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United States Department of State

Foreign Service Institute

1400 Key Boulevard
Arlington, Virginia 22209

SB102
File

March 6, 1992

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

Dear Senator Cotten,

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

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

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

Sincerely,

Barbara Pace

Barbara F. Pace

THE SENIOR SEMINAR Tel. (703) 875-5354

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

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

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

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

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

The Compact specifically provides for uniform regulation of oil and hazardous substance transportation, including the establishment of standards for routes, crews, and equipment for vessels and for vessel contingency plans. Comprehensive oil spill prevention and response legislation was passed in 1990 at the federal level (Oil Pollution Act of 1990) and in Alaska through a package of more than 10 laws in 1989 and 1990. Implementation of these legislative efforts is well underway at both federal and state levels through the development of extensive regulations. Compact provisions for development of an additional layer of regulations for these purposes is both unnecessary and inappropriate. At best, such an effort would be duplicative of Alaska and federal work; at worst, it could result in totally confusing layers of regulations under various authorities. It seems logical to allow the industry and states to operate under the statutes being developed before deciding whether additional or modified regulations are needed.

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

The U.S. Coast Guard has primary authority for marine transportation in U.S. waters and is responsible for establishing vessel safety and design standards, training and manning requirements, routing, and traffic control. It is the only agency which participates in the development of internationally approved maritime protocols and has the demonstrated experience, expertise, and resources to assure uniform enforcement of marine regulations. Moving this regulatory authority for marine transportation to the proposed Compact will lead to confusion among domestic and international shippers as to which agency has primary jurisdiction over safety standards for vessels transporting oil or hazardous materials. Exxon Shipping Company firmly supports the concept of uniformity of maritime law and regulations throughout the United States. We believe the U.S. Coast Guard already provides that uniformity. Since our industry is international in scope, we believe a single U.S. agency approach is absolutely critical.

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

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

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

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

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

Accordingly, Exxon Shipping Company urges this Committee to oppose the passage of SB 102.

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BP OIL

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February 28, 1991

BP COMMENTS ON PACIFIC OCEAN RESOURCE COMPACT

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

The major thrust of the Compact legislation is that existing federal law (i.e., OPA) does not go far enough in setting standards and regulations for industry to follow. However, it does present an opportunity for the states to play a meaningful role in promulgating appropriate requirements for industry. The proposal merits serious consideration so long as it does not result in an additional layer of regulations, and so long as its requirements are coordinated with the Coast Guard's requirements. As proposed, the Compact seems to unnecessarily duplicate, on a regional basis, many of the highlighted areas of concern which will be addressed through the new federal thrust outlined in OPA and the various state oil spill legislative initiatives passed over the last few years.

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

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

vessels, and pleasure boaters;

- encouraging and coordinating research into oil spill prevention and response by universities and other scientific organizations.

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

- o The legislation grants broad powers to the Compact, but there is no clear definition of how these powers are to be implemented and exercised by the Compact in the performance of its duties.

- o Article 9 provides for no limitation of existing state authority. Unless there is a willingness to allow Compact standards and regulations to supercede those promulgated by the individual states little will be accomplished beyond the establishment of an additional bureaucratic entity and layer of regulations.

- o Cost and control issues may be large impediments to effective Compact operation. The states must wrestle with the problem of yielding individual control of specific issues to the Compact as a whole, while providing incremental funding (beyond that required to support similar state activities) to support the

Compact's tasks.

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

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

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

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

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

COMPACT PARTIES GROSS STATE PRODUCTS

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

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

February 28, 1991

PROPOSED AMENDMENTS TO PROPOSED PACIFIC OCEAN RESOURCES COMPACT LEGISLATION

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

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

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

o Article I, A (6) - Delete paragraph (6) in its entirety.

As amended, the compact would cover existing jurisdictions.

o Article I, A (8)(a-f) - Replace (8)(a-f) with the following: "Recent studies conducted in the wake of major accidental releases of oil or hazardous substances have concluded that the existing system of response to spills could be improved in the following ways to provide better protection of ocean resources:

(a) enhanced personnel training and qualifications;

(b) enhanced traffic management;

(c) improved coordination in regulatory oversight;

(d) better mechanisms for cost recovery by the states or the province;

(e) an improved information base dealing with marine and coastal environments."

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

o Article I, B (1) - replace (1) with: "To assist in the promotion of interstate commerce via cooperation with the U. S. Coast Guard in regulating the transportation of oil or hazardous substances within the compact zone."

o Article I, B (2) - replace (2) with: "To provide a legal mechanism to coordinate certain ocean activities within existing jurisdictions."

The intent should be one of enhanced cooperation between the parties to the Compact and the Coast Guard, rather than potentially duplicating the effort in areas that are already sufficiently covered under recently enacted federal and state oil spill legislation.

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

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

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

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

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

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

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

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

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

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

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

  As amended, the compact will not require congressional action.

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

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

  (a) providing input to Federal government agencies regarding:

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

development of a regional Unified Incident Command System;

(h) developing regional spill trajectory models;

(c) arranging and conducting multi-state spill response exercise drills;

(d) reviewing requirements and proposals for vessel traffic management, vessel traffic systems, speed limits, and vessel traffic reduction;

(e) establishing and maintaining a regional index of potential spill responders and an inventory of available response equipment;

(f) studying the utilization of volunteers and proposing measures for volunteer training;

(g) creating and carrying out a spill prevention education strategy aimed at industrial operators, passenger vessels, and pleasure boaters;

(h) encouraging and coordinating research into oil spill prevention and response by universities and other scientific organizations.

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

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

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

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

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

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

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

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

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

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

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MEMORANDUM

February 28, 1991

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

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

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

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

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

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

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

- Ensure a coordinated network of response plans and programs among the states, federal agencies and private organizations;

- Establish requirements for and approval of vessel contingency plans according to the Oil Pollution Act of 1990 and any requirements of the individual states;

- Provide an informational and technical clearinghouse;

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

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

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

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

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

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

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

The granting of planning and management authority over ocean resources to a regional compact has significant implications to all parties of interest as well as to the many state and federal agencies with programs affecting the area. If that is our goal - regional management of ocean resources - then it deserves a thorough review and debate on scope of authority and jurisdiction, a delineation of specific activities *to be included, the nature of Compact oversight responsibilities and the continued role, if any, of existing state and federal programs and agencies.* As with oil spill response, we are also concerned with the additional overlap and duplication that would probably result. We do not wish to suffer further the confusion and conflict that is the natural result of unclear ground rules and competing jurisdictions with shared authority in a particular policy area. The bill, as drafted, only hints at the broad range of future responsibilities and authorities contemplated for the Compact.

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

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

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

SOUTHEAST ALASKA PETROLEUM RESOURCE ORGANIZATION
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03/19/91

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

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

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

BENEFITS

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

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

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

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

TECHNICAL DEFICIENCIES

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

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

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

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

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

OMISSIONS

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

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

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

Many of these ships carry large quantities of heavy fuel oil which looks and acts much like crude oil. These ships proceed into some of the most sensitive habitats in our state, through difficult navigational areas, with the added pressure of keeping precise time schedules. None of these ships have contingency plans, none have adequate pollution response or control equipment, none have adequately trained spill response personnel, and all are capable of protecting themselves from legal claims arising from a ship casualty. Of course none of us will be all that concerned with environmental protection when one of these ships goes to the bottom hazarding the lives of 600 visitors to our state, but oil pollution will be a by-product of such a tragedy. You are courting disaster by not recognizing this threat and planning accordingly.

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

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

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

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

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

If you judge the threat to the environment by the relative persistence of the product, you can see how foolish it is for the state to treat oils of relatively equal persistence as a lesser threat than "Alaskan" crude oil. Yet this is exactly the situation created by the wording of HB 587. This is another example of trying to be over technical in writing law when you have little professional knowledge of the subject at hand.

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

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

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

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

R. H. Mullen
Manager

Samson Tug & Barge Company, Inc.

