

SCOMM

78:21

FISCAL NOTE

REQUEST:

Revision Date:

Affected

Agency:

DEC

Title:

Pacific Ocean

BRU:

Environ.

Resources Compact

Quality

Sponsor:

Cotten et al

Components:

E.Q.proj.

Requestor:

Senate Finance

1016

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
Personal Services						
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	0.0	0.0	0.0	150.0	150.0	150.0
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	5.0	5.0	5.0	155.0	155.0	155.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	5.0	5.0	5.0	155.0	155.0	155.0
Federal Fund						
Other						
TOTAL	5.0	5.0	5.0	155.0	155.0	155.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

There is no current year impact.

See attached information sheet.

Prepared By:

Senator Pat Pourchot, Co-chairman
Senate Finance Committee

Date:

4/8/92

Phone: 465-3879

DISTRIBUTION (BY PREPARER
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT AND BUDGET
AGENCY(IES)

**CSSB 102 Pacific Ocean Resources Compact
Fiscal Note**

The bill, as amended, provides for the ratification of the Pacific Ocean Resources Compact. The intent of the compact is to coordinate protection of marine and coastal resources by the states of Alaska, California, Hawaii, Oregon, and Washington. The compact is not effective until it is adopted by at least three states and approved by Congress.

Each ratifying state is to appoint two persons to act as representatives to the compact. In Alaska, these would be appointed by the governor and approved by the legislature. The fiscal impact depends on several unknowns such as the date of ratification by other states and Congress, and the number and location of meetings. The initial funding level for fiscal years 93 through 95 provide for the costs of maintaining involvement while the ratification process occurs in other states and Congress.

Expenditures could increase in subsequent years depending on the number of states to ratify the compact and the scope of the compact's activities. If the compact activities were primarily related to oversight of U.S. Coast Guard rulemaking, the costs would be relatively minimal. Alternatively, the compact's activities could include (if agree to by all party states) the development of contingency planning regulations that would replace the states' and federal contingency planning within the compact zone. However, if the compact developed a contingency planning process, the compact is authorized to charge reasonable fees to cover the costs of review. For FY 96 - 98, the fiscal note assumes 1) at least three states join the compact, 2) the compact develops contingency planning regulations, 3) a portion of the compact agency's costs are offset by fees, and 4) any additional staff required in the Alaska Department of Environmental Conservation (DEC) to oversee the compact are more than offset by the reduction in DEC contingency planning review staff that would no longer be need.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSIONBILL NO. CS SB 102 (O&G)

Revision Date: _____

Title: An Act enacting and entering into Pacific Ocean

Resources Compact _____

Sponsor: Senators Cotten, Zharoff, Sturgulewski, et. al.

Requestor: _____

Department Affected: Office of the GovernorBRU: Executive OperationsComponent: Executive OfficeCOMPONENT SERIAL NO.

0	0	0	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	14.8	14.8	14.8	14.8	14.8	14.8
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	14.8	14.8	14.8	14.8	14.8	14.8

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	14.8	14.8	14.8	14.8	14.8	14.8
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	14.8	14.8	14.8	14.8	14.8	14.8

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: n/a

ANALYSIS: (Attach a separate page if necessary.)

Fiscal note assumes travel for Governor and attending staff to meet annually with the governors of the compact states regarding compact issues.

Prepared by: Michael A. Nizich, Director *MAN/ep*
Division: Division of Administrative ServicesPhone: 465-3616
Date: 4/8/92Approved by Commissioner: D. Max Hodel, Chief of Staff
Agency: Office of the Governor *[Signature]*Date: 4/8/92 *4/8/92*

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requester, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 102 (O & G)

Revision Date: _____
 Title: Pacific Ocean Resources
Compact
 Sponsor: Cotten
 Requestor: Senate Finance

Department Affected: Environmental Conservation
 BRU: Spill Prevention and Response
 Component: Spill Prevention and Response

COMPONENT SERIAL NO. 1 | 0 | 1 | 6

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	57.0	57.0	57.0	57.0
TRAVEL	10.0	20.0	40.0	40.0	40.0	40.0
CONTRACTUAL	0.0	4.0	200.0	440.0	440.0	440.0
SUPPLIES	0.0	1.0	10.0	10.0	10.0	10.0
EQUIPMENT	0.0	0.0	10.0	10.0	10.0	10.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	10.	25.	317.	557.	557.	557.

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	10.0	25.0	317.0	557.0	557.0	557.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER						
FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	10.	25.	317.	557.	557.	557.

POSITIONS:

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

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary.) See Attached

Prepared by: Lynn Tomich Kent

Division: Spill Prevention & Response

Phone: 465-5220

Date: 4/7/92

Approved by Commissioner: _____

Agency: Environmental Conservation

Date: 4/8/92

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

ATTACHMENT TO CSSB 102 FISCAL NOTE

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

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

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

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

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

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

FY 93 FUNDING

Travel

10.0

Total	10.0
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FY 96 FULL FUNDING

Personal Services

1 Environmental Specialist III	57.0
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Travel

Estimated for staff and three appointed representatives to attend meetings of the compact	40.0
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Contractual

Includes Alaska's estimated contribution to support the compact and five staff positions	440.0
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Supplies

10.0

Equipment

Total	<u>10.0</u> 557.0
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[G:\ADMIN\HB102FN2.NAR]

STATE OF ALASKA
1991 LEGISLATIVE SESSION

FISCAL NOTE

No. 1
Bill Version: SB 102
Bill (S) Publish Date: 3-18-92

Revision Date: March 19 Department Affected: Environmental Conservation
Title: Pacific Ocean Resources Compact BRJ: Environmental Quality
Sponsor: Zharoff, Sturgulewski, Ellsaon Component: Environmental Quality Projects
Requestor: _____ COMPONENT SERIAL
NUMBER 1016

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared By: Lynn Kent
Division: Environmental Quality

Phone: 465-2530

Date: 3/19/91

Approved by Commissioner: [Signature]

Agency: Department of Environmental Conservation

Date: 3/22/91

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

-ATTACHMENT-

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

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

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

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

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

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

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

Personal Services

1 Environmental Specialist III	56.7
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Travel

Estimated for staff and three appointed representatives to attend meetings of the compact	40.0
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Contractual

Includes Alaska's estimated contribution to support the compact and five staff positions	441.5
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Supplies

	9.0
--	-----

Equipment

	9.0
--	-----

Total	556.2
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Alaska State Legislature

Senate Committee on Oil and Gas

Senator Sam Cotten, Chairman
Senator Drue Pearce, Vice-Chairman
Senator Bettie 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 pass, it must have one affirmative vote from each party state.

May 6, 1991

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;"

ALASKA STATE LEGISLATURE

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State Capitol
Juneau, Alaska 99801-1182
(907) 465-3711

SENATOR SAM COTTEN

April 22, 1992

The Honorable Pat Rodey
Alaska State Senate
Room 113, Capitol Building
Juneau, AK 99801

Dear Pat:

You requested some information concerning my Senate Bill 102 (Pacific Ocean Resources Compact).

A compact is a multi-state agreement through which states form a governing body to address issues of regional concern. The idea of the Pacific Ocean Resources Compact was developed by the Alaska Oil Spill Commission, which was formed in the wake of the *Exxon Valdez* oil spill. Specific compact legislation was developed by the Western Legislative Conference, Ocean Resources Committees and Pacific Fisheries Legislative Task Force. The resulting legislation was introduced concurrently in February 1991 in the states of Alaska, Washington, Oregon, California, and Hawaii.

The intent of the Pacific Ocean Resources Compact legislation is to 1) prevent spills of substances, especially oil, dangerous to the environment and fisheries, 2) provide a mechanism for states to participate in U.S. Coast Guard rulemaking on issues important to western states, and 3) encourage uniform standards for matters such as contingency planning and financial responsibility. The Compact does not address resource management or allocation, or the regulation of fisheries.

Unlike other compacts to which Alaska is a party, once ratified by each state, the Pacific Ocean Resources Compact would require approval by Congress. As a result of Congressional approval that bestows federal authority, the compact is federal rather than state law. As a result, if the compact states developed contingency planning or financial responsibility standards, these standards would replace existing state and federal laws and regulations. Therefore, the Compact would not result in an additional layer of regulation for the oil and hazardous materials transportation industry, but instead reduce the layers of regulation. Industry initially supported the legislation's potential for uniform standards but has tempered that support based on fears of additional regulation. Additional regulation is the primary concern of the Hickel administration.

Original Bill. The Compact bill, as originally introduced, would have given the Compact considerable authority to direct federal agencies, especially the U.S. Coast Guard. In addition, the compact agency could establish uniform standards

The Honorable Dick Elaison
April 22, 1992
Page Two

responsibility, and provided oversight for the implementation of these standards.

"Oregon" Proposed Bill. As a result of the considerable authority of the original Compact legislation and testimony received at initial legislative hearings, the Ocean Resources Committee recommended that a new version be developed, which was proposed by Oregon. This version significantly reduced the proposed Compact authority--instead of directing federal agencies and setting uniform standards, the Compact would establish the Compact agency as an interested party. This would facilitate the ability of the Compact states to influence U.S. Coast Guard rulemaking.

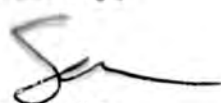
Alaska Senate Special Committee on Oil and Gas Committee Substitute. The proposed compacting states agreed that the "Oregon version" had insufficient authority. The third proposal, generally adopted by the Alaska Senate Oil and Gas Committee, is a compromise between the first two proposals. In this version, which was adopted after numerous hearings many of which were held jointly with the Senate Transportation Committee, the Compacting states continue to have the status of an interested party with the U.S. Coast Guard. In addition, if agreed by all states, the compact could develop a uniform contingency planning standard for the west coast states. Under this proposal each state has two voting representatives; at least one affirmative vote from each state is required for a measure to pass.

Alaska's legislation has one unique amendment that changes the definition of vessels to exempt vessels under 5,000 gross weight tonnage. These vessels primarily carry noncrude petroleum products and serve smaller communities in Alaska. The intent of this amendment is to avoid any impact on fuel prices in rural Alaska.

In summary, Alaska can benefit in numerous ways from joining the Pacific compact. The primary benefit is enhanced state sovereignty. Of particular relevance is the jurisdiction over ocean waters from the state's three-mile limit to the 200-mile limit.

If you have any questions, please do not hesitate to contact or my staff aide, Ginny Fay.

Sincerely,



Sam Cotten
State Senator

EXPLANATION OF CHANGES FROM CSSB 102 (O&G) TO CSSB 102 (FIN)

- Page 3, line 2 delete "(E) ocean resource management" to ensure the scope of the compact is limited to its intent.
- Page 4, line 16 delete "(E)" same as above
- Page 6, line 7 substance"s" grammatical correction
- Page 6, line 12 change [one] to two, change missed by legal services when O&G CS adopted.
- Page 7, lines 11, 14,
22, 28 add 'response' to prevention because intent of compact is to address prevention and response to oil and hazardous substance spills. Additions clarify this intent and makes the language in lines 11-28 consistent with the rest of the bill
- Page 8, line 5 change [consistent] to "compatible" because DEC has advised us that federal definition of "consistent" makes it a word that should best be avoided.
- Page 8, line 8 add satisfy and to address DEC concerns that the compact could be a forum to reduce Alaska's contingency planning standards. This amendment provides that any standards adopted by the compact must meet existing state standards.

EXPLANATION OF CHANGES FROM FIRST CSSB 102 (FIN) TO SECOND CSSB 102 (FIN)

- Page 2, line 25 adds language clarifying that the compact will have no effect on the Endangered Species Act (16 U.S.C. 1531-1544), Marine Mammals Act (16 U.S.C. 1371-1407), Alaska Native Claims Settlement Act (43 U.S.C. 1601-1642), and Alaska National Interest Lands Conservation Act (16 U.S.C. 3101-3233).
- Page 3, line 5 augments the statement that "each party to the compact has unique natural resource, social, economic, and political conditions for which local management by the individual party is most appropriate," by adding that this is especially true in Alaska regarding subsistence uses of resources.
- Page 6, line 1 (5) delete "or other artificial contrivance" and insert "either self-propelled or propelled by another vessel" to ensure that pipelines or other non-water vehicles are not included.
- Page 9, line 20 24 clarify that a standardized cost recovery formula is to be used to reduce litigation costs in small spills occurring in areas with well established coastal resource inventories and that a standardized formula is not appropriate for calculating the damages to subsistence uses of resources.
- Page 12 U 11 adds a provision that requires public review in Alaska under the Alaska Administrative Procedures Act of any proposed compact regulations before they can be approved by Alaska's representatives to the compact.

Corporation. Sponsored by the Governor, SB 465 approves the land exchange agreement of April 6, 1992, between the state and Cape Fox Corporation. The State of Alaska would acquire surface estate of land at White River, Lake Harriet Hunt, and Talbot Lake and Cape Fox would acquire surface estate on state lands near Leask Lake. Stated reasons for the land exchange are to provide increased public road-accessible recreation for the Ketchikan area, to provide increased economic development in the construction, timber and tourism industries and to improve the White River and Leask Lake roads at no additional expense to the state. No appraisal values for land and timber appear in the final exchange agreement. SB 465 has zero notes from DF&G and DEC, and a zero note from DNR, providing the state is not required to maintain the White River road.

SB 102. enacting and entering into the Pacific Ocean Resources Compact. Sponsored by Senator Cotten. Second hearing for SB 102, which authorizes the state to enter into the Pacific Ocean Resources Compact upon ratification of two or more of the states of California, Hawaii, Oregon or Washington and with consent of Congress. Senator Cotten has proposed a second draft CS (dated 4/24/92). In addition to the changes in the previous draft CS, the new version 1) includes language to clarify that the Compact will have no affect on the Endangered Species Act, Marine Mammals Act, ANCSA or ANILCA 2) clarifies that the Compact does not affect subsistence uses of resources 3) deletes the term "artificial contrivance" and replaces it with self-propelled or propelled to ensure that a pipeline or similar objects are not included 4) clarifies that the Standardized Cost Recovery Formula is to be used to reduce litigation costs for small spills occurring in areas with well-establishes resource inventories and 5) adds a provision that requires public review in Alaska of any proposed compact regulations.

SB 346. An Act making an appropriation to commercial fisheries development endowment and to the Alaska Fisheries Development Foundation and SB 345. An Act relating to the commercial fisheries development endowment. Sponsored by Senator Zharoff. Second hearing for SB 346 and SB 345. Senator Zharoff has proposed a draft CS for both bills addressing many of the concerns raised by the committee about the retention and investment of the endowment fund. The proposal would establish a separate commercial fisheries endowment in the Department of Revenue (DOR). The net income of the endowment may be appropriated annually for payment to the Alaska Fisheries Development Foundation for development research and to DOR for administration costs. The endowment will be established for a 10 year period based on a \$5 million appropriation from the earnings reserve of the Alaska Science and Technology endowment. Upon repeal of the endowment, the funds will be deposited into the

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
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Summary of Changes to SB 102--The Pacific Ocean Resources Compact

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

When introduced in each state, the legislation was identical, but various changes have been made in hearings in each state. Many of these changes were discussed by prime sponsors at Western Legislative Conference, Ocean Resources Committee meetings on March 1 and 2 in San Diego and April 5 and 6 in San Francisco. The next sections briefly discuss changes incorporated into the bill in joint hearings in the Alaska Senate in the Special Committee on Oil and Gas and Transportation Committee. While an identical bill was introduced in the Alaska House of Representatives, no hearings occurred.

Original Bill

The Compact bill, as originally introduced, would have given the Compact considerable authority to direct federal agencies, especially the U.S. Coast Guard. In addition, the compact agency could establish uniform standards for routes, crews, and equipment, contingency plans, and financial responsibility, and provide oversight for the implementation of these standards. A more complete discussion of the original bill is contained in the Compact overview paper attached.

"Oregon" Proposed Bill

At the Ocean Resources Committee meeting in San Diego, members discussed testimony received in hearings on the Compact in Alaska, California, Washington, and Oregon (Hawaii adjourned shortly after their bill was introduced before any hearings occurred). As a result of these discussions, Oregon proposed a second version of the Compact (shown as Oregon SB 500). This version significantly reduced the proposed Compact authority--instead of directing

federal agencies and setting uniform standards, the Compact would provide a "short cut" into the federal Administrative Procedures Act by establishing the Compact as an interested party. This would give the Compact standing in any federal agency rulemaking procedure. Thus, the Oregon proposal would facilitate the ability of the compact states to influence U.S. Coast Guard rulemaking.

Alaska Senate Special Committee on Oil & Gas Committee Substitute

In general, this version of the bill is a compromise between the original bill and the state of Oregon proposal. 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 to have the status of 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. This committee is created by the Compact. As in all the reviewed versions, the USCG retains enforcement authority. Compact voting procedures are also changed in this draft. Under this proposal each state has two voting representatives; at least one affirmative vote from each state is required for a measure to pass.

Amendments Unique to the Current Alaska Committee Substitute

The current Alaska committee substitute contains two amendments that have not been passed in other states. The first amendment (attached) is a technical amendment clarifying the transition from state approved contingency plans to Compact approved contingency plans. Without this amendment, state approved plans could remain in effect indefinitely. This amendment requires contingency plans to be approved under Compact regulations once Compact regulations are in place and a state approved plan expires.

The second amendment (attached) changes the definition of vessels to exempt vessels under 5,000 gross weight tonnage. This amendment is still in need of negotiation with other party states because Oregon sponsors preferred an exemption for vessel less than 2,500 gross weight tonnage. The intent of this amendment is to avoid potentially raising fuel prices in rural Alaska as a result of Compact actions. These smaller vessels, however, would continue to be subject to state jurisdiction.

Status of Compact Legislation in Other States

The following is brief summary of the status of Compact legislation in the party states:

Oregon--legislation is expected to be passed this year; Oregon's legislature meets biennially;

Washington--there have been a number of hearings on the bill which has moved through committees but it is not expected to pass the legislature this year as a result of industry concerns; Washington meets annually;

California--some hearings have been held but the legislation is not expected to pass because in fall 1990 California passed extensive oil spill prevention legislation; California's statutes are now more stringent than other west coast states; California is reluctant to potentially give up these standards; California meets annually; and

Hawaii--no action to date because of adjournment; hearings expected when legislature reconvenes.

Attachments

G. Fay, May 21, 1991

Pacific Ocean Resources Compact

A compact is a multi-state agreement through which states form a governing body to address issues of regional concern. While Alaska is a party to many types of multi-state compacts (approximately 20 depending on how "compact" is defined), the proposed Pacific Ocean Resources Compact has more authority than the other compacts to which Alaska is a party. This is because Congressional approval of the Pacific Ocean Resources Compact allows the participating states to enter a realm usually reserved for the federal government.

In the proposed Pacific Ocean Resources Compact, the states of Alaska, California, Hawaii, Oregon, and Washington would join in a multi-state compact for the purposes of the regulation of shipments of oil and hazardous substances in 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 can not 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 and 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 address individually states.*** For example, many of the statutes 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 been permitted had they been enacted by a compact in which Alaska was a member.

Benefits to Alaska of the Pacific Ocean Resources Compact

Alaska can benefit in numerous ways from joining the Pacific Ocean Resources Compact. Some of the most significant benefits are described below.

- The primary benefit is *enhanced state sovereignty, especially jurisdiction over ocean waters from the state's three-mile limit to the 200-mile limit*. Regional oil spill response and prevention contingency planning would be extended into this 200-mile zone.
- The Compact as currently proposed, would have *the ability to influence aspects of tanker transportation such as tanker design, tanker transportation lanes, tug escorts, and safety equipment*. This influence stems from the Compact's standing to enter into U.S. Coast Guard rulemaking procedures.
- The Compact would have *the authority to coordinate the oil and hazardous substance spill response plans and programs of the states, federal agencies, and private organizations*. It also establishes requirements for the submission and approval of contingency plan for vessels transporting oil and hazardous substances in the Compact zone. Because oil transportation is a regional activity, there would be considerable benefits from establishing uniform standards.
- *Alaska's sphere of influence would be significantly increased because Alaska delegates would comprise one-fifth of the voting power within the Compact*. At least one affirmative vote would be required from each state for a measure to be passed. In contrast, Alaska holds less than one half of one percent of voting power in Congress.
- *While Alaska would hold 20 percent of the Compact voting power, its fiscal contribution to the Compact would be 10 percent*. Once established, the Compact should result in considerable savings for all party states because rather than approving four or five vessel contingency plans, only one regional plan would be required. Savings would also result from cooperative environmental monitoring and research efforts.

• *Exempt small Barge operators*
 sec. def. of vessel
 art 2
 P. 6
 C. 3

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,

¹Much 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.

²For 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

³In 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

May 6, 1991

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.

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.

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.

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
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SENATE SPECIAL COMMITTEE ON OIL & GAS AND TRANSPORTATION
HEARING ON SENATE BILL 102
PACIFIC OCEAN RESOURCES COMPACT
March 5, 1991

OVERVIEW

- I. Introduction - Senator Sam Cotten, Chair, Senate Special Committee on Oil & Gas
- II. Development of the Compact Proposal - Professor Harry Bader, University of Alaska, Fairbanks, Division of Natural Resources Management, School of Agriculture and Land Resources Management
 - a. States/British Columbia Task Force on Oil Spills
 - b. Western Legislative Conference, The Council of State Governments
- III. Alaska Department of Environmental Conservation - Janice Adair, Special Assistant
 - a. Comparison of Alaska oil spill statutes with those of Washington, Oregon, Hawaii, and California and the federal Oil Pollution Act of 1990
 1. Financial liability
 2. Contingency planning
 3. Spill clean-up and prevention standards
- IV. U.S. Coast Guard - Captain Dorsey, 17th District Legal Officer and Captain Bodron, Chief, Marine Safety Division
 - a. Process for development of U.S. Coast Guard position on the Compact bill
- V. Discussion
- VI. Scheduling of Public Hearing on SB 102

DIVISION OF LEGAL SERVICES

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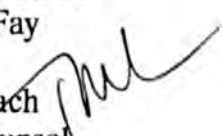
Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

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(c).

^{6/} Govt. Code 8670.31(g).

^{7/} AS 46.04.030(c).

^{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).

Senator Sam Cotten
March 19, 1991
Page 4

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

7-LS0470J ✓
Dierdorff
4/24/92

CS FOR SENATE BILL NO. 102 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS COTTEN, Zharoff, Sturgulewski, Eliason, Menard

A BILL

FOR AN ACT ENTITLED

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 46 is amended by adding a new chapter to read:

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of
7 the state. This compact shall take effect after two or more of the states of California, Hawaii,
8 Oregon, or Washington ratify the compact in substantially the same form as set out in
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia
12 may become an associate party to the compact, without voting power. Upon request of the
13 Province of British Columbia and approval of the Congress, the Province of British Columbia
14 may become a full party to the compact with the same rights and powers as the party states.

