SCOMM

78:22

MINUTES

3/26/91

barges - gross weight tonnage

44 - under 2,500

19 - 2,500 - 5,000

29 - 5,000 +

---

92 total

opposition

Uncertainty

3rd Level of govt.

Risk / Lower stds
increase regulation

Cost / Potential savings
Requires oppn regulation

Overall / step in New
direction - opportunity for
AC to increase influence
~~on other~~ on decisions that
affect us.

Amends/differences

(1) Origin — WSC/PFTF

(2) what is compact? US const.

Art I sec 10 "no state shall w/out const -- enter into compact."

Ruling regarding N.W. Power Plan Carried

(3) What Does This compact DO?
P7. - P.9/10

(4) How does Ark fit in?

(5) Protections offered

(6) Benefits for Ark —
More Power from DC to West Coast.
Increase state Power
W/ State Regs + FED Regs NOW in Progress

we can learn from each other -

Some would argue that we can do that now ....

Study groups, WLC, BC-States etc.

NO Power / Less interest

OBA '90 we fought U.S. stds v. State options

Industry lost & States lost power -

if west coast states agree Congress would accept

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz

P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

May 6, 1991

To: Members of the Senate Special Committee on Oil and Gas and Senate Transportation Committee

From: Senator Sam Cotten
Chair, Senate Special Committee on Oil and Gas

RE.: **Sectional Analysis of Senate Bill 102--Pacific Ocean Resources Compact Amendments**

In general, this version of the bill is a compromise between the original bill and the amendments proposed by the state of Oregon reviewed at the last committee meeting on the Compact. Under the first bill, the Compact agency would have authority to essentially direct U.S. Coast Guard (USCG) rulemaking. The second proposal established the Compact as an interested party for making recommendations to the USCG.

Under the current proposal, the Compact agency continues with the status as an interested party. In addition, by serving as a West Coast Spill Prevention Advisory Committee to the USCG, the Compact is more intricately involved in the development of rules pertinent to the prevention of oil spills. As in all the reviewed versions, the USCG retains enforcement authority.

In addition to the amendments outlined below, the committee will consider amendments for exempting small barges from Compact regulation.

Article I-Findings and Purpose

Page 2, line 23: New language inserted to further clarify that the Compact is not intended to regulate fisheries or marine resources

Page 3, line 2: "Ocean management" was in the original bill draft; was removed to reduce the Compact's scope; inserted back to avoid limiting of the Compact

Lines 19-27: Similar language was in the original draft; current language in the same spirit but

"softened"

Line 31: "encouraging" changed from "providing"

Page 4, lines 4-8: "coordination," "work with," "advance," and "monitor" changed from "sovereignty over, "direct," "act in," and "enhance the oversight and supervision of," respectively. These changes essentially change the Compact from an entity that directs federal agencies to one that works with federal agencies--especially the U.S. Coast Guard.

Line 16: "ocean resource management" added back consistent with page 3, line 2 cited above.

Lines 29-30: "recommend" and "monitor" changed from "establish" and "provide oversight," respectively. These changes have an effect similar to those on page 4, lines 4-8 cited above.

Article II-Definitions

No changes in Article II

Article III-Operative Dates

No changes in Article III

Article IV-Pacific Ocean Resources Compact

Page 6, line 24: "two" changed from "three." Changes the number of persons appointed by each party from three to two.

Article V-Pacific Ocean Resources Compact Authority

Page 7,lines 11-31: New (a)(1) added. This section authorizes the Compact to facilitate the prevention of oil and hazardous substance spills by 1) serving as a West Coast Spill Prevention Advisory Committee to the U.S. Coast Guard; 2) participating as an interested person in any U.S. Coast Guard rulemaking proceeding relating to the establishment of safety standards for routes, crews, and equipment for vessels transporting oil and hazardous substances; and 3) making recommendations to other appropriate state, federal, regional entities on proceedings as specified in two above.

Page 8, line 5:	"consistent" changed from "at least as stringent as," the federal Oil Pollution Act of 1990.
Lines 9-15:	New language added that 1) allows contingency plans approved by states to remain in effect until a new contingency plan is approved by the Compact and 2) requires Compact contingency plans to cover all subject areas included by the member parties' prior to the Compact's formation.
Page 9, lines 5-6:	Specifically includes submission of contingency plans and financial assurance requirements as topics of regulations the U.S. Coast Guard is requested to enforce.
Lines 7-10:	Allows for Compact cost recovery for the review of contingency plans.
Lines 18-19:	Establishes a standardized cost recovery formula for damages to natural resources by spills.
Lines 20-30:	Provides for the Compact to enter into an agreement with the U.S. Coast Guard under which the Compact will administer compliance with the requirements for demonstrating financial responsibility under section 1016 of the federal Oil Pollution Act of 1990. As with contingency plans, states' financial responsibility requirements remain in effect until the Compact establishes requirements and enters into an agreement with the U.S. Coast Guard for enforcement. Under this new section, the Compact agency can no longer issue subpoenas.

Article VI-Pacific Ocean Resources Compact Organization

No changes.

Article VII-Voting and Quorum

Pages 10-11, Lines 30-31 and 1	Changes voting procedure so each representative from each party state has one vote. For a measure to passage, it must have one affirmative vote from each party state.

JOINT SENATE TRANSPORTATION AND
SPECIAL COMMITTEE ON OIL AND GAS
March 5, 1991
1:35 P.M.

OIL AND GAS MEMBERS PRESENT

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice Chairman
Senator Lyman Hoffman
Senator Dick Shultz

OIL AND GAS MEMBERS ABSENT

Senator Bettye Fahrenkamp

TRANSPORTATION MEMBERS PRESENT

Senator Curt Menard, Chairman
Senator Lloyd Jones, Vice Chairman
Senator Drue Pearce
Senator Dick Shultz

TRANSPORTATION MEMBERS ABSENT

Senator Bettye Fahrenkamp

COMMITTEE CALENDAR

SENATE BILL NO. 102
"An Act enacting and entering into the Pacific Ocean Resources Compact."

PREVIOUS ACTION

SB 102 - No previous action to consider.

WITNESS REGISTER

Professor Harry Bader
University of Alaska, Fairbanks
Division of Natural Resources Management
School of Agriculture and Land Resources Management
Fairbanks, Alaska

Virginia Fay, Legislative Aide
c/o Senator Cotten
P.O. Box V
Juneau, Alaska 99811

Janice Adair, Special Assistant

Department of Environmental Conservation
P.O. Box O
Juneau, Alaska 99811-1800

Captain Bodron, Chief
Marine Safety Division
U.S. Coast Guard, 17th District
P.O. Box 3-5000
Juneau, Alaska 99802-1217

ACTION NARRATIVE

TAPE 1, SIDE 1
Number 001

SENATOR COTTEN called the Joint Senate Transportation and Oil and Gas Committee meeting to order at 1:35 p.m. and announced SB 102 PACIFIC OCEAN RESOURCES COMPACT to be up for consideration. He said they were on teleconference with Professor Harry Bader, University of Alaska, Fairbanks. He said the purpose of the meeting was to give the members initial exposure to the legislation. He said that a lot of different organizations had been talking about this sort of compact, including the Ocean Resources Committee of the Western Council of State Governments of which he is Vice Chairman and the Pacific Fisheries Task Force. He said this bill was one of the main topics of the Pacific Fisheries Task Force meeting held this past week end in San Diego. He explained that this legislation has been introduced in Alaska, Washington, Oregon, Hawaii, and California. The U.S. Congress would have to ratify any compact. There is still a question of whether British Columbia could become a voting member. He said the primary intent of this legislation is to regulate traffic that handles oil and hazardous substances. He said initially they want to talk about routes, crews, equipment standards, and contingency plans. He said there was a need to protect those who provide local essential services.

Professor Bader said that a compact ratified by Congress becomes federal law, and is binding upon federal agencies. Intrastate compacts are relatively new territory and were created out of Supreme Court decisions made within the last decade. He said that regional sovereignty is more effective than large uniform federal standards, because they accommodate local situations. Since this is such a new area, there are concerns about what the compact would actually do.

SENATOR PEARCE asked if the language passed by each legislature have to be the same. Senator Cotten answered that the language does have to be essentially the same, but not exactly. He said that each state may have differences, for instance, in how the members are picked to represent Alaska,

how it's funded, etc.

SENATOR PEARCE requested a list of "industry" people who attended the Ocean Resources meeting of April last year and what their comments were on this issue.

PROFESSOR BADER emphasized that this is not the type of compact that is regularly contemplated in constitutional law. Its authority and jurisdiction is a direct result of a series of cases first enunciated in 1983 and culminated with Seattle Master Builders in 1986 which recognized for the first time definitively that an interstate compact, for all intents and purposes, is federal law. In other words, the state could exercise jurisdiction and sovereignty in a manner not otherwise available to an individual state due to the interstate commerce clause of the federal constitution.

Professor Bader explained that it was felt that the Exxon Valdez disaster was caused from complacency and a lack of vigilance. They isolated three areas of concern - enhanced state sovereignty, enhanced community empowerment and avenues for public participation, and the third, uniform standards that would be consistently applied. Also, there is a need to protect those who provide local essential services. Professor Bader said that they thought local people would have a better opportunity to influence the results of a regional based compact, rather than going through the federal bureaucracy. He commented that the uniform standards are good for both environmental protection and economic planning. He said the greatest disincentive to economic development is an unstable regulatory environment.

Number 300

SENATOR PEARCE asked for a list of items he was outvoted on recently. She thought that now would be a good time to support getting some of those items back. Professor Bader said he was outvoted on exemptions for local barges which would drive up the cost to local communities. He said that Virginia Fay, Senator Cotten's staff, is in contact with Jeannette Hohman regarding clarification of this issue.

SENATOR PEARCE asked about returning to the simple majority vote within the compact. Professor Bader said that was another important issue he was outvoted on. Senator Pearce agreed this was important as Senator Zharoff and Representative Davidson said, because of our Alaska experience with the interstate fisheries management committees where the Alaskans have felt their vote was lost.

SENATOR JONES asked if the compact takes precedence over the federal government. Professor Bader said that no, the compact

is the federal government, because it is ratified by Congress with a delegation of authority "normally considered the sphere" of federal government. He clarified that the law of the compact cannot involve a subject area not originally intended by Congress to be abrogated.

Senator Jones asked if the compact covered ocean resources within the EEZ. Professor Bader answered no, and definitely stated that the intent of the compact is the protection of ocean resources from threats due to the transportation of oil and hazardous substances and in no way is involved in allocation or management of ocean resources. Senator Cotten also stated that there is no question that the compact does not manage fish.

Number 400

SENATOR PEARCE asked if and when Congress can change the compact. Professor Bader explained that generally Congress approves a compact by passing a joint resolution, yes or no, but they do have the authority to manipulate and say their approval is contingent upon amendments.

SENATOR COTTEN said some questions were raised by the Pacific Fisheries Task Force. One questioned whether the compact wanted the authority to coordinate and deal with an entire body of maritime law that could also include international law.

On the issue of routes, Professor Bader suggested requiring the federal government, or the Coast Guard, to enforce the compact rules unless the federal government either adopts the regulation or goes through a formal administrative due process and rejected with justification the compact autonomy in this issue. A rejection would be subject to suit under the Administrative Procedures Act.

He also strongly urged them to amend the definition of "vessels" to provide explicit protection for smaller vessels. He thought they should change Article 7 so that each state has two voting representatives and that the majority action include a voting member from each state.

SENATOR COTTEN noted that there needed to be more discussion on vessel definition of 5,000 dead weight tons. Professor Bader said that he tried to use language that is consistent with the 1990 Oil Pollution Control Act, so whatever the federal government used as a definition is what he would use.

Number 494

JANICE ADAIR, Special Assistant, Department of Environmental Conservation, said they are receiving copies of statutes from other states now which would be subject to this compact for comparison with Alaska's. At this point, they have questions like who would be responsible for determining what is in a contingency plan and who would review it. Senator Cotten said he thought it should be made clear that the compact has sole authority for contingency plans. Another issue, Ms. Adair said, was how the regulations would be adopted and how people of the state could participate as they are formed. She said they needed to find out which statutes would no longer be applicable.

SENATOR PEARCE asked whether the compact would become the enforcement authority. Senator Cotten said that wasn't clear.

SENATOR PEARCE raised questions regarding organization and staffing of the compact that needed clarification.

VIRGINIA FAY, Legislative Aide for Senator Cotten, said her impression is that there would be a staff to the compact of around 12 people. She said that she understood that the compact would be responsible for the implementation and enforcement of the compact regulations. The states work out between themselves what financial responsibilities and standards they want. She said, according to staff in Senator Bradbury's office in Oregon, that the Coast Guard would continue to enforce routes and things of that nature.

SENATOR PEARCE asked if the compact covered contingency plans for shore based facilities as well as vessels. Ms. Fay said she understood that shore based facilities would remain under state jurisdiction. Ms. Adair commented that in the authority section of the statute, one and three make it clear that this is just for vessels, but number two kind of opened up the issue and needs clarification.

TAPE 1, SIDE 2
Number 001

SENATOR JONES said that enforcement is clearly covered by the Coast Guard on page 8, line 12. He asked what was meant on page 7, line 27 regarding "various ocean programs that may have been established by each party" what was meant. Professor Bader said that section references the research and investigation of ocean resources phase of the compact's duties. He reiterated that this compact in no way intends to allocate or manage resources. Senator Jones said that needed to be clarified in the bill. Senator Cotten noted that page 2, lines 19 - 23 makes it real clear that the compact does not intend to encompass those activities.

SENATOR JONES asked where the compact interfaced with the Coastal Zone Management Act (CZMA). Professor Bader said the Act has provisions for compacting, as well as funding for it. The compact activities are worded to be consistent with the CZMA.

Professor Bader stated that it is important to create a complete paper trail on the history of all issues that might be disputed, because there will be litigation over this compact.

Number 500

SENATOR JONES asked if a veto action could be put in the compact so any one state could stop action for a cause. Professor Bader said that history on compacts points to the contrary.

SENATOR PEARCE commented that there would be a lot of contingency plans for 12 people to look at.

Senator Pearce asked if a state contingency plan would no longer be required since the compact would require contingency plans. Professor Bader said this would reference constitutional law embodied in two U.S. Supreme Court decisions - Askew v. American Waterways Operators, Inc. 411 U.S. 325 and Ray v. Atlantic Richfield Co. 435 U.S. 151 which says that docking facilities are not within the purview of the interstate compact. Its jurisdiction extends from the territorial sea out to the 200 mile limit. In considering the scope of the compact, the zones need to be clarified and what authority the state has outside of federal authority. He pointed out that the compact was written with state sovereignty in mind, because this was lost in Chevron v. Hammond.

CAPTAIN BODRON, Chief, Coast Guard, said he passed a copy of the bill to the Coast Guard's Chief Counsel for review and they are awaiting comments. He read a portion of a letter from Admiral Chengalini, 17th District Commander, Juneau, which said that among the issues being looked at most closely are the ramifications of delegating broad tank vessel safety and pollution prevention regulatory and enforcement authority to a nonfederal regional entity, the role of British Columbia in the compact, and the role of the compact in view of the authority already granted to the state by the Oil Pollution Act of 1990.

Captain Bodron asked Professor Bader to comment on the Oil Pollution Act of 1990. Professor Bader said that they had worked under an assumption from the Oil Spill Commission's report which stated that complacency occurred at all levels

of government due to a failure of empowerment of the citizenry. They believe that regulatory vigilance is maintained when there is a maximum grant of state or regional sovereignty. Captain Bodron said it seemed that the two would overlap in several places.

SENATOR JONES asked how the Coast Guard would work within the compact. Captain Bodron said that the Coast Guard is known to cooperate with government entities, but it's still unclear what the compact would require them to do.

SENATOR HOFFMAN asked who would have jurisdiction over the ocean in between the shore lines of the compact parties, if for instance Alaska and California were part of the compact and Washington and Oregon were not. Professor Bader commented that Congress would probably not ratify the compact without unanimity among the states.

SENATOR COTTEN said they would schedule another meeting on this issue and adjourned the meeting at 2:55 p.m.

SENATE JOINT TRANSPORTATION AND
SPECIAL COMMITTEE ON OIL AND GAS
March 26, 1991
1:43 P.M.

OIL AND GAS MEMBERS PRESENT

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Lyman Hoffman
Senator Dick Shultz

OIL AND GAS MEMBERS ABSENT

Senator Bettye Fahrenkamp

TRANSPORTATION MEMBERS PRESENT

Senator Curt Menard, Chairman
Senator Lloyd Jones, Vice Chairman
Senator Drue Pearce
Senator Dick Shultz

TRANSPORTATION MEMBERS ABSENT

Senator Bettye Fahrenkamp

OTHER SENATE MEMBERS PRESENT

Senator Rick Uehling

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 21
Relating to oil and gas exploration and production within, and the state's royalty shares in the development of, the Arctic National Wildlife Refuge.

SENATE BILL NO. 102
"An Act enacting and entering into the Pacific Ocean Resources Compact."

PREVIOUS SENATE COMMITTEE ACTION

SJR 21 - See Oil and Gas Committee minutes dated 3/12/91.

SB 102 - See Joint Transportation and Oil and Gas Committee minutes dated 3/5/91.

WITNESS REGISTER

Virginia Fay, Legislative Aide
Senator Sam Cotten
P. O. Box V
Juneau, Alaska 99811
POSITION STATEMENT: Testified on SB 102.

Assistant Professor Harry Bader
Environmental Law and Policy
University of Alaska, Fairbanks
POSITION STATEMENT: Testified on SB 102.

Jerry Aspland, President
ARCO Marine, Inc.
Long Beach, California
POSITION STATEMENT: Commented on SB 102.

Tom Mullens, Manager
Environmental and External Affairs
BP Oil Shipping Co.
POSITION STATEMENT: Commented on SB 102.

Theresa Savancara
Alaska Environmental Lobby
P.O. Box 22151
Juneau, Alaska 99802-2151
POSITION STATEMENT: Supported SB 102.

ACTION NARRATIVE

Tape 1, Side 1
Number 001

SENATOR COTTEN called the Joint Transportation and Senate Special Committee On Oil and Gas meeting to order at 1:43 p.m. and announced SJR 21 ENDORSING ANWR LEASING W/O ROYALTY CHANGE to be up before the Special Committee On Oil and Gas.

SENATOR HOFFMAN moved to adopt the CS to SJR 21. There were no objections and it was so ordered.

SENATOR PEARCE moved to pass CSSJR 21 (Oil and Gas) from Committee with individual recommendations. There were no objections and it was so ordered.

SENATOR COTTEN said they would now meet jointly with Senate Transportation and announced SB 102 PACIFIC OCEAN RESOURCES COMPACT to be up for consideration. He said they were on teleconference.

VIRGINIA FAY, Staff for Senator Cotten, briefed the Committee on the background of the issue. She noted that Senator Bradbury from Oregon had gone through all the proposed amendments from California, Oregon, and Washington, on their Compact bills, which are essentially identical to ours, and synthesized them into Oregon SB 500.

Essentially, she said, Article 1 changes some of the purposes of the Compact and Article 5 changes some of the authority. She explained that originally the Compact had authority to give the state sovereignty over some federal agencies. Some of the amendments move the Compact authority down to a more advisory level. It does not supercede the federal level. It leaves individual state's sovereignty intact.

In exchange for the reduction in authority, it received a short cut into the federal Administrative Procedures Act which is the normal avenue for a state to influence federal actions, such as Coast Guard Regulations, tanker routes, etc. Instead of having to petition the Coast Guard for "standing," the amendments recognize that the states in the Compact have "standing" to influence regulations. Then there is a formal procedure for addressing and responding to concerns.

Ms. Fay explained the papers that were contained in their packets.

HARRY BADER, Assistant Professor of Environmental Law and Policy at the University of Alaska, Fairbanks, said he participated in the Western States Legislative Conference in negotiating a potential compact. He said he would go over the amendments first and then respond to Senator Pearce's request from a previous meeting to brief them on the issues he was outvoted on regarding protecting Alaska's sovereignty within the Compact.

Some of the amendments are direct reflections of comments submitted from British Petroleum and the Coast Guard. The language in Article 1b 1 and a on page 2 was to reduce the likelihood of compact encroachment on valid existing state authority. Article 1a specified the limited scope of their compact. He thought these two sections clarified that the Compact is not trying to involve itself in an area of resource management and allocation.

The substantive provision comes from Article 51 a and b which is a direct response to the Coast Guards's concern that the Compact was trying to supplant its authority and elevate the states into a completely federal sphere. It heightens the scrutiny that a petition must be assessed under in the Administrative Procedures Act (APA), Sections 553 E and 555

B of the APA. It establishes that once a party, petitioning under these provisions, proves it is an interested party, they can petition a regulatory agency and draft a regulation or a modification, with the analysis and reasons for that, and submit it to the agency. The agency must review the petition request in a formalized process where the strictures of due process have been later enunciated through the court interpretation of APA. The affected agency must respond with a formal response in a timely fashion point by point.

This is not normal under the general provisions of APA. The advantage is that it saves time, cost, and creates certainty.

Number 289

Article 51 AC talks about the status being comprehensive in that the Compact is not going to be any less than the most comprehensive state prior to compacting needs clarification. The intent of the use of the word "comprehensive" was intended to reflect directive authority, not the level or the intent of the authority or the rigorousness of the regulation. The best way to think of it is in terms of subject areas. Mr. Bader emphasized that "comprehensive" should be interpreted and has to be clarified to reflect that we are dealing with subject areas. Therefore the subject area of the Compact will include prevention, but not the most rigorous provisions within that subject area. Comprehensiveness needs to be clarified to reflect scope not intensity of regulation. The way it is currently worded, it is ambiguous and could be litigated.

SENATOR COTTEN commented that in a memo from Terri Lauterbach she concludes that California's law is more comprehensive, because they have specific prevention measures. Mr. Bader said they did not intend for the most rigorous state's regulation to be the base line. They intended the most comprehensive state in terms of subject areas.

Number 322

Mr. Bader said there were three concerns where he was outvoted - Article 2, numbers 2 and 8 which is the definition and Article 7 which is voting. His concern when negotiating with other states was that Alaska is unique, because we have remote communities that are dependent upon diesel fuel and other products being brought in. And every regulation that is added increases the cost of transportation by $1. He explained that if they increase the cost of energy in regulation by 10%, it may actually cause a 15% - 20% reduction in the available income which can't be done to those communities.

Mr. Bader proposed two amendments which redefines vessel so that it categorically and explicitly exempts any vessel from Compact regulation that is less than 5,000 dead weight tons.