Phone (907) 747-8559 • Fax(907) 747-5370 • P.O. Box 559 • Sitka, Alaska 99835

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

March 14, 1991

Dear Senator Cotten:

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

This bill, as with HB 567 of 1990, fails to recognize the largest potential for a major oil spill in Alaska or members of the compact. Certainly the Exxon Valdez made an impression, but historically how many tankships have had major spills in the last 12 years? How many large freight vessels and foreign flag passenger vessels have had major spills? A review of U.S. Coast Guard records will show a very real list. In Southeast Alaska and the nearby Canadian waters in recent years - the Lee Wang Zin, the Sundancer, the North Star, just to name a few who have grounded and spilled oil into the water. No, they are not carrying crude oil, but they all carry and use heavy bunker oil (persistent). Some of the old and the majority of the new foreign flag passenger vessels carry in the neighborhood of 1,000,000 gallons of this heavy oil. During the summer they transit throughout Southeast Alaska, Prince William Sound, Seward, and into Anchorage. They do not have onboard any major oil response equipment.
Scenario: At 0200 on a summer morning the foreign flag passenger vessel Rotterdam grounds on a charted pinnacle in the vicinity of the entrance to Glacier Bay, Alaska. Two fuel tank compartments have been holed and heavy bunker oil is leaking. Weather is Southeasterly winds 30 kts with gust to 40; tide is flooding. There are 1200 passengers onboard and the vessel has a 15 degree list.
With this scenario, we have search and rescue - 1800 persons (passengers and crew) in jeopardy, a grounded vessel that may or may not be salvageable, oil in the water and the potential for a lot more oil. They have no C-Plans, no response equipment, no trained personnel to respond, and minimum liability insurance for clean-up. This oil will be around for a long time and the impact will be tremendous and so will the public outrage. Why aren't these vessels required to comply will be the question?

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

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

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

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

Sincerely,

Albert M. Snelling

ALBERT M. SNELLING
Safety Officer

cc: Senator Eliason

Ginny Fay

Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION

750 W. Second Ave., Suite 200, Anchorage, AK 99501 (907) 258-4800

March 23, 1991

Dear Affiliate Leader:

I am writing to ask your support for legislation now pending in your state's legislature that will significantly strengthen your state's authority to prevent spills of oil and other hazardous substances in marine waters off your coast. The legislation is intended to ratify the Pacific Ocean Resources Compact.

The Compact is a united effort by the Pacific Ocean states 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 shipment of oil and other hazardous substances in state waters within the Pacific Basin.

The Compact includes Alaska, Oregon, Washington, California and Hawaii. The Canadian province of British Columbia will also be invited to join the Compact which, with Congressional approval, will be able to propose and 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 crude oil or other hazardous substance spill.

Legislators introducing bills supporting the Compact in the five participating states are:

Alaska--Senator Sam Cotten (SB 102)
Washington--Senator Jack Metcalf (SB 5428)
Oregon--Senator Bill Bradbury (SB 500)
California--Assemblyman Don Hauser (AB 393)
Hawaii--Senator Richard Matsuura (SB 862)
Representative Peter Apo (HB 1703*)

*Bill has been deferred to next session

To obtain copies of these bills, contact Ginny Fay of Senator Cotten's office (907-465-3711); Senator Metcalf's office (206-

786-7618); Mara Brown of the Oregon Senate Majority office (503-378-8700); Mary Morgan of Assemblyman Hauser's office (916-445-8360); Representative Apo's office (808-548-5730); or Senator Matsuura's office (808-548-6291).

For your information, I have attached a copy of a fact sheet on the Pacific Ocean Resources Compact prepared by Senator Cotten's aide Ginny Fay. In addition, I have attached a copy of the bill introduced in the Alaska Legislature.

One of the critical lessons we Alaskans learned in the wake of the Exxon Valdez oil spill was that the citizens most at risk from spills of crude oil and other hazardous substances MUST be involved in the decision-making processes for prevention of and responding to spills. The Pacific Ocean Resources Compact is an important step toward achieving greater involvement. We ask that you please give it your support. In addition, I would appreciate any suggestions you may have regarding other organizations in your state that would be interested in offering their support.

If you have questions or need more information, please feel free to contact me.

Best regards.

Sincerely,

Ann L. Rothe
Alaska Regional Representative

cc: Doug Miller, Director, NWF Alaska Natural Resources Center
Bruce Apple, Director, NWF Pacific Northwest Natural Resources Center
Larry Schweiger, Vice President, NWF Affiliate Programs
Sharon Newsome, Vice President, NWF Resources Conservation
Rich Bechtel, NWF Department of Resources Conservation
Sheila Gottehrer, Executive Director, Regional Citizens Advisory Council
Harry Bader, Chairman, State of Alaska Citizens Oversight Council on Oil and Other Hazardous Substances
Ginny Fay, Senator Cotten's office
Mara Brown, Oregon Senate Majority Office

TELECOPIER COVER SHEET

National Wildlife Federation
1400 16th Street, N.W.
Washington, D.C. 20036

Date: February 20, 1991

To: Ms. Ginny Fay
Senator Cotten

Fax Number: (907) 465-4979

From: Rich Bechtel
National Wildlife Federation
(202) 797-6660

Sender's Fax Number: (202) 797-6646

NUMBER OF PAGES INCLUDING COVER SHEET: 4

SPECIAL INSTRUCTIONS/REQUESTS: Ginny, I wrote this analysis shortly after the conference committee vote on double hulls, so it is a little darker in outlook than if I were to write it today. Rich.

ANY PROBLEMS? PLEASE CALL (202) 797-6801.

TO: Colleagues Following the Double Hulls Issue

FROM: Rich Bechtel

RE: A Quick Analysis of the Double Hull Provision Adopted by the Oil Spill Conference Committee

DATE: 18 July 1990

I. Double Hull Mandate: The Good News

1. The provision mandates double hulls for all new tank vessels over 5,000 gross tons (gt).

2. It requires vessels under 5,000 gross tons (inland barges) to have "double containment" systems which the Secretary of DOT certifies to be as effective as double hulls -- not quite as good news.

II. Retrofit Provisions: The Evisceration of the Mandate

1. It sets out an elaborate phase-out schedule for current tank vessels based upon age and size. Larger and older vessels must retire before ones that are smaller and younger. Below is a simplified sketch of the schedule:

SIZE	1995	2000	2005	2010	2015
5,000 to 15,000	40+ yrs	35+ yrs	25 yrs	END*	
15,000 to 30,000	40+ yrs	30+ yrs	25 yrs	END*	
30,000>	28+ yrs	23 yrs		END*	

If vessel has double bottom or sides, add 5 yrs.

*Lightering exemption ------------------------------ END

*LOOP exemption ------------------------------------ END

*Tank vessels under 5,000 gt exemption ------------ END

2. This means that when a tank vessel reaches its retirement age, it can opt to lighter (unload its oil cargo to a smaller tanker) or visit the Louisiana Offshore Oil Port (LOOP) until 2015. As a result, foreign vessels will visit LOOP and lighter in U.S. waters for another 25 years. These

exemptions are most unfortunate since they will undermine the law's ability to drive the adoption of double hulls as an international standard.

3. Few new double hulled tankers will enter service until the old single hulled vessels retire, since new vessels can not compete with old, fully depreciated ones. However, a few will be built sooner, because oil companies must replace some of their vessels over time simply due to their age and fatigue. Other vessels will simply retire without being replaced because their capacity will not be needed as Alaskan production drops.

4. The provision calculates the age of a vessel from when it was delivered after construction, after completion of a major conversion, or after qualification under the wrecked vessel act. This will probably be a huge loophole -- a fountain of youth -- which will restart the clock on many vessels enabling them to operate with single hulls for another 25 years.

   For example, the Exxon Valdez will have a new life of 25 years even though Exxon chose to replace its damaged hull with another single hull. The USCG currently determines on a case by case basis whether or not repair work qualifies as a major conversion. Now shippers will swamp it with requests to certify past repair work as major conversions.

