

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

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The preemptive effect of the 1972 federal law varied with respect to the four major provisions of the Washington law: the requirement of a state-licensed pilot for all federally enrolled and licensed tankers over 50,000 DWT navigating in Puget Sound, the outright ban of supertankers (over 125,000 DWT) from transiting the Sound, the imposition of vessel design, construction, and navigational equipment standards on tankers between 40,000 and 125,000 DWT, and the provision of an alternative tug escort requirement for vessels not meeting these standards. Each was considered separately as they implicated different provisions of federal law and therefore raised individual questions of congressional intent.

The state-licensed pilot provision was dealt with easily, as the Court was able to find in the federal enrollment and licensing laws clear evidence of congressional intent with respect to state pilotage. While the federal law did not completely preclude state pilotage laws, it did expressly prohibit state pilotage laws for vessels enrolled in the coastwise trade (interstate shipping). 46 U.S.C. section 215. The Court held, however, that federal law left states free to impose pilotage requirements on foreign trade vessels that enter and leave their ports. Washington could therefore require "registered" tankers larger than 50,000 DWT to employ a state-licensed pilot while in Puget Sound.

The State's tanker safety standards presented a much more difficult questions of congressional intent. The relevant federal law, Title II of the Ports and Waterways Safety Act (PWSA), contains no express language regarding permissible state law. In Title II Congress required the Coast Guard to promulgate marine environmental protection regulations specifying standards for maneuverability and stopping that would reduce the risk of collisions, groundings, and other accidents that could lead to an oil spill. These regulations were also expected to reduce oil pollution resulting from normal operations, such as ballasting, deballasting, and cargo handling. 46 U.S.C. 391a(7)(A). Vessel inspections and certificates of compliance would indicate that a particular vessel complied with applicable design and construction standards and that its crew was qualified to handle oil as cargo. *Id.*, section 391a(9).

The Washington Tanker Law required tankers between 40,000 and 125,000 DWT navigating in Puget Sound to have certain "standard safety features," including a particular shaft horsepower to dead weight tonnage ratio (1 to 2.5), twin propeller screws, double bottoms beneath all oil cargo compartments, two operating radars (one being a collision avoidance system), and other navigational position location systems as required by the State board of pilotage commissioners. These standards were not required of vessels while in ballast or while escorted by a tug vessel or vessels with a combined shaft horsepower equivalent to five per cent of the tanker's dead weight tonnage. These design features were more stringent than those under federal regulations.

The Supreme Court ruled that these tanker design and equipment provisions were preempted. The Court found in Title II a statutory pattern that revealed a congressional intent to entrust to the Secretary of Transportation the duty to determine which design characteristics render oil tankers sufficiently safe to be allowed to proceed in the navigable waters of the United States. That the Secretary alone was to make the risk assessment judgment was evident to the Court, as it wrote:

Congress intended uniform national standards for [tanker] design and construction ... that would foreclose the imposition of different or more stringent state requirements.... Congress did not anticipate that a vessel found to be in compliance with the Secretary's design and construction regulations and holding a Secretary's permit, or its equivalent, to carry the relevant cargo would nevertheless be barred by state law from operating in the navigable waters of the United States on the ground that its design characteristics constitute an undue hazard.... The Supremacy Clause dictates that the federal judgment that a vessel is safe to navigate U.S. waters prevail over [any] contrary state judgment.

435 U.S. at 163-164, 165.

To square its holding under Title II with Court decisions made prior to enactment of the PWSA, the Court concluded that State and local governments may enforce local laws against federally licensed or inspected vessels only if they are aimed at objectives that differ from those embodied in the federal law. As Title II was aimed at tanker vessel safety and environmental

protection, states may not, at least directly, mandate different or higher tanker design requirements. Can they impose them indirectly by requiring tankers not meeting the standards to be escorted by tugs? This question made it necessary for the Court to examine the congressional intent behind Title I of the PWSA concerning vessel traffic controls and port safety.

The regulation of vessel traffic and port controls has been delegated less exclusively to the federal government than has tanker design and construction. The Court found the language and structure of Title I to evince a much less preemptive effect on state law. Title I gives the Secretary of Transportation the discretionary authority to adopt vessel traffic systems (VTS) for particular U.S. ports for preventing damage to vessels, structures (a term not defined in the Act but most likely meaning bridges, piers, roadsteads, and other harbor installations), and shore areas, as well as prevent pollution of navigable waters and marine resources. Under a VTS, the Coast Guard controls vessel traffic during periods of congestion and hazardous conditions by specifying vessel movement times, size and speed limitations, vessel operating conditions, navigational equipment, and minimum safety equipment.

The Supreme Court viewed Washington's tug escort provision not as a design requirement but one "more akin to an operating rule arising from the peculiarities of local waters that call for special precautionary measures, and, as such, ... a safety measure clearly within the Secretary's [Title I] authority." 435 U.S. at 171. Unlike Title II, however, Title I contains explicit language allowing the state to exercise legal authority in the field of vessel traffic and port safety. Section 1222 (b) provides that Title I does not prevent a state from prescribing for structures higher safety equipment requirements or safety standards "than those which may be prescribed pursuant to Title I." 33 U.S.C. section 1222 (b). Higher state safety standards for the protection of structures are allowed even if the Coast Guard has enacted provisions to achieve the same objective in its regulations and applicable VTS. The implication is that state safety standards for vessels are also permissible but they may not impose higher standards than any that are adopted under the federal law. 435 U.S. at 174. (This is not entirely clear, however, as the Court's opinion later refers to legislative history that could be interpreted as precluding any state regulation of vessels. 435 U.S. at

174, citing House Report No. 92- 563, pt.2 (1971) at 15. But the Court's analysis regarding the supertanker ban, discussed below, indicates the Court's belief that state action respecting vessel safety and equipment is permissible as long as the Coast Guard has not considered and acted upon the particular measure.) Until the Secretary acts it is not possible to determine if the state standard imposes an impermissible higher safety standard.

Thus the federal PWSA allows states to regulate in the area of vessel safety and traffic controls as long as they do not conflict with federally-promulgated regulations. States may impose more protective standards with respect to structures even if they go beyond what the Coast Guard has deemed necessary in its regulations. Whether Washington's tug escort requirement, a provision concerning vessel traffic safety, was precluded by the authority of the Secretary of Transportation depended on whether the Coast Guard had either promulgated its own tug escort requirement for the Puget Sound VTS or had decided that such a requirement should not be imposed. Since the record revealed no evidence that either decision had been taken, the Washington tug escort provision was not preempted. The Court, however, left open the possibility that subsequent Coast Guard rulemaking (in 33 CFR Part 164, under Title I) setting minimum standards for tug escorts would oust the state provision. 435 U.S. at 172.

The members of the Court were divided on whether the tanker design standards were saved by the alternative tug escort provision that allowed tankers to avoid compliance with the design standards. The Court found the Puget Sound tug escort provision to be a requirement "with insignificant international consequences" as it did not coerce tanker owners into adopting the state's design standards. The provision was in effect just a tug escort requirement, a permissible local regulation that was not per se preempted as would be a direct state design standard. The tug escort provision could stand as long as it did not conflict with a federally promulgated tug rule. The 1972 Act authorized the Coast Guard to impose a tug escort rule but did not compel it, and no such requirement had yet been adopted for the Puget Sound vessel traffic system, nor had a policy decision been taken that such a requirement was unnecessary. Justice White's plurality opinion, joined in full only by three justices, Chief Justice Burger and Justices Stewart and Blackmun,

implied, however, that if the Coast Guard were to enact such regulation, the state tug provision would be preempted. 435 U.S. at 171-172. Because the state had the power to require all vessels to use a tug escort, it could also require only those vessels not meeting the specified design standards to use tugs. The Court also found that the tug escort provision did not violate the Constitution's commerce clause by imposing heavy costs on interstate shipping.

In a dissenting opinion, Justice Marshall, joined by Justices Rehnquist and Brennan, agreed that the tug escort provision was permissible. Because all affected tanker owners had opted to use tug escorts and thus had not felt forced to comply with the design requirements, it was unnecessary for the Court to address the question of whether the state design requirements were in conflict with the federal goal of national uniformity and thus not preempted.

The Court was also seriously divided on the question whether the federal law prevented the State from banning supertankers from Puget Sound. The majority found Washington's prohibition of tankers greater than 125,000 DWT to be preempted by the Coast Guard's authority under PWSA's Title I to establish "vessel size and speed limitations." Both the majority and the dissent agreed that Title I did not on its face preempt all state regulation of vessel size; preemption depended on whether the Coast Guard had addressed and acted upon the particular regulatory issue of size limitations. The justices disagreed, however, whether the Coast Guard had in fact considered the question and concluded that no size limitation was necessary. The majority concluded that the Coast Guard's local navigation rule controlling the number and size of vessel in Rosario Strait at any given time constituted federal action with respect to vessel size limit that precluded a higher state standard. The state could not have adopted the supertanker ban as a matter of state judgment that very large tank vessels unsafe generally. Such a blanket determination would be precluded under Title II as a judgment respecting tanker design. As a judgment reflecting consideration of local conditions and water depths, however, the ban would have been permissible had the Coast Guard not made its own judgment that the local conditions did not warrant such a prohibition. The Court was not concerned that the Rosario Strait rule was an unwritten policy and therefore did not clearly reflect an affirmative Coast Guard judgment that a supertanker ban was

unnecessary. The Secretary's failure to adopt a supertanker ban "takes on the character of a ruling that no such regulation is appropriate" because the Title I required him to give full consideration to numerous factors in setting vessel traffic controls. Because his responsibility to consider and balance factors was so broad, it was apparent that the the ban was determined to be unnecessary. This reasoning appears somewhat strained, however, as it seems to say that because the Act requires the Secretary to consider everything thoroughly he must have done so.

The dissent did not buy the majority's analysis either. It noted the Court's well-established principle in cases of supremacy clause analysis that state and federal statutory schemes should be read to the greatest extent possible as compatible and should only oust state law to the extent necessary to protect achievement of federal aims. The dissent took particular note that the Coast Guard's Puget Sound Vessel Traffic System, 33 CFR Part 161, Subpart B, contained no tanker size limitation. The Coast Guard comments on the System in the Federal Register during its promulgation indicated that no consideration of the need for a ban took place. To the dissenters the Coast Guard's unwritten rule prohibiting more than one tanker larger than 70,000 DWT from transiting Rosario Strait during clear weather reduced to 40,000 DWT during bad weather was insufficient to establish a federal policy that a supertanker prohibition was unwarranted. 435 U.S. at 183, n.3.

Contrary to the majority's conclusion that Title I preempted the supertanker ban, the dissent found support for the state ban in a provision authorizing local VTSs. Section 1222 (e) provides that "the existence of local vessel-traffic-control schemes must be weighed in the balance" [by the Coast Guard] in determining which federal regulations should be imposed. 435 U.S. at 184, n.4. Likewise, Title II of the Act, regarding tanker design and construction standards did not preempt the State's supertanker ban. The dissent rejected the suggestion to that effect made by the majority's statement that Title II preempted "a state judgment that, as a matter of safety and environmental protection generally, tankers should not exceed 125,000 DWT." 435 U.S. at 175. Justice Marshall wrote:

It is clear, however, that the Tanker Law was not merely a reaction to the problems arising out of tanker operations in general, but instead was a measure tailored to respond to unique local conditions – in particular, the unusual susceptibility of Puget Sound to damage from large oil spills and the peculiar navigational problems associated with tanker operations in the Sound. Thus, there is no basis for preemption under Title II (emphasis added).

435 U.S. at 184-185.

The fact that the Court wrote three separate opinions weakens the force of the Ray decision. Moreover, the holding is not helped by the PWSA's lack of clear congressional intent with respect to state regulatory jurisdiction. Most important, however, is that the Court's most forceful argument for federal preemption of tanker design and construction standards was based upon the assumed need for uniformity in order to achieve international agreement on tanker safety standards. An argument could be made that vessels carrying North Slope crude oil from Valdez to ports on the West coast are engaged in interstate trade only. They are not competing with foreign tankers for international shipping. Many of these tankers, like the Exxon Valdez, were constructed specifically for the North Slope trade. Rather than frustrate the federal objective for uniform, international standards, the adoption of consistent state-imposed tanker standards by all States handling North Slope crude oil could help demonstrate the need for a higher, minimum international standard of tanker safety design. Consistent state tanker standards enacted by all the states receiving North Slope crude oil would eliminate the otherwise potent argument aired in Ray that national standards are needed to prevent the very costly impact on shipping of diverse state design requirements, for example, among Washington, Oregon, and California. See, e.g., Ray, 435 U.S. at 14-15.

The problem of costly, divergent state tanker standards was raised in the separate concurring opinion by Justice Stevens, joined by Justice Powell. They criticized the majority's decision not to preempt the tug escort alternative provision. They believed it to be of no consequence that the escort penalty imposed only a modest additional cost on tankers not meeting the invalid design rules. In their view, these additional costs would be magnified by the enactments of similar re-

quirements by other states attempting to impose more stringent standards. Evidence of this multiplier problem could be found in the fact that Alaska had just recently enacted an explicit system of economic incentives to try to get tankers to adopt safety and design standards similar to those required by the Washington Tanker Law. The decision in Ray despite its weakness was to have a serious impact on this newly enacted Alaskan law, although it is not entirely clear that it should have. It is to this story that we now turn.

C. Alaska's Experience with Federal Preemption: Chevron v. Hammond

To address the significant risks of oil spills posed by the imminent commencement of shipping operations from the terminus of the Trans-Alaska Pipeline in Valdez, the Alaska Legislature adopted SB 406 in 1976, enacted as Chapter 266, 1976 Alaska Laws. SB 406 was a comprehensive act covering all aspects of marine oil transportation and handling. Section 1, the Tank Vessel Traffic Regulation Act, required safety and maneuverability features on tankers and tug escorts for certain vessels, and the adoption of a state system of tanker traffic regulations. The Tank Vessel Act included a provision authorizing ADEC to adopt a comprehensive system of traffic regulations for tankers that did not conflict with regulations adopted by the Coast Guard and one authorizing the Governor to enter into interstate compacts to achieve the purposes of the Act. Section 2, the Oil Discharge Prevention and Pollution Control Act, prohibited the discharge of oil in state waters and required the payment of annual risk charges by terminal operators and vessel owners into a fund to pay for clean-up, research, and administration. The amount of the annual risk charges depended upon the presence or absence of the specified vessel features. Provisions of the new law also controlled the placement of ballast water in tankers and prohibited its discharge.

The new law took effect on July 1, 1977. On September 16, 1977, Chevron USA, Inc. and others filed suit in the federal district court for Alaska, claiming that key provisions of the law were unconstitutional. During the pretrial phase of the litigation in March, 1978, the Supreme Court announced its decision in Ray v. Atlantic Richfield Co. In response to the Ray ruling,

Chevron and the State stipulated that certain provisions of the 1976 Tank Vessel Traffic Regulation Act were preempted by the federal Ports and Waterways Safety Act and thus void. This agreement settled a significant part of the challenge to the state law.

Stipulated as preempted under the tanker design provisions (Title II) of the PWSA was the requirement that all tankers navigating Alaskan waters have on board what Alaska considered to be "standard safety and maneuverability features." The safety features included two marine radars systems, collision avoidance radar systems, LORAN-C navigational receivers, and other position location systems as prescribed by regulations by the Alaska Department of Environmental Conservation (ADEC). Provisions requiring tug escorts for tankers greater than 40,000 DWT that lacked such maneuverability and stopping features as lateral thrusters, controllable pitch propellers, and backup propulsion equipment were deemed preempted in light of the Coast Guard's promulgation of the Prince William Sound Vessel Traffic System under Title I of the PWSA. The parties also agreed on the invalidity of provisions controlling the placement of ballast water in vessel cargo tanks. They were not invalidated under the PWSA, however; they were deemed to posed an unreasonable burden on interstate commerce and were thus invalid under the commerce clause of the U.S. Constitution.