SENATOR COTTEN asked if OPA 90 exempts those vessels. Mr. Bader explained that OPA 90 has two areas where they implicitly talk about trying to assist smaller vessels. One category is 10,000 dead weight tons and the other is 5,000 dead weight tons and those refer to retrofitting and liability and that is implicit. One of the problems with OPA 90 is that it is ambiguous like "comprehensive." He thought if they took the serious step of going into a Compact, they should get rid of ambiguous language and not rely on OPA 90 for its implicit inferences. Make it clear that the Compact cannot touch those vessels. If someone else regulates them, it's not the Compact's authority.

Number 349

SENATOR JONES asked about industries that rely on the use of certain hazardous products and their competing with those same industries in Oregon and Washington. What happens when Oregon and Washington get together and raise the price of that substance so that Alaskan mills can't compete. How can you control that? Senator Cotten asked if he was referring to pulp mills. Senator Jones said that would be a good example. Mr. Bader said that issue leads to a second amendment which is aimed at protecting Alaskan interests. He said they need to change the way the Oregon legislation was written. He explained that meant going back to the pre-Hawaii agreement that they had which is every state gets two voting representatives rather than the one that is in Article 7. Rather than require a simple majority of those representatives, the majority has to contain at least one vote from each member state. That way Alaska's interests are protected, in that a representative from Alaska has to be in the voting majority for a Compact provision to pass.

MR. BADER explained that two voting representatives are needed from every state because in a Compact giving a single state automatic veto tends to reduce the likelihood of passage by Congress. Also if you expand the number of representatives, you reduce the problem that the Alaska Oil Spill Commission found that by increasing representation you reduce the chance of any special interest capture of the entire state delegation. The intent of this amendment is to prevent the three states of California, Oregon, and Washington from forming a cartel and through regulation increasing the price of one product so that Alaska industries are at a disadvantage.

Number 394

SENATOR JONES asked what prevents one of the delegation from voting with the other states for some reason? Mr. [illegible] answered that if that person is a duly appointed representative of the state of Alaska, nothing prevents that. Senator Cotten commented that each state probably has different ways of selecting its representative for the Compact.

SENATOR COTTEN said they would take questions from the teleconference now.

Number 412

JERRY Aspland, President, ARCO Marine, Inc., said he believed the objective of the Compact was two fold. One is to coordinate marine activities up and down the coast and secondly to allow the states more input into federal rule making. He said those objectives are important and he supported them. He supports them only from the stand point that we can somehow, instead of having a Compact, develop another state DC Task Force. He also recommended establishing within the state of Alaska an Office of Maritime Affairs similar to what is being established in the state of Washington, because it is very difficult to go to any state government and find the right agency in which to discuss marine affairs. He thought an office like that could coordinated the state marine efforts. He said that ARCO Marine cannot support the application of Compact law to accomplish the objectives, because as rules and regulations are developed, the Compact will supercede the federal law.

Mr. Aspland also pointed out that the Compact extends to the outer boundaries and limits of the economic zone. Present law only applies to three miles, so this is a huge step outside of present regulatory authority. The Compact as written allows for single states to withdraw and it is his understanding that the court system has not allowed this in the past. That once you're in you're in and the only way to get out of a compact is to dissolve the Compact. The proposed Compact steps out of the traditional compact language.

Mr. Aspland recommended that a body similar to the state's DC Task Force be developed to address the subjects that are outlined in the new draft Oregon SB 500. That Task Force could be made up of state, federal, citizen, and industry representatives to develop guidelines and influence on the federal regulation. They strongly urge the state to establish an Office of Maritime Affairs similar to Washington which has a central clearing house responsibility for marine activities

within the state. It could also serve as the state's "expert witness" in maritime affairs.

In conclusion, he said he believes there is a need for this western cooperation between the states. They do not support the Compact form, since it would supercede federal regulation.

SENATOR COTTEN said one of the attractions of this idea is to go beyond the three mile limit, because things that take place up to 200 miles and more off shore affect what happens to interests here in Alaska. As far as getting out of the Compact, he said that the proposed language does allow for a state to give notice and then elect to leave the Compact. He asked if he thought this was the same as the Northwest Planning Council. Mr. Aspland answered yes, that there were some 200 compacts that have been made across the U.S. which are very specific in their makeup and objectives and the one before them is very broad.

Senator Cotten asked him if he was concerned with the states superceding federal law in the areas that the states don't currently have jurisdiction. Mr. Aspland said if you take this far enough, for example, into vessel structure, if it were to be built in the U.S., he would have to build it to two different regulations - one covered by federal regulations governed by the Coast Guard and another set of regulations that are covered by the compact. There could be a personnel affect on the situation where a person could have to have a license that was issued by the compact and a license issued by the federal government.

Mr. Aspland said he hoped they would take an interest in developing some of the federal regulations. He thought that was important for industry.

Number 514

TOM MULLENS, Manager of Environmental and External Affairs, BP Oil Shipping Co., said he agreed with much of Mr. Aspland's testimony. He thought the compact added another layer of regulation and that it was much too soon to embark on that type of effort. Time is needed for HB 567 and the Federal Oil Commission Act of 1990 to be fully implemented. They are also concerned about the confusion that can be created regarding international, federal, and state efforts that are under way. He said that a state would have very limited power with a one fifth vote.

In conclusion, he said they do support interstate communication and coordination. They have actively supported the BC State's Initiative.

Number 555

THERESA SAVANCARA, volunteer with Alaska Environmental Lobby, supported the formation of the Pacific Ocean Resources Compact, because it would empower the states most likely damaged by oil and other hazardous substance spills and allow them to act in a unified manner to prevent and respond to spills.

TAPE 1, SIDE 2
Number 001

SENATOR COTTEN announced an Ocean Resources Committee meeting in San Francisco on April 6 and 7 and adjourned the meeting at 2:30 p.m.

OREGON PROPOSED AMENDMENTS

DRAFT

PROPOSED AMENDMENTS TO

Senate Bill 500

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

SUMMARY

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

Ratifies Pacific Ocean Resources Compact. Appropriates money.

A BILL FOR AN ACT

Relating to Pacific Ocean Resources Compact; and appropriating money.

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

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

(2) In addition to the States of Alaska, California, Hawaii and Washington, the Province of British Columbia may become an associate party to the compact, without voting power. Upon request of the Province of British Columbia and approval of Congress, the Province of British Columbia may become a full party to this compact with the same rights and powers as the party states.

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

ARTICLE I

Findings and Purpose

A. The parties recognize:

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

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

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

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

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

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

(2) Some marine resource activities, such as fisheries, are currently highly managed with regard for their regional or transboundary nature through existing state programs, regional fisheries

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

councils, interstate compacts and international treaties. Because there are existing formal mechanisms for interstate cooperation and coordination for these marine resource activities, this compact is not intended to encompass these activities

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

(a) Prevention of oil and hazardous substance spills;

(b) Transportation of oil and other hazardous substances;

(c) Oil and hazardous substance spill response planning;

(d) Environmental monitoring and research ; and".

(e) Ocean resource management."

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

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

(6) The 1983 Presidential Proclamation of the 200-mile United States Exclusive Economic Zone has created the opportunity for all coastal states to more fully exercise and assert their responsibilities pertaining to the protection, conservation and development of ocean resources under United States jurisdiction.

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

(8) Recent studies conducted in the wake of major accidental releases of oil or hazardous substances have concluded that the existing system of response to spills could be improved in the following ways to provide better protection of ocean resources:

(a) Enhanced personnel training and qualifications;

(b) Improved vessel design and integrity;

(c) Better mechanisms for cost recovery by the states or the province;

(d) Improved coordination in regulatory oversight;

(e) Enhanced traffic management; and

(f) An improved information base dealing with marine and coastal environments.

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

I(B)

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

(1) To assist in the promotion of interstate commerce by encouraging uniform regulation of the transportation of oil or hazardous substance within the compact zone.

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

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

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

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

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

(7) To address issues of mutual concern to the Pacific states and the Province of British

Columbia and enhance the parties' influence over activities of concern that are not now addressed through existing compacts, including:

(a) Spill prevention;

(b) Transportation of oil and other hazardous substances;

(c) Spill response planning;

(d) Environmental monitoring and research ; and

(e) Ocean resource management.

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

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

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

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

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

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

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

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

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

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

ARTICLE II

Definitions

As used in this compact:

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

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

(3) "Hazardous substance" or "hazardous substances" means any element or compound that, when it enters in or upon the water, presents an imminent and substantial danger to the public health or welfare or the environment, including but not limited to fish, animals, vegetation or any part of the natural habitat in which they are found. "Hazardous substance" includes but is not limited to a substance designated under 33 U.S.C. §1321 (b)(2)(A), any element, compound, mixture, solution or substance designated under 42 U.S.C. §9602, any hazardous waste having characteristics identified under or listed under 42 U.S.C. § 6921, any toxic pollutant listed under 33 U.S.C. §1317 (a) and any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action under 15 U.S.C. § 2606.

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

(5) "Oil" means crude petroleum oil and any other hydrocarbons regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and any petroleum products

or petrochemicals of any kind and in any form whether crude, refined or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse or mixed with other wastes, liquefied natural gas or propane.

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

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

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

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

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

Med Wood amendment

ARTICLE III

Operative Dates

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

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

ARTICLE IV

Pacific Ocean Resources Compact

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

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

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

ARTICLE V

Pacific Ocean Resources Compact Authority

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

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

"(A) Participating as an interested person in any rulemaking proceeding by the United States Coast Guard related to the establishment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. If the United States Coast Guard does not adopt the recommendations of the compact, the United States Coast Guard shall explain in writing, as part of the rulemaking process the basis for its finding that the adoption of such recommendation would be inconsistent with the prevention of oil and hazardous substance spills.

"(B) As an interested person, requesting the United States Coast Guard to initiate rulemaking for the establishment or amendment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. If the United States Coast Guard does not initiate rulemaking as requested by the compact, the United States Coast Guard shall explain in writing the basis for its finding that the initiation of such rulemaking would be inconsistent with the prevention of oil and hazardous substance spills.

(C) Making recommendations to other appropriate state, federal and regional entities regarding substances in the compact zone.

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

(c) By regulation, establish the requirements for submission of and approval by the compact of a contingency plan by any vessel transporting oil or hazardous substance in the compact zone. Such requirements shall be at least consistent with the requirements for response plans under section 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). A plan developed in accordance with the regulations adopted by the compact and approved by the compact shall satisfy the requirements of section 4202 of the Oil Pollution Act and shall supersede any requirements of an individual party for submitting a vessel contingency or spill response plan. In establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact are at least as comprehensive as similar plans required by the parties before adoption of this compact and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in effect at the time the compact initiates its requirements under this subparagraph.

(d) Establish and maintain an informational clearinghouse related to spill response, including a directory of personnel, equipment, technical expertise, organizations and other resources available to assist as part of a regional oil or hazardous substance spill response.

- major change in authority
- gives state standing under administrative procedure act

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

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

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

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

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

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

(k) Request the United States Coast Guard to enforce or assist in the enforcement of any regulations adopted by the compact

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

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

(a) Accept grants and gifts.

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

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

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

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

(f) Establish a uniform level of proof of financial responsibility to be provided to each party to the Compact.

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

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

(i) Allow a variance from the provisions of this compact or rules or regulations adopted by the compact pursuant to this Article. A variance shall be based on a showing by the person or entity seeking the variance that the activity allowed under the variance will have no regional impact and that the variance is economically necessary. Under no circumstances may a variance result in the regulation of the transportation of oil or hazardous substance according to standards less stringent than standards imposed under federal law.

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

ARTICLE VI

Pacific Ocean Resources Compact Organization

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

ARTICLE VII

Voting and Quorum

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

(2) Each party shall be entitled to one vote. No action or decision of the compact shall be approved unless the action or decision receives a majority of the votes of the parties.

ARTICLE VIII

Support Agencies

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

ARTICLE IX

Parties' Powers Under Compact

Except as specifically provided in Article V of this compact, nothing in this compact shall be construed to limit the powers of any party or to repeal or prevent the enactment of any legislation

Need Voting Amendment

or the enforcement of any requirement imposing additional conditions and restrictions to conserve ocean resources.

ARTICLE X

Absence

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

ARTICLE XI

Funding

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

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

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

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

ARTICLE XII

Withdrawal from Compact

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

SECTION 3. There is appropriated to the Pacific Ocean Resources Compact, for the biennium beginning July 1, 1991, out of the General Fund, the sum of $ _____ for the purpose of carrying out the provisions of the Pacific Ocean Resources Compact.

DRAFT

SB 500-7
(LC 20)
3/13/91 (JH/dv/rc)

PROPOSED AMENDMENTS TO SENATE BILL 500

On page 2 of the printed bill, line 8, after the semicolon delete "and".

In line 9, delete the period and insert "; and"

"(e) Ocean resource management.".

In line 24, after "spills" delete the rest of the line and insert "could be improved in the following ways to provide better protection of ocean resources:

"(a) Enhanced personnel training and qualifications;

"(b) Improved vessel design and integrity;

"(c) Better mechanisms for cost recovery by the states or the province;

"(d) Improved coordination in regulatory oversight;

"(e) Enhanced traffic management; and

"(f) An improved information base dealing with marine and coastal environments.".

Delete lines 25 through 31.

In line 36 delete "providing" and insert "encouraging".

In line 38, delete "that the parties cannot now individually regulate".

In line 39, delete "sovereignty over" and insert "coordination of".

In line 40, delete "direct" and insert "work with" and delete "act in" and insert "advance".

In line 43, delete "enhance the oversight and supervision of" and insert "monitor".

On page 3, line 5, delete "and".

In line 6, delete the period and insert "; and

"(e) Ocean resource management.".

In line 18, delete "establish" and insert "recommend".

In line 19, delete "to provide oversight for" and insert "monitor".

On page 5, line 1, after "spills" delete the rest of the line and insert "by:

"(A) Participating as an interested person in any rulemaking proceeding by the United States Coast Guard related to the establishment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. If the United States Coast Guard does not adopt the recommendations of the compact, the United States Coast Guard shall explain in writing, as part of the rulemaking process, the basis for its finding that the adoption of such recommendation would be inconsistent with the prevention of oil and hazardous substance spills.

"(B) As an interested person, requesting the United States Coast Guard to initiate rulemaking for the establishment or amendment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. If the United States Coast Guard does not initiate rulemaking as requested by the compact, the United States Coast Guard shall explain in writing the basis for its finding that the initiation of such rulemaking would be inconsistent with the prevention of oil and hazardous substance spills.

"(C) Making recommendations to other appropriate state, federal and regional entities regarding".

Delete line 3 and insert "substances in the".

In line 9, delete "at least as stringent as" and insert "consistent with" and delete "spill".

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

In line 15, after "parties" insert "before adoption of this compact".

In line 38, after "compact" delete the rest of the line and insert "including but not limited to regulations related to the submission of a contingency plan or financial assurance requirements".

In line 39, delete "stance spills".

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 may be assessed in increments up to the maximum amount.".

On page 6, delete line 3 and insert:

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

"(f) Establish a uniform level of proof of financial responsibility to be provided to each party to the compact.".

In line 4, delete "(f)" and insert "(g)".

In line 7, delete "(g)" and insert "(h)".

In line 11, delete "(h)" and insert "(i)".

- Analysis/ Summary
- Proposed Changes

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

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

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

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

Prepared by M. Brown
for Sen. Bill Bradbury

MEMO

DATE: April 4, 1991

RE: Pacific Ocean Resources Compact, Amendments

TO: Honorable Senator S. Cotten Fax 465-4979

FROM: Harry R. Bader

Introduction

The recent amendments proposed by the state of Oregon fine tune the compact language and ameliorate some of the problems that have surfaced concerning the relationship between the states, the federal government, and the regional compact's jurisdiction. However, the major concerns I raised in negotiations during meetings in Seattle, Sitka, and Anchorage have still not been resolved. Until these positions have been accommodated, I cannot recommend Alaska's ratification of the compact. These three issues are as follows:

1. VOTING REPRESENTATION
2. EXEMPTION FOR SMALL OPERATORS IN REMOTE AREAS
3. CLARIFICATION OF "COMPREHENSIVE" IN COMPACT REGULATORY LANGUAGE.

This memo will first summarize the Oregon amendments, and then, in section 2, justify the need for further amendment to protect Alaska's unique interests.

Summary of Compact Following the Oregon Modifications

The concerns about the authority of the compact to involve itself in resources allocation and management of Ocean Resources should be dispelled by the explicit language on page 1, lines 20, 31, and 32 and page 2, lines 1, 2, and 3. However, if there is the belief that this is not enough, the legislature may consider an amendment explicitly stating that this compact will have no authority to proffer regulations addressing resource allocation and management as it may relate to use and consumption (i.e. fish, ice, water, sea mammals, kelp, salt, ocean floor mining & dredging).

Line 19 on page 2 does not refer to the compacting states, but rather to all coastal states in general.

Amendments to article I, B. should dispel fears by those concerned with state sovereignty.

Page 3 lines 19 and 20 under Article I, (e) (13) eliminates the need to amend the compact, as discussed in the hearing, about traffic routes and lanes. The Oregon change does not eviscerate the compact because of the procedural forcing mechanism contained in Article V(1)(a)A on page 5, lines 1-34 formalize influence under the APA section 553(e). This provision brings the compact into greater conformity with substantive compacts such as the Northwest Power Planning Council. These provisions mirror the APA, and are therefore nothing new in terms of substantive law. However, it is an advance in terms of the states participation in the regulatory

process for marine protection.

Like the APA sections 553(e) and 555(b), the amendment provides a direct route, narrowly tailored and focused, into agency decision-making and rules promulgation, without unnecessarily treading upon the agency's formal mandates. Thus, once a recommendation is received from the compact, the effected agency must: (1) consider it within a reasonably prompt matter of time, (2) provide notice of consideration, (3) a give a reasoned justification, in a formal written statement, for its decision. The invocation of this systematic approach then provides the basis for subsequent judicial review under the arbitrary and capricious standard.This provision will be discussed below.

The definition of the compact zone (page 3 lines 31 and 32) NEEDS FURTHER CLARIFICATION to explicitly include or exclude the state's territorial sea. What "border" is referred to? Is it the land or territorial sea within state jurisdiction? This issue needs to be resolved in order to reconcile the compact with the rulings of RAY v. ATLANTIC RITCHFIELD and ASKEW v. AMERICAN WATERWAYS OPERATORS, INC.

Section Two: Suggested Amendments

1. Vessel Exemption

I still strongly urge an amendment to the definition of vessel (page 4 lines 8 and 9) to make clear an exemption for small vessel operators (vessels less than 5,000 dwt) consistent with the 1990 Oil Pollution Control Act. This is essential if we are to succeed

in providing both environmental protection and economic stability for remote coastal villages. A version of proposed language for this vessel exemption should be in Senator Cotten's information booklet. The Vessel Exemption was drafted by Ms. Fay and myself the last time I was in Juneau to testify about this bill.

2. Voting Mechanism

Changes in the voting and representational system are necessary to protect Alaskan interests, as well as those of Oregon and Hawaii. First, I would return to the pre-Kona agreement in which each state is given two votes. Secondly, I would re-instill the requirement that any action taken by the compact commission must include at least one vote from each state in the majority. This provision recognizes that state interests are not always homogenous and increases the representational spectrum, reducing the potential for special interest capture of an entire delegation. A version of potential draft language is also included in the Senator's information notebook.

3. Clarification of the term "Comprehensive"

In addition, I would clarify the term "comprehensive" on line 37 of page 5 (Article V (C) (c) to reflect the idea of scope of regulation rather than stringency. Thus, the area of jurisdiction covered in a contingency plan would be no less than the maximum now contemplated by any party state prior to compacting. However, this ought not be confused with the level of regulation or standards within a particular subject area. Comprehensive should infer the definition of breadth of regulation, not the intensity of regulation.

Thus I would rephrase this section to read:

"In establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure the vessel contingency plans required under this compact WILL EXTEND TO ALL SUBJECT AREAS CONTEMPLATED BY THE MEMBER STATES, IN AGGREGATE, PRIOR TO THE ADOPTION OF THE COMPACT."

ALASKA AMENDMENTS

5/7/91

Proposed Contingency Plan Amendment

Page 8, line 11: Insert--after "paragraph;"

"if a contingency plan approved by one of the parties to this compact expires after the compact contingency plan regulations are adopted, a new contingency plan must be adopted under the compact regulations;"

5/7/91

REVISED DEFINITION OF VESSEL FOR THE PACIFIC OCEAN RESOURCES COMPACT

See Article II (8)

These changes are designed to take advantage of the language contained in the 1990 Oil Pollution Control Act which protects small operators providing essential service in remote or rural areas. The need for exemptions are particularly important throughout much of Alaska.

New Definition of Vessel

Vessel means a watercraft or other artificial contrivance that is constructed or adapted to carry, or that carries oil or hazardous substances in bulk as cargo or cargo residue and that is greater than 5,000 gross weight tonnage.

Texaco Inc
Marine Department

2000 Westchester Avenue
White Plains NY 10650
914 253 4000

May 3, 1991

The Honorable Sam Cotten
Alaska State Legislature
P. O. Box V, State Capital
Juneau, AK 99811

Dear Senator Cotten:

In response to your letter dated April 26, 1991, we are pleased to advise that the tug/barge units VALIANT/PENNSYLVANIA and VICTORY/TEXAS are each 12,591 gross tons and they trade in the U.S. Gulf between Texas and Florida.

Yours truly,

J. B. Liebertz

JBL:map
3/1

April 28, 1991

Bering Sea Fisheries, Inc.
H. W. BODEY, (PRES.)
4413 - 83 AVE. S.E.
EVERETT, WASHINGTON 98205
PHONE EVERETT 334-1498

Senator Sam Cotten, Chairman
Juneau, Alaska

Dear Mr. Cotten:

Received your letter of April 23rd, regarding oil barge regulations, etc..

Yes, we do have an oil barge, "King Salmon"--979 tons--10,000 barrel.

Pollution insurance is maintained according to Alaska State law.

We have a processing facility near Emmonak, in the Yukon, established in 1966. We hauled our own fuel for many years and bought what we couldn't haul at False Pass and St. Michael. In 1981, we purchased a tug and barge to haul our fuel, freight and frozen fish, not only for ourselves, but also Yukon Delta, of Emmonak. At the time, tney were left without any transportation.

We take fuel from Seattle, on the way North, and get fuel at Dutch Harbor during the summer. We supply Yukon Delta, the Emmonak Tank Farm, and, of course, all our fishermen and our own needs, plus anyone else who may need fuel in the general area.

I certainly hope we do not get in the same class as the super tankers. From your letter, I believe you are on the right track. So far, the DEC has some pretty stiff rules suggested, which can either drive us out of business or raise the price of fuel in these areas considerably, to cover costs of abiding by them. This fuel and supplies are vital at Spring breakup--not only to us but to others we supply.

I sincerely hope this answers your questions. Please feel free to contact me at any time on this issue.

Yours truly,

H W Bodey

H.W. Bodey
Bering Sea Fisheries

P.S. Mr. Cotten:

If something went done about the DEC. + all of their requirements in this oil plan – we + many other small operators will be out of business, probably in one year! I cannot overemphasize this.