1 Sec. 46.47.020. COMPACT TERMS AND CONDITIONS. The provisions of the Pacific
2 Ocean Resources Compact are:

3 ARTICLE I

4 FINDINGS AND PURPOSE

5 (a) The parties recognize that

6 (1) this state and the states of California, Hawaii, Oregon, and Washington and
7 the Province of British Columbia have a common interest in the protection of marine and coastal
8 resources; this common interest results from

9 (A) the fluid, dynamic ocean currents and atmospheric winds that carry
10 pollutants beyond one party's coastal area to another;

11 (B) the migratory nature of many important living marine resources that
12 depend on the marine habitat of various parties for different parts of their lifecycle;

13 (C) the economic reliance of each party on renewable resources of the
14 ocean;

15 (D) the use of the ocean for transport of oil and other hazardous
16 substances between ports in the various parties and other ports; and

17 (E) a regional interest in providing a stable environment for those
18 communities dependent on ocean resources and ocean trade for a livelihood;

19 (2) some marine resource activities, such as fisheries, are currently highly
20 managed with regard for their regional or transboundary nature through existing state programs,
21 regional fisheries councils, interstate compacts, and international treaties; because there are
22 existing formal mechanisms for interstate cooperation and coordination for these marine resource
23 activities, this compact is not intended to encompass these activities or to grant to the compact
24 authority to regulate resource allocation or management as it may pertain to the use and
25 consumption of marine resources and nothing in this compact affects the provisions of the
26 Endangered Species Act (16 U.S.C. 1531 - 1544), Marine Mammals Act (16 U.S.C. 1361 -
27 1407), Alaska Native Claims Settlement Act (43 U.S.C. 1601 - 1642), or Alaska National Interest
28 Lands Conservation Act (16 U.S.C. 3101 - 3233);

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

- 1 (A) prevention of oil and hazardous substance spills;
2 (B) transportation of oil and other hazardous substances;
3 (C) oil and hazardous substance spill response planning; and
4 (D) environmental monitoring and research;

5 (4) each party has jurisdiction over the submerged and submersible land within
6 its territorial sea and responsibility for management of many marine resources and ocean uses;
7 each party has unique natural resource, social, economic, and political conditions for which local
8 management by the individual party is the most appropriate; this is particularly true with respect
9 to subsistence resource use in Alaska;

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

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

18 (7) citizens of the Pacific states and the Province of British Columbia are
19 increasingly concerned with the environmental integrity of the ocean and protection of all ocean
20 resources;

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

- 24 (A) enhanced personnel training and qualifications;
25 (B) improved vessel design and integrity;
26 (C) better mechanisms for cost recovery by the states or the province;
27 (D) improved coordination in regulatory oversight;
28 (E) enhanced traffic management; and
29 (F) an improved information base dealing with marine and coastal
30 environments;

31 (9) a spill or discharge of oil or a hazardous substance from an ocean-going vessel

1 has the potential of causing major regional effects.

2 (b) Therefore, the purpose of this compact is to

3 (1) assist in the promotion of interstate commerce by encouraging uniform
4 regulation of the transportation of oil or hazardous substances within the compact zone;

5 (2) provide a legal mechanism to regulate certain ocean activities within the
6 United States Exclusive Economic Zone;

7 (3) enhance regional coordination of issues of critical importance;

8 (4) work with federal agencies to advance the best interest of the region;

9 (5) foster regional cooperation and pooling of resources to reduce costs and
10 increase effective use of scarce resources;

11 (6) monitor activities of concern to the parties;

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

15 (A) spill prevention;

16 (B) transportation of oil and other hazardous substances;

17 (C) spill response planning; and

18 (D) environmental monitoring and research;

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

21 (9) provide technical assistance to parties for ocean activities covered by this
22 compact;

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

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

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

29 (A) the maintenance and protection of common ocean resources; and

30 (B) vessel transportation of oil and other hazardous substances;

31 (13) recommend uniform safety standards for routes, crews, and equipment for

vessels transporting oil and hazardous substances within the compact zone and monitor the implementation of these standards and regulations by federal agencies, states or provinces, and private industry;

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

(15) 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

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" means an element or compound that, when it enters in or on the water, presents an imminent and substantial danger to the public health or welfare or the environment, including fish, animals, vegetation, or a part of the natural habitat in which they are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A), an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic pollutant listed under 33 U.S.C. 1317(a), and an 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 or any other hydrocarbon, regardless of gravity, that is 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 byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, or mixed with other wastes, liquefied natural gas, or propane;

1 (6) "party" means a state or province that ratifies this compact as provided in
2 Article III of this compact;

3 (7) "representative" means an individual appointed as provided in Article IV of
4 this compact to represent a party;

5 (8) "vessel" means a watercraft, whether self-propelled or propelled by another
6 vessel, that is constructed or adapted to carry, or that carries oil or hazardous substances in bulk
7 as cargo or cargo residue and that is greater than 5,000 gross weight tonnage, and that

8 (A) operates on the navigable waters of the compact zone; or

9 (B) transfers oil or hazardous substances in a place subject to the
10 jurisdiction of the United States.

11 ARTICLE III

12 OPERATIVE DATES

13 (a) Except as provided in (b) of this article, this compact shall become effective when
14 this state and two or more of the states of California, Hawaii, Oregon, or Washington ratify the
15 compact and the consent of the Congress is or has been granted as required by section 10,
16 Article I, of the Constitution of the United States.

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

19 ARTICLE IV

20 PACIFIC OCEAN RESOURCES COMPACT

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

29 (b) The term of each representative shall be four years. A representative shall hold office
30 until a successor is appointed and qualified but the successor's term shall expire four years from
31 the legal date of expiration of the term of the predecessor. Vacancies occurring in the office of

1 a representative for any reason or cause shall be filled for the unexpired term by the party
2 represented by the vacancy. A party may remove the representative for that party in accordance
3 with the statutes of the party concerned. Each representative may delegate to a deputy the power
4 to be present and participate, including voting as the representative or substitute, at any meeting
5 of or hearing by or other proceeding of the compact.

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

10 ARTICLE V

11 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

12 (a) The Pacific Ocean Resources Compact is authorized to

13 (1) facilitate the prevention of or response to oil and hazardous substance spills
14 by

15 (A) serving as a West Coast Spill Prevention Advisory Committee to the
16 United States Coast Guard; as such, the compact shall advise the United States Coast
17 Guard on matters pertaining to spill prevention and response within the compact zone and
18 also shall advise the United States Coast Guard on other matters within the compact's
19 authority as set forth in this compact;

20 (B) participating as an interested person in any rulemaking proceeding by
21 the United States Coast Guard related to the establishment of safety standards for routes,
22 crews, and equipment for vessels transporting oil and hazardous substances; the United
23 States Coast Guard shall adopt the recommendations of the compact, unless the United
24 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption
25 of a recommendation would not prevent or facilitate response to oil and hazardous
26 substance spills;

27 (C) as an interested person, requesting the United States Coast Guard to
28 initiate rulemaking for the establishment or amendment of safety standards for routes,
29 crews, and equipment for vessels transporting oil and hazardous substances; the United
30 States Coast Guard shall initiate rulemaking as requested by the compact, unless the
31 United States Coast Guard makes a finding that the initiation of the rulemaking would not

1 further the prevention of or response to oil and hazardous substance spills;

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

5 (2) ensure a coordinated network of oil and hazardous substance spill response
6 plans and programs of the parties, federal agencies, and private organizations;

7 (3) by regulation, establish the requirements for submission of and approval by
8 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the
9 compact zone; the requirements must be compatible with the requirements for response plans
10 under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed in accordance
11 with the regulations adopted by the compact and approved by the compact shall satisfy the
12 requirements of sec. 4202 of the Oil Pollution Act and shall satisfy and supersede any
13 requirements of an individual party for submitting a vessel contingency or spill response plan;
14 however, all plans approved by parties to this compact before the operative date of the compact
15 shall remain in full force and effect until a contingency plan is approved by the compact under
16 this paragraph; if a contingency plan approved by one of the parties to this compact expires after
17 the compact contingency plan regulations are adopted, a new contingency plan must be adopted
18 under the compact regulations; in establishing regulations under this paragraph, the compact shall
19 work closely with officials of the parties to assure that the vessel contingency plans required
20 under this compact include all subject areas included by the member parties in the standards for
21 vessel contingency plans of the parties, in the aggregate, before the adoption of the compact;

22 (4) establish and maintain an informational clearinghouse related to spill response,
23 including a directory of personnel, equipment, technical expertise, organizations, and other
24 resources available to assist as part of a regional oil or hazardous substance spill response;

25 (5) provide a forum for discussion and recommendation to resolve conflicts
26 among member parties or the federal government regarding various ocean resources programs
27 that have been or may be established by each party;

28 (6) provide opportunities for public participation in compact activities by holding
29 meetings of the compact in various locations within the territorial limits of the parties, providing
30 opportunities for public comment at meetings and developing a public outreach program;

31 (7) designate state or provincial agency officials to act on behalf of the compact

1 as liaisons with federal agencies;

2 (8) identify the regional data needs related to ocean resources and recommend a
3 method for compiling the data in a format that can be shared by all parties;

4 (9) consult with and advise any pertinent party or federal agency with regard to
5 problems connected with ocean resources management and recommend the adoption of any rules
6 or regulations the compact considers advisable that are within the jurisdiction of the agency;

7 (10) establish sanctions and a schedule of civil penalties for violations of the rules
8 or regulations of the compact and impose those sanctions or civil penalties in accordance with
9 5 U.S.C. 551 - 559 and 701 - 706;

10 (11) request the United States Coast Guard to enforce or assist in the enforcement
11 of any regulations adopted by the compact including, but not limited to, regulations related to the
12 submission of a contingency plan or financial assurance requirements in the compact zone;

13 (12) establish a schedule of reasonable fees to be assessed for the review of a
14 contingency plan submitted under (3) of this subsection; the fees must be sufficient to recover
15 the costs of reviewing the plans and conducting any related inspections; the fees may be assessed
16 in increments up to the maximum amount.

17 (b) In addition to the authority granted under (a) of this article, the compact may

18 (1) accept grants and gifts;

19 (2) enter into contracts for whose performance the compact shall be solely
20 responsible in order to support its operations;

21 (3) conduct and prepare, independently or in cooperation with others, studies,
22 investigations, research, and programs relating to the purposes of this compact;

23 (4) conduct public hearings on matters pertaining to the purposes of this compact;

24 (5) establish, for the purpose of reducing litigation costs, a standardized cost
25 recovery formula, based on the amount of oil or hazardous substance spilled, to be used to
26 estimate damages to other resources from small oil or hazardous substance spills in areas with
27 well established coastal resource inventories; however, a standardized formula may not be used
28 for the economic evaluation of damage to subsistence use of resources;

29 (6) enter into an agreement with the United States Coast Guard under which the
30 compact will administer compliance with the requirements for demonstrating financial
31 responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by

1 the compact; proof of financial responsibility, if established by the compact under this paragraph,
2 shall satisfy and supersede the requirement of any individual party for demonstrating financial
3 responsibility; however, all financial responsibility requirements established by the parties to this
4 compact before the compact establishes an amount under the paragraph shall remain in full force
5 and effect until the compact establishes a requirement and enters into an agreement with the
6 United States Coast Guard under this paragraph; in establishing the amount of financial
7 responsibility under this paragraph, the compact shall work with officials of each party to assure
8 that such requirements are sufficient to satisfy the requirements of the parties, in aggregate;

9 (7) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,
10 enforce the rules and regulations adopted by the compact to carry out the authority of the
11 compact as set out in this article;

12 (8) appoint technical and advisory committees for the purpose of advising the
13 compact on regional ocean resources issues, data needs and format, and other purposes related
14 to the compact's activities; a technical or advisory committee appointed by the compact is not
15 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);

16 (9) allow a variance from the provisions of this compact or rules or regulations
17 adopted by the compact under this article; a variance must be based on a showing by the person
18 or entity seeking the variance that the activity allowed under the variance will have no regional
19 effect and that the variance is economically necessary; under no circumstances may a variance
20 result in the regulation of the transportation of oil or hazardous substance according to standards
21 less stringent than standards imposed under federal law.

22 (c) The compact shall adopt all regulations necessary to carry out its duties and exercise
23 its authority under this article. The compact shall adopt the regulations in accordance with the
24 provisions of 5 U.S.C. 500 - 559.

25 ARTICLE VI

26 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

27 The compact shall select a chair and a vice-chair. After the initial chair and vice-chair
28 are selected, the compact shall establish a rotation for the selection of the chair and vice-chair
29 so the office rotates through the parties to the compact. The compact shall appoint and at its
30 pleasure remove or discharge such officers and employees as may be required to carry the
31 provisions of this compact into effect and shall fix and determine their duties, qualifications, and

1 compensation. The compact shall adopt rules and regulations for the conduct of its business.
2 It may establish and maintain one or more offices for the transaction of its business and may
3 meet at any time or place within the territorial limits of the signatory parties but must meet at
4 least once a year.

5 ARTICLE VII

6 VOTING AND QUORUM

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

8 (b) Each representative shall be entitled to one vote. An action or decision of the
9 compact may not be approved unless the action or decision receives a majority of the votes of
10 the representatives, including at least one affirmative vote from each party.

11 ARTICLE VIII

12 SUPPORT AGENCIES

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

16 ARTICLE IX

17 PARTIES' POWERS UNDER COMPACT

18 Except as specifically provided in Article V of this compact, nothing in this compact may
19 be construed to limit the powers of a party or to repeal or prevent the enactment of legislation
20 or the enforcement of a requirement imposing additional conditions and restrictions to conserve
21 ocean resources.

22 ARTICLE X

23 ABSENCE

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

26 ARTICLE XI

27 FUNDING

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

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

30 (c) The compact shall prepare an annual budget which shall be approved by vote of the
31 compact. After approval, the proposed budget shall be presented to the chief executive and the

1 legislative body of each party.

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

3 ARTICLE XII

4 WITHDRAWAL FROM COMPACT

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

8 Sec. 46.47.030. REPRESENTATIVES. The two representatives of the state to the Pacific
9 Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the
10 legislature.

11 Sec. 46.47.040. PUBLIC REVIEW OF REGULATIONS. A representative of this state
12 may not vote for the adoption of a regulation of the Pacific Ocean Resources Compact that
13 affects this state unless the regulation has been subjected to public review under the procedures
14 of AS 44.62 (Administrative Procedure Act) relating to public comment and hearings.

7-LS0470G

Dierdorff

4/8/92

PROPOSED CHANGES HIGHLIGHTED:
Pages 3, 4, 6, 7, 8

CS FOR SENATE BILL NO. 102 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS COTTEN, Zharoff, Sturgulewski, Eliason, Menard

A BILL

FOR AN ACT ENTITLED

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 46 is amended by adding a new chapter to read:

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of
7 the state. This compact shall take effect after two or more of the states of California, Hawaii,
8 Oregon, or Washington ratify the compact in substantially the same form as set out in
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia
12 may become an associate party to the compact, without voting power. Upon request of the
13 Province of British Columbia and approval of the Congress, the Province of British Columbia
14 may become a full party to the compact with the same rights and powers as the party states.

1 Sec. 46.47.020. COMPACT TERMS AND CONDITIONS. The provisions of the Pacific
2 Ocean Resources Compact are:

3 ARTICLE I

4 FINDINGS AND PURPOSE

5 (a) The parties recognize that

6 (1) this state and the states of California, Hawaii, Oregon, and Washington and
7 the Province of British Columbia have a common interest in the protection of marine and coastal
8 resources; this common interest results from

9 (A) the fluid, dynamic ocean currents and atmospheric winds that carry
10 pollutants beyond one party's coastal area to another;

11 (B) the migratory nature of many important living marine resources that
12 depend on the marine habitat of various parties for different parts of their lifecycle;

13 (C) the economic reliance of each party on renewable resources of the
14 ocean;

15 (D) the use of the ocean for transport of oil and other hazardous
16 substances between ports in the various parties and other ports; and

17 (E) a regional interest in providing a stable environment for those
18 communities dependent on ocean resources and ocean trade for a livelihood;

19 (2) some marine resource activities, such as fisheries, are currently highly
20 managed with regard for their regional or transboundary nature through existing state programs,
21 regional fisheries councils, interstate compacts, and international treaties; because there are
22 existing formal mechanisms for interstate cooperation and coordination for these marine resource
23 activities, this compact is not intended to encompass these activities or to grant to the compact
24 authority to regulate resource allocation or management as it may pertain to the use and
25 consumption of marine resources;

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

29 (A) prevention of oil and hazardous substance spills;

30 (B) transportation of oil and other hazardous substances;

31 (C) oil and hazardous substance spill response planning; and

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~~Deleted~~ (D) environmental monitoring and research;
~~[(E) OCEAN RESOURCE MANAGEMENT]~~

(4) each party has jurisdiction over the submerged and submersible land 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) the 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 a hazardous substance from an ocean-going vessel has the potential of causing major regional effects.

(b) Therefore, the purpose of this compact is to

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

- 1 (2) provide a legal mechanism to regulate certain ocean activities within the
2 United States Exclusive Economic Zone;
- 3 (3) enhance regional coordination of issues of critical importance;
- 4 (4) work with federal agencies to advance the best interest of the region;
- 5 (5) foster regional cooperation and pooling of resources to reduce costs and
6 increase effective use of scarce resources;
- 7 (6) monitor activities of concern to the parties;
- 8 (7) address issues of mutual concern to the Pacific states and the Province of
9 British Columbia and enhance the parties' influence over activities of concern that are not now
10 addressed through existing compacts, including
- 11 (A) spill prevention;
- 12 (B) transportation of oil and other hazardous substances;
- 13 (C) spill response planning; and
- 14 (D) environmental monitoring and research;
15 Deleted (E) OCEAN RESOURCE MANAGEMENT
- 16 (8) foster cooperation and coordination among the parties in order to increase the
17 effectiveness of the individual party's ocean laws and programs;
- 18 (9) provide technical assistance to parties for ocean activities covered by this
19 compact;
- 20 (10) provide for formal participation by the Province of British Columbia with
21 the compact to more fully address issues of regional concern;
- 22 (11) ensure that the citizens of the region have opportunities to participate in
23 discussions and deliberations of regional ocean resources issues;
- 24 (12) establish an innovative system under which the parties can represent their
25 shared interests within the compact zone, including
- 26 (A) the maintenance and protection of common ocean resources; and
- 27 (B) vessel transportation of oil and other hazardous substances;
- 28 (13) recommend uniform safety standards for routes, crews, and equipment for
29 vessels transporting oil and hazardous substances within the compact zone and monitor the
30 implementation of these standards and regulations by federal agencies, states or provinces, and
31 private industry;
- (14) promote more coordinated management of ocean resources that are of mutual

1 concern;

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

5 ARTICLE II

6 DEFINITIONS

7 In this compact,

8 (1) "compact" means the representative body created by Article IV of this
9 compact;

10 (2) "compact zone" means the portion of the oceans bordering the parties within
11 the 200-mile exclusive economic zone;

12 (3) "hazardous substance" means an element or compound that, when it enters in
13 or on the water, presents an imminent and substantial danger to the public health or welfare or
14 the environment, including fish, animals, vegetation, or a part of the natural habitat in which they
15 are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A),
16 an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a
17 hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic
18 pollutant listed under 33 U.S.C. 1317(a), and an imminently hazardous chemical substance or
19 mixture with respect to which the administrator of the United States Environmental Protection
20 Agency has taken action under 15 U.S.C. 2606;

21 (4) "navigable waters" means the waters of the United States, including the
22 territorial sea;

23 (5) "oil" means crude petroleum oil or any other hydrocarbon, regardless of
24 gravity, that is produced at the well in liquid form by ordinary production methods, and any
25 petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a
26 petroleum byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
27 refuse, or mixed with other wastes, liquefied natural gas, or propane;

28 (6) "party" means a state or province that ratifies this compact as provided in
29 Article III of this compact;

30 (7) "representative" means an individual appointed as provided in Article IV of
31 this compact to represent a party;

(8) "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, and that

(A) operates on the navigable waters of the compact zone; or

(B) transfers oil or hazardous substances in a place subject to the jurisdiction of the United States.

ARTICLE III

OPERATIVE DATES

(a) Except as provided in (b) of this article, this compact shall become effective when this state and one or more of the states of California, Hawaii, Oregon, or Washington ratify the compact and the consent of the Congress is or has been granted as required by section 10, Article I, of the Constitution of the United States.

(b) 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

(a) 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, may not be considered an agency or instrumentality of the United States for the purpose of any federal law. Each party participating in this compact shall appoint two persons, subject to the applicable laws of the appointing party, to undertake the functions and duties of representatives of the compact. This compact shall be invested with the powers and duties set out in this compact.

(b) 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 the 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. A 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

1 of or hearing by or other proceeding of the compact.

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

6 ARTICLE V

7 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

8 (a) The Pacific Ocean Resources Compact is authorized to

9 (1) facilitate the prevention of or response to oil and hazardous substance spills
10 by

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

16 (B) participating as an interested person in any rulemaking proceeding by
17 the United States Coast Guard related to the establishment of safety standards for routes,
18 crews, and equipment for vessels transporting oil and hazardous substances; the United
19 States Coast Guard shall adopt the recommendations of the compact, unless the United
20 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption
21 of a recommendation would not prevent or facilitate response to oil and hazardous
22 substance spills;

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

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

1 (2) ensure a coordinated network of oil and hazardous substance spill response
2 plans and programs of the parties, federal agencies, and private organizations;

3 (3) by regulation, establish the requirements for submission of and approval by
4 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the
5 compact zone; the requirements must be consistent with the requirements for response plans
6 under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed in accordance
7 with the regulations adopted by the compact and approved by the compact shall satisfy the
8 requirements of sec. 4202 of the Oil Pollution Act and shall satisfy and supersede any
9 requirements of an individual party for submitting a vessel contingency or spill response plan;
10 however, all plans approved by parties to this compact before the operative date of the compact
11 shall remain in full force and effect until a contingency plan is approved by the compact under
12 this paragraph; if a contingency plan approved by one of the parties to this compact expires after
13 the compact contingency plan regulations are adopted, a new contingency plan must be adopted
14 under the compact regulations; in establishing regulations under this paragraph, the compact shall
15 work closely with officials of the parties to assure that the vessel contingency plans required
16 under this compact include all subject areas included by the member parties in the standards for
17 vessel contingency plans of the parties, in the aggregate, before the adoption of the compact;

18 (4) establish and maintain an informational clearinghouse related to spill response,
19 including a directory of personnel, equipment, technical expertise, organizations, and other
20 resources available to assist as part of a regional oil or hazardous substance spill response;

21 (5) provide a forum for discussion and recommendation to resolve conflicts
22 among member parties or the federal government regarding various ocean resources programs
23 that have been or may be established by each party;

24 (6) provide opportunities for public participation in compact activities by holding
25 meetings of the compact in various locations within the territorial limits of the parties, providing
26 opportunities for public comment at meetings and developing a public outreach program;

27 (7) designate state or provincial agency officials to act on behalf of the compact
28 as liaisons with federal agencies;

29 (8) identify the regional data needs related to ocean resources and recommend a
30 method for compiling the data in a format that can be shared by all parties;

31 (9) consult with and advise any pertinent party or federal agency with regard to

1 problems connected with ocean resources management and recommend the adoption of any rules
2 or regulations the compact considers advisable that are within the jurisdiction of the agency;

3 (10) establish sanctions and a schedule of civil penalties for violations of the rules
4 or regulations of the compact and impose those sanctions or civil penalties in accordance with
5 5 U.S.C. 551 - 559 and 701 - 706;

6 (11) request the United States Coast Guard to enforce or assist in the enforcement
7 of any regulations adopted by the compact including, but not limited to, regulations related to the
8 submission of a contingency plan or financial assurance requirements in the compact zone;

9 (12) establish a schedule of reasonable fees to be assessed for the review of a
10 contingency plan submitted under (3) of this subsection; the fees must be sufficient to recover
11 the costs of reviewing the plans and conducting any related inspections; the fees may be assessed
12 in increments up to the maximum amount.

