

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2056 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

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(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph if made public, would divulge information entitled to protection under section 1905 of Title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of Title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of

of the members of the board and the by the Administrator shall not be officers local governments. On the basis of the the board shall within sixty days after dings of fact as to whether or not such ereupon by decision, incorporating its endations to abate the pollution as may such decision and the record of the such decisions shall be public. Upon istrator shall promptly implement the the provisions of this chapter.

alleged polluter

lled under this subsection, the board is se alleged activities result in discharges to file with it in such forms as it may ; data, furnishing such information as : character, kind, and quantity of such other means to prevent or reduce such a report. Such report shall be made may prescribe, and shall be filed with od as it may prescribe, unless addition- owing satisfactory to the board by the report or portion thereof (other than ator has access under this section, if ets or secret processes of such person, or portion thereof confidential for the

If any person required to file any to do so within the time fixed by the failure shall continue for thirty days n shall forfeit to the United States the y of the continuance of such failure, he Treasury of the United States, and he name of the United States in the e such person has his principal office iness. The Administrator may upon ny forfeiture provided for under this

board members

or employees of Federal, State, or (including travel-time) during which titled to receive compensation at a t in excess of the maximum rate of he General Schedule under section ling the limitations of sections 5703 l for travel, subsistence, and related

(f) Enforcement proceedings

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, c. 758, Title III, § 310, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 860.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92-500, see 1972 U.S. Code Cong. and Adm. News, p. 3668.

West's Federal Forms

Jurisdiction and venue in district courts, matters pertaining to, see § 1003 et seq.

Library References

International Law § 10.
C.J.S. International Law § 12.

§ 1321. Oil and hazardous substance liability

(a) Definitions

For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision

thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.¹

(17) "Otherwise² subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

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(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C.A. § 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C.A. § 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C.A. § 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which

may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to

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the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed \$50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed \$250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(E) Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

(c) Removal of discharged oil or hazardous substances;
National Contingency Plan

(1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C.A. § 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]) the

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CROSS REFERENCES

Intervention on the high seas, 33 USCS §§ 1471 et seq.
International and national coordination of environmental efforts, 42 USCS § 4332.

RESEARCH GUIDE

Am Jur:

61A Am Jur 2d, Pollution Control §§ 4, 132, 212, 233.

Law Review Articles:

International Joint Commission (United States-Canada) and the International Boundary and Water Commission (United States-Mexico): Potential for Environmental Control Along the Boundaries. 6 NYU J of International L & Politics 499, Winter, 1973.

Boundary Waters Treaty of 1909: Does It Provide an Environmental Cause of Action? 20 SD L Rev 147, Winter, 1975.

INTERPRETIVE NOTES AND DECISIONS

Decision under 33 USCS § 1320 must be "on the basis of the evidence presented"; hearing contemplated by section results only in "recommendations" for abating international pollution and might well be intended by Congress to be legislative type of hearing producing policy of general application. *Seacoast Anti-Pollution League v Costle* (1978, CA1) 572 F2d 872, cert den 439 US 824, 58 L Ed 2d 117, 99 S Ct 94 and later app (CA1) 597 F2d 306.

EPA administrator has authority to apply ocean dumping criteria promulgated under Marine Protection, Research, and Sanctuaries Act of 1972 [33 USCS §§ 1420, 1444 et seq.] to set National Pollutant Discharge Elimination System permit conditions for ocean discharges in absence of promulgated ocean discharge guidelines under 33 USCS § 1343. *Re Continental Oil Co.* (1978) USEPA NPDES Permit Op No. 72.

§ 1321. Oil and hazardous substance liability

(a) Definitions. For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act [42 USCS § 1342], (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act [42 USCS § 1342], and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act [42 USCS § 1342], which are caused by events occurring within the scope of relevant operating or treatment systems;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

- (4) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;
- (5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;
- (6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;
- (7) "person" includes an individual, firm, corporation, association, and a partnership;
- (8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches;
- (9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone [15 UST 1606];
- (10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;
- (11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;
- (12) "act of God" means an act occasioned by an unanticipated grave natural disaster;
- (13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;
- (14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section;
- (15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;
- (16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.[:]
- (17) "Otherwise [otherwise] subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or

numbering, or as provided for by international agreement to which the United States is a party.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs and alternative remedies. (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to,

appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6)(A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of

paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than \$5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91) [46 USCS Appx. § 91], of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed \$50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed \$250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act [33 USCS § 1319(b)].

(E) Civil penalties shall not be assessed under both this section and section 309 [33 USCS § 1319] for the same discharge.

(c) **Removal of discharged oil or hazardous substances; National Contingency Plan.** (1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

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TO: GINNY FAY + SENATOR COTTEN FROM BOB MOTTLEY, (212) 830-2957
AND NICK BLENKEY, EDITOR OF MAKING LOG (212) 620-9263

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West Coast States May Gang Up on Tanker Industry

By WILLIAM DIBENEDETTO

Journal of Commerce Staff

WASHINGTON — Four West Coast states and Hawaii hope to form a bloc that would have wide authority to regulate tankers and oil spill response measures in their region.

The move could develop into a classic states' rights vs. federal law battle, and might eventually render ineffective large sections of a federal oil pollution response, liability and compensation law enacted by Congress last year.

For instance, the interstate group would have power to impose new standards for tank-

er design, equipment, and crew sizes. And it could regulate ocean activities within the 200-mile Exclusive Economic Zone of the United States.

"It's a pretty bad package; a dangerous device with a propensity for causing a lot of mischief," said Ernest Corrado, president of the American Institute of Merchant Shipping, a group that represents U.S. tanker and bulk operators.

"It's scary," said an oil industry source who requested anonymity. "The whole concept of a federal approach will be thrown out."

The Pacific Ocean Resources Compact the

states envision needs approval from only two of the state legislatures involved — Alaska, California, Oregon, Washington and Hawaii — before it is sent on to Congress.

If Congress approves, regulations passed under the compact have the full effect of federal law, including enforcement duties by federal agencies. In addition, British Columbia may become a non-voting party to the compact.

Sen. Sam Cotten, who chairs the Senate Special Committee on Oil and Gas in the Alaska legislature and is a principal sponsor

of the compact legislation, said, "We're very serious about this."

Even with the federal pollution law, he noted, "You have different states with different standards; under the compact there will be one set of rules for the West Coast."

"We surrender certain authority and so does the federal government. It's a trade-off."

Sen. Cotten said the compact idea is the result of about two years of work, and it could take a year or two to get all five states to pass it.

Under the compact authority, the states
SEE WEST, PAGE 10A

West Coast States May Gang Up To Regulate Tankers, Oil Spills

CONTINUED FROM PAGE 1A

would coordinate programs and draft regulations involving oil and hazardous substance spill prevention, transportation, response planning and environmental monitoring and research.

Identical compact legislation pending in each state legislature says the states "do not have an effective means to address mutual concerns related to transport of oil and hazardous substances in waters within and beyond (their) jurisdiction that may jeopardize ocean resources."

It adds, "The existing system of response to spills fails to provide adequate protection to ocean resources."

Leo Brien, president of the Pacific Merchant Shipping Association, said, "It's very early in the process, but this is clearly causing us some problems."

It seems "very premature," he continued, because California, for example, recently passed comprehensive spill legislation and the federal pollution law was enacted last August.

Mr. Brien said it won't be easy for states to agree on final compact

legislation, and it faces an uncertain future in Congress. He noted that Congress has approved over 200 state compacts, but this one is a "radical departure" because of its anticipated scope.

Mr. Corrado noted that the five states' congressional delegations comprise 27% of the vote on Capitol Hill. "That would give them a big start right away" toward congressional approval, he said.

"Nobody envisioned this," he continued, adding that the compact concept seems to nullify the oil pollution act.

than that of former Gov. Bill Sheffield, a businessman-turned-governor who also brought a crew of political newcomers to Juneau. Former Gov. Steve Cowper, a former legislator, also made his share of first-year mistakes.

But others say things are far worse. The
Continued on Page 6



Janet Halvarson Photo by Al Geist

'Time for new blood' at FVCB

By Al Geist
For the Journal of Commerce

FAIRBANKS — "These are high-pressure jobs and usually people don't stay longer than five years. By that time, the talent they offer has been used and it's time to bring in new blood." Those are the words of Janet Halvarson, on her last day on the

Continued on Page 3

Environmentalists have appealed Forest Service plans for the Tongass National Forest. The Tongass Reform Act of 1990 — an action industry representatives say could seriously harm the ability of independent small sawmills to operate economically in Southeast Alaska. Story, Page 11

PACIFIC OCEAN COMPACT

Bill aims at increasing state influence

AK J of Commerce 2/18/91

By Don Byron
Alaska Journal of Commerce

Legislation introduced earlier this month in all five Pacific Ocean states would strengthen the hands of the states in preventing oil spills in their waters all the way out to the 200-mile limit, according to the bill's Alaska sponsor.

The Pacific Ocean Resources Compact will, said Sen. Sam Cotten, D-Anchorage, "enable us to set standards for ships and routes, establish regulations, and speak with one voice on activities affecting our joint resource — the Pacific Ocean."

The compact would include Alaska, Hawaii, Washington, Oregon and Califor-

nia. The interstate deal would require congressional approval.

The province of British Columbia could also join the group, either as a non-voting member, or, if Congress and the Canadian federal governments approved, as a full member. Each member state would have an equal vote.

"We'll invite British Columbia to participate," Cotten said. "They're obviously an interested party."

Under the legislation, the compact would undertake a united effort to prevent spills of oil or other substances harmful to the environment and fisheries of the Pacific.

It would set standards for such things as crews, equipment and routes used for ship-

ping oil and other hazardous materials within the compact area. Of specific concern to Alaska could be such issues as tanker design, tug escorts, safety equipment and crew size and training. "It would expand state influence," Cotten said.

A Hickel administration spokesman did not respond to a request for the governor's position on the bill.

The compact would exist only for regulation of shipments of oil and hazardous substances, and would not address such other interstate (and international) issues as resource management or allocation, or fisheries regulation.

Historically, interstate compacts have
Continued on Page 2

State LUST assistance not enough

By Tim Bradner
Alaska Journal of Commerce

It now appears likely that the new state underground storage tank assistance program approved last year by state legislators may not achieve one of its key goals, helping small businesses with underground tanks meet new federal requirements for financial responsibility.

Environmental Protection Agency requirements for \$500,000 to \$1 million in insurance go into effect this April for some larger fuel storage operators and in October for small firms who own one to 12 tanks.

It was hoped that the state assistance program would substi-

tute for the federal financial responsibility, or insurance, requirement. But state and EPA officials now think the funding mechanism for the state program — tank registration fees and some \$10 million in general fund appropriations over two years — will be inadequate to meet this need.

EPA officials in Seattle are reportedly looking at different ways federal regulations can be interpreted, but they are not optimistic. If the program doesn't qualify, owners of underground fuel tanks will still be required to get insurance, although the new program may help if its loan and grant provisions can assist small firms do required site assessments that will make insurance affordable, or even possible. Site

Continued on Page 9

Hawaii, Guam, Puerto Rico and the Virgin Islands. Office of Personnel Management officials told Alaska's congressional delegation that such cuts were being considered, although they said any action would be held off for at least eight months. The allowance is tax-free, and if it is lost, federal workers would lose \$3,000 to \$10,000 per year. Federal officials will publish the 295-page report by Wisconsin-based Runzheimer International in the federal register. After a 90-day period for public comments, the Office of Personnel Management says it will spend two to three months studying possible changes. As one of the biggest employers in Alaska, a cut of such magnitude could have substantial effects on the state's economy.