H.W. "Bill" Bodey

Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettye Fahrenkamp
Senator Lyman F. Hoffman
Senator Dick Shultz

P. O. Box V, State Capital
Juneau, AK 99811
(907) 465-3711

April 23, 1991

Received 4-28-1991

Bering Sea Fisheries
4413 83rd Avenue, SE
Everett, WA 98205

Dear Sir or Madame:

This session I introduced legislation in the Senate that will enable Alaska to join the Pacific Ocean Resources Compact. The Compact as currently proposed will have three members from each of the states of Alaska, California, Hawaii, Oregon, and Washington. Similar legislation was introduced in these states. The compact agency will have authority to regulate activities related to oil and hazardous substances within the compact zone. The compact zone extends from the oceans bordering the party states to the 200-mile exclusive economic zone.

Under Article II of the proposed compact, the definition of vessel is intended to exempt smaller barges transporting non-crude petroleum products to communities. However, the current compact language is not clear. Our intent is to clarify the language in the committee process to exempt barges under 5,000 gross-weight tonnage.

To facilitate this process, **we would like information on the ports of call of the barge vessels in your fleet.** Attached is an Alaska Department of Environmental Conservation memorandum on barges operating in Alaska. I would appreciate if for your company you would 1) verify the information provided, especially information on vessel gross-weight tonnage; 2) provide information on the ports of call of each of the identified vessels; and 3) add any omitted information.

Senate Bill 102 is currently in the Senate Special Committee on Oil and Gas; additional hearings are expected to be scheduled in the near future. If you have any questions, please contact me or Ginny Fay on my staff at (907)465-3711 or FAX (907)465-4979.

Sincerely,

Sam Cotten
Senator

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

May 2, 1991

Ref: Commmittee
Oil and Gas

Dear Senator Cotten:

In reference to the Senate Committee on Oil and Gas letter of April 23, 1991, the following information is verified:

> Tank Barge Annahootz, Official Number 655941, 2,638 gross tons is operated by Samson Tug and Barge Company, P.O. Box 559, Sitka, Alaska 99835.

The T/B Annahootz is inspected and certificated under Subchapter D of 46 CFR by the U.S. Coast Guard; certified for ocean service. It is also required to meet the requirements of Subchapter O of 33 CFR - Pollution. In addition to carrying 37,000 plus barrel of non-persistent petroleum products (gasoline, diesel oil, and aviation fuel) the above deck cargo consist of containerized freight. Cargo consisting of boats, building supplies, modular homes and groceries may be carried.

The ports of Sitka, Juneau, Haines, and Ketchikan, in Southeast Alaska are the normal ports for the transportation of petroleum products. However, contracts for delivery to other ports in Alaska are possible and have occurred. With a Certficate of Inspection for ocean service, we are not prohibited from transporting cargo on the high seas or to any port in Alaska.

The containerized cargo may be assigned to ports of call, such as Seward, Valdez, Kodiak, King Salmon, Dutch Harbor, and Adak, as well as others. Also cargo may be shipped to Seattle from these ports. Samson Tug and Barge Company provides a year round, every two week sailing schedule from the port of Seattle, Washington to ports in Alaska.

We hope this information will be helpful in the of processing SB 102. If we can assist in this matter further, please feel to contact me, I am

Albert M. Snelling

ALBERT M. SNELLING
Safety Director

Samson Tug & Barge Company, Inc.

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

Senator Dick Eliason
Alaska State Legislature
P.O. Box V
State Capitol Building
Juneau, AK. 99811

May 2, 1991

Dear Senator Eliason:

A marine industry organization from Anchorage advised us on Friday May 26, 1991, of Senate Bill 263, which had been introduced, was in committee, and that testimony was being received on that afternoon. This bill would amend a portion of HB 567 of 1990. It would offer some relief from the regulations that go into effect on 1 June 1991; extending portions of the regs until 1992. We have submitted written comment on this bill to the Oil and Gas Committee. We invite you to review the bill and encourage its passage.

Senate Bill 263 would allow time to study and analyze non-crude operations, including facility operations, transportation of and the economic effects. The operational and engineering standards, established by the state in HB 567, we consider to be unworkable and as a result petroleum transportation operations by our company will be discontinued on June 1, 1991. Operating under the interim approved contingency plan we now have, plus amendments that must be made, we feel cannot be done legally. The opposite of course being illegal, which subjects Samson Tug and Barge to civil penalties, lawsuits, and possible criminal action. We have been advised that other transportation companies are considering this same avenue.

As our State Senator, we would request that you keep us up to date on the outcome of this bill and future bills concerning the transportation of petroleum products.

Sincerely,

Albert M. Snelling

ALBERT M. SNELLING
Safety Director

Copy: Congressman Grussendorf
Senator Cotten
Senator Hoffman

BOYER TOWING, INC.
7318 4th Avenue South
Seattle, Washington
98108

April 29, 1991

Senator Sam Cotten
Alaska State Legislature
Senate Committe on Oil & Gas
P.O. Box V State Capitol
Juneau, Ak. 99811

Dear Senator Cotten:

In answer to your April 23, 1991 letter, Boyer Towing operates two fuel barges in Southeast Alaska. These two barges (Callapooya & Kootznahoo) deliver non-crude petroleum products into log camps, mines and towns along the Panhandle area of Alaska. The barge Callapooya also transports petroleum products from Washington State.

The information on the Alaska department of Environmental conservation memorandum on Boyer Towings fleet is correct.

Sincerely

S. W. Sloan

Boyer Towing Inc.

	(Crowley continued)			
	500-2	7,171	16	2,442
	18	3,179	254	2,971
	DB 300	2,614	Cinnabar	75
Foss Maritime Co. 660 West Ewing St. Seattle, Wa 98119	Foss 256	2,656		Insurance
	Foss 255	2,637		
	Foss Tongass	744		
	SEA 76	830		
	Foss Energizer	4,757		
	Phoenix 120	3,218		
	Hanalei	1,849		
Exxon Shipping Co. P.O. Box 3342 Houston,TX 77253	Exxon Barge No.503	9,185	Guaranty Exxon Equity Holding Co.	
Delta Western P.O. Box 102916 Anchorage, AK 99501	DW 282	1,000	Self-Insurance	
	DW 280	1,000		
Boyer Towing Inc. 7818 4yh Ave. Seattle, WA 98108	Kootznahoo	312	Insurance	
	Callapooya	1,192		
	Approval Rescinded 3/4/91			
Samson Tug & Barge Co. P.O. Box 559 Sitka, AK 99835	Annahootz	2,638	Insurance	
Texaco Marine Services 1800 Westchester Ave. White Plains, NJ 10650	Valliant/ Pennsylvania Victory/Texas (tug/barge)		Self-Insurance	
White Pass Transportation Ltd. P.O. Box 4070 Whitehorse, Yukon Y1A 3T1	Alaskan Spirit		Insurance	
Smith Lighterage Co. P.O. Box 106 Dillingnam, AK 99576	Skip I	216	Insurance	
	Ray'Sons	98		
Moody's Sea Lighterage Aleknagik, AK 99555	Sealite I	194	Insurance	
	ST 20	294		
	Approval Rescinded 2/27/91			
Kugkaktlike Limited General Delivery Kipnuk, AK 99614	Chalin	206	Insurance	
Alaska Marine Charters 106 110th Place S.E. Bellevue, WA 98004	Investigator	1,730	Insurance	
	Approval rescinded until new insurance meeting State requirements can be met			

A UNIMAR COMPANY
UNITED MARINE
TUG & BARGE INC.
EMPLOYEE OWNED & OPERATED

1441 NORTH NORTHLAKE WAY, SEATTLE, WASHINGTON 98103 (206) 632-1441 FAX: (206) 548-0552

April 26, 1991

Alaska State Legislature
Senate Committee on Oil and Gas
P. O. Box V, State Capital
Juneau, AK 99811

Senator Cotten,

We presently operate a 72,500 barrel oil barge between Nikiski and Dutch Harbor, with diversions to Bethel, Cold Bay, Akutan, Homer, Valdez, Cordova, Kodiak, Skagway, and Ketchikan. We are the operators for the vessel owner, Forty Niner Transportation.

This is presently the only contract we have in Alaska Waters for the transportation of bulk petroleum products.

Sincerely yours,

UNITED MARINE TUG & BARGE, INC.

Ted Van Duin,
Port Captain

Delta Western
Alaska's Petroleum Distributor

4511 Shilshole Ave. N.W.
P.O. Box 70438
Seattle, Washington 98107
(206) 781-0100
(800) 782-2213
FAX (206) 781-0406

May 2, 1991

Senator Sam Cotten
Chairman, Senate Committee on Oil & Gas
PO Box V, State Capital
Juneau, AK 99811

Re: Pacific Ocean Resources Compact

Dear Senator Cotten,

In response to your letter dated April 23, 1991 to Larry Soriano, the following represents changes and additions to the list provided by the DEC

BARGE	GROSS TONS
Barge DW 280	3382
Barge DW 282	3365
Barge DW 180-2	1053

These barges are serving numerous ports within Southeast, South Central and Western Alaska. The primary ports of call are Wrangell, Juneau, Haines, Yakutat, Seldovia, Nikiski, Anchorage, Sand Point, King Cove, Dutch Harbor, Dillingham and Naknek.

If you require any further information, please do not hesitate to contact me.

Sincerely,

Randy Collar

Randy Collar
Transportation Manager

RC:paa

ADEC Staff

March 12, 1991

465-2630

Revised List

Barges w/Approved
Proof of Financial
Responsibility

Glenn Adams
Project Assistant
EQ/SPPM/Financial Responsibility

The following fuel Barges have approved Proof of Financial Responsibility through June 1,1991. Please let me know of any other fuel barge that is not on this list, that is operating in Alaskan waters. Other barges will be added to this list when they are approved.

Barge Owner/Operator	Barge Name & GRT			Type of Proof
Crowley Maritime Corp.	B&R 5	247		Surety Bond
101 Calif. St.	B&R 80-1	109	B&R 80-2	121
San Francisco, Ca.	B&R 80-3	121	120-1	318
94111-5875	120-2	318	160-1	530
	160-4	569	BC 151	629
	BC 152	629	BC 154	629
	210	1,256	211	1,256
	212	1,256	213	1,256
	218	1,256	251	2,637
	255	2,971	312-3	3,157
	Arctic Challenger	4,717	PAC 570	5,057
	Cordova	5,051	Nikiski	5,051
	McKinley	5,051	Ketchikan	5,051
	Palmer	5,051	Kodiak	5,051
	Juneau	5,145	101	5,498
	102	7,970	450-2	8,123
	450-3	5,123	50-4	8,123
	450-6	8,987	450-7	8,987
	450-8	8,123	450-9	8,134
	450-11	8,923	UT 10	4,133
	250-10	2,639	SATCO 10	1,257
	SATCO 20	1,202	SATCO 21	1,202
	Barge ST22	338	Barge ST23	338
	Napamute	334	Kodiak No.1	221
	Eak	53	Orca No.2	192
	Oil No. 1	155	14	3,174
	17	2,442	450-10	8,914

(Crowley continued)			
500-2	7,171	16	2,442
18	3,179	254	2,971
DB 300	2,614	Cinnabar	75

Foss Maritime Co.
660 West Ewing St.
Seattle, Wa 98119

Insurance

Foss 256	2,656
Foss 255	2,637
Foss Tongass	744
SEA 76	830
Foss Energizer	4,757
Phoenix 120	3,218
Hanalei	1,849

Exxon Shipping Co.
P.O. Box 3342
Houston,TX 77253

Exxon Barge No.503 9,185 Guaranty
Exxon Equity Holding Co.

Delta Western
P.O. Box 102916
Anchorage, AK 99501

DW 282	~~1,000~~ 3,365
DW 280	1,000 3,882

Self-Insurance

Boyer Towing Inc.
7318 4yh Ave.
Seattle, WA 98108

Kootznahoo	312
Callapooya	1,192

Insurance

Approval Rescinded 3/4/91

Samson Tug & Barge Co.
P.O. Box 559
Sitka, AK 99835

Annahootz 2,638

Insurance

Texaco Marine Services
2000 Westchester Ave.
White Plains, NJ 10650

Valliant/ Pennsylvania Victory/Texas (tug/barge)

Self-Insurance

White Pass Transportation Ltd.
P.O. Box 4070
Whitehorse, Yukon Y1A 3T1

Alaskan Spirit

Insurance

Smith Lighterage Co.
P.O. Box 106
Dillingham, AK 99576

Skip I	216
Ray'Sons	98

Insurance

Moody's Sea Lighterage
Aleknagik, AK 99555

Sealite I	194
ST 20	294

Insurance

Approval Rescinded 2/27/91

Kugkaktlike Limited
General Delivery
Kipnuk, AK 99614

Chalin 206

Insurance

Alaska Marine Charters
106 110th Place S.E.
Bellevue, WA 98004

Investigator 1,730

Insurance

Approval rescinded until new insurance meeting State requirements can be met

Northland Services, Inc. 601 So. Myrtle Street Seattle, WA 98124	ZPC 401 Kvichak Trader	1,739 2,227	Insurance
Bering Sea Fisheries 4413 83rd Ave. S.E. Everett, WA 98205	King Salmon	979	Insurance
Trident Seafood Corp. 5303 Shilshole Ave. NW Seattle, WA 98107	NC-S-1 J-S-1	Approval Rescinded 2/28/91	Insurance
Coastwise Trading Co. 200 East Randolph Dr. Chicago, IL 60601	Georgia Bay Florida Bay	9,759 11,296	Guaranty
Dojer Ltd. P.O. Box 660 Whittier, AK 99693	Itswoot Blue Fox Approval rescinded until new insurance meeting State requirements is provided		Insurance
Forty Niner Transportation Co. 1600 A Street,Suite 307 Anchorage, AK 99501	FNT-180 FNT-340	1,066 5,214	Guaranty Harbor Ent.
Brice Inc. P.O. Box 668 Fairbanks, AK 99707	OBS 4000 Approval rescinded 2\11\91 pending new insurance coverage		Insurance
United Marine Tug and Barge, Inc. 1441 North Northlake Way Seattle, WA 98103	UMBT 281 MLC 344 MLC 332 MLC 340-1 MLC 333	3365 5214 4564 5214 4586	Insurance
Brix Maritime Barging, Inc. P.O. Box 83018 Portland, OR 97283	Sitka Palmar	2,506 5,051	Insurance

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM March 19, 1991

SUBJECT: Vessel Contingency Plans
(Work Order No. 7LS-1032)

TO: Senator Sam Cotten
Attn: Ginny Fay

FROM: Terri Lauterbach
Legislative Counsel

You have asked whether the laws of California are more comprehensive or more stringent than the laws of Alaska with respect to oil spill contingency plans for vessels.[1/]

In my opinion, the laws of California are both more comprehensive and more stringent than the laws of Alaska for vessel contingency plans. Contingency plan requirements for vessels in California cover at least one additional area compared to Alaska and have stricter requirements in some of the areas that are covered in both states' laws.

CONTEXT OF DISCUSSION

The context in which you asked your question comes from the possibility of Alaska joining an interstate compact with other West Coast states that might contain language such as the following:

> The compact shall work closely with officials of the [party states] to assure that the vessel contingency plans required under this compact are at least as comprehensive as similar plans required by the parties before adoption of this compact and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in effect at the time the compact initiates its requirements under this subparagraph. (Emphasis added.) (Language obtained from you.)

1/ This memo is restricted to a discussion of the statutes of the two states. No attempt is made to compare the regulations of each state. Both sets of regulations are still being developed.

I interpret this language to mean that the vessel contingency plans of the compact states must not only address all relevant areas (comprehensiveness) but also contain "any requirements...in effect at the time" (be as stringent).[2/]

COMPREHENSIVENESS

The main area covered by California laws that makes their contingency planning requirements for vessels more comprehensive than under Alaska's laws is in the area of prevention measures.

California requires that vessel contingency plans demonstrate that "all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the...vessel." Alaska has no such requirement to reduce the possibility of an oil spill.

Our laws call the plans "oil discharge prevention and contingency plans" but Alaska law only contains standards for response measures that must be taken after a spill occurs. DEC can make exceptions to the response planning standards for vessels that take prevention measures, but no vessel is required to take prevention measures under our law.

STRINGENCY

California's vessel contingency plan laws are more stringent than Alaska's in several respects.

(1) Best available protection. California's laws require that contingency plans provide for "the best achievable protection of coastal and marine resources."[3/] In contrast, Alaska's laws set specific response planning standards in terms of size of vessel, size of discharge, and number of hours.

[2/] Since the compact language you sent to me deals only with vessel contingency plans, that is the only subject addressed in this memo. This memo does not address master state plans or other aspects of state prevention or response to oil discharges, such as state research into technology, state deployment of equipment and personnel, or state marine safety regulations.

[3/] Govt. Code 8670.28(a). "Best achievable protection" is defined in Govt. Code 8670.3(c) as being

> the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable...

"Best achievable technology" is further defined in Govt. Code 8670.3(d) to include processes "that are being developed, or could feasibly be developed anywhere in the world."

In my opinion, California's "best achievable protection" standard might well be a stricter standard than our 72-hour standard, particularly as technologies improve, and particularly for smaller spills which, in Alaska, are only subject to the same 72-hour standard as larger spills.

(2) Best available technology. In California, the state can require a contingency plan to be resubmitted when new response technologies become available.[4] In Alaska, a plan only needs to contain the best technology available at the time of submission or renewal, with no modifications required for upgrading technology within the three-year approval period.[5]

(3) Reasons for modification. In California, the state can require resubmission of a contingency plan for reasons not allowed in Alaska. Those reasons are availability of better technology than when the plan was first approved (discussed above), changes in regulations (not necessarily in response to a change in the underlying law), deficiencies determined in a statewide evaluation one year after the 1991 regulations are adopted, and increased need to protect endangered species habitat.[6]

In Alaska, the only specified reasons for modifications within the three-year approval period are changes within the operation of the facility and discharge experience.[7]

(4) Approval period. In California, a contingency plan is approved for only a two-year period. In Alaska, a plan is approved for three years.

(5) Conditional approval. It does not appear to me that California's law allows for approval of a plan subject to conditions, as is allowed under regulations of DEC in Alaska.[8] California law specifically provides that "A plan is not deemed approved until all portions are approved."[9] A nonapproved plan must be returned to the sender. Failure to gain approval after a second submission may be determined to be a violation in California.

---

[4] Govt. Code 8670.31(g).

[5] AS 46.04.030(e).

[6] Govt. Code 8670.31(g).

[7] AS 46.04.030(e).

[8] While this memo is primarily limited to statutory comparisons, I mention this particular Alaska regulation because it has been made noteworthy by developments in this state. I consider it highly unlikely that California might turn out to have a similar regulation when its regulations are adopted because of its more specific statutory language about plans not being approved in parts.

[9] Govt. Code 8670.31(d).

I hope you find the discussion in this memo helpful. Please let me know if I can answer further questions on this matter or be of other assistance.

TML:pl
91-180.plm

REVISED DEFINITION OF VESSEL FOR THE PACIFIC OCEAN RESOURCES COMPACT

See Article II (8)

These changes are designed to take advantage of the language contained in the 1990 Oil Pollution Control Act which protects small operators providing essential service in remote or rural areas. The need for exemptions are particularly important throughout much of Alaska.

New Definition of Vessel

Vessel means a watercraft or other artificial contrivance that is constructed or adapted to carry, or that carries oil or hazardous substances in bulk as cargo or cargo residue and that is greater than 5,000 dead weight tons.

REVISED COMPACT VOTING PROCEDURE

Article VII

(1) A majority of representatives, with at least one member from each member state, shall constitute a quorum.

(2) Each member state shall have two voting representatives.

(3) No action or decision of the compact shall be approved unless the action or decision receives a majority of votes of the representatives, with at least one representative from each state voting in the majority.

FEDERAL OPA 90 (OIL POLLUTION ACT, 1990)

September 1990

THE ROLE OF THE STATES UNDER THE FEDERAL OIL SPILL LAW

American Petroleum Institute
Office of General Counsel

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:30PM #491 P.02

TABLE OF CONTENTS

		Page
I.	BACKGROUND	1
II.	LIABILITY	2
	A. Strict Liability for All Damages	2
	B. The Necessity of Liability Limits	3
	C. The Fund	5
III.	FINANCIAL RESPONSIBILITY	7
IV.	GOOD SAMARITAN PROTECTION FOR OIL SPILL RESPONDERS	9
V.	FEDERAL PRIMACY IN SPILL RESPONSE AND CONTINGENCY PLANNING	10
	A. Response Chain of Command.	10
	B. Contingency Planning.	12

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:30PM #491 P.03

THE ROLE OF THE STATES UNDER THE FEDERAL OIL SPILL LAW

I. BACKGROUND

For the past fifteen years, comprehensive oil spill legislation has been considered in the U.S. Congress, with the issue of preemption of state liability laws dividing the House and Senate. In 1989, the House abandoned its historic position and passed a bill which does not conflict with the Senate Bill and allows the States to enact their own oil spill liability laws. On August 18, 1990, President Bush signed this legislation.

In order to legislate responsibly in this area, the States should carefully analyze the comprehensive federal law which addresses issues of oil spill liabilities, funding, financial responsibility, contingency planning, "Good Samaritan" legal protections, and coordination of oil spill response and cleanup.

This new federal law vests in the individual States extensive responsibilities for developing regulatory standards and enforcing its provisions. The States should carefully assess their rights and benefits under this federal law, which creates a $1 billion federal oil spill fund, and avoid oil spill legislation which would unnecessarily duplicate or conflict with the federal law.

Such conflicts, for example, in the financial responsibility area could significantly obstruct the efficient conduct of national and international commerce. In the contingency planning and response area, federal and state conflicts could jeopardize an immediate and effective strategy for containing, mitigating and removing an oil spill.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:30PM #491 P.04

The sections below will briefly summarize the major aspects of the new federal oil spill law and its important provisions concerning the role of the States in protecting their interests. The States should enact their own provisions in the following areas only if they find the federal legislation incomplete or otherwise unsatisfactory.

II. LIABILITY

A. Strict Liability for All Damages

The new federal law, entitled "The Oil Pollution Act of 1990," imposes strict liability on tankers or other vessels and facilities for damages resulting from an oil spill. The Act independently lists the extensive damages for which the spiller would be liable, including:

1. removal costs incurred by the U.S. or a State;

2. all damages for economic losses, including injury and lost use of real and personal property and lost income or profits, recoverable by any citizen or business in any state;

3. natural resource damages recoverable by a State under an assessment by State trustees, for all costs of assessing damages and restoring the State's natural resources, including the "lost use" value of such resources pending restoration;

4. lost State government revenues, including lost taxes, royalties, rents, fees, or net profit shares;

5. subsistence uses of damages natural resources; and

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:31PM #491 P.05

6. public services costs (of State and local governments) required during or after oil spill removal activities, including protection from fire, safety or health hazards.