13 (b) In addition to the authority granted under (a) of this article, the compact may

14 (1) accept grants and gifts;

15 (2) enter into contracts for whose performance the compact shall be solely
16 responsible in order to support its operations;

17 (3) conduct and prepare, independently or in cooperation with others, studies,
18 investigations, research, and programs relating to the purposes of this compact;

19 (4) conduct public hearings on matters pertaining to the purposes of this compact;

20 (5) establish a standardized cost recovery formula for damages to other resources
21 based on the amount of oil or hazardous substance spilled;

22 (6) enter into an agreement with the United States Coast Guard under which the
23 compact will administer compliance with the requirements for demonstrating financial
24 responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by
25 the compact; proof of financial responsibility, if established by the compact under this paragraph,
26 shall satisfy and supersede the requirement of any individual party for demonstrating financial
27 responsibility; however, all financial responsibility requirements established by the parties to this
28 compact before the compact establishes an amount under the paragraph shall remain in full force
29 and effect until the compact establishes a requirement and enters into an agreement with the
30 United States Coast Guard under this paragraph; in establishing the amount of financial
31 responsibility under this paragraph, the compact shall work with officials of each party to assure

1 that such requirements are sufficient to satisfy the requirements of the parties, in aggregate;
2 (7) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,
3 enforce the rules and regulations adopted by the compact to carry out the authority of the
4 compact as set out in this article;

5 (8) appoint technical and advisory committees for the purpose of advising the
6 compact on regional ocean resources issues, data needs and format, and other purposes related
7 to the compact's activities; a technical or advisory committee appointed by the compact is not
8 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);

9 (9) allow a variance from the provisions of this compact or rules or regulations
10 adopted by the compact under this article; a variance must be based on a showing by the person
11 or entity seeking the variance that the activity allowed under the variance will have no regional
12 effect and that the variance is economically necessary; under no circumstances may a variance
13 result in the regulation of the transportation of oil or hazardous substance according to standards
14 less stringent than standards imposed under federal law.

15 (c) The compact shall adopt all regulations necessary to carry out its duties and exercise
16 its authority under this article. The compact shall adopt the regulations in accordance with the
17 provisions of 5 U.S.C. 500 - 559.

18 ARTICLE VI

19 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

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

29 ARTICLE VII

30 VOTING AND QUORUM

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

- 1 (b) Each representative shall be entitled to one vote. An action or decision of the
2 compact may not be approved unless the action or decision receives a majority of the votes of
3 the representatives, including at least one affirmative vote from each party.

4 ARTICLE VII

5 SUPPORT AGENCIES

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

9 ARTICLE IX

10 PARTIES' POWERS UNDER COMPACT

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

15 ARTICLE X

16 ABSENCE

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

19 ARTICLE XI

20 FUNDING

- 21 (a) Each party shall contribute to the support of the compact.
22 (b) The annual contribution of each party shall be figured to the nearest \$100.
23 (c) The compact shall prepare an annual budget which shall be approved by vote of the
24 compact. After approval, the proposed budget shall be presented to the chief executive and the
25 legislative body of each party.
26 (d) Each party shall be responsible for the expenses of its own representatives.

27 ARTICLE XII

28 WITHDRAWAL FROM COMPACT

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

- 1 Sec. 46.47.030. REPRESENTATIVES. The two representatives of the state to the Pacific
2 Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the
3 legislature.

7-LS0470NG

Dierdorff

4/7/92

CS FOR SENATE BILL NO. 102 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS COTTEN, Zharoff, Sturgulewski, Eliason, Menard

A BILL

FOR AN ACT ENTITLED

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 46 is amended by adding a new chapter to read:

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of
7 the state. This compact shall take effect after two or more of the states of California, Hawaii,
8 Oregon, or Washington ratify the compact in substantially the same form as set out in
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia
12 may become an associate party to the compact, without voting power. Upon request of the
13 Province of British Columbia and approval of the Congress, the Province of British Columbia
14 may become a full party to the compact with the same rights and powers as the party states.

1 Sec. 46.47.020. COMPACT TERMS AND CONDITIONS. The provisions of the Pacific
2 Ocean Resources Compact are:

3 ARTICLE I

4 FINDINGS AND PURPOSE

5 (a) The parties recognize that

6 (1) this state and the states of California, Hawaii, Oregon, and Washington and
7 the Province of British Columbia have a common interest in the protection of marine and coastal
8 resources; this common interest results from

9 (A) the fluid, dynamic ocean currents and atmospheric winds that carry
10 pollutants beyond one party's coastal area to another;

11 (B) the migratory nature of many important living marine resources that
12 depend on the marine habitat of various parties for different parts of their lifecycle;

13 (C) the economic reliance of each party on renewable resources of the
14 ocean;

15 (D) the use of the ocean for transport of oil and other hazardous
16 substances between ports in the various parties and other ports; and

17 (E) a regional interest in providing a stable environment for those
18 communities dependent on ocean resources and ocean trade for a livelihood;

19 (2) some marine resource activities, such as fisheries, are currently highly
20 managed with regard for their regional or transboundary nature through existing state programs,
21 regional fisheries councils, interstate compacts, and international treaties; because there are
22 existing formal mechanisms for interstate cooperation and coordination for these marine resource
23 activities, this compact is not intended to encompass these activities or to grant to the compact
24 authority to regulate resource allocation or management as it may pertain to the use and
25 consumption of marine resources;

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

29 (A) prevention of oil and hazardous substance spills;

30 (B) transportation of oil and other hazardous substances;

31 (C) oil and hazardous substance spill response planning; *and* ✓

1 (D) environmental monitoring and research; and ✓

2 ~~(E) ocean resource management,~~ ✓

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

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

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

15 (7) citizens of the Pacific states and the Province of British Columbia are
16 increasingly concerned with the environmental integrity of the ocean and protection of all ocean
17 resources;

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

21 (A) enhanced personnel training and qualifications;

22 (B) improved vessel design and integrity;

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

24 (D) improved coordination in regulatory oversight;

25 (E) enhanced traffic management; and

26 (F) an improved information base dealing with marine and coastal
27 environments;

28 (9) a spill or discharge of oil or a hazardous substance from an ocean-going vessel
29 has the potential of causing major regional effects.

30 (b) Therefore, the purpose of this compact is to

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

- 1 regulation of the transportation of oil or hazardous substances within the compact zone;
- 2 (2) provide a legal mechanism to regulate certain ocean activities within the
- 3 United States Exclusive Economic Zone;
- 4 (3) enhance regional coordination of issues of critical importance;
- 5 (4) work with federal agencies to advance the best interest of the region;
- 6 (5) foster regional cooperation and pooling of resources to reduce costs and
- 7 increase effective use of scarce resources;
- 8 (6) monitor activities of concern to the parties;
- 9 (7) address issues of mutual concern to the Pacific states and the Province of
- 10 British Columbia and enhance the parties' influence over activities of concern that are not now
- 11 addressed through existing compacts, including
- 12 (A) spill prevention;
- 13 (B) transportation of oil and other hazardous substances;
- 14 (C) spill response planning; *and*
- 15 (D) environmental monitoring and research; *and*
- 16 ~~(E) ocean resource management;~~
- 17 (8) foster cooperation and coordination among the parties in order to increase the
- 18 effectiveness of the individual party's ocean laws and programs;
- 19 (9) provide technical assistance to parties for ocean activities covered by this
- 20 compact;
- 21 (10) provide for formal participation by the Province of British Columbia with
- 22 the compact to more fully address issues of regional concern;
- 23 (11) ensure that the citizens of the region have opportunities to participate in
- 24 discussions and deliberations of regional ocean resources issues;
- 25 (12) establish an innovative system under which the parties can represent their
- 26 shared interests within the compact zone, including
- 27 (A) the maintenance and protection of common ocean resources; and
- 28 (B) vessel transportation of oil and other hazardous substances;
- 29 (13) recommend uniform safety standards for routes, crews, and equipment for
- 30 vessels transporting oil and hazardous substances within the compact zone and monitor the
- 31 implementation of these standards and regulations by federal agencies, states or provinces, and

1 private industry;

2 (14) promote more coordinated management of ocean resources that are of mutual
3 concern;

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

7 ARTICLE II

8 DEFINITIONS

9 In this compact,

10 (1) "compact" means the representative body created by Article IV of this
11 compact;

12 (2) "compact zone" means the portion of the oceans bordering the parties within
13 the 200-mile exclusive economic zone;

14 (3) "hazardous substance" means an element or compound that, when it enters in
15 or on the water, presents an imminent and substantial danger to the public health or welfare or
16 the environment, including fish, animals, vegetation, or a part of the natural habitat in which they
17 are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A),
18 an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a
19 hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic
20 pollutant listed under 33 U.S.C. 1317(a), and an imminently hazardous chemical substance or
21 mixture with respect to which the administrator of the United States Environmental Protection
22 Agency has taken action under 15 U.S.C. 2606;

23 (4) "navigable waters" means the waters of the United States, including the
24 territorial sea;

25 (5) "oil" means crude petroleum oil or any other hydrocarbon, regardless of
26 gravity, that is produced at the well in liquid form by ordinary production methods, and any
27 petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a
28 petroleum byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
29 refuse, or mixed with other wastes, liquefied natural gas, or propane;

30 (6) "party" means a state or province that ratifies this compact as provided in
31 Article III of this compact;

1 (7) "representative" means an individual appointed as provided in Article IV of
2 this compact to represent a party;

3 (8) "vessel" means a watercraft or other artificial contrivance that is constructed
4 or adapted to carry, or that carries oil or hazardous substances in bulk as cargo or cargo residue
5 and that is greater than 5,000 gross weight tonnage, and that

6 (A) operates on the navigable waters of the compact zone; or

7 (B) transfers oil or ^{or} hazardous substances in a place subject to the
8 jurisdiction of the United States.

9 ARTICLE III

10 OPERATIVE DATES

11 (a) Except as provided in (b) of this article, this compact shall become effective when
12 this state and two or more of the states of California, Hawaii, Oregon, or Washington ratify the
13 compact and the consent of the Congress is or has been granted as required by section 10,
14 Article I, of the Constitution of the United States.

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

17 ARTICLE IV

18 PACIFIC OCEAN RESOURCES COMPACT

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

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

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

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

8 ARTICLE V

9 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

10 (a) The Pacific Ocean Resources Compact is authorized to

11 (1) facilitate the prevention of ^{response to} oil and hazardous substance spills by ✓

12 (A) serving as a West Coast Spill Prevention Advisory Committee to the
13 United States Coast Guard; as such, the compact shall advise the United States Coast
14 Guard on matters pertaining to spill prevention ^{and response} within the compact zone and also shall ✓
15 advise the United States Coast Guard on other matters within the compact's authority as
16 set forth in this compact;

17 (B) participating as an interested person in any rulemaking proceeding by
18 the United States Coast Guard related to the establishment of safety standards for routes,
19 crews, and equipment for vessels transporting oil and hazardous substances; the United
20 States Coast Guard shall adopt the recommendations of the compact, unless the United
21 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption
22 of a recommendation would not prevent ^{of further spills} oil and hazardous substance spills; ✓

23 (C) as an interested person, requesting the United States Coast Guard to
24 initiate rulemaking for the establishment or amendment of safety standards for routes,
25 crews, and equipment for vessels transporting oil and hazardous substances; the United
26 States Coast Guard shall initiate rulemaking as requested by the compact, unless the
27 United States Coast Guard makes a finding that the initiation of the rulemaking would not
28 further the prevention of ^{of further spills} oil and hazardous substance spills; ✓

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

1 (2) ensure a coordinated network of oil and hazardous substance spill response
2 plans and programs of the parties, federal agencies, and private organizations;

3 (3) by regulation, establish the requirements for submission of and approval by
4 the compact of a contingency plan by any vessel transporting oil or hazardous substance in the
5 compact zone; the requirements must be ^{compatible} ~~consistent~~ with the requirements for response plans ✓
6 under sec. 4202 of the Oil Pollution Act of 1990 (P.L. 101-380); a plan developed in accordance
7 with the regulations adopted by the compact and approved by the compact shall satisfy the
8 requirements of sec. 4202 of the Oil Pollution Act and shall ^{satisfy and} ~~supersede~~ any requirements of an ✓
9 individual party for submitting a vessel contingency or spill response plan; however, all plans
10 approved by parties to this compact before the operative date of the compact shall remain in full
11 force and effect until a contingency plan is approved by the compact under this paragraph; if a
12 contingency plan approved by one of the parties to this compact expires after the compact
13 contingency plan regulations are adopted, a new contingency plan must be adopted under the
14 compact regulations; in establishing regulations under this paragraph, the compact shall work
15 closely with officials of the parties to assure that the vessel contingency plans required under this
16 compact include all subject areas included by the member parties in the standards for vessel
17 contingency plans of the parties, in the aggregate, before the adoption of the compact;

18 (4) establish and maintain an informational clearinghouse related to spill response,
19 including a directory of personnel, equipment, technical expertise, organizations, and other
20 resources available to assist as part of a regional oil or hazardous substance spill response;

21 (5) provide a forum for discussion and recommendation to resolve conflicts
22 among member parties or the federal government regarding various ocean resources programs
23 that have been or may be established by each party;

24 (6) provide opportunities for public participation in compact activities by holding
25 meetings of the compact in various locations within the territorial limits of the parties, providing
26 opportunities for public comment at meetings and developing a public outreach program;

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28 as liaisons with federal agencies;

29 (8) identify the regional data needs related to ocean resources and recommend a
30 method for compiling the data in a format that can be shared by all parties;

31 (9) consult with and advise any pertinent party or federal agency with regard to

1 problems connected with ocean resources management and recommend the adoption of any rules
2 or regulations the compact considers advisable that are within the jurisdiction of the agency;

3 (10) establish sanctions and a schedule of civil penalties for violations of the rules
4 or regulations of the compact and impose those sanctions or civil penalties in accordance with
5 5 U.S.C. 551 - 559 and 701 - 706;

6 (11) request the United States Coast Guard to enforce or assist in the enforcement
7 of any regulations adopted by the compact including, but not limited to, regulations related to the
8 submission of a contingency plan or financial assurance requirements in the compact zone;

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10 contingency plan submitted under (3) of this subsection; the fees must be sufficient to recover
11 the costs of reviewing the plans and conducting any related inspections; the fees may be assessed
12 in increments up to the maximum amount.

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16 responsible in order to support its operations;

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18 investigations, research, and programs relating to the purposes of this compact;

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23 compact will administer compliance with the requirements for demonstrating financial
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25 the compact; proof of financial responsibility, if established by the compact under this paragraph,
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4 compact as set out in this article;

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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.

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Except as specifically provided in Article V of this compact, nothing in this compact may be construed to limit the powers of a party or to repeal or prevent the enactment of legislation or the enforcement of a requirement imposing additional conditions and restrictions to conserve ocean resources.

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

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- (a) Each party shall contribute to the support of the compact.
- (b) The annual contribution of each party shall be figured to the nearest \$100.
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7-LS0470ND
Dierdorff
4/16/91

CS FOR SENATE BILL NO. 102 (JH)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS COTTEN, Zharoff, Sturgulewski, Eliason, Menard

A BILL
FOR AN ACT ENTITLED

1 "An Act enacting and entering into the Pacific Ocean Resources Compact."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 46 is amended by adding a new chapter to read:

4 CHAPTER 47. PACIFIC OCEAN RESOURCES COMPACT.

5 Sec. 46.47.010. COMPACT ENACTED AND ENTERED INTO. (a) The Pacific Ocean
6 Resources Compact as set out in AS 46.47.020 is enacted into law and entered into on behalf of
7 the state. This compact shall take effect after one or more of the states of California, Hawaii,
8 Oregon, or Washington ratify the compact in substantially the same form as set out in
9 AS 46.47.020 and consent is granted by the Congress as required by section 10, Article I, of the
10 Constitution of the United States.

11 (b) In addition to the states named in (a) of this section, the Province of British Columbia
12 may become an associate party to the compact, without voting power. Upon request of the
13 Province of British Columbia and approval of the Congress, the Province of British Columbia
14 may become a full party to the compact with the same rights and powers as the party states.

1 Sec. 46.47.020. COMPACT TERMS AND CONDITIONS. The provisions of the Pacific
2 Ocean Resources Compact are:

3 ARTICLE I

4 FINDINGS AND PURPOSE

5 (a) The parties recognize that

6 (1) this state and the states of California, Hawaii, Oregon, and Washington and
7 the Province of British Columbia have a common interest in the protection of marine and coastal
8 resources; this common interest results from

9 (A) the fluid, dynamic ocean currents and atmospheric winds that carry
10 pollutants beyond one party's coastal area to another;

11 (B) the migratory nature of many important living marine resources that
12 depend on the marine habitat of various parties for different parts of their lifecycle;

13 (C) the economic reliance of each party on renewable resources of the
14 ocean;

15 (D) the use of the ocean for transport of oil and other hazardous
16 substances between ports in the various parties and other ports; and

17 (E) a regional interest in providing a stable environment for those
18 communities dependent on ocean resources and ocean trade for a livelihood;

19 (2) some marine resource activities, such as fisheries, are currently highly
20 managed with regard for their regional or transboundary nature through existing state programs,
21 regional fisheries councils, interstate compacts, and international treaties; because there are
22 existing formal mechanisms for interstate cooperation and coordination for these marine resource
23 activities, this compact is not intended to encompass these activities or to grant to the compact
24 authority to regulate resource allocation or management as it may pertain to the use and
25 consumption of marine resources;

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

2 (A) prevention of oil and hazardous substance spills;

3 (B) transportation of oil and other hazardous substances;

3 (C) oil and hazardous substance spill response planning;

*clarifies that
the compact is not
to regulate or
allocate marine
resources*

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*Add this
back in - was in
original bill*

1 (D) environmental monitoring and research; and

2 (E) ocean resource management;

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

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

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

15 (7) citizens of the Pacific states and the Province of British Columbia are
16 increasingly concerned with the environmental integrity of the ocean and protection of all ocean
17 resources;

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

21 (A) enhanced personnel training and qualifications;

22 (B) improved vessel design and integrity;

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

24 (D) improved coordination in regulatory oversight;

25 (E) enhanced traffic management; and

26 (F) an improved information base dealing with marine and coastal
27 environments;

28 (9) a spill or discharge of oil or a hazardous substance from an ocean-going vessel
29 has the potential of causing major regional effects.

30 (b) Therefore, the purpose of this compact is to

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

*added back
from original
bill
but reworded to soften*

changed from "providing"
CSSB 102()

- 1 regulation of the transportation of oil or hazardous substances within the compact zone;
- 2 (2) provide a legal mechanism to regulate certain ocean activities within the
- 3 United States Exclusive Economic Zone; *Changed from "sovereignty over"*
- 4 (3) enhance regional coordination of issues of critical importance; *Changed from "action"*
- 5 *Changed from "dict"* (4) ~~work~~ with federal agencies to advance the best interest of the region;
- 6 (5) foster regional cooperation and pooling of resources to reduce costs and
- 7 increase effective use of scarce resources;
- 8 *from "enhance the oversight and supervision of"* (6) monitor activities of concern to the parties;
- 9 (7) address issues of mutual concern to the Pacific states and the Province of
- 10 British Columbia and enhance the parties' influence over activities of concern that are not now
- 11 addressed through existing compacts, including
- 12 (A) spill prevention;
- 13 (B) transportation of oil and other hazardous substances;
- 14 (C) spill response planning;
- 15 (D) environmental monitoring and research; and
- 16 (E) ocean resource management; *added back*
- 17 (8) foster cooperation and coordination among the parties in order to increase the
- 18 effectiveness of the individual party's ocean laws and programs;
- 19 (9) provide technical assistance to parties for ocean activities covered by this
- 20 compact;
- 21 (10) provide for formal participation by the Province of British Columbia with
- 22 the compact to more fully address issues of regional concern;
- 23 (11) ensure that the citizens of the region have opportunities to participate in
- 24 discussions and deliberations of regional ocean resources issues;
- 25 (12) establish an innovative system under which the parties can represent their
- 26 shared interests within the compact zone, including
- 27 (A) the maintenance and protection of common ocean resources; and
- 28 (B) vessel transportation of oil and other hazardous substances;
- 29 *changed from establish* (13) ~~recommend~~ uniform safety standards for routes, crews, and equipment for
- 30 vessels transporting oil and hazardous substances within the compact zone and *changed from provide* monitor the
- 31 implementation of these standards and regulations by federal agencies, states or provinces, and

1 private industry;

2 (14) promote more coordinated management of ocean resources that are of mutual
3 concern;

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

7 ARTICLE II

8 DEFINITIONS

9 In this compact,

10 (1) "compact" means the representative body created by Article IV of this
11 compact;

12 (2) "compact zone" means the portion of the oceans bordering the parties within
13 the 200-mile exclusive economic zone;

14 (3) "hazardous substance" means an element or compound that, when it enters in
15 or on the water, presents an imminent and substantial danger to the public health or welfare or
16 the environment, including fish, animals, vegetation, or a part of the natural habitat in which they
17 are found; "hazardous substance" includes a substance designated under 33 U.S.C. 1321(b)(2)(A),
18 an element, compound, mixture, solution, or substance designated under 42 U.S.C. 9602, a
19 hazardous waste having characteristics identified under or listed under 42 U.S.C. 6921, a toxic
20 pollutant listed under 33 U.S.C. 1317(a), and an imminently hazardous chemical substance or
21 mixture with respect to which the administrator of the United States Environmental Protection
22 Agency has taken action under 15 U.S.C. 2606;

23 (4) "navigable waters" means the waters of the United States, including the
24 territorial sea;

25 (5) "oil" means crude petroleum oil or any other hydrocarbon, regardless of
26 gravity, that is produced at the well in liquid form by ordinary production methods, and any
27 petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a
28 petroleum byproduct, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
29 refuse, or mixed with other wastes, liquefied natural gas, or propane;

30 (6) "party" means a state or province that ratifies this compact as provided in
31 Article III of this compact;

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

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

(A) operates on the navigable waters of the compact zone; or

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

ARTICLE III

OPERATIVE DATES

(a) Except as provided in (b) of this article, this compact shall become effective when this state and one or more of the states of California, Hawaii, Oregon, or Washington ratify the compact and the consent of the Congress is or has been granted as required by section 10, Article I, of the Constitution of the United States.