5. Mr. Tauzin asked that report language be developed which would define broadly "major conversion." He reasoned, that if a vessel receives a major expenditure of cash, it must be safer environmentally and therefore should be considered a major conversion. This will be an evasion of the first order.

6. Mr. Tauzin and Mr. Breaux added a section during debate which would require the Secretary of DOT to complete a rulemaking within 12 months "to require operational and structural requirements that the Secretary determines will provide as substantial protection to the environment as is economically and technologically feasible" while awaiting retirement or conversion (they probably have hydrostatic balance in mind).

7. The conferees dropped a provision (amending Title XI of the Merchant Marine Act) which would have required the Secretary to use a loan guarantee program to help capitalize shippers who must replace their vessels as a result of the retrofit requirements.

8. They began and then delayed debate on an amendment developed by the Shipbuilders' Council that would require vessels which receive the off-loaded oil from the larger tankers to be built in the U.S. The USCG does not consider the "mother" lightering ship as a U.S. destination, so shi_ owners can escape the Jones Act requirement that vessels engaged in domestic trade must be built in the U.S. This loophole simply makes lightering more attractive and qualifies lightering vessels built in Japan and Korea under less rigorous environmental standards.

9. The provision kept the study sections found in the Senate and House offers which direct the Secretary of DOT: 1) to periodically review recommendations from the National Academy of Science; 2) to determine within 6 months whether other structural and operational requirements match or provide greater environmental safety than double hulls and forward his findings to Congress; and 3) to assess within 5 years the impact of the double hull requirement "on the safety of the marine environment and on the economic viability and operational makeup of the maritime oil transportation industry."

10. Many ship and barge builders think operators will seriously begin ordering new vessels in 2000, perhaps in 1998.

ARCO PUBLIC POLICY VIEWS:
REVISED DRAFT DATED 3/13/91 OF THE PROPOSED
PACIFIC OCEAN RESOURCES COMPACT

A proposal has been put forward by Senator Bradbury of Oregon which would modify the original language of the Pacific Ocean Resources Compact as introduced in the legislatures of Alaska, California, Hawaii, Oregon, and Washington. The proposal would modify the Compact, a concept which seeks to regulate oil and hazardous substance transportation, spill prevention and response, and other maritime and coastal concerns, including the extension of the State's coastal economic zones from three to two hundred miles. The Compact would enter into force only upon its ratification by two or more of the states and subsequent approval of the U.S. Congress.

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

Although most of the proposed changes to the Compact move it in the direction of increased coordination among the participating states, along with more active participation in the Federal legislative and regulatory process, the concept of a formal, Congressionally approved, Compact is still troublesome. There are two primary concerns with the compact approach in this instance. Our major concern is that the Compact would supersede established and proven Federal laws and regulations which provide a uniform framework for ocean policy in Federal waters. Furthermore, the wide-ranging improvements in spill prevention and response which will arise out of the Federal Oil Pollution Act of 1990 are in the implementation process. Second, the addition of another layer of government, one which would come between state entities and the federal government is counterproductive. The current Federal/State review and regulatory process can be burdensome - an intermediary Compact layer would only further complicate the process.

If the primary thrust of the Compact is one of increased input into the Federal regulatory process while achieving uniformity among Western State regulations, ARCO believes that such goals are achievable without a Compact. Many states are active participants in Federal regulation development. Similarly, state coordination can be achieved through interstate working groups without the negatives associated the Compact process. The proposed compact would require increased and open-ended state administrative expenses, with questionable benefits to state citizens. This fact, coupled with the loss of individual state autonomy and prerogative, argues against the adoption of the Pacific Ocean Resources Compact.

ARCO MARINE

PACIFIC OCEAN RESOURCES COMPACT

February 15, 1991

Summary

Five West Coast states plan to extend their jurisdiction to regulate shipping through adoption of an agreement ("compact"), approved by Congress, that would establish a regional organization with quasi-federal authority to regulate (1) out to 200 miles from the coastline, and (2) to standards beyond those permitted by existing federal law. This is a radical departure from existing legal regimes involving states, but, in today's political climate, the five states could succeed in achieving part, if not all, of the extended jurisdiction they seek. The marine industry should actively oppose this plan, both in state capitals and in Washington.

Situation

The states of Alaska, Washington, Oregon, California, and Hawaii plan to adopt an agreement titled the "Pacific Ocean Resources Compact" and submit it to Congress for approval as required by the Constitution. The compact provides that the Canadian Province of British Columbia ("B.C.") may also become a party, first as an associate (without voting power) and later, upon request by B.C. and approval of Congress, as a full party with the same rights and powers as the U.S. member states. The announced intention of the compact is to protect marine and coastal resources in Pacific Ocean areas adjacent to the five states and B.C., and its main thrust is to regulate shipping in order to control ship-source pollution.

Legislation that will begin the process of compact adoption is already under active consideration in all five states. A bill was introduced in each of the five legislatures on January 31, 1991.

The Compact

Since our country was founded, some 200 compacts have been adopted by states and approved by Congress. The Pacific Ocean Resource Compact is notable in that it would go well beyond existing compacts in extending the geographic scope of state jurisdiction and in vesting federal powers in a regional authority administered by states. The unstated premise: The Oil Pollution Act of 1990 ("OPA 90") does not go far enough, and the compact is a way to go much further.

The compact sets the stage with this statement: "Parties now do not have an effective means to address mutual concerns related to transport of oil and hazardous substances in waters within and beyond the party's jurisdiction that may jeopardize ocean resources and uses important to one or more coastal parties."

The compact notes the establishment of the U.S. Exclusive Economic Zone ("EEZ") as an opportunity for states to assert their responsibilities to protect ocean resources, and goes on to cite studies that support this conclusion: "the existing system of response to spills fails to provide adequate protection to ocean resources . . . ." The litany of inadequacies includes personnel training and qualifications, vessel design and integrity, traffic management, regulatory oversight, cost recovery, and information about the environment.

Under "the purpose of this compact" are 15 items, some very revealing, all directed toward correcting the inadequacies in the "existing system" through action to be taken by states in the Pacific region. The items listed under "purpose" speak in aggressive terms: uniform regulation of transportation within the compact zone, enhancing regional sovereignty, directing federal agencies to act, and enhancing supervision of and influence over spill prevention, transportation, response planning, and environmental monitoring and research. One of these items merits particular attention: "To provide a legal mechanism to regulate certain ocean activities within the [U.S. EEZ] <u>that the parties cannot now individually regulate</u>" (emphasis provided).

The authority of the compact organization would include the following, applicable to operation of vessels transporting oil and hazardous substances in the compact zone:

- establish uniform safety standards for routes, crews and equipment to the extent that the parties and the federal government have such authority within the compact zone
- establish requirements for contingency plans as least as stringent as those in OPA 90
- establish and enforce sanctions and civil penalties for violations of compact regulations
- request the Coast Guard to enforce compact regulations
- the power to subpoena
- adopt regulations in accordance with federal procedures

Activities under the compact would be funded by contributions from member states and would be managed by an organization administered by representatives appointed by member states. Federal agencies would be represented, but without voting privileges.

<u>Discussion</u>

Uniformity of law and regulation among states in a region is certainly desirable from the perspective of the transportation industry, <u>provided</u> the states respect the long-standing bounds on their authority to regulate interstate and foreign commerce and provided their uniform rules are consistent with federal law. The Pacific Ocean Resources Compact is a radical departure from that norm.

The compact would take more of a departure from conventional legal regimes than OPA 90 did. It would establish regional authority to regulate out to 200 miles. In that area, it would regulate shipping as to "routes" (navigation), "crews" (presumably manning, training, certification, watchkeeping), and "equipment" (an undefined and therefore flexible term). There is reference in the compact's preamble to regulation of "vessel design and integrity," so, at best, the intention to regulate design and construction standards is ambiguous.

This is an attempt by five states to create a means to perform federal functions and exercise federal powers. It is an attempt to regulate activities in interstate and foreign commerce on a sub-federal level.

Certainly the compact as drafted would authorize establishment of a floor for standards that could exceed what the states now can establish individually, and would allow enforcement in geographic areas far outside present state jurisdictional limits. Furthermore, under the compact, each member state could then set standards applicable in its territory that exceed the compact standards.