Interior now says ANWR oil discovery chances are 50 percent. The Interior Department has revised its estimates of finding oil in the Arctic National Wildlife Refuge, and now says there is a 50 percent chance of finding a commercial oilfield. Earlier, the agency gave a 19 percent chance. The federal Bureau of Land Management

Hickel and Young: Raise industry royalty to cover state's loss. Gov. Walter Hickel and Congressmen Don Young are now saying that if Congress doesn't give Alaska its "fair share" of federal oil royalties from any ANWR production, oil companies should pay higher royalties to help make up the difference. Industry generally pays 12.5 percent royalties on federal leases, and Alaska, under current law, would receive 90 percent of that. As part of legislation opening ANWR to exploration, Congress may scale back the state's share to 50 percent.

Terrorism fears dampen Japanese tourism, flights via Alaska. Fears in international terrorism is having harsh effects on Japanese tourism to Europe, the economic core for passenger flights that continue to stop at Anchorage International Airport. State airport officials said 20 percent of the international flights refueling in Anchorage may be cancelled this month. One Japan Air Lines Boeing 747 landed recently with just 19 passengers on board.

Oil prices will rebound dip: British Petroleum's officer told Alaska business company believes a short-term glut could depress prices a Gulf war, but that market likely restore an equilibrium \$20 to \$25 per barrel range, told listeners at a Resource Council breakfast that so barrels of recoverable oil produced in Alaska, and business experts think another barrels can be developed. invest some \$2.5 billion in the next few years, it was said.

Details on Hickel's Exxon proposal. A few details emerged of a proposed settlement between Gov. Walter J. Hickel and Exxon over ongoing oil spill litigation. cleanup would be paid from a fund to be established by Exxon, H. lawmakers in Juneau. Hickel federal studies into the Exxon put the damage assessment at \$1.2 billion. Hickel has proposed a \$1.2 billion settlement.

Pacific Ocean Compact

Continued from Page 1

been used to try to deal with other problems that transcend state boundaries, such as air pollution, land-use planning and water allocation.

Industry's response has, so far at least, been favorable, Cotten said. "They'd rather have one set of standards and regulations instead of potentially five or six," he said.

"I'm inviting criticism," Cotten said, but he added, "The benefits are pretty clear for Alaska."

The compact is the result of work by a couple of interstate bodies, Cotten said. One was the Pacific Fisheries Task Force, with four Alaska legislators (Sens. Dick Eliason and Fred Zharoff and Reps. Cliff Davidson and Mike Navarre) as members. The other was the Ocean Resources Committee of the Council of State Governments' Western Conference. Cotten, then a state representative, was vice chairman of the committee.

But Cotten said the major factor pushing the states toward the compact was the 1989 Exxon Valdez oil spill.

The compact would coordinate plans for responding to oil or hazardous substance spills, and would assemble and keep a directory of personnel, equipment, technical expertise, organizations and other resources.

If Alaska does not join the compact, "the other states will," he said.

The Pacific Compact legislation was introduced in the other participating states by state Sen. Bill Bradbury of Oregon, Assemblyman Dan Hauser of California, state Sen. Jack Metcalf of Washington and state Rep. Peter Apo of Hawaii.

Co-sponsors with Cotten on the legislation, SB 102, are Sens. Eliason, Zharoff and Arliss Sturgulewski.

Correction

In a Feb. 4 story, the name of Alaska Housing Finance Corp.'s Tom Hulin was misspelled. Also, Hulin was mistakenly identified several times in the story as the agency's CEO, or chief executive officer. He is chief operating officer.

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Chemical and other hazardous materials

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Chernobyl

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Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 163-3991
Fax: (907) 163-3331

November 20, 1990

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MEMORANDUM

TO: Representative Kay Brown

FROM: Glenn T. Grafe
Legislative Analyst

RE: Comparison of Oil Spill Statutes in Alaska and California
Research Request 91.046

STATE OF ALASKA
DEPT. OF ENVIRONMENT & CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

This memorandum compares oil spill statutes in Alaska and California. As you requested, the statutes are compared using six categories: contingency planning, performance standards, liability and penalties, financing, financial responsibility requirements, and institutional structure. Specific statutes are identified by number and summarized on the attached tables.

California uses a different system of identifying statutes than does Alaska. Statutes concerning prevention of and response to oil spills are found in the Fish and Game Code, the Government Code, the Harbors and Navigation Code, the Public Resources Code, and the Water Code. Because it is possible for two different statutes to have the same number, California statutes are always identified by code and number.

We reviewed California, statutes including supplements covering legislation passed in 1989 (supplements are updated each January), and SB 2040, a bill passed earlier this year that drastically changed California's oil spill laws. According to sources at the California State Legislature, no other significant oil spill legislation became law during 1990.

This analysis compares statutory provisions: similarities or differences between the two states' oil spill prevention and response measures that result from regulations adopted by state agencies are not considered. The following is a summary of information contained in the series of tables attached to this memorandum.

Contingency Planning Requirements

As a result of legislation passed during 1990, California statutes require more comprehensive oil spill contingency planning than Alaska statutes require. California statutes emphasize research about new technologies that may be used in the event of a spill. Required studies include investigations into communications and ship position reporting systems, and appropriate response

equipment and technology. California statutes also require identification of the hierarchy of state agencies involved in oil spills, coordination among them, assessment of response equipment, identification of safe shipping lanes, and a procedure for approving dispersants and biological remediation. Oil spill contingency plans must assure that equipment is on hand to respond to a reasonable worst case scenario. Alaska statutes specify only general requirements for contingency planning.

Both Alaska and California statutes contain provisions for oil spill contingency plans at the state and regional level and for individual facilities or vessels. While Alaska requires an annual update of the state contingency plan, California only requires an updated plan every three years. California law, however, provides more specific direction about the content of the plans. Both states require periodic unannounced drills to test spill preparedness. Tables 1 and 2 outline the contingency planning statutes.

Performance Standards

California statutes require that the best achievable technology be used to provide reasonable protection from an oil spill. Companies are encouraged to share facilities, and new marine terminals must have on-site deballasting facilities. Tankers are required to have the most effective, feasible spill containment and recovery equipment. Marine terminals must have an overflow warning mechanism. The state is directed to create wildlife rehabilitation stations for birds and marine mammals. Additionally, the oil spill administrator is requested to promote higher federal standards.

Alaska statutes require the Division of Emergency Services to equip depots in areas where a spill is likely to occur and to oversee an oil spill response corps. The Alaska Hazardous Substance Spill Technology Review Council is directed to provide the state with information on cleanup technology. Tables 3 and 4 summarize California and Alaska statutes concerning performance standards.

Liability and Penalties

Both Alaska and California have complex liability and penalty regimens. A brief summary of these laws follows (a more detailed analysis might be obtained from the Legal Services Division).

Both states hold persons responsible for a spill, liable for damages to the environment, personal property, economic losses, and costs of cleanup by the state. California statutes provide for absolute liability; Alaska statutes provide for strict liability; and both states provide for joint and several liability. Both states provide certain persons who respond to a spill immunity from liability.

Penalties for oil spills vary between the two states although both have provisions for dollar per gallon penalties as well as a range of penalties levied per incident. California has many statutes concerning liability and penalties and some of them appear to be redundant. Because the system of penalties is so complex, it is difficult to compare these statutes without specifically addressing each one. Table 5 outlines California statutes and Table 6 specifies Alaska statutes dealing with liability and penalties.

Financial Responsibility Requirements

Statutory provisions regarding proof of financial responsibility for transporting oil are outlined in Table 7. While Alaska law differentiates between crude and refined oil, California does not. Both states accept insurance, self-insurance, surety bonds and letters of credit, but Alaska permits other proof as permitted by the Department of Environmental Conservation. Alaska requires in-state service of process for claims but allows an exemption to this rule for protection and indemnity (P&I) clubs.¹ California requires a higher dollar amount for proof of financial responsibility than does Alaska. While California provides for a specified increase in this dollar amount in 1995 and 2000, the amounts in Alaska are increased every three years using the consumer price index. California provides for a reduced rate for small vessels and Alaska permits exemptions for small vessels and terminals under a certain size.

Financing Spill Prevention and Clean Up

Mechanisms to finance spill prevention, cleanup and response differ in each state. California has a more complex system of funds and accounts than does Alaska. In Alaska, money recovered from settlements or penalties are placed in the Oil and Hazardous Release Mitigation Account. This money may or may not be placed in the Oil and Hazardous Release Response Fund within the General Fund. Even when placed in this fund, there is no guarantee that the money will be allocated to oil spill programs due to constitutional limitations on dedication of funds. The legislature has stated, however, that it intends to always have funds available for spill response. The purpose of the response fund is to provide money for cleanup of spills, monitoring compliance with contingency plans, verifying financial responsibility, funding the Oil and Hazardous Response Corps, funding the Citizen's Oversight Council on Oil and Hazardous Substances, and reimbursing municipalities.

California law provides for several funds concerning oil spills and it differentiates between spill prevention and cleanup. The Fish and Wildlife

¹P&I clubs often provide insurance pools for tankers and terminals, but they refuse to provide service of process for states and only recognize federal authorities.

Representative Brown
November 28, 1990
Page 4

Pollution Cleanup and Abatement Account is funded from oil spill settlements and is used for damage assessments, economic valuation, and restoration. It is to be used for cleanup only when money is not available from the spiller or from other funds. Amounts over \$1,000,000 may be used for fish and wildlife preservation. The Oil Spill Prevention and Administrative Fund is earmarked for research to reimburse the Oil Spill Committee. This fund receives money from a fee of \$0.04 per barrel of oil. The Environmental Enhancement Fund is used for specific enhancement projects. Money for oil spill cleanup is available from the Hazardous Substance Account and the Oil Spill Response Trust Fund. The trust fund receives money from a \$0.25 per barrel fee that is collected from terminals and pipelines until the fund reaches \$100,000,000. Tables 8 and 9 summarize financial arrangements in California and Alaska.

Institutional Structure

Both Alaska and California have lead agencies and committees or commissions to make recommendations. The California legislature directs most responsibility for oil spill prevention and response to a single person known as the administrator. The administrator is a deputy commissioner from the California Department of Fish and Game and is responsible for managing some of the funds as well as coordinating spill prevention and response. The administrator is the chairman for the State Interagency Oil Spill Committee. A subcommittee called the Review Subcommittee reviews and comments on regulations. The Oil Spill Technical Advisory Committee oversees actions of the administrator. Specific harbors along the coast have Harbor and Safety Committees to ensure the safety and health of the people and the environment.

The Alaska Department of Environmental Conservation (DEC) has the primary responsibility for spill prevention and response in Alaska. The Division of Emergency Response of the Department of Military and Veterans' Affairs, however, coordinates some aspects of oil spill response and is responsible for the Oil and Hazardous Substance Response Corps as well as the maintenance of equipment depots. The Oil and Hazardous Substance Response Office and the Alaska Emergency Response Commission are both located within the DEC. The Hazardous Substance Spill Technology Review Council reviews effectiveness of spill technologies, recommends research topics and maintains information on cleanup technology. The legislature oversees the Citizen's Oversight Council on Oil and Hazardous Substances. This council determines if state agencies are carrying out their duties, assists in the development of interstate compacts, and recommends policies. Tables 10 and 11 summarize statutes in California and Alaska that outline the responsibilities of various departments, commissions and councils.