States concerned that federal cleanup standards may be less stringent than State standards should examine section 1011 of the new law:

> The President shall consult with the affected [state] trustees...on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the National Contingency Plan, removal with respect to any discharge shall be considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination shall not preclude additional removal action under applicable state law.

This provision will ensure that cleanup operations under the National Contingency Plan are sufficiently carried out to the reasonable satisfaction of the Governor of any State impacted by a spill. This participatory mechanism will ensure that States will have a significant role in determining the extent and sufficiency of cleanup operations necessitated by an oil spill. In addition, the states are free to require "additional removal actions under applicable state laws" if they are not satisfied with the cleanup achieved under the National Contingency Plan.

B. The Necessity of Liability Limits

The federal limits on liability have been substantially increased and are set at a sufficiently high level to foster responsible and environmentally protective conduct on the part of petroleum transporters and facilities -- without exposing them to

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:31PM #491 P.06

unlimited, and therefore uninsurable, liability. Specifically, tankers would be exposed to an overall liability level of $1200 per gross ton, onshore facilities and deepwater ports would have a $350 million liability limit, and outer continental shelf facilities would face a $75 million limit on liability for third party damages with no cap on clean up costs. Finally, federal liability caps would not apply in cases where the operator was grossly negligent, engaged in willful misconduct, violated applicable federal safety, construction, or operating standards, or failed to report the spill incident as required by law.

These federal liability provisions will ensure compensation to citizens, businesses and state/local governments who suffer damages from an oil spill -- under the strictest liability standards against oil spillers. Some states, however, have considered ill-advised legislation which would expose oil spillers to unlimited liabilities. State laws for unlimited liability undermine the federal law which carefully balanced imposing tough liabilities on oil spillers against practical concerns of insurance availability and affordability and international competitiveness. Given the unprecedented cost experience of the Exxon Valdez oil spill, with cleanup costs alone approaching $2 billion, the federal Congress understood correctly that petroleum transporters and facilities will not be willing to "bet their companies" in every case in which they handle or transport petroleum. The States must be no less cognizant of these critical concerns. Major coastal states such as Florida and New York have instead wisely legislated appropriate

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:32PM #491 P.07

limits on the liability of petroleum facilities and vessels.

If the States are satisfied with the federal proposal's strict standards of oil spill liability, backed by at least a $1 billion federal fund, they should not legislate in this area. Most critically, the States should reject the counterproductive measure of imposing unlimited liabilities on oil spillers.

C. The Fund

To the extent a catastrophic spill results in damages in excess of the federal liability caps, the $1 billion federal fund would satisfy most remaining liabilities -- with one important exception. "Removal costs" incurred on account of state legal requirements which are not consistent with the National Contingency Plan under the federal Clean Water Act may not be paid from the federal fund. This is not to say that the federal law does not hold spillers liable for removal costs incurred solely pursuant to state law -- it does. However, the new federal law denies access to the new federal fund for removal costs imposed by the states which are not called for under the new requirements for oil spill contingency planning. Thus, if the states participate in the new contingency planning process, as this new law calls for, and the states incorporate their removal standards in this process, the federal fund will be accessible to satisfy any such state removal standards.

This condition on the availability of the federal fund for state removal costs was added in the last stages of the Congressional conference on this new federal law. Significantly,

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:33PM #491 P.08

new contingency planning requirements, which bear very little resemblance to provisions in the previously passed House and Senate bills, were also added in the last stages of the conference. The philosophy underlying the limitation on the states' access to the federal fund is to encourage the states to participate diligently in the contingency planning process of the new federal law -- if, prior to a spill, the state and federal officials can agree on appropriate removal strategies and standards and incorporate them in the required plans, the federal fund will ensure total access and compensation to meet those standards. The states will not have unlimited access to the federal fund, however, if they decide to impose or create new cleanup and removal standards after a spill has occurred which are not mentioned in the contingency plans required under the new law.

Under section 1012(d) of the new law, a State Governor may obtain the President's consent to obligate up to $250,000 from the federal fund for "the immediate removal of a discharge" -- but again only if the removal costs are consistent with the National Contingency Plan. In addition, under section 1013(b), a claim for state removal costs consistent with the National Contingency Plan may be presented immediately to the fund for payment. A state therefore does not have to follow the usual claims procedure under this law of presenting his claim to the spiller and waiting 90 days before presenting a claim to the fund. Furthermore, under section 6002(b), these fund expenditures are exempt from federal appropriations procedures and will be paid "expeditiously." See,

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:35PM #491 P.12

Sec. 1012(g).

Ultimately, it makes eminent sense to insure against catastrophic oil spill liability once -- at the federal level up to at least $1 billion -- rather than to do so 50 times over, legislating a duplicative, catastrophic fund for each of the 50 States. The reasons which existed for the States to set up their own funds -- to sufficiently insure potential oil spill liabilities, finance State government clean up costs, and limited access of state governments to various federal funds - no longer exist. The States should instead accept the invitation in the new federal law to participate in the development of removal standards under the National Contingency Plan which will enable their access to the federal fund for the immediate payment of oil spill liabilities.

III. FINANCIAL RESPONSIBILITY

Section 1019 of the new law provides:

> "A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 1016."

The Conference Report elaborates that "[t]his authority includes the right to inspect vessels and facilities, to require the display of evidence of financial responsibility and to impose sanctions for failure to comply with the requirements."

Given this broad delegation of authority to the States to embrace and enforce federal requirements of financial responsibility, the States should refrain from legislating

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:36PM #491 P.13

additional (or merely duplicative) requirements unless they find the federal requirements deficient in some respect. To the extent state law in this area would merely duplicate federal requirements, no substantive purpose would be served. Rather, local businesses would merely be burdened by the annual preparation and submission of paperwork. To the extent any State governments required higher levels of financial responsibility than those required under the new federal law, (which approach the highest levels of insurability), that state might jeopardize the viability of petroleum operations located in that State. The efficient flow of commerce is achieved by the imposition of a uniform level of financial responsibility, so long as that level is high enough to insure against all of the potential liabilities of a petroleum operator or transporter.

Summary of Federal Financial Responsibility Requirements

The new law contains an array of available sanctions against those vessels and facilities that do not satisfy their financial responsibility requirements -- including seizure, detention, and withholding clearance for entry, and the imposition of civil penalties of up to $25,000 per day. Substantively, oil tankers are required to show financial responsibility of the greater of $1200 per gross ton or $10 million. Offshore facility owners and operators are subject to financial responsibility of $150 million; deepwater ports are required to have $350 million of financial responsibility. Various methods of demonstrating financial responsibility are enumerated in the new law, including evidence of

FROM:API-HEAD 8300 TO:6760719C/4654979 MAR 19, 1991 2:34PM #491 P.10

insurance, surety bonds, guarantees, letters of credit, and self-insurance.

These federal financial responsibility requirements are extremely high and the sanctions for non-compliance are strict and punitive. The States should find that the federal requirements for financial responsibility provide a satisfactory guarantee of compensation for the states, their citizens, and natural resources. The States should aggressively undertake the enforcement prerogatives regarding financial responsibility which are offered the under the new federal law.

IV. GOOD SAMARITAN PROTECTION FOR OIL SPILL RESPONDERS

With the emergence of a new federal oil spill liability law, and recent costs for oil spill damages reaching the multi-billion dollar level, the viability and effectiveness of organizations designed to respond to oil spills is threatened. Such organizations, many of which are non-profit, simply can not afford exposure to the "brave new world" of oil spill liabilities -- and why should they?

The law must recognize the significant differences between the spill response organizations and the original spillers of oil -- allocating their respective liability risks accordingly. Specifically, federal and state laws should extend to spill response cooperatives and contractors the protection from liability -- except in cases of gross negligence or willful misconduct -- which is afforded other emergency entities in our society,

FROM:API-HEAD 8300 TO:5760719074654979 MAR 19, 1991 2:34PM #491 P.11

including ambulance services and firefighters. In the case of damages allegedly caused by the negligence of oil spill responders, it is the original spiller of oil, whose conduct necessitates the response, who should pay those damages.

The new federal law therefore contains a provision which extends such limited immunity protection for oil spill response organizations -- but only for the liabilities they face under the federal law. This provision will not succeed if spill responders continue to face duplicate, (and in some case unlimited), liabilities under individual state laws. At present, the majority of existing Good Samaritan state laws applicable to oil spill responders contain a host of impractical and unrealistic condition on the immunity. For example, under many of these state laws, an oil spill responder loses its immunity if it charges any fee for its services. Such conditions on liability exposure only undermine the goal of ensuring emergency response capability. The States should instead legislate for the promotion of the best possible response to spill emergencies by enacting straightforward limited responder immunity provisions such as the new national standard.

V. FEDERAL PRIMACY IN SPILL RESPONSE AND CONTINGENCY PLANNING.

A. Response Chain of Command

A most important lesson learned from recent, publicized spill incidents is that immediate and decisive response to oil spills is essential to a successful containment and cleanup. The new federal law fundamentally amends the Clean Water Act's provisions in this

regard to charge federal authorities with the duty to ensure an effective response. Thus, section 4201 provides that "[t]he President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge...into or on the navigable waters...." In cases of "a substantial threat to the public health or welfare of the United States,...the President shall direct all Federal, State, and private actions to remove the discharge...." Federal primacy is express in the new legislation with respect to oil spill response: "Each federal agency, State, owner or operator, or other person participating in [removal] efforts...shall act in accordance with the National Contingency Plan or as directed by the President...." See, new section 311(c)(3) of the Federal Water Pollution Control Act, as amended by section 4201 of the new law.

The States should avoid oil spill response legislation which conflicts or is otherwise inconsistent with this new federal duty and authority to ensure effective response measures are taken. Of course, to the extent state contingency plans or other response provisions would interfere with the new federal response provisions of the Clean Water Act, they would be inconsistent and of questionable effect. States should, however, be careful not to cause uncertainty by placing federal response authorities or oil spill responders in the position of having to resolve conficting directives from federal and state authorities.

Recent examples of such conflicts resulted in delayed response

and exponentially increased damage to economic and environmental interests. The Conference Report emphasizes the point: "This subsection is designed to eliminate the confusion evident in recent spills where the lack of clear delineation of command and management responsibility impeded prompt and effective response."

B. Contingency Planning

The new federal law establishes a new and comprehensive national planning and response system under the Federal Water Pollution Control Act. This system will consist of an updated National Contingency Plan, a new National Response Unit, Coast Guard Strike Teams, Coast Guard District Response Groups, Area Committees and Contingency Plans, and vessel and facility contingency plans.

Within one year of enactment, the President is required to revise and republish the National Contingency Plan (NCP) to "provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal...." The new NCP must assign "duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities...." New Coast Guard Strike Teams are established as well as "[p]rocedures and techniques to be employed in identifying, containing, dispersing, and removing oil...." The NCP also importantly calls for

> A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be

> reimbursed in accordance with the Oil Pollution Act of 1990, in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

The NCP must also include a new fish and wildlife response plan, developed in consultation with, inter alia, "State fish and conservation officials."

By August 18, 1991, the Secretary of Transportation must establish a new "National Response Unit" (NRU) in Elizabeth City, North Carolina. The NRU will maintain a comprehensive computer list of spill removal resources, "coordinate the use of private and public personnel and equipment to remove a worst case discharge," administer Coast Guard Strike Teams and maintain all approved Area Contingency Plans.

Also by August 18, 1991, Coast Guard District Response Groups must be established in each of ten Coast Guard districts. These response Groups will manage all federal removal resources within their district, including firefighting equipment.

By February 18, 1991, the President is required to designate areas for which new "Area Committees" are to be established, ensuring "that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan...." Area Committees are to be comprised of "members appointed by the President from qualified personnel of Federal, State, and local agencies." Area Committees are required, by February 18, 1992, to submit "Area Contingency Plans" which are "adequate to remove a worst case discharge...from a vessel,

offshore facility or onshore facility operating in or near the area." The plans must note "areas of special economic or environmental importance that might be damaged by a discharge" and "describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge...." These plans must be integrated with the NCP and individual vessel and facility contingency plans.

Finally, owners or operators of tankers and facilities must prepare and obtain Presidential approval of individual contingency plans. These plans must, among other things,--

> identify, and ensure by contract or other means approved by the President the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge....

Regulations for vessel and facility contingency plans must be published by August 18, 1992 and plans must be submitted for approval no later than February 18, 1993.

As a consequence of these extensive planning requirements, which will include extensive State and public input, the States should not require a potentially fourth and conflicting level of oil spill contingency planning. Contingency planning requirements under state law would entail the preparation and submission of potentially duplicative paperwork and would risk inconsistency with federally-required plans -- each potential factors in delaying an immediate and ordered response which is critically necessary in order to limit environmental and economic damages. Finally, to the extent a state's contingency plan requirements were at variance

with plans approved by federal authorities, they would be of dubious legal effect.

No Duplication

As has been noted, the driving philosophy of this federal legislation is that the spiller is strictly and exclusively responsible for all the consequences of his spill. In this regard, it is the spiller who must ensure the availability of "private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge" -- and pay all spill liabilities if a spill occurs. Consistent with this philosophy, the Congress rejected a course of action which would relieve private industry of its obligation -- as an ordinary business cost -- of providing sufficient national oil spill response capability. In large part, the creation of MSRC reflects industry's fulfillment of this obligation.

Because of this federal requirement that a private response and cleanup capability exists which is sufficient to respond to worst case discharges from vessels or facilities, any further public expenditures for these would duplicate private efforts. As a practical matter, public resources are expressly precluded from being referenced by vessels and facilities to fulfill their contingency and response planning obligations under federal law. It would therefore be a redundant and wasteful exercise for the

states to tax their citizens for the purpose of creating and sustaining state response and cleanup resources which duplicate those private capabilities mandated by federal laws.

AMERICAN PETROLEUM INSTITUTE - OFFICE OF GENERAL COUNSEL
STATUTORY SCHEDULE OF IMPLEMENTATION OF THE OIL POLLUTION ACT OF 1990
(AUGUST 1990)

Date of Enactment: August 18, 1990

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
None	1004(d)(1)	Sec. of Trans.; Discretionary regulation to reduce liability limits for onshore facilities from $350 million down to $8 million, considering specified factors.	STTF
No later than 1 year after enactment.	1004(d)(2)(B)	Sec. of Trans.; Submit Report to Congress of deepwater port oilspill risks.	M.T.C.
	1004(d)(2)(C)	Sec. of Trans.; must issue regs. within 180 days of submission of Report, lowering liability limits for deepwater ports from $350 million down to $50 million, if Report concludes that deepwater port operations pose a reduced environmental threat than other operations.	M.T.C.
Within 6 months of date of enactment, and from time to time thereafter.	1004(d)(3)	President; Report to Congress on desirability of adjusting liability limits under the Act.	M.T.C.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:40PM #491 P.21

FROM:API-HEAD 8300 TO:6758071907465497 MAR 19. 1991 2:41PM #491 P.22

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Every three years.	1004(d)(4)	President; Regulations adjusting liability limits to reflect increases in the CPI.	M.T.C.
Not later than 2 years after enactment.	1006(e)(1)	NOAA, in consultation with EPA and Fish and Wildlife Service; Regulations for the assessment of natural resource damages.	MRDA Task Force
None	1012(c)	President; Discretionary regs. to designate officials to administer the Fund.	M.T.C.
Not later than 6 months after enactment.	1012(e)	President; proposed regulations on obligating the Fund and entering into agreements with the states ($250,000). Final regs. must be published within 3 months of the close of the comment period for proposed regs.	M.T.C.
One year after enactment.	1012(g)	Comptroller General Audit Report of Fund	M.T.C.
None	1013(e)	President shall publish regs. for the adjudication of claims against the Fund.	M.T.C.
None	1014(b)	President; Regulations for designation of responsibility for a spill and advertisement.	M.T.C.

FROM:API-HEAD 8300 TO:6750719074654979 MAR 19, 1991 2:41PM #491 P

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
None	1016(a)	Financial responsibility regulations; for vessels by Sec. of Trans.; for facilities, by the President.	MTC/POC
Within 6 months after enactment.	3002	Secretary of State; Report to Congress on U.S. - Canada Great Lakes Oil Spill Cooperation.	
Within 6 months after enactment.	3003	Secretary of State; Report to Congress on U.S. - Canada Lake Champlain Oil Spill Cooperation.	
None	4103(b)	Sec. of Trans.; regulations regarding license re-issuance.	M.T.C.
Within 1 year of enactment.	4107	Sec. of Trans.; Report to Congress on need for expanded authority to direct the movement of vessels and expanded VTS.	M.T.C.
Not later than 1 year after enactment.	4109	Sec. of Trans.; Regs. establishing minimum standards for plating thickness.	M.T.C.
Not later than 1 year after enactment.	4110	Sec. of Trans.; Regs. establishing minimum technicals standards for overfill prevention and cargo tank pressure monitoring.	M.T.C.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:42PM #491

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Not later than 1 year after enactment.	4111	Sec. of Trans.; initiate a study regarding tanker navigation safety standards (crew sizes, qualifications, navigation equipment/-procedures, tanker-free zones). Not later than 2 years after enactment, Sec. must submit Report to Congress and recommendations.	M.T.C.
Not later than 1 year after enactment.	4112	Sec. of Army; Report to Congress on Dredge Modification Study.	
Not later than 1 year after enactment.	4113	President (to designate EPA and Coast Guard); Study on liners/secondary containment for onshore facilities. 6 months after submission of Report, recommendations are implemented.	S.T.T.F.
Within 180 days of enactment.	4114(a)	Sec. of Trans.; initiate a rulemaking regarding conditions for auto-pilot use.	M.T.C.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19. 1991 2:42PM #491 P.

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Within 12 months of enactment.	4115(b)	Sec. of Trans.; issue a final rule affecting vessels over 5000 gross tons for "structural and operational" requirements (in addition to double hulls), e.g., "hydrostatic loading, liners, spill rails..."	M.T.C.
Not later than 6 months after enactment.	4115(e)	Sec. of Trans.; Report to Congress on National Academy of Sciences Study regarding other "structural and operational requirements... equal to or greater than [double hulls]." Not later than 5 years after enactment, Report to Congress or impact of double hull and other requirements on environment and health of maritime transportation industry.	M.T.C.
None	4116(a)	Sec. of Trans.; Regulation for pilotage in Prince William Sound.	M.T.C.
None	4116(b)	Sec. of Trans.; Designation of areas where master/mate is required in addition to pilot.	M.T.C.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:43PM #491 P.2

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Not later than 6 months after enactment.	4116(c)	Sec. of Trans.; Initiate issuance of regs. to define areas for escort of tankers.	M.T.C.
Not later than 1 year after enactment.	4117	Sec. of Trans.; Report to Congress on Study of feasibility of Maritime Oil Pollution Prevention Training Program.	M.T.C.
Not later than 1 year after enactment.	4118	Sec. of Trans.; Regulations regarding vessel communications equipment.	M.T.C.
Not later than 1 year after enactment.	4201(c)	President shall revise and republish the National Contingency Plan (NCP) to implement amendments, including establishment of strike teams, a national center, conditions for dispersant use, state participation, and fish and wildlife response plan.	Spill Response and Effects Task Force

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19. 1991 2:44PM #491 P

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Not later than 6 months after enactment.	4202(b)	President shall designate areas for which Area Committees will be established. Not later than 18 months after enactment, Area Committees shall submit to President Area Contingency Plans; Not later than 24 months after enactment, President shall review these plans.	Spill Response and Effects Task Force
Not later than 1 year after enactment.	4202(b)	Sec. of Trans.; must establish new "National Response Unit." Sec. of Trans. must establish new Coast Guards District Response Groups.	M.T.C.
Not later than 24 months after enactment.	4202(b)(4)	Pres. shall issue regs. for tank vessel and facility contingency plans; after 30 months from enactment, tank vessels/facilities must submit plans to President; Pres. must review submitted plans within 36 months after enactment, (but may permit operations for up to 2 years after submission of plans under certain conditions).	M.T.C.

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19. 1991 2:44PM #491 P

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Within 36 months of enactment	5002(1)(1)	Alaska Regional Advisory Councils (Prince William Sound, Cook Inlet) and Terminal/Tanker Associations shall report to President and Congress concerning activities/recommendations.	M.T.C.
Within 36 months of enactment	5002(1)(2)	GAO Report to President and Congress on funds, programs, and recommendations concerning Alaska Terminal and Tanker Oversight and Monitoring.	M.T.C.
Within 1 year of enactment	5004	Sec. of Trans.; shall issue final regs. necessary for effective VTS in Valdez, including audible alarms. Sec. of Trans.; shall report to congressional committees on feasibility of "positive control of tank vessel movements in Prince William Sound by Coast Guard personnel."	M.T.C.
Not later than 6 months after enactment.	6003(e)	Environmental Sciences Review Panel report to Sec. of Interior regarding adequacy of information for North Carolina OCS leasing.	General Committee on Exploration

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19. 1991 2:45PM #491

DEADLINE	SECTION	IMPOSED ON WHOM; BRIEF DESCRIPTION	RESPONSIBILITY FOR ISSUE MANAGEMENT
Within 180 days of enactment	7001(b)	Interagency [Oil Pollution Research] Committee shall submit Plan for research to Congress.	Spill Response and Effects Task Force
No later than 1/31/91	8302	Sec. of Interior must Report to Congress on study of contingency plans, damages recovery, and coordinated action in response to oil spill in Arctic Ocean.	Spill Response and Effects Task Force

OPA 1990

REGULATED FACILITIES/VESSELS:

Tank Vessels: any vessel constructed or adapted to carry oil or hazardous material in bulk as cargo
Offshore Facilities
Onshore Facilities: any facility capable of discharging into navigable waters, adjoining shorelines, or exclusive economic zone

MAJOR C-PLAN REQUIREMENTS/STANDARDS:

Tank Vessel and Facility Response Plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of discharge.

Response plan to identify private personnel and equipment needed to remove, to the maximum extent practicable, worst case discharge (including discharge due to fire or explosion), and to mitigate or prevent discharge.

Tank vessels to carry appropriate removal equipment employing best technology that is economically feasible and compatible with safe operation of vessel.

Response plan shall describe training, equipment testing, periodic unannounced drills and response actions.

Response plan shall be consistent with National Contingency Plan and Area Contingency Plan.

FINANCIAL RESPONSIBILITY LEVELS - PER INCIDENT:

Onshore Facility - $350,000,000.

Offshore Facility - $150,000,000.

Tank Vessel/Oil Barge over 3,000 tons - the greater of $1,200 per ton or $10,000,000

Tank Vessel/Oil Barge under 3,000 tons - the greater of $1,200 per ton or $2,000,000.

Any Vessel over 300 tons - the greater of $600 per ton or $500,000.