This compact is a revolutionary concept. For pollution control purposes, the compact would create a superstate, an entity falling somewhere between a state and the federal government in powers. While it is without precedent in the law of compacts, and while it raises many legal questions, including constitutional law issues, legal arguments against it will not necessarily prevail, at least in the short run. To many politicians and to certain environmental organizations, it will be powerfully attractive.

This initiative by West Coast states is serious, coordinated, and politically shrewd. Its chances of success should not be underrated.

Many arguments can be made against the adoption of the compact as drafted, including the following:

- OPA 90 provides a high degree of protection of ocean resources, and many of its provisions have yet to be implemented. The individual states are not impeded from imposing further requirements. There is no demonstrated need for another layer of regulation.
- The compact would burden interstate and foreign commerce, with no commensurate advantage to the environment.
- The compact amounts to a fundamental change in our way of regulating interstate and foreign commerce, with unpredictable consequences.

- The compact would not promote regulatory uniformity but would have the opposite effect.
- The compact violates the Constitutional principles that reserve admiralty and maritime jurisdiction and foreign relations to the federal government.
- The compact would impose requirements on foreign shipping that violate treaties to which the U.S. is party.
- The compact would create an intermediate bureaucracy not accountable to the electorate or its representatives on either state or federal level.
- The compact organization would be able to impose regulations on shipping without being subject to economics cost-benefit analyses comparable to those required of federal regulatory agencies.

An additional concern is the precedential value of the Pacific Ocean Resources Compact in the eyes of states outside the Pacific area. It may be expected that states in regions such as New England or the Gulf of Mexico may see the compact as a model that could be applied to develop compacts for ocean areas off their shores. If the compact for the Pacific enters into force, it would be difficult to resist efforts to establish similar regimes in other regions.

Recommendation

The marine industry should actively oppose the adoption of the compact and its approval by Congress, both in state capitals and in Washington.

PACIFIC FISHERIES LEGISLATIVE TASK FORCE

SENATOR BILL BRADBURY
PACIFIC OCEAN RESOURCES COMPACT

AMENDMENTS TO SB 500 AND POLICY IMPLICATIONS OF PROPOSED AMENDMENTS.

SB 500-1

ACTION: AMEND THE COMPACT TO ADOPT THE DEFINITION OF "VESSEL" THAT IS CONSISTENT WITH THE FEDERAL OIL POLLUTION ACT, AND DELETE THE VARIANCE ALLOWING ECONOMICALLY NECESSARY ACTIONS WHICH ALSO DO NOT HAVE A REGIONAL IMPACT.

POLICY IMPLICATION: DOES THE COMPACT WANT THE SIMPLICITY OF CONFORMING TO FEDERAL LAW AND THUS AUTOMATICALLY EXEMPTING VESSELS LESS THAN 5,000 DEAD WEIGHT TONS, INCLUDING SMALL TUGS AND BARGES, FROM THE REGULATIONS ADOPTED BY THE COMPACT.

PRO-AMENDMENT: THOSE STATES WHICH HAVE SPECIFIC REGULATIONS PERTAINING TO VESSELS LESS THAN 5000 DEAD WEIGHT TONS IN PLACE WHICH ARE ALREADY AS STRINGENT AS FEDERAL LAW, WILL BE ABLE TO HAVE CONTROL OVER THESE VESSELS. THE COMPACT WON'T RUN THE RISK OF OVERLAPPING JURISDICTION WITH THE STATES IN REGARD TO THESE SPECIFIC VESSELS.

AGAINST-AMENDMENT: THE COMPACT MAY BE REDUCING ITS AUTHORITY TO REGULATE VESSELS WHICH COULD ADVERSELY IMPACT THE RESOURCES OF THE REGION.

SB 500-1
(LC 20)
3/1/91 (JK/sm)

PROPOSED AMENDMENTS TO

SENATE BILL 500

On page 4 of the printed bill, line 10, after "(a)" insert "(A)".

In line 11, delete "(b)" and insert "(B)".

In line 12, delete the period and insert "; and
"(b) Is greater than 5,000 dead weight tons.".

On page 6, delete lines 11 through 16.

SB 500-2

AMEND THE COMPACT TO GIVE THE COMPACT AUTHORITY TO ASSESS A SCHEDULE OF REASONABLE FEES FOR THE REVIEW OF CONTINGENCY PLANS, TO BE ASSESSED IN INCREMENTS UP TO THE MAXIMUM AMOUNT.

POLICY IMPLICATIONS: DOES THE COMPACT WANT THE AUTHORITY TO ASSESS FEES FOR THE REVIEW OF THE CONTINGENCY PLANS?

PRO-AMENDMENT: THE COMPACT WILL MOVE IN THE DIRECTION OF BEING A SELF-SUFFICIENT BODY. THE USER WILL BE RESPONSIBLE FOR PROVIDING COMPENSATION FOR THE COSTS INCURRED BY THE COMPACT WHICH ARE OF A DIRECT BENEFIT TO THEM. EACH INDIVIDUAL STATE WILL BE RESPONSIBLE FOR A PORTION OF THE BALANCE.

AGAINST-AMENDMENT: A DETERMINATION WILL HAVE TO BE MADE AS TO THE AMOUNT AND FREQUENCY OF FEES ASSESSED, AND AS TO WHICH PARTIES MUST PAY THE FEES.

SB 500-2
(LC 20)
3/1/91 (JH/sm)

PROPOSED AMENDMENTS TO SENATE BILL 500

On page 5 of the printed bill, after line 39, insert:

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

SB 500-3

ACTION: THE COMPACT WILL BE AMENDED TO CLARIFY ITS INTENT IN RELATION TO COMPACT AUTHORITY TO REQUIRE VESSEL CONTINGENCY PLANS.

POLICY IMPLICATION: SHOULD THE COMPACT BE AMENDED TO CLARIFY THE INTENTION TO BECOME THE SOLE AUTHORITY OVER THE REGULATION OF CONTINGENCY PLANS AS SPECIFICALLY ADOPTED BY THE COMPACT AND TO CLARIFY THE INTENTION NOT TO INTERFERE WITH SPILL RESPONSE PLANS THAT HAVE CAREFULLY BEEN DRAWN UP BY THE INDIVIDUAL COMPACT PARTIES?

PRO-AMENDMENT: THE AMENDMENTS WILL SIMPLIFY THE COMPACT AND ELIMINATE CONFUSION WITH REGARD TO THE SUBMISSION OF CONTINGENCY PLANS. THIS AMENDMENT WOULD CLARIFY THAT ONLY ONE CONTINGENCY PLAN WOULD BE REQUIRED FOR TRANSPORTATION WITHIN THE COMPACT ZONE. THIS ALSO MAKES CLEAR THAT THE PLAN SUBMITTED TO THE COMPACT SUPERSEDES ALL STATE PLANS.

SB 500-3
(LC 20)
3/1/91 (JH/bg)

PROPOSED AMENDMENTS TO
SENATE BILL 500

On page 5 of the printed bill, line 9, delete "spill".

In line 12, after "and" insert "shall supersede".

SB 500-4 (PART ONE)

ACTION: ELIMINATING COMPACT AUTHORITY OVER "ROUTES"; CLARIFYING COMPACT AUTHORITY TO REGULATE VESSELS, CREWS, AND EQUIPMENT FOR SPILL RESPONSE, NAVIGATION AND COMMUNICATION.

POLICY IMPLICATION: DOES THE COMPACT WANT THE AUTHORITY TO COORDINATE AND DEAL WITH AN ENTIRE BODY OF MARITIME LAW THAT ALSO COULD INCLUDE INTERNATIONAL LAW?

PRO-AMENDMENT: THE COMPACT WILL NOT BE DIRECTLY INVOLVED IN A COMPLEX SERIES OF LAWS AND TREATIES, BUT WILL BE ABLE TO ASSIST THE COAST GUARD IN IMPLEMENTING THE SAFEST ROUTES POSSIBLE.