The parties did not agree with respect to the validity of the Oil Discharge Prevention and Pollution Control Act. They decided that a two-phase trial was necessary. The first phase of the trial would consider the validity of the annual risk charges and the Coastal Protection Fund. The second phase would try the validity of the ballast water discharge provision, loading and unloading requirements, the contingency plans and capability criteria, the certification provision, and the financial responsibility standards. This law authorized ADEC to take all necessary steps in cooperation with federal authorities to prevent oil spills, including the inspection and supervision of oil transfer activities, to arrange for the prompt and effective containment and removal of spilled oil, and to provide procedures to compensate victims. The key aim of the law was to provide economic incentives for oil terminal facilities and tanker owners to adopt the State-specified safety and maneuverability features by assessing annual risk charges and by requiring risk avoidance certifi-

cates and proof of financial responsibility. The certificates would be issued upon payment of an annual risk charge into the Coastal Protection Fund and upon proof of capability to carry out all required state and federal spill prevention and contingency plans. Oil terminal facility and marine carrier certificates would not be issued unless the owners could demonstrate their ability to provide all equipment, personnel and supplies to contain and clean-up any oil discharges. The statute provided for the establishment of differential risk charges based upon the presence of the risk-reducing equipment and design features.

The Act also authorized the State to undertake the immediate removal of discharged oil and to direct operations of all contractors and departmental personnel. The Coastal Protection Fund was created as a revolving fund consisting of all annual risk charges, payments for damages, penalties, and other fees established under the Act. The Fund's purpose was to finance ADEC's administrative, enforcement and clean-up expenses and to fund research on spill prevention and removal.

After a trial in the first phase, the U.S. District Judge, Judge James M. Fitzgerald, ruled in June, 1978, that the State's system of risk avoidance charges was preempted by the federal PWSA. The Coastal Protection Fund was invalid in light of Article IX, section 7 of the Alaska Constitution prohibiting the dedication of license fees for a special purpose. The State of Alaska filed an appeal of this ruling but later abandoned it. Details of Judge Fitzgerald's views on the risk charge system are presented below.

After this initial ruling, the remaining issues concerned the validity of the State's ballast water discharge regulations requiring onshore treatment, constitutionality of the warrantless ADEC searches and inspections of tankers, and the permissibility of State certification of tankers. Judge Fitzgerald ruled in September, 1979 that the ballast water provisions were preempted by the federal PWSA. Before he could rule on the other provisions, the Alaska Legislature repealed both the Tank Vessel Regulation Act and the Oil Discharge Prevention and Pollution Control Act. HB 205, Chapter 116, 1980 Alaska Laws, effective July 1, 1980.

The State ultimately appealed only one of the provisions that Judge Fitzgerald ruled unconstitutional, the ballast water discharge provision. Alaska eventually prevailed on this issue. The U.S. Circuit Court of Appeals for the Ninth Circuit reversed Judge Fitzgerald. It held that the federal Ports and Waterways Safety Act, as amended by the Ports and Tanker Safety Act of 1978, did not "occupy the field" of tanker discharge regulation in state waters, that the State's discharge prohibition did not pose an irreconcilable conflict with any regulations adopted by the Coast Guard pursuant to the PWSA nor prevented the achievement of that Act's objectives, and that the federal Clean Water Act reflected express congressional intent to achieve maximum state-federal cooperation in protecting the marine environment within three miles of the shoreline. Chevron v. Hammond, 726 F.2d 483 (9th Cir. 1984). The U.S. Supreme Court denied Chevron's petition for a writ of certiorari and the litigation was finally concluded.

It is difficult and probably unwise to speculate on what the Ninth Circuit would have held had the State decided to appeal Judge Fitzgerald's decision to invalidate the oil spill risk charge system. His preemption analysis was not particularly convincing nor detailed, however, and it seems clear from his opinion that his principal concern was for the adequacy of the statistical basis for the risk charge system. His reading of the Supreme Court's decisions overlooked the complexities of the Ray decision that could have limited its impact and it completely ignored the Court's strong endorsement of state authority in spill contingency measures in the Askew case. On these grounds it would have been more appropriate to appeal the decision to the Ninth Circuit for a more comprehensive reading of the applicable case law. It may be that the regulations' technical deficiencies revealed by Judge Fitzgerald's close scrutiny made the State reluctant to pursue their vindication in the Court of Appeals.

The judge seemed particularly bothered by the nature of the actuarial statistics and data on tanker accidents that were used as the basis for establishing the different risk charges by tanker size and construction. His discussion of the system and of the qualifications and methodology of the ADEC contractor who designed it, suggest that it was the program's execution rather than its legal basis that troubled him. That being the case, the more appropriate response would have been

to remand the risk charge regulations to the agency to correct the defects rather than invalidate the system entirely.

Judge Fitzgerald considered at length the ADEC methodology employed in setting the risk charges, emphasizing the Department's conscious decision, with the encouragement of the Attorney General, to develop the program as a system of insurance premiums rather than regulatory standards for tankers. This approach was taken in light of the potential for preemption under the federal regulatory statute, the PWSA. He was particularly persuaded by testimony of Chevron's expert witnesses that the ADEC contractor's report, which formed the basis for the risk charge regulations, was "statistically and actuarially unsound" and based upon inadequate and misapplied data. Memorandum of Decision, June 30, 1978, at 29. (These data concerned the casualty experience of the world-wide tanker fleet on the high seas, and did not take account of the performance of tankers in Alaskan coastal waters.)

The model employed in the report assumed a simplistic and unproven relationship between particular tanker design features and navigation equipment and their reduction of the risk of an oil spill. Judge Fitzgerald found the risk reduction estimates to be subjective, incomplete, and unsupported. He condemned the contractor's report as "devoid of merit" but faulted the ADEC decision to use an actuarial method for which the contractor was unqualified and for which he was given inadequate time (six weeks), resources, and staff assistance. Noting the complexity of the task of determining tanker standards to reduce oil spills, Judge Fitzgerald pointed out that the double bottom issue alone had consumed years of study and debate before it was ultimately rejected by the International Maritime Consultative Organization (IMCO) in February, 1978, just four months prior to his ruling. He was apparently influenced, at least in part, by the results of the IMCO deliberations, but he assumed, probably naively, that the IMCO decision was a technical rather than a political and economic one. See Silverstein, Superships and Nation-States: The Transnational Policies of the Intergovernmental Maritime Consultative Organization (1978) at 184-186 ("IMCO is an inherently sympathetic forum to maritime interests" which has not functioned effectively as a regulatory body because of its lack of an independent research capability).

Judge Fitzgerald gave significantly less attention to the legal question whether Alaska's risk charge regulations were preempted by the PWSA. Again he noted the international dimension of the problem of tanker oil spills, adding that President Carter's proposal for double bottoms on tankers had been rejected four months before at the International Conference on Tanker Safety and Pollution Prevention on safety grounds and in preference for further study of the selective placement of segregated ballast tanks. In his view the risk charge system was an attempt to influence the design characteristics of tankers, a subject that the Ray v. Atlantic Richfield decision of three months prior had indicated was completely preempted by Title II of the PWSA.

He rejected the argument that the risk charge system was similar to Washington's alternative design/tug escort requirement, and as an operating rule reflecting the peculiar conditions of local waters, it was not preempted under Title I until specific federal judgments to the contrary were made. Judge Fitzgerald merely concluded that because the risk charge system was designed to provide incentives for the incorporation of state-desired safety and maneuverability features it was contrary to the goal of Title II to achieve uniform national and international standards. In light of the divergence in opinion respecting the effectiveness of various design characteristics to prevent oil spills, he predicted that a widely varying array of conflicting state standards would result if states were allowed to enact their own tanker standards.

The actual impact the state regulations were having on tanker design was not considered, although this was an important part of the Supreme Court's consideration of the Washington's design/tug escort alternative in Ray. Judge Fitzgerald made no mention of the fact that tanker owners were paying the risk charges instead of incorporating the State's safety and design features. Moreover, he did not even discuss whether the risk charge system was effectively an oil spill contingency fund the contributions to which were assessed on the basis of the different risks posed by certain kinds of tankers. If he had undertaken this line of inquiry he may have upheld the risk charge system as a contingency fund provision authorized by the federal Clean Water Act as interpreted by the Supreme Court in Askew v. American Waterways Operators, as discussed above. A more thorough consideration of these issues could have been made by the Court of

Appeals, thus the State's failure to appeal the ruling is unfortunate. A ruling by the Ninth Circuit on all aspects of the Alaska law could have helped clarify the application of the Ray and Askew rulings and promoted the development of this uncertain area of the law.

D. California's Legislative Initiatives

The State of California is currently pursuing legislation to revise and strengthen the State's control over oil shipments through state waters. There is both a petition drive to get new legislation enacted by referendum and bills pending in the State Senate and Assembly. All of these proposals promise to enhance considerably the State's power to prevent an Exxon Valdez disaster in State waters. While these proposals may raise concerns regarding federal preemption, and are likely to be challenged by a litigious oil industry, they merit serious consideration by other States. They are likely to have a more positive reception in the federal courts, if the new federal oil spill legislation reflects a renewed spirit of cooperative state-federal responsibility for oil spill prevention and if the deficiencies of the federal regulatory performance since 1978 can be presented.

California's Environmental Initiative is currently being prepared for a citizens' petition drive and voter referendum in November, 1990. If adopted it would enact comprehensive environmental legislation to control pesticide use, reduce the production of greenhouse gases, protect old growth forests, prevent toxic water pollution, and reduce the risks of coastal oil spills. The oil spill provisions should be of interest to other states because they skillfully employ the strongest aspects of the State's legal authority to build a comprehensive oil spill prevention and response system.

Recognizing that most if not all oil development and transportation facilities are located on state tidelands (including offshore exploration and production facilities, pipelines, tanker terminals, and refineries), the new law would forbid the renewal of any state lands lease for such facilities until a State Oil Spill Prevention Plan is adopted. The Plan must be implemented by all agencies with authority over potential sources of oil pollution. It will include at a minimum tug escorts

for oil tankers, the establishment of emergency stations for disabled tankers, and periodic inspections for all oil-related facilities.

Permit approvals for facilities that pose the risk of oil spills will be withheld in the absence of an approved oil spill contingency plan that meets requirements specified by the California Coastal Commission, prepared in consultation with the State Lands Commission and the Department of Fish and Game. (Together the heads of these agencies will form a State Oil Spill Coordinating Committee to oversee implementation of the new law.) Local governmental and port contingency plans will be developed and incorporated into local coastal management programs, giving them the force of federal approval and consistency under the federal Coastal Zone Management Act.

In the event of a spill, the Act contemplates that state agencies will direct all containment and clean-up operations, including those of the responsible party, subject to the overriding authority of the U.S. Coast Guard. A new agency within the Department of Fish and Game, the Office of Oil Spill Response, would direct spill response, interagency coordination, and most importantly, oil spill contingency training and plan implementation. The Office would have available funds from an Oil Spill Prevention and Response Fund created by a variable fee on oil deliveries by tanker and offshore pipelines. The variable fee provision adopts a relative risk approach that is similar in philosophy to the 1976 Alaska legislation. The fee of up to twenty-five cents per barrel "shall be commensurate with the oil spill risk posed by the method of transportation and volume of oil transported." Initiative Measure, Section 24, adding Public Resources Code, section 6232 (a).

Bills pending in the California legislature should also be noted. They reflect a new boldness and a willingness to exercise the maximum state authority to prevent the occurrence of catastrophic oil spills. The pending Senate and Assembly bills use the State's regulatory authority over shoreside terminal facilities to impose risk-reducing standards on tankers. This approach, if tested in the courts, will bring into direct focus the somewhat conflicting policies on state authority that are reflected in the federal Clean Water Act and the Ports and Waterways Safety Act/Port and Tanker Safety Act.

Clearly the aim of the California law is to influence tanker design and construction but does so through the state's police power and public trust responsibilities as applied to marine terminal facilities. The impact of the Ray and Askew decisions on this approach is uncertain. A reviewing court is likely to be influenced by the ineffectiveness of existing federal and state controls as revealed by the Exxon Valdez disaster. Whether it concludes that there is greater scope for state control could depend on the language Congress adopts in enacting the 1989 Oil Spill Prevention Act. These developments should be followed closely.

STATE OF ALASKA THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 2, 1990

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

TO: Representative Cliff Davidson

FROM: John B. Gaguine *JBG*
Legislative Counsel

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

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

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

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

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

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

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

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

If I may be of further assistance, please advise.

JBG:pl
WKP2/119

CRS Issue Brief

Oil Pollution Liability and Compensation Legislation After the *Exxon Valdez* Oil Spill

Updated November 9, 1990
(Archived)

by
Martin R. Lee
Environment and Natural Resources Policy Division



Oil Pollution Liability and Compensation Legislation After the *Exxon Valdez* Oil Spill

SUMMARY

The President signed the Oil Pollution Act of 1990 (P.L. 101-380) on Aug. 18, 1990. Based on a consensus among the Administration, Congress, and the oil industry that comprehensive oil pollution liability and compensation legislation was necessary, leaders in the House and Senate announced in April 1989, following the *Exxon Valdez* spill, that consideration of oil pollution liability and compensation was a priority. On behalf of the Administration, Secretary of Transportation Samuel Skinner said at May 11, 1989, congressional hearings on the *Exxon Valdez* incident that the Administration also considered this issue a priority and forwarded legislation to Congress (introduced as H.R. 2325 and S. 1066). In its May 1989 report on the *Exxon Valdez* oil spill, the National Response Team (NRT) advocated adopting comprehensive oil pollution liability and compensation legislation.

Prior to enactment of the Oil Pollution Act of 1990, there were four Federal and more than 20 State laws that related to the oil pollution liability and compensation, and two (unratified) international conventions.

Since 1975, Congress considered, but did not enact, comprehensive oil pollution liability and compensation legislation. In the 101st Congress, a number of proposals reflected many of the discussions, debates, and resolutions of the past 14 years. H.R. 1465 and S. 686, the chief bills, were comprehensive, covering a wide range of costs and damages. They proposed internalizing the costs of pollution cleanup and damages within the oil-handling industry. Also, they offered protection to a number of industries and businesses affected by a spill, including the fishing and recreation industries that are characterized by many small participants and are subject to natural and seasonal variations.

There were some areas, however, where there were differences: in whether to set different liability limits for barges and tankers, in the disposition of the Trans-Alaska Pipeline Fund (which has accumulated \$250 million), and most fundamentally on the question of preemption. H.R. 1465 as introduced and reported generally preempted State liability requirements; S. 686 as introduced and passed preserved State authority. Amendments accepted during House passage of H.R. 1465, however, preserved State authority and made H.R. 1465 similar to S. 686. The final enacted version preserved State authority. Taxing provisions (\$0.05 per barrel) establishing a \$1 billion fund were passed as part of the Reconciliation Act (P.L. 101-239, Section 7505).

During the 1970s, many States adopted their own liability and compensation programs. Over 20% of the States had compensatory funds of various kinds. Internationally, two conventions -- the Civil Liability Convention (CLC) and the Fund Convention (FC), in effect for other countries but not the United States -- established liability and compensation mechanisms internationally. However, the Senate Foreign Relations Committee did not favorably recommend these for ratification in 1972 due to dissatisfaction with liability limits, fund size, and the possibility of dual taxation (S. Exec. Rept. 92-9). Protocols in 1984 to the parent conventions resolved some of the earlier problems and, in the opinion of some observers, enhanced the probability of ratification. The 1984 protocols were submitted to the Senate on Nov. 5, 1985, and the Senate Committee on Foreign Relations favorably reported them with reservations on Oct. 26, 1985 (S. Exec. Rept. 99-28). House-passed H.R. 1465 contained language to implement the International Conventions if the U.S. adopts them; S. 686 does not contain such language. The conference did not adopt the House-passed international convention language.

The various oil pollution liability and compensation laws and conventions -- four Federal, more than 20 State, and two international -- were often referred to as a "hodgepodge" or patchwork. There was little disagreement over the need to replace and consolidate these laws and conventions; rather, the disagreement was over the nature and form that a replacement statute and mechanism should take.