RESPONSE FUNDING:

Federal Oil Spill Liability Trust Fund - $1,000,000,000 with $25,000,000 available to Coast Guard, and $30,000,000 through FY

92 available to establish National Spill Response System. Up to $250,000 available on request of Governor to State for immediate removal or, pursuant to agreement, request by a designated state official.

PREVENTION REQUIREMENTS:

Review of driver's license, alcohol and drug testing; suspension of licenses, certificates or documents; removal of ship's master if under influence of alcohol or drugs.

Periodic gauging of vessel plate thickness.

Requirements defining provisions for tank vessel operation with auto pilot engaged or unattended engine room.

Watches on tank vessel cannot exceed 15 hours during any 24 hour period or 36 hours in any 72 hour period.

Double hull tank vessels required according to replacement schedule. Single hull tank vessels phased out by 2010, until then will require double tug escort while in sensitive waters such as Prince William Sound.

Pilotage in Prince William Sound by Alaska licensed pilot who is not a member of vessel's crew. Federal designation of pilotage waters in areas and approaches of Prince William Sound.

INSPECTIONS/DRILLS:

Periodic inspections of containment booms, skimmers, vessels and other major equipment used to remove discharges.

Periodic drills without prior notice of removal capability according to relevant facility and vessel response plans. Annual reports of these drills will be published, including assessments of the effectiveness of the plans and a list of amendments made to improve the plans.

RESPONSE CONTRACTOR STANDARDS:

OPA 1990 provides for an immunity from liability for persons other than responsible party who are providing clean up assistance or advice in an action consistent with the National Contingency Plan, except for personal injury, wrongful death, gross negligence or willful misconduct.

ALASKA

REGULATED FACILITIES/VESSELS:

Oil Terminal Facilities (over 5,000 barrels crude, 10,000 barrels noncrude)
Exploration/Production Facilities
Oil Pipelines
Tank Vessels/Oil Barges

MAJOR C-PLAN REQUIREMENTS/STANDARDS:

Sufficient oil discharge containment, storage, transfer, and cleanup equipment, personnel, and resources to meet the following time/volume standards:

Oil Terminal Facilities - discharge equal to capacity of largest tank or greater if high risk area; within 72 hours, or shortest possible time if spill is to an environment other than open water.

Oil Exploration/Production Facilities - discharge equal to "realistic maximum oil discharge" (RMOD); within 72 hours or shortest time if other than open water.

Oil Pipelines - discharge equal to "RMOD" within 72 hours, or shortest time if other than open water.

Tank Vessels/Oil Barges

- less than 500,000 barrels crude oil capacity shall maintain in region resources for 50,000 barrel discharge supplemented by resources outside region for "RMOD", within 72 hours or shortest time if other than open waters.

- more than 500,000 barrels crude oil capacity shall maintain in region resources for 300,000 barrel discharge supplemented by resources outside region for "RMOD", within 72 hours or shortest time if other than open waters.

- any noncrude cargo capacity shall have resources to contain or control the greater of 15 percent of maximum capacity or "RMOD", within 48 hours or shortest time if other than open waters, clean up within shortest possible time.

FINANCIAL RESPONSIBILITY LEVELS - PER INCIDENT:

Crude Oil Terminal Facilities - $50,000,000.

Noncrude Oil Terminal Facilities - $25 per barrel storage capacity or $1,000,000; maximum of $50,000,000.

Offshore Exploration/Production Facility - $50,000,000.
Onshore Exploration Facility - $5,000,000.

Onshore Production Facility - $20,000,000.

Pipeline - $50,000,000.

Crude Oil Tank Vessel/Oil Barge - $300 per barrel storage capacity or $100,000,000.

Noncrude Tank Vessel/Oil Barge - $100 per barrel storage capacity or $1,000,000; maximum of $35,000,000.

All dollar amounts adjust according to Consumer Price Index.

RESPONSE FUNDING:

Surcharge of $.05 per barrel of oil produced from property in the state; surcharge suspended when maximum fund balance exceeds $50,000,000.

PREVENTION REQUIREMENTS:

Department may consider evidence of implementation of oil discharge prevention measures such as double hulls, containment systems, hydrostatic testing, vessel traffic systems and enhanced staffing levels to reduce time/volume standards for individual facility, pipeline, tank vessel or oil barge operation.

INSPECTIONS/DRILLS:

Department may require plan holder to demonstrate ability to meet standards, including exercises and verification of access to resources identified in C-Plan. Department may reasonably enter and inspect facilities, pipelines, tank vessels, or oil barges. Department may perform structural integrity inspections if determined necessary.

RESPONSE CONTRACTOR STANDARDS:

If other than spiller and according to C-Plan, or order of state or federal authority, then contractor not civilly liable unless negligent or grossly negligent according to generally accepted professional standards and practices, or intentional misconduct.

CALIFORNIA

REGULATED FACILITIES/VESSELS:

Vessels: Barges and tankers constructed or adopted to carry oil in bulk or in commercial quantities as cargo.
Facilities: Any facility located in marine waters or capable of discharging into marine waters.

MAJOR C-PLAN REQUIREMENTS/STANDARDS:

State oil spill contingency plan due January 1, 1993; 3 year term

Vessel and marine facility plans due 90 days after the regulations go into effect which is to be on or before December 31, 1991; 2 year term.

May not conflict with the National Contingency Plan

Plans must demonstrate all necessary equipment and services for the response, containment, and cleanup of a "reasonable worst case oil spill" scenario. Equipment and services must be either in place or the planner must show it has the appropriate financial or contractual arrangements in place.

Must identify the types of equipment that can be used, its location and how long to deliver to the spill site.

Each marine facility must also identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure and external events. It must identify measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a "reasonable worst case oil spill."

Each plan must contain a list of contact to call during drills, threatened or actual discharges and a timetable for implementing the plan.

The regulations will set standards for determining a "reasonable worst case oil spill."

FINANCIAL RESPONSIBILITY LEVELS:

Vessels: $500 million; rises to $750 million on July 1, 1995 and $1,000 million on January 1, 2000. May be reduced for "small barges" based on quantity of oil and potential risk to marine waters.

Facilities: "Reasonable worst case oil spill" based on amount of oil, risk to marine waters, costs of cleanup, frequency of operations and potential damages.

RESPONSE FUNDING:

$0.25 per barrel collected from refineries, terminals and pipelines with a $100,000,000 cap. (Oil Spill Response Trust Fund)
If no money is in the Trust Fund, the Fish and Wildlife Pollution Cleanup and Abatement Account may be used for cleanup. It is funded through oil spill settlements and civil penalties.

PREVENTION REQUIREMENTS:

Report due to the Legislature by December 31, 1992 on the feasibility of requiring new technologies to aid prevention.

INSPECTION/DRILLS:

Regular inspections of facilities along with associated equipment.

Periodic announced and unannounced drills; drills may also be conducted prior to approving a contingency plan.

SUMMARY OF FEDERAL OIL SPILL LEGISLATION

HR 1465 CONFERENCE COMMITTEE REPORT

TITLE I - Oil Pollution Liability and Compensation

SUBTITLE A - Prevention

1) Liability

1) Tank vessel - The greater of $1200/gross ton or
$10,000,000 if the vessel is greater than 3,000 gross tons
$2,000,000 if the vessel is less than 3,000 gross tons

2) Any other Vessel - $600/gross ton or $500,000 whichever is greater

3) Offshore Facility - except deep water port, the total of all removal costs plus $75,000,000*

4) Onshore Facility and Deep Water Port -$350,000,000

* The President may establish a limit on liability for offshore facilities of less than $350,000,000 but not less than $8,000,000 and deep water ports to not less than $50 million.

2) Deep Water Port Study - The Secretary shall conduct a study the relative operational and environmental risks posed by the transportation of oil by vessel to deep water ports vs. other ports, including offshore lightering practices and an analysis of the volume of oil transported by vessel using those practices and an analysis of the frequency and volume of oil discharges which occur in connection with lightering practices. Study must be completed in one year.

3) Damages- spillers are liable for the following damages: 1) loss of earning capacity due to property or natural resource damage and property damage or loss; 2) loss of subsistence use of natural resources by anyone who uses the resource for subsistence; 3) loss of tax or other revenues by governments and 4) damages for the net costs to state and local governments of providing increased or additional public services during or after removal activities. Lawsuits must be started within three years of the time removal actions are completed.

4) Preservation of State Authorities

5) Creates the $1 billion federal oil spill liability trust fund that can be use by federal or state officials for removal costs and the costs of monitoring removal actions and be consistent with the NCP. However the fund can not be used to pay for meeting stricter state standards). The fund can also be used to pay: 1) the costs of natural resource damage assessments and restoration; 2) claims for damages when the spiller denies liability or when the claim is not settled by payment within 90 days; and 3) administrative, operational, and personnel costs for implementation and enforcement of the act. Up to $25 million is available to the Coast Guard in any fiscal year. Up to $30 million each year through fiscal 1992 is available to establish a national spill response system, including the purchase and pre spill positioning of oil spill equipment. Up to $26.5 million a year is available for research and development activities.

6) Clean up standards - Clean up is considered complete when determined so by the President in consultation with the Governor's of affected states.

TITLE II - Conforming Amendments

1) Money in three existing federal oil spill funds are combined into the Comprehensive federal oil pollution liability fund.

TITLE III - International Oil Pollution Prevention

1) Non-binding resolution stating that the U.S. should participate in an international oil pollution liability and compensation system that is at least as effective of state and federal laws. The president is required to encourage international organizations to establish an international inventory of spill removal equipment and personnel.

TITLE IV - Prevention and Removal

1) Alcohol and Drugs:

a) review of driver's license records of applicants for licenses, certificates of registry, or merchant mariner's documents
b) alcohol and drug testing or merchant sailors;
c) temporary suspension of licenses, certificates and documents under certain circumstances;
d) criminal checks prior to issuance or renewal of documents;
e) suspension or revocation of a license, certificate or document if the individual is convicted of driving under the influence; and
f) removal of the ship's master if he is under the influence of alcohol or dangerous drugs

2) Vessel Traffic Service Systems Study to-

a) determine whether the Secretary should be given additional authority to direct the movement of vessels
b) determine and prioritize the U.S. Ports and Channels that are in need of new, expanded or improved VTSS. The study is to be completed in one year.

3) Periodic Gauging of plating thickness - Requires periodic gauging of the plate thickness of vessels, and requires overfill and pressure monitoring devices to prevent spills.

4) Study to ensure the safe navigation of vessels transporting oil or hazardous substances

a) determine appropriate crew sizes
b) evaluate the adequacy of qualifications and training of crew members
c) evaluate the ability of crew members to take emergency actions to prevent or remove a discharge
d) evaluate the adequacy of navigational equipment and systems on tankers
e) evaluate and test electronic means of position reporting and identification of tankers
f) evaluate the adequacy of navigation procedures
g) evaluate whether areas of navigable waters should be designated as zones where the movement of tankers should be limited
h) evaluate the adequacy of inspection standards
i) review and incorporate the results of past studies
j) evaluate the use of computer simulator courses
k) evaluate the size, cargo capacity and flag nation of tankers transporting oil or hazardous substances on navigable waters. The study is to be completed in 2 years.

5) Study on dredge modification - The army will conduct a study the feasibility of modifying dredges to use in the removal of oil and hazardous substances. The report will be completed in one year.

6) Study to determine whether liners or other secondary means of containment should be used to prevent leaking or to aid in leak detection of on shore facilities used for the bulk storage of oil and located near navigable waters. Study will be completed by the President in one year.

7) Manning requirements - The Secretary shall initiate regulations to define the conditions and waters which tank vessels may operate with auto pilot engaged or with an unattended engine room.

a) watches - a licensed individual or seaman may not be permitted to work more than 15 hours in any 24 hour period or more than 36 hours in any 72 hour period except in an emergency or drill.

8) Double Hull Tankers - Double hulls are required on all new oil tankers and barges operating in waters

subject to U.S. jurisdiction, except for vessels used only to respond to discharges of oil or hazardous substances. All single hull tankers will be phase out by 2010 based on age and size and until then at least two tugs would be required to accompany any single hull ships in certain sensitive areas such as Prince William Sound and Puget Sound. Not later than 6 months after the date of enactment, the Secretary shall determine based on recommendations from the National Academy of Sciences or other qualified organization, whether other structural and operational tank vessel requirements will provide protection to the marine environment equal to or greater than that provided by double hulls.

9) Pilotage - The Secretary shall designate by regulation the areas of the approaches and waters of Prince William Sound on which a vessel is not required to be under the direction and control of a licensed pilot. In any area of Prince William Sound, where a vessel is required to be under the direction and control of a pilot, the pilot may not be a member of the crew of that vessel and shall be a pilot licensed by the State of Alaska who is operating under a federal license when a vessel is navigating waters in PWS.

SUBTITLE B - Removal

1) National Contingency Plan - provides for efficient, coordinated and effective action to minimize damage from oil and hazardous substances and shall include:

a) assignment of duties and responsibilities among federal departments and agencies in coordination with state and local agencies and port authorities.
b) identification, procurement, maintenance and storage of equipment and supplies
c) establishment or designation of coast guard strike teams consisting of:
1) personnel who shall be trained, prepared and available to provide necessary services to carry out the NCP
2) adequate oil and hazardous substance pollution control equipment and material
3) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife
d) a system of surveillance and notice designed to safeguard against as well and ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate state and federal agencies
e) establishment of a national center to provide coordination and direction for operations in carrying out the plan
f) procedures and techniques to be employed in identifying, containing, dispersing and removing oil and hazardous substances
g) a schedule, prepared in cooperation with the states, identifying spill dispersents, chemicals, and other spill mitigating devices and substances
h) a system whereby the state or states affected by a discharge of oil or hazardous substances may act when necessary to remove discharges and may be reimbursed
I) establishment of criteria and procedures to ensure immediate and effective federal identification of, and response to, a discharge
J) establishment of procedures and standards for removing a worst case discharge of oil or for mitigating or preventing the discharge
k) designation of the federal official who shall be the federal on-scene coordinator for each area for which an area contingency plan is required
l) establishment of procedures for the coordination of activities of the Coast Guard strike teams, federal on scene coordinators and district response groups
m) a fish and wildlife response plan for the immediate and effective protection, rescue, and rehabilitation of fish and wildlife resources

2) National Response Unit - The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in Elizabeth City, North Carolina. The Secretary shall:

a) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide
b) shall provide technical assistance, equipment, and other resources requested by a FOSC
c) shall coordinate use of private and public personnel and equipment to remove a worst case discharge
d) may provide technical assistance in the preparation of an area contingency plan

e) shall administer Coast Guard Strike Teams
f) shall maintain on file all area contingency plans approved by the president
g) shall review plans

3) Coast Guard District Response Groups - Response groups including personnel and equipment will be established in each of the 10 Coast Guard Districts

4) Area Response plans and Area Committees - composed of federal state and local agencies will prepare the Area contingency plan (designated 6 months after enactment, plans must be submitted 18 months after enactment)

5) The President shall issue regulations which require an owner or operator of a tank vessel or facility to prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge of oil or a hazardous subetance.

A tank vessel or facility plan shall be:
a) consistent with the requirements of the NCP
b) identify the qualified person having full authority to implement removal actions and require immediate communications between that individual and the appropriate federal official and the persons providing personnel and equipment
c) identify and ensure, by contract or other means, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge or to mitigate or prevent the discharge
d) describe the training, equipment testing, periodic unannounced drills and the response actions of persons on the vessel or at the facility.

6) Equipment Requirements and Inspections - Not later than 2 years after enactment, the president shall require:

a) periodic inspections of containment booms, skimmers, vessels, and other major equipment used to remove discharges
b) vessels to carry appropriate removal equipment that employs the best technology economically feasible that is compatible with the safe operation of the vessel

7) Drills

SUBTITLE C - Penalties

1) Existing penalties are increased and may be assessed administratively. Federal enforcement powers are strengthened.

TITLE V - Prince William Sound

1. Prince William Sound Oil Spill Recovery Institute - Conduct oil spill research and educational and educational demonstration projects. 18 members including a representative of the Department of Environmental Conservation, Fish and Game and Commerce and Economic Development.
Under the Institute is an advisory board and a scientific technical committee

a) identify and develop the best techniques, equipment and materials for dealing with oil spills in the arctic and subarctic marine environments
b) complement federal and state damage assessment efforts and determine the long term effects of the Exxon Valdez oil spill

2) Terminal and Tanker Oversight and Monitoring - 2 programs are developed, one in PWS and one in Cook Inlet. Both are made up of an Oil Terminal Tanker Operations Association and a Citizens Advisory Council

The Association is made up of one terminal facility, one shipper, one state government official and one federal government official. The functions of the Association is to 1) review policies related to operation and maintenance of the oil terminal facilities and oil tankers which affect or may effect the environment and 2) provide a forum to discuss and make recommendations concerning all permits,

plans and site specific regulations governing the activities and actions of terminal facilities and tankers.

The Citizens Advisory Council is appointed by the Governor and shall represent fishing, aquaculture, native corporations, environmental organizations, recreational organizations, state chamber of commerce (tourism), and specific representatives from local communities, and non-voting members including EPA, Coast Guard, NOAA, Forest Service, BLM, DEC, F&G, DNR, DES. Duties include: provide advice and recommendations to the Association on policies, permits and regulations relating to operation and maintenance of facilities and tankers which may effect the environment; monitor environmental impacts of the operations of facilities and terminals; review the adequacy of oil spill prevention and contingency plans for tankers and facilities; provide recommendations to the Association on Port Operations, policies and practices; recommend standards for permits and regulations, modifications of terminal facility and tanker operations; and modifications to prevention and contingency plans; and create additional committees.

Funding provided by the oil industry, contingency plans will not be approved if these Environmental monitoring and oversight programs are not funded. $2 million in PWS, $1 million in Cook Inlet.

3) The Transportation Secretary is required to establish special requirements for Prince William Sound including:

a) an improved vessel traffic service system for the Port of Valdez and a Bligh Reef warning light
b) pre-positioned oil spill containment and removal equipment in strategic locations
c) establishment of an oil spill clean up force sufficient to clean up a 200,000 barrel spill
d) training in oil removal techniques for fishermen and fishing industry employees in the area
e) spill drills twice a year
f) Tankers that have spilled more than 1 million gallons are prohibited from operating in Prince William Sound

TITLE VI - Miscellaneous

TITLE VII - Research and Development

1) $26.5 million annually for a new research and development program coordinated by an Interagency Coordinating Committee on Oil Pollution Research. The Committee Would coordinate efforts by federal agencies, industry, universities, research institutions, states and other nations. The Committee will investigate technologies to prevent and clean up spills, ways to improve industry and government response to spills, ways to restore damaged natural resources, the environmental effects of spills and other topics.

TITLE VIII - Trans-Alaska Pipeline System

1) Pipeline ROW holders are responsible for paying all costs and are strictly liable for $350 million in damages.

2) Presidential Task Force - Composed of an appointee of the EPA, Interior, and Transportation, 3 members appointed by the Governor (one from DEC and one from DNR), one member nominated by OTA. The Task Force will conduct a comprehensive 2 year audit of the TAPS and terminal operations and make recommendations concerning prevention of oil spills, and health and environmental damage. the audit includes a review of whether Alyeska is in compliance with laws, regulations and right of way agreements. $5 million annually is authorized from the fund.

3) Penalties

TITLE IX - Amendments to Oil Spill Liability Trust Fund, ETC.

Oil Pollution Act of 1990
PL 101-380

The 101st Congress enacted comprehensive oil spill legislation in response to an 11-million-gallon spill from the tanker *Exxon Valdez* into Alaska's Prince William Sound in March 1989.

The conference report (HR 1465, H. Rpt. 101-653) passed the Senate Aug. 2, 1990, and the House followed suit Aug. 3. President Bush signed the bill Aug. 18.

The act establishes a new liability and compensation system for oil spills. Vessel liability limits are dramatically increased. Additional money for cleanup and compensation is available from a $1 billion fund supported by a tax on oil.

The act also requires double hulls on oil tankers, requires better contingency planning and preparedness, increases penalties for spills, requires measures to increase navigation safety, and expands research on oil spill effects and cleanup methods.

Table of contents

Title I — Liability and compensation	64
Title II — Conforming amendments	65
Title III — International oil pollution	65
Title IV — Prevention and removal	66
Title V — Prince William Sound	67
Title VI — Miscellaneous	67
Title VII — Research and development	68
Title VIII — Trans-Alaska pipeline system	68
Title IX — Amendments to oil spill liability trust fund	69

Title I — Liability and compensation

Overview: Title I sets up a single federal liability and compensation system that is intended to provide prompt compensation for cleanup costs and damages from oil spills. Those seeking compensation could include federal, state and local governments, and private parties such as fishermen, beach front property owners, boat owners and hotel owners.

Spillers are liable for cleanup costs and damages up to specified liability limits, but in certain circumstances their liability is unlimited. If full compensation is unavailable from the spiller, additional compensation for cleanup costs and damages will be available from a federal oil spill liability fund. The fund, previously established in the tax code, is supported by a 5-cent-per-barrel tax on oil.

The act's liability and compensation system applies to oil spills from vessels and facilities in navigable waters, adjoining shorelines, or the 200-mile exclusive economic zone. Examples of onshore facilities are oil terminals; offshore facilities include oil drilling and production platforms.

Liability: Each owner and operator of a vessel or facility that discharges oil is liable for "removal costs" and specified damages.

Removal costs include costs of cleanup, other actions to minimize damage from a spill, and prevention (in cases where there is a substantial threat of a discharge of oil). Spillers are liable for removal costs incurred by federal, state or Indian governments under state law or specified federal laws. Spillers also are liable for removal costs incurred by any person for actions that are consistent with the national contingency plan, the federal regulations governing oil spill response.

Damages for which spillers are liable include:

- loss of profits or earning capacity due to property or natural resource damage;
- property damage or loss;
- natural resource damage;
- loss of subsistence use of natural resources by anyone who uses the resources for subsistence;
- loss of tax or other revenues by governments; and
- damages for the net costs to state and local governments of providing increased or additional public services during or after removal activities (such as protection from fire, safety or health hazards).

Spillers generally are not liable if they can show the spill was caused solely by an act of God, an act of war, or an act or omission of a third party (generally not including employees or parties that have a contractual relationship with the spiller).

A person (for example, a vessel owner) can file "contribution" lawsuits to recover a portion of cleanup costs and damages from any other liable or potentially liable party (who may have helped to cause a spill). Anyone who pays a claimant for removal costs or damages — such as an insurance company or the oil spill trust fund — obtains the claimant's rights to sue potentially liable parties to recover the money. (This is called subrogation.)

The liability provisions do not apply to discharges allowed by a permit, or to discharges from public vessels.

Special provisions apply to claims by foreign claimants and parties responsible for a spill.