AGAINST-AMENDMENT: THE COMPACT IS GIVING UP AUTHORITY TO REGULATE AND SPECIFY ROUTES FOR THE TRANSSHIPMENT OF OIL AND MAY BE REDUCING SOME OF ITS ABILITY TO PROTECT THE COMMON RESOURCES.

SB 500-4 (PART TWO)

ACTION: AMEND THE BILL TO SP[illegible] THAT NOTHING IN THE COMPACT IS INTENDED TO LIM[illegible]OCAL AUTHORITY OF PARTY TO ESTABLISH PILOTA[illegible]ATION OR SHIP ASSISTANCE REQUIREMENTS F[illegible]ORS, BAYS OR RIVERS.

POLICY IMPLICATION: DOES THE COMPACT WANT TO CONTINUE TO ALLOW LOCAL AUTHORITIES THE ABILITY TO REGULATE PILOTAGE, NAVIGATION OR SHIP REQUIREMENTS WITHIN HARBORS, PORTS, BAYS, AND RIVERS WHILE RETAINING COMPACT AUTHORITY OVER CREWS, VESSELS, AND EQUIPMENT WITHIN THOSE AREAS.

PRO-AMENDMENT: THE AMENDED LANGUAGE WOULD PRESERVE THE INTEGRITY OF LOCAL CONTROL, AND TRUST THAT LOCAL AUTHORITIES HAVE THE BEST JUDGEMENT AND ABILITY TO REGULATE VESSELS WITHIN THE PORTS, BAYS AND RIVERS OF THE STATE ABOUT WHICH THE LOCAL AUTHORITIES ARE MOST KNOWLEDGEABLE.

AGAINST-AMENDMENT: THE COMPACT WOULD BE GIVING UP SOME AUTHORITY WITHIN THESE AREAS AND POSSIBLY LEAVING SOME BAYS OR HARBORS WITHOUT ADEQUATE PROTECTION AGAINST OIL SPILLS.

SB 500-4
(LC 20)
3/1/91 (JH/se)

PROPOSED AMENDMENTS TO

SENATE BILL 500

On page 5 of the printed bill, line 2, delete "routes," and after the first "and" insert "spill response, navigational and communication".

On page 6, line 44, after the first "to" insert a colon and begin a new paragraph and insert "(1)".

On page 7, after line 2, insert:

"(2) Transfer to the compact any local authority of a party to establish pilotage, navigation or ship assistance requirements for a harbor, bay or river within the territorial sea of the party.".

ARCO PUBLIC POLICY VIEWS:
PROPOSED PACIFIC OCEAN RESOURCES COMPACT

SUMMARY
Legislation has recently been introduced in the states of Alaska, California, Hawaii, Oregon and Washington that would establish an interstate compact on oil and hazardous substance transportation, spill prevention, spill response, and for other purposes, including extending the current three mile state coastal economic zone to the Federal 200 mile limit. The compact is to become effective when one or more states ratify it and it is approved by the U.S. Congress, and would supersede existing state and Federal law.

ARCO believes that coordination of Pacific coastal state oil spill prevention and response plans among the states and with Federal law is important to effective spill protection for the marine environment. However, a broad ranging formal interstate compact that would seek to supersede recently passed comprehensive Federal and state oil spill prevention and response laws, which are in the process of implementation, and further emerging state laws in Alaska, Washington, and Oregon, is premature, unnecessary, costly to state consumers and taxpayers, and could even worsen spill prevention and response capability. Thus, ARCO is opposed to the Pacific Ocean Resources Compact.

ARCO believes that the same objectives can be accomplished more effectively and efficiently though a different mechanism.
That mechanism is the establishment of an inter-state coordinating working group on spill prevention and response. Its membership should be small, and should include key legislative and administrative staff, as well as limited technical expert participation from industry and other pertinent groups. Its scope should include discussions of spill prevention and response implementation, regulation and legislation. Federal agency advisory participation should also be sought.

Such a group could be termed the Pacific Ocean Spill Prevention and Response Group (POSPRG). This group would significantly improve interstate spill prevention and response coordination, but without individual states giving up their own state legislative authority, without changing national or international law for Pacific coastal states only, without having member states bear a potentially large financial burden for compact implementation and operations, and without lessening the individual member states' ability to respond to local changes that may be necessary over time. With advisory participation from Federal agencies, this group would also improve state-Federal oil spill prevention and response coordination for the Pacific coastal states.

ARCO strongly recommends that a POSPRG be established in lieu of the Pacific Ocean Resources Compact

BACKGROUND

Overview

This compact seeks to achieve some 15 purposes for the participating states. Included among them are: To provide uniform regulation of oil and hazardous substance transportation, to provide a legal mechanism to regulate "certain ocean activities...that the parties cannot now individually regulate, to "enhance regional sovereignty," to "direct federal agencies...," "to address issues of mutual concern...and enhance ...influence over activities of concern not now addressed...," to insure the opportunity for regional citizen participation in regional ocean resources issues, to establish a regional system of maintenance and protection of common ocean resources and oil and hazardous substance vessel transportation, and, in effect, to extend the current state three mile coastal economic zone out to the Federal 200 mile economic zone limit.

To achieve these purposes, the compact seeks to provide collective legal authority and responsibility for the signing states to override existing state law and federal law in some 19 broad areas. The participating states would give up individual state legislative and regulatory authority to the compact in these areas, and the Federal government would allow their existing law to be superseded while sanctioning whatever changes in international law would be necessary.

Among these areas are: Authority to establish uniform safety standards for routes, crews and equipment for vessels transporting oil or hazardous substances, insure coordinated oil and hazardous spill response plans and programs, establish contingency plan requirements for oil vessels and hazardous materials transportation, establish and maintain a spill response clearinghouse, provide a forum for resolving ocean resource program conflicts, provide opportunities for public comment and meetings on compact activities, designate officials to collectively represent the signing states to federal agencies, identify and recommend compiling ocean resource data needs, recommend adoption of ocean resource management rules and regulations, establish and impose sanctions and civil penalties for violations, accept gifts and grants, enter into contracts, conduct and prepare compact related studies, investigations, research and programs, conduct public hearings, issue subpoenas, appoint technical and advisory committees, and adopt all regulations to carry out duties and exercise authority.

Comprehensive oil spill prevention and response legislation was passed in 1990 at the federal level (Oil Pollution Act of 1990), in California (Lempert-Keene-Seastrand Oil Spill Prevention and Response Act) and in Alaska (a comprehensive package of more than 10 laws passed in 1989 and 1990). Implementation is just getting underway. This inter-state compact, in effect, assumes that federal and state implementation will fail, without giving it a chance to be implemented. And, coming at this point in the implementation process, the compact would impede, rather than enhance, the implementation process, particularly confusing and potentially further delaying the regulation of domestic and foreign vessels.

Funding

Funding for the implementation and administration of this compact would be provided by the states that sign it. State expenses would be shared in proportion to each state's gross state product, except that no state would provide more than 50 percent of the funding nor less than 10 percent. Regardless of funding shares, each participating state would have one vote, and a majority of all participating states would be required for any action or decision.

In 1986, shares of total Gross State Product for the states in the region were: Alaska (2.8%), California (77.2%), Hawaii (2.8%), Oregon (6%), and Washington (11.2%). While the details would need to be negotiated, if California were limited to a 50% share of costs, Alaska, Hawaii, Oregon, and Washington could pay 12.5% of the costs each.

This compact would not replace existing state law on oil spill prevention and response, but would only replace certain portions of it. The compact would also replace the Federal role and increase regulations in certain spill prevention and response areas, and in addition, as noted above, provide for regulatory activities for ocean resources and other functions. In addition, there is no requirement that the compact use any of the cost benefit or other economic analysis required by federal regulatory and some state agencies before issuing its rules and regulations.

State consumers and tax payers would have to bear this increased cost, in addition to the costs of existing and proposed federal and state oil spill prevention and response law. And if states failed annually to appropriate sufficient funds for compact operations after drawing these new powers and authorities from state and federal law, enforcement responsibility and oversight would be confused, marine operations would be made more difficult, and the potential spill risk could be increased.