(b) 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

(a) 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, may not be considered an agency or instrumentality of the United States for the purpose of any federal law. Each party participating in this compact shall appoint two persons, subject to the applicable laws of the appointing party, to undertake the functions and duties of representatives of the compact. This compact shall be invested with the powers and duties set out in this compact.

(b) 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 the 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. A party may remove the representative for that party in accordance

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

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

8 ARTICLE V

9 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

10 (a) The Pacific Ocean Resources Compact is authorized to

11 (1) facilitate the prevention of oil and hazardous substance spills by

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

17 (B) participating as an interested person in any rulemaking proceeding by
18 the United States Coast Guard related to the establishment of safety standards for routes,
19 crews, and equipment for vessels transporting oil and hazardous substances; the United
20 States Coast Guard shall adopt the recommendations of the compact, unless the United
21 States Coast Guard makes a finding, as part of the rulemaking process, that the adoption
22 of a recommendation would not prevent oil and hazardous substance spills;

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

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

(2) ensure a coordinated network of oil and hazardous substance spill response plans and programs of the parties, federal agencies, and private organizations;

(3) 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; the requirements must be ~~consistent~~ ^{changed from "at least as stringent as"} with as the requirements for response plans under sec. 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 sec. 4202 of the Oil Pollution Act and shall ~~supersede~~ ^{replace} any requirements of an individual party for submitting a vessel contingency or spill response plan; however, all plans approved by parties to this compact before the operative date of the compact shall remain in full force and effect until a contingency plan is approved by the compact under this paragraph; in establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact include all subject areas included by the member parties in the standards for vessel contingency plans of the parties in the aggregate, before the adoption of the compact.

(4) 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;

(5) 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;

(6) 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;

(7) designate state or provincial agency officials to act on behalf of the compact as liaisons with federal agencies;

(8) 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;

(9) 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;

lets state contingency plans remain in effect
should solve the scope of contingency plans problem

1 (10) establish sanctions and a schedule of civil penalties for violations of the rules
2 or regulations of the compact and impose those sanctions or civil penalties in accordance with
3 5 U.S.C. 551 - 559 and 701 - 706;

4 (11) request the United States Coast Guard to enforce or assist in the enforcement
5 of any regulations adopted by the compact including ^{but not limited to} regulations related to the submission of a
6 contingency plan or financial assurance requirements in the compact zone;

(12) establish a schedule of reasonable fees to be assessed for the review of a
contingency plan submitted under (3) of this subsection; the fees must 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.

(b) In addition to the authority granted under (a) of this article, the compact may

(1) accept grants and gifts;

(2) enter into contracts for whose performance the compact shall be solely
responsible in order to support its operations;

(3) conduct and prepare, independently or in cooperation with others, studies,
investigations, research, and programs relating to the purposes of this compact;

(4) conduct public hearings on matters pertaining to the purposes of this compact;

(5) establish a standardized cost recovery formula for damages to other resources
based on the amount of oil or hazardous substance spilled;

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

(7) in accordance with the provisions of 5 U.S.C. 551 - 559 and 701 - 706,

1 enforce the rules and regulations adopted by the compact to carry out the authority of the
2 compact as set out in this article;

3 (8) appoint technical and advisory committees for the purpose of advising the
4 compact on regional ocean resources issues, data needs and format, and other purposes related
5 to the compact's activities; a technical or advisory committee appointed by the compact is not
6 subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended);

7 (9) allow a variance from the provisions of this compact or rules or regulations
8 adopted by the compact under this article; a variance must be based on a showing by the person
9 or entity seeking the variance that the activity allowed under the variance will have no regional
10 effect and that the variance is economically necessary; under no circumstances may a variance
11 result in the regulation of the transportation of oil or hazardous substance according to standards
12 less stringent than standards imposed under federal law.

13 (c) The compact shall adopt all regulations necessary to carry out its duties and exercise
14 its authority under this article. The compact shall adopt the regulations in accordance with the
15 provisions of 5 U.S.C. 500 - 559.

16 ARTICLE VI

17 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

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

27 ARTICLE VII

28 VOTING AND QUORUM

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

30 (b) Each representative shall be entitled to one vote. *voting change* An action or decision of the
31 compact may not be approved unless the action or decision receives a majority of the votes of

the representatives, including at least one affirmative vote from each party.

ARTICLE VIII

SUPPORT AGENCIES

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

ARTICLE IX

PARTIES' POWERS UNDER COMPACT

Except as specifically provided in Article V of this compact, nothing in this compact may be construed to limit the powers of a party or to repeal or prevent the enactment of legislation or the enforcement of a requirement imposing additional conditions and restrictions to conserve ocean resources.

ARTICLE X

ABSENCE

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

ARTICLE XI

FUNDING

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

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

(c) 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 the legislative body of each party.

(d) 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.

Sec. 46.47.030. REPRESENTATIVES. The two representatives of the state to the Pacific Ocean Resources Compact shall be appointed by the governor, subject to confirmation by the

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1 legislature.

Alaska State Legislature

Senator Sam Cotten Chairman
Senator Drue Pearce, Vice-Chairman
Senator Shirley Craft
Senator Lyman F. Hoffman
Senator Dick Shultz



State Capitol
Juneau, AK 99801-1182
(907) 465-3711

Senate Committee on Oil and Gas

April 25, 1992

Janice Adair, Assistant Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Ms. Adair:

This letter is to address the Department's "concerns and questions" relating to SB 102, "An Act enacting and entering into the Pacific Ocean Resources Compact." While a number of the concerns raised are fairly broad and speculative, we will try to address them as well as clarify some of the Department's apparent misunderstandings of the legislation.

In your April 22 letter to Representative Davidson, you state that: "Some individuals supporting the Compact Legislation do not expect the Compact to develop regulations. If it is not the intent of the Legislature to have the Compact develop regulations, then we question the need for this legislation." While the basis for this statement is unclear, it is fair to say that the primary purpose of the legislation is not the development of regulations. Instead, its primary purpose is to extend states' sovereignty and jurisdiction over the marine waters of the Exclusive Economic Zone (EEZ). The EEZ extends from the states' three-mile limit to the current federal 200-mile limit.

The mechanism for implementing this primary objective is 1) the definition of the Compact zone, Article II (2) and 2) the Compact's establishment of the West Coast Spill Prevention Advisory Committee that has standing as an interested party to initiate or participate in U.S. Coast Guard rule-making to facilitate the prevention of and response to oil and hazardous substance spills, Article V (a) (1) (A-D).

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As you noted, the Compact legislation does have provisions for the development of contingency plan regulations. These provisions were developed and included after lengthy negotiations among the party states over a number of years. Despite the Department's concerns that the "Compact bill provides no guidance and no boundaries for the development of regulations," Article V (a) (3) very succinctly directs the Compact agency to work closely with officials from all of the party states to ensure that contingency plan regulations developed by the Compact satisfy the requirements on each party's contingency planning standards that existed prior to the development of the Compact.

Rather than providing little guidance, the Compact will be required to work within the confines of all party states' statutes and regulations, as well as the federal Oil Pollution Act of 1990 (OPA 90). In addition, all states would have to agree to any proposed regulations, Article VII Voting and Quorum. Given the considerable guidance provided by the Compact language to protect the interest of each party state, the development of regulations will be a considerable accomplishment and, thus, a secondary objective of the Compact. The sponsors of the legislation in the party states do support the development of regulations, however, because a consistent set of comprehensive standards to prevent spills would be in the states' interest and provide uniform standards for the oil and hazardous materials shipping industry.

You mentioned that the federal government and West Coast states have all recently passed laws to strength spill prevention and response and are in the process of implementing regulations. As a result, there has been insufficient time to evaluate the effectiveness of these programs. Evaluation of the implementation of these programs is undoubtedly an ongoing and continual process. Based on the significant passage of laws by the states and federal government, the *Exxon Valdez* oil spill appears to have prompted the citizens and elected officials in this country to judge that our prevention, response, and financial responsibility requirements were inadequate. The laws were passed to establish new standards to protect the public and natural resources from future spills. The standards themselves are less difficult to evaluate than their implementation. In addition, the process of state ratification and Congressional approval of the Compact probably provides at least another five years for the evaluation process to continue in the states.

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The next sections address your specific questions that have not already been answered above:

*The definition of "hazardous substances" is contained in Article II (3). This definition was developed after a thorough legal review of federal and all potential Compact party states' definitions of hazardous materials. Most of the states rely almost exclusively on federal definitions of hazardous materials. As a result, the definition in the Compact legislation encompasses the states' definitions by referring to numerous federal legal citations. This office contacted your department staff regarding this definition in February 1991. We were advised that the department primarily relies on the U.S. Coast Guard CHRIS manual for the definition of hazardous substances subject to marine transportation and is, thus, consistent with the Compact definition.

* The Compact may NOT regulate transportation on Alaska rivers or inland waters. This is clearly established by the definition of "compact zone," Article II (2) which "means the portion of the oceans bordering the parties within the 200-mile exclusive economic zone (emphasis added)." In addition, Article I (4) states that "each party has jurisdiction over the submerged and submersible land within its territorial sea...." The compact is clearly marine oriented. It should also be noted that the Compact would have no effect on Coastal Zone Management for the same reasons.

* Within the compact zone, the U.S. Coast Guard would be responsible for enforcing regulations, and conducting inspections and drills.

* The states would continue to be responsible for shore-based facilities and smaller vessels (primarily non-crude product suppliers). The Compact is intended to address the regional **transportation** of oil and hazardous materials. As a result, it does not seem appropriate for the Compact to address shore-based facilities. The exemption of smaller vessels was amended in the Alaska legislation to protect the interests of rural Alaska that rely heavily on the **intrastate** transportation of fuel products, and is, thus, not a West Coast regional concern.

* While the Compacts headquarters may be located outside of Alaska, the legislation clearly directs that the Compact "ensure that the

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citizens of the region have opportunities to participate in discussions and deliberations," Article I (b) (11). Undoubtedly to meet these concerns, the location of Compact meetings would be rotated. In addition, while it was assumed that the approval of any regulations by Alaska representatives would require public review in Alaska, this Alaska Administrative Procedures Act requirement was specifically added to the legislation.

* There would obviously be no duplication or double counting of sanctions and civil penalties relating to natural resources damages which is prohibited by federal law. Within the Compact zone, the Compact can develop sanctions or civil penalties if the states agree that the regulations developed by the National Oceanic and Atmospheric Association (NOAA) are inadequate. In either case, the sanctions and civil penalties would be enforced by the U.S. Coast Guard under the federal Administrative Procedures Act to ensure due process, Article V (a) (10).

* In your letter of April 22, there are numerous references to Compact "regions." We are uncertain of the origin or meaning of this. Specifically, the legislation develops the compact zone to address the regional transportation of oil and hazardous substances. We are aware of no proposed subregions.

Thank you for your kind attention. I hope this addresses your questions and clarifies your understanding of the legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Cotten", written in dark ink.

Senator Sam Cotten

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Avenue, Suite 105
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Telephone No. (907)465-5050
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April 22, 1992

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

Dear Representative Davidson:

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

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

More specifically:

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

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

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

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

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

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

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

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

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

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April 22, 1992

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

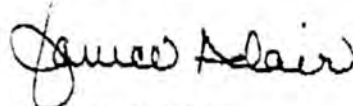
* The Compact headquarters will likely be located outside of Alaska, further limiting public access to this agency.

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

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

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

Sincerely,



Janice Adair
Assistant Commissioner

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

MEMORANDUM

State of Alaska

Department of Law

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

DATE: April 8, 1992

FILE NO:

TEL. NO: 269-5274

SUBJECT: SB 102 - Pacific Ocean
Resources Compact

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

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

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

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

Deborah Behr
Legislative Attorney
Department of Law -- Juneau

April 8, 1992
Page 2

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

In general, the Compact established in SB 102 would simply establish a forum for cooperative efforts of the party states and would not limit the internal regulatory powers of the member states. However, three provisions in Article V of the Compact have the potential to significantly alter the State of Alaska's regulation of oil and hazardous substance transportation in state waters. In particular, Article V(a)(2) would create an unified "Compact region" in which the Compact would establish and enforce oil and hazardous substance contingency plans for vessels. Pursuant to this article, the Compact would adopted uniform regulations for the region that are "consistent" with response plan requirements established under the federal Oil Pollution Act of 1990.¹ Once in place, the "compact contingency plans" would supersede individual state plans. Individual state contingency plans approved prior to the adoption of compact plan regulations would remain in effect until their expiration, at which point they would be subject to the compact plan regulations. Article V(a)(10) would allow the compact to establish sanctions for violations of

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

Deborah Behr
Legislative Attorney
Department of Law -- Juneau

April 8, 1992
Page 3

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

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

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

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

Deborah Behr
Legislative Attorney
Department of Law -- Juneau

April 8, 1992
Page 4

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

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

BCT:bkn

cc: Craig Tillery

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802-1217
Phone: (907) 463-2025
Staff Symbol (d)

16450
March 4, 1991

The Honorable Sam Cotten
Alaska State Senator
Post Office Box V
Juneau, Alaska 99811

Dear Senator Cotten:

Thank you for sending the copy of your proposed Pacific Ocean Resources Compact legislation. Not surprisingly, this proposed legislation is of significant interest, not only to the Seventeenth Coast Guard District, but also to the other Pacific Area Coast Guard Districts, the Commandant of the Coast Guard, and other affected Federal agencies. We are, therefore, studying the proposed legislation very closely.

Among the issues that we are looking at most closely are: the ramifications of delegating broad tank vessel safety and pollution prevention regulatory and enforcement authority to a non-Federal, regional entity; the interplay of Compact regulations with existing Federal statutes and regulations; the authorities and responsibilities of the Coast Guard vis-a-vis the Compact; the role of British Columbia in the Compact; and the desirability of the Compact in view of the authorities already granted to the states by the Oil Pollution Act of 1990. I hope to provide you with further comments on these and other issues in the near future.

Once again, thank you for the information. My staff and I are looking forward to working with you and the State in resolving these issues. Captain Don Bodron (907) 463-2205 is my expert on these matters. Please feel free to contact either him or me.

Sincerely,

D. E. CIANCAGLINI
Rear Admiral, U.S. Coast Guard
Commander
Seventeenth Coast Guard District

from the desk of
Ray Gillespie



4/8/92

Leo asked that this be hand delivered. If you
have any questions, you can call me at 463-3375.

Ray



April 8, 1992

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

RE: SB 102

Dear Senator Cotten:

Last December I wrote you regarding the concerns PMSA had with California's compact legislation (AB 393 - Hauser). Fortunately, the California legislature is no longer considering this legislation, largely because of the problems we noted.

The reasons I cited in my earlier letter (copy attached for your easy reference) are still valid, but I want to emphasize two points:

- Our industry worked very hard in California and other West Coast states when their respective legislation was deliberated. The legislation, which was ultimately enacted, while not perfect, is balanced and workable. We are not prepared to accept, in any fashion, yet a third layer of government regulation and bureaucracy, which we believe SB 102 will create. The West Coast does not need another de facto U.S. Coast Guard.
- The cost to administer this proposed compact will likely be borne in proportion to the state's size. In the case of California, that would effectively mean picking up the lion's share of a cost that would largely benefit other states. California was not prepared to do this, and I do not believe Alaska should be so inclined, either.

PACIFIC MERCHANT SHIPPING ASSOCIATION

One Kaiser Plaza, Suite 420, Oakland, California 94612 Telephone (415) 839-9850 Fax (415) 839-2980

The Honorable Sam Cotten
April 8, 1992
Page Two

In summary, a cooperative arrangement of West Coast states would be beneficial, and we would support such an agreement. We must continue to oppose, however, any arrangement that creates a new layer of government.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leo Brien".

Leo R. Brien
President

LRB:si
Enclosure



December 20, 1991

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

Dear Senator ~~Cotten~~: *Sam*

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

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

This raises a number of issues:

- * The U.S. Congress, Alaska, California and Washington state enacted comprehensive oil spill prevention legislation in 1990 and 1991. Each provides a high degree of protection for the marine environment. Much of the regulatory proceedings necessary to implement the provisions of this legislation is still being completed. It seems premature to consider additional regulation until we have had an opportunity to evaluate the impact of the legislation so recently enacted.
- * The proposed compact appears to violate the constitutional principals that reserve admiralty and maritime jurisdiction to the federal government.
- * The Alaska legislature enacted, I believe, very comprehensive legislation that dramatically increased the State's authority over the shipping and handling of oil. Is Alaska prepared to

PACIFIC MERCHANT SHIPPING ASSOCIATION

One Kaiser Plaza, Suite 420, Oakland, California 94612 Telephone (415) 839-8650 Fax (415) 839-2980

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

- * Industry, and ultimately, the consumer, is already providing significant funding for federal and state oil spill prevention laws. As additional unspecified funding is required for this interstate compact, it is unrealistic and unfair to expect industry and consumers to pay yet another assessment. Will general funds be available for this proposal? Given the deficit situation facing many states, the availability of general funds appears highly doubtful.
- * The power to enact and enforce regulations governing activities off the coasts has inherent foreign policy implications, and there is a constitutional limit on the extent to which Congress may authorize a state to exercise that power. The delineation of that federal limit has been the subject of international debate and that controversy would likely be intensified if authority out to 200 miles were granted to states through the creation of this compact.

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

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

Senator Cotten
Page 3

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

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

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

Sincerely yours,



Leo Brien
President
Pacific Merchant Shipping Association

Though the attached article may also be of interest.

LRB:rc



December 20, 1991

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

FROM: Leo Brien 

SUBJECT: Pacific Compact Legislation - Alaska

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

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

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

Please advise of questions/comments.

cc: W. Lawrence
R. Ray

LRB:rc

PMSA



December 20, 1991

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

Dear Senator ~~Cotten~~: *Sam*

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Senator Cotten
Page 3

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Sincerely yours,



Leo Brien
President
Pacific Merchant Shipping Association

*Thoug the attached article may also be of
interest.*

LRB:rc

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

The protocols that he referred to are 1984 International Maritime Organization (IMO) protocols to the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage. At a recent diplomatic conference in London, participants asked the IMO to adopt new protocols in place of the 1984 protocols, which have been ratified by only two of the eight countries needed for enactment (OPA 90 discouraged any hope of the US ratifying these protocols). The International Oil Pollution Compensation Fund Assembly recommended that the

IMO reduce the number of countries required to adopt the protocols to make it easier for the protocols to go into effect. The assembly had earlier rejected a suggestion that the liability limits be raised to \$283 million (currently the limit is \$80 million; the 1984 protocols would have raised the limit to \$191 million).

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

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

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

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Oil Spill US Law Report is published monthly by Cutter Information Corp., 37 Broadway, Arlington, MA 02174-5539, USA; Tel: (617) 648-8700; Fax: (617) 648-8707; Telex: 650 100 9891.

Subscriptions: \$667 per year; \$767 outside North America. ISSN 1055-9175.

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Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

PACIFIC OCEAN RESOURCES COMPACT - SB 102

SB 102 will better **protect our ocean resources** from hazards associated with the transportation of **oil and other hazardous substances**. By forming a compact, Alaska, Washington, Oregon, Hawaii, and California can speak in one voice to prevent oil and other hazardous substance spills from occurring in their waters. The Compact would facilitate regional planning and allow the group to address regional regulatory problems that they could not as individual states.

Legislation similar to SB 102 has been introduced in the other Compact member states. Once ratified by one or more of these states and Congress, the Compact would be federal law.

BENEFITS TO ALASKA

* **Enhanced state sovereignty** over issues of critical importance, such as prevention of oil and hazardous substance spills, spill contingency planning, and environmental monitoring and research;

* **Increased jurisdiction** from 3 up to 200 miles offshore;

* **Augmented voting power.** As a member of the compact, Alaska would have one-fifth of the voting power. In Congress, our current voting power is less than one-half percent; and

* **Increased uniformity and safety** of tanker transportation through input on design, safety equipment, crew size, and training.

The Alaska Environmental Lobby strongly supports SB 102. The Pacific Ocean Resources Compact would allow states most likely damaged by oil and hazardous substance spills to act in a unified manner to prevent and respond to spills.

Prepared by Theresa Svancara, 3/25/91.

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT
ALASKA CHAPTER SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • KNIK GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB
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JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK LANDERS AND KAYAKERS

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

Jeslie Kaleak, Sr., Mayor



April 13, 1992

Senator Al Adams
P.O. Box V
Juneau, AK 99811

Re: Pacific Oceans Resources Compact - CS For Senate Bill 102

Dear Senator Adams:

The Borough has had the opportunity to quickly review Senate Bill 102 and its accompanying materials. We strongly support in concept the idea of a Pacific Ocean Resources Compact, and the State of Alaska's active participation in such an organization. We have reservations, however, about the means by which Alaska's two or three representatives will be selected (the Bill specifies 2 in Article IV, while the supporting materials indicate that there will be 3 members from each state).

The Borough has long been concerned about the possibility of both American and Canadian oil tanker traffic through the Beaufort and Chukchi Seas, and the devastating impacts which a tanker spill might have on our area's resources and our subsistence activities. We have encouraged and continue to support stronger oil spill contingency planning and more realistic spill response exercises. We would be very pleased to see the influence and jurisdiction of the State of Alaska in these matters extended to the 200-mile limit of federal waters through implementation of the Pacific Compact.