Lawsuits to recover removal costs must be started within three years of the time removal actions are completed. Lawsuits to recover damages must be started within three years after the date the injury and its connection with the spill were reasonably discoverable — or, in the case of natural resource damages, three years after damage assessment regulations are issued.

Liability limits: Liability is unlimited if the spill was caused by gross negligence or willful misconduct, or by a violation of an applicable federal safety, construction or operating regulation.

Liability also is unlimited if the responsible party fails or refuses to report the incident, to provide reasonable cooperation to responsible officials in connection with removal activities, or to comply with a cleanup order issued under section 311 of the Federal Water Pollution Control Act (the Clean Water Act).

In other cases, liability limits are as follows:

• Tank vessels (which carry oil in bulk) — $1,200 per gross ton, but no less than $10 million for vessels greater than 3,000 gross tons, and no less than $2 million for smaller vessels. (Many inland barges weigh less than 3,000 gross tons.)

• Other vessels — $600 per gross ton or $500,000, whichever is greater.

• Offshore facilities — $75 million for damages plus all cleanup costs.

• Onshore facilities and deep-water ports — $350 million. (A deep-water port receives oil from supertankers and pipes it ashore.)

The president can lower the limit for categories of onshore facilities to as low as $8 million, and for deep-water ports to as low as $50 million based on a study. Special provisions apply to mobile offshore drilling units.

Natural resource damage: Compensation for natural resource damage can be sought by U.S., state, Indian or foreign governments. The measure of natural resource damages is the cost of restoring, rehabilitating, replacing or acquiring the equivalent of the damaged resources — and "the diminution in value of those natural resources pending restoration," plus the reasonable cost of assessing those damages.

Officials designated as natural resource trustees are to assess the damage from spills, and develop and implement restoration plans. The National Oceanic and Atmospheric Administration must issue regulations assessing natural resource damage, in consultation with the Environmental Protection Agency, Fish and Wildlife Service and other affected agencies.

Money recovered for natural resource damage by a trustee (federal, state, Indian or foreign) is to be kept in a revolving trust account to pay costs incurred by the trustee. Any leftover money is to be deposited in the federal oil spill fund.

Financial responsibility: Those responsible for vessels and deep-water ports are required to have insurance or other evidence of financial responsibility up to their liability limits; offshore facilities must have coverage of $150 million. Violators are subject to stiff sanctions, including seizure of the vessel.

States can enforce federal financial responsibility requirements.

Lawsuits for compensation can be filed directly against guarantors (insurers).

Cleanup standard: For purposes of the national contingency plan, cleanup is considered complete when determined so by the president in consultation with the governors of affected states. Additional removal actions can be carried out under state law.

Uses of fund: The federal oil spill liability trust fund can be used by federal and state governments for removal costs, and the costs of monitoring removal actions. The costs must be determined by the president to be consistent with the national contingency plan (this means the fund cannot be used to pay for meeting stricter state standards).

The fund also can be used to pay:

• the costs of natural resource damage assessments and restoration;

• claims for damages when the spiller denies liability, when the claim is not settled by payment within 90 days, or when a claim is not fully and adequately compensated;

• administrative, operational and personnel costs for implementation and enforcement of the act. Up to $25 million will be available to the Coast Guard in any fiscal year. Up to $30 million each year through fiscal 1992 will be available to establish a national spill response system, including the purchase and pre-spill positioning of oil spill removal equipment. Up to $27.25 million a year will be available for research and development activities.

Up to $250,000 from the fund will be available to a state for immediate oil spill removal actions. States can enter into agreements with the federal government that set procedures for receiving additional payments.

The federal government can sue spillers to recover compensation paid from the fund.

State pre-emption: The act expressly preserves states' authority to impose additional liability or requirements with respect to oil spills and removal activities. The act also preserves states' authority to establish their own oil spill funds, and to impose fines and penalties for oil spills.

Title II — Conforming amendments

The act repealed or made conforming amendments to several earlier federal oil spill laws, including the Intervention on the High Seas Act, section 311 of the Federal Water Pollution Control Act, Deepwater Port Act, and Title II of the Outer Continental Shelf Lands Act Amendments of 1978. (See also Title VIII.)

Money in three existing federal oil spill funds — the section 311(k) fund, the Deepwater Port Liability Fund, and the Offshore Oil Pollution Compensation Fund — is to be deposited in the comprehensive federal oil pollution liability fund.

Title III — International oil pollution prevention and removal

Due to Senate opposition, the conference report omitted House provisions to implement in the United States after U.S. ratification a pair of international oil spill liability and compensation protocols. Instead, the act contains a non-binding resolution stating that the United States should participate in an international oil pollution liability and compensation system that is at least as effective as federal and state laws.

The secretary of state must review international agreements and treaties with Canada regarding oil spills in the

Great Lakes and Lake Champlain. The purpose is to determine whether changes or new agreements are needed.

The president must encourage international organizations to establish an international inventory of spill removal equipment and personnel.

Title IV, subtitle A — Prevention

This summary of Title IV is derived from a summary by House and Senate staff.

Double hulls: Double hulls are required on all new oil tankers and barges operating in waters subject to U.S. jurisdiction, except for vessels used only to respond to a discharge of oil or hazardous substances. New vessels of less than 5,000 gross tons are required to have double containment systems; existing vessels of that size are required to have double containment systems by 2015.

Certain vessels are exempt from the double hull requirement until 2015: vessels unloading oil at deep-water ports, and ships engaged in "lightering," or transferring, oil to other ships more than 60 miles from the U.S. coast.

Existing vessels without double hulls must be phased out beginning in 1995. Older vessels will be phased out before newer ones, and heavier ones before lighter ones. All vessels with single hulls must be retired by 2010, and all vessels with double bottoms or double sides must be retired by 2015.

The transportation secretary must require interim measures on vessels to provide substantial protection to the environment until the double hull requirement is fully implemented. Also required is a study of other structural or operational requirements that would provide equal or greater protection to the environment than double hulls.

The transportation secretary is authorized to provide Title XI loan guarantees under the Merchant Marine Act of 1936 to aid in financing a contract for construction or reconstruction of a vessel to comply with the double hull requirement.

Alcohol and drugs: The act establishes new requirements to prevent oil spills due to use of alcohol or drugs by ship personnel.

The act provides for:

- review of driver's license records of applicants for licenses, certificates of registry, or merchant mariner's documents;
- alcohol and drug testing of merchant sailors;
- temporary suspension of licenses, certificates or documents under certain circumstances;
- criminal checks prior to issuance or renewal of documents;
- suspension or revocation of a license, certificate or document if the individual is convicted of driving under the influence; and
- removal of the ship's master if he is under the influence of alcohol or dangerous drugs.

Manning standards: The act limits the number of hours a crew member can work on a tanker during a one-day or three-day period, and requires the transportation secretary to issue regulations on the use of automatic pilots by tank vessels.

The transportation secretary is required to evaluate the vessel manning, training, qualification and watch-keeping standards of foreign countries periodically. If the secretary determines that a country has failed to maintain or enforce standards equivalent to U.S. law or international standards accepted by the United States, the secretary must prohibit vessels with documentation from that country from entering the United States. The secretary may allow provisional entry if the vessel owner or operator shows that the vessel is not unsafe, or that entry is necessary for the safety of the vessel or individuals on board.

Vessel traffic service systems: The secretary must require tank vessels that carry oil or hazardous materials in bulk to participate in vessel traffic service systems. The authority had been discretionary.

The act requires a study of traffic service systems and a report to Congress within one year.

Additional provisions: Other provisions:

- require the transportation secretary to issue regulations on pilotage in the waters of Prince William Sound;
- require regulations to ensure that certain vessels are equipped to receive radio marine navigation safety warnings and to engage in radio communications with the Coast Guard and other designated vessels and stations;
- provide a limited exception to U.S. citizen ownership requirements for vessels engaged solely in cleanup and removal activities;
- ensure that the qualifications of Canadian pilots operating in the Great Lakes are equal to those of U.S. pilots;
- require periodic gauging of the plate thickness of vessels, and require overfill and pressure monitoring devices to prevent spills; and
- require studies related to navigation safety, the feasibility of modifying dredges to clean up spills, and the use of liners for bulk storage of oil at onshore facilities.

Title IV, subtitle B — Removal

This summary of subtitle B is taken from the staff summary.

Federal removal authority: The president is required to ensure effective and immediate removal of an oil or hazardous substance spill.

The president can federalize a spill (take over cleanup operations), direct or monitor all federal, state or private cleanup efforts, or remove or destroy a leaking vessel. In the case of spills that pose "a substantial threat to public health or welfare," the president is required to direct all federal, state and private cleanup efforts.

Immunity: With certain exceptions, immunity from liability for removal costs and damages is provided to people

involved in cleanup activities, such as industry cooperatives or response organizations. Immunity is not available to the responsible party, or when there is personal injury or wrongful death, or gross negligence or willful misconduct.

National planning and response system: A national planning and response system is established to ensure that there are adequate plans to respond to a spill.

The national contingency plan must be revised to establish procedures for removing a worst-case discharge or substantial threat of a discharge. The plan is to set out the roles of federal agencies and ensure coordination among Coast Guard strike teams, district response groups, federal on-scene coordinators — which direct spill cleanup efforts — and area committees. The plan must include a response plan for protecting fish and wildlife resources.

A national response unit is established to compile a list of oil spill removal resources, personnel and equipment worldwide, coordinate use of private and public personnel and equipment to remove a worst-case discharge, administer Coast Guard strike teams and provide technical assistance, and review and maintain on file all area contingency plans.

A district response group — including Coast Guard personnel and equipment for each port, and pre-positioned equipment — is established in each of the 10 Coast Guard districts. The groups are to provide technical assistance and equipment when required by a federal on-scene coordinator, maintain Coast Guard response equipment in the district, and review area contingency plans. The act does not require the Coast Guard to form additional strike teams to clean up spills; two strike teams had been established previously in San Francisco and Mobile, Ala.

Local area committees are established to prepare area contingency plans to respond to a worst-case discharge. The committees are to be composed of federal, state and local agency personnel. All U.S. waters and adjoining shorelines are to be covered by area contingency plans. Plans must be reviewed and approved by the president.

Owners or operators of tank vessels, offshore facilities and most onshore facilities must prepare plans for responding, to the maximum extent practicable, to a worst-case discharge. Effective 36 months after enactment, a covered vessel or facility is barred from operating if the president has reviewed but not approved its plan, or if the vessel or facility is not operating in compliance with the plan. The president can authorize operation without an approved response plan for up to two years after its submission, if the vessel or facility certifies the availability of private personnel and equipment to respond, to the maximum extent practicable, to a worst-case discharge.

The president within two years must require vessels carrying oil or hazardous substances in bulk to carry cleanup equipment employing the best technology economically feasible and compatible with safe operation of the vessel. Periodic inspection of cleanup equipment also must be required.

Title IV, subtitle C — Penalties and enforcement

The act increases penalties under the Federal Water Pollution Control Act and other laws for spills of oil and hazardous substances and many other violations related to spills, safety or navigation. The Coast Guard and EPA are given authority to assess civil penalties administratively.

Federal enforcement powers are strengthened — including powers to require record-keeping, to enter and inspect vessels and facilities, and to make arrests and execute warrants. In cases of an imminent and substantial threat to public health or welfare, the president can seek a court injunction, issue an administrative order or take other action.

Title V — Prince William Sound

A Prince William Sound Oil Spill Recovery Institute is established to conduct oil spill research and educational and demonstration projects directly related to the *Exxon Valdez* spill. The act authorizes appropriations from the oil spill trust fund of up to $5 million the first year after enactment and $2 million for each of the nine years thereafter.

Two environmental oversight and monitoring demonstration programs for oil terminals and oil tankers are established for Prince William Sound and Cook Inlet. An oil industry association and a citizen advisory council are established for each. Owners and operators of oil terminals and tankers operating in the area are required to provide up to $2 million annually for the Prince William Sound program and $1 million annually for the Cook Inlet program.

The transportation secretary is required to establish special requirements for the Prince William Sound area, including:

- an improved vessel traffic service system for the port of Valdez and a Bligh Reef warning light;
- pre-positioned oil spill containment and removal equipment in strategic locations;
- establishment of an oil spill cleanup force sufficient to clean up a 200,000-barrel spill or worst-case discharge;
- training in oil removal techniques for fishermen and fishing industry employees in the area; and
- spill drills twice a year.

Title VI — Miscellaneous

Appropriations: In general, fund money is available only by appropriation. However, fund money is available without appropriation for:

- removal actions and initiation of natural resource damage assessments, up to $50 million in a fiscal year;
- payment of claims for uncompensated removal costs and damages;
- natural resource damage assessment and restoration, in the case of funds recovered from liable parties; and
- the Bligh Reef light and Valdez vessel traffic service system ($5 million).

North Carolina offshore leasing: A moratorium is

placed on new oil and gas leasing, exploration or development on the outer continental shelf off the shore of North Carolina. The moratorium extends until Oct. 1, 1991, or until 45 days of continuous session of the Congress after the secretary of the interior certifies that environmental information is adequate to carry out his responsibilities under the Outer Continental Shelf Lands Act — whichever is later.

The interior secretary is required to consider the findings of a review panel consisting of five scientists selected by himself and the governor of North Carolina. The interior secretary also is required to undertake additional ecological, socioeconomic and physical oceanographic studies.

The law authorizes $500,000 in fiscal 1991 for the interior secretary to carry out the moratorium provisions.

Common hydrocarbon-bearing areas: The secretary of the interior is required to prevent, through cooperative development of an area, the harmful effects of unrestricted competitive production of hydrocarbons from a common hydrocarbon-bearing area underlying the federal and state boundary.

The act authorizes appropriations to provide compensation, including interest, to Louisiana and its lessees for net drainage of offshore oil and gas as determined in a March 1989 study.

Title VII — Research and development

The act establishes a new research and development program coordinated by an Interagency Coordinating Committee on Oil Pollution Research. The committee is to coordinate efforts by federal agencies, industry, universities, research institutions, states and other nations.

The committee, composed of representatives of nine federal departments and independent agencies, is to develop a research plan with advice from the National Academy of Sciences. NAS later is to submit to Congress a report assessing the adequacy of the plan.

The program will investigate technologies to prevent and clean up spills, ways to improve industry and government response to spills, ways to restore damaged natural resources, the environmental effects of spills, and other topics.

The Coast Guard is to conduct oil-pollution minimization projects in the ports of New York/New Jersey, Los Angeles/Long Beach and New Orleans.

The committee is to coordinate a program of competitive grants to universities or other research institutions for research on regional aspects of oil pollution.

In addition, the agencies on the interagency committee are given authority to make research grants to universities, research institutions and others.

The act authorizes a total of $27.25 million annually for research programs, including $6 million annually for the regional research grants program, $5 million in fiscal 1991 and $3.5 million in subsequent years for environmental effects research, and at least $2.25 million annually for the port pollution-minimization projects. The regional research program and port projects are authorized through fiscal 1995.

Title VIII — Trans-Alaska Pipeline System

On-shore spills: Liability provisions of the Trans-Alaska Pipeline Authorization Act continue to apply to Alaska pipeline-related spills onshore. This means that pipeline right-of-way holders are responsible for paying all removal costs and are subject to strict liability (liability regardless of fault) for $350 million in damages. (The 1990 act raised the figure from $50 million to $350 million.)

Spills of trans-Alaska pipeline system oil after it is loaded onto a vessel are subject to liability provisions of the 1990 act.

Elimination of TAPS fund: Trustees of the Trans-Alaska Pipeline Liability Fund (known as the TAPS fund) are to reserve amounts necessary to pay claims arising from vessel oil spills before the date of enactment, and to pay related administrative expenses.

After the comptroller general of the United States certifies that the reserved funds are sufficient, TAPS fund trustees must rebate a share of the remaining balance to Alaska (for its contributions to the TAPS fund as an owner of oil) and deposit the rest into the comprehensive oil spill liability trust fund.

Any unused reserved funds also would be deposited into the comprehensive fund after all claims were paid and the comptroller general certified that fact.

The act provides that a 5-cent-per-barrel fee on owners of TAPS oil (enacted as part of the TAPS law) need not be collected if the TAPS fund trustees determine, and the comptroller general certifies, that the fund has enough money available to pay all outstanding claims and administrative costs.

The vessel liability provisions of the Trans-Alaska Pipeline Authorization Act are to be repealed effective 60 days after the comptroller general certifies that all claims, lawsuits, and administrative expenses have been resolved or paid. The act says the repeal has no effect on any right to recover or responsibility that arose from oil spills that occurred before enactment and were subject to the repealed provisions.

***Exxon Valdez* compensation:** The 1990 act expedites compensation for the *Exxon Valdez* spill, which is subject to liability and compensation provisions of the trans-Alaska act. The 1990 act makes retroactive changes in TAPS liability provisions. Also, the act makes compensation available from the TAPS fund if the vessel owner or operator has not paid a claim within 90 days after a claim is submitted. This includes the first $14 million in claims, the amount of a vessel owner's liability under the trans-Alaska act.

Pipeline audit: A presidential task force is created to conduct a comprehensive two-year audit of the trans-Alaska pipeline and terminal operations and to make recommendations concerning prevention of oil spills and health and

environmental damage. The audit is to include a review of whether Alyeska Pipeline Service Co., the right-of-way holder, is in compliance with laws, regulations and agreements. The provision authorizes $5 million annually for the task force from the comprehensive fund.

Penalties: The authority of the Minerals Management Service to impose penalties on outer continental shelf facilities is made clear. The maximum penalty is raised to $20,000 per day and is to be adjusted for inflation.

The interior secretary can impose civil penalties of up to $1,000 per barrel for pipeline spills in Alaska.

Alaska native corporations can bring claims for oil spill damages to lands validly selected under the Alaska Native Claims Settlement Act.

The act calls on the secretary of state, in consultation with others, to negotiate a treaty with Canada concerning oil spills in the Arctic Ocean.

Title IX — Amendments to oil spill liability trust fund

An oil spill liability trust fund was created in the Internal Revenue Code by the 1986 and 1990 budget reconciliation acts (PL 99-502 and PL 101-239), in anticipation of the oil spill law. The fund is supported by a 5-cent-per-barrel tax on oil that took effect Jan. 1, 1990.

The oil spill act amends limits on spending and borrowing authority in the Internal Revenue Code. The act allows up to $1 billion per spill for cleanup costs and damages to be spent from the fund. The amount that can be spent on natural resource damage restoration or replacement is limited to $500 million per spill. The fund can borrow up to $1 billion in the aggregate from the general treasury.

The trust fund can be used only for purposes enumerated elsewhere in the act. Certain specified penalty monies are to be deposited into the comprehensive fund.

COMPARISON STATE OIL SPILL LAWS

Comparison of Oil Spill Legislation in Alaska, Oregon and Washington

DRAFT

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

Penalties - Spill penalties	Criminal penalties: criminal negligence - class A misdemenor or class C felony depending on amount spilled. Civil penalties assessed with consideration of toxicity of oil: $1 - $10 per gallon (penalty 5 times higher if there is gross negligence. If the spill is over 18,000 gallons, additional penalties of $8 - $12 per gallon ($500 million maximum). Other penalties may be assessed. Recklass operation of a tank vessel is a class C felony.	Persons willfully or negligently discharging oil shall incur a civil penalty equal to the amount of damage incurred. Intentional or negligent discharge of oil results in a penalty of up to $20 thousand per day.	Civil penalty for violating chapter: up to $100 thousand (RCW 88 44.190). Negligent discharge: up to $20 thousand per day. Penalty for reckless discharge: $100 thousand. Criminal penalty: $10 per day. Civil penalty: up to $10 thousand per day.
- Operating without a contingency plan			First conviction: gross misdemeanor, second conviction: class C felony. Business license may may be revoked and a fine of up to $100 thousand.
- Operating without required financial responsibility.			Privilege of operating vessel may be suspended. Penalty not to exceed $10 thousand.
Response Procedures	Spiller must immediately notify state of spill. Spiller must clean up oil immediately.	Owner or controller of oil must immediately collect & remove oil or at least contain it. Anyone with knowledge of spill must report it.	Spiller must notify coast guard and the state Division of Emergency Management.
Cleanup Standards			Department to establish standards for cleanup contractors.
Response Funds	Oil & Hazardous Substance Release Mitigation Account in General Fund for money recoverd. Oil & Hazardous Release Response Fund for actual cleanup expenses; funded by penalties, state, federal & private sources. Fund used for cleanup, monitoring, Oil & Hazardous Substances Response Corps, equipment depots, & environmental restoration.	Oil Spillage Control Fund within the General Fund to be used for cleanup and environmental resoration. Fund may be invested. Oil & Hazardous Material Emergency Response & Remedial Action Fund is separate from General Fund & used for cleanup.	Per transit assessments collected and placed in a fund. Tankers with an agreement with a clean-up cooerative or contractor exempt from fee. Fee not collected when fund reaches $1.5 million. Commission may issue bonds or obtain loans.
Commissions & Councils	Citizen's Oversight Council on Oil & Hazardous Substances, in the Legislative Branch, assists in developing compacts, recommends policies, & determines if state agencies are carrying out their duties. The Hazardous Substance Spill Technology Review Council recommends research topics and maintain information on spill technology.	Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan. Commission establishes policies for operation of the Department of Environmental Quality.	Washington State Maritime Commission created to establish procedures for spill prevention and response. The commission must: assess a per transit fee, establish an emergency response communication system, contract with cleanup contractors, recover response costs, conduct drills, develop an oil spill contingency plan, and cooperate with other government jurisdictions.
Response	State employees or response corps may enter private property.	Director has right to enter private property to control oil spill.	State may enter private property to respond to a spill.
Wildlife Rescue Provisions			Wildlife rescue coalition established to coordinate resuce and rehabilitation.