Congressional Involvement: Past and Present

During the past 14 years, several versions of oil pollution liability and compensation legislation have been acted upon by both the House and Senate. In April 1982, the Reagan Administration announced its opposition to such legislation, favoring reliance on existing law for cleanup and judicial action for damages. It reversed its position in April 1984, however, when it provisionally backed the major 98th Congress proposal -- H.R. 3278. That proposal was adopted in amendments to the 98th Congress version of Superfund reauthorization (H.R. 5640), which passed the House, but was not acted upon by the Senate.

In the 99th Congress, the House and Senate passed oil pollution liability and compensation legislation as part of Superfund reauthorization legislation (H.R. 2005), but those provisions were deleted in conference. Oil pollution liability and compensation provisions were then included in a reconciliation bill (P.L. 99-509), the provisions of which would become effective only if Congress enacted parent authorizing legislation by September 1987, which it did not. On Sept. 27, 1986, the Senate passed a separate oil pollution liability and compensation bill, S. 2799. No further action was taken on this bill before the 99th Congress adjourned.

In the 100th Congress, the chief bills were H.R. 1632, reported by the House Committee on Merchant Marine and Fisheries (H.Rept. 100-163, Parts 1 and 2), and a similar bill, S. 1802. Provisions of H.R. 1632 were passed by the House as part of the FY88 budget reconciliation legislation (H.R. 3545), but conferees decided to delete these provisions so that the Senate could have time to consider its own legislation. S. 2643 was the Senate's response; however, it received no action.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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Oil Pollution Liability and Compensation Legislation
After the *Exxon Valdez* Oil Spill

SUMMARY

The President signed the Oil Pollution Act of 1990 (P.L. 101-380) on Aug. 18, 1990. Based on a consensus among the Administration, Congress, and the oil industry that comprehensive oil pollution liability and compensation legislation was necessary, leaders in the House and Senate announced in April 1989, following the *Exxon Valdez* spill, that consideration of oil pollution liability and compensation was a priority. On behalf of the Administration, Secretary of Transportation Samuel Skinner said at May 11, 1989, congressional hearings on the *Exxon Valdez* incident that the Administration also considered this issue a priority and forwarded legislation to Congress (introduced as H.R. 2325 and S. 1066). In its May 1989 report on the *Exxon Valdez* oil spill, the National Response Team (NRT) advocated adopting comprehensive oil pollution liability and compensation legislation.

Prior to enactment of the Oil Pollution Act of 1990, there were four Federal and more than 20 State laws that related to the oil pollution liability and compensation, and two (unratified) international conventions.

Since 1975, Congress considered, but did not enact, comprehensive oil pollution liability and compensation legislation. In the 101st Congress, a number of proposals reflected many of the discussions, debates, and resolutions of the past 14 years. H.R. 1465 and S. 686, the chief bills, were comprehensive, covering a wide range of costs and damages. They proposed internalizing the costs of pollution cleanup and damages within the oil-handling industry. Also, they offered protection to a number of industries and businesses affected by a spill, including the fishing and recreation industries that are characterized by many small participants and are subject to natural and seasonal variations.

There were some areas, however, where there were differences: in whether to set different liability limits for barges and tankers, in the disposition of the Trans-Alaska Pipeline Fund (which has accumulated \$250 million), and most fundamentally on the question of preemption. H.R. 1465 as introduced and reported generally preempted State liability requirements; S. 686 as introduced and passed preserved State authority. Amendments accepted during House passage of H.R. 1465, however, preserved State authority and made H.R. 1465 similar to S. 686. The final enacted version preserved State authority. Taxing provisions (\$0.05 per barrel) establishing a \$1 billion fund were passed as part of the Reconciliation Act (P.L. 101-239, Section 7505).

ISSUE DEFINITION

Since 1975 Congress considered comprehensive oil pollution liability and compensation legislation that would replace certain provisions of four major Federal statutes. In the 101st Congress, House-passed H.R. 1465 and Senate-passed S. 686 reflected many of the discussions, debates, and resolutions of the past 14 years. The bills were similar in many respects; however, there was one fundamental difference. H.R. 1465 as introduced and reported preempted State authority to establish liability provisions, while S. 686 as introduced and passed preserved such authority. Amendments accepted during House passage of H.R. 1465, however, preserved State authority and made H.R. 1465 similar to S. 686. The final enacted version -- the Oil Pollution Act of 1990 (P.L. 101-380) -- preserved State authority. Taxing provisions requiring a \$0.05 per barrel fee on oil creating a \$1 billion fund were passed as part of the Budget Reconciliation Legislation, P.L. 101-239, Section 7505 (H.R. 3299). (For a general discussion of the *Exxon Valdez* oil spill, see CRS Issue Brief 89075.)

BACKGROUND AND ANALYSIS

Background

Numerous activities -- including nuclear power, transportation of chemicals, and airline travel -- pose certain risks, sometimes hazardous risks. Nonetheless, modern society frequently accepts these risks because of the overriding benefits of such activities. Various Federal and State laws and international agreements recognized such risks and benefits, and incorporate liability provisions affording an element of predictability and assuring compensation in case of an accident.

The handling of oil obviously involves benefits and risks. Prior to the enactment of the Oil Pollution Act of 1990, four Federal statutes incorporated oil pollution liability standards and compensation provisions: the Clean Water Act of 1972 (33 U.S.C. 1251), the Trans-Alaska Pipeline Authorization Act of 1973 (43 U.S.C. 1651), the Deepwater Port Act of 1974 (33 U.S.C. 1501), and the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801). (Although Superfund, the Comprehensive Environmental Response, Compensation and Liability Act (46 U.S.C. 1801 et seq.), taxes petroleum and chemical feedstocks, to clean up abandoned toxic waste sites and hazardous substance spills, it does not provide for cleaning up petroleum spills.) None of the four Federal statutes was comprehensive and all had perceived shortcomings. While the Clean Water Act included wide geographic and source coverage, it was limited to cleanup and mitigation costs; its fund cleanup was supported by Federal appropriation. Although the other three statutes provided broader cleanup and damage coverage and included compensatory funds maintained by industry, they were limited to covering special spills related to specific oils, that is, Trans-Alaska Pipeline, deepwater port, and Outer Continental Shelf oil.

During the 1970s, many States adopted their own liability and compensation programs. Over 20% of the States had compensatory funds of various kinds. Internationally, two conventions -- the Civil Liability Convention (CLC) and the Fund Convention (FC), in effect for other countries but not the United States -- established liability and compensation mechanisms internationally. However, the Senate Foreign Relations Committee did not favorably recommend these for ratification in 1972 due to dissatisfaction with liability limits, fund size, and the possibility of dual taxation (S.Exec. Rept. 92-9). Protocols in 1984 to the parent conventions resolved some of the earlier problems and, in the opinion of some observers, enhanced the probability of ratification. The 1984 protocols were submitted to the Senate on Nov. 5, 1985, and the Senate Committee on Foreign Relations favorably reported them with reservations on Oct. 26, 1986 (S. Exec. Rept. 99-28). House-passed H.R. 1465 contained language to implement the International Conventions if the U.S. adopts them; S. 686 does not contain such language. The conference did not adopt the House-passed international convention language.

The various oil pollution liability and compensation laws and conventions -- four Federal, more than 20 State, and two international -- were often referred as a "hodgepodge" or patchwork. There was little disagreement over the need to replace and consolidate these laws and conventions; rather, the disagreement was over the nature and form that a replacement statute and mechanism should take.

Congressional Involvement: Past and Present

During the past 14 years, several versions of oil pollution liability and compensation legislation have been acted upon by both the House and Senate. In April 1982, the Reagan Administration announced its opposition to such legislation, favoring reliance on existing law for cleanup and judicial action for damages. It reversed its position in April 1984, however, when it provisionally backed the major 98th Congress proposal -- H.R. 3278. That proposal was adopted in amendments to the 98th Congress version of Superfund reauthorization (H.R. 5640), which passed the House, but was not acted upon by the Senate.

In the 99th Congress, the House and Senate passed oil pollution liability and compensation legislation as part of Superfund reauthorization legislation (H.R. 2005), but those provisions were deleted in conference. Oil pollution liability and compensation provisions were then included in a reconciliation bill (P.L. 99-509), the provisions of which would become effective only if Congress enacted parent authorizing legislation by September 1987, which it did not. On September 27, 1986, the Senate passed a separate oil pollution liability and compensation bill, S. 2799. No further action was taken on this bill before the 99th Congress adjourned.

In the 100th Congress, the chief bills were H.R. 1632, reported by the House Committee on Merchant Marine and Fisheries (H.Rept. 100-163, Parts 1 and 2), and a similar bill, S. 1802. Provisions of H.R. 1632 were passed by the House as part of the FY88 budget reconciliation legislation (H.R. 3545), but conferees decided to delete these provisions so that the Senate could have time to consider its own legislation. S. 2643 was the Senate's response; however, it received no action.

In the 101st Congress, there has been general consensus among the Administration, Congress, and the oil industry that comprehensive oil pollution liability and compensation legislation was necessary. Leaders in the House and Senate announced in April, following the *Exxon Valdez* spill, that consideration of oil pollution liability and compensation was a priority. On behalf of the Administration, Secretary of Transportation Samuel Skinner announced at May 11, 1989 congressional hearings that the Administration also considered this issue a priority and forwarded legislation (H.R. 2325) to Congress.

Merchant Marine and Fisheries Committee consideration of H.R. 1465, as approved by the Subcommittee on Coast Guard and Navigation, was held on June 21, 1989. The full committee approved H.R. 1465, with amendments which

- allowed States to use their own oil spill funds and then seek compensation from responsible party or the Federal fund;
- allowed victims to use State courts in instances of personal injury or wrongful death;
- expanded the definition of natural resource damages; and
- raised the amount available from the fund to \$ 1 billion from the original \$500 million proposed.

In approving H.R. 3027, the House Committee on Public Works and Transportation included some provisions approved by the Committee on Merchant Marine and Fisheries as well as provisions on oil spill response and prevention. That committee reported H.R. 1465 after amending it with the text of H.R. 3027.

As reported (S.Rept. 101-94) by the Senate Committee on Environment and Public Works, S. 686 established liability standards and a fund for compensation similar to that proposed in the House bills. As approved by the Committee, the bill would not preempt State laws but preserve State authority.

In consideration on the floor, the Senate included recommendations on tanker safety and manning made earlier by the Senate Committee on Commerce, Science, and Transportation. The full Senate passed S. 686 on Aug. 4, 1989.

On Nov. 9, 1989, the full House passed H.R. 1465 after amending it with the language of H.R. 3394, creating a "new composite" bill reflecting agreement between the House Committees on Merchant Marine and Fisheries and on Public Works and Transportation. The most significant change was H.R. 1465's new language on pre-emption, which preserved State authority, making the bill similar to Senate-passed S. 686.

Thus, both the House and Senate approaches were similar in adding oil pollution prevention and cleanup requirements to basic liability and compensation bills.

Provisions of Legislation in the 101st Congress

What is Covered?

Like earlier proposals and the Trans-Alaska Pipeline, deepwater port, and Outer Continental Shelf Lands statutes, the Oil Pollution Act of 1990 (P.L. 101-380) covers a wide range of costs and damages. These include cleanup and removal costs, personal or real property injuries, natural resource damages, loss of earnings, and tax revenues.

Setting Liability Limits

The appropriate level of liability for vessels and barges had been a continuing concern. Under the Clean Water Act and most earlier proposals, barges were accorded lower liability limits due to their smaller size and perceived lower damage potential. H.R. 1465 placed per-ton liability limits for barges and smaller tankers at less than that for tankers, while S. 686 proposed setting liability limits for the barges at the same per-ton level as vessels. Citing lower risks of damage and lack of available insurance, barge owners and operators have traditionally favored lower limits. In some cases, though, barges have caused damages disproportionate to their size because of a spill's proximity to sensitive natural resources.

House-passed H.R. 1465 established tank vessel liability at \$1,200 per gross ton as opposed to the \$1,000 per gross ton level under S. 686. However, H.R. 1465 divided the liability between the owner and operator of the vessel and the owner of the oil. Senate-passed S. 686 did not make this distinction and placed the liability on the owner or operator.

Liability limits under the Oil Pollution Act, P.L. 101-380, are unlimited if the spill is caused by gross negligence or willful misconduct, or by a violation of an applicable Federal safety standard, construction, or operating regulation. The final liability limits of P.L. 101-380 include \$1,200 per gross ton but no less than \$10 million for vessels greater than 3,000 gross tons, and no less than \$2 million for smaller vessels, such as most inland barges which weigh less than 3,000 gross tons. Other vessels would have liability limits of \$600 per gross ton or \$500,000, whichever is greater. Liability limits for Outer Continental Shelf facilities would remain at \$75 million for damages and be unlimited for cleanup costs. For onshore facilities and deepwater ports, the liability limit would be \$350 million, although the President may lower this limit.

Preemption

The relationship of the proposed legislation to existing State laws was a continuing major issue. Provisions in H.R. 1465, as introduced and reported, represented a compromise developed over many years. While they proposed to preempt State liability requirements, H.R. 1465 allowed continued State cleanup funds. Amendments accepted during House passage, however, preserved State authority and made H.R. 1465 similar to S. 686 on the preemption question, thus paving the way for the conference/enacted version, which preserved the right of States to have stricter liability laws and their own oil spill compensation funds.

Tanker Operation and Design

Both House-passed H.R. 1465 and Senate-passed S. 686 contained provisions regulating tankers, including provisions relating to alcohol and drug abuse and access to the National Drivers Registry. Both had similar provisions on vessel traffic systems and tanker operations. H.R. 1465 required double hulls for all new tankers and the retrofitting of existing tankers within 15 years. S. 686 allowed the Secretary of Transportation to require double hulls if it was determined they would be beneficial. The enacted version requires in Title IV, Subtitle A, double hulls on all new tankers operating in U.S. waters, and the retrofitting or phaseout of single-hulled vessels between 1995 and 2010. The law also contains a special Title V requiring pilots and vessel traffic systems for Prince William Sound.

Removal and Contingency Planning

The Oil Pollution Act of 1990 provides for major changes in response to and planning for oil spills. The enacted version (as did both bills as passed) requires in Title IV, Subtitle B, the President to arrange for removal of oil pollution, grants immunity to industry cooperatives and response organizations, and requires a national planning and response system.

Research and Development

The Oil Pollution Act of 1990 includes in Title VII \$26.5 million annually for a new research and development program coordinated by an Interagency Coordinating Committee on Oil Pollution Research.

Trans-Alaska Pipeline Amendments

Title VIII includes major reform amendments relating to the Trans-Alaska Pipeline System, provisions not contained in S. 686.

International Issues

H.R. 1465 as passed contained provisions that domestically implemented two international conventions and their 1984 protocols, if the Senate gave its advice and consent and the President ratified them. Some previous opposition to implementation legislation was based on procedural grounds, stemming from the belief that these provisions should be included only after the conventions and protocols were closely examined and approved by the Senate. Others were opposed to United States' involvement with the conventions at this time, claiming that the United States would not derive as much in benefits as it would contribute. S. 686 did not contain such implementing language. The conferees opted not to include the House-passed provisions which could be used to implement the international conventions, and adopted a non-binding resolution that the United States should participate in an international oil pollution liability and compensation system that is at least as effective as Federal and State laws.

Other Issues

Budget Issues

Basic to this legislation (H.R. 1465 and S. 686) was the concept of internalizing the costs of pollution, such as cleanups and damages, within the oil-handling industry and relieving the Federal Treasury, which usually bears these costs. Accordingly, this law would appear to help reduce the deficit and to accommodate the aims of Congress and President. Since 1971, Congress has appropriated more than \$20 million to the Clean Water Act 311 Fund, which is maintained by appropriations. Initially there would be a budgetary benefit of roughly \$5 to \$6 million a year (average outlays from the 311 fund which would no longer be used), if no further appropriations were necessary. Under these bills, a draw on the Treasury would be avoided in the event of future catastrophic spills, since the proposed provisions cover cleanup costs. Also, in instances where injured parties might seek emergency assistance from the Government for economic damages (such as fishermen or small businesses), they might immediately recover such losses from the comprehensive fund.