I hope that this information is useful to you. Please contact us if we may be of additional assistance. A copy of SB 2040, recently passed by the California legislature is attached to this memorandum.

Attachments

TABLE 1
Oil Spill Contingency Planning Statutes for California

Description	Statute Reference
Each operator of a marine facility shall prepare an operations manual describing equipment and procedures to protect public safety and the environment.	PR 8758*
A state oil spill contingency plan will be written and updated every three years. It will contain: the hierarchy for state and local response responsibilities, a regional and local planning element, a plan for predeployment of equipment and emergency response vessels, a process for approving use of dispersants, facilities needed for wildlife rehabilitation, an expedited means of approving permits, and a map indicating sensitive marine areas.	Gov 8754.1* Gov 8754.7 Gov 8754.8
Administrator** will carry out unannounced drills.	Gov 8670.10
Administrator shall conduct studies about: the use of dispersants, incineration, and bioremediation, including the environmental effects of these agents; the possibility of using fishermen for spill response; technology needs; coordination; liability; and compensation.	Gov 8670.12
Administrator to report annually to governor and legislature.	Gov 8670.15
Administrator to coordinate plans with federal government.	Gov 8670.14
Administrator shall review contingency plans, equipment, personnel and training.	Gov 8670.19
Administrator to adopt regulations requiring harbor and safety committees to develop safety plans that will review communications systems, anchorages, congestion in shipping lanes, navigational aid placement, routes during emergencies, and when tankers should be accompanied by tugboats.	Gov 8670.23
Administrator to adopt regulations that require oil spill contingency plans to assure that: equipment is on hand to respond to a reasonable worst case scenario, hazard and operational studies are completed, and sensitive areas are protected.	Gov 8670.28
Operators of marine facilities must complete an interim contingency plan by July 1991 specifying chain of command, communication procedures, site layout, spill response procedures and response training.	Gov 8670.29
Vessel operators must submit an interim contingency plan including spill response plans, capability to respond to a spill, and the procedures for reporting spills.	Gov 8670.30
Administrator may approve contingency plans or require that they be rewritten.	Gov 8670.31
Administrator may permit vessels without an approved plan to enter state waters if the marine terminal operator takes responsibility for a spill.	Gov 8670.33
Tankers may enter into state waters without an approved contingency plan during emergencies.	Gov 8670.34
Administrator may draft guidelines concerning the adequacy of oil spill contingency elements of area plans, including training of local personnel.	Gov 8670.35
Oil spill contingency plans will be reviewed by the Oil Spill Committee and the Oil Spill Technical Advisory Committee.	Gov 8670.36
Administrator shall conduct studies with state and federal agencies to recommend improvements to contingency planning.	Gov 8670.37

* Gov refers to the Government Code and PR refers to the Public Resources Code

** The administrator is a deputy commissioner of the Department of Fish and Game and is responsible for oil spills.

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046A)

TABLE 2
Oil Spill Contingency Planning Statutes for Alaska

Description	Statute Reference
Terminal facilities, pipelines, tank vessels, and oil barges must have an approved oil spill contingency plan to operate in state waters. The plan must be renewed every 3 years. Operators must be able to respond quickly to an oil spill (different standards for each type of facility). The Department of Environmental Conservation (DEC) may approve, modify or disapprove plans within 65 days of submittal.	AS 46.04.020
A state master plan will be completed and referred to as the Oil and Hazardous Substance Discharge Prevention and Contingency Plan. It will be revised annually. The plan shall identify actions to reduce the occurrence of catastrophic oil spills, designated locations for response depots, and provide for unannounced oil spill drills. The DEC shall consult with other agencies when writing the plan.	AS 46.04.200
The DEC may establish regional plans and review them annually.	AS 46.04.210
The DEC may enter into contracts to provide personnel, equipment or services to comply with oil spill laws.	AS 46.04.090

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.0468)

Description	Statute Reference
Administrator* to report to the legislature by December 1992 about the feasibility of requiring new technologies, including advanced electronic vessel location charts, shipboard oil and water separation systems, and new designs for skimming vessels.	Gov 8670.13*
State oil spill contingency plan to provide best achievable protection of the coast and marine waters and will identify appropriate shipping lanes, navigational aids, ship position reporting requirements, communications requirements, and required emergency response vessels to aid disabled tankers and to respond to a spill.	Gov 8754.7
Transfer of petroleum between tanker and a shore facility must be continually monitored with an overflow warning mechanism.	H&N 135*
Tankers and barges must comply with federal and state regulations before using a marine facility.	PR 8752*
Administrator may prohibit a marine facility from servicing a tanker that has had a violation within 3 years and has not corrected the problem.	PR 8754
Commission to adopt regulations for best achievable protection, using the best achievable technology considering reasonable protection and processes currently in use elsewhere.	PR 8755
Commission shall coordinate inspections of marine facilities with other agencies to monitor effects on public safety, health and the environment.	PR 8757
Multi-company use of tanker facilities encouraged, and facilities to be designed to reduce the volume of oil spilled, minimize risk of collision and have onshore deballasting facilities.	PR 30251 PR 30707
Administrator shall promote adoption of regulations by the federal government to: require alarms on the bridge to indicate when manual operation of ships is attempted while on auto-pilot, 2 VHF radios, a single-side band radiotelephone, a satellite communication device, two collision avoidance radar devices, and design of shipping lanes to protect sensitive areas.	Gov 8670.16
Administrator shall promote adoption of rules, regulations and guidelines for the best protection of the public health and safety and the environment including: compatibility of tanker control systems, specification when tug boats are necessary, and a requirement that at least one person be on the bridge who speaks English and the language of the ship's master.	Gov 8670.17
Administrator may inspect vessels on a regular basis and will report to the legislature recommending an inspections system that will not duplicate Coast Guard activities.	Gov 8670.18
Vessels not in compliance with federal double hull requirements may not load or unload oil in the state.	Gov 8670.22
Administrator shall establish rehabilitation stations for birds and marine mammals and \$500,000 will be appropriated for this purpose between 1991 and 1992.	Gov 8670.37.5
Tankers must have ready access to the most effective, feasible containment and recovery equipment for oil spills.	PR 30251 PR 30707

* Administrator is a deputy commissioner of the Department of Fish and Game responsible for oil spills.

** Gov refers to the Government Code, H&N refers to the Harbors and Navigation Code, PR refers to the Public Resources Code.

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046C)

TABLE 4
Performance Standards for Preventing Oil Spills in Alaska

Description	Statute Reference
The DEC may inspect facilities, tankers and pipelines to ensure compliance.	AS 46.04.060
The DEC shall adopt regulations to carry out the purposes of this chapter.	AS 46.04.070
The Division of Emergency Services will maintain equipment depots to enable quick response to spill.	AS 46.08.120

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.0460)

TABLE 5
Liability and Penalties for Persons Responsible for Oil Spills in California

Topic and Description	Statute Reference
LIABILITY, PENALTIES AND OFFENSES	
Operator or owner absolutely liable for damages, without regard to fault, for property damage by the state, county, city, or other person.	H&N 293
Responsible party absolutely liable for damages incurred by any party and court costs. Not liable if spill due to an act of war, natural disaster or unrelated third party.	Gov 8670.56.5*
Persons responsible for oil entering water during exploration liable for damages to any injured party.	H&N 294
For intentionally or negligently discharging oil into water civilly liable for up to \$6,000.	H&N 151*
Failure to report a spill of one barrel of oil or more results in a \$500 - \$5,000 fine and/or up to one year in prison.	WC 13272
Knowingly failing to follow an order of the administrator, notify the Coast Guard about a disabled tanker, or discharging oil into marine waters may result in not more than one year in prison and a fine of \$5,000 - \$50,000 per day. Failing to notify the emergency service office, operating without a contingency plan or failing to follow a contingency plan may result in not more than one year in prison and/or a fine of \$2,500 - \$250,000.	Gov 8670.64
Except as otherwise provided, persons who knowingly violate provisions in the Government Code or Division 7.8 of the Public Resources Code may be fined up to \$50,000 and one year in prison.	Gov 8670.65
Intentional or negligent acts in violation of an oil spill provision in SB 2040 punishable by a civil penalty of \$25,000 - \$500,000 per day.	Gov 8670.66
Intentional or negligent acts in violation of an oil spill provision in SB 2040 punishable by an administrative penalty of up to \$100,000 per day.	Gov 8670.67
Unlawful to pollute waters including petroleum.	F&G 5650*
Guilty of a misdemeanor for discharging oil or ballast from any vessel.	H&N 153 H&N 152
Persons guilty of a misdemeanor, for each day unapproved substances for cleanup are used.	WC 13169*
No oil may be deposited in waters.	PR 6873*
Persons causing or permitting an oil spill are liable civilly for administrative penalties of up to \$10 per gallon (minus recovery) without regard to fault, and up to \$30 per gallon (minus recovery) if there was negligence.	Gov 8670.67.5
Persons intentionally neglecting cease and desist orders or causing discharge into waters are civilly liable for an administrative penalty of \$500 - \$5,000 per day, or \$15,000 per day if a cleanup abatement order is issued. When a cease and desist order is not violated, administrative penalty is up to \$10 per gallon or \$20 per gallon if imposed by superior court.	WC 13350
Administrator may issue a complaint alleging facts for basis of liability, and responsible party may request a hearing.	Gov 8670.68

TABLE 5
Liability and Penalties for Persons Responsible for Oil Spills in California

Topic and Description	Statute Reference
RECOVERY OF CLEAN UP COSTS Department of Fish and Game may recover costs from responsible party for costs incurred during cleanup and abatement for substances detrimental to fish and wildlife. Party responsible for spill is liable for money borrowed and placed in the Oil Spill Response Trust Fund Person who causes an oil spill shall immediately contain, clean up and remove oil. Administrator may direct spiller to clean up spill and may seek an injunction. Responsible persons liable for cleanup costs.	F&G 5655 F&G 12015 F&G 12016 Gov 8670.53.15 Gov 8670.25 Gov 8670.62 Gov 8670.56.5 H&N 294 Gov 8670.64
LIABLE FOR DAMAGE TO THE ENVIRONMENT Persons responsible for oil spill are liable civilly for all actual damages to fish and wildlife.	F&G 12016 H&N 294 H&N 293
IMMUNITY Those who take good faith actions are immune from liability under certain conditions. Response contractors may be made immune.	Gov 8670.56.6

* F&G refers to the Fish and Game Code, H&N refers to the Harbors and Navigation Code, Gov refers to the Government Code, WC refers to the Water Code, and PR refers to the Public Resources Code.