An Alternative Approach

Clearly it is in the best interests of the Pacific coastal states coordinate state oil spill prevention and response legislation, standards, and regulations among themselves. Since the marine industry is interstate, national and international in scope, it also would be useful for the Pacific coastal states to actively work with the U.S. government, and in particular the Coast Guard, to rapidly implement Federal law.

To accomplish these ends, it is recommended that the Pacific coastal states establish an interstate coordinating working group on oil spill prevention and response legislation and implementation, which could be termed the Pacific Ocean Spill Prevention and Response Group (POSPRG). The group should be kept relatively small to be effective. Each concerned state would have membership, which should at least be at the senior administration and legislative staff level. Limited technical participation also should be sought, as needed, from industry and other pertinent groups. Additionally, it is recommended that limited Federal agency participation (ie, Coast Guard, EPA) be sought as well.

This group would serve as the focal point for Pacific coastal state spill prevention and response cooperation and coordination. It would seek to improve the quality of state spill prevention and response by improving state consistency in standards, planning and procedures, including contingency planning, while seeking to remove overly redundant and unnecessary requirements. It would serve as a forum for discussion of state implementation problems and recommended legislative and regulatory improvements, including model state spill legislation and regulations.

With Federal agency participation, Pacific coastal states would receive timely information on Federal plans and regulations, as well as provide coordinated state input into the Federal process.

Such a group would meet the key objectives of the compact, while facilitating coordination and implementation of existing law. It would also avoid setting up and funding a major new bureaucracy with new rules and regulations, thereby adding confusion to existing oil spill prevention and response law.

Government Affairs
Public Issues
ABB: 2/27/91

PACIFIC OCEAN RESOURCES COMPACT

Multi-State Compacts

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

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

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

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

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

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

Benefits to Alaska of Joining the Pacific Ocean Resources Compact

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

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

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

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

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

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

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

G. Fay
2/1/91

cc: JAA, Kurt Oxley, OFW, Bob Lewine (by FAX)

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ARCO MARINE

February 21, 1991

BY FACSIMILE

Susan Liebson, Esquire
ARCO Transportation Company
300 Oceangate
Long Beach, California 90802

Re: Pacific Ocean Resources Compact:
Procedures for Congressional Approval

Dear Susan:

You have asked us to describe the procedure for the approval by the United States Congress of the Pacific Ocean Resources Compact under the Compact Clause of the United States Constitution.

The Compact Clause is a prohibition on compacts between states without the "consent of Congress." While courts have ruled that not all compacts require the consent of Congress, an agreement such as the Pacific Ocean Resources Compact, which encroaches upon the authority of the Federal government, clearly does.

Normally compacts are approved by the Congress through the enactment of consent legislation, which like other legislation requires the signature of the President. The Compact clause requires merely the "consent of Congress", however, and some Congressional staffers have expressed the opinion that the President's signature might not be required. It is difficult for us to envision a truly effective compact unless it is approved by legislation that requires the President's signature. A concurrent resolution, which does not require the signature of the President, does not have the force and effect of law, and nothing in the Constitution explicitly gives a compact that status. If a compact proposes to supersede or alter Federal laws or regulations in any way, it would appear that Congress must approve it through the enactment of legislation. One court has ruled that consent legislation with the signature of the President is necessary to delegate Federal authority, and our research has failed to reveal any compacts that were approved by the Congress with a mere concurrent resolution.

The legislation approving a compact can take several different approaches to approval: express, advance, conditional and implied. Express consent is the usual form and it follows adoption of the compact by one or more of the state parties. A certified copy of the compact is transmitted to the Congress by a state party, and legislation expressly approving that compact is then introduced. The legislation may also include conditions on the approval of the compact, such as preserving where necessary the foreign policy prerogatives of the President.

The legislation is generally referred to the Judiciary Committees of each House for report and recommendation. A compact may also be referred to other Committees, particularly in the House of Representatives, where the consent legislation contains amendments to other Federal laws within their jurisdiction or otherwise affects issues within their subject matter jurisdiction.

Staff of the Judiciary Committees inform us that compacts are typically approved in a routine fashion. The House Judiciary Committee typically holds hearings on compacts pending before it, but the Senate Judiciary Committee rarely does, relying instead on the record of state and House action. Therefore, it appears that we should focus our efforts on the Administration, through the Coast Guard and the State Department, and on the individual states. It may be extraordinarily difficult to stop the Pacific Ocean Resources Compact altogether, and ultimately we may have to emphasize amending the Compact to make it more acceptable to the Administration and the marine and energy interests it would affect.

The first order of business should be to deal with the compact in state capitals in an effort to stop or, if that proves impossible, to amend it to a more acceptable form.

Sincerely,

Warren L. Dean

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ARCO MARINE

February 12, 1991

BY FACSIMILE

Captain Jerry Aspland
President
ARCO Marine, Inc.
300 Oceangate
Long Beach, CA 90802-4341

Re: Proposed Pacific Ocean Resources Compact

Dear Captain Aspland:

You have asked us to review the law on state compacts and to answer the questions itemized below with respect to the Pacific Ocean Resources Compact, a proposed compact pending before the Oregon legislature. Many of the issues raised by the Compact are complicated issues of first impression that have constitutional implications. This letter sets forth our preliminary views on these issues. We will continue our research and supplement our analysis as required.

Compacts are fairly common mechanisms through which states accomplish a variety of purposes that require collaboration. Normally, compacts address activities within the existing authority of the constituent states, but they may include activities beyond the authority of those states if Congress, in addition to approving the compact, explicitly authorizes those activities. The proposed Pacific Ocean Resources Compact is novel in that it would provide a broad array of powers to the Compact that is unprecedented in previously approved compacts. Further, some of the powers under the Compact not only are traditionally within federal authority but also may impinge on functions reserved to the federal government by the Constitution. Any attempt by Congress to authorize the Compact to exercise these powers will subject the Compact to constitutional challenge. In addition, the Compact's potential for detracting from the required uniformity of laws governing admiralty and maritime affairs raises constitutional issues not implicated by previous compacts.

Compacts are typically used by two or more states to create organizations for regulatory purposes. In its most basic form, an interstate compact is simply a formal, legally binding instrument among two or more states establishing a regular method of addressing an issue of shared interest. Interstate compacts date back to the Articles of Confederation. Their use for regional water management began in the 1920s with the adoption of the Port Authority of New York and the Colorado River Basin compacts. The use of interstate compacts has grown dramatically in recent years. For instance, from 1941 to 1975, 100 new compacts were adopted relating to a wide variety of state concerns, including extradition and environmental matters. In the area of interstate water compacts, there are four general categories of existing compacts: (1) water allocation compacts; (2) pollution control compacts; (3) flood control and planning compacts; and (4) comprehensive regulatory and project development compacts. The compacts within these four areas evolved through the normal compact process of state negotiation, leading to passage of identical state enabling legislation, and finally approval of the compact by Congress through enactment of a public law.[1]

A cooperative agreement among states may or may not be covered by the compact clause of the United States Constitution (Article I, § 10 cl. 3) which provides, "No state shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign Power . . . ." The only interstate agreements that fall within the scope of the compact clause are those "tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States." If the joint activity does not affect the federal sphere, no approval by Congress is needed. If it affects the fed-

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[1] Hill, <u>The Great Lakes Quasi Compact: An Emerging Paradigm for Regional Governance of U.S. Water Resources?</u>, Detroit College of Law Review 1 (Spring 1989).

eral sphere, then Congress must authorize the activity.[2] Thus, in upholding the constitutionality of the Multistate Tax Commission, which coordinates, without congressional consent, the taxation of interstate corporations by twenty-one member states, the Supreme Court noted that although the Commission "increase[s] . . . the bargaining power of the member States [with respect to] the corporations" subject to regulation, it does not do so with respect to the federal government or non-member states.[3]

"[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause."[4] Such "consent legislation" requires a majority vote of both houses of Congress and the signature of the President.[5]

The Supreme Court has also identified several formal criteria for defining the range of agreements not subject to the clause's congressional approval requirement. In rejecting a compact clause challenge to a system that facilitated interstate banking, the Court stated that the system lacked "several of the classic indicia of a compact," noting in particular that the statutes involved were

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[2] Seattle Master Builders v. Pacific N.W. Elec. Power, 786 F.2d 1359 (9th Cir. 1986) citing Cuyler v. Adams, 449 U.S. 443, 440 (1981).