Economic Issues

The most direct effect on the overall economy results from the imposition of a January 1990 fee on oil. Most analysts consider that a fee of \$.05 per barrel, adopted by P.L. 101-239 to support P.L. 101-380, will not significantly affect oil prices and will have only a negligible effect on gasoline prices. As a cost of doing business, the fee is internalized, and future cleanup and damages will be paid by oil companies, although the eventual costs (through fees paid to maintain the fund) will presumably be passed along to consumers through price increases for petroleum products. Generally, the oil industry was not opposed to this fee.

Taking another view, the now-enacted coverage of economic damages offers potential protection for a whole series of businesses and industries, including the fishing and recreation industries that have many small participants and are subject to natural and seasonal variations. The concept of including economic damages for such businesses as part of a compensation program is aimed at preventing not only short-term losses but severe long-term effects. P.L. 101-380 thus should have a positive economic effect by stabilizing these businesses in the event of a disastrous oil spill. Proponents of the legislation argued that the assured economic benefits outweigh the economic costs of the fee on oil.

Under most past law, the economic effect could have been very different. Injured fishermen or motel owners were ineligible for economic claims and had to pursue court action, which could prove lengthy and be unpredictable. Further, judging from the recent history of the Clean Water Act fund, the new fund might very well function on its investment income alone, barring large outlays for catastrophic spills like the *Exxon Valdez*. Thus, the costs to industry could decrease over time, and there would be protection for small marine-resource dependent businesses.

Environmental Issues

The intention of P.L. 101-380 is to provide prompt cleanup and mitigation. Previously, cleanups have sometimes been delayed or even suspended due to questions of liability and adequacy of funds. P.L. 101-380 provides up-front funding for cleanups and thus offers the potential to minimize environmental damage and degradation. It also provides for natural resource restoration if necessary.

The legislation should help prevent or reduce spills and environmental damage, due to the substantial preventive provisions contained in Title IV, Subtitle A, rather than the liability and compensation provisions. However, it should be noted that until the *Exxon Valdez* spill, the Trans-Alaskan Pipeline, Deepwater Port, and Outer Continental Shelf funds have not been drawn on for spill claims. From this record, some have inferred that these laws prevent spills. However, the real reason for spill-free activity probably lies in the fact that numerous laws and regulations now closely regulate the oil handling industry, including foreign vessels. As embodied in P.L. 101-380, oil pollution liability and compensation provisions may act hand-in-hand with regulatory provisions in preventing oil spills.

LEGISLATION

P.L. 101-239, H.R. 3299, Section 7505

Reconciliation Bill, FY90 (Section 11503). Introduced Sept. 20, 1989; referred to Committee on the Budget. Reported Sept. 20, 1989 (H.Rept. 101-247) Passed House Oct. 5, 1989. Passed Senate Oct. 13, 1989. Conference Report (H.R. Rept. 101-386) filed Nov. 21, 1989. Signed into law on Dec. 19, 1989.

P.L. 101-380, H.R. 1465

Comprehensive Oil Pollution Liability and Compensation Act. Establishes liability and compensation provisions for oil pollution and implements the provisions of the Civil Liability and Fund conventions and their protocols. Introduced Mar. 16, 1989; referred jointly to Committees on Merchant Marine and Fisheries and on Public Works and Transportation. Reported by Committee on Merchant Marine and Fisheries, Committee on Public Works and Transportation, Committee on Science, Space and Technology (H.Repts. 101-242, Parts I-V) and Committee on Rules (H.Rept. 101-323). Passed the House, amended, November 9, 1989. In conference with S. 686. Conference report filed August 1, 1990 (H.Rept. 101-653). Signed into law Aug. 18, 1990.

H.R. 2072 (Whitten)

Dire Supplemental Appropriations. Introduced Apr. 18, 1989. Passed House May 24, Senate June 7, 1989. In Conference.

H.R. 2325 (Davis)

(Administration's Bill.) Establishes a domestic liability and compensation system for oil pollution, and implements the 1984 Protocols to the 1969 Civil Liability and 1971 FUND Conventions concerning sea-going tanker-source oil pollution. Introduced

May 11, 1989; referred to the Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Ways and Means.

H.R. 3027 (Anderson)

Provides liability for damages resulting from oil pollution, establishes a compensation fund, and improves oil pollution response. Introduced July 27, 1989; referred to Committees on Merchant Marine and Fisheries, Public Works and Transportation, and Science and Technology. Reported by Committee on Public Works and Transportation Sept. 13, 1989, the provisions of which were amended to H.R. 1465 as a substitute (H.Rept. 101-241, Part 1, and by Committee on Science, Space, and Technology Sept. 22, 1989 (H.Rept. 101-241, Part 2).

H.R. 3394 (Jones)

New composite bill incorporating features of reported versions of H.R. 1465 and H.R. 3027. Introduced Oct. 3, 1989; referred to Committees on Merchant Marine and Fisheries, on Public Works and Transportation, and on Science, Space, and Technology. See H.R. 1465.

H.R. 4910 (Wyden)

Amends the Federal Water Pollution Control Act. Introduced May 23, 1990; referred to Committee on Public Works and Transportation.

S. 686 (Mitchell)

Oil Pollution Liability and Compensation Act. Proposes a comprehensive oil pollution liability and compensation regime. Introduced Apr. 4, 1985; referred to Committee on Environment and Public Works. Reported (S.Rept. 101-94) July 28, 1989. Passed Senate Aug. 4, 1989. In conference with H.R. 1465. See H.R. 1465.

S. 1066 (Chafee)

Establishes a domestic liability and compensation system for oil pollution from vessels and facilities, and implements the 1984 Protocols to the 1969 Civil Liability and 1971 FUND conventions concerning sea-going tanker-source oil pollution. Introduced May 18, 1989; referred to Committee on Public Works and Transportation.

S. 1223 (Lieberman)

Amends Section 311 of the Clean Water Act on liability. Introduced June 22, 1989; referred to Committee on Environment and Public Works.

S. 2506 (Bradley)

Provides for liability for transfer of oil between a vessel and facility. Introduced Apr. 24, 1990; referred to Committee on Environment and Public Works.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Merchant Marine and Fisheries. Oil Pollution Liability and Compensation Act. Hearings, 101st Congress, 1st session. May 11, 1989. (not yet printed)

- U.S. Congress. House. Committee on Public Works and Transportation. Oil pollution liability and compensation. Hearings, 101st Congress, 1st session. June 28, 1989.
- U.S. Congress. Senate. Committee on Finance. Comprehensive Oil Pollution Liability and Compensation Act -- S. 771 and S. 1066. Hearings, 101st Congress, 1st session. June 21, 1989. (not yet printed)
- U.S. Congress. Senate. Committee on Foreign Relations. International aspects of oil pollution liability and compensation. Hearings, 101st Congress, 1st session. July 13, 1989. Washington, U.S. Govt. Print. Off., 1989. (not yet printed)
- U.S. Congress. House. Committee on Rules. H.R. 1465. Hearing, 101st Congress, 1st session. Oct. 4, 1989 (not yet printed)
- U.S. Congress. House. Committee on Science, Space, and Technology. H.R. 3027. Hearings, 101st Congress, 1st session. Sept. 7, 1989 (not yet printed)

FOR ADDITIONAL READING

- American Petroleum Institute. The socioeconomic impacts of oil spills. Publication 4375. Washington, March 1984. 61 p.
- U.S. General Accounting Office. International oil pollution: Current and alternative liability and compensation arrangements affecting the United States. Washington, Feb. 3, 1983. 26 p. GAO/ID 83-19
- U.S. Library of Congress. Congressional Research Service. After the *Exxon Valdez* oil spill: oil pollution liability and compensation legislation, by Martin R. Lee. [Washington] Apr. 27, 1989. 19 p.
CRS Report 89-266 ENR

Commentary for Proposed Interstate Compact
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9/4/90
(Revised 9/12/90)
(Revised 10/15/90)
(Revised 1/28/91)

The following commentary provides an explanation of the proposed language for the interstate compact on oil and hazardous substances transportation and spill response. Notes in parenthesis indicate the source of the comment and may be referred to for a more indepth discussion of the issue. These documents are: 1) The federal act creating the Northwest Power Planning Council (P.L. 96-501); 2) Final Draft of Alaska Sea Grant Legal Research Team, "Potential Utility of an Interstate Compact as a Vehicle for Oil Spill Prevention and Response," Bader, Harry, Principal Investigator, December, 1989 (Bader); and 3) "Draft Final Report of the States/BC Task Force on Oil Spills," July 2, 1990 (States/BC Task Force).

Although the States/BC Task Force did recommend the formation of an interstate compact, the Task Force did not submit specific recommendations to the Western Legislative Conference regarding the scope and purpose of the compact. To the extent possible, the proposed compact reflects generally the recommendations of the Task Force in its final draft report.

Please feel free to contact me with comments or if you have questions about the commentary or proposed language.

SECTION 1

Section 1 is the language used in Oregon to ratify the compact, which is set forth in full in Section 2. This language may vary somewhat from state to state, and should be adjusted to comply with the form and style requirements of the five states. The section sets forth when the compact becomes effective and what states are invited to participate in the compact.

1. This compact originally attempted to take advantage of the preapproval granted by Congress for states to participate in interstate compacts for ocean resources management purposes

Interstate Compact Commentary
January 28, 1991

under section 309 of the federal Coastal Zone Management Act (CZMA). Because the preauthorization language was not included in the 1990 reauthorization of the CZMA, the language of the compact making those portions of the compact falling within the purview of the CZMA preauthorization have been removed. Presumably, the party states could still designate the body created in this compact to fulfill those interstate management roles if the preauthorization is again passed by Congress.

2. With the change in the CZMA discussed above, Congressional approval is necessary for all parts of the compact.

3. The second tier of approval is that necessary if British Columbia elects to participate in the compact as a full member, rather than as only an associate party without voting privileges. This would elevate the compact to a status resembling a treaty and would require approval from the Canadian government as well as Congress.

SECTION 2

Section 2 of the Act sets forth the body of the proposed compact in full.

Article I

1. In order to create a valid interstate compact, it is necessary to demonstrate why a regional approach, as opposed to a state-by-state or national approach, is justified. (Bader, p. 15) This article sets forth the basis for a regional justification for a compact between the states of Alaska, California, Hawaii, Oregon and Washington regarding shipment of oil or hazardous substances and ocean resources management coordination. The reasons for seeking a regional approach include the interdependence of the marine resources of the region as well as the need for more uniformity in regulation of vessels moving along the west coast.

2. Paragraph (2) clarifies the intent not to include fisheries regulation within the scope of this compact. Participants in the discussions on this compact were well aware that numerous agreements and mechanisms already regulated fisheries resources among the five states and did not wish to add yet another regulatory body to this area. Thus, the language in paragraph (2) was added to exclude this from the scope of this compact.

Interstate Compact Commentary
January 28, 1991

3. The language in paragraphs A.(3) and B.(7) reflects the recommendations of the States/BC Task Force to address prevention measures in this interstate compact and this language is drawn from the findings of that Task Force. (States/BC Task Force, pp. 4, 10 and 49) The language in paragraph A.(8) was taken directly from the findings of the States/BC Task Force report.

4. Smaller vessels, such as lighter barges do not, in most instances, have the potential regional spill impact that larger, ocean-going vessels do, so this compact is primarily concerned with the larger, ocean-going vessels. After considerable discussion as to how to limit the application of the regulations adopted by the Compact body, it was decided to limit the applicability of the compact by using a definition of "vessel" that is a modification of the definition found in the Oil Pollution Act of 1990. See Article II *infra*. Responsibility for safety of the smaller, locally operated vessels would remain with the individual parties, unless a party specifically requested assistance from the Compact.

5. Part B of this Article sets forth the intended scope of the compact; i.e., how the Compact body will address the regional issues.

6. Issues of spill response planning, spill prevention and transportation as set forth in this Article are targeted by States/BC Task Force recommendations (States/BC Task Force, pp. 4, 10 and 49)

Article IX

1. Another element necessary for an interstate compact is clearly defined terms. (Bader, p. 15) This Article is intended to define the major terms used in the compact, and by definition, delineate the scope of the compact.

2. The definition of "oil" and "hazardous substance" is an amalgamation of the definitions found in the states' statutes.

3. As mentioned above, the definition of "vessel" is in part, taken from the definition of "vessel" found in the Oil Pollution Act of 1990.

Article III

Interstate Compact Commentary
January 28, 1991

1. This Article reiterates the effective dates as set forth in Section 1 of this Act. See the discussion under Section 1, SUPRA.

Article IV

1. The language establishing the Compact and relating to the appointment by the parties of representatives is adapted from the federal act creating the Pacific Northwest Electric Power and Conservation Planning Council. P.L. 96-501, Sec. 4(a)(2).
2. Three representatives from each party satisfies the equal representation requirement. (Bader, p. 14)
3. Each party appoints and removes its representatives to the compact in accordance with its own laws.
3. The compact body is directed to invite certain federal agencies to send designees to participate as nonvoting members of the compact. This allows input from potentially affected federal agencies. (Bader, p. 15)

Article V

1. Addresses in a very broad manner the recommendation of the States/BC Task Force as discussed above.
2. Gives Compact body broad standard setting, monitoring and enforcement powers as required for interstate compact. (Bader, p. 13)
3. One advantage of the interstate compact arrangement is increased regulatory responsiveness to local needs; by encouraging public participation in Compact activities, this advantage is even more evident. (See Bader, pp. 7-8)
4. Paragraph (2) (a) allows Compact to receive and dispose of funds, and to obtain financing beyond the parties' allocations. See Article XI. (Bader, p. 15)
5. Grants Compact body authority to establish the requirements of oil and hazardous substance spill contingency plans required for vessels operating in the compact zone. These contingency plans would replace separate requirements for contingency plans established by the states and by the

Interstate Compact Commentary
January 28, 1991

federal government pursuant to the Oil Pollution Act of 1990. This authority again addresses the regional justification for this compact because it would add to uniformity in regulatory requirements for vessels operating along the west coast. In developing the requirements for the contingency plans, the Compact body is directed to work closely with state officials to develop requirements for the Compact's contingency plans that are at least as comprehensive as various state requirements that may exist at the time the Compact adopts its requirements.

6. Two areas of authority should be pointed out. First, the Compact is given authority to establish sanctions and a schedule of civil penalties to be imposed for violations of the rules or regulations of the compact body. Second, the Compact is given authority to request the U. S. Coast Guard to enforce or assist in the enforcement of regulations adopted by the compact.

7. Under paragraph (2) of this Article, the compact body is granted the discretionary authority to allow variances from the requirements of the Compact, if the activity requested under the variance will have no regional impact and the variance is economically necessary. No variance granted may allow an activity that would otherwise be prohibited under other federal law.

8. All regulations and exercise of authority by the compact body must be in accordance with the provisions of the United States Code related to procedures of administrative agencies.

Article VI

1. This Article sets forth the mechanics of the compact body, including the hiring of staff, selection of chairperson and vice chairperson and the establishment of an office for the transaction of its business. The method for selecting a chairperson was adapted from the method used by the Pacific Fisheries Legislative Task Force.

Article VII

1. This Article establishes the quorum and voting requirements of the compact body. Note that while each party has three representatives, each party has only one vote. An action by the compact requires a simple majority. The method of determining how the party will vote is left to the

Interstate Compact Commentary
January 28, 1991

individual parties.

2. This voting mechanism avoids a requirement for unanimous consent by the Compact, which is not acceptable. (Bader, p. 14)

Article VIII

1. This Article allows the compact to either contract for staff support or request appropriate agencies of the parties to act as research agencies for the compact.

Article IX

1. Specifies that only state powers that are preempted or limited by the Compact are those that specifically set forth in Article V.