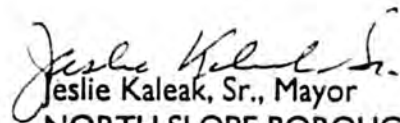
A greater voice is a benefit, however, only if the positions which the Alaskan members will express through the compact are those endorsed by the at-risk coastal regions of the state. We do not believe that representatives

Senator Al Adams
April 13, 1992
Page 2

directly appointed by Governor Hickel will be likely to find favor with the coastal regions. The Governor's history of appointments to positions with influence over resource development and spill contingency planning has been less than positive in our view. We urge you, therefore, to seek amendment of proposed Section 46.47.030 of the statute to require that the representatives of the state to the compact must be appointed by the Governor from nominees submitted by the Citizens' Oversight Council on Oil and Other Hazardous Substances, subject to confirmation by the Legislature. As you are aware, the Council was created by the Legislature in 1990 to promote safe production, transport, and storage of oil and other substances. The attached materials on the Council clearly indicate that it would be a natural extension of its duties to select suitable nominees for appointment to the Pacific Compact.

Thank you for bringing this important legislation to the Borough's attention. I hope our comments have been helpful in your review of the proposal.

Sincerely,


Leslie Kaleak, Sr., Mayor
NORTH SLOPE BOROUGH

cc: Rep. Eileen MacLean
Department of Wildlife Management



ALASKA STATE LEGISLATURE LEGISLATIVE COUNCIL

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930

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CITIZEN'S OVERSIGHT COUNCIL

ON

OIL AND OTHER HAZARDOUS SUBSTANCES

REC'D NISR LAW
MAR 1 1991

In 1990 the Legislature created the Citizen's Oversight Council on Oil and Other Hazardous Substances. Creation of the Council was one of the key recommendations of the Alaska Oil Spill Commission. Below are some questions and answers about the Council.

Q. WHAT IS THE CITIZEN'S OVERSIGHT COUNCIL ON OIL AND OTHER HAZARDOUS SUBSTANCES?

>The Citizen's Oversight Council on Oil and Other Hazardous Substances is a legislatively appointed, permanent, five member panel whose sole responsibility is to promote the safe production, transport and storage of oil and other substances.

Q. WHY CREATE A CITIZEN'S OVERSIGHT COUNCIL?

>Currently, no agency of state or federal government has, as its sole responsibility, the safe production, transport and handling of hazardous substances.

>The Alaska Oil Spill Commission felt that only an independent citizen's group can provide the continuing vigilance necessary for proper oversight of state and federal regulatory agencies.

Q. WHO MAY SERVE ON THE CITIZEN'S OVERSIGHT COUNCIL?

>Citizen's who have no direct financial stake in the oil industry but who do have an interest in and a commitment to preventing oil and hazardous substance releases. Council terms are for four years except that the first appointments

will include a one year, a two year, a three year and two four terms.

Q. WHO MAY NOT SERVE ON THE CITIZEN'S OVERSIGHT COUNCIL?

>Elected officials or any federal, state or municipal employees or contractors directly or indirectly involved in the oversight or regulation of the oil industry.

>Oil industry employees or any contractors or subcontractors to the oil industry are prohibited from serving on the Citizen's Oversight Council.

Q. WHO APPOINTS MEMBERS OF THE CITIZEN'S OVERSIGHT COUNCIL?

>Members are appointed by the Legislative Council, a permanent, joint House/Senate Committee of the Alaska State Legislature.

Q. WHAT AUTHORITY DOES THE CITIZEN'S OVERSIGHT COUNCIL HAVE?

>The Council has an advisory role in state government. There are seven specific directives to the Council in the enabling legislation. They all direct the Council to assess the risks of oil and hazardous substance spills in Alaska, to make that information known and to recommend action on the part of the responsible agencies.

>The Council has the power to conduct investigations, subpoena witnesses and require the production of files, books and papers necessary for the proper conduct of investigations.

>The Council is to serve as a coordinating group for other citizen groups in Alaska.

Q. ARE THE CITIZEN'S OVERSIGHT COUNCIL MEMBERS PAID?

>No. The Council budget includes money only for travel and expenses for the members.

Q. HOW MUCH TIME WILL MEMBERS HAVE TO DEVOTE TO THE COUNCIL?

>There is no set amount of time that must be devoted to the Council. However, the Legislative Council is looking for five citizens who regard the prevention of releases of oil and other hazardous substances as a serious and important matter to the future of Alaska. In a oil dependent state such as Alaska, the promotion of prevention will be a complex and time-consuming matter.

The Council will probably meet on a regular basis, either in person or through the teleconference system. Public hearings will probably be held on an irregular basis. The current budget includes money for travel to six meetings.

Council members will have the assistance of staff. The Council budget includes money for two employees, an administrator and a secretary. More than \$100 thousand in contractual money is available for research projects.

NEWS 11 Dec 90

Spill council organized

The Associated Press

JUNEAU — Five Alaskans have been named to a new advisory council that will determine whether government agencies are properly regulating the transportation and handling of oil and other hazardous substances.

The state Citizens' Oversight Council on Oil and Other Hazardous Substances was created by the 1990 legislature in response to the Exxon Valdez oil spill.

The legislature found that "a pervasive contributing factor to the Exxon Valdez disaster was the complacency of the oil industry and the federal and state agencies." It concluded "it is essential to involve local citizens to help ensure compliance with environmental laws and regulations."

The council will file an annual report with the legislature and governor assessing the performance of state and federal agencies and recommending changes in laws and procedures to improve environmental safety.

Its members were recently appointed by the Legislative Council, the panel of lawmakers that handles legislative business between sessions. The members are:

• Leo Hannan, a retired engineering technician with the U.S. Air Force in An-

chorage.

• John H. Lucking Jr., a sergeant with the Unalaska police force.

• Harry R. Bader, an assistant professor of natural resources management at the University of Alaska Fairbanks.

• Gary Kompkoff, a commercial fisherman and village council president in Tatitlek.

• Kathryn L. Kinnear of Kodiak, a national board member of the Women's Fisheries Network.

The council plans to hold its first organizational meeting Wednesday in Anchorage at the Legislative Information Office.

STATEMENT OF
EXXON SHIPPING COMPANY
TO THE
SENATE FINANCE COMMITTEE

ON SB 102
APRIL 9, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

Enrolled
Senate Bill 500

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

CHAPTER

AN ACT

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

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

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

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

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

ARTICLE I
Findings and Purpose

A. The parties recognize:

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

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

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

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

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

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

(2) Some marine resource activities, such as fisheries, are currently highly managed with regard for their regional or transboundary nature through existing state programs, regional fisheries councils interstate compacts and international treaties. Because there are existing formal mechanisms for interstate cooperation and coordination for these marine resource activities, this compact

is not intended to encompass these activities or to grant to the Pacific Ocean Resources Compact authority to regulate resource allocation or management as it may pertain to the use and consumption of marine resources.

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

- (a) Prevention of oil and hazardous substance spills;
- (b) Transportation of oil and other hazardous substances;
- (c) Oil and hazardous substance spill response planning;
- (d) Environmental monitoring and research; and
- (e) Ocean resource management.

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

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

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

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

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

- (a) Enhanced personnel training and qualifications;
- (b) Improved vessel design and integrity;
- (c) Better mechanisms for cost recovery by the states or the province;
- (d) Improved coordination in regulatory oversight;
- (e) Enhanced traffic management; and
- (f) An improved information base dealing with marine and coastal environments.

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

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

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

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

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

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

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

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

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

- (a) Spill prevention;
- (b) Transportation of oil and other hazardous substances;
- (c) Spill response planning;
- (d) Environmental monitoring and research; and
- (e) Ocean resource management.

- (8) To foster cooperation and coordination among the parties in order to increase the effectiveness of the individual party's ocean laws and programs.
- (9) To provide technical assistance to parties for ocean activities covered by this compact.
- (10) To provide for formal participation by the Province of British Columbia with the compact to more fully address issues of regional concern.
- (11) To insure that the citizens of the region have opportunities to participate in discussions and deliberations of regional ocean resources issues.
- (12) To establish an innovative system under which the parties can represent their shared interests within the compact zone, including:
 - (a) The maintenance and protection of common ocean resources; and
 - (b) The vessel transportation of oil and other hazardous substances.
- (13) To recommend uniform safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances within the compact zone and monitor the implementation of these standards and regulations by federal agencies, states or provinces and private industry.
- (14) To promote more coordinated management of ocean resources that are of mutual concern.
- (15) To provide a forum for the regional coordination of the individual parties' plans for the management and protection of those areas of the Pacific Ocean and adjacent waters over which the compacting parties jointly or separately now have or may acquire jurisdiction.

ARTICLE II

Definitions

As used in this compact:

- (1) "Compact" means the representative body created by Article IV of this compact.
- (2) "Compact zone" means the portion of the oceans bordering the parties within the 200-mile exclusive economic zone.
- (3) "Hazardous substance" or "hazardous substances" means any element or compound that, when it enters in or upon the water, presents an imminent and substantial danger to the public health or welfare or the environment, including but not limited to fish, animals, vegetation or any part of the natural habitat in which they are found. "Hazardous substance" includes but is not 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.

ARTICLE III Operative Dates

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

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

ARTICLE IV Pacific Ocean Resources Compact

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

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

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

ARTICLE V Pacific Ocean Resources Compact Authority

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

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

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

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

(C) As an interested person, requesting the United States Coast Guard to initiate rulemaking for the establishment or amendment of safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances. The United States Coast Guard shall initiate rulemaking

as requested by the compact, unless the United States Coast Guard makes a finding that the initiation of such rulemaking would not further the prevention of oil and hazardous substance spills.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Accept grants and gifts.

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

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

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

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

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

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

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

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

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

ARTICLE VI

Pacific Ocean Resources Compact Organization

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

ARTICLE VII

Voting and Quorum

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

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

ARTICLE VIII
Support Agencies

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

ARTICLE IX
Parties' Powers Under Compact

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

ARTICLE X
Absence

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

ARTICLE XI
Funding

- (1) Each party shall contribute to the support of the compact.
- (2) The annual contribution of each party shall be figured to the nearest \$100.
- (3) The compact shall prepare an annual budget which shall be approved by vote of the compact. After approval, the proposed budget shall be presented to the chief executive and legislative body of the signatory parties.
- (4) Each party shall be responsible for the expenses of its own representatives.

ARTICLE XII
Withdrawal from Compact

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

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

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

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

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

Passed by Senate June 15, 1991

Received by Governor:

Repassed by Senate June 28, 1991

.....M....., 1991

Approved:

.....M....., 1991

.....
Secretary of Senate

.....
President of Senate

.....
Governor

Filed by Office of Secretary of State:

Passed by House June 27, 1991

.....M....., 1991

.....
Speaker of House

.....
Secretary of State

The Pacific Ocean Resources Compact includes one clause which would seem to dictate to the State of Alaska how it may calculate damages for injuries to natural (and possibly other) resources of oil and hazardous substance spills. Article V (a) (12) (B) (5) says the compact may "establish a standardized cost recovery formula for damages to other resources based on the amount of oil or hazardous substance spilled". Although the use of "may" in the compact would seem to lessen the threat that a damage recovery approach inappropriate for Alaska could be forced on the state, in fact use of this approach for calculation of oil spill damages is likely to be forcefully promoted nationally through new natural resource damage assessment regulations currently being drafted by NOAA under authority of the Oil Pollution Act of 1990. The Department of Fish and Game is currently working to keep the NOAA regulations on damage assessment approaches as flexible as possible. It would seem an especially bad time for the state to approve language which could be interpreted to dictate a specific approach to damage assessment.

It should be noted that these comments do not attempt to address damage calculations for hazardous substance spills. Suffice it to say that the state is not as far along in planning for those types of spills as it is for oil spills. Therefore, some portion of the work described below for oil spills would have to be duplicated for hazardous substance spill damage calculations if the suggested Compact language was retained.

Although Alaska has had a compensation formula approach to oil spill civil penalties on the books for years, the more likely model for what the Compact is describing is a new Washington state compensation table. The formula used in this approach weights more heavily than does the Alaska model factors for environmental sensitivity of affected habitats, species and recreational opportunities. The key, therefore, to arriving at valid damage claims is the accuracy of the resource information which informs these "vulnerability scales". The critical question for Alaska is whether or not the state has or would be willing to develop good enough information on coastal resource sensitivity to oil spills so that it could arrive at scales which would not grossly underestimate the value lost in oil damage to resources.

To give a very rough estimate of the cost of developing coastal resource information to the necessary level, I have made the assumption that Alaska would follow the same pattern as the state of Washington to develop that information. To develop their base of information, Washington relied largely on coastal mapping done for them by the Resource Planning Institute (RPI). They supplemented this information with resource information from existing state and federal sources, doing original research only on toxicity of oils likely to be spilled in the state. This combination of information was then evaluated by technical advisory committees set up for each of several geographic "zones" in the state. These committees did the final scaling of seven factors on

"vulnerability score" scales of 1 - 5, i.e. vulnerability of an endangered species to oil could be only five times that of the least vulnerable species.

If Alaska were to replicate this approach, coastal environmental sensitivity mapping would first need to be completed for the state. RPI has also done this type of work in Alaska and Environmental Sensitivity Indexes (ESE's) have been prepared for much of the state coastline. However, according to Department of Environmental Conservation sources, still uncovered by this approach are coastal areas from Kotzebue Sound through Chukchi and Beaufort Seas, some of Southeast Alaska (money appropriated for this work in 1991 was not used and was turned back to the Legislature), and possibly portions of the Gulf of Alaska and the Aleutians Islands. This is an area many times larger than the whole coastline of the state of Washington. Current supplementary data on resource presence or resource vulnerability to oil does not exist for much of the coastline - either that area already covered by ESE's or the area not yet indexed. The cost for this necessary baseline research is very hard to predict, but it would be significant. Oil toxicity research beyond that done in Washington may also be necessary. In addition, the Washington experience suggests that staffing of two or three professional level staff would be necessary for at least two years. Regional technical advisory committees to review this information and accomplish vulnerability scoring could be largely volunteer, but would require substantial support and transportation costs.

Beyond the question of cost of this approach for Alaska is the much more serious question of whether such an approach, without considerable additional data collection, would be adequate to recover fair damage claims. Even where ESE mapping exists it is a fairly crude aerial estimate of ground and habitat types through four seasons accompanied by some ground truthing. Habitat and living resource information to supplement the indexes have been based on existing data from sources such as US Fish and Wildlife and Alaska Department of Fish and Game. Because of the Exxon Valdez spill, the quality of previously existing data has been significantly upgraded by damage assessment work in parts of the oil affected areas. But the results of the EVOS damage assessment experience have also made it even more questionable to assert that the typical ESE level of information would be detailed enough to predict resource injury, especially injury to endangered and/or migratory species, for any spill.

The value of using this approach for small spills where damage claims are likely to be small is clear. But for medium or large spills, the Catch 22 in this situation is that, according to the Washington regulations, the compensation table must be used if damages are likely to be "unquantifiable at reasonable cost", with reasonable cost defined as the case in which studies would cost less than a likely settlement would gain. Thus, if good pre-spill information is lacking, field studies would need to be extensive

and would likely to cost more than a settlement. Therefore, a compensation table would be used. But if good pre-spill information is lacking, any compensation table is likely to be inadequate as well!

In short, at this point in time the risk to Alaska of allowing itself to be tied into a compensation formula would seem great and should be avoided.



Senate Majority Office, S-223 State Capitol, Salem, Oregon 97310

FAX COVERSHEET

Fax # (503) 378-6604 • Phone # 378-8700

DATE: APRIL 18, 91 TIME: 11:40

TO: GINNY FAY
NAME

SENATOR SAM COTTEN
AGENCY

907 / 465-4979
FAX #

FROM: MARA BROWN

TOTAL # OF PAGES INCLUDING FAX COVER SHEET: 9

COMMENTS: I HOPE THIS IS USEFUL FOR
YOUR REVIEW OF THE AMENDMENTS. THEY
WERE ADOPTED BY THE SENATE AGRICULTURE
AND NATURAL RESOURCES COMMITTEE ON WED
AND PASSED TO WAYS AND MEANS.

I'M LOOKING FORWARD TO YOUR COMMENTS!

MARA BROWN

MEMO

DATE: March 15, 1990

RE: Pacific Ocean Resources Compact

TO: Ms. Fay **FAY 465-4979**

FROM: Harry R. Bader **#**

Introduction

The recent amendments proposed in the state of Oregon go a long way in resolving most of the vexing problems associated with the compact and the objections voiced by British Petroleum, ARCO, and the Western States Petroleum Association. However, the concerns I have raised in negotiations concerning an explicit exemption for small operators, as well as the voting formula are still pertinent and I strongly recommend amendment to be sponsored by the state of Alaska.

Summary Review of Compact

The concerns of Senator Jones about the authority of the compact to involve itself in resources allocation and management are unfounded based upon the statement in 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 will be discussed below.

The definition of the compact zone (page 3 lines 31 and 32) need further clarification to explicitly include or exclude the state's territorial sea. What is the "border" referred to? Is it the land or territorial sea within state jurisdiction?

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 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.

The amendments on page 5 concerning the Coast Guard dispels completely all objections on this issue brought up by the Coast Guard at the hearing as well as by the memo from BP. 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.

This provision, like the APA sections 553(e) and 555(b) 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.

Finally, I strongly recommend changes in the voting and representational system. 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.

In general, the compact's provisions can be summarized as providing a floor for regulation rather than supplanting state sovereignty.

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 the most rigorous 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.

My personal opinion is that the BP position paper was very helpful and made some cogent observations and valuable suggestions. The amendments contemplated by Oregon and suggested by me should go far in dispelling their deepest concerns. I am gratified that they did not reject the idea outright. Also, the modifications reflecting the pre-existent provisions of APA should dispel the objections voiced by the Coast Guard.

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

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

1991-93

1993-95

EFFECT ON EXPENDITURES:

Emergency Board General Fund \$ 25,000

Legislative Assembly Indeterminate

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

COMMENTS:

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

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

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

Page 1 of 2

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

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

LEGISLATIVE REVENUE OFFICE

REVENUE IMPACT ANALYSIS

BILL # SB500C

DATE 6-26-91

THE LEGISLATIVE REVENUE OFFICE HAS DETERMINED
THIS LEGISLATION HAS NO IMPACT ON STATE OR LOCAL
REVENUES ANALYZED BY THIS OFFICE

2050

SB 500-10
(LC 20)
4/15/91 (JH/se)

**PROPOSED AMENDMENTS TO
SENATE BILL 500**

1 On page 2 of the printed bill, line 3, after "activities" insert "or to grant
2 to the Pacific Ocean Resources Compact authority to regulate resource al-
3 location or management as it may pertain to the use and consumption of
4 marine resources".

5 In line 8, after the semicolon delete "and".

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

7 "(e) Ocean resource management."

8 In line 24, after "spills" delete the rest of the line and insert "could be
9 improved in the following ways to provide better protection of ocean re-
10 sources:

11 "(a) Enhanced personnel training and qualifications;

12 "(b) Improved vessel design and integrity;

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

14 "(d) Improved coordination in regulatory oversight;

15 "(e) Enhanced traffic management; and

16 "(f) An improved information base dealing with marine and coastal envi-
17 ronments."

18 Delete lines 25 through 31.

19 In line 35 delete "providing" and insert "encouraging".

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

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

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

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

1 "monitor".

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

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

4 "(e) Ocean resource management.".

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

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

7 On page 4, line 28, delete "three" and insert "two".

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

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

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

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

28 "(D) Making recommendations to other appropriate state, federal and re-
29 gional entities regarding".

30 Delete line 3 and insert "substances in the".

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

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

4 In line 13, after the period insert "However, all plans approved by parties
5 to this compact before the operative date of the compact shall remain in full
6 force and effect until a contingency plan is approved by the compact pursu-
7 ant to this paragraph."

8 In line 15, after "compact" delete the rest of the line and insert "include
9 all subject areas included by the member parties, in the standards for vessel
10 contingency plans of the parties, in aggregate, before the adoption of the
11 compact."

12 Delete lines 16 and 17.

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

16 In line 39, delete "stance spills".

17 After line 39, insert:

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

23 On page 6, delete line 3 and insert:

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

26 "(f) Enter into an agreement with the United States Coast Guard under
27 which the compact will administer compliance with the requirements for
28 demonstrating financial responsibility under section 1016 of the Oil Pollution
29 Act of 1990 in an amount established by the compact. Such proof of financial
30 responsibility, if established by the compact, shall satisfy and supersede the

1 requirement of any individual party for demonstrating financial responsibil-
2 ity. However, all financial responsibility requirements established by the
3 parties to this compact before the compact establishes an amount under this
4 paragraph shall remain in full force and effect until the compact establishes
5 a requirement and enters into an agreement with the United States Coast
6 Guard under this paragraph. In establishing the amount of financial respon-
7 sibility under this paragraph, the compact shall work with officials of each
8 party to assure that such requirements are sufficient to satisfy the require-
9 ments of the parties, in aggregate."

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

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

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

13 In line 34, delete "party" and insert "representative".

14 In line 35, delete "parties" and insert "representatives, including at least
15 one affirmative vote from each party"

16 On page 7, line 9, after "compact" delete the rest of the line and insert
17 a period.

18 Delete lines 10 through 12.

19 In line 25, delete the blank and insert "25,000".

20

PROPOSED AMENDMENTS TO

Senate Bill 500

Sponsored by Senator BRADBURY; Senators BRENNEMAN, COHEN, GOLD, KATZMAYER, 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.

1 is not intended to encompass these activities or to grant

2 to the Pacific Ocean Resources Compact authority to regulate resource al-
3 location or management as it may pertain to the use and consumption of
4 marine resources".

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

- 7 (a) Prevention of oil and hazardous substance spills;
- 8 (b) Transportation of oil and other hazardous substances;
- 9 (c) Oil and hazardous substance spill response planning;
- 10 (d) Environmental monitoring and research ; and".
- 11 (e) Ocean resource management."

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

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

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

23 (7) Citizens of the Pacific states and the Province of British Columbia are increasingly con-
24 cerned with the environmental integrity of the ocean and protection of all ocean resources.

25 (8) Recent studies conducted in the wake of major accidental releases of oil or hazardous sub-
26 stances have concluded that the existing system of response to spills could be
27 improved in the following ways to provide better protection of ocean re-
28 sources:

- 29 (a) Enhanced personnel training and qualifications;
- 30 (b) Improved vessel design and integrity;
- 31 (c) Better mechanisms for cost recovery by the states or the province;
- 32 (d) Improved coordination in regulatory oversight;
- 33 (e) Enhanced traffic management; and
- 34 (f) An improved information base dealing with marine and coastal

35 environments.

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

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

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

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

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

44 (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

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

- 3 (a) Spill prevention;
- 4 (b) Transportation of oil and other hazardous substances;
- 5 (c) Spill response planning;
- 6 (d) Environmental monitoring and research; and
- 7 (e) Ocean resource management.