Sources: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046E)

TABLE 6
Liability and Penalties for Persons Responsible for Oil Spills in Alaska

Topic and Description	Statute Reference
LIABILITY AND PENALTIES	
Owner of substance, vessel or facility and operators are strictly liable, jointly and severally, for public and private property damages unless due to an act of war or God or a third person. State may recover attorney fees for civil actions against spiller.	AS 46.04.822 AS 46.03.763
Superior court may place an injunction against a spiller.	AS 46.03.765
Vessel may be detained and sold for security for payment if a person spills oil.	AS 46.03.77
Spiller liable for damages including the loss of persons, property, income or economic benefit.	AS 46.03.824
Person causing discharge must immediately clean it up, unless more harm would result from cleanup efforts.	AS 46.04.020
Criminal penalties: Oil spillers with criminal negligence are guilty of a class A misdemeanor if provisions of AS 46.04 or AS 44.09 or related regulation are violated. If AS 46.03.740 is violated with criminal negligence, then violator is guilty of a class C felony (if 10,000 barrels or more) or guilty of a class A misdemeanor (if 10,000 barrels or less).	AS 46.03.790
Civil penalties will be assessed considering toxicity, degradability, and dispersal characteristics of the oil and may not exceed: \$10 per gallon for anadromous streams, \$2.50 per gallon for estuaries, and \$1 per gallon for unconfined saltwater (minus oil recovered). Penalty 5 times as much if there is gross negligence. For a spill greater than 18,000 gallons the owners of the vessel, oil or facility may be jointly and severally liable. They are not liable if spill is an act of God or result of an action by a third person. If the spill is less than 18,000 gallons, persons liable under AS 46.03.760(a), but the fine may be under \$500. Not liable under AS 46.03.760(a).	AS 46.03.758
In addition to other spills, a person responsible for an oil spill over 18,000 gallons is also liable for a fine of \$8 per gallon for the first 420,000 gallons and \$12 per gallon thereafter (\$500,000,000 maximum). Subject to the maximum penalty, spillers may be fined up to 4 times the above rates if there was gross negligence or if the contingency plan was not followed. Not also liable under AS 46.03.760(a). Penalties maybe reduced if spill is a result of an action by a third party.	AS 46.03.759
Oil spillers liable civilly for a fine of \$500 - \$100,000 initially and not more than \$5,000 per day thereafter.	AS 46.03.760(a)
Oil spillers liable civilly for a fine of \$500 - \$100,000 initially and not more than \$10,000 per day thereafter.	AS 46.03.760(f)
Reckless operation of a tank vessel resulting in spill is a class C felony.	AS 46.03.742
Negligent operation of a tank vessel with criminal negligence is a class A misdemeanor.	AS 46.03.743
Ballast water may not be discharged into waters unless the safety of the vessel is at stake.	AS 46.03.750
Persons responsible for a facility or a vessel must immediately notify the Department of Environmental Conservation (DEC).	AS 46.03.755
A person may not discharge petroleum products into waters except as permitted under Article IV of the International Convention for the Prevention of Pollution of the Sea by Oil	AS 46.03.740

TABLE 6
Liability and Penalties for Persons Responsible for Oil Spills in Alaska

Topic and Description	Statute Reference
RECOVERY OF CLEAN UP COSTS Cleanup costs may be recovered by responsible party.	AS 46.03.760
LIABLE FOR DAMAGE TO THE ENVIRONMENT Persons responsible for spilling oil are liable for restoration of the environment.	AS 46.03.780
IMMUNITY Hazardous response contractors are not civilly liable unless they are grossly negligent or are criminally negligent. Liability is limited for response corps workers or state workers.	AS 46.03.823 AS 46.08.160

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046F)

TABLE 7
Comparison of Financial Responsibility Requirements between California and Alaska

California	Statute Reference	Alaska	Statute Reference
Accepted proof: Insurance, self-insurance, surety bond, or letter of credit	Gov 8670.37.54*	Accepted proof: Insurance, self-insurance, guarantee, surety, letter of credit, or other approved proof.	AS 46.04.041
May be issued for vessel or for company that owns oil, for pipeline or for marine facility. Marine facility must have a copy of vessel's certificate.	Gov 8670.37.51	Issued for vessel, terminal facility, pipeline, or oil exploration and production facility	AS 46.04.040
Owners of multiple facilities may have only one certificate but it may be cancelled for other facilities or vessels in the event of an oil spill.	Gov 8670.37.55		
Certificates not valid for more than two years.	Gov 8670.37.57		
Possession of certificate is conclusive evidence that the party is liable for spill damage.	Gov 8670.37.53		
Amount: Vessels must prove financial responsibility for \$500,000,000 (\$750,000,000 by 1995 and \$1,000,000,000 by 2000). Amount may be reduced for small barges. Marine facilities must show responsibility for a reasonable worst case scenario considering amount of oil and frequency of shipments.	Gov 8670.37.53	Amount per Incident: Crude oil terminal \$50,000,000, noncrude oil terminal \$25 per barrel; tank vessel with crude oil \$300 per barrel, \$100,000,000 maximum; noncrude oil tank vessel \$100 per barrel, \$35,000,000 maximum. Small vessels may be exempted.	AS 46.04.041
		Amounts to change every three years reflecting changes in consumer price index.	AS 46.04.043
		Exemptions: Crude oil terminals with less than 5,000 barrels or noncrude terminals with less than 10,000 barrels.	AS 46.04.051
		Service of process required in-state with an exception for insurance clubs.	AS 46.04.04

* Gov stands for the California Government Code

Sources: Alaska and California Statutes.

Prepared by Legislative Research Agency, November 1990 (91.046G)

TABLE 8
Financing Arrangements for Oil Spills in California

Description	Statute Reference
The Fish and Wildlife Pollution Cleanup and Abatement Account (FWPCAA) is created in the Fish and Game Preservation Fund. Money from oil spill settlements to be placed in the account and will be spent for oil spill cleanup only if money is not available from the spiller or the Hazardous Substance Account. Fund to be used for response coordination, planning, resource injury assessment, economic valuation, and restoration. Amounts over \$1,000,000 at the end of each fiscal year may be used for fish & wildlife preservation	F&G 12017*
Money recovered from oil spill settlements and civil penalties shall be deposited in the FWPCAA.	F&G 5655 H&N 153* F&G 5656
Funds for oil spill cleanup will be obtained first from the Hazardous Substance Account (HSA) of the General Fund, then from the FWPCAA.	F&G 12015
The Oil Spill Prevention and Administration Fund (OSPAF) is created and shall be administered by the administrator.**	Gov 8670.38 Gov 8670.39
Administrator to collect an annual fee not to exceed \$0.04 per barrel from marine terminal or pipeline operators and placed in the OSPA. Money to be used for research, oil spill response and implementation programs, and reimbursement to the Interagency Oil Spill Committee (not to be used for spill response). Commission shall be reimbursed by the fund.	Gov 8670.40 PR 8759*
The Oil Spill Response Trust Fund (OSRTF) is created & shall be administered by the administrator	Gov 8670.46
Fees to be deposited in fund include: \$0.25 per barrel fee for out-of-state oil, \$0.25/barrel for oil produced in-state but not refined there, federal funds, and borrowed money. Fees will not be collected when there is \$100,000,000 in the fund. Fund to provide money to respond to oil spills including cleanup and abatement, wildlife rehabilitation, and claims for damages. Interest on fund to be placed in OSPA.	Gov 8670.47.5 Gov 8670.48
OSRTF fees may be raised in increments of \$0.25 up to \$1.00 under specific circumstances. Money to be used only after there is a spill.	Gov 8670.48.5 Gov 8670.49
OSRTF funds may be used for wildlife rehabilitation, local response costs or to reimburse people who are unable to collect settlements.	Gov 8670.50 Gov 8670.51.1
Expenditure for this section to be paid from the OSRTF or from the State Water Pollution Cleanup and Abatement Account.	Gov 8754.4
Administrator to designate responsible party and require it to advertise how claims will be processed. People may apply directly to the fund for claims less than \$50,000. Contributors to the fund may advise on how funds will be spent but cannot contest payments of less than \$1,000,000.	Gov 8670.51.1
Attorney general will attempt to recover costs from spillers and reimburse fund.	Gov 8670.53
Governor may request that money be borrowed to be placed in OSRTF but borrowed funds must be repaid. Obligations for money borrowed for fund accorded only to the fund and not to the state.	Gov 8670.53.15 Gov 8670.53.3 Gov 8670.53.4
Environmental Enhancement Fund created. Money to be deposited in fund from Article 9 of the Government Code. Projects must be approved by the Environmental Enhancement Committee. The committee is made up of the administrator, a public member, and an executive member of the State Coastal Conservancy.	Gov 8670.70 Gov 8670.71 Gov 8670.72

* Gov refers to the Government Code, PR refers to the Public Resources Code, H&N refers to the Harbors and Navigation Code, and F&G refers to the Fish and Game Code.

** The administrator is a deputy commissioner of the Department of Fish and Game and is responsible for oil spills.

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.045-f)

Description	Statute Reference
The Department of Environmental Conservation (DEC) shall seek reimbursement from applicable federal funds and money received shall be placed in the general fund and credited to the Oil and Hazardous Substance Release Mitigation Account (OHSRMA).	AS 46.04.010
The Oil and Hazardous Release Response Fund (OHRRF) is created for payment of expenses associated with the release of oil or hazardous substances.	AS 46.08.005
The OHRRF is established in the General Fund for actual expenses, not for capital projects.	AS 46.08.010
Funding for the OHRRF is from state, federal and private donor sources, oil spillers, and fines and penalties. Money from settlements or penalties shall be placed in the OHSRMA and may be appropriated to the fund.	AS 46.08.020
The intent of the legislature is that funds for oil spills will always be available.	AS 46.08.030
Uses of fund: investigate and clean up releases, monitor compliance, maintain Oil and Hazardous Substances Response Office, review contingency plans, verify financial responsibility, maintain the Oil and Hazardous Substances Response Corps, depots, matching funds for federal monies, review and revise state and regional plans, environmental restoration, reimburse the Legislative Council for operations of the Citizen's Oversight Council on Oil and Hazardous Substances, and reimburse municipalities.	AS 46.04.040
DEC to keep records for fund. The DEC and the Governor to complete an annual report to legislature.	AS 46.08.050 AS 46.08.060
DEC to seek reimbursement for costs of cleanup and may reimburse municipalities if an agreement exists between the state and the municipality.	AS 46.06.070

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.0461)

TABLE 10
Institutional Arrangements for Oil Spills in California

Description	Statute Reference
INSTITUTIONS	
The administrator* for oil spill response shall be a chief deputy director of the Department of Fish and Game, appointed by the governor and confirmed by the senate rules committee.	Gov 8670.4**
The administrator shall ensure that the staff is trained in oil spill response. The staff shall be funded by the Oil Spill Prevention and Administration Fund. The administrator shall be the primary authority for oil spill prevention and response, shall implement the state contingency plan, and shall be on-site for all oil spills over 100,000 gallons. The administrator shall provide training for volunteers and groups such as the California Conservation Corps.	Gov 8670.6 Gov 8670.7 Gov 8670.8
State Interagency Oil Spill Committee (SIOSC) created with the administrator acting as chairperson for the 19-member committee.	Gov 8574.9
Review Subcommittee of the SIOSC created. The 5-member committee to review and comment on regulations. Agencies may reject the recommendations only if tougher standards are employed.	Gov 8754.10
Administrator shall negotiate with Alaska, Washington and Oregon to complete an interstate compact.	Gov 8670.9
Administrator to negotiate with the Coast Guard to provide a vessel traffic service to be operated by the Coast Guard and voluntarily funded by the maritime industry. Funds will be kept in the Vessel Safety Account.	Gov 8670.21
Administrator shall create Harbor and Safety Committees for specific harbors to assure safety of vessels. Regulations will be adopted to require committees to develop harbor safety plans.	Gov 8670.23
Oil Spill Technical Advisory Committee composed of 9 members to oversee actions of the administrator. Committee to provide recommendations to the administrator, the lands and coastal commissions, and the Interagency Oil Spill Committee. Committee maybe funded from the OSPAF.	Gov 8670.54 Gov 8670.55 Gov 8670.56
PROCEDURES	
Persons responsible for spills above one barrel shall notify the Office of Emergency Services.	Gov 8670.25.5
Operators of disabled vessels will notify Coast Guard.	
Persons will respond to the oil spill contingency plan and will follow orders of the administrator unless such orders endanger the public safety or the environment.	Gov 8670.27
Administrator may request the attorney general to seek an injunction. Civil actions may be consolidated and shall be brought in the county of the spill.	Gov 8670.57 Gov 8670.59 Gov 8670.61
Responsible party to provide a rehabilitation plan for full mitigation of damage to wildlife.	Gov 8670.61.5
Administrator may issue a cease and desist order.	Gov 8670.60.4

* The administrator is a deputy commissioner of the Department of Fish and Game and is responsible for oil spills.