Article X

1. Specifies consequence of continued absence of representatives from any party.

Article XI

1. Compact must be able to receive financing beyond simple allocations by member parties. (Bader, p. 15)
2. See also Article VI (2) which allows the compact to accept grants and gifts.
3. Establishes a maximum and minimum contribution toward funding for the compact that may be required by any party.
4. Each party is responsible for expenses of its own representatives.

Article XII

1. Same as Pacific Marine Fisheries Compact.
2. Should we add a requirement that remaining parties must approve withdrawal? This would be consistent with the language of the 9th Circuit Court in Seattle Master Builders

Interstate Compact Commentary
January 28, 1991

v. Pacific Northwest Electric Power and Conservation Planning Council, 786 F.2d 1359, 1363 (9th Cir. 1986). Since this issue was never discussed, a requirement that remaining parties must approve withdrawal was not added to the proposed compact language.

SECTION 3

1. This section appropriates money to the compact for its initial expenses. This section represents the form and style used for appropriations in Oregon. Each state should substitute its own standard language, as well as its source for the funding.

ar:commenta
1/28/91

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 31, 1991

SUBJECT: Compensation of P.O.R.C. Representatives
(W.O. 7-LS0470\A)

TO: Senator Sam Cotten
Attn: Ginny Fay

FROM: David R. Dierdorff 
Revisor of Statutes

Compensation for the state's representatives to the Pacific Ocean Resources Compact, no matter the form, raises a few questions that should be considered. First, who will actually pay the people? I assume that they will be employees of Alaska, paid by the state for services on behalf of the state, with the state's financial contribution to P.O.R.C. going to cover staff and other expenses of the compact. Second, if a state official (e.g., a commissioner) is appointed as a representative, I assume that that person is entitled only to per diem and expenses.

If my assumptions are correct, a provision for compensation might take the following form:

AS 46.47.040. COMPENSATION OF REPRESENTATIVE. A representative of the state to the Pacific Ocean Resources Compact, other than a representative who is otherwise employed by the state, receives \$___ compensation for each day spent on official business of the compact and may be reimbursed for actual and necessary expenses at the same rate paid to members of state boards under AS 39.20.180. A representative who is an officer or employee of the state may receive per diem and expenses under AS 39.20.180.

Under current law, similar compensation ranges from a low of \$50 per day to a high of \$400 (for members of the railroad's board of directors).

DRD:pl
91-054.plm

Comparison of Oil Spill Legislation in Alaska, Oregon and Washington

DRAFT

Category	Alaska	Oregon	Washington
Proof of Financial Responsibility - Type of Proof Accepted	Insurance, self-insurance, guarantee, surety, letter of credit, or other approved proof.	Insurance, surety bonds, self-insurance, or other evidence approved by the commission.	Insurance, surety bonds, self-insurance, or other evidence of financial responsibility. Documents to be kept on vessel.
- Amount	Amount per incident: Crude Oil terminal \$50 million; noncrude terminal \$25 per barrel; tank vessel with crude oil, \$300 per barrel (\$100,000,000 maximum); non-crude tank vessel, \$100 per barrel (\$35 million maximum).	Vessels over 300 gross tons, \$150/ton or \$1 million, whichever is greater.	Vessels over 300 gross tons, \$150/ton or \$1 million, whichever is greater.
Prevention Requirements - Oil Tankers			Must not exceed speed of escorting tugs. Must have Washington state licensed pilots in Puget Sound. Certain vessels need to be accompanied. Vessels larger than 125,000 deadweight tons may not enter certain areas unless they have double bottoms, two radars, and other safety equipment.
Contingency Planning - Facility and vessel plans	Terminals, pipelines, tank vessels & oil barges must have contingency plans renewed every 3 years. The state may approve, modify or disapprove plans within 65 days of submittal. State may establish regional plans.		Each facility or vessel must have a contingency plan outlining: method of response, removal of oil, early detection procedures, training & drills, equipment available, & disposal of recovered oil. Department shall review plans under specific criteria and conduct drills. Plans are legally binding.
- Statewide Plan	State master plan to be revised annually. Plan shall identify actions to reduce oil spills, depot locations, and provide for unannounced drills.	State to develop an integrated interagency response plan for oil or hazardous material spills. Plan to include an inventory of private contractors, agency personnel, volunteers, wildlife rehabilitation centers & equipment. Plan also to contain a spill response strategy.	State to update master plan annually after consultation with an advisory committee. Plan to include a map of sensitive areas. Department to develop policies for use of chemical agents and means to dispose of oil.
Equipment Requirements	The Division of Emergency Services to maintain equipment depots.		Department shall publish an annual index of contingency plans and equipment available.
Liability of Spiller or Owner	Owner and operators strictly liable, jointly & severally, for public and private damages. Vessel may be detained and sold to recover costs. Spiller liable for loss of persons, income and property. Responsible party liable for cleanup costs and restoration of environment.	Owner or person having control over oil is strictly liable without regard to fault for damages. Liable for reasonable costs. If there is not a good faith effort to clean up oil, state may recover three times the amount of its costs.	Oil discharger liable for state's cleanup expenses. Owner or controller of oil is strictly liable, without regard to fault, for damages. Other persons directly liable to the state for the state's cleanup expenses.
Limits on Liability	Contractors liable for negligence. State and response corps workers not liable.	Volunteers not liable unless grossly negligent or if there was reckless, wanton or intentional misconduct. Contractors liable.	Contractors and volunteers not liable.

Penalties			
- Spill penalties	Criminal penalties: criminal negligence - class A misdemeanor or class C felony depending on amount spilled. Civil penalties assessed with consideration of toxicity of oil: \$1 - \$10 per gallon (penalty 5 times higher if there is gross negligence. If the spill is over 18,000 gallons, additional penalties of \$8 - \$12 per gallon (\$500 million maximum). Other penalties may be assessed. Reckless operation of a tank vessel is a class C felony.	Persons willfully or negligently discharging oil shall incur a civil penalty equal to the amount of damage incurred. Intentional or negligent discharge of oil results in a penalty of up to \$20 thousand per day.	Civil penalty for violating chapter: up to \$100 thousand (RCW 88.44.190). Negligent discharge: up to \$20 thousand per day. Penalty for reckless discharge: \$100 thousand. Criminal penalty: \$10 per day. Civil penalty: up to \$10 thousand per day.
- Operating without a contingency plan			First conviction: gross misdemeanor, second conviction: class C felony. Business license may be revoked and a fine of up to \$100 thousand.
- Operating without required financial responsibility.			Privilege of operating vessel may be suspended. Penalty not to exceed \$10 thousand.
Response Procedures	Spiller must immediately notify state of spill. Spiller must clean up oil immediately.	Owner or controller of oil must immediately collect & remove oil or at least contain it. Anyone with knowledge of spill must report it.	Spiller must notify coast guard and the state Division of Emergency Management.
Cleanup Standards			Department to establish standards for cleanup contractors.
Response Funds	Oil & Hazardous Substance Release Mitigation Account in General Fund for money recovered. Oil & Hazardous Release Response Fund for actual cleanup expenses; funded by penalties, state, federal & private sources. Fund used for cleanup, monitoring, Oil & Hazardous Substances Response Corps, equipment depots, & environmental restoration.	Oil Spillage Control Fund within the General Fund to be used for cleanup and environmental restoration. Fund may be invested. Oil & Hazardous Material Emergency Response & Remedial Action Fund is separate from General Fund & used for cleanup.	Per transit assessments collected and placed in a fund. Tankers with an agreement with a clean-up cooperative or contractor exempt from fee. Fee not collected when fund reaches \$1.5 million. Commission may issue bonds or obtain loans.
Commissions & Councils	Citizen's Oversight Council on Oil & Hazardous Substances, in the Legislative Branch, assists in developing compacts, recommends policies, & determines if state agencies are carrying out their duties. The Hazardous Substance Spill Technology Review Council recommends research topics and maintain information on spill technology.	Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan. Commission establishes policies for operation of the Department of Environmental Quality.	Washington State Maritime Commission created to establish procedures for spill prevention and response. The commission must: assess a per transit fee, establish an emergency response communication system, contract with cleanup contractors, recover response costs, conduct drills, develop an oil spill contingency plan, and cooperate with other government jurisdictions.
Response	State employees or response corps may enter private property.	Director has right to enter private property to control oil spill.	State may enter private property to respond to a spill.
Wildlife Rescue Provisions			Wildlife rescue coalition established to coordinate rescue and rehabilitation.

Source: State Statutes From Alaska, Washington and California

Prepared by Legislative Research Agency, March 1991 (91.201)

DRAFT

**PACIFIC OCEAN RESOURCES COMPACT
SUMMARY OF PROPOSED AMENDMENTS
MARCH 20, 1991**

ARTICLES	SB 500	SB 500 AMENDMENTS
ARTICLE I: Findings & Purpose	Outlines areas of spill response improvement, and common interests of Compact parties.	Adds language consistent with changes in Compact Authority.
ARTICLE II: Definitions		Unchanged; although under amended Compact definitions will not supersede definitions in federal Oil Pollution Act.
ARTICLE III: Operative Dates	Compact effective when ratified by at least two Compact states and granted approval by Congress.	Unchanged
Article IV: Pacific Ocean Resources Compact	Creation of Pacific Ocean Resources Compact	Unchanged

ARTICLES	SB 500	SB 500 AMENDMENTS
ARTICLE VI: Pacific Ocean Resources Compact Organization		Unchanged
Article VII: Voting and Quorum	Each party has one vote. A quorum must be present for any Compact business to proceed.	Unchanged
Article VIII: Support Agencies		Unchanged
Article IX: Parties' Powers Under Compact		Unchanged

Prepared by M. Brown
for Sen. Bill Bradbury

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

PACIFIC OCEAN RESOURCES COMPACT
SUMMARY OF PROPOSED AMENDMENTS
MARCH 20, 1991

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Article IV: Pacific Ocean Resources Compact	Creation of Pacific Ocean Resources Compact	Unchanged

ARTICLES	SB 500	SB 500 AMENDMENTS
Article V: Pacific Ocean Resources Compact Authority	Supersedes Federal Law with respect to establishing uniform safety standards for routes, crews and equipment for vessels transporting oil and other hazardous substances in compact zone. One contingency plan per vessel submitted to compact. Compact has authority to request that the US Coast Guard enforce or assist in the enforcement of regulations adopted by the Compact relating to the prevention of oil and hazardous substance spills in compact zone. Compact may issue subpoenas.	Amended to be consistent with Federal Law. Submission of one contingency plan clarified; compact supersedes all other contingency plans; one plan per vessel. Adds sec.1(a) (A) and (B) to Article V: Gives Compact elevated standing with respect to Coast Guard rule-making regarding routes, crews and equipment. Compact has ability to (A) request initiation of rule-making and (B) respond to Coast Guard Rule Making. Adds Sec. 1 (a) (C): Gives Compact authority to make recommendations to state, federal and other appropriate authorities. Sec. 1 (L) added: Compact has authority to assess fees. Sec. 2: Compact "may" do the following: (e) and (f) added: 2.(e) Compact may establish cost recovery plan. 2.(f) Compact may establish uniform level of proof of financial responsibility. Compact may not issue subpoenas.

ARTICLES	SB 500	SB 500 AMENDMENTS
ARTICLE VI: Pacific Ocean Resources Compact Organization		Unchanged
Article VII: Voting and Quorum	Each party has one vote. A quorum must be present for any Compact business to proceed.	Unchanged
Article VIII: Support Agencies		Unchanged
Article IX: Parties' Powers Under Compact		Unchanged

Prepared by M. Brown
for Sen. Bill Bradbury

and British Columbia can represent their interests in the compact zone, and also provide a means for citizens to address their concerns over interests within the compact zone. More specifically, this includes the establishment of uniform safety standards for routes, crews and equipment for vessels transporting oil and other hazardous substances within the compact zone. The compact also stipulates the provisions for the implementation of these standards and regulations by federal agencies, states or provinces and private industries. Other goals of the Ocean Compact are to maintain and protect common ocean resources through the coordination of the parties' ocean resources management plans.

The implementation of the Ocean Compact would be carried out in part by the delegates from each state who would be appointed as representatives of the parties to undertake the duties and responsibilities of the compact. The Secretary of Transportation, the Administrator of the Environmental Protection Agency (EPA) and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) or their delegates may also serve as non-voting members of the compact.

COMPACT AUTHORITY

The authority of the Ocean Compact centers on its provision to prevent oil or other hazardous substance spills. In addition to establishing uniform vessel safety standards, the compact will have the authority to coordinate the oil and hazardous substance spill response plans and programs of the states, federal agencies and private organizations. The compact also establishes the requirements for the submission and approval of a contingency plan by any vessel transporting oil or hazardous substances in the compact zone. Such requirements are to be at least as stringent as those required under the Federal Oil Spill Pollution Act of 1990. The vessel contingency plan itself must comply with the Oil Pollution Act.

The Compact also calls for coordination of the parties' individual or regional oil or hazardous material spill response systems, by maintaining a directory of personnel, equipment, technical expertise, organizations and other resources available in the event a spill response within the compact zone is needed. In addition to the spill response coordination, the compact calls for interstate cooperation regarding studies or data which relates to ocean resources and needs to be compiled and shared among the parties.

The Compact will eventually designate state or provincial agency officials to serve as liaisons with federal agencies, so that the Compact may advise those agencies with regards to ocean management issues and necessary regulation.

There is a provision in the Compact which allows for a variance from the provisions of the compact. This applies only when the activity allowed under the variance does not have any regional impact and that the variance is economically necessary. However, the Compact stipulates that under no circumstances will the activity allowed by the variance result in the regulation or transportation of oil or other hazardous substances to standards less stringent than standards imposed under federal law.

At this time the legislation is written to appropriate an unspecified amount of general fund revenues to carry out the provisions of the compact.

Historically, compacts were used to settle interstate boundary disputes. However, reflecting the increasing complexity of modern problems, half of the approximately 200 compacts formed since the Delaware River Compact of 1783, have been established after WWII.

Examples of compacts are found in all areas of state concern, including health, education, transportation, and natural resources. Issues under these categories often have such public good characteristics as non-excludability. Specific examples of compacts in the Natural Resources include The Colorado River Compact, the Pacific and Gulf States Marine Fisheries Compacts, and the Columbia River Basin Fish and Wildlife Program. Another important compact which provided some guidance in the language of the Ocean Compact, is the Northwest Power Planning Council.

The following points were extrapolated from a publication of the Legislative Service Bureau of Michigan, and address the common arguments in favor of and in opposition to the formation of interstate compacts.

Arguments that have been made in favor of interstate compacts include the following: The interstate compact is a means for the states to preserve their position in the federal system and to reduce the burden on the federal government. The interstate compact can be effective in the establishment of joint agencies with two or more states. Furthermore, while compacts may appear to diminish state autonomy in specific areas, they also pave the way for greater state achievements and interstate problem solving. Compacts take precedence over ordinary state statutes and they represent one of the most powerful ways of achieving intergovernmental action.

Arguments that can be made against the formation of interstate compacts include the following: A considerable amount of time is needed to initiate, negotiate and ratify a compact. Because compacts are increasingly controlled by the specialists who are responsible for their implementation, the public may feel separated from the process of negotiating and forming compact issues. Compacts may become overly interest group oriented as opposed to meeting the needs of the general public or addressing the actual issues at hand.

Legislators introducing the Bill in the five participating states are Senator Sam Cotten of Alaska; Assemblyman Dan Hauser of California; Senator Jack Metcalf of Washington who is the Chair of Senate Committee on Agriculture and Natural Resources, in WA; and in Hawaii, Representative Peter Apo. The British Columbia contact person is Richard Dallan, Office of Deputy Minister, Ministry of Environment.



News Release

Bill Bradbury

Oregon Senate Majority Leader

5223 State Capitol, Salem, Oregon 97310-1347

Phone: 581-8700

For immediate release: Jan. 31, 1991

**For further information contact:
Mara Brown, 378-8700**

Sen. Bill Bradbury said legislation introduced today in Oregon and four other Pacific states will significantly strengthen the states' hand in preventing spills of oil and other hazardous substances from their shores to a point 200 miles out.