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

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

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

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

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

- 17 (a) The maintenance and protection of common ocean resources; and
- 18 (b) The vessel transportation of oil and other hazardous substances.

19 (13) To recommend uniform safety standards for routes, crews and equipment for vessels trans-
20 porting oil and hazardous substances within the compact zone and to monitor the im-
21 plementation of these standards and regulations by federal agencies, states or provinces and private
22 industry.

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

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

27 ARTICLE II

28 Definitions

29 As used in this compact:

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

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

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

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

44 (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

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

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

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

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

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

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

13 ARTICLE III

14 Operative Dates

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

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

21 ARTICLE IV

22 Pacific Ocean Resources Compact

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

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

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

42 ARTICLE V

43 Pacific Ocean Resources Compact Authority

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

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

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

(note further change.)

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

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

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

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

In establishing regulations under this paragraph, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact include

all subject areas included by the member parties, in the standards for vessel contingency plans of the parties, in aggregate, before the adoption of the compact.

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

1 (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.

2
3
4 (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.

5
6
7 (g) Designate state or provincial agency officials to act on behalf of the compact as liaisons with federal agencies.

8
9 (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.

10
11 (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.

12
13 (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.

14
15
16 (k) Request the United States Coast Guard to enforce or assist in the enforcement of any regulations adopted by the compact including but not limited to regulations related to the submission of a contingency plan or financial assurance requirements in the compact zone.

17
18 (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."

19
20 (2) In addition to the authority granted under paragraph (1) of this Article, the compact may:

21 (a) Accept grants and gifts.

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

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

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

25
26 (e) Establish a standardized cost recovery formula for damages to other resources based on the amount of oil or hazardous substance spilled.

27
28 (f) Enter into an agreement with the United States Coast Guard under which the compact will administer compliance with the requirements for demonstrating financial responsibility under section 1016 of the Oil Pollution Act of 1990 in an amount established by the compact. Such proof of financial responsibility, if established by the compact, shall satisfy and supersede the

1 requirement of any individual party for demonstrating financial responsibil-
2 ity. However, all financial responsibility requirements established by the
3 parties to this compact before the compact establishes an amount under this
4 paragraph shall remain in full force and effect until the compact establishes
5 a requirement and enters into an agreement with the United States Coast
6 Guard under this paragraph. In establishing the amount of financial respon-
7 sibility under this paragraph, the compact shall work with officials of each
8 party to assure that such requirements are sufficient to satisfy the require-
9 ments of the parties, in aggregate."

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

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

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

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

26 ARTICLE VI

27 Pacific Ocean Resources Compact Organization

28 The compact shall select a chairperson and a vice chairperson. After the initial chairperson and
29 vice chairperson are selected, the compact shall establish a rotation for the selection of the chair-
30 person 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 re-
quired to carry the provisions of this compact into effect and shall fix and determine their duties,
qualifications and compensation. The compact shall adopt rules and regulations for the conduct of
its business. It may establish and maintain one or more offices for the transaction of its business
and may meet at any time or place within the territorial limits of the signatory parties but must
meet at least once a year.

ARTICLE VII
Voting and Quorum

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

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

ARTICLE VIII
Support Agencies

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

ARTICLE IX
Parties' Powers Under Compact

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

ARTICLE X
Absence

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

ARTICLE XI
Funding

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

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

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

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

ARTICLE XII
Withdrawal from Compact

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

SECTION 3. There is appropriated to the Pacific Ocean Resources Compact, for the biennium beginning July 1, 1991, out of the General Fund, the sum of \$ 25,000 for the purpose of carrying out the provisions of the Pacific Ocean Resources Compact.

DRAFTSB 500-7
(LC 20)
3/13/91 (JH/dv/rc)**PROPOSED AMENDMENTS TO
SENATE BILL 500**

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

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

3 "(e) Ocean resource management."

4 In line 24, after "spills" delete the rest of the line and insert "could be
5 improved in the following ways to provide better protection of ocean re-
6 sources:

7 "(a) Enhanced personnel training and qualifications;

8 "(b) Improved vessel design and integrity;

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

10 "(d) Improved coordination in regulatory oversight;

11 "(e) Enhanced traffic management; and

12 "(f) An improved information base dealing with marine and coastal envi-
13 ronments."

14 Delete lines 25 through 31.

15 In line 35 delete "providing" and insert "encouraging".

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

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

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

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

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

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

24 "(e) Ocean resource management."

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

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

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

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

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

20 "(C) Making recommendations to other appropriate state, federal and re-
21 gional entities regarding".

22 Delete line 3 and insert "substances in the".

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

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

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

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

30 In line 39, delete "stance spills".

1 After line 39, insert:

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

7 On page 6, delete line 3 and insert:

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

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

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

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

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

15

DRAFT

PROPOSED AMENDMENTS TO

Senate Bill 500

Sponsored by Senator BRADBURY; Senators BRENNEMAN, COHEN, GOLD, KITZILBER, SPRINGER, Representatives JOSL, RIJKE, 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 enacted.

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1 councils, interstate compacts and international treaties. Because there are existing formal mech-
 2 anisms for interstate cooperation and coordination for these marine resource activities, this compact
 3 is not intended to encompass these activities.

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

- 6 (a) Prevention of oil and hazardous substance spills;
- 7 (b) Transportation of oil and other hazardous substances;
- 8 (c) Oil and hazardous substance spill response planning;
- 9 (d) Environmental monitoring and research ; and".
- 10 (e) Ocean resource management."

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

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

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

22 (7) Citizens of the Pacific states and the Province of British Columbia are increasingly con-
 23 cerned with the environmental integrity of the ocean and protection of all ocean resources.

24 (8) Recent studies conducted in the wake of major accidental releases of oil or hazardous sub-
 25 stances have concluded that the existing system of response to spills could be
 26 improved in the following ways to provide better protection of ocean re-
 27 sources:

- 28 (a) Enhance personnel training and qualifications;
- 29 (b) Improved vessel design and integrity;
- 30 (c) Better mechanisms for cost recovery by the states or the province;
- 31 (d) Improved coordination in regulatory oversight;
- 32 (e) Enhanced traffic management; and
- 33 (f) An improved information base dealing with marine and coastal

34 environments.

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

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

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

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

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

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

44 (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

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

- 3 (a) Spill prevention;
4 (b) Transportation of oil and other hazardous substances;
5 (c) Spill response planning;
6 (d) Environmental monitoring and research; and
7 (e) Ocean resource management.

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

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

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

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

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

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

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

19 (13) To recommend uniform safety standards for routes, crews and equipment for vessels trans-
20 porting oil and hazardous substances within the compact zone and to monitor the im-
21 plementation of these standards and regulations by federal agencies, states or provinces and private
22 industry.

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

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

27 ARTICLE II

28 Definitions

29 As used in this compact:

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

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

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

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

44 (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

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

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

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

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

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

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

ARTICLE III

Operative Dates

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

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

ARTICLE IV

Pacific Ocean Resources Compact

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

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

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

ARTICLE V

Pacific Ocean Resources Compact Authority

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

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

2
3 "(A) Participating as an interested person in any rulemaking proceeding
4 by the United States Coast Guard related to the establishment of safety
5 standards for routes, crews and equipment for vessels transporting oil and
6 hazardous substances. If the United States Coast Guard does not adopt the
7 recommendations of the compact, the United States Coast Guard shall ex-
8 plain in writing, as part of the rulemaking process the basis for its finding
9 that the adoption of such recommendation would be inconsistent with the
10 prevention of oil and hazardous substance spills.
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14 "(B) As an interested person, requesting the United States Coast Guard
15 to initiate rulemaking for the establishment or amendment of safety stan-
16 dards for routes, crews and equipment for vessels transporting oil and haz-
17 ardous substances. If the United States Coast Guard does not initiate
18 rulemaking as requested by the compact, the United States Coast Guard shall
19 explain in writing the basis for its finding that the initiation of such
20 rulemaking would be inconsistent with the prevention of oil and hazardous
21 substance spills.
22
23

24 (C) Making recommendations to other appropriate state, federal and
25 regional entities regarding substances in the compact zone.
26

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

29 (c) By regulation, establish the requirements for submission of and approval by the compact of
30 a contingency plan by any vessel transporting oil or hazardous substance in the compact zone. Such
31 requirements shall be at least consistent with the requirements for response plans under section
32 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). A plan developed in accordance with the regu-
33 lations adopted by the compact and approved by the compact shall satisfy the requirements of sec-
34 tion 4202 of the Oil Pollution Act and shall supersede any requirements of an individual party for submitting a
35 vessel contingency or spill response plan. In establishing regulations under this paragraph, the
36 compact shall work closely with officials of the parties to assure that the vessel contingency plans
37 required under this compact are at least as comprehensive as similar plans required by the parties
38

39 before adoption of this compact

40 and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in ef-
41 fect at the time the compact initiates its requirements under this subparagraph.

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

SB 500

(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 539.

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

SB 500

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

ARTICLE X

Absence

3
4
5 Continued absence of representation or of any compact representative from any party shall be
6 brought to the attention of the appointing authority of the party not represented.

ARTICLE XI

Funding

7
8
9 (1) Each party shall contribute to the support of the compact according to the party's relative
10 proportion of the party's gross state product, but each party must contribute at least 10 percent of
11 the total annual budget for the compact and shall not be required to contribute more than 50 per-
12 cent of the total annual budget for the compact.

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

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

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

ARTICLE XII

Withdrawal from Compact

18
19
20 This compact shall continue in force and remain binding upon each party until renounced by it.
21 Renunciation of this compact must be preceded by sending six months' notice in writing of intention
22 to withdraw from the compact to the other parties to the compact.

23
24 **SECTION 3.** There is appropriated to the Pacific Ocean Resources Compact, for the biennium
25 beginning July 1, 1991, out of the General Fund, the sum of \$ _____ for the purpose of carrying
26 out the provisions of the Pacific Ocean Resources Compact.
27 _____

**PACIFIC OCEAN RESOURCES COMPACT
SUMMARY OF PROPOSED AMENDMENTS
APRIL 15, 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. Clarifies that compact does regulate resource allocation or management pertaining to use and consumption of marine resources.
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. Each party has three representatives.	Changes number of party representatives from three to two persons.

ARTICLES		
Article V: Pacific Ocean Resources Compact Authority POLICY QUESTION: SHOULD COMPACT AUTHORITY BE CONSISTENT WITH FEDERAL LAW?	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.	Amended to be consistent with Federal Law.
POLICY QUESTION: WHEN WILL COMPACT CONTINGENCY PLAN GO INTO EFFECT?	One contingency plan per vessel submitted to compact.	Submission of one contingency plan clarified; compact supersedes all other contingency plans; one plan per vessel. Parties plans already in place will remain in place until Compact becomes operative.
HOW WILL THE COMPACT ADDRESS ISSUES PREVIOUSLY ADDRESSED BY MEMBER PARTIES?		Contingency plan will include all subject areas included by member parties, in the standards for vessel contingency plans of the parties, in aggregate before adoption of the Compact.

ARTICLES	SB 500	
		Adds section 1(a) (A) Compact serves as West Coast Spill Prevention Advisory Committee to the Coast Guard on matters pertaining to spill prevention in the Compact zone.
POLICY QUESTION: IF COMPACT IS CONSISTENT WITH FEDERAL LAW -- WHAT WOULD GIVE IT MORE AUTHORITY WITH RESPECT TO OIL SPILL PREVENTION REGULATIONS?	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.	Adds sec.1(a) (B) and (C) 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.
POLICY QUESTION: HOW WILL COMPACT ASSESS FEES?		Sec. 1 (L) added: Compact has authority to assess fees.

ARTICLES	SB 500	
POLICY QUESTION: SHOULD THE COMPACT ESTABLISH COST RECOVERY PLAN, ENABLING IT TO ASSESS DAMAGE BASED ON ENVIRONMENTAL CONDITIONS, AND REGION RATHER THAN ON "DEAD BODY COUNT?"		Sec. 2: Compact "may" do the following: (e) and (f) added: 2.(e) Compact may establish cost recovery plan.
POLICY QUESTION: HOW WILL COMPACT SEEK PROOF OF FINIANCIAL RESPONSIBILITY?		2.(f) Compact may enter into agreement with Coast Guard, compact will administer compliance with requirements of demonstrating financil responsibility under 1990 Oil Pollution Act.
		Requirements of parties' for proof of financial responsibility remain in place until compact regulations are adopted.
	Compact may issue subpoenas.	Compact may not issue subpoenas.
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.	Each representative entitled to one vote. Action requires a majority of votes of the representatives including at least one vote per party.

ARTICLES	DD FORM	
Article VIII: Support Agencies		Unchanged
Article IX: Parties' Powers Under Compact		Unchanged

Cotton

32910-14.19

MAR 25 1991

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

B.C. ENVIRONMENT

MAR 26 1991

ENVIRONMENTAL EMERGENCY
SERVICES BRANCH
VICTORIA, B.C.

Dear Ms. Gregoire:

Re: Proposed Interstate Compact

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

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

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

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

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

.../2

- 2 -

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

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

Yours truly,

ORIGINAL
SIGNED BY

2
Richard L. Dalon
Deputy Minister

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

Secretariat
WOLFERSTAN/dj

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



Province of
British Columbia

Office of the
Premier

MEMORANDUM

JB

Mr. Richard Dalon
Deputy Minister
Ministry of Environment

March 7, 1991

B.C. ENVIRONMENT

MAR 08 1991

ENVIRONMENTAL EMERGENCY
SERVICES BRANCH
VICTORIA, B.C.

Re: Proposed Interstate Compact

004955

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

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

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

.../2

Mr. R. Dalon

- 2 -

March 7, 1991

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

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

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

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

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

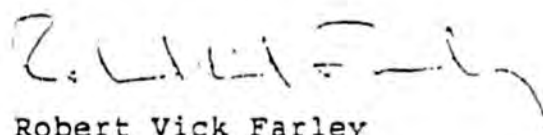
Mr. R. Dalon

- 3 -

March 7, 1991

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

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



Robert Vick Farley
Senior Advisor
Constitutional Affairs
Intergovernmental Relations

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

ATTACHMENT 1

OIL SPILL
MEMORANDUM
OF
CO-OPERATION

Between the
Province of British Columbia
the
State of Washington
the
State of Oregon
the
State of Alaska
and the
State of California



June 1989

OIL SPILL MEMORANDUM OF CO-OPERATION

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

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

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

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

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

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

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

- (1) Prevention Alternatives
- (2) Technology Sharing
- (3) Emergency Response
- (4) Financial Recovery.

Issues addressed by the subcommittees will include:

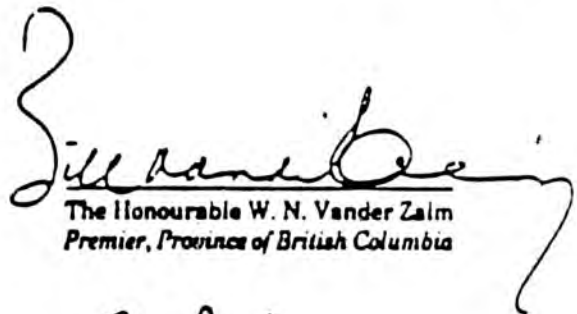
- (1) the creation of a joint emergency response plan;
- (2) an evaluation of capabilities and technologies for spill prevention, response and containment;
- (3) a review of tanker safety, routes and operating requirements;
- (4) an inventory of equipment, material, and personnel available to either the Province or the States for use in oil spill control and clean-up operations;
- (5) joint spill response drills and training.

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

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

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

Signed this 16th day of June 1989.


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

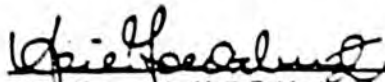
Signed this 16th day of June 1989.


The Honorable Booth Gardner
Governor, State of Washington

Signed this 31st day of August 1989.


The Honorable Steve Cowie
Governor, State of Alaska

Signed this 3rd day of July 1989.


The Honorable Neil Goldschmidt
Governor, State of Oregon

Signed this 9th day of November 1989.

George Deukmejian
The Honorable George Deukmejian
Governor, State of California

STATES/B.C. TASK FORCE

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

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

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

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

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

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

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

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



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

States / British Columbia Oil Spill Task Force

John Sandor
Alaska

Dept. of Environmental
Conservation

Gerry Armstrong
British Columbia

B.C. Environment

Michael Kahoe
California

Office of Environmental
Protection

Fred Hansen
Oregon

Department of
Environmental Quality

Christine Gregoire
Washington

Department of Ecology

August 15, 1991

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

Dear Sirs and Madames:

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

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

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

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

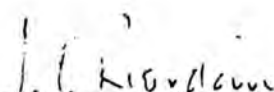
The United States Congress passed the *Oil Pollution Act of 1990* (OPA) last summer; and in Canada, the report of the Brander-Smith inquiry on oil spills was released. These initiatives are changing the federal regulatory climates for oil spill prevention and response, in part by acknowledging the vested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

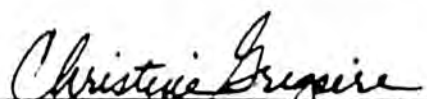
In view of the Exxon Valdez disaster and other major oil spills in recent years, we and our mutual federal governments must never again become complacent about the potential for environmental catastrophe. Prevention measures provide by far the most effective means of protecting our valuable waters, shorelines,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

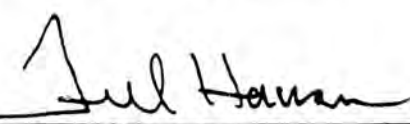
With your continued leadership and support, the States / British Columbia Oil Spill Task Force will execute our 1991-1992 Action Plan and further our fundamental objective of preventing oil spills through inter-governmental cooperation and concerted advocacy. We will report to you next year on our progress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

Yours sincerely,


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


Gerry Armstrong, Deputy
Minister, British Columbia
Ministry of Environment


Christine Gregoire, Director,
Washington Department of
Ecology


Fred Hansen, Director,
Oregon Department of
Environmental Quality


Michael Kahoe, Assistant
Secretary, California Office of
Environmental Protection

enclosure: Task Force Action Plan

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

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

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

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

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

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

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

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

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

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

Prevention Subcommittee (California Chair)

MEMBERSHIP:

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

OBJECTIVE AND SCOPE OF ACTIVITIES:

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

- A. Evaluations of the causes of major oil spills;
- B. The findings of the Technology and Research Subcommittee;
- C. Special studies by the Task Force; and
- D. Other sources of information.

TASKS AND MAJOR MILESTONES:

- Develop a list of potential key Task Force advisors for review and approval by the Task Force. (Schedule for completion - August 1991).
- Provide a mechanism for States and British Columbia to coordinate on prevention policy issues. (Schedule for completion - Ongoing).
- Evaluate the need for prevention related studies in specific geographic areas.
- Serve as a focal point for evaluating and drafting additional Task Force spill prevention recommendations. This task will be accomplished in part through participation in the debriefing process after major spills have occurred. (Schedule for completion - January 1992).
- Review and provide coordinated input into the International Maritime Organization's (IMO) deliberations by providing comments to the respective Coast Guards and State Departments. (Schedule for completion - dependent upon IMO addressing key issues).

Emergency Response Subcommittee (B.C. Chair)

MEMBERSHIP:

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

OBJECTIVE AND SCOPE OF ACTIVITIES:

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

TASKS AND MAJOR MILESTONES:

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

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

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

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

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

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

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

Rules Coordination and Review Subcommittee (Washington Chair)

MEMBERSHIP:

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

OBJECTIVE AND SCOPE OF ACTIVITIES:

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

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial rules proposed for development and a companion list of EPA, USCG, and Canadian federal (e.g. implementation of the Brander-Smith Inquiry) regulations with their respective schedules. (Schedule for completion - August 1991).
- Exchange all draft and final state/provincial oil spill related rules among members that directly relate to the committee mission statement. (Schedule for completion - Ongoing).
- Evaluate Task Force member's respective rules for consistency and work to minimize differences while emphasizing federal consistency. (Schedule for completion - ongoing activity).

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

Milestone 2: Other milestones to be established by subcommittee.

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

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

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

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

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

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Technology and Research Subcommittee (Alaska Chair)

MEMBERSHIP:

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

OBJECTIVE AND SCOPE OF ACTIVITIES:

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

TASKS AND MAJOR MILESTONES:

- Develop a list of state/provincial technical reports proposed for development and a companion list of EPA, USCG, and Canadian federal technical reports with their respective schedules. (Schedule for completion - August 1991).
- Ensure information developed as a result of these studies is immediately forwarded to all Task Force members. (Schedule for completion - dependent on schedule developed in above task).
- To the extent possible, provide unified and coordinated input into the Federal studies regarding spill prevention and response (several reports and studies are required by the USCG, EPA and Science Advisory Board as a result of OPA 1990). (Schedule for completion - dependent on schedule developed in task 1 above).
- Share information on the development of oil spill environmental sensitivity computer information systems. (Schedule for completion - British Columbia, March 1992; Oregon, August 1991; and Washington, September 1991).



UNITED STATES CODE SERVICE

Lawyers Edition



All federal laws of a general and permanent nature arranged in accordance with the section numbering of the United States Code and the supplements thereto.

5 USCS Government Organization and Employees

§§ 101-553

1989



THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester, New York 14694

BANCROFT-WHITNEY CO.
San Francisco, California 94109

Cite This Volume:
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ABBREVIATIONS

A	Atlantic Reporter
A2d	Atlantic Reporter, Second Series
ACMR	Army Court of Military Review
AD	Appellate Division Reports (NY)
AD2d	Appellate Division Reports, Second Series (NY)
AdL2d	Pike and Fischer Administrative Law, Second Series
ADVA	Administrator's Decisions, Veterans' Administration
AFCMR	Air Force Court of Military Review
AGBCA	Department of Agriculture Board of Contract Appeals
Ag Dec	Agriculture Decisions
ALAB	NRC Atomic Safety and Licensing Appeal Board
ALR	American Law Reports
ALR2d	American Law Reports, Second Series
ALR3d	American Law Reports, Third Series
ALR4th	American Law Reports, Fourth Series
ALR Fed	American Law Reports, Federal
Am Bankr NS	American Bankruptcy, New Series
AMC	American Maritime Cases (AMC Inc)
Am Jur 2d	American Jurisprudence, Second Edition
Am Jur Legal Forms 2d	American Jurisprudence Legal Forms, Second Edition
Am Jur Pl & Pr Forms (Revised)	American Jurisprudence Pleading and Practice Forms, Revised Edition
Am Jur Proof of Facts	American Jurisprudence Proof of Facts
Am Jur Proof of Facts 2d...	American Jurisprudence Proof of Facts, Second Series
Am Jur Trials	American Jurisprudence Trials
App DC	United States Court of Appeals for the District of Columbia
Appx	Appendix
ASBCA	Armed Services Board of Contract Appeals
ATF Qtrly Bull	Quarterly Bulletin, Alcohol, Tobacco and Firearms Bureau, U.S. Dept. Treas.