** Gov refers to the Government Code

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046J)

Institutional Arrangements for Oil Spills in Alaska

Description	Statute Reference
INSTITUTIONS	
The Department of Environmental Conservation (DEC) shall negotiate with government agencies to facilitate a coordinated and effective oil spill prevention and response.	AS 46.04.020
The Alaska State Emergency Response Commission (AERC) created in DEC and the Oil and Hazardous Response Office shall serve as its staff. The commission is composed of commissioners of state departments. The commission oversees emergency response activities concerning hazardous materials (oil is defined as a hazardous substance).	AS 46.13.010 AS 46.14.020 AS 46.14.030
The Hazardous Substance Spill Technology Review Council is created to recommend research topics, review effectiveness of spill technologies and maintain information on cleanup technology.	AS 46.13.110 AS 46.13.120
The Citizen's Oversight Council on Oil and Other Hazardous Substances is created within the legislature to determine if state agencies are carrying out their duties; to recommend policies, assist in the development of compacts, meet with local and regional advisory committees. State agencies are to cooperate with the council.	AS 46.20.600 AS 46.20.610 AS 46.20.620
The Division of Emergency Services (DES) within the Department of Military and Veterans' Affairs shall respond to disasters and may use the Oil and Hazardous Response Fund.	AS 26.23.040 AS 26.23.050
The Division of Emergency Services (DES) shall establish an Oil and Hazardous Substance Response Corps.	AS 46.08.110
The DEC's Oil and Hazardous Substance Response Office (OHSRO) shall be trained in oil spill programs and technologies.	AS 46.08.100
The OHSRO shall be prepared to respond promptly to a spill and has authority to enter private land without a prior public hearing.	AS 46.08.130 AS 46.08.140
The OHSRO or DES may enter into agreements to provide training, personnel, or research.	AS 46.06.050
PROCEDURES	
The DES shall maintain response depots equipped to respond to a spill.	AS 42.08.120
A catastrophic oil discharge emergency may exist without a declaration by the governor. In such cases, the DEC shall coordinate duties.	AS 46.04.080
When conflicts arise with municipalities, the DEC decisions shall prevail.	AS 46.04.110
The governor may enter into compacts concerning oil spills contingency planning.	AS 46.04.100
The DEC may issue an order declaring an emergency and people must comply with its orders but may request a hearing.	AS 46.03.865
Actionable rights are for the benefit of the state and do not create a presumption of law for other persons.	AS 46.03.870
Manufacturer's information about chemical and biological agents for use in oil spills will be kept confidential.	

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046k)

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

1 transportation of oil or hazardous substance within the compact zone.

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

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

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

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

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

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

12 (a) Spill prevention;

13 (b) Transportation of oil and other hazardous substances;

14 (c) Spill response planning;

15 (d) Environmental monitoring and research; and

16 (e) Ocean resource management.

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

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

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

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

24 (12) To establish an innovative system under which the parties can represent their shared in-
25 terests within the compact zone, including:

26 (a) The maintenance and protection of common ocean resources; and

27 (b) The vessel transportation of oil and other hazardous substances.

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

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

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

35 ARTICLE II

36 Definitions

37 As used in this compact:

38 (1) "Compact" means the representative body created by Article IV of this compact.

39 (2) "Compact zone" means the portion of the oceans bordering the parties within the 200-mile
40 exclusive economic zone.

41 (3) "Hazardous substance" or "hazardous substances" means any element or compound that,
42 when it enters in or upon the water, presents an imminent and substantial danger to the public
43 health or welfare or the environment, including but not limited to fish, animals, vegetation or any
44 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

1 of the party concerned. Each representative may delegate to a deputy the power to be present and
 2 participate, including voting as the representative or substitute, at any meeting of or hearing by or
 3 other proceeding of the compact.

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

7 ARTICLE V

8 Pacific Ocean Resources Compact Authority

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

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

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

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

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

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

29 (b) Insure a coordinated network of oil and hazardous substance spill response plans and pro-
 30 grams of the parties, federal agencies and private organizations.

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

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

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

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

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

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

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

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

16 (j) Establish sanctions and a schedule of civil penalties for violations of the rules or regulations
17 of the compact and impose such sanctions or civil penalties in accordance with 5 U.S.C. §§551 to
18 559 and §§701 to 706.

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

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

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

27 (a) Accept grants and gifts.

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

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

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

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

35 (f) Enter into an agreement with the United States Coast Guard under which the compact will
36 administer compliance with the requirements for demonstrating financial responsibility under sec-
37 tion 1016 of the Oil Pollution Act of 1990 in an amount established by the compact. Such proof of
38 financial responsibility, if established by the compact, shall satisfy and supersede the requirement
39 of any individual party for demonstrating financial responsibility. However, all financial responsi-
40 bility requirements established by the parties to this compact before the compact establishes an
41 amount under this paragraph shall remain in full force and effect until the compact establishes a
42 requirement and enters into an agreement with the United States Coast Guard under this paragraph.
43 In establishing the amount of financial responsibility under this paragraph, the compact shall work
44 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

1 ocean resources.

2 ARTICLE X

3 Absence

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

6 ARTICLE XI

7 Funding

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

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

10 (3) The compact shall prepare an annual budget which shall be approved by vote of the compact.
11 After approval, the proposed budget shall be presented to the chief executive and legislative body
12 of the signatory parties.

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

14 ARTICLE XII

15 Withdrawal from Compact

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

19
20 **SECTION 3.** One member of the Senate appointed by the President of the Senate and one
21 member of the House of Representatives appointed by the Speaker of the House of Representatives
22 shall act as the representatives of the State of Oregon on the Pacific Ocean Resources Compact in
23 accordance with the powers and duties set forth in the compact.

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

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

32 **SECTION 5.** This Act being necessary for the immediate preservation of the public peace,
33 health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.
34

*Washington
State
Senate*



OLYMPIA, WASHINGTON 98504

**Environment and
Natural Resources**

SUBSTITUTE SENATE BILL 5428

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Environment & Natural Resources (originally sponsored by Senators Metcalf, Owen, Oke, Barr and Snyder).

Read first time February 14, 1991.

1 AN ACT Relating to Pacific Ocean Resources Compact; adding a new
2 chapter to Title 90 RCW; and making an appropriation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Sec. 1. (1) The legislature hereby ratifies the
5 Pacific Ocean Resources Compact as set forth in section 2 of this act.
6 Except as provided in subsection (2) of this section, this compact
7 shall take effect after one or more of the states of Alaska,
8 California, Hawaii, or Oregon ratify the compact and consent is granted
9 by Congress as required by section 10, Article I of the Constitution
10 of the United States.

11 (2) In accordance with the consent of Congress granted in the
12 Coastal Zone Management Act, 16 U.S.C. Sec. 1456b, those portions of
13 this compact related to the regional coordination of the parties'
14 coastal management plans shall be in effect when one or more of the

1 states of Alaska, California, Hawaii, or Oregon become parties thereto.
2 Pursuant to 15 C.F.R. Sec. 932.31(b), this compact may be submitted to
3 the Associate Administrator of the National Oceanic and Atmospheric
4 Association for review for conflict with federal law or treaties, but
5 such review shall not delay or otherwise affect the effectiveness of
6 this compact between the parties.

7 (3) In addition to the states of Alaska, California, Hawaii, and
8 Oregon, the Province of British Columbia may become an associate party
9 to the compact, without voting power. Upon request of the Province of
10 British Columbia and approval of Congress, the Province of British
11 Columbia may become a full party to this compact with the same rights
12 and powers as the party states.

13 NEW SECTION. Sec. 2. The provisions of the Pacific Ocean
14 Resources Compact are as follows:

15 ARTICLE I

16 FINDINGS AND PURPOSE

17 A. The parties recognize:

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

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

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

1 (c) The economic reliance of each party upon renewable resources
2 of the ocean;

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

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

8 (2) Some marine resource activities, such as fisheries, are
9 currently highly managed with regard for their regional or
10 transboundary nature through existing state programs, regional
11 fisheries councils, interstate compacts, and international treaties.
12 Because there are existing formal mechanisms for interstate cooperation
13 and coordination for these marine resource activities, this compact is
14 not intended to encompass these activities.

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

- 18 (a) Prevention of oil and hazardous substance spills;
19 (b) Transportation of oil and other hazardous substances;
20 (c) Oil and hazardous substance spill response planning; and
21 (d) Environmental monitoring and research.

22 (4) Each party has jurisdiction over the submerged and submersible
23 lands within its territorial sea and responsibility for management of
24 many marine resources and ocean uses. Each party has unique natural
25 resource, social, economic, and political conditions for which local
26 management by the individual party is the most appropriate.

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

1 (6) The 1983 Presidential Proclamation of the two hundred-mile
2 United States Exclusive Economic Zone has created the opportunity for
3 all coastal states to more fully exercise and assert their
4 responsibilities pertaining to the protection, conservation, and
5 development of ocean resources under United States jurisdiction.

6 (7) Citizens of the Pacific states and the Province of British
7 Columbia are increasingly concerned with the environmental integrity
8 of the ocean and protection of all ocean resources.

9 (8) Recent studies conducted in the wake of major accidental
10 releases of oil or hazardous substances have concluded that the
11 existing system of response to spills fails to provide adequate
12 protection to ocean resources in the following ways:

13 (a) Inadequate personnel training and qualifications;

14 (b) Weaknesses in vessel design and integrity;

15 (c) Insufficient traffic management;

16 (d) Gaps in regulatory oversight;

17 (e) Incomplete cost recovery by the states or provinces; and

18 (f) A lack of information about the marine and coastal
19 environments.

20 (9) A spill or discharge of oil or hazardous substance from an
21 ocean-going vessel has the potential of causing major regional impacts.

22 B. Therefore the purpose of this compact shall be:

23 (1) To assist in the promotion of interstate commerce by providing
24 uniform regulation of the transportation of oil or hazardous substance
25 within the compact zone;

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

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

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

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

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

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

11 (a) Spill prevention;

12 (b) Transportation of oil and other hazardous substances;

13 (c) Spill response planning; and

14 (d) Environmental monitoring and research;

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

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

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

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

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

28 (a) The maintenance and protection of common ocean resources; and

29 (b) The vessel transportation of oil and other hazardous
30 substances;

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

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

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

13 ARTICLE II

14 DEFINITIONS

15 Unless the context clearly requires otherwise, the definitions in this
16 section apply throughout this compact.

17 (1) "Compact" means the representative body created by Article IV
18 of this compact.