"The Pacific Ocean Resources Compact will enable us to set standards for ships and routes, establish regulations, and speak with a united voice on things that are happening to our joint resource -- the Pacific Ocean," Sen. Bradbury said.

Sen. Bradbury, Senate Majority Leader, is chief sponsor of Oregon's Ocean Compact bill, SB 500. He announced its introduction Thursday in a press conference with Sen. John Brenneman, Senate Republican Leader, who also supports the bill.

The Compact, which includes Oregon, Washington, California, Alaska, and Hawaii, is a united effort to prevent spills of substances dangerous to the environment and fisheries of the Pacific Ocean. It will set standards for crews, equipment, and routes used for the trans-shipment of oil and other hazardous materials within the Compact Zone.

The Canadian province of British Columbia will also be invited to join the Compact which will be able to propose and, with Congressional approval, implement regulations affecting federal agencies, states, and private industries operating in the Compact Zone.

The Compact will have the authority to coordinate spill response plans and will maintain a directory of personnel, equipment, technical expertise, organizations, and other resources available to assist in the event of a hazardous substance spill.

* * *



News Release

Bill Bradbury

Oregon Senate Majority Leader

State Capitol, Salem, Oregon 97310-1447

Phone: 378-8700

Jan. 28, 1991

For further information contact:
Mara Brown, 378-8700

Sen. Bill Bradbury and Sen. John Brenneman will hold a joint press conference at 10:15 a.m. Thursday, Jan. 31, in the Capitol Press Room to announce introduction of a bill to create the Pacific Ocean Resources Compact.

The legislation, SB 500, backed by the leaders of the Democratic and Republican Senate Caucuses, will make Oregon a member of the Compact, a new five-state agreement for preventing oil spills primarily through setting standards for trans-shipment of oil and other hazardous materials. The Compact will also serve as a forum for discussion of regional ocean issues.

Similar legislation is expected to be introduced the same day in the other compact states -- Alaska, California, Washington and Hawaii. British Columbia will also be invited to join the Compact.

* * *

Unofficial Summary of SB 500
Prepared by Mara Brown
31 January 1991

On Thursday, January 31, 1991, legislation pertaining to the Pacific Ocean Resources Compact was introduced concurrently in the five states participating in the compact. The Compact involves the states of Oregon, Washington, Alaska, California and Hawaii, and eventually could include British Columbia. In Oregon, Senate Bill 500 is being sponsored by Senator Bill Bradbury, the Senate Majority Leader, and also has the support of Senate Republican Leader John Brennenman, and Representative Walt Schroeder, who have signed on to the Bill. The three Legislators were present at a press conference Thursday in the Capitol Press Room.

The Ocean Compact as an interstate compact, shares the characteristics of interstate compacts generally as the most binding legal means of establishing cooperation between states. The US Constitution provides for interstate compacts in Article I, Section 10 such that "No state shall, without the consent of Congress ... enter into any agreement or compact with another State, or with a foreign power." Each state in a compact agreement is bound by its own state statute and also subject to Constitutional endorsement of contracts. A state in the compact can not jeopardize the terms of the compact or unilaterally withdraw from the compact except as outlined in the compact. As contracts, interstate compacts take precedence over other state laws that conflict with the provision of the compact.

The Pacific Ocean Resources Compact grew in part out of the combined efforts of the Ocean Resources Committee of the Western Legislative Council and the recommendation for the establishment of an interstate compact made by the States/BC Task Force on Oil Spills. The States/ BC Task Force recommendation was an element of the final report presented to the Western Legislative Conference on July 2, 1990. Senate Bill 500 thus reflects the intent of both of these working groups as much as possible.

Originally, it was thought that the formation of the compact would have come under section 309 of the federal Coastal Zone Management Act (CZMA) which granted congressional preapproval for interstate compacts concerned with ocean resources management issues. However, the 1990 Reauthorization of the CZMA did not include the preauthorization language. Upon ratification by one or more states, the compact would require Congressional approval. If British Columbia were to become a full voting member of the compact the compact would take on the status of an international treaty and require the approval of the Canadian Government as well as the Congress. Because of differences in the legislative process, BC will probably hold non-voting status with respect to the Ocean Compact.

The Ocean Compact addresses what is considered the "Compact Zone:" the area within the states' Territorial Seas extended to include the area within the US Exclusive Economic Zone -- out to 200 miles from the mean high water mark.

the Ocean Compact.

The Ocean Compact addresses what is considered the "Compact Zone:" the area within the states' Territorial Seas extended to include the area within the US Exclusive Economic Zone -- out to 200 miles from the mean high water mark.

IMPLEMENTATION

The compact establishes a framework through which the states

** TOTAL PAGE.006 **



THE COUNCIL OF STATE GOVERNMENTS WESTERN OFFICE

121 SECOND STREET 4TH FLOOR SAN FRANCISCO, CA 94105 TELEPHONE (415) 974-6422

Site goes up state territorial sea jurisdiction

TELECOPIER COVER SHEET

Compact zone is from shore to 200 miles

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CALIFORNIA

COLORADO

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IDAHO

MONTANA

NEVADA

NEW MEXICO

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UTAH

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WLC COMMITTEE WORK**EDIT** continued...

1. The following year, 1992, could be devoted to domestic approval procedures with a goal of January 1, 1993 for implementation.

Deputy Assistant Secretary Hughes concluded with a description of President Bush's "Enterprise for America's" proposal, a major new hemispheric initiative with Latin America with three main components:

- trade
- investment
- debt

The trade initiative aims to move the hemisphere towards free and fair trade. The investment initiative is designed to increase the potential for domestic and foreign investment in Latin America, to encourage capital flows and to improve the environment. The debt initiative provides support for debt and debt service reduction.

For copies of Deputy Assistant Secretary Hughes' speech, please contact Kate Albert in the CSG Western Office.

Committee work session highlights include the establishment of a Subcommittee on International Trade and Regional Cooperation to pursue the EDIT Committee's momentum of progress on trade issues. The Subcommittee will most likely continue studying the issues of regional cooperation to promote trade and investment, the U.S.-Canada Free Trade Agreement and foreign investment. The full committee will begin the next biennium with a focus on al development.

Ocean Resources Committee Proposes Compact to Combat Oil Spills, Adopt Uniform Standards

Meeting in conjunction with the WLC 1990 Annual Meeting in Anchorage, Alaska, the WLC Ocean Resources Committee urged the Pacific states and the U.S. Congress to approve a Pacific Ocean Resources Compact designed to prevent oil spills, and to deal with those that occur. The proposed Pacific Ocean Resources Compact is an interstate agreement between Alaska, Washington, Oregon, California and Hawaii. In addition, the Province of British Columbia may participate as a nonvoting member. Upon approval of the U.S. Congress and appropriate Canadian approval, British Columbia would be able to participate as a full party.

The compact recognizes the social, economic, geographic, and environmental similarities that bind the region together insofar as potential impacts of an oil spill or discharge of other hazardous substances. In addition, the compact recognizes regional prevention and response needs as identified by the Pacific States/British Columbia Oil Spill Task Force, a group of executive branch officials organized by the governors of Alaska, California, Oregon and Washington, along with the Premier of British Columbia.

The primary purpose of the compact is the prevention of spills through the adoption and enforcement of uniform standards and rules relating to transshipment of oil and other hazardous substances. In addition, the entity is charged with establishing a network to facilitate a regional response to a spill. Other duties include

serving as a forum for discussion and resolution of conflicts among the states relating to ocean resources, excluding fisheries, and identifying the regional data needs related to transshipment of oil and ocean resources.

Those portions of the compact relating to ocean resource management would become effective upon adoption of the compact; those portions relating to shipments of oil and hazardous substances would become effective upon adoption by at least two states and approval of Congress. Each state participating in the compact will appoint three persons, each serving a four-year term, to undertake the functions and duties of members of the compact.

Based upon the discussions in Anchorage, final language for the interstate compact will be developed prior to the 1991 legislative sessions in each of the Pacific States. The compact will be introduced in each of the states during the session and following approval by the member states, the compact will be submitted to Congress for approval. While details of funding for the new compact organization remain to be resolved, each member state will contribute financially to the new organization created by the compact. In addition, the WLC Ocean Resources Committee has applied to the National Coastal Resources Institute for a planning grant which will allow the states to work cooperatively to define a workplan for the compact, ensuring immediate implementation of the compact upon approval by Congress.

Final Report of the States/British Columbia Oil Spill Task Force

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STATE OF
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

Province of British Columbia

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STATES/BRITISH COLUMBIA OIL SPILL TASK FORCE

October 16, 1990

Premier Vander Zalm of British Columbia
Governor Gardner of Washington
Governor Goldschmidt of Oregon
Governor Deukmejian of California
Governor Cowper of Alaska

We are proud to announce the completion of the Final Report of the States/British Columbia Oil Spill Task Force. This report represents the success shared by Alaska, Washington, Oregon, California, and British Columbia in jointly studying, sharing information, and developing recommendations on reducing the threat of oil spills on the West Coast. The States/British Columbia Oil Spill Task Force, formed in 1989 in response to the Nestucca and Exxon Valdez spills, has achieved consensus of 5 distinct jurisdictions sharing similar oil spill issues. Many Task Force Recommendations are already in place such as conducting joint drills, sharing information among states, coordination of response efforts, and preparing oil spill prevention legislation.

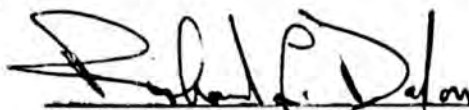
The recommendations included in the report are aimed primarily at state and federal agencies and the oil transportation industry. While enveloping a large scope of oil transportation, safety, and cleanup issues, the recommendations have been distilled into an integrated list of measures which, when implemented, will greatly reduce the chances of large oil spills and vastly improve our ability to respond to spills which do occur. The recommendations build upon the major finding of the Task Force: that while spill response is a necessary defense, spill prevention is the key.

Joint recommendations have been generalized to accommodate differences among the states and province. Each Task Force Member has offered recommendations specific to the state or province. To ensure that this report is maintained as a living document, the Task Force Members have committed to implementation of all Task Force Recommendations within their specific jurisdiction.

We thank you again for your foresight and leadership in creating the Task Force. Our efforts will serve as a model for other states and can help ensure our citizens that the Task Force has also pledged to continue their mission of coordination and review of oil spill prevention and response efforts. We will join forces to assist each other during a major spill and plan to meet annually to share information and conduct joint drills.



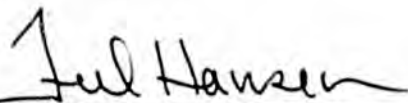
Christine Gregoire, Director
Washington Department of Ecology



Richard Dalon, Deputy Minister
British Columbia Ministry of Environment



Dennis Kelso, Commissioner
Alaska Department of Environmental Conservation



Fred Hansen, Director
Oregon Department of Environmental Quality



Michael Kahoe, Assistant Secretary
California Environmental Affairs Agency

STATES/BC TASK FORCE ON OIL SPILLS

Final Report

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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

STATES/BC TASK FORCE ON OIL SPILLS

Final Report

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I. Executive Summary

A. OVERVIEW

Following the 231,000 gallon (873 m³) Nestucca oil spill off the coast of Washington in December, 1988, British Columbia Premier William Vander Zalm and Governor Booth Gardner of Washington established the British Columbia/Washington Task Force on Oil Spills. The day after the first Task Force meeting, the Exxon Valdez struck Bligh Reef in Prince William Sound, and the Task Force membership soon expanded to include Alaska, Oregon, and California. (Maps 1-6 illustrate petroleum transportation flows and facilities on the West Coast and in each individual jurisdiction).

The mandate of the Task Force was to a) investigate ways and means of preventing oil spills; b) to review oil spill response procedures; c) document and assess the mechanisms for handling compensation claims; and d) to develop a coordinated contingency plan for preventing and responding to oil spills in the future. This goal was to culminate in the adoption of a comprehensive set of recommendations which, if implemented, would minimize (to the extent practicable) the probability of major and catastrophic spills and help assure an effective response to such incidents. The Task Force used periodic meetings, subcommittee investigations, training forums, and other tools to accomplish this mandate.

B. MAJOR FINDINGS

Four Task Force subcommittees produced a detailed set of findings, many of which underlie joint and individual recommendations. These findings can be summarized by the following points:

1. Recent spills from the Nestucca, Arco Anchorage, Exxon Valdez, and American Trader have revealed significant problems in oil transportation management, including:
 - a. Inadequate personnel training and qualifications
 - b. Shortcomings in vessel design and integrity
 - c. Insufficient traffic management
 - d. Gaps in regulatory oversight
 - e. Incomplete cost recovery by states/provinces
2. Despite research in spill cleanup technology, it is unlikely that a large fraction of oil can be recovered from a catastrophic spill.
3. Since response efforts can not effectively reduce the impact of large oil spills, prevention of spills must be the prime strategy in developing solutions to this issue.
4. Readiness and response to smaller size spills of oil or refined petroleum products must still be emphasized, since much of the West Coast traffic is by barge and freighters carrying fuel.
5. Comprehensive oil spill prevention demands participation by industry, citizens, environmental organizations, and all governmental jurisdictions.
6. The States/B.C. Task Force on Oil Spills should continue to promote coordination of West Coast oil spill prevention and response efforts.

C. JOINT RECOMMENDATIONS

The following recommendations have the full support of all Task Force members. Individual recommendations by each Task Force member are presented in the body of the report, beginning on page 51. Recommendations have been subdivided by the technical nature of the issue to assist the reviewer in analyzing recommendations with similar characteristics.

The recommendations are not in priority order; priorities are detailed in section IV. The recommendations vary as to the governmental body that has authority to make the suggested changes, and will be forwarded to the appropriate "authorizing agent" through mechanisms identified in an implementation strategy (page 92).

The main objective of this Task Force, as reflected in the following recommendations, is to continue to work towards coordinated prevention and response to oil spills for the Pacific coast. Two aspects of this effort are particularly important: mutual assistance among the members for catastrophic spills, and interjurisdictional protocols for transboundary spills. To achieve these objectives, the Task Force will continue to work together to implement similar response procedures to ensure consistency among the separate jurisdictions. To minimize the need for any response, recommendations to prevent spills occurring along the coast have been developed and given high priority.

Vessel Traffic Reduction

RECOMMENDATION 1: Petroleum Conservation

Implement programs designed to reduce petroleum consumption, such as conservation measures (including appliance and automobile efficiency standards, recycling, and effective mass transit), alternative energy source research, and economic incentives.

RECOMMENDATION 2: Alternative Oil Transportation

Review proposals for alternative transportation modes which would reduce petroleum transportation by tanker in high risk and environmentally sensitive areas. In reviewing any proposals, Task Force members are committed to insuring compliance with all applicable state/provincial/federal laws, including their processes to involve the public.

Vessel Traffic Management

RECOMMENDATION 3: Tug Escorts - Single Propulsion

Require tug escorts for all single boiler or single engine, and single screw tank vessels carrying oil or other petroleum products in waterways designated as high risk by an individual state or province.

RECOMMENDATION 4: Tug Escorts - Tonnage Requirements

Review and, if appropriate, reduce dead weight tonnage specifications for tug escort requirements.

RECOMMENDATION 5: Vessel Traffic Service Systems

Upgrade vessel traffic service systems by replacing outdated equipment, eliminating gaps in coverage, increasing operator training and assignment length, and establishing mandatory participation in vessel traffic service systems in high-risk or congested areas.

RECOMMENDATION 6: Near Miss Reporting System

Establish, on a trial basis with a subsequent assessment of usefulness, a near miss reporting system which links directly with vessel inspection information, vessel traffic, and vessel casualty database systems.

RECOMMENDATION 7: Tow Cables

Develop and implement a mandatory set of guidelines for tugs on tow cable size and material specifications, cable maintenance practices, cable handling equipment design, and barge recovery plan preparation.

RECOMMENDATION 8: Vessel Safety Measures

Establish regional safety measures, including speed limits, based on escort vehicle or other limitations, for all laden tank vessels in inland waters and their critical approaches.