ABBREVIATIONS

ATF Rul	Ruling of Alcohol, Tobacco and Firearms Bureau, U.S. Dept. Treas.
BAMSL	Bankruptcy Reporter of the Bar Association of Metropolitan St. Louis
BCA	Board of Contract Appeals
BCD	Bankruptcy Court Decisions, CRR Pub. Co.
Bd Imm App	Board of Immigration Appeals
BIA	Board of Immigration Appeals
Bkr L Ed	Bankruptcy Service, Lawyers Edition
BLR	BRBS Black Lung Reporter (Matthew Bender)
BNA FEP Cas	Fair Employment Practices Cases
BNA LRRM	Labor Relations Reference Manual
BNA OSHC	Occupational Safety and Health Cases
BNA WH Cas	Wage and Hour Cases
BR	Bankruptcy Reporter
BRBS	Benefits Review Board Service
BTA	Board of Tax Appeals
BTA Mem	Board of Tax Appeals Memorandum Decisions
CA	United States Court of Appeals
CAB Adv Dig	Civil Aeronautics Board Advance Digest
CAD	Customs Appeals Decisions
Cal Rptr	California Reporter
CB	Cumulative Bulletin of the Internal Revenue Service
CBC	Collier Bankruptcy Cases
CBD	Customs Bulletin and Decisions, Customs Service, Department of the Treasury
CCG	Consumer Credit Guide
CCH Bankr L Rptr	Bankruptcy Law Reporter
CCH BCA Dec	Board of Contract Appeals Decisions
CCH CCG	Consumer Credit Guide
CCH Comm Fut L Rep	Commodity Futures Law Reporter
CCH EEOC Dec	Decisions of the Equal Employment Opportunity Commission
CCH EPD	Employment Practice Decisions
CCH Fed Secur L Rep	Federal Securities Law Reporter
CCH FERC	Federal Energy Regulatory Commission Reports
CCH Lab Cas	Labor Cases
CCH LC	Labor Cases
CCH NLRB	National Labor Relations Board Decisions
CCH OSHD	Occupational Safety and Health Decisions

ABBREVIATIONS

CCH Trade Cas	Trade Cases
CCH Trade Reg Rep	Trade Regulation Reports
CCH Unemployment Ins Rep	Unemployment Insurance Reporter
CCPA	Court of Customs and Patent Appeals
CD	Customs Decisions
CFR	Code of Federal Regulations
CFTC	Commodity Futures Trading Commission
CGCMR	Coast Guard Court of Military Review
CGLB	Coast Guard Law Bulletin
CIT	Court of International Trade
CLI	Commission Licensing Issuance
CMA	Court of Military Appeals
CMR	Court-Martial Reports
COGSA	Carriage of Goods by Sea Act
Comm Fut L Rep	Commodity Futures Law Reporter (CCH)
Comp Gen Unpub Dec	Unpublished decisions of the U.S. Comptroller General
Comr Pat	Commissioner of Patents and Trademarks
CPD	Customs Penalty Decisions
CPSC Advisory Op No	Consumer Product Safety Commission Advisory Opinion Number
CRD	Customs Rules Decisions
CR L	Criminal Law Reporter (BNA)
CSD	Customs Service Decisions
Ct Cl	Court of Claims
Cust Bull	Customs Bulletin and Decisions, US Department of Treasury
Cust Ct	Customs Court
Cust & Pat App (Cust)	U.S. Court of Customs and Patent Appeals (Customs)
Cust & Pat App (Pat)	U.S. Court of Customs and Patent Appeals (Patents)
DC	United States District Court
DCAB	Department of Commerce Contract Appeals Board
DCO	Department of Commerce Orders
Dist Col App	District of Columbia Court of Appeals
DOA	Department of Agriculture
DOE	Department of Energy
DOT CAB	Department of Transportation Contract Appeals Board
DPRM	Denial of Petition for Rulemaking, NRC Decision
EBC	Employment Benefits Cases (BNA)

ABBREVIATIONS

EBCA	Department of Energy Board of Contract Appeals
ECAB	Employees' Compensation Appeals Board, U.S. Department of Labor
EEOC DEC	Equal Employment Opportunity Commission Decisions
ELR	Environmental Law Reporter (ELI)
Em Ct App	Emergency Court of Appeals
EMP COORD	Employment Coordinator (RIA)
ENG BCA	Corps of Engineers Board of Contract Appeals
EPD	Employment Practices Decisions (CCH)
ERA	Economic Regulatory Administration
ERC	Environmental Reporter Cases (BNA)
ERISA Op Letters	Employee Retirement Income Security Act Opinion Letters
Ex Or	Executive Order
F	Federal Reporter
F2d	Federal Reporter, Second Series
F Cas	Federal Cases
FCC	Federal Communications Commission
FCC2d	Federal Communications Commission Reports, Second Series
FCSC	Foreign Claims Settlement Commission
FCSC 1981 Ann Rpt	FCSC Annual Report for 1981
FCSC Dec & Anno (1968) ..	FCSC Decisions and Annotations, 1968 edition
FDA	Food and Drug Administration
FDA Dec	Food and Drug Administration Decisions
FEA	Federal Energy Administration
Fed Evid Rep	Federal Rules of Evidence Service (Callaghan)
Fed Proc, L Ed	Federal Procedure, Lawyers Edition
Fed Reg	Federal Register
Fed Rules Evid Serv	Federal Rules of Evidence Service (Callaghan)
Fed Rules Serv	Federal Rules Service
Fed Rules Serv 2d	Federal Rules Service, Second Series
FEPC	Fair Employment Practice Cases (BNA)
FERC	Federal Energy Regulatory Commission
Fed Secur L Rep	Federal Securities Law Reporter (CCH)
FHLBB	Federal Home Loan Bank Board
FLRA	Federal Labor Relations Authority
FLRA GCO	Federal Labor Relations Authority, General Counsel Opinions

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 ions

ABBREVIATIONS

FLRC Federal Labor Relations Council
 FMC Federal Maritime Commission
 FMSHRC Federal Mine Safety and Health Review
 Commission
 FOIA Freedom of Information Act
 FPC Federal Power Commission
 FR Federal Register
 FRB Federal Reserve Bulletin
 FRCP Federal Rules of Civil Procedure
 FRCrP Federal Rules of Criminal Procedure
 FRD Federal Rules Decisions
 FRE Federal Rules of Evidence
 FRS Federal Reserve System
 FSIP Federal Service Impasses Panel
 F Supp Federal Supplement
 FTC Federal Trade Commission
 GAO General Accounting Office
 GSBCA General Services Administration Board of
 Contract Appeals
 HEW Department of Health, Education and Wel-
 fare
 HUD Department of Housing and Urban Devel-
 opment
 HUD BCA Department of Housing and Urban Devel-
 opment Board of Contract Appeals
 IBCA Interior Department Board of Contract Ap-
 peals
 ICC Interstate Commerce Commission
 ID Decisions of the Department of the Interior
 I & N Dec Immigration and Naturalization Service De-
 cisions
 ILS Immigration Law Service
 INS Immigration and Naturalization Service
 IRB Internal Revenue Bulletin
 IRS Internal Revenue Service
 JAG Judge Advocate General
 Jud Pan Mult Lit Rulings of the Judicial Panel on Multidis-
 trict Litigation
 LBCA Department of Labor Board of Contract
 Appeals
 LC Labor Cases (CCH)
 LD Land Decisions
 L Ed Lawyers Edition U.S. Supreme Court Re-
 ports

ABBREVIATIONS

L Ed 2d.....	Lawyers Edition U.S. Supreme Court Reports, Second Series
LJ.....	Law Journal
LQ.....	Law Quarterly
L Rev.....	Law Review
LRRM.....	Labor Relations Reference Manual (BNA)
MA.....	Maritime Administration
MCC.....	Motor Carrier Cases (decided by ICC)
Mich.....	Michigan Reports
Mich App.....	Michigan Appeals Reports
Misc.....	Miscellaneous Reports (NY)
Misc 2d.....	Miscellaneous Reports, Second Series (NY)
MJ.....	Military Justice Reporter
MSB.....	Maritime Subsidy Board
MSPB.....	Merit Systems Protection Board
MSPR.....	United States Merit Systems Protection Board Reporter (West)
Mun Ct App Dist Col.....	Municipal Court of Appeals for District of Columbia
NASA BCA.....	National Aeronautics and Space Administration Board of Contract Appeals
NCMR.....	Navy Court of Military Review
NE.....	North Eastern Reporter
NE2d.....	North Eastern Reporter, Second Series
NLRB.....	Decisions and Orders of the National Labor Relations Board
NLRB Advice Mem Case No.....	National Labor Relations Board Advice Memorandum Case Number
NMCMR.....	U.S. Navy—Marine Corps Court of Military Review
NOAA.....	National Oceanic and Atmospheric Administration
NRC.....	Nuclear Regulatory Commission
NTSB.....	National Transportation Safety Board
NW.....	North Western Reporter
NW2d.....	North Western Reporter, Second Series
NY.....	New York Reports
NY2d.....	New York Reports, Second Series
NYS.....	New York Supplement
NYS2d.....	New York Supplement, Second Series
nt.....	note
nts.....	notes
OAG.....	Opinions of the Attorney General
OCSLA.....	Outer Continental Shelf Lands Act

ABBREVIATIONS

U.S. Supreme Court Re-
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ey General
f Lands Act

OFCCP	Office of Federal Contract Compliance Pro- grams
Op Atty Gen	Opinions of Attorney General
Op Comp Gen	Opinions of Comptroller General
OSAHRC	Occupational Safety and Health Review Commission (Official Reports)
OSHRC	Occupational Safety and Health Review Commission
P	Pacific Reporter
P2d	Pacific Reporter, Second Series
PBGC Op No.	Pension Benefit Guaranty Corporation Opinion Number
PRD	Protest Review Decisions
Proc	Proclamation
PSBCA	Postal Service Board of Contract Appeals
PS Docket	Postal Service Docket
PTE	Prohibited Transaction Exemption Deci- sions of The Office of Pension and Wel- fare Benefit Programs, Department of Labor
PUR3d	Public Utilities Reports, Third Series
PUR4th	Public Utilities Reports, Fourth Series
RD	Reappraisal Decision, U. S. Customs Court
RESPA	Real Estate Settlement Procedures Act
Rev Proc	Revenue Procedure
Rev Rul	Revenue Ruling
RRRA	Regional Rail Reorganization Act
R.S.	Revised Statutes
RUSCC	Rules of United States Claim Court
S Ct	United States Supreme Court Reporter
SE	South Eastern Reporter
SE2d	South Eastern Reporter, Second Series
SEC	Securities and Exchange Commission, also SEC Docket (CCH)
So	Southern Reporter
So 2d	Southern Reporter, Second Series
Soc Sec & Unemployment Ins Rep	Social Security and Unemployment Insur- ance Reporter
Sp Ct RRRA	Special Court, Regional Rail Reorganiza- tion Act
SSA	Social Security Administration
SSR	Social Security Rulings
Stat	Statutes at Large

ABBREVIATIONS

SW	South Western Reporter
SW2d	South Western Reporter, Second Series
TC	United States Tax Court Reports
TCM	Tax Court Memorandum
T Ct	United States Tax Court
TD	Treasury Decisions
TD ATF	Treasury Decisions concerning matters of Alcohol, Tobacco and Firearms Bureau
TIAS	Treaties and International Agreements Series
TMT & App Bd	Trademark Trial and Appeal Board
UCCRS	Uniform Commercial Code Reporting Service (Callaghan)
US	United States Reports
USC	United States Code
USCMA	United States Court of Military Appeals
USCS	United States Code Service
USEPA GCO	United States Environmental Protection Agency, General Counsel Opinions
USEPA RCO	United States Environmental Protection Agency, Regional Counsel Opinions
USEPA NPDES	United States Environmental Protection Agency, National Pollutant Discharge Elimination System
USLW	United States Law Week
USPQ	United States Patents Quarterly
UST	United States Treaties and Other International Agreements
USTC	United States Tax Cases
VA CAB	Veterans Administration Contract Appeals Board
VA GCO	Veterans Administration, General Counsel Opinions
WAB	Wage Appeals Board Decision, Dept. of Labor
WH Cases	Wage and Hour Cases
WH Op Letter	Wage and Hour Opinion Letter

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21. —Timeliness

Notice of appeal from National Labor Relation Board denial, on September 26, of request for award of attorney's fees under 5 USCS § 504, received by clerk of court on October 30, was untimely since notice of appeal or petition for review deemed is filed when received and party disappointed under § 504 has 30 days to appeal; notwithstanding permissive language "may" rather than "shall", 30 day filing period of § 504 is outer limit and jurisdictional, thus, Court of Appeals had no power to waive it. *Sonicraft, Inc. v NLRB* (1987, CA7) 814 F2d 385, 125 BNA LRRM 2679, 106 CCH LC ¶ 12281.

Thirty-day time limitation for filing petition for review in 1985 Equal Access to Justice Act (5 USCS § 504) applies to case in which fee

petition was pending on effective date of Act, thus where petitioner sought review of denial of fee application almost 9 months after issuance of agency order, court lacks jurisdiction to review. *Western Newspaper Pub. Co. v NLRB* (1987, CA7) 821 F2d 459, 125 BNA LRRM 2906, 106 CCH LC ¶ 12433.

5 USCS § 504(c)(2) sets a 30-day time limit for court appeals from all final fee decisions by agencies conducting adversary adjudication, whether decision be ruling that certain amount be awarded, or that no amount be awarded because none was warranted on merits, or because requesting party did not prevail, or because application was inadequate, or because application was too late. *J-I-J Constr. Co. v United States* (1987, CA FC) 829 F2d 26, 34 CCF ¶ 75359.

SUBCHAPTER II. ADMINISTRATIVE PROCEDURE**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Other provisions:**

Prior similar provisions. The provisions of 5 USCS §§ 551 et seq. were originally enacted by Act June 11, 1946, ch 324, 60 Stat. 237, popularly known as the "Administrative Procedure Act". That Act was repealed as part of the general revision of this Title by Act Sept. 6, 1966, and its provisions incorporated into 5 USCS §§ 551 et seq. and §§ 701 et seq.

CROSS REFERENCES

This subchapter is referred to in 2 USCS §§ 501, 502; 5 USCS §§ 572, 7118, 7134, 8902; 7 USCS §§ 136d, 1642; 10 USCS §§ 2397, 2397a; 12 USCS §§ 635a-2, 1437, 1749bbb-17, 1959, 2278a-10; 15 USCS §§ 78ggg, 266, 1392, 1715, 3412; 16 USCS §§ 460aa-3, 470q, 470hh; 17 USCS §§ 701, 803; 19 USCS §§ 1337, 1677c; 20 USCS § 107d-2, 641; 21 USCS §§ 811, 824, 875, 958; 22 USCS §§ 277d-24, 1623, 1645n, 4116; 25 USCS 372-1, 954; 28 USCS § 509; 29 USCS §§ 156, 164, 213, 481, 628, 792, 1137; 30 USCS §§ 184, 956; 31 USCS §§ 321, 3801, 3803; 33 USCS §§ 524, 597; 39 USCS § 3008; 41 USCS § 43a; 42 USCS §§ 263f, 1975a, 2000e-12, 2231, 2236, 3789d, 6212, 6241, 6393, 7191, 7276, 7420, 11346; 43 USCS § 1624; 45 USCS §§ 1116, 1212; 46 USCS §§ 7702, 9303; 47 USCS §§ 303, 305, 310, 409; 49 USCS §§ 10530, 10705, 10724, 10925, 10928, 10929, 11123-11125, 11127, 11349; 49 USCS Appx. §§ 1348, 1355, 1481, 1607c, 1655, 1672, 2002; 50 USCS §§ 167h, 795, 835; 50 USCS Appx. §§ 463, 2159.

§ 551. Definitions

For the purpose of this subchapter [5 USCS §§ 551 et seq.]—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

AGENCIES GENERALLY

ding on effective date of Act,
 oner sought review of denial of
 most 9 months after issuance of
 ert lacks jurisdiction to review.
 per Pub. Co. v NLRB (1987,
 9, 125 BNA LRRM 2906, 106

e)(2) sets a 30-day time limit
 from all final fee decisions by
 ting adversary adjudication,
 be ruling that certain amount
 that no amount be awarded
 s warranted on merits, or be-
 party did not prevail, or be-
 was inadequate, or because
 too late. J-I-J Constr. Co. v
 87, CA FC) 829 F2d 26, 34

PROCEDURE

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§§ 551 et seq. were
 24, 60 Stat. 237,
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 le by Act Sept. 6,
 §§ 551 et seq. and

5 USCS §§ 572, 7118,
 97, 2397a; 12 USCS
 § 78ggg, 266, 1392,
 USCS §§ 701, 803; 19
 USCS §§ 811, 824, 875,
 § 372-1, 954; 28 USCS
 30 USCS §§ 184, 956;
 39 USCS § 3008; 41
 1, 2236, 3789d, 6212,
 24; 45 USCS §§ 1116,
 § 310, 409; 49 USCS
 125, 11127, 11349; 49
 672, 2002; 50 USCS

et seq.]—
 nment of the United
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ADMINISTRATIVE PROCEDURE

5 USCS § 551

- (A) the Congress;
 - (B) the courts of the United States;
 - (C) the governments of the territories or possessions of the United States;
 - (D) the government of the District of Columbia;
- or except as to the requirements of section 552 of this title—
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
 - (F) courts martial and military commissions;
 - (G) military authority exercised in the field in time of war or in occupied territory; or
 - (H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41 [41 USCS §§ 101 et seq.]; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;
- (2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;
 - (3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;
 - (4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
 - (5) "rule making" means agency process for formulating, amending, or repealing a rule;
 - (6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
 - (7) "adjudication" means agency process for the formulation of an order;
 - (8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;
 - (9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;
 - (10) "sanction" includes the whole or a part of an agency—
 - (A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

- (B) withholding of relief;
 - (C) imposition of penalty or fine;
 - (D) destruction, taking, seizure, or withholding of property;
 - (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
 - (F) requirement, revocation, or suspension of a license; or
 - (G) taking other compulsory or restrictive action;
 - (11) "relief" includes the whole or a part of an agency—
 - (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
 - (B) recognition of a claim, right, immunity, privilege, exemption, or exception; or
 - (C) taking of other action on the application or petition of, and beneficial to, a person;
 - (12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;
 - (13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
 - (14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter [5 USCS §§ 551 etc.].
- (Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 381; Sept. 13, 1976, P. L. 94-409, § 4(b), 90 Stat. 1247.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1)	5 USC § 1001(a)	June 11, 1946, ch 324, § 2(e), 60 Stat. 237. Aug. 8, 1946, ch 870, § 302, 60 Stat. 918. Aug. 10, 1946, ch 951, § 601, 60 Stat. 993. Mar. 31, 1947, ch 30, § 6(a), 61 Stat. 37. June 30, 1947, ch 163, § 210, 61 Stat. 201. Mar. 30, 1948, ch 161, § 301, 62 Stat. 99. June 11, 1946, ch 324, § 2 (less (a)), 60 Stat. 237.
(2)-(13)	5 USC § 1001 (less (a))	

In para. (1), the sentence "Nothing in this Act shall be construed to repeal delegations of authority as provided by law," is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In para. (1)(G), the words "or naval" are omitted as included in "military".

dence that report was false, publication does not qualify as agency sanction. Industrial Safety

Equipment Asso. v Environmental Protection Agency (1988, App DC) 837 F2d 1115.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the

AGENCIES GENERALLY

Asso. v Environmental Protection
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5 USCS § 552

justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

- (i) it has been indexed and either made available or published as provided by this paragraph; or
 - (ii) the party has actual and timely notice of the terms thereof.
- (3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

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(D) [Repealed]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more

than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

- (i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

- (1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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5 USCS § 552

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(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological or geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the

existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the record remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

- (1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
- (2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;
- (3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;
- (4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;
- (5) a copy of every rule made by such agency regarding this section;
- (6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and
- (7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 383; June 5, 1967, P. L. 90-23 § 1, 81 Stat. 54; Nov. 21, 1974, P. L. 93-502, §§ 1-3, 88 Stat. 1561, 1563, 1564;

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mation as provided in subsection (a) of this section, the existence of the records, and the records as not subject to the

ing of information or limit the release of information as specifically stated in this section. No information from Confidential Source shall be

ear, each agency shall submit a report to the Speaker of the House of Representatives for referral to the appropriate committee. The report shall include—

(1) whether such agency not to comply with the provisions of this section under subsection (a) and

(2) under subsection (a)(6), the action upon each appeal of the action upon each appeal

of each person responsible for the action, and the number of persons responsible for the action

acted pursuant to subsection (a) of this section, the exemption from the action taken against the person responsible for improperly why disciplinary action was

by regarding this section; (3) the amount of fees collected by the agency under this section; and (4) the efforts to administer fully this

report on or before March 1 of each year or the prior calendar year as provided in this section, the exemption from the action taken against the person responsible for improperly why disciplinary action was

agency" as defined in section 552 of this title, "department, military department, government corporation, or other organization of the Government (including the independent regulatory agency.

June 5, 1967, P. L. 90-23 § 1, 85 Stat. 1561, 1563, 1564;

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Sept. 13, 1976, P. L. 94-409, § 5(b), 90 Stat. 1247; Oct. 13, 1978, P. L. 95-454, Title IX, § 906(a)(10), 92 Stat. 1225; Nov. 8, 1984, P. L. 98-620, Title IV, Subtitle A, § 402(2), 98 Stat. 3357; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle N, §§ 1802, 1803, 100 Stat. 3207-48, 3207-49.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC § 1002	June 11, 1946, ch 324, § 3, 60 Stat. 238.

In subsec. (b)(3), the words "formulated and" are omitted as surplusage. In the last sentence of subsec (b), the words "in any manner" are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

Explanatory notes:

A former 5 USC § 552 was transferred by Act Sept. 6, 1966, which enacted 5 USCS §§ 101 et seq., and now appears as 7 USCS § 2243.

Amendments:

1967. Act June 5, 1967 (effective 7/4/67, as provided by § 3 of such Act, which appears as a note to this section) substituted this section for one which read:

"§ 552. Publication of information, rules, opinions, orders, and public records

"(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

"(1) a function of the United States requiring secrecy in the public interest; or

"(2) a matter relating solely to the internal management of an agency.