19 (2) "Compact zone" means the portion of the oceans bordering the
20 parties within the two hundred-mile exclusive economic zone.

21 (3) "Hazardous substance" or "hazardous substances" means any
22 element or compound that, when it enters in or upon the water, presents
23 an imminent and substantial danger to the public health or welfare or
24 the environment, including but not limited to fish, animals,
25 vegetation, or any part of the natural habitat in which they are found.
26 "Hazardous substance" includes but is not limited to a substance
27 designated under 33 U.S.C. Sec. 1321(b)(2)(A), any element, compound,
28 mixture, solution or substance designated under 42 U.S.C. Sec. 9602,

1 any hazardous waste having characteristics identified under or listed
2 under 42 U.S.C. Sec. 6921, any toxic pollutant listed under 33 U.S.C.
3 Sec. 1317(a), and any imminently hazardous chemical substance or
4 mixture with respect to which the Administrator of the United States
5 Environmental Protection Agency has taken action under 15 U.S.C. Sec.
6 2606.

7 (4) "Navigable waters" means the waters of the United States,
8 including the territorial sea.

9 (5) "Oil" means crude petroleum oil and any other hydrocarbons
10 regardless of gravity, which are produced at the well in liquid form
11 by ordinary production methods, and any petroleum products or
12 petrochemicals of any kind and in any form whether crude, refined, or
13 a petroleum by-product, including petroleum, fuel oil, gasoline,
14 lubricating oils, oily sludge, oily refuse, or mixed with other wastes,
15 liquefied natural gas, or propane.

16 (6) "Party" means a state or province that ratifies this compact
17 as provided in Article III of this compact.

18 (7) "Representative" means an individual appointed as provided in
19 Article IV of this compact to represent a party to the compact.

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

23 (a) Operates on the navigable waters of the compact zone; or

24 (b) Transfers oil or hazardous substance in a place subject to the
25 jurisdiction of the United States.

26 ARTICLE III

27 OPERATIVE DATES

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

6 (2) This agreement shall become operative as to the Province of
7 British Columbia as a full party upon request of the Province of
8 British Columbia approval of the Congress.

9 ARTICLE IV

10 PACIFIC OCEAN RESOURCES COMPACT

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

22 (2) The term of each representative shall be four years. A
23 representative shall hold office until a successor is appointed and
24 qualified but the successor's term shall expire four years from legal
25 date of expiration of the term of the predecessor. Vacancies occurring
26 in the office of a representative for any reason or cause shall be
27 filled for the unexpired term by the party represented by the vacancy.
28 Any party may remove the representative for that party in accordance

1 with the statutes of the party concerned. Each representative may
2 delegate to a deputy the power to be present and participate, including
3 voting as the representative or substitute, at any meeting of or
4 hearing by or other proceeding of the compact.

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

10 ARTICLE V

11 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

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

13 (a) Facilitate the prevention of oil and hazardous substance spills
14 through the establishment of uniform safety standards for routes,
15 crews, and equipment for vessels transporting oil and hazardous
16 substances to the extent that the parties and the federal government
17 have such authority within the compact zone;

18 (b) Ensure a coordinated network of oil and hazardous substance
19 spill response plans and programs of the parties, federal agencies, and
20 private organizations;

21 (c) By regulation, establish the requirements for submission of and
22 approval by the compact of a contingency plan by any vessel
23 transporting oil or hazardous substance in the compact zone. Such
24 requirements shall be at least as stringent as the requirements for
25 spill response plans under section 4202 of the Oil Pollution Act of
26 1990, P.L. 101-380. A plan developed in accordance with the
27 regulations adopted by the compact and approved by the compact shall
28 satisfy the requirements of section 4202 of the Oil Pollution Act and

1 (j) Establish sanctions and a schedule of civil penalties for
2 violations of the rules or regulations of the compact adopted in
3 accordance with 5 U.S.C. Secs. 551 through 559 and 701 through 706.

4 (k) Request the United States Coast Guard to enforce or assist in
5 the enforcement of any regulations adopted by the compact related to
6 the prevention of and response to oil or hazardous substance spills in
7 the compact zone.

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

10 (a) Accept grants and gifts;

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

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

16 (d) Conduct public hearings on matters pertaining to the purposes
17 of this compact;

18 (e) Issue subpoenas;

19 (f) In accordance with the provisions of 5 U.S.C. Secs. 551 through
20 559 and 701 through 706, enforce the rules and regulations adopted by
21 the compact to carry out the authority of the compact as set forth in
22 this Article;

23 (g) Appoint technical and advisory committees for the purpose of
24 advising the compact on regional ocean resources issues, data needs,
25 and format and other purposes related to the compact's activities. A
26 technical or advisory committee appointed by the compact shall not be
27 subject to the provisions of the Federal Advisory Committee Act, P.L.
28 92-463, as amended;

29 (h) Allow a variance from the provisions of this compact or rules
30 or regulations adopted by the compact pursuant to this Article. A

1 variance shall be based on a showing by the person or entity seeking
2 the variance that the activity allowed under the variance will have no
3 regional impact and that the variance is economically necessary. Under
4 no circumstances may a variance result in the regulation of the
5 transportation of oil or hazardous substance according to standards
6 less stringent than standards imposed under federal law.

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

11 ARTICLE VI

12 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

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

25 ARTICLE VII

26 VOTING AND QUORUM

- 1 (1) A majority of the representatives shall constitute a quorum.
2 (2) Each party shall be entitled to one vote. No action or
3 decision of the compact shall be approved unless the action or decision
4 receives a majority of the votes of the parties.

5 ARTICLE VIII
6 SUPPORT AGENCIES

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

10 ARTICLE IX
11 PARTIES' POWERS UNDER COMPACT

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

17 ARTICLE X
18 ABSENCE

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

22 ARTICLE XI
23 FUNDING

1 representatives. The member appointed by the governor shall serve as
2 the chair of the representatives of the state of Washington.

3 NEW SECTION. Sec. 4. The term of the members appointed by
4 the president and the speaker shall be dependent upon continued
5 membership in the house from which appointed. Vacancies occurring
6 during the term of compact representatives shall be filled for the
7 unexpired term by the appointment of a successor in the same manner as
8 for the vacating member. The member appointed by the governor shall
9 serve at his or her pleasure.

10 NEW SECTION. Sec. 5. The representative appointed to the
11 compact from the state of Washington by the governor shall be entitled
12 to compensation in accordance with RCW 43.03.240, except that if such
13 representative is a state employee, reimbursement for subsistence and
14 travel expenses shall be as provided for such employee under chapter
15 43.03 RCW. Representatives who are legislative members shall be
16 compensated as for legislative business pursuant to chapter 44.04 RCW.

17 NEW SECTION. Sec. 6. There is hereby granted to the compact
18 representatives from this state all the powers provided for in said
19 compact and all powers necessary or incidental to carry out the
20 compact. The compact representatives may employ or contract for such
21 professional, technical, and clerical assistance as may be required to
22 aid them in carrying out their functions under the compact and this
23 chapter.

24 NEW SECTION. Sec. 7. All departments, agencies, and officers
25 of this state and its subdivisions are directed to cooperate with the

1 compact and its representatives in the furtherance of any of its
2 activities pursuant to the compact.

3 NEW SECTION. Sec. 8. Sections 1 through 7 of this act shall
4 constitute a new chapter in Title 90 RCW.

5 NEW SECTION. Sec. 9. The sum of dollars, or as
6 much thereof as may be necessary, is appropriated for the biennium
7 ending June 30, 1993, from the general fund to the Pacific Ocean
8 Resources Compact for the purposes of carrying out the provisions of
9 the Pacific Ocean Resources Compact.

SENATE BILL REPORT

SB 5428

AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES,
FEBRUARY 11, 1991

Brief Description: Adopting the Pacific Ocean Resources Compact.

SPONSORS: Senators Metcalf, Owen, Oke, Barr and Snyder.

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 5428 be substituted therefor, and the substitute bill do pass.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Barr, Conner, Snyder, and Sutherland.

Staff: Gary Wilburn (786-7453)

Hearing Dates: February 7, 1991; February 11, 1991

BACKGROUND:

Following the Nestucca oil spill off the coast of Washington in December, 1988, Washington State and the province of British Columbia established the British Columbia/Washington Task Force on Oil Spills. Soon thereafter the Exxon Valdez spill occurred, and the task force membership was expanded to include Alaska, Oregon and California. The task force was charged with investigating ways and means of preventing oil spills, to review existing response procedures, to assess mechanisms for handling compensation claims, and to develop a coordinated contingency plan for prevention of and response to future spills.

The final report of the task force was issued in October, 1990, and contained several recommendations made jointly by the participating states and British Columbia. One major finding was that the task force should continue to promote coordination of west coast oil spill prevention and response efforts. It recommended that the task force work with the Western Legislative Conference to develop an interstate compact to make binding agreements concerning spill prevention and cleanup measures on the west coast.

The report noted that compacts are a mechanism to support and promote objectives with federal weight on regional levels. They can gain consistency among west coast state spill programs and requirements. They also allow extension of state jurisdiction over geographic areas and over subjects which otherwise are exclusively exercised by the federal government, such as coastal waters to the limits of the 200-mile exclusive economic zone. All interstate compacts require the consent of the United States Congress.

In 1990 the Congress enacted comprehensive oil spill prevention and response legislation, which further extends federal activities on subjects such as oil tanker hull construction, financial responsibility requirements, vessel traffic service systems, vessel manning and work shifts, navigation safety standards, and penalties. These additional federal initiatives provide additional impetus to states seeking legal mechanisms, such as an interstate compact, to ensure that their state spill prevention and response programs may continue to operate in conjunction with federal programs.

Coordinated by the Western Legislative Conference, legislation to enact a Pacific Ocean Resources Compact has been introduced in the legislatures of Washington, Oregon, California, Hawaii and Alaska.

SUMMARY:

The Pacific Ocean Resources Compact is ratified by the Legislature. The compact takes effect when one or more of the states of Alaska, Hawaii, California or Oregon ratify the compact and congressional consent is granted. Those portions relating to regional coordination of coastal management plans take effect when ratified by Washington and another of such states, pursuant to congressional consent granted in the Coastal Zone Management Act. British Columbia may become an associate, nonvoting member of the compact, and upon approval of Congress may become a full party to the compact.

Legislative findings and purposes are stated regarding the importance of protecting west coast states' marine waters and resources from the adverse affects of oil and hazardous substance spills, and the need for a formal interstate mechanism to address mutual concerns relating to transport of such substances.

The compact zone is the portion of the oceans bordering the parties within the 200-mile exclusive economic zone. The hazardous substances covered under the compact are defined by referencing lists or designations made pursuant to several federal statutes.

The compact is authorized to: (1) facilitate prevention of oil and hazardous spills by establishing uniform safety standards for routes, crews and vessel equipment; (2) ensure a coordinated network of spill response plans and programs; (3) establish regulations for compact approval of vessel contingency plans, which upon approval are to satisfy federal and state planning requirements; (4) establish an informational clearinghouse; (5) provide a forum for discussion; (5) provide opportunities for public participation; (6) identify regional data needs; (7) establish sanctions and a schedule of civil penalties; and (8) other duties. Additionally, the compact is granted administrative powers such as issuing subpoenas, conducting public hearings, entering contracts, conducting investigations, and appointing technical and advisory committees.