[3] United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 473 (1978).

[4] Cuyler, 449 U.S. at 440. There is potential for overlap where both tests are met: "state agreements whose subject matter is appropriate for federal legislation but which do not threaten to increase the political power of the states at the expense of the federal government. Within this area, apparently, a compact that does not receive congressional consent will not be invalidated for lack of consent, but a compact that is consented to by Congress will thereby become federal law." Washington Metro. Area Transit Authority v. One Parcel of Land in Montgomery County, Maryland, 706 F.2d 1312 (4th Cir. 1986).

[5] One Parcel of Land, 706 F.2d at 1319.

unilaterally revocable and did not interpose a new authority between federal and state governments.[6]

1. If the Compact enters into force, will the federal legislation approving the Compact and the regulations adopted under terms of the Compact supersede pre-existing federal law and regulations?

Yes. In Cuyler v. Adams, 449 U.S. 433 (1981), the Supreme Court held that the test for whether an interstate compact becomes federal law is whether it "is a congressionally sanctioned interstate compact within Art. I, § 10 of the Constitution." "Where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the State's agreement into federal law under the Compact Clause."[7] The Pacific Ocean Resources Compact affects interstate commerce and admiralty and maritime affairs, both of which are appropriate subjects for congressional legislation. Thus, upon its approval by Congress through enactment of a statute, the Compact's terms would have the force and effect of subsequent federal legislation that would supersede pre-existing law to the extent the terms overlapped.

Because a compact is a contract, congressional intent is determined according to the terms of the compact itself and the language of the consenting legislation.[8] Congress may make its consent to a compact conditional upon the states' compliance with specified terms. Congress may, in the context of a compact or otherwise, subject federal government activities to state law by enacting legislation that makes the authorization of state control clear and unambiguous.[9]

2. May the Coast Guard be authorized to enforce the regulations adopted under terms of the Compact? May the Coast Guard be required to do so?

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[6] Northeast Bancorp v. Board of Governors of the Fed. Reserve Sys., 472 U.S. 159, 175 (1985).

[7] Cuyler, 449 U.S. at 440.

[8] Texas v. New Mexico, 482 U.S. 124 (1987).

[9] Seattle Master Builders, 786 F.2d at 1364 (citation omitted).

The answer is "yes" in both instances, but such authority or requirement must be explicitly provided for by Congress in the consenting legislation or otherwise. "There is no bar against federal agencies following policies set by nonfederal agencies."[10] While our research has not revealed cases directly on point, it is "not unusual for the federal government to be involved in or to be directly affected by compact-created agencies. . . . The federal government has even participated as a member of interstate compact agencies."[11]

This issue is one that Congress must specifically address. For example, in legislation consenting to the Great Lakes Basin Compact, the bill specifically provided that nothing in the compact would affect the jurisdiction, powers or prerogatives of any department, agency or officer of the federal government with respect to the Great Lakes Basin.

3. What is the relationship between OPA 90 and (1) the federal legislation approving the Compact and (2) the regulations adopted under the Compact?

(1) With respect to the consenting federal legislation, the relationship to OPA 90 will be determined by the terms of the Compact itself as approved by Congress. If the Compact language is irreconcilably inconsistent with OPA 90 or implementing regulations, it would supersede the pre-existing provisions.

(2) Giving regulations adopted under the Compact the force and effect of federal regulations would raise serious constitutional issues. Normally federal regulations can be promulgated only by the Executive Branch of the Federal government. At a minimum, congressional intent to permit the Compact to promulgate such regulations must be explicit. Even then it is unclear whether such regulations would withstand constitutional challenge under the appointments clause, which, in general, requires all executive action to be taken by persons appointed by, and subject to the authority of, the President.

4. Had OPA 90 not been enacted, would it have been possible to form the Compact?

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10 Seattle Master Builders, 786 F.2d at 1364.

11 Id.

Yes. The states do not derive their authority to form a compact from OPA 90 but rather from the Constitution. In any event, because the Pacific Resources Compact implicates areas of federal concern, the Compact must receive congressional approval to be valid.

5. What is the status of international treaties covering the same substantive issues as those the Compact purports to cover: (1) under domestic law? (2) under international law?

(1) A compact has the same effect on treaties as any other federal law. Under the Constitution, a treaty has the force and effect of federal law. A compact, and the federal legislation approving it, can supersede a treaty as could other subsequent federal law. (2) Under international law, the obligations of a treaty remain despite enactment of conflicting federal law (or approval of conflicting compact terms). The conflict between a federal law and a treaty obligation could result in the United States being in violation of those obligations and thus would give rise to serious foreign relations concerns.

6. Are compacts by their nature all-inclusive or are they governed by the express provisions of the approving federal legislation?

Because a compact is considered a contract, it is governed by its express terms to the extent approved by Congress. Also see response to question 1.

7. Must state laws and regulations within the states that are party to the Compact conform to the regulations adopted under the Compact?

Upon entering into a compact, the member states effectively surrender a portion of their sovereignty. The compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. Therefore, one party may not enact legislation that would impose burdens upon the compact absent the concurrence of the other parties.[12]

Because a compact organization is considered the state-created agency of each member state, a state can impose state law on a compact organization only if the compact specifically reserves the

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[12] Hellmuth v. Washington Metro. Area Transit Authority, 414 F. Supp. 408, 409 (D. Md. 1976).

right to do so. A compact constitutes not only law but a contract that may not be amended, modified or altered without the consent of all parties. If a state wishes to enact stricter standards, it must ensure that the compact language permits it, as did the compact creating the Tahoe Regional Planning agency that contained the following language:

> Every such ordinance, rule or regulation [adopted by the compact agency to effectuate its regional plan] shall establish a minimum standard applicable throughout the basin, and any political subdivision may adopt and enforce an equal or higher standard applicable to the same subject of the regulation in its territory.[13]

8. **How would the Compact affect Ray v. Atlantic Richfield Company and CHEVRON U.S.A. v. Alaska?**

If the Pacific Ocean Resources Compact were implemented, it would give the Compact the ability to regulate (consistent with the terms of the Compact and approving federal legislation) in areas that the courts in these two cases ruled had been pre-empted by federal legislation.

9. **Can the Compact, as approved by Congress, extend the geographic scope of states' jurisdiction; e.g., to the EEZ? Can it extend the authority of states to regulate shipping beyond present limitations on state authority imposed by federal law?**

Congress can, in legislation approving a compact or otherwise, authorize a compact to exercise any power that it could authorize a state to exercise. The power to enact and enforce regulations governing activities off the coasts has inherent foreign policy implications, and there is, therefore, a constitutional limit on the extent to which Congress may authorize a state to exercise that power. The delineation of that limit has been the subject of controversy for many years, and any attempt by Congress to extend state authority to the EEZ would substantially intensify that controversy.

10. **Would inclusion of a "foreign power," British Columbia (B.C.) in this case, have an effect on the terms, conditions, or legal**

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[13] California Dep't of Transp. v. South Lake Tahoe, 466 F. Supp. 527 (E.D. Cal. 1978).

status of the compact, as contrasted with existing compacts (U.S. states only)?

The international aspects of the compact must be considered by Congress. This issue has been addressed in the Great Lakes Basin Compact, which contemplated membership by the Canadian provinces of Ontario and Quebec with Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Pennsylvania, in a compact relating to the development, use and conservation of the water resources of the Great Lakes Basin. That compact was stated to be "solely a consultative and recommendatory agency which will cooperate with the United States."