"(b) Each agency shall separately state and currently publish in the Federal Register—

"(1) descriptions of its central and field organizations, including delegations of final authority by the agency, and the established places at which, and methods whereby, the public may obtain information or make submittals or requests;

"(2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of the formal or informal procedures available and forms and instructions as to the scope and contents of all papers, reports, or examinations; and

"(3) substantive rules adopted as authorized by law and statements of general policy or interpretations adopted by the agency for public guidance, except rules addressed to and served on named persons in accordance with law.

A person may not be required to resort to organization or procedure not so published.

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ADMINISTRATIVE PROCEDURE

5 USCS § 553

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Added Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 383.)

THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 5 — GOVERNMENT ORGANIZATION AND EMPLOYEES

*[This title was enacted into law by Act Sept. 6, 1966, P. L. 89-554,
§ 1, 80 Stat. 378.]*

CHAPTER 5. ADMINISTRATIVE PROCEDURE

[§§ 554-600 are contained in this volume]

SUBCHAPTER I. GENERAL PROVISIONS

Section

- 500. Administrative practice; general provisions
- 501. Advertising practice; restrictions
- 502. Administrative practice; Reserves and National Guardsmen
- 503. Witness fees and allowances
- 504. Costs and fees of parties

SUBCHAPTER II. ADMINISTRATIVE PROCEDURE

- 551. Definitions
- 552. Public information; agency rules, opinions, orders, records, and proceedings
 - 552a. [Records about individuals]
 - 552b. Open meetings
- 553. Rule making
- 554. Adjudications
- 555. Ancillary matters
- 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision
- 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record
- 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses
- 559. Effect on other laws; effect of subsequent statute

SUBCHAPTER III. ADMINISTRATIVE CONFERENCE OF THE
UNITED STATES

- 571. Purpose
- 572. Definitions
- 573. Administrative Conference of the United States
- 574. Powers and duties of the Conference
- 575. Organization of the Conference
- 576. Authorization of appropriations

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
- (2) the selection or tenure of an employee, except a [an] administrative law judge appointed under section 3105 of this title;
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and
- (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

- (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
- (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial

AGENCIES GENERALLY

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ADMINISTRATIVE PROCEDURE

5 USCS § 554

decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 384; Mar. 27, 1978, P. L. 95-251, § 2(a)(1), 92 Stat. 183.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation

U.S. Code

*Revised Statutes and
Statutes at Large*

..... 5 USC § 1004

June 11, 1946, ch 324, § 5,
60 Stat. 239.

In subsec. (a)(2), the word "employee" is substituted for "officer or employee of the United States" in view of the definition of "employee" in 5 USCS § 2105.

In subsec. (a)(4), the word "naval" is omitted as included in "military".

In subsec. (a)(5), the word "or" is substituted for "and" since the exception is applicable if any one of the factors are involved.

In subsec. (a)(6), the word "worker" is substituted for "employee", since the latter is defined in 5 USCS § 2105 as meaning Federal employees.

In subsec. (b), the word "When" is substituted for "In instances in which".

In subsec. (c)(2), the comma after the word "hearing" is omitted to correct an editorial error.

In subsec. (d), the words "The employee" and "such an employee" are substituted in the first two sentences for "The same officers" and "such officers" in view of the definition of "employee" in 5 USCS § 2105. The

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter [5 USCS §§ 551 et seq.].

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 385.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES**Prior law and revision:***Derivation**U.S. Code**Revised Statutes and
Statutes at Large**June 11, 1946, ch 324, § 6,
60 Stat. 240.*

5 USC § 1005

Plumbers Local Union, etc. v Construction Industry Stabilization Committee (1973, Em Ct App) 479 F2d 1052.

63. Timeliness of statement

Claimant for benefits under Longshoremen's and Harbor Workers' Compensation Act is entitled to new hearing if inordinately long time has elapsed between closing of hearing and issuance of decision; where decision of administrative law judge is dated only 4 months after close of hearing, claimant is not entitled to new hearing in absence of showing prejudice by lateness of decision. *Valencia v Marine Terminals Corp.* (1978) 9 BRBS 788.

64. Service of statement

5 USCS § 555(e) does not require that notice be personally served, it being sufficient that public information release was issued concurrently with release of text of decision. *Department of Defense v Hawaiian Tel. Co.* (1975) FCC 75-119, 36 AdL2d 204.

65. Effect of failure to provide

Where substantive law makes public notice, not private notice, operative event for purposes of running of statutory filing period, party may not rely on failure of commission to provide personal notice of its decision to excuse failure to appeal within statutory period. *National Black Media Coalition v FCC* (1985) 245 App DC 273, 760 F2d 1297.

FTC's denial of manufacturer's "Petition for Rule Making and Request to Hold Proposed Complaints in Abeyance" without statement of grounds did not violate notice provisions of 5 USCS § 555(e) where no formal complaint was filed and thus no proceedings had been commenced or were pending. *Beltone Electronics Corp. v Federal Trade Com.* (1975, ND Ill) 402 F Supp 590, 1975-2 CCH Trade Cases ¶ 60566.

Even though there is now requirement that Parole Board comply with provision of 5 USCS § 555 requiring statement of reasons for denial of parole, prisoner denied statement of reasons is not entitled to recover damages from members of Parole Board, where, at time prisoner requested parole, existing procedures did not require statement of reasons, and officials, in good faith, relied on existing procedures which they believed to have been constitutional and valid. *Altimus v Manhood Foundation, Inc.* (1976, SD NY) 425 F Supp 1118, aff'd without op (CA2 NY) 559 F2d 1202.

Secretary of Interior's failure to send notice of denial of application for oil and gas lease to aggrieved party suspends running of period for appeal until notice is sent in accordance with 5 USCS § 555; Agency's mailing of notice of decision to applicant at old address, despite fact that applicant had notified agency of change of address, constituted failure to give notice of decision. *Turner v Watt* (1983, DC Utah) 566 F Supp 87, 77 OGR 601.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter [5 USCS §§ 551 et seq.] does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or partici-

of manufacturer's "Petition for
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al Trade Com. (1975, ND Ill) 402
1975-2 CCH Trade Cases ¶ 60566.

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record and decision in the case.

(c) Subject to published rules of the agency and within its powers,
employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice
would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by
consent of the parties;
- (7) dispose of procedural requests or similar matters;
- (8) make or recommend decisions in accordance with section 557 of this
title; and
- (9) take other action authorized by agency rule consistent with this
subchapter [5 USCS §§ 551 et seq.].

(d) Except as otherwise provided by statute, the proponent of a rule or
order has the burden of proof. Any oral or documentary evidence may be
received, but the agency as a matter of policy shall provide for the
exclusion of irrelevant, immaterial, or unduly repetitious evidence. A
sanction may not be imposed or rule or order issued except on considera-
tion of the whole record or those parts thereof cited by a party and
supported by and in accordance with the reliable, probative, and substan-
tial evidence. The agency may, to the extent consistent with the interests of
justice and the policy of the underlying statutes administered by the
agency, consider a violation of section 557(d) of this title sufficient grounds
for a decision adverse to a party who has knowingly committed such
violation or knowingly caused such violation to occur. A party is entitled
to present his case or defense by oral or documentary evidence, to submit
rebuttal evidence, and to conduct such cross-examination as may be
required for a full and true disclosure of the facts. In rule making or
determining claims for money or benefits or applications for initial licenses
an agency may, when a party will not be prejudiced thereby, adopt
procedures for the submission of all or part of the evidence in written
form.

(e) The transcript of testimony and exhibits, together with all papers and
requests filed in the proceeding, constitutes the exclusive record for
decision in accordance with section 557 of this title and, on payment of
lawfully prescribed costs, shall be made available to the parties. When an
agency decision rests on official notice of a material fact not appearing in
the evidence in the record, a party is entitled, on timely request, to an
opportunity to show the contrary.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 386; Sept. 13, 1976, P. L. 94-409,
§ 4(c), 90 Stat. 1247; Mar. 27, 1978, P. L. 95-251, § 2(a)(1), 92 Stat. 183.)

tion to nonobservance of applicable rules are necessary for same reasons that they are necessary for court. *NLRB v Ochoa Fertilizer Corp.* (1961) 368 US 318, 7 L Ed 2d 312, 82 S Ct 344, 49 BNA LRRM 2236, 43 CCH LC ¶ 17321.

Objection to taking of official notice by hearing examiner is waived by failure to file appropriate exception under Federal Power Commission rules, and thereafter party cannot complain if Commission also takes official notice. *Wisconsin v Federal Power Com.* (1952) 91 App DC 307, 201 F2d 183, cert den 345 US 934, 97 L Ed 1362, 73 S Ct 795.

Failure of party to challenge basic facts officially noticed or indicate any matters it might bring forward in rebuttal excuses agency from granting petition to reopen based on allegation that agency took official notice of data without affording party opportunity to cross-examine and offer rebuttal evidence. *Midwest Television, Inc. v Federal Communications Com.* (1970) 138 App DC 228, 426 F2d 1222.

Administrative Procedure Act gives party right to object to use of official notice when such objection is timely filed (5 USCS § 556(e)), and parties would forfeit their right to object to use of data where rule of timeliness was disregarded. *Bangor & A. R. Co. v Interstate Commerce Com.* (1978, CA1) 574 F2d 1096, reh den (CA1) 578 F2d 444 and cert den 439 US 837, 58 L Ed 2d 133, 99 S Ct 121 and (disagreed with by *Illinois v United States* (CA7) 666 F2d 1066, later app (CA7) 698 F2d 888 and (disagreed with by *Georgia Public Service Com. v United States* (CA11) 704 F2d 538, reh den (CA11) 710 F2d 840)) and (disagreed with by *SEC v Wall Street Pub. Institute, Inc.* (App DC) 851 F2d 365, CCH Fed Secur L Rep ¶ 93799).

100. Administrative notice

Where Department of Health and Human Services' Medical-Vocational Guidelines are applied Administrative Law Judge does not determine disability; ultimate issue is removed from adjudication, and only subsidiary facts upon which regulation operates are decided or deter-

mined through adjudicatory process; therefore, determinations actually made at hearing are not based on administrative notice, and 5 USCS § 556(e) is not applicable. *Broz v Schweiker* (1982, CA11 Ala) 677 F2d 1351, vacated without op 461 US 952, 77 L Ed 2d 1311, 103 S Ct 2421, on remand (CA11 Ala) 711 F2d 957, mod, reh den (CA11 Ala) 721 F2d 1297, later proceeding (CA11 Ala) 725 F2d 1280 and (disagreed with by *Reeves v Heckler* (CA11 Ala) 734 F2d 519 (disagreed with by multiple cases as stated in *Moon v Bowen* (CA5 Tex) 810 F2d 472) and later proceeding (CA11 Ala) 841 F2d 383, CCH Unemployment Ins Rep ¶ 17959, reh den (CA11 Ala) 860 F2d 1009, CCH Unemployment Ins Rep ¶ 14402A) as stated in *Calvin v Heckler* (CA9 Or) 782 F2d 802.

Normally, fact that is administratively or officially noticed in adjudicatory proceeding is subject to rebuttal by evidence, but just as Congress in passing law may find that certain facts exist, so agency in issuing legislative or substantive regulation may take certain facts as irrebuttably established, so long as this finding is not arbitrary and capricious, is within authority delegated to agency by statute, and is not in violation of constitution. *McCoy v Schweiker* (1982, CA8 Ark) 683 F2d 1138.

Medical and vocational guidelines and legislative facts do not violate Administrative Procedure Act's requirement of rebuttal of administratively noticed adjudicative facts. *Rivers v Schweiker* (1982, CA5 Tex) 684 F2d 1144.

Fact that medical and vocational guidelines adopted are based upon administrative notice of conditions in national labor market does not make guidelines instance of administrative notice, rather, guidelines are set of rules, promulgated pursuant to informal notice and comment rulemaking procedures, and terms of 5 USCS § 556(e) do not literally apply, therefore, § 556(e) does not automatically require disability claimant to be given chance at adjudicatory claims hearing to contest the facts underlying guidelines. *Sherwin v Secretary of Health & Human Services* (1982, CA1 Mass) 685 F2d 1, cert den 461 US 958, 77 L Ed 2d 1318, 103 S Ct 2432.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an

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icatory process; therefore, made at hearing are not ve notice, and 5 USCS able. *Broz v Schweiker* F2d 1351, vacated with L Ed 2d 1311, 103 S Ct 1 Ala) 711 F2d 957, mod, 721 F2d 1297, later pro- 725 F2d 1280 and (dis- s v Heckler (CA11 Ala) with by multiple cases as wen (CA5 Tex) 810 F2d ing (CA11 Ala) 841 F2d ent Ins Rep ¶ 17959, reh 2d 1009, CCH Unemploy- A) as stated in *Calvin v* F2d 802.

is administratively or offi- icatory proceeding is sub- sence, but just as Congress d that certain facts exist, legislative or substantive ertain facts as irrebutably this finding is not arbi- is within authority dele- tute, and is not in viola- *McCoy v Schweiker* (1982, 38,

onal guidelines and legisla- ate Administrative Proce- of rebuttal of administra- icative facts. *Rivers v* Tex) 684 F2d 1144.

and vocational guidelines on administrative notice of labor market does not nce of administrative no- are set of rules, promul- mal notice and comment s, and terms of 5 USCS y apply, therefore, § 556(e) require disability claimant adjudicatory claims hear- acts underlying guidelines. of Health & Human Ser- s) 685 F2d 1, cert den 461 318, 103 S Ct 2432.

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ADMINISTRATIVE PROCEDURE

5 USCS § 557

employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

- (1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or
 - (2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.
- (c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

- (1) proposed findings and conclusions; or
- (2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and
- (3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

- (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
- (B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

- (A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
- (B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be

involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

- (i) all such written communications;
- (ii) memoranda stating the substance of all such oral communications; and
- (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 387; Sept. 13, 1976, P. L. 94-409, § 4(a), 90 Stat. 1246.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 USC § 1007	June 11, 1946, ch. 324, § 8, 60 Stat. 242.

In subsec. (b), the word "employee" is substituted for "officer" and "officers" in view of the definition of "employee" in 5 USCS § 2105. The word "either" is added after the word "requires" in the first sentence to eliminate the need for parentheses. The words "the presiding employee or an employee qualified to preside at hearings under section 556 of this title" are substituted for "such officers" in the last sentence. The word "initial" is omitted before "decision", the final

cy to conduct independent negotiations.
Lincoln Peoples' Utility Dist. v Johnson
A9) 735 F2d 1101.

CS § 557 does not prohibit communica-
tion between prosecutive arm of agency and
making arm regarding matters not actu-
g litigated before agency. Amrep Corp.
v Buck (1979, DC Dist Col) 46 AdL2d 72.
tion by air carrier that ex parte commu-
by National Mediation Board with
s' association concerning initial applica-
investigation of representational dispute
ing violation of Government in Sunshine
SCS § 557) is not of such nature as to
to constitutional or gross statutory
exceptions to courts' lack of subject
isdiction. Air Florida, Inc. v National
Bd. (1982, SD Fla) 534 F Supp 1, 109
RM 2921, 109 BNA LRRM 2924, 97
10056, dismd without op (CA11 Fla)
LRRM 3640, withdrawn, rereported
la) 720 F2d 686, 115 BNA LRRM

ons concerning ex parte contacts are
le to proceedings before Office of
Compensation Programs concerning
benefits under Federal Employee Com-
Act (5 USCS §§ 8101 et seq.). Allen v
(1984, ND Cal) 585 F Supp 1114, 39
d 154.

of 2 principal amendments to Admin-
procedure Act made by Government in
ne Act are applicable in most cases to
ental Protection Agency, in first in-
ause open meeting requirement is not
EPA, and in second instance because
t concerning ex parte communications
gency decision-maker and persons out-
y applies only when 5 USCS § 557
d that section applies to very few EPA
arings; in any case, EPA rules of
nerally bar ex parte contacts. USEPA

of ex parte communication made in
with administrative proceeding by
party or by member or employee of
USCS § 557(d)(1)). 58 ALR Fed 834.

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ative proceedings blemished by ex
communication may be remedied adminis-
(1) disclosing communication and its
2) ordering violating party to show
his interest should not be dismissed,
lly remedied by voiding proceedings
t concludes agency's decision making
so irrevocably tainted so as to make
of agency unfair. Professional Air
trollers Organization v Federal Labor
Authority (1982) 222 App DC 97, 685
10 BNA LRRM 2676.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 388.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC § 1008	June 11, 1946, ch 324, § 9, 60 Stat. 242.

In subsec. (b), the prohibition is restated in positive form.

In subsec. (c), the words "within a reasonable time" are substituted for "with reasonable dispatch". The last two sentences are restated for conciseness and clarity and to restate the prohibition in positive form. Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

Explanatory notes:

A former 5 USC § 558 was transferred by Act Sept. 6, 1966, which enacted 5 USCS §§ 101 et seq., and now appears as 7 USCS § 2209.

CODE OF FEDERAL REGULATIONS

Department of Transportation, continuance of expired authorizations by operation of law pending final determination of applications for renewal thereof, 14 CFR Part 377.

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licensee" as used in Administrative Act (5 USCS § 558(c)) includes one temporary permit under § 311 of Interstate Commerce Act (49 USCS § 911); permits granted by Interstate Commerce Commission under § 311 covers "activity of nature" within meaning of *Atlantic S.S. Corp. v Atlantic S. Co.* (1957) 353 US 436, 1 L Ed 919, 99.

Comparison with other laws

of Administrative Procedure Act (5 USCS § 558), providing that in any case in which an agency has, in accordance with agency rules, received a timely and sufficient application for a new license, no license with respect to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency. Interstate Commerce Commission to order that carrier under § 311(a) of Interstate Commerce Act (49 USCS § 911(a)) not to exercise the provision in § 311(a) that temporary permits thereunder shall be valid for more than 180 days. *Panama Corp. v Atlantic Coast Line R. Co.* (1977) 436 F.2d 963, 77 S.Ct. 999. 210a of Interstate Commerce Act (49 USCS § 10a) sets maximum duration of temporary authority at 180 days, if application for renewal authority is made, temporary authority shall be valid for a period of 180 days. *United States v. Riss & Co.* (1977) 185 App DC 150.

Interstate Commerce Commission has the authority to extend the duration of temporary authority granted under 49 USCS § 10a until final disposal is made of the application for permanent authority. *Navajo Inc. v United States* (1970, DC Arizona) 318.

§ 558(c) applies to licenses required by an agency has no duty to act on application for renewal of general permit with general permit under Pollution Control Act (33 USCS § 1301) has no legally protected interest in will issue permit; right to extend upon completion of legally sufficient application, and where agency does not apply for renewal of general permit § 558(c) is inapplicable. *Kitluta, Inc.* (1984, DC Alaska) 592 ELR 20691 app dismissed without

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op, vacated without op (CA9 Alaska) 772 F.2d 912 and app dismissed, vacated on other grounds, motion denied (CA9 Alaska) 782 F.2d 800, 16 ELR 20363.

22. Timeliness of agency action

Since the whole thrust of 5 USCS § 558 is to protect applicants and licensees and not to impose obligations upon them, the last sentence may not be given effect to prolong for an indefinite period of administrative inaction the authorization of an unwilling licensee beyond the fixed period for which he has sought renewal. *County of Sullivan v Civil Aeronautics Board* (1971, CA2) 436 F.2d 1096.

23. Effect of extension

Provision of 5 USCS § 558 that when licensee has made timely and sufficient application for renewal, license shall not expire until application has been finally determined by agency does not mean that Federal Communications Commission is disabled by mere filing of renewal application from effectuating rule changes adopted prior to expiration of previous license by incorporating changes in renewal of license. *Goodwill Stations, Inc. v Federal Communications Com.* (1963) 117 App DC 64, 325 F.2d 637.

Even though Federal Communications Commission rule (47 CFR § 1.62) provided that when

5 USCS § 559

there is pending application for renewal, in accordance with provisions of § 9(b) of Administrative Procedure Act (5 USCS § 558(c)), license shall continue in effect without further action by Commission until such time as Commission makes final determination on renewal application, but that no operation under rule shall be construed as finding that operation will serve public interest, convenience, or necessity, nor shall operation affect action of Commission with respect to any pending application or proceeding. rule did not preclude Commission from taking into account as broadcast experience conditional licensee's eight months of operations between the four-months expressly awarded it and the time needed for the receipt of new applications and the holding of a comparative hearing. *Community Broadcasting Corp. v Federal Communications Commission* (1966) 124 App DC 230, 363 F.2d 717.

Even though carrier's temporary authority remained in full force and effect by virtue of extension provision of § 9(b) of Administrative Procedure Act (5 USCS § 558(c)) until final determination of application for permanent operating rights, this did not preclude Interstate Commerce Commission from bringing proceeding alleging that carrier's operations exceeded scope of temporary authority. *Riss & Co. v United States* (1952, DC Mo) 117 F.Supp. 296, aff'd 346 US 890, 98 L.Ed. 393, 74 S.Ct. 221.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter [5 USCS §§ 551 et seq.], chapter 7 [5 USCS §§ 701 et seq.], and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter [5 USCS §§ 551 et seq.] through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter [5 USCS §§ 551 et seq.], chapter 7 [5 USCS §§ 701 et seq.], sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

(Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 388; Oct. 22, 1968, P.L. 90-623, § 1(1), 82 Stat. 1312; Mar. 27, 1978, P.L. 95-251, § 2(a)(1), 92 Stat. 183; Oct. 13, 1978, P.L. 95-454, Title VIII, § 801(a)(3)(B)(iii), 92 Stat. 1221.)

CHAPTER 7. JUDICIAL REVIEW

Section

- 701. Application; definitions
- 702. Right of review
- 703. Form and venue of proceeding
- 704. Actions reviewable
- 705. Relief pending review
- 706. Scope of review

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Prior similar provisions. The provisions of 5 USCS §§ 701 et seq. were originally enacted by Act June 11, 1946, ch 324, 60 Stat. 237, popularly known as the "Administrative Procedure Act". That Act was repealed as part of the general revision of this title by Act Sept. 6, 1966, and its provisions incorporated into 5 USCS §§ 551 et seq. and §§ 701 et seq.

CROSS REFERENCES

International Wheat Agreement Act of 1949, applicability of this chapter, 7 USCS § 1642.
Farm Labor Contractor Registration Act of 1963, applicability of this chapter, 7 USCS § 2049.
Uniform Time Act of 1966, applicability of this chapter, 15 USCS § 266.
Motor vehicle safety standards orders, applicability of this chapter, 15 USCS § 1392.
Judicial review of public library services and construction, 20 USCS § 351d.
American-Mexican Chamizal Convention Act of 1964, inapplicability of this chapter, 22 USCS § 277d-24.
Tort claims against government, administrative adjustment, 28