Source: State Statutes From Alaska, Washington and California

Prepared by Legislative Research Agency, March 1991 (91.201)

DRAFT

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:45PM #491 P.30

AMERICAN PETROLEUM INSTITUTE SURVEY OF

STATE OIL SPILL LIABILITY LAWS

VAN NESS, FELDMAN, SUTCLIFFE & CURTIS

OCTOBER 4, 1989
(UPDATED OCTOBER 29, 1990)

Reprinted with Permission
of the American Petroleum Institute

MAR 19, 1991 2:45PM #491 P.31
TO:6760719074654979
FROM:API-HEAD 8300

STATE OIL SPILL LIABILITY LAWS

		COMPENSATORY LIABILITY								
		CLEAN UP		DAMAGES[1]						
				3RD PARTY		NATURAL RESOURCES		SPILL FUND		
STATE	STATUTE	STANDARD[2]	LIMIT[3]	STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES[4]
Ala.	§22-22-9	Negl.	No	--	--	Negl.	--	--	--	--
Alaska	§46.03.822, §46.03.780, §46.08.020, §43.55.200	Strict	No	Strict	No	Strict	No	50 Mil	$.05/barrel; reimbursements; penalties; appropriations	CI, NR
Ariz.	§49-283, §49-285	Strict	No	--	--	--	--	No	Reimbursements; Fees, Penalties	CI
Ark.	§8-4-103(b)	Strict	No	--	--	Strict	No	--	--	--
Calif.	Harbor §151, §293; Fish §2014, §12015, §5655; Water §13440	Strict	No	Strict	No	Strict	No	100 Mil	$.25/barrel; Reimbursements; penalties; appropriations	CI/3dP/ NR
Colo.	§25-8-606	Strict	No	--	--	--	--	--	--	--
Conn.	§22a-451	Strict	No	--	--	--	--	80 Thous	Reimbursements; penalties	CI
Del.	§6204, §6205, §6207, §6208	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	--	--	--
Fla.	§376,§206 §377	Strict	Tran: Lesser of 50 Mil, or $625 PGT; Fac: 25 Mil	Strict	No	Strict	No	50 Mil ($100 Mil. if offshore drilling is approved)	$.02/Barrel	CI/ 3dP/ NR
Ga.	§12-5-51, §12-14-1	Strict	No	--	--	Strict	No	--	--	--

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:47PM #491 P.32

STATE OIL SPILL LIABILITY LAWS

		COMPENSATORY LIABILITY								
		CLEAN UP		DAMAGES[1]						
				3RD PARTY		NATURAL RESOURCES		SPILL FUND		
STATE	STATUTE	STANDARD[2]	LIMIT[3]	STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES[4]
Hawaii	§342-8, §12-8D	Strict	No	--	--	Strict	--	No	appropriations, reimbursements, penalties	Cl
Idaho	§52-101	--	--	--	--	--	--	--	--	--
Ill.	85§1705; 111-1/2§1042; 56§2.1	Strict	No	--	--	Strict	No	--	--	--
Ind.	§13-7-12-3, §14-2-6-7	Tort	No	--	--	Strict	No	--	--	--
Iowa	§455B.392	Strict	Tran: 5 Mil Fac: 50 Mil	--	--	Strict	Tran: 5 Mil Fac: 50 Mil	--	--	--
Kans.	§65-171u §65-171v §65-171w	Strict	No	--	--	Strict	No	5 Thous	Appropriations; Reimbursements	Cl
Ky.	§224.110	--	--	--	--	Strict	No	--	--	--
La.	§30:2025(E) §30:2077 §30:2025 §30:2034	Strict	No	Strict	No	Strict	No	1/2 Mil	Haz Waste Fund; reimbursement	Cl
Maine	38§548 38§552 38§561	Strict	No	Strict	No	Strict	No	6 Mil	$.04 Per barrel; reimbursements, penalties, fees	Cl, 3dP
Md.	§4-405 Envr.§4-411 §4-408 §4-409 §4-417	Strict	No	Strict	No	Strict	No	5 Mil	$.0075/barrel; Fees; penalties	Cl, NR

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:48PM #491 P.33

STATE OIL SPILL LIABILITY LAWS

		COMPENSATORY LIABILITY								
		CLEAN UP		DAMAGES[1]						
				3RD PARTY		NATURAL RESOURCES		SPILL FUND		
STATE	STATUTE	STANDARD[2]	LIMIT[3]	STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES[4]
Mass.	Ch.21E§5; Ch.91§59A Ch.130§24 Ch.131§42	Strict	No	Strict	No	Strict	No	--	--	--
Mich.	§323.6 §30.401	Tort	No	--	--	--	--	--	--	--
Minn.	§115.071(3)	Strict	No	--	--	Strict	No	--	--	--
Miss.	§49-17-43 §49-17-68	Strict	No	--	--	Strict	No	No	Fines; Penalties; Fees; Reimbursements	CI
Mo.	§41B:644.076 §41B:644.096	Strict	No	--	--	--	--	--	--	--
Mont.	§75-5-635	Strict	No	--	--	--	--	--	--	--
Nebr.	§81-1508	--	--	--	--	Strict	No	--	--	--
Nev.	§445.319 §445.331	Strict	No	--	--	Strict	No	--	--	--
N.H.	§146-A:3 §146-A:10 §146-A:11 §146-A:14	Strict	No	Negl.	No	Strict	No	2.75 Mil	License fees	CI
N.J.	§58:10-23.11e §58:10-23.11h §58:10A-10 §58:10A-6	Strict	Tran: 150/GT Fac: 50 Mil	Strict	Tran: 150/GT Fac: 50 Mil	Strict	No	50 Mil	$.0175 per barrel	CI/ 3dP/ NR
N. Mex.	§74-4B-10	Strict	No	Nuisance	No	--	--	--	--	--

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:49PM #491 P.34

STATE OIL SPILL LIABILITY LAWS

		COMPENSATORY LIABILITY								
		CLEAN UP		DAMAGES[1]						
				3RD PARTY		NATURAL RESOURCES		SPILL FUND		
STATE	STATUTE	STANDARD[2]	LIMIT[3]	STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES[4]
N.Y.	Nav Law §181, §174	Strict	Tran: 300PGT; Fac: 50 Mil	Strict	Tran: 300PGT; Fac: 50 Mil	Strict	Tran: 300PGT; Fac: 50 Mil	25 Mil	$.04/Barrel; Reimbursements; fees; penalties	CI/ 3dP/ NR
N.C.	§143-215.94o §143-215.94p §143-215.87	Strict	No	Strict	No	Strict	No	No	Appropriations; reimbursements; penalties	CI,NR
N. Dak.	§61-28	--	--	--	--	--	--	--	--	--
Ohio	§6111	--	--	--	--	--	--	--	--	--
Okla.	§900	--	--	--	--	--	--	--	--	--
Oreg.	§466.590, §466.640, §466.670, §468.790, §468.795, §468.800	Strict	No	Strict	No	Strict	No	No	Fees; penalties; reimbursements	CI
Pa.	35P.S.§691	--	--	--	--	--	--	--	--	--
R.I.	§46-12.3-1 §46-12-1 §46-12.4-1	Strict	No	Strict	No	Strict	No	No	appropriations, penalties, reimbursements	CI
S.C.	§48-1-90(a) §48-43-560 §48-43-600	Strict	No	Arb	No	Strict	No	--	--	--
S. Dak.	§34A-13-9 §34A-12-12 §34A-2-76 §34A-2-96	Strict	No	--	--	Strict	No	5 Mil	Fees; penalties	CI
Tenn.	§69-3-100	--	--	--	--	--	--	--	--	--

FROM:API-HEAD 8300 TO:6760719074654979 MAR 19, 1991 2:50PM #491 P.35

STATE OIL SPILL LIABILITY LAWS

		COMPENSATORY LIABILITY								
		CLEAN UP[2]		DAMAGES[1]						
				3RD PARTY		NATURAL RESOURCES		SPILL FUND		
STATE	STATUTE	STANDARD[3]	LIMIT[4]	STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES[5]
ex.	§26-124, §26.263(6), §26.265	Strict	No	--	--	Strict	No	5 Mil	Appropriations; fines; penalties	CI
Utah	§26-11-1	--	--	--	--	--	--	--	--	--
Vt.	T.10§1274 T.10§1283	Strict	No	--	--	Strict	No	50 Thous	Reimbursements; Fees; Appropriations	CI
Va.	§62.1-44.34:14	Strict	No	Strict	Tran: Greater of 500/PGT or $10 Mil. Fac: $10 Mil.	Strict	Tran: Greater of 500/PGT or $10 Mil. Fac: $10 Mil	No	Reimbursements	CI
Wash.	§90.48.335 §90.48.336 §90.48.142	Strict	No	Strict	No	Strict	No	No	$.01/gal; Fees; penalties; Reimbursements	CI,NR
W. Va.	§20-5A-1 §20-5A-19a	--	--	--	--	Strict	No	--	--	--
Wis.	§147.23	Strict	No	--	--	Strict	No	--	--	--
Wyo.	§35-11-101 §35-11-901(h)	--	--	--	--	Strict	No	--	--	--

FROM:API-HEAD 8300 10:8/80/190/4034579 MAR 19, 1991 2:31PM 8491 P.30

Endnotes Key

1/ Does not include punitive damages or civil or criminal penalties.

2/ Negl. = Negligence; Strict = Strict and absolute liability; Tort = Liability according to state tort law; Arb. = Liability standard determined by board of arbitration.

3/ Tran = Transportation; Fac = Facility; GT = Gross Ton. All liability limits are subject to forfeiture if the spiller acts in gross negligence or willful misconduct. For Delaware, New Jersey, New York and Virginia the liability limits expressed are total limits for all types of damage claims against the state's fund. Other statutory and common law claims are not precluded to the extent they do not duplicate statutory liability.

4/ Cl = Cleanup; 3dP = 3rd Party Damages; NR = Natural Resources

90-484 A

CRS Report for Congress

Liability Provisions in State Oil Spill Laws: A Brief Summary

SENT TO YOU BY YOUR
UNITED STATES SENATOR
Ted Stevens
ALASKA

George A. Costello
Legislative Attorney

Mark Gurevitz
Paralegal Specialist
American Law Division

October 1, 1990

CRS

Congressional Research Service • The Library of Congress

Liability Provisions in State Oil Spill Laws: A Brief Summary

This report briefly summarizes state oil spill liability and compensation statutes applicable to vessels, with particular emphasis on which states provide for unlimited liability for damages resulting from oil spills, and which states limit liability. It updates and supersedes an earlier survey dated Sep. 27, 1989. Examined were laws of the Atlantic, Pacific, and Gulf coastal states, and in addition, laws of states bordering on the Mississippi and Ohio rivers. Of the 37 states surveyed, we have identified 28 that provide for liability to the state or to others for oil spill damages. Of these 28, 19 provide for unlimited liability and 9 provide for limited liability to the state. Fifteen of the 28 states also create a private right of action to recover damages; of these, 10 provide for unlimited recovery and 5 for limited liability. We also identified the following 9 states that have general water pollution control laws that contain no express authority for the state or for private parties to recover for cleanup costs or for other damages: Hawaii, Indiana, Louisiana, Minnesota, Ohio, Pennsylvania, Rhode Island, Tennessee, and West Virginia.

A few general cautionary notes. Our investigation was limited to a check of *statutory* law, and did not include decisional law. Thus, our figures do not address the possibility of recovery under the common law of torts, or under general statutory provisions not contained in the same statute as the identified oil spill or water pollution control provisions. Secondly, we have relied on the most recent compilations of state codes and statutes available to us, and cannot be certain that all recent enactments have been accounted for.

For purposes of categorization, we have distinguished between those state statutes specifically addressing oil spills, and general pollution control laws (for the most part, water pollution laws) that define pollution broadly enough to include oil pollution, and that also provide for liability to the state for cleanup costs or other damages. Our findings are summarized in chart form below, followed by a brief narrative summary of each state's laws.

State Statutes Specifically Addressing Oil Spills

	liability to state	to private parties
Alaska	U	U
California	U	U
Delaware	L	L
Florida	L	L
Maine	U	U
Maryland	U	U
Massachusetts	U	U
New Hampshire	U	U
New Jersey	L*	L
New York	L	L
North Carolina	L	U
Oregon	U	U
South Carolina	L*	U
Vermont	U	
Virginia	L	L
Washington	L	U

U = unlimited liability
L = limited liability
* = unclear. See discussion.

General Pollution Control Laws Covering Oil Pollution, Providing for Liability to the State, and Not Providing for Liability to Private Parties

	liability to state
Alabama	U
Arkansas	U
Connecticut	U
Georgia	U
Illinois	U
Iowa	L
Kentucky	U
Michigan	U
Mississippi	U
Missouri	U
Texas	U
Wisconsin	U

State-By-State Summary

Alabama. The Alabama Water Pollution Control Act defines "pollution" broadly enough to include oil pollution, and authorizes the attorney general or any district attorney to bring a civil action to recover the state's "reasonable costs to prevent, minimize or clean up any damage resulting from pollution resulting from the wrongful act, omission or negligence." ALA. CODE § 22-22-9(m). In addition, if the pollution causes the death of any fish or wildlife, the state may recover money reasonably necessary to restock waters or replenish wildlife. § 22-22-9(n).

Alaska. In addition to having provisions specifically addressing oil pollution, Alaska also provides for strict liability, without regard to fault, for the damages "to persons or property, whether public or private, including damages to the natural resources of the state or a municipality," and for response costs, caused by the discharge of "hazardous substances" into state waters, (ALASKA STAT. § 46.03.822), and defines hazardous substance to include oil (§ 46.03.826). Damages are defined to include "injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit." (§ 46.03.824).

Arkansas. Arkansas has a general water pollution control law broad enough to cover oil, and authorizes the state to recover for cleanup costs, investigatory expenses, and damages for loss of fish and wildlife. ARK. STAT. ANN. § 8-4-103. There is no provision for private recovery, and no express limit on state recovery.

California. California provides for liability to the state for "all actual damages, in addition to the reasonable costs actually incurred in abating or cleaning up the oil deposit." CAL. HARB. & NAV. CODE § 151. In addition, the Miller Anti-Pollution Act of 1971 (HARB. & NAV. Code § 293) provides for absolute liability for vessel owners or operators for "any property damage incurred by the state or by . . . any person, and for any damage or injury to the natural resources of the state" resulting from oil spills. No limitation is placed on either of these liability provisions.

Connecticut. Connecticut imposes liability to the state for response costs incurred in "containing, removing, or mitigating" pollution caused by spills of oil or hazardous wastes. The attorney general is authorized to bring a civil action to recover such costs. Conn. Gen Stat. § 22a-451. No limitation is placed on such recovery. No express provision is made for recovery by private parties.

Delaware. Delaware has a specific oil pollution liability statute. Persons responsible for oil pollution are liable to the state for cleanup costs and natural resources damages, and to private parties for a variety of damages, including injury to or loss of the use of real or personal property, and loss of the use of natural resources. DEL. CODE ANN. tit. 7, § 6207. All such liability is limited; in the case of vessels the limitation is the greater of $300 per gross

ton or $250,000, but may not exceed $30 million. § 6208. The liability limitation is inapplicable if the spill resulted from gross negligence or willful misconduct.

Florida. Florida has a Pollutant Spill Prevention and Control Act governing spills of oil and other chemicals. Responsible parties are liable to the state (*i.e.*, to the Florida Coastal Protection Trust Fund) for costs of cleanup or abatement. In addition, the Fund may pay private claimants for damages resulting from a spill. Liability to the Fund is limited, in the case of vessels, to the *lesser* of $50 million or $625 per gross ton, unless the discharge resulted from willful misconduct or gross negligence. The liability limits are also inapplicable if the responsible party fails to report the incident or fails or refuses to provide "reasonable assistance" in cleanup activities. FLA. STAT. § 376.12.

Georgia. Georgia has a statute directed at oil or hazardous substance spills, but it provides only for civil penalties and not for liability to the state or to private parties. GA. CODE ANN. §§ 12-14-1 to 12-14-4. Under Georgia's general Water Quality Control Act, pollution is defined broadly enough to include oil spills, and violators can be held liable to the state for costs incurred in cleaning up and abating a spill, and for replacing aquatic wildlife. GA. CODE ANN. § 12-5-51. There is no limitation placed on this liability to the state. No provision is made for private recovery.

Illinois. Illinois has a general provision protecting public water supplies from oil or other water pollution. When oil or other pollutants are discharged into the state's waters, appropriate units of local government are authorized to act to remove the pollution. Responsible parties are then liable to such governmental body for actual removal costs. Ill. Ann. Stat. ch. 85, § 1705.

Iowa. Iowa has a hazardous substances response law with a broad definition of "hazardous substance" that has been interpreted administratively to include oil. When a "hazardous condition" exists, the state may recover for reasonable cleanup costs, for costs incurred in evacuating people threatened by the condition, and for damages to natural resources. IOWA CODE ANN. § 455B.392. Liability to the state is limited to a total of $5 million for vessels and other transportation conveyances, and to $50 million for any facility. No provision is made for private recovery.

Kentucky. Under Kentucky law, persons responsible for water pollution that causes "injury, death, or destruction of fish or other wildlife" are liable to the state "in an amount reasonably necessary to restock or replenish such fish or wildlife." KY. REV. STAT. § 224.110.

Maine. Maine's oil spill compensation and liability law provides for unlimited liability to the state for all damages incurred by the state for cleanup costs, and for disbursements to private claimants who have been paid by the Maine Coastal and Inland Surface Oil Clean-up Fund. ME. REV. STAT. ANN. tit. 38, §§ 551, 552.

Maryland. Maryland's oil spill law provides for liability to the state for removal costs and for "the cost of restoring the area damaged by the spillage to its original condition." MD. ENV. CODE § 4-408. In addition, persons responsible for an oil spill are liable to private parties for resulting damage to real or personal property. § 4-409.

Massachusetts. The Massachusetts Oil and Hazardous Substances Material Release Act is (but for its coverage of oil) patterned on CERCLA. Persons responsible for the release of oil or hazardous substances into the waters of the state are liable to the state for "all costs of assessment, containment and removal," and for damages for injury to and destruction of natural resources, and in addition are liable to private parties for damage to real or personal property. There is no limitation on this liability; liability to the state for assessment, containment, and removal can be for treble damages. MASS. GEN. LAWS ANN. ch. 21E, § 5.

Michigan. Under Michigan law, the owner or operator of any "watercraft" that discharges oil into state waters is liable to the state "for the full amount of the costs reasonably incurred for its removal." MICH. COMP. LAWS § 323.337.

Mississippi. Mississippi's general water pollution control law defines pollution broadly enough to include oil, and, in addition to prescribing penalties for violations, provides that anyone causing pollution that results in the death of fish or other wildlife shall be liable to the state for an additional amount "reasonably necessary to restock such waters or replenish such wildlife." MISS. CODE ANN. § 49-17-43.

Missouri. Missouri's Clean Water Law defines pollution broadly enough to include oil pollution, and authorizes the state or its subdivisions to sue to recover damages resulting from water pollution, including "costs and expenses of restoring any waters of the state to their condition as they existed before the violation." MO. ANN. STAT. § 644.096.

New Hampshire. Under New Hampshire's oil spill law, responsible parties are strictly liable to the state for containment and removal of the discharged oil, and for "cleanup and restoration of the site and surrounding environment." N.H. REV. STAT. ANN. § 146-A:3-a. In addition, persons responsible for an oil spill that results in damage to private property are "liable in tort to the person whose property is damaged in double the amount of the damages." § 146A:10.

New Jersey. New Jersey's Spill Compensation and Control Act, N.J. Rev. Stat. §§ 58:10.23.11 *et seq.*, prohibits the discharge into state waters of hazardous substances, defined to include petroleum products, and creates a Spill Compensation Fund to pay for cleanup and to compensate private parties. A discharger who fails to comply with a cleanup order is liable to the Department of Environmental Protection for three times the Department's cost of removal. § 58:10-23.11f. The Fund is liable for the cost of restoring

and replacing natural resources, for restoring, repairing, or replacing damaged real or personal property, for lost income due to damage to property or natural resources, and for revenue lost by the state. The fund may recover for these damages, but such recovery is limited to $50 million for major facilities, and to $150 per gross ton for vessels. These limitations are inapplicable if the discharge resulted from gross negligence or willful misconduct, or from a gross or negligent violation of an applicable safety, construction or operating standard or regulation. Partially duplicative of the Spill Act is the state's Water Pollution Control Act. This law defines pollutant to include oil, and authorizes the state to bring a civil action to recover for removal costs and for "damages for any loss or destruction of wildlife, fish, or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge." Authority is also conferred on the court to order payment to the state of "the actual amount of any economic benefits accruing to the violator from a violation," and to order payment of "compensatory damages" to "any persons who have been aggrieved by the unauthorized discharge." N.J. Rev. Stat. § 58:10A-10. No limitations are placed on recovery under this provision.

New York. New York has an oil spill prevention, compensation, and control law that provides for strict but limited liability to the state and to private parties for damages resulting from spills. In addition, responsible parties who fail to undertake necessary relocation of persons residing in the area of the spill may be liable for twice the cost of such relocation. A spill compensation fund is liable in the first instance for "all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained." These damages can include the cost of restoring, repairing, or replacing damaged property, the cost of restoration and replacement of natural resources, loss of income or earning capacity, and loss of tax revenues. Responsible parties are liable to the fund, but their liability is limited to $50 million for facilities and to $300 per gross ton for vessels, unless gross negligence or willful misconduct can be shown. N.Y. Nav. Law § 181.

North Carolina. North Carolina's Oil Pollution and Hazardous Substances Control Act of 1978 provides for liability for damages to public and private resources resulting from an unlawful discharge. Liability to the state is for cleanup costs and for damage to public resources; if "fish, animals, vegetation or other resources" of the state are injured or if water quality is degraded, damages include investigatory costs as well as expenses reasonably necessary to restock waters, replenish resources "and otherwise restore" waters to their condition prior to the discharge. N.C. Gen. Stat. § 143-215.90. Liability to the state is limited to "applicable limits prescribed by federal law" for federal government recovery. (§143.215.89). In addition, violators are liable to private parties for "damages to persons or property" (§ 143-215.93); this liability is not limited by the statute.

Oregon. Oregon's oil spill law makes persons responsible for the unlawful discharge of oil that enters state waters "strictly liable, without regard to fault, for the damages to persons or property, public or private." Or. Rev.

STAT. § 468.790. The state may sue to recover its costs in collecting, removing, treating, containing, or dispersing the oil. § 468.805.

South Carolina. South Carolina has a statute directed at spills of oil, gasoline, pesticides, ammonia, and chlorine, and provides for liability to private individuals for resulting damages. The state is authorized to "arrange for the removal of the pollutant"; if the discharge occurred in waters of the United States, the state is directed to act in accordance with the national contingency plan, and removal costs are to be paid "in accordance with the applicable provisions of the [federal] law." S.C. CODE ANN. § 48-43-560. The provision is unclear as to whether the state has a cause of action to recover its cleanup costs, and as to whether the liability limitation of the federal Clean Water Act limits any such recovery by the state. Recovery by private claimants is not limited; private persons may submit claims to an arbitration board, or may in the alternative bring a civil action to recover "all damages." § 48-43-600.

Texas. The Texas Hazardous Substances Spill Prevention and Control Act creates a Spill Response Fund and authorizes the state to recover cleanup costs and other damages from responsible parties. A provision limiting the state's recovery to $5 million was repealed in 1989. Moreover, the state may recover double its cleanup costs if the responsible party has, after reasonable notice, failed to clean up the spill. Cleanup costs may include costs of scientific studies to measure environmental impact and to determine the best response, "out-of-pocket costs associated with state agency actions," "reasonable costs incurred by the state in cleanup operations," and "costs of remediating injuries proximately caused by reasonable cleanup activities." TEXAS WATER CODE ANN. § 26.265. The statute contains no private right of action.