The House report on the bill by which Congress consented to the compact specifically states that the consent given by Congress to the compact does not extend to the paragraph providing for membership by the Canadian provinces, nor does it "purport to authorize recommendations to, or cooperation with, any foreign or international governments, political subdivisions, agencies or bodies." It also provided that nothing in the compact

> shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or any international commission or agency over the Great Lakes Basin . . . nor shall anything contained in the bill be construed to establish an international agency or to limit or affect in any way the treatymaking power or right of the United States.

H.R. Rep. No. 1640, 90th Cong., 2d Sess. 3-4. The language of the compact itself, therefore, makes clear that the compact does not affect international treaties. The inclusion of similar language in legislation consenting to the Pacific Resources Compact would nullify any provisions of the compact that were inconsistent with the obligations of the United States under international law.

Although the Compact Clause of the Constitution clearly envisions the possibility of agreement or collaboration between states and foreign powers, the Pacific Ocean Resources Compact extends the possible scope of this cooperation beyond the extent previously allowed. For example, existing compacts allow for cooperation between states and foreign powers to build connecting bridges or tunnels and permit cooperation for the operation of these structures. The cooperation envisioned by the Compact at issue, however, has serious implications for the constitutional right of the federal government to conduct the foreign relations of the United States and, as such, may be subject to challenge on constitutional grounds even with congressional consent. The prospect that the Coast Guard may be called upon to enforce compact regulations in British Columbia (or that British Columbia police may be called upon to enforce those regulations in United States) presents unprecedented problems in this regard.

Please let us know if you have further questions.

Sincerely,

Warren L. Dean

MARITIME JURISDICTION

The maritime jurisdictional areas of the United States are (i) internal waters; (ii) the territorial sea; (iii) the contiguous zone; (iv) the exclusive economic zone; and (v) the continental shelf. With the exception of the continental shelf, the outer boundary of these jurisdictional areas is defined by reference to the "baseline from which the territorial sea is measured," commonly known as the "baseline." The placement of the baseline is determined in accordance with principles of international law. See 33 C.F.R. § 2.05-10; Articles 3-13, 1958 Convention on the Territorial Sea and Contiguous Zone. See generally, A. Shalowitz, Shore and Sea Boundaries (1964). In general, the baseline is the low water mark along the coasts plus closing lines across the mouths of rivers, inlets, bays and other similar indentations.[1]

Internal waters comprises all waters inside the baseline. The extent of the territorial sea is uncertain. As a matter of foreign policy, the outer limit of the territorial sea was recently extended from three nautical miles beyond the baseline to 12 nautical miles.[2] Apparently, however, the outer boundary of the territorial

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[1] The baseline should not be confused with the "lines of demarcation," which divide the high seas from inland waters for purposes of the rules of the road, see 33 U.S.C. § 151; 33 C.F.R. part 80, nor with the "boundary lines," which delineate the areas where various federal statutes apply, see 46 C.F.R. part 7.

[2] Presidential Proclamation No. 5928, 57 Fed. Reg. 777 (December 27, 1988). By its terms, the proclamation did not, in itself, "extend[] or otherwise alter[] existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom."

sea remains at three miles for purposes of domestic law.[3]

The contiguous zone extends from the outer limit of the territorial sea (three miles) out to 12 miles from the baseline.[4] The outer boundary of the EEZ is a line 200 nautical miles from the baseline.[5] All waters beyond the territorial sea (including the exclusive economic zone) are "high seas."[6]

Several other terms are often used in the context of maritime jurisdiction. The term "territorial waters" encompasses all waters landward of the outer limits of the territorial sea; that is, the territorial sea plus internal waters. The term "customs waters" means all waters between the baseline and the outer limit of the

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[3] See generally, Alexander, The Territorial Sea of the United States: Is It Twelve Miles or Not?, 4 J. Mar. Law & Comm. 449 (1989) and authorities cite therein (concluding that the presidential proclamation has the effect of extending the territorial sea only as a matter of foreign policy.

[4] Department of State Public Notice 358, 37 Fed. Reg. 11,906 (June 1, 1972). International law now recognizes a contiguous zone out to 24 miles, but the United States has not extended its zone.

[5] Except for purposes of fishery management and conservation, the inner boundary of the exclusive economic zone is the outer limit of the old territorial sea (three miles from the baseline). Presidential Proclamation No. 5030 (March 10, 1983). For purposes of fishery management and conservation, the inner boundary of the exclusive economic zone is "the seaward boundary of each of the coastal states." 16 U.S.C. § 1802(6).

[6] In some contexts, mostly in older statutes and cases, the term "high seas" is used to refer to all waters beyond the headlands, "the open ocean, where the dominion of the winds and waves prevails without check or control." United States v. Bevans, 16 U.S. (3 Wheat.) 336, 341 (1818) (Daniel Webster, arguing for the defendant). This includes the territorial sea and some internal waters, such as the Great Lakes. See, e.g., 18 U.S.C. § 7 (defining the special maritime and territorial jurisdiction of the United States); United States v. Rodgers, 150 U.S. 249 (1893) ("high seas" construed to include unenclosed portions of the Great Lakes). In most modern contexts, and certainly in international law, "high seas" refers to the waters beyond the territorial sea of any nation.

contiguous zone; that is, the territorial sea plus the contiguous zone. The term "inland waters" is often used as being synonymous with "internal waters"; more appropriately, "inland waters" should be reserved for use in describing those waters in which use of the "inland rules of the road" is prescribed.

Maritime jurisdiction is generally stated in relation to national governments, in this case the United States. In general, the United States has plenary power to enact and enforce laws relating to United States vessels without regard to location.[7] The power of the United States to enact and enforce laws relating to foreign vessels varies with the vessel's location and activity.[8]

Absent a delegation of federal authority,[9] the power of an individual state of the United States to enact and enforce laws relating to vessels extends only to the waters within its territorial limits, that is, its internal waters and that portion of the territorial sea over which it may claim authority under federal law.[10] Even there, the states' powers are subject to the paramount

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[7] Of course, the United States must obtain permission from a foreign government before exercising its enforcement jurisdiction while a vessel is in that foreign government's territorial waters.

[8] This complex subject will be addressed in a separate paper.

[9] The extent to which the federal government may delegate its authority to enact and enforce laws within maritime jurisdictional areas beyond the state's territorial limits is uncertain.

[10] The Supreme Court's decision, in United States v. California, 332 U.S. 19 (1947), that the United States held paramount rights in the lands under the territorial sea was changed in the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315, which granted all coastal states a right to claim a boundary out to three miles. See United States v. Louisiana, 389 U.S. 155, 156 (1967). That Act further granted states bordering on the Gulf of Mexico a right to claim a boundary beyond three miles (to a maximum of three marine leagues, approximately nine miles) based on the extent of

interests of the federal government.[11] In general, a state may exercise its police powers to enact and enforce any law governing maritime activities that does not present an active conflict with federal law. Askew v. American Waterway Operators, Inc., 411 U.S. 325 (1973). In the absence of such a conflict, a state law is valid unless it prejudices "the characteristic features of the maritime law [or] interfere[s] with its proper harmony and uniformity [with respect to] international and interstate relations." Just v. Chambers, 312 U.S. 383, 389 (1941).

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their marine boundary at the time they were admitted into the Union. Id. Based on this latter provision, the marine boundaries of Texas and Florida (in the Gulf of Mexico) have been set at three marine leagues. United States v. Louisiana, 363 U.S. 1 (1960) and 389 U.S. 155 (1967); United States v. Florida, 363 U.S. 121 (1960).

[11] A state may enact laws governing the conduct of its citizens (individual and corporate) on waters beyond its territorial limits. The Hamilton (Old Dominion S.S. Co. v. Gilmore, 207 U.S. 398 (1907) (involving authority over a corporate citizen); Skiriotes v. Florida, 313 U.S. 69 (1941) (involving authority over an individual citizen). This power too is subject to the paramount interests of the United States. And the extent of the state's power to actively enforce such laws beyond its territorial limits is uncertain. Id., 313 U.S. at 78-79.