RECOMMENDATION 9: Tow Systems

Require towing systems and plans on all tankers carrying oil and other petroleum products.

Vessel Design

RECOMMENDATION 10: Double Hulls

Require double hulls for all new tank vessels designed to carry oil or other petroleum products as cargo.

RECOMMENDATION 11: Onboard Navigation Improvements

Require all tankers carrying oil or other petroleum products in coastal and inland waterways to possess and operate an onboard navigation system, such as an Electronic Chart Display Information System (ECDIS).

Personnel

RECOMMENDATION 12: Petroleum Facility Worker Training

Require state/province certification of training programs for managers, workers, and safety officers at terminals which handle oil or other petroleum products. Program certification requirements should include spill prevention and response training.

RECOMMENDATION 13: Mariner Qualifications

Require more stringent mariner qualifications, including spill prevention and response training, simulator training, vessel class and size restrictions on deck officer certification, and alcohol and drug testing.

RECOMMENDATION 14: Tug Crew Training

Mandate oil spill response training for all tug crews involved in tank vessel operations.

RECOMMENDATION 15: Crew Requirements

Require two licensed officers (including pilot where appropriate) to be present on the bridge of all tankers carrying oil or other petroleum products while in inland waterways. Require adequate crew levels, sufficient to meet normal and emergency operation needs, for tank vessels carrying oil or other petroleum products.

RECOMMENDATION 16: Dedicated Tug Crews

Assign dedicated tug crews to specific classes of tugs and tank barges carrying oil or other petroleum products to assure familiarity with tug and tank barge operating characteristics.

Enforcement, Penalties, and Liability

RECOMMENDATION 17: Strong Sanctions

Legislate strong levels of civil and criminal sanctions for noncompliance with oil spill regulations.

RECOMMENDATION 18: Proof of Financial Responsibility

Raise state/Canadian federal proof of financial responsibility requirements to ensure spillers can finance oil spill related cleanup and damage costs.

RECOMMENDATION 19: Natural Resource Valuation

Develop and require use of methods of natural resource valuation which fully incorporate non-market and market values in assessment of damages resulting from spills.

RECOMMENDATION 20: Cost Recovery

Develop responsible party contracts to aid in the recovery of all natural resource damage and cleanup costs.

RECOMMENDATION 21: Liability Limits

Remove any ambiguity in federal law and guarantee a state's right to fully exercise its own liability standard. Increase the maximum limit of liability for oil pollution damage under Canadian law.

RECOMMENDATION 22: Coast Guard Enforcement

Increase the Coast Guard's ability to conduct routine on-water surveillance patrols by increasing funding to U. S. Marine Safety Offices and Canadian Coast Guard Regional Offices.

RECOMMENDATION 23: Enforcement Staff

Establish adequate environmental resource agency staffing level devoted to enforce compliance with spill planning requirements, and aggressively pursue legal action against violators.

Regulatory Oversight

RECOMMENDATION 24: Prevention Plans

Require all facilities (and tank vessels larger than 10,000 dwt) which handle oil or other petroleum products to develop and implement spill prevention plans, which would at a minimum include risk-reducing transfer methods and personnel training specifications.

RECOMMENDATION 25: Response Plans

Require all facilities (and tank vessels larger than 10,000 dwt) which handle oil or other petroleum products to develop and implement spill response plans, which would at a minimum include response time, equipment, and staff support specifications.

RECOMMENDATION 26: Local Participation

Each state/province shall recognize and utilize local citizen expertise and knowledge in spill prevention and response efforts. This may include a volunteer training and coordination plan to enhance preparedness.

RECOMMENDATION 27: Clean Up Requirements

Ensure that all state, provincial, and federal agencies act in full cooperation to require the spiller or other responsible party to meet all applicable state, provincial, and federal performance requirements.

RECOMMENDATION 28: Vessel Inspections

Require periodic (but not less than every two years) structural and mechanical integrity inspections of vessel equipment and hull structures on all tank vessels carrying oil or other petroleum products. Develop a priority inspection system for more frequent inspections of particular tanker features essential to safety, and for certain tankers, equipment, and companies with a history of stress fracture incidents and other safety problems.

Education

RECOMMENDATION 29: Prevention Education

Develop a joint spill prevention education strategy for industry and the public, including a program aimed at preventing small chronic oil spills by operators of fishing vessels, ferries, ports, cruise ships and marinas.

Transfer Operations

RECOMMENDATION 30: Transfer Operations Review

Review the adequacy of and make appropriate improvements in equipment, operating procedures, and the appropriateness of existing West Coast locations used for transfer of oil and other petroleum products (with particular emphasis on non-dockside locations).

Spill Response Enhancement

RECOMMENDATION 31: Response Training

Develop, in cooperation with the Coast Guards, industry, and local communities, local programs to provide spill response training to fishing boat operators, ports and harbor districts, marinas, and local communities.

RECOMMENDATION 32: Wildlife Rescue Training and Equipment

Develop and oversee joint programs which provide wildlife rescue volunteer training. Work with industry and others to acquire wildlife rescue equipment, including mobile equipment.

RECOMMENDATION 33: Onboard Response Equipment

Require all tank vessels carrying oil or petroleum products to have onboard response equipment for commencement of spill response efforts as soon as practicable, in amounts and types appropriate to the vessel's class and size.

RECOMMENDATION 34: Response Drills

Conduct a major spill response drill in each of the Western coastal states/provinces at least annually, with joint Coast Guard cooperation when the drill area crosses international boundaries. The drills should emphasize interjurisdictional simulations and all Task Force members should be invited to participate in the other member's drills.

RECOMMENDATION 35: Transfer Containment

Require placement of booms and other appropriate equipment, such as in-water oil sensors, around tank vessels during transfers of oil or other petroleum products in areas designated by individual states/province.

RECOMMENDATION 36: Contingency Plans

Revise state/provincial contingency plans to include the Emergency Response Subcommittee's Mutual Aid Plan, including continual updates of the "call down" lists.

RECOMMENDATION 37: Public Involvement

Ensure that all appropriate governmental agencies, industry, and interested citizens have the opportunity to become involved in development of major spill response policies and plans.

RECOMMENDATION 38: Mutual Aid

In the event of a major spill affecting the waters and coastline of a Task Force member, other Task Force members will cooperate to the fullest extent possible to provide back-up equipment and personnel to respond to the emergency.

RECOMMENDATION 39: Incident Command System (ICS)

The Task Force members should adopt a form of an Incident Command System (ICS) to enhance their ability to manage responses to major spills of oil and other petroleum products.

Research

RECOMMENDATION 40: Research Coordination

Encourage, fund where feasible, and coordinate oil spill research, with emphasis on west coast issues, through university systems and other means, and develop a framework for information sharing and combined funding projects.

Structure and Process of the Task Force

RECOMMENDATION 41: Annual Meeting

Meet annually, with responsibility for the meeting location rotated uniformly among the Task Force members; meetings will include reports by each member on progress in implementing recommendations. Each Task Force member will independently ensure the involvement of interested parties and the public in their respective jurisdiction. Task Force members will review and where appropriate, modify recommendations during annual meetings.

Multi-state/province compact

RECOMMENDATION 42: Interstate Compact

Work cooperatively with the Western Legislative Conference in their evaluation of the advantages and disadvantages of developing an interstate compact to make binding agreements concerning spill prevention and cleanup measures on the West Coast.

Studies and Other Recommendations

RECOMMENDATION 43: Petroleum Industry Response Cooperatives

Conduct a review of Marine Spill Response Corp's (MSRC), Burrard Clean's, and other spill clean-up cooperatives' proposals and schedules for west coast spill response centers.

RECOMMENDATION 44: Information Sharing

Share reports and other information regarding oil spill prevention and response among Task Force members (e.g. information on spill response worker training and liability issues). Following major spill events in Task Force jurisdictions, the Task Force members will participate in a debrief and take appropriate action, including changes to recommendations. These activities should not jeopardize litigation efforts by Task Force members.

RECOMMENDATION 45: Coordination of Studies

In the event of a major trans-boundary spill affecting the waters and coastline of two or more Task Force members, those affected members will coordinate their subsequent studies and activities designed to identify damage, restore the natural environment, and pursue damage claims.

RECOMMENDATION 46: Spill Equipment Updates

Review annually, and update if necessary, response equipment lists and mutual aid provisions for response to catastrophic spills. Continue to work towards consistency among the members in individual contingency plans and response criteria.