Each party to the compact is to appoint three persons as representatives of the compact, serving four-year terms. The compact shall invite certain federal agencies to participate as nonvoting members. A chair and vice-chair are to be appointed by the compact, and rotated through all the compact parties. It must meet at least once a year. Each party is entitled to one vote, and actions of the compact require a majority of the votes of the parties.

Except as specifically provided regarding the compact authority, nothing in the compact is to limit the powers of any party or to repeal or prevent enactment of any legislation or enforcement of any requirement imposing additional ocean resources conditions or restrictions. Each party is to contribute not less than 10 percent nor more than 50 percent of the budget of the compact, with contributions generally to be proportional to the party's gross state product.

EFFECT OF PROPOSED SUBSTITUTE:

The three Washington representatives to the compact are appointed by: (1) the Governor, (2) the President of the Senate, and (3) the Speaker of the House. The Governor's appointee serves as the chair of the Washington representatives. Travel and subsistence reimbursement is provided for. The compact representatives may employ professional and clerical assistance to carry out their functions.

Appropriation: unspecified

Revenue: none

Fiscal Note: requested February 1, 1991

TESTIMONY FOR:

Will assist coastal states in achieving consistency in regulation of the marine transportation of oil and hazardous substances.

TESTIMONY AGAINST: None

TESTIFIED: Bob Nichols, Office of the Governor; Chris Gregoire, Director, Department of Ecology

SCOMM

78:30



SB 102
File

United States Department of State

Foreign Service Institute

*1400 Key Boulevard
Arlington, Virginia 22209*

March 6, 1992

Senator Sam Cotten
State Capitol Building, Suite 11-C
Juneau, AK 99801

Dear Senator Cotten,

I appreciated the chance to talk with you recently about Alaska's international interests and state-federal relations, the twin foci of my Senior Seminar independent project. My two weeks in Anchorage and Juneau have considerably deepened my understanding of the issues. Your work on a multi-state "compact" to set common standards for dealing with oil spills seems like a particularly creative approach to enhancing the state's authority in such matters.

As many have commented to me, Washington seems to know little of Alaska. I hope the observations I can make as a result of my trip will help to continue to spread the word.

Again, thank you for taking the time to meet with me.

Sincerely,

Barbara Pace

Barbara F. Pace

STATEMENT OF
EXXON SHIPPING COMPANY
TO THE
SPECIAL COMMITTEE ON OIL AND GAS
ALASKA SENATE
ON SB 102
March 26, 1991

Exxon Shipping Company appreciates the opportunity to provide comments on Senate Bill 102.

The proposed legislation seeks to have Alaska ratify the creation of a multi-state Pacific Ocean Resources Compact. The Compact has fifteen 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 could be 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 more than 10 laws in 1989 and 1990. Implementation of these legislative efforts is well underway at both 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. It is the only agency which participates in the development of internationally approved maritime protocols and has the demonstrated experience, expertise, and resources to assure uniform enforcement of marine regulations. Moving this regulatory authority for marine transportation to the proposed Compact will 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. Exxon Shipping Company firmly supports the concept of uniformity of maritime law and regulations throughout the United States. We believe the U.S. Coast Guard already provides that uniformity. Since our industry is international in scope, we believe a single U.S. agency approach is absolutely critical.

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. The United States Coast Guard currently provides that uniformity. Our industry is multi-state and international in scope, and therefore we believe a single agency approach to such issues is absolutely critical.

The Compact would move away from these established concepts 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 SB 102.

**BP OIL**

BP Oil Company
200 Public Square
Cleveland, Ohio 44114-2375
(216) 586-4141

February 28, 1991

BP COMMENTS ON PACIFIC OCEAN RESOURCE COMPACT

BP supports interstate and provincial cooperation to ensure adequate and efficient prevention of and/or response to oil and hazardous substance spills. Standardization of spill response planning across the five states, in conjunction with federal requirements under the Oil Pollution Act of 1990 (OPA), will serve to greatly simplify the contingency planning task for industry and eliminate the confusion inherent in a situation where a federal plan and multiple state plans (all potentially different) would be required. The proposed formation of the Pacific Ocean Resources Compact, as introduced in the state legislatures of Alaska, California, Hawaii, Oregon, and Washington may provide an opportunity for such interaction; however, the industry has a number of concerns with this specific proposal.

The major thrust of the Compact legislation is that existing federal law (i.e., OPA) does not go far enough in setting standards and regulations for industry to follow. However, it does present an opportunity for the states to play a meaningful role in promulgating appropriate requirements for industry. The proposal merits serious consideration so long as it does not result in an additional layer of regulations, and so long as its requirements are coordinated with the Coast Guard's requirements. As proposed, the Compact seems to unnecessarily

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duplicate, on a regional basis, many of the highlighted areas of concern which will be addressed through the new federal thrust outlined in OPA and the various state oil spill legislative initiatives passed over the last few years.

It is appropriate that the Compact engage in a number of activities aimed at improvement of oil and hazardous substance spill prevention and response, including:

- providing input to Federal government agencies regarding: uniform safety standards throughout the region, covering areas such as navigation rules, training/certification of vessel officers/crew, methods of natural resource valuation, development of contingency plans, development of a regional Unified Incident Command System;
- developing regional spill trajectory models;
- arranging and conducting multi-state spill response exercise drills;
- reviewing requirements and proposals for vessel traffic management, vessel traffic systems, speed limits, and vessel traffic reduction;
- establishing and maintaining a regional index of potential spill responders and an inventory of available response equipment;
- studying the utilization of volunteers and proposing measures for volunteer training;
- creating and carrying out a spill prevention education strategy aimed at industrial operators, passenger

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- vessels, and pleasure boaters;
- encouraging and coordinating research into oil spill prevention and response by universities and other scientific organizations.

This focus of activities for the compact is much more appropriate than developing an entire new regulatory authority and structure. Beyond this primary concern, several additional problem areas exist in the Compact legislation:

- o The legislation grants broad powers to the Compact, but there is no clear definition of how these powers are to be implemented and exercised by the Compact in the performance of its duties.
- o Article 9 provides for no limitation of existing state authority. Unless there is a willingness to allow Compact standards and regulations to supercede those promulgated by the individual states little will be accomplished beyond the establishment of an additional bureaucratic entity and layer of regulations.
- o Cost and control issues may be large impediments to effective Compact operation. The states must wrestle with the problem of yielding individual control of specific issues to the Compact as a whole, while providing incremental funding (beyond that required to support similar state activities) to support the

Compact's tasks.

- o Individual states will find wide disparity between their funding requirements and their voting privileges. As currently envisioned in Article 11, one party to the compact will most likely provide 50% of the funding requirements, while the remaining 50% will be spread on an approximately equal basis among the other parties. Even so, each party will be entitled to only one vote under Article 11's provisions. The attached chart provides the anticipated breakdown of the funding required from each party to the compact, based on relative gross state products.

- o The Compact could disrupt domestic and international trade by confusing which authorities have jurisdiction. Article 5 grants the Compact the authority to establish uniform safety standards for routes, crews, and equipment for vessels transporting oil and hazardous substances, and to request that the Coast Guard enforce or assist in the enforcement of such standards. However, the Coast Guard already has a Federal mandate to do this, which will be further enhanced through the impending implementation of OPA.

The revitalized Coast Guard, with an increased budget

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and access to additional federal monies via the federal Oil Spill Liability Trust Fund, should be able to provide adequate oversight and administration of OPA-mandated requirements. By duplicating existing standards and regulations, the parties to the Compact will incur the cost and effort required to promulgate such standards and regulations. Industry will thus be faced with a myriad of potentially conflicting requirements to follow.

The formation of the Pacific Ocean Resources Compact is a concept that BP can support, as long as the main focus remains on increased cooperation between the parties to the Compact and federal government agencies, and emphasis does not shift to an attempt to duplicate regulations and procedures that already exist in federal and state oil spill legislation.

By working with the Coast Guard, via increased cooperation with respect to the enforcement of federal regulations, all parties involved (the states, the federal government, and industry) should be able to achieve the common goal, which is to maintain the best possible program for spill prevention and response. In this light, BP is preparing suggested modifications to the proposed Pacific Ocean Resources Compact.

COMPACT PARTIES GROSS STATE PRODUCTS

<u>STATE</u>	<u>1986</u> <u>(\$ BILLION)</u>	<u>% OF TOTAL GSP</u>	<u>% OF REQUIRED</u> <u>FUNDING</u>
CALIFORNIA	533.8	77	50
WASHINGTON	77.7	11	10*
OREGON	41.3	6	10*
ALASKA	19.8	3	10*
HAWAII	<u>19.3</u>	<u>3</u>	<u>10*</u>
	691.9	100	100*

* LEGISLATION STATES THAT EACH PARTY PROVIDE A MINIMUM OF 10% OF THE COMPACT'S FUNDING REQUIREMENT, BUT NO MORE THAN A MAXIMUM OF 50%. FINAL PERCENTAGE WILL NEED TO BE DETERMINED, BUT MUST EQUAL 100%.

February 28, 1991

**PROPOSED AMENDMENTS TO PROPOSED PACIFIC OCEAN
RESOURCES COMPACT LEGISLATION**

- o Section 1, (1) - Delete the words "and consent is granted by Congress as required by section 10, Article I of the Constitution of the United States."

Section 1, (2) - Delete the words "and approval of Congress,"

As amended, the Compact would not require the consent of the Congress.

- o Article I, A (d) - Delete paragraph (d) in its entirety.

As amended, the compact would cover existing jurisdictions.

- o Article I, A (8)(a-f) - Replace (8)(a-f) with the following:
"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) enhanced traffic management;
- (c) improved coordination in regulatory oversight;
- (d) better mechanisms for cost recovery by the states or the province;
- (e) an improved information base dealing with marine and coastal environments."

This language better reflects the fact that advances in prevention and preparedness have been achieved by the federal government, the states, and industry. It also incorporates the major findings of the States/BC Task Force.

- o Article I, B (1) - replace (1) with: "To assist in the promotion of interstate commerce via cooperation with the U. S. Coast Guard in regulating the transportation of oil or hazardous substances within the compact zone,"
- o Article I, B (2) - replace (2) with: "To provide a legal mechanism to coordinate certain ocean activities within existing jurisdictions."

The intent should be one of enhanced cooperation between the parties to the Compact and the Coast Guard, rather than potentially duplicating the effort in areas that are already

sufficiently covered under recently enacted federal and state oil spill legislation.

- o Article I, B (3) - replace "sovereignty over" with "coordination of".

Article I, B (4) - replace "dispute" with "work with" and "act in" with "to advance".

Article I, B (6) - replace "To enhance the oversight and supervision of" with "To monitor".

Article I, B (15) - delete "over which the compacting parties jointly or separately now have or may acquire jurisdiction."

The Compact should not have jurisdiction over federal authorities, in the form of oversight and supervisory privileges.

- o Article I, B (13) - replace "To establish" with "To provide input to the Coast Guard in the establishment of". Also replace "provide oversight for" with "monitor".

The Coast Guard has federally mandated jurisdiction in these areas, which should not be duplicated at the state or multi-state Compact level. However, increased cooperation between the compact and the Coast Guard and the individual states would be beneficial.