Vermont. Vermont has an environmental contingency fund to finance state response to oil and hazardous substances spills. Fund disbursements may be made for investigations, cleanup, and "to take appropriate interim action to prevent or minimize the immediate impact of such releases to the public health and the environment." The state may bring an action against a responsible party to reimburse the fund, and there is no express limitation on the state's recovery. VT. STAT. ANN. tit. 10, § 1283. No private right of action is created by the statute.

Virginia. Virginia prohibits discharge of oil into state waters, and provides for limited liability to the state and to private parties for damages resulting from an unlawful discharge. The state may recover "all costs of investigation, containment, and cleanup," and in addition may recover for all property damage incurred by the state or by a political subdivision and for loss of tax or other revenues, and for loss of any natural resources that cannot be replenished or restored. Private parties may recover for injury to person and property, and for lost income and for loss of the use of damaged property. Total liability for damages (excluding the State's cleanup costs) is limited in the case of tank vessels to the greater of $10 million or $500 per gross ton. The limitations do not apply in the case of gross negligence or willful misconduct, violation of safety regulations, failure or refusal to report the

discharge, or failure or refusal to cooperate in the cleanup. VA. CODE § 62.1-44.34:18.

Washington. Washington law provides that any person owning or having control over oil that unlawfully enters state waters "shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry." WASH. REV. CODE ANN. § 90.48.336. There is no statutory limitation on private recovery, and responsible parties are also liable to the State for the full cost of cleanup. §90.48.335. However, the State's recovery for damages to public resources is to be established in a compensation schedule prepared by the Department of Ecology; this schedule is to reflect "adequate compensation for unquantifiable damages . . . for any adverse environmental, recreational, aesthetic, or other effects" caused by the spill. The State's recovery under this compensation schedule is to be no less than one dollar and no more than $50 per gallon of oil spilled. §90.48.366.

Wisconsin. Wisconsin's general water pollution control act covers oil pollution (WIS. STAT. ANN. § 147.015), and a polluter is liable to the state for cleanup costs, including the cost of replacing fish and wildlife. § 147.23. No limitation is placed on the state's recovery, and the statute makes no provision for a private right of action.

George Costello
Legislative Attorney

Mark Gurevitz
Paralegal Specialist
American Law Division
October 1, 1990

PUBLIC COMMENTS

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.

1985p

STATEMENT OF
EXXON SHIPPING COMPANY
TO THE
SPECIAL COMMITTEE ON OIL AND GAS
ALASKA SENATE
ON SB 102
March 17, 1992

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 various stated purposes. They range from very specific regulatory provisions to broad, undefined regulatory provisions to coordination of mutual interest activities of Compact parties. A key aspect of the Compact would provide for the extension of states' jurisdictional authorities out to 200 miles offshore. The compact would vest comprehensive authority to its appointed administrative body regarding activities, regulatory powers, staffing and funding.

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

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

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

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

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

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

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

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

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

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

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

opposed uniform bus & west coast states,

The cues of letters could open Then

it would be diff.

Written Statement

of

Jerry A. Aspland

President, ARCO Marine, Inc.

Senate Oil and Gas Committee

Hearing on S.B. 102

The Pacific Ocean Resources Compact

March 17, 1992

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

ARCO Marine is keenly interested in S.B. 102, the Pacific Ocean Resources Compact. I have particpated in discussions of this topic before the Oceans Committee of the Western Legislative Conference, and have registered my concerns with the Compact proposal when it was considered in the states of Washington, Oregon, and California. I appreciate the opportunity to present my written statement to you today.

The Compact, a concept which seeks to regulate oil and hazardous substance transportation, spill prevention and response, and other maritime and coastal concerns, including the extension of the State's coastal economic zones from three miles to two hundred miles is fraught with

implementation as well as operational problems. While the Compact proposal before you today would enter into force upon its ratification by two or more of the five Western States, it will also require the approval of the U.S. Congress.

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

While changes have been made in comparison to the original Compact proposal, moving it in the direction of increased coordination among the participating states with more active participation in the Federal legislative and regulatory process, the concept of a formal, Congressionally approved, Compact is still troublesome. There are three primary concerns with the compact approach in this instance. Our first concern arises from the fact that the Western States, and Alaska in particular, were quick in developing legislation to ensure safe oil transportation and to protect their waters, resources, and citizenry from oil spills. ARCO Marine welcomed an opportunity to comment during the oil spill legislative process and continues to provide input to state agencies as regulations are formulated which

implement the legislation. To sweep this all aside in an effort to legislate uniformity between the Western States is a misplaced, duplicative, and expensive effort.

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

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

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 Marine 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.

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

03/19/91

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

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

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

BENEFITS

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

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

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

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

TECHNICAL DEFICIENCIES

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

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

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

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

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

OMISSIONS

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

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

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

Many of these ships carry large quantities of heavy fuel oil which looks and acts much like crude oil. These ships proceed into some of the most sensitive habitats in our state, through difficult navigational areas, with the added pressure of keeping precise time schedules. None of these ships have contingency plans, none have adequate pollution response or control equipment, none have adequately trained spill response personnel, and all are capable of protecting themselves from legal claims arising from a ship casualty. Of course none of us will be all that concerned with environmental protection when one of these ships goes to the bottom hazarding the lives of 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 567. This is another example of trying to be over technical in writing law when you have little professional knowledge of the subject at hand.

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

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

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

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

R. H. Mullen
Manager

Samson Tug & Barge Company, Inc.

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

BP OIL

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

February 28, 1991

BP COMMENTS ON PACIFIC OCEAN RESOURCE COMPACT

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

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

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.

- 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.

- 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

- 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.

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

  As amended, the compact would cover existing jurisdictions.

- 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.

- 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."

- 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:

(b) 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.

- 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.

- 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.

- 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.

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

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

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?

PR0-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?

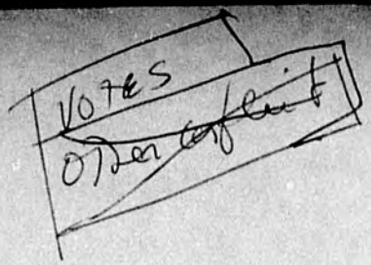
PRO-AMENDMENT: THE AMENDMENTS WILL SIMPLIFY THE COMPACT AND ELIMINATE CONFUSION WITH REGARD TO THE SUBMISSION OF CONTINGENCY PLANS . THIS AMENDMENT WOULD CLARIFY THAT ONLY ONE CONTINGENCY PLAN WOULD BE REQUIRED FOR TRANSPORTATION WITHIN THE COMPACT ZONE. THIS ALSO MAKES CLEAR THAT THE PLAN SUBMITTED 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 SPECIFY THAT NOTHING IN THE COMPACT IS INTENDED TO LIMIT THE LOCAL AUTHORITY OF PARTY TO ESTABLISH PILOTAGE, NAVIGATION OR SHIP ASSISTANCE REQUIREMENTS FOR HARBORS, 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

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

MEMORANDUM

February 28, 1991

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

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

The Compact would be comprised of 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.

• • • • •

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.

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

DYER, ELLIS, JOSEPH & MILLS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

WATERGATE - SUITE 1000

600 NEW HAMPSHIRE AVENUE, N.W.

WASHINGTON, D. C. 20037

(202) 944-2000

TELECOPIER (202) 944-2068

TELEX/TWX 8106007810 DELAW

SIDNEY A. WALLACE

COUNSEL

THOMAS M. DYER
JAMES B. ELLIS II
MICHAEL JOSEPH
THOMAS L. MILLS
WAYNE A. KEUP
E. ALEX SLANTON
WARREN L. DEAN, JR.
HOWARD A. VINE
MARGARET T. CHAO
BRIAN A. BANNON
BRETT M. ESSER
CONSTANTINE G. PAPAVIZAS
DEBRA M. ROBBINS*
SHERIDEN T. BLACK
LINDA K. ROSENTHAL
JOSEPH D. CLICK
NORMAN F. LENT III
R. ANTHONY SALGADO
KATHLEEN M. TENGEVER*
EMILY W. STREETT
MARGARET E. SMITH*
GLENN P. HARRIS
GEOFFREY E. SWANSON
LAURIE L. CRICK*

*NOT ADMITTED IN D.C.

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

DYER, ELLIS, JOSEPH & MILLS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
WATERGATE - SUITE 1000
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D. C. 20037
(202) 944-3000

TELECOPIER (202) 944-3068
TELEX/TWX 5106007810 MCI LAW

SIDNEY A. WALLACE
COUNSEL

THOMAS M. DYER
JAMES B. ELLIS II
MICHAEL JOSEPH
THOMAS L. MILLS
WAYNE A. KEUP
E. ALEX SLANTON
WARREN L. DEAN, JR.
MARGARET T. CHAO
BRIAN A. BANNON
DUNCAN C. SMITH III
BRETT M. ESGER
CONSTANTINE G. PAPAVIZAS
DEBRA M. ROBBINS*
SHERIDEN T. BLACK
LINDA K. ROSENTHAL
JOSEPH O. CLICK
NORMAN F. LENT III
R. ANTHONY SALGADO
KATHLEEN M. TENOEVER*
EMILY W. STREETT
MARGARET E. SMITH*
GLENN P. HARRIS
GEOFFREY S. SWANSON
LAURIE L. CRICK*

*NOT ADMITTED IN D.C.

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-

---

[1] Hill, The Great Lakes Quasi Compact: An Emerging Paradigm for Regional Governance of U.S. Water Resources?, 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

---

[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?

---

[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?

---

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

[11] Id.

Yes. The states do not derive their authority [illegible] 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

---

[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

---

[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

DYER ELLIS, JOSEPH & MILLS

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

---

[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

---

[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

---

[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).

---

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.

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.

OVERVIEW

+

PRESS RELEASE

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,

---

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

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

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

Benefits to Alaska of Joining the Pacific Ocean Resources Compact

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

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

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

---

[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

Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

FOR IMMEDIATE RELEASE
February 1, 1991

Contact:
Senator Sam Cotten or
Ginny Fay (907)465-3711

PACIFIC OCEAN RESOURCES COMPACT

Legislation introduced by Senator Sam Cotten and legislators in four other Pacific states will significantly strengthen the states' hands in preventing spills of oil and other hazardous substances from their shores to the 200-mile limit.

"The Pacific Ocean Resources Compact will enable us to set standards for ships and routes, establish regulations, and speak with one voice on activities affecting our joint resource--the Pacific Ocean," said Senator Cotten. Senator Cotten is prime sponsor of Alaska's Ocean Compact bill, SB 102.

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

-CONTINUED-

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 hazardous substance spill. In general, industry has expressed support for the uniform set of standards that would result from the Compact for the transportation of North Slope oil.

Legislators introducing the bill in the five participating states are Senator Bill Bradbury of Oregon, Assemblyman Dan Hauser of California, Senator Jack Metcalf of Washington, and Representative Peter Apo of Hawaii. The British Columbia contact person is Richard Dallon, Office of Deputy Minister, Ministry of Environment.

-END-

WLC Ocean Resources Committee Minutes on Compact

MEMORANDUM

TO: WLC Ocean Resources Committee Members
Other Interested Parties

FROM: Assemblymember Sam Farr (CA), Chair

DATE: 13 April 1990

SUBJECT: Committee Meeting Follow-Up

Enclosed is a copy of the summary of our meetings in Seattle on March 31 and April 1. The two-day meeting covered a broad range of topics, focusing on interstate compacts in ocean management, and was very well received. As the summary indicates, representatives of nearly every state or island government on the Ocean Resources Committee were present. Thanks to all attendees for making the meeting such a success.

The next meeting of the full Ocean Resources Committee will be at the WLC Annual Meeting in Anchorage, Alaska on September 23-26. A subcommitte of the full Ocean Resources Committee will likely meet in conjunction with the Pacific Fisheries Legislative Task Force meeting in Alaska this June to continue discussion of forming an interstate compact among the Pacific states and British Columbia. The program for the WLC Annual Meeting is still in development, but the first meeting of the Ocean Resources Committee will be on Sunday morning, September 23. Reservation materials for the 1990 WLC Annual Meeting will be mailed to every western state legislator in late May or early June.

OCEAN RESOURCES COMMITTEE
MEETING SUMMARY

Seattle, Washington
31 March & 1 April 1990

Attendance

Committee Members:

Assemblymember Sam Farr (CA), Chair
Senator Herminia Dierking (GU), Vice-Chair
Representative Peter Apo (HI), Vice-Chair
Representative Cliff Davidson (AK)
Senator Fred Zharoff (AK)
Assemblymember Dan Hauser (CA)
Senator Bill Bradbury (OR)
Representative Larry L. Campbell (OR)
Senator Jack Metcalf (WA)

Other Legislators:

Senator Drue Pearce (AK)
Senator Mike Szymanski (AK)
Representative Ken Jacobsen (WA)
Representative Larry Phillips (WA)
Representative Nancy Rust (WA)

Legislative Staff:

Jim Rote, Legislative Staff (CA)
Joy Skalbeck, Legislative Staff (CA)
Darryl Young, Legislative Staff (CA)
Ernie Cid, Legislative Staff (GU)
Peter Green, Legislative Staff (OR)
Jeannette Holman, Legislative Counsel (OR)
Harry Reinert, Legislative Staff (WA)
Andrew Grose, WLC Director
William B. Hull, WLC Staff

Guests:

Carol Alexander, Greenpeace
Xan Augerot, Washington Sea Grant
Harry Bader, University of Alaska
Steve Duca, PIRO

--- OVER ---

Lynne Ewing, Ministry of Energy, Mines & Petroleum Resources (BC)
John Fitzpatrick, Jr., PIRO
Geoff Gibbs, British Petroleum America
Marc Hershman, University of Washington
Richard Hildreth, University of Oregon
Barbara Johnson, Ministry of Regional & Economic Development (BC)
Jeanne Moore, Consultant
Lee Rees, Attorney General's Office (WA)
Bill Schramm, NOAA/COAP
Greg Sorlie, Department of Ecology (WA)
Ron Wagner, Port Angeles Pilots

Saturday, March 31

The morning program began with a roundtable discussion of recent ocean issues and ocean-related legislation in the Pacific states and island govenments. The discussion concentrated on oil spill prevention and response issues. Members distributed copies of legislation and summaries of legislation.

G. Stephen Duca, Vice President for Readiness and External Affairs for the Petroleum Industry Response Organization (PIRO), made the morning's opening presentation. PIRO was formed by representatives of the oil industry to establish a national capability to respond to catastrophic accidents such as the Exxon Valdez grounding. Mr. Duca briefed committee members on the progress of PIRO to date and answered questions concerning the time scale for implementation of the PIRO response capability.

Greg Sorlie of the Washington Department of Ecology briefed committee members on the recent work of the Pacific States/British Columbia oil spill task force. The task force is composed of representatives of the governors of California, Oregon, Washington and Alaska, as well as the premier of British Columbia. Its mission is to pool regional resources toward prevention of and response to major oil spills. Mr. Sorlie discussed the findings of the task force and answered questions concerning implementation of the task force's recommendations.

Ms. Lee Rees of the Washington Attorney General's Office discussed recent developments in federal oil spill legislation. Both the House of Representatives and the Senate have passed bills which are now being reconciled in conference committee. Ms. Rees discussed the differences in the bills and areas of concern to the states. She also briefly discussed an oil spill manual which is being prepared for state attorneys general to assist them in with legal issues concerning oil spills.

The rest of the afternoon was spent in discussion of the validity of forming an interstate compact among the Pacific States and British Columbia to deal with certain ocean management issues. The idea of an interstate compact had first been proposed by the Committee in a resolution passed at the WLC Annual Meeting in Monterey last November.

Professor Dick Hildreth of the University of Oregon made the initial presentation concerning interstate compacts and ocean management. He contended that Section 309 of the Coastal Zone Management Act (CZMA) "preauthorizies" the formation of interstate compacts in the ocean realm, as long as they do not attempt to usurp federal authority. Professor Hildreth encouraged the Committee to consider drafting such a compact. In addition, he pointed out that the current version of the CZMA being debated in Congress has deleted reference to interstate compacts. At his suggestion, the Committee drafted a letter to Congress requesting that the "preauthorization" of interstate compacts currently embodied in the CZMA be included in any reauthorization.

William Schramm, Chief of the National Ocean Service Ocean Applications Group, discussed the establishment and function of the Center for Ocean Analysis and Prediction (COAP) in Monter[illegible] COAP is a new and unique NOAA Center staffed by personnel from all five NOAA li[illegible] organizations and charged with the mission of preparing and distributing oceanographic information. Mr. Schramm presented the idea of the Pacific states pooling financial resources to provide for the establishment of a state liaison office between this new NOAA Center and the individual states. The topic will be discussed again at later Committee meetings.

Professor Harry Bader of the University of Alaska discussed his research on the efficacy of using interstate compacts to regulate oil transportation and oil spill response. He began with an overview of interstate compacts and the general rules by which Congress finds interstate compacts to be legitimate. He discussed the advantages and disadvantages of forming an interstate compact under the "preauthorization" of CZMA Section 309 as opposed to obtaining Congressional ratification.

Senator Bill Bradbury (OR) was the final speaker of the afternoon. He outlined the key issues concerning the Committee's drafting of an interstate compact and set the agenda for the next day's discussions.

Sunday, April 1

The morning's discussions concerned the drafting of an interstate compact. Copies of compact language from California and Oregon were distributed and compared. Discussion centered on the scope of issues to be dealt with in a compact and the degree to which a legitimate interstate interest, seperate from that of the federal government, could be articulated. Committee members agreed to form a subcommittee to further the discussions of an interstate compact. The subcommittee is composed of Assemblyman Hauser (CA), Senator Bradbury (OR), Representative Jacobsen (WA) and Senator Zharoff (AK). Plans call for the subcommittee to meet in conjunct[illegible] with the next meeting of the Pacific Fisheries Legislative Task Force in Alaska this June.

In addition, the Committee directed staff to investigate the possibility of obtaining funding through CZMA Section 309 to fund the establishment of a interstate compact. Staff will contact the National Coastal Research Institute to determine the procedure for appyling for such funding.

WBH:orsmsum

MEMORANDUM

TO: WLC Ocean Resources Committee Members
Other Interested Parties

FROM: Assemblyman Sam Farr, California, Chair

SUBJECT: WLC Annual Meeting Follow-Up

DATE: 12 November 1990

Enclosed is a copy of the summary of our meetings on September 23-25 in Anchorage. Also enclosed are copies of the resolutions which were proposed by the committee and adopted by the full conference. **I urge you to send these resolutions to the members of your state's Congressional delegation to assure the widest possible distribution.** Copies of the resolutions have been mailed to the appropriate Congressional committees and Executive Branch agencies from the Council of State Governments' Western Office in San Francisco. A copy of one of those letters has been enclosed for you to use as a model in sending these resolutions to Congressional members and other interested parties.

Based on the comments of committee members at the Anchorage meeting, final language for the Pacific Ocean Resources Compact is being prepared by Jeannette Holman, Oregon Legislative Counsel. The final review of the language will occur at the meeting of the Pacific Fisheries Legislative Task Force (PFLTF) in Hawaii the last week of November. Several WLC Ocean Resources Committee members are also PFLTF members, so our concerns should be amply represented at the PFLTF meeting. Final compact language will be distributed to Ocean Resource Committee members following the PFLTF meeting.

The WLC Annual Meeting in Anchorage marked the last official meeting of the WLC Ocean Resources Committee for the 1989-90 biennium. The Ocean Resources Committee will continue as one of five WLC policy committees for the 1991-92 WLC biennium. Letters requesting appointment to all WLC policy committees will be sent to legislative leadership in early 1991. It has been my pleasure to serve as Chair of the Ocean Resources Committee for the past four years. I appreciate the dedication all of you have shown to our common concerns over that time. I hope many of you will choose to continue in the work we have begun by serving on the WLC Ocean Resources Committee during the 1991-92 biennium.

Staff:
William Hull, Western Legislative Conference

The morning program was a roundtable discussion of recent ocean or coastal-related legislation or other initiatives in the Pacific states and island governments. Committee members shared copies of legislation and other materials of interest. Following presentations by committee members from each of the member states, corporate and public interest group representatives were invited to address the committee with their concerns.

The afternoon program concentrated on finalizing language on the Pacific Ocean Resources Compact. However, prior to the discussion on the compact the committee heard from speakers concerning state liaison programs at the National Oceanic and Atmospheric Administration (NOAA) and the final report of the Pacific States/British Columbia Oil Spill Task Force.

The first speaker was William Schramm, Chief of the National Ocean Service Ocean Applications Group and Acting Director of the NOAA Center for Ocean Analysis and Prediction (COAP) in Monterey. The COAP is a new and unique NOAA Center staffed by personnel from all five NOAA line organizations and charged with the mission of preparing and distributing oceanographic information. Mr. Schramm updated the committee on COAP's plan of action for 1991 and described the Center's efforts to foster coordination, cooperation and collaboration between NOAA and state governments.

Gail Gatton, Special Assistant to the Commissioner of the Alaska Department of Environmental Conservation, updated the committee on the work of the Pacific States/British Columbia Oil Spill Task Force. The task force was established to examine oil transportation issues and make recommendations on preventing major oil spills to Pacific waterways. The task force has issued a final report containing recommendations for intrastate and interstate actions and will now develop a plan to carry out the recommendations. Of note, the final report calls for the task force to work closely with the WLC Ocean Resources Committee in developing an interstate compact on oil transportation and oil spill response.

Following the presentations, the committee began review of the draft language for a Pacific Ocean Resources Compact. The proposed compact is an interstate agreement between Alaska, Washington, Oregon, California and Hawaii. In addition, the Province of British Columbia may participate as a nonvoting member. Upon approval of the U.S. Congress and appropriate Canadian approval, British Columbia would be able to participate as a full party.

The primary purpose of the compact is the prevention of spills through the adoption and enforcement of uniform standards and rules relating to transshipment of oil and other hazardous substances. In addition, the entity is charged with establishing a network to facilitate a regional response to a spill. Other duties include serving as a forum for discussion and resolution of conflicts among the states relating to ocean resources (excluding fisheries) and identifying the regional data needs related to transshipment of oil and ocean resources.

Those portions of the compact relating to ocean resource management would become effective upon adoption of the compact. Those portions relating to shipments of oil and hazardous substances would become effective upon adoption by at least two states and approval of Congress.

Resolution 90-7 urges the federal government to improve management of the coastal zones; and

Resolution 90-8 urges the U.S. Congress and the Western Legislative Conference of the Council of State Governments to acknowledge the Exclusive Economic Zones of the Northern Mariana Islands and the Island of Guam.

Tuesday, September 25

The committee members, staff and guests flew to Valdez and toured facilities containing the latest in oil spill retrieval technology at the Alyeska Pipeline Terminal. In addition, committee members viewed several videotapes of the results of the cleanup efforts in Prince William Sound after the oil spill from the Exxon Valdez.

WBH:oramsum