Alaska

Valdez

3 Tankers/Day
Southbound

Puget Sound
1 Tanker/Day
Inbound

British Columbia

Washington

Oregon

California

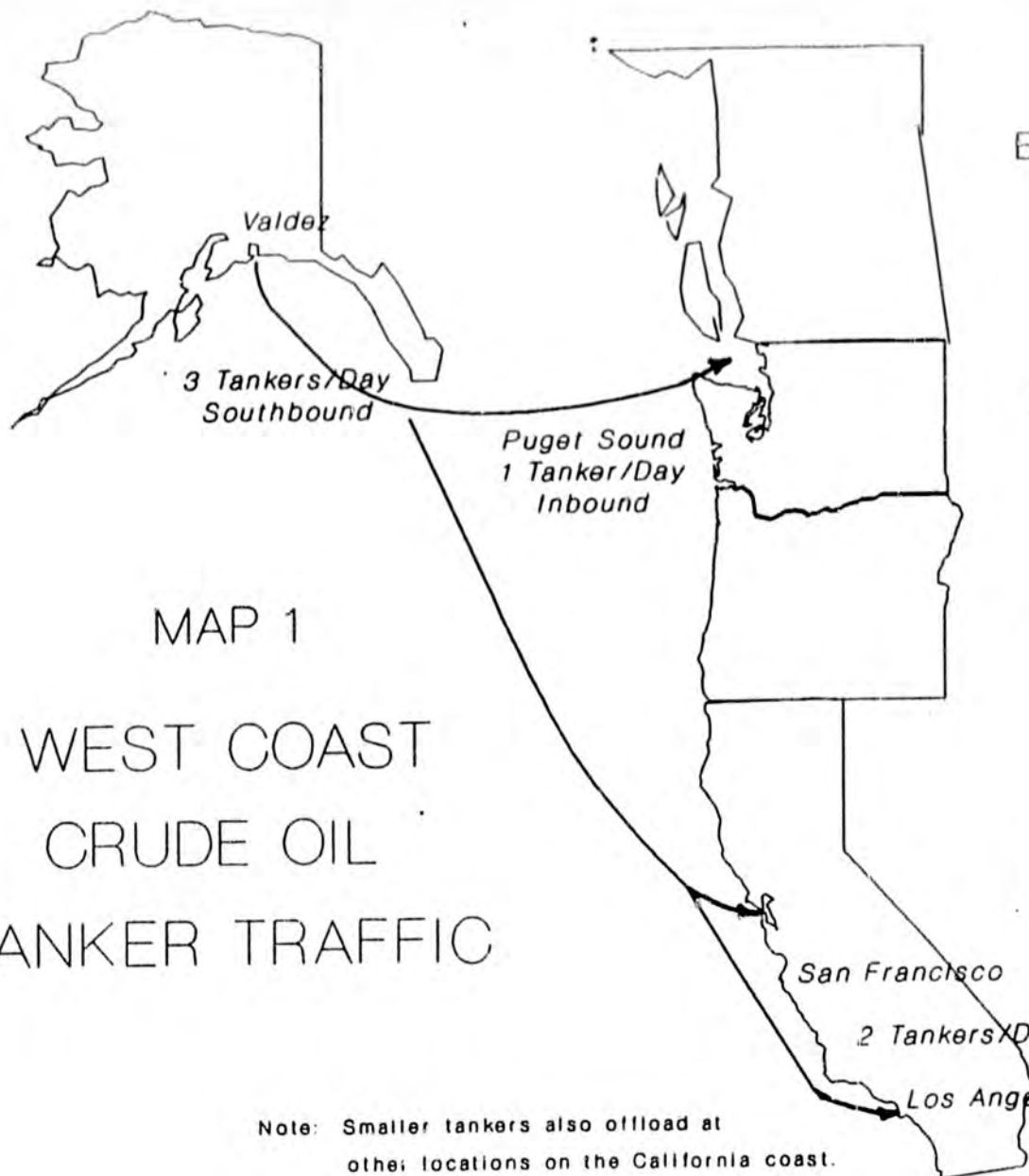
San Francisco

2 Tankers/Day Inbound

Los Angeles

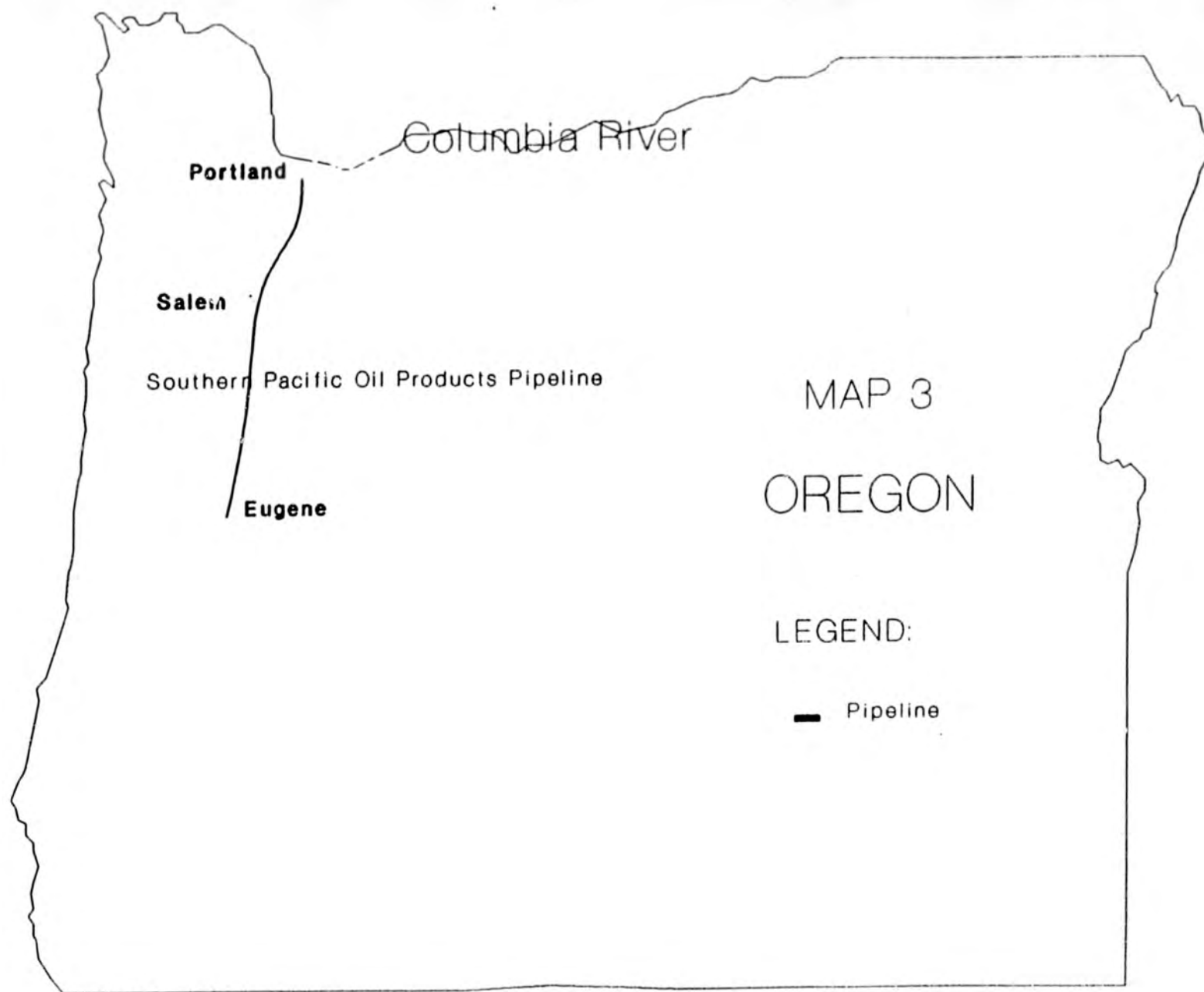
MAP 1
WEST COAST
CRUDE OIL
TANKER TRAFFIC

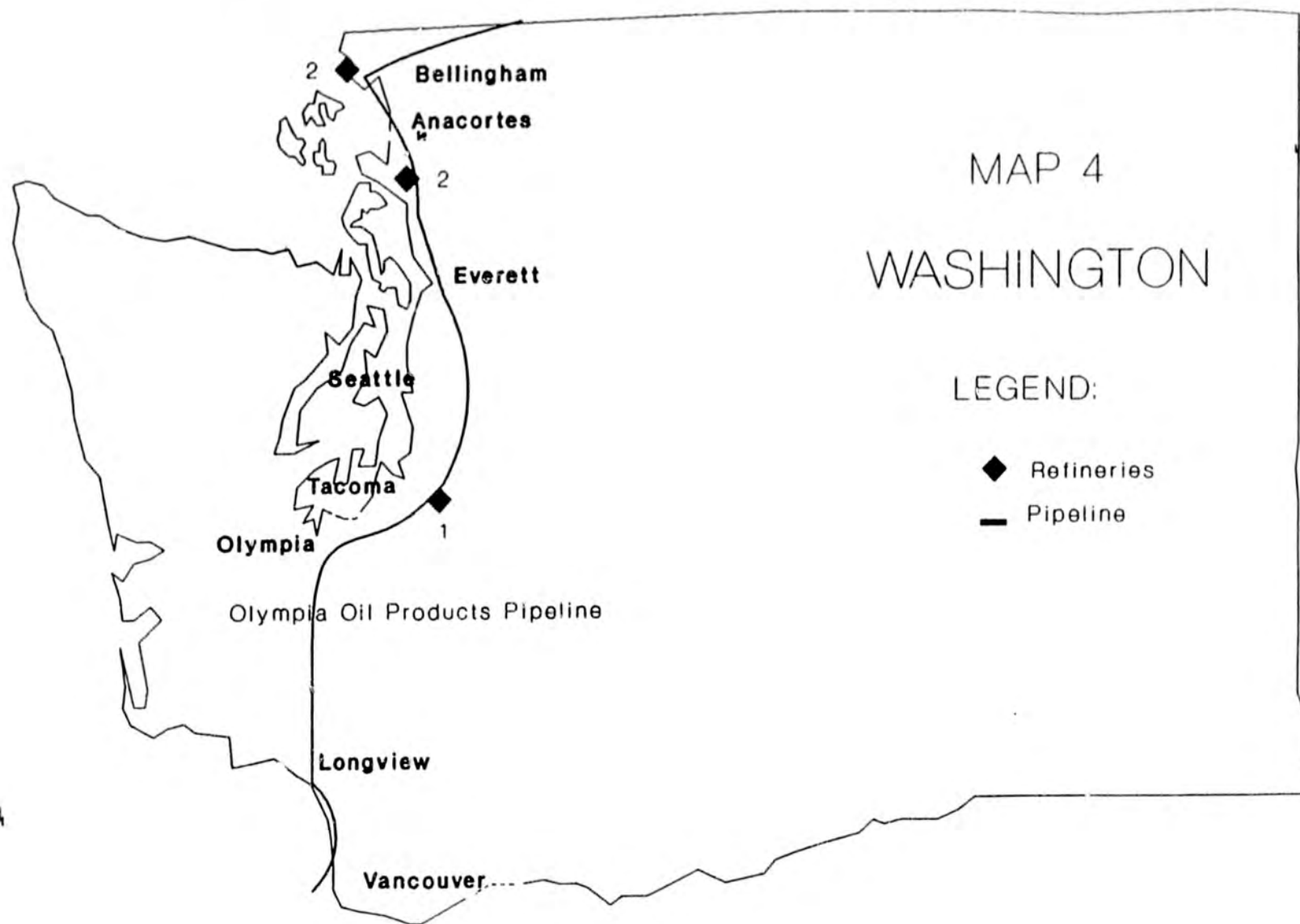
Note: Smaller tankers also offload at
other locations on the California coast.



MAP 2
CALIFORNIA







MAP 5

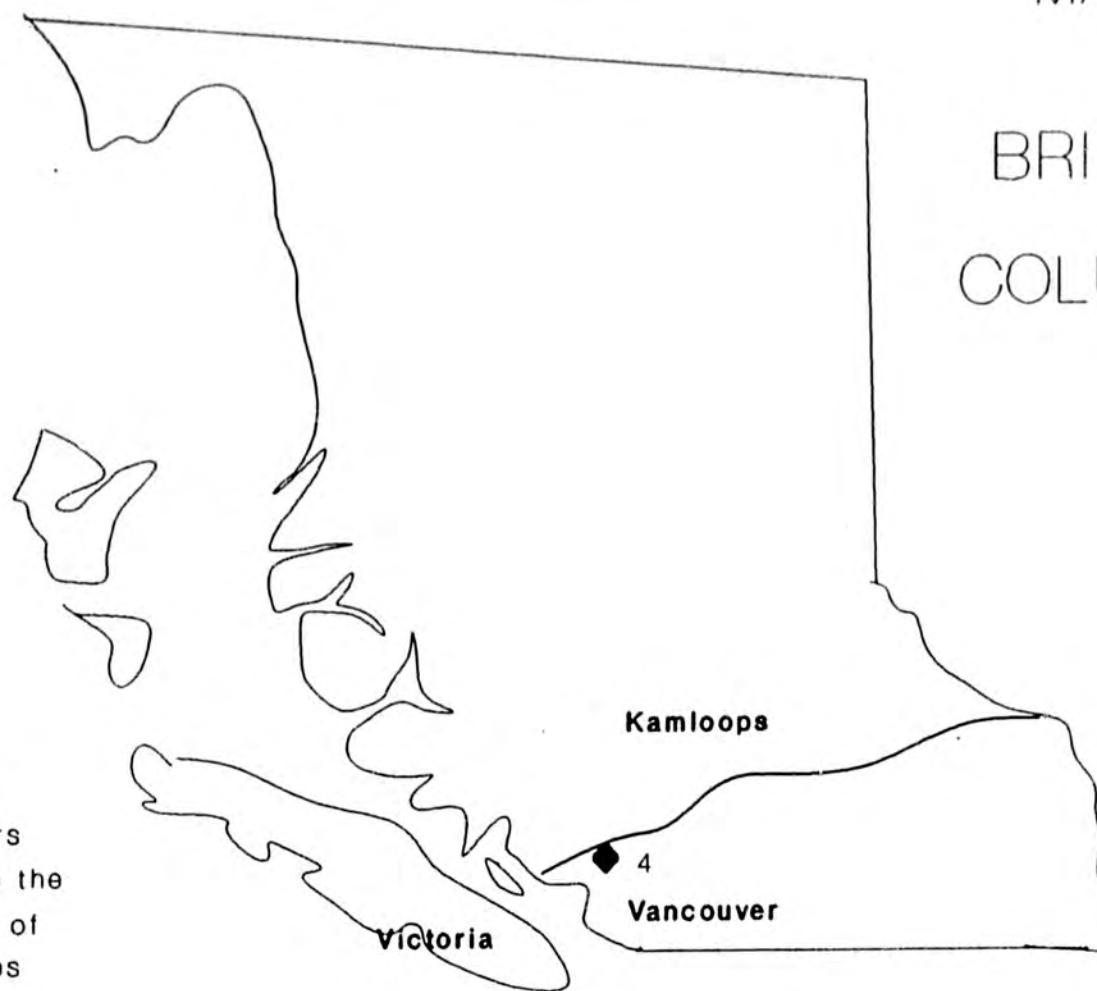
BRITISH
COLUMBIA

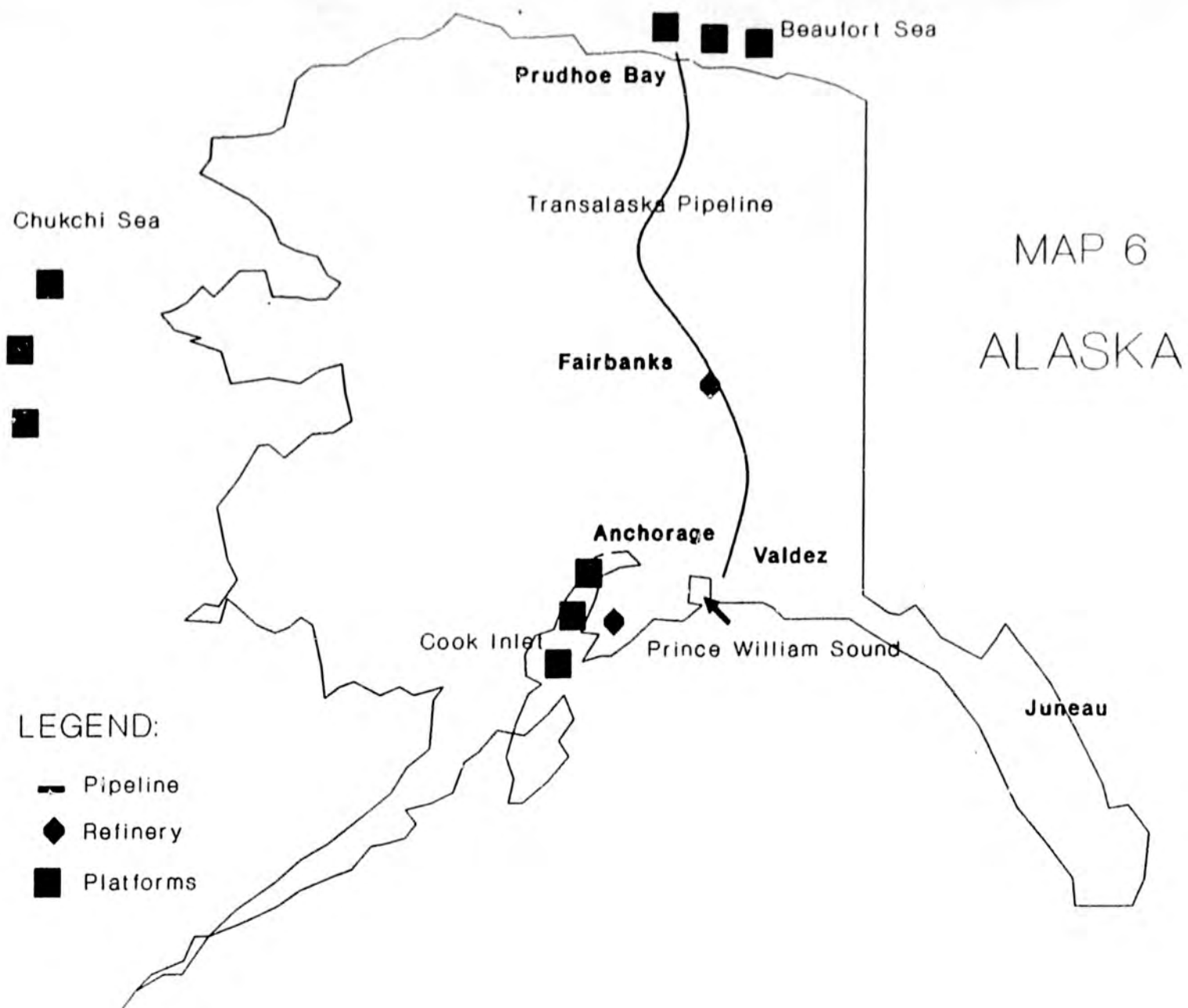
LEGEND:

— Pipeline

◆ Refineries

NOTE: Numbers
refer to the
number of
facilities





II. Background

A. HISTORY AND MISSION OF THE STATES/BC OIL SPILL TASK FORCE

1. The Nestucca Spill

On the night of December 22, 1988, while attempting to reattach a broken tow line during rough seas, the tug Ocean Service collided with the tanker barge Nestucca off Gray's Harbor, Washington. The resulting puncture in the barge's hull leaked 231,000 gallons (873 m³) of fuel oil into Washington's coastal waters.

More than 110 miles (176 km) of Washington's scenic coastline were contaminated by the fuel oil, which formed a slick covering some 800 square miles (2,080 km²). As dead birds and patches of oil began to appear on beaches in British Columbia, the Nestucca incident clearly repeated an obvious but necessary message: oil spills do not respect interstate or international political boundaries. Thousands of oiled seabirds were collected, and many died despite rescue efforts.

2. Formation of the Washington-B.C. Task Force

This Nestucca spill motivated action in Washington and British Columbia. On January 20, 1989 Governor Booth Gardner and Premier Vander Zalm announced the formation of a joint oil spill Task Force, to be co-chaired by Christine Gregoire, Director of Washington's Department of Ecology, and Richard Dalon, Deputy Minister of the B.C. Ministry of Environment. During the first Task Force meeting, held March 23 in Victoria, the co-chairs established a task force process and subcommittee organization. On the following day, the Exxon Valdez transformed perspectives on oil spill management.

3. The Exxon Valdez Runs Aground

On March 24, with eight of 11 cargo tanks torn open by the rocks of Bligh Reef, the Exxon Valdez released nearly 11 million gallons (41,580 m³) of crude oil into the rich waters of Prince William Sound, Alaska. Oil reached over a thousand miles of Alaska coastline, causing extensive damage to beaches, seabirds, marine mammals, and other natural resources. Many Alaskan coastal communities faced economic and social hardships as the spill's devastation spread. For example, virtually the entire commercial salmon season of Kodiak Island communities was lost. The Exxon Valdez incident not only demonstrated that catastrophic spills were possible, but that our ability to prevent, respond to, and clean up such disasters was far from adequate.

4. Alaska, Oregon, and California Join the Task Force

The Prince William Sound spill prompted interest among other west coast states in working with Washington and British Columbia on mutual oil spill prevention and response issues. On July 3, 1989 Governor Neil Goldschmidt on behalf of the state of Oregon officially joined the Task Force, followed by Alaska Governor Steve Cowper on August 3. On September 21, California completed the current membership of the States/British Columbia Task Force.

The Task Force was given the mandate to investigate ways and means of preventing oil spills; to review oil spill response capability; document and assess the mechanisms for handling compensation claims; and to develop a coordinated contingency plan for preventing and responding to oil spills in the future.

5. Memorandum of Agreement

Task Force activities were initiated by an "Oil Spill Memorandum of Co-operation," initially signed on June 16 by Washington and British Columbia (refer to Attachment I). The memorandum dealt with future transboundary environment and wildlife issues, and stressed the importance of:

- o enhancing the environment and protecting it from oil spills;
- o protecting transboundary fish and wildlife from damage caused by spills and other discharges of oil;
- o maintaining and improving a coordinated response to oil spills; and
- o pursuing the above in cooperation with the federal governments of Canada and the United States.

Under the terms of the memorandum, each signatory agreed to appoint an appropriate government representative to maintain the memorandum. Written notification of appointments was sent to all signatories to ensure effective coordination. The memorandum is intended to be perpetual, although each party has the option of terminating its involvement in the agreement.

The current appointments are, in addition to co-chairs Christine Gregoire and Richard Dalon:

Fred Hansen - Director, Oregon Department of Environmental Quality;

Dennis Kelso - Commissioner, Alaska Department of Environmental Conservation and;

Michael Kahoe, Assistant Secretary, California Environmental Affairs Agency.

Appointed representatives are to meet annually to review and plan cooperation.

The memorandum also identified the following issues to be addressed by the Task Force:

- o creation of a joint emergency response plan;
- o evaluation of capabilities and technologies for spill prevention, response, and containment;
- o review of tanker safety, routing, and operating requirements;
- o inventory of equipment, material, personnel, and other resources available to either the province or the states for use in oil spill control and clean-up operations; and
- o joint spill response drills and training.

Investigation of these issues was assigned to four subcommittees established under the Task Force:

1. **Prevention Alternatives Subcommittee**, directed to evaluate ways and means of improving oil spill prevention through changes in operating procedures, regulations, and laws.

Chair: John Bones, British Columbia Ministry of Environment.