- o Article II, (2) - Delete the words "within the 200-mile exclusive economic zone." and replace with "including all waters under the jurisdiction of the parties."

The compact's authority should extend to those areas under state jurisdiction.

- o Article III, (1) - Delete the words "and the consent of Congress is or has been granted as required by section 10, Article I of the Constitution of the United States."

Article III, (2) - Delete the words "and the approval of Congress"

As amended, the compact will not require congressional action.

- o Insert as a new Article V, (1)(a) the following:

"To engage in a number of activities aimed at improvement of oil and hazardous substance spill prevention and response, including:

- (a) providing input to Federal government agencies regarding:

- uniform safety standards throughout the region, navigation rules,
- training/certification of vessel officers/crew,
- methods of natural resource valuation,
- development of contingency plans,

development of a regional Unified Incident Command System:

- (h) developing regional spill trajectory models;
- (c) arranging and conducting multi-state spill response exercise drills;
- (d) reviewing requirements and proposals for vessel traffic management, vessel traffic systems, speed limits, and vessel traffic reduction;
- (e) establishing and maintaining a regional index of potential spill responders and an inventory of available response equipment;
- (f) studying the utilization of volunteers and proposing measures for volunteer training;
- (g) creating and carrying out a spill prevention education strategy aimed at industrial operators, passenger vessels, and pleasure boaters;
- (h) encouraging and coordinating research into oil spill prevention and response by universities and other scientific organizations.

These are the appropriate activities of this multi-state compact.

- o Article V, (1)(c) - replace (1)(c) with "Establish guidelines for the preparation of a contingency plan by any vessel transporting oil or hazardous substances in the compact zone. Such guidelines shall be consistent with the requirements for spill response plans under section 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). In establishing guidelines under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans prepared under the guidelines of this compact are at least as comprehensive as similar plans required by the parties and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in effect at the time the compact initiates its approvals under this paragraph."

Standardization of the major provisions of spill response planning across the parties to the compact, in conjunction with federal requirements under the Oil Pollution Act of 1990, will serve to greatly simplify the contingency planning task for industry and eliminate potential confusion caused by multiple plan requirements. The process need not be regulatory in nature to be successful, however.

- o Article V, (1)(j) - Delete paragraph (1)(j).

Article V, (2)(h), first line - Delete "or rules or regulations adopted by the compact".

As amended, the compact will not function as a regulatory body and will therefore have no need to seek redress through the implementation of sanctions or penalties, or to grant variances to rules or regulations adopted by the compact.

- o Article V, (1)(k) - Delete "adopted by the compact".

The U. S. Coast Guard will not be permitted under law to enforce state or compact regulations.

- o Article V, (2)(e) - Delete paragraphs (2)(e).

The compact should not need such authority to perform its duties.



KAHL ASSOCIATES
RESEARCH CONSULTANTS & ADVOCATES
1100 11th STREET • SUITE 10 • SACRAMENTO, CA 95814 • (916) 448-2162

MEMORANDUM

February 28, 1991

TO: Assemblyman Dan Hauser, California State Assembly.
FROM: Michael Kahl for the Western States Petroleum Association.
SUBJECT: DISCUSSION PAPER -AB 393 (Hauser). Pacific Ocean Resources Compact.

On behalf of the Western States Petroleum Association (WSPA), I would like to express our concerns with AB 393 which would create a Pacific Ocean Resources Compact. Our members have not taken a formal position on this legislation at this point and are interested in continuing discussions on possible refinements or alternatives to this approach. As the basis for these discussions, I have attempted to frame some of the general issues which we think should be addressed. You will no doubt be hearing directly from individual companies and organizations on the details of your bill. We look forward to an open dialogue on these issues as we craft a formal oil industry position.

The Compact would be comprised of its signatories, presumably Alaska, Washington, Oregon, California, Hawaii and possibly, the Province of British Columbia of Canada. Its jurisdiction would encompass the 200 mile U.S. Exclusive Economic Zone (EEZ) along each state's coastline. It would serve the purpose of 1) regulating the vessel transport of oil and hazardous materials; and, 2) establishing a system for the coordinated management and protection of common ocean resources. The Compact will be established upon the approval of any two states and the U.S. Congress.

It is my understanding that identical legislation is being pursued in all of the states noted above.

Our comments fall into three areas - I. Compact assumption of oil spill response programs of the states and federal government; II. Overly broad authority and jurisdiction of the Compact; and, III. General and specific questions about the use of a compact to serve in the role of representative general purpose government.

I. Compact assumption of spill programs relating to transport of oil and hazardous materials - This appears to be the only clearly defined responsibility of the Compact. Under the bill, the Compact would:

- Facilitate spill prevention through uniform safety standards for routes, crews and vessel equipment;

- Ensure a coordinated network of response plans and programs among the states, federal agencies and private organizations;
- Establish requirements for and approval of vessel contingency plans according to the Oil Pollution Act of 1990 and any requirements of the individual states;
- Provide an informational and technical clearinghouse;

The Compact would also provide a forum for conflict resolution among member states and federal agencies, give technical assistance, advise on rules and regulations, establish sanctions and penalties for violations of rules, among other activities. Variance from Compact rules can be granted to any person or entity upon a showing that the activity will have no regional impact, is economically necessary and meets the minimum standards of federal law.

As you are aware, California - after two years of study and debate - passed comprehensive oil spill prevention and response legislation. In addition, the U.S. Congress approved an equally stringent federal program (Oil Pollution Act of 1990 - OPA 90). These statutes will authorize extensive programs and regulations in each area contemplated by the Compact. Since they are already being implemented it is unclear how they can be stayed in deference to a yet-to-be established multi-state effort. It strikes me that granting further authority in this area to a regional compact will result in unnecessary duplication and competition among agencies (federal and state) as well as confuse the regulated community. *If the California Legislature intends to move forward with a compact program in oil spill response, it might consider rescinding relevant provisions of the 1990 Oil Spill Prevention & Response Act (and Congress should do likewise with regard to OPA 90).* Such rescision should include OSPR authority over vessel contingency plans, inspections, safety standards, communications and traffic systems; similarly, State Lands Commission authorities in common areas should also be reviewed and pared down.

Since ocean transport is truly international in scope, there is considerable merit in placing all authority over vessels in a single agency. However, the Compact, as currently conceived, would detract from that goal. The shipping community already views the U.S. Coast Guard as that single agency with the authority to establish safety and design standards for vessels, including training and manning requirements, routing and traffic control, communications, etc. It is the only agency which participates in the design of internationally approved protocols and is the only agency with the demonstrated experience, expertise and resources to assure uniform enforcement. *To transfer this rule making and standards development function from the USCG to a lesser, regional agency would be a major departure from current practice and would move further away from what is needed for international commerce. The shipping community requires internationally applied rules and standards. Efforts to regionalize or state-ize them are often counterproductive to the goal of standardization and uniformity.*

Further contributing to this concern with program duplication and jurisdictional overlap is the fact that *the Compact, as proposed, does not clearly preempt activity by its member states in this same area of spill response.* For example, requirements of a vessel contingency plan must not only meet the minimum standards of the OPA 90 but those of the individual states as well. Apparently, Compact requirements would be additive to that of the states and federal government. Further, states would maintain a role in enforcement with USCG assistance or enforcement of Compact promulgated rules. Under such a scheme, the regulated community would not only be subjected to more layers of governmental regulation but provide no hope of relief from the possibility that each state can "up the ante" of ever-more stringent regulation.

II. Overly broad purpose and authority of the Compact - In addition to the special role the Compact will have in the regulation of vessel transport of oil and hazardous materials, it would also provide regional sovereignty in the management of California's ocean resources in the Exclusive Economic Zone. The Compact would:

- Provide a legal mechanism to regulate certain ocean activities within the EEZ;
- Enhance regional sovereignty over issues of critical importance;
- Direct federal agencies to act in the best interest of the region;
- Establish a system for the maintenance and protection of common ocean resources;
- Promote more coordinated management of ocean resources.

These purposes and apparent mandates for the Compact are stated in vague, broadly defined and all-encompassing terms. The only activity precluded from Compact jurisdiction is fisheries. However, all other activities in the EEZ, including offshore oil development, ocean mining, ocean farming and others, would apparently be subject to Compact jurisdiction. For these broad purposes, the Compact can conduct hearings, promulgate regulations, negotiate with the federal government, provide technical assistance and comment on member states programs. It can also conduct environmental monitoring and research, and, apply sanctions and penalties for violations of Compact rules.

The granting of planning and management authority over ocean resources to a regional compact has significant implications to all parties of interest as well as to the many state and federal agencies with programs affecting the area. If that is our goal - regional management of ocean resources - then it deserves a thorough review and debate on scope of authority and jurisdiction, a delineation of specific activities

to be included, the nature of Compact oversight responsibilities and the continued role, if any, of existing state and federal programs and agencies. As with oil spill response, we are also concerned with the additional overlap and duplication that would probably result. We do not wish to suffer further the confusion and conflict that is the natural result of unclear ground rules and competing jurisdictions with shared authority in a particular policy area. The bill, as drafted, only hints at the broad range of future responsibilities and authorities contemplated for the Compact.

III. Compact governance issues - Our first concern is that the Compact will be operating in policy making areas which are usually the purview of general purpose, representative governments. Rules of the Compact will greatly affect the wealth, resources and interests of the individual states and the national government. We would be taking major power and authority over natural resource questions and placing it with a ruling body comprised of three persons from each state, a simple majority of which would be required for any action. It is probably more appropriate that the role of compacts be restricted to clearly and narrowly defined purposes after policies of the signatories have already been determined by more representative institutions in each state. Under the structure proposed, representatives to the Compact would have more say and power than a state governor in many of these policy areas of concern.

Funding provisions for the Compact should be of particular interest to California since in all likelihood we will be required to contribute 50% of its total annual budget. Each state will contribute in proportion to its gross state product up to 50% of the total.

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All of that being said, there is a need for greater regional cooperation and coordination of programs common to these Pacific states which are contiguous, have established commercial and transportation linkages or share natural resources. In this context, a more appealing approach might be a less formal (non-regulatory) body dedicated to study, fact-finding, education, negotiation of interstate agreements and recommendation of policies and programs for consideration by their respective states and the federal government. Regional standardization of vessel spill response planning across the five states, in conjunction with federal requirements under OPA 90, could greatly simplify and streamline the contingency planning task for industry and eliminate the confusion inherent in federal and multiple state plan requirements. We support and encourage increased interstate and provincial cooperation and feel that policy interchange and recommendations, such as that accomplished by the B.C./States Task Force, are quite useful and lead to important programs for protecting our coastal resources. We do, however, stop short of supporting another level of governmental oversight in an area already addressed more than adequately by existing state and federal agencies.

SOUTHEAST ALASKA PETROLEUM RESOURCE ORGANIZATION
540 Water Street Suite 202
Ketchikan, Alaska 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 be 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 failing 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 encoded 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.

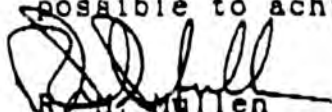
If you judge the threat to the environment by the relative persistence of the product, you can see how foolish it is for the state to treat oils of relatively equal persistence as a lesser threat than "Alaskan" crude oil. Yet this is exactly the situation created by the wording of HB 587. This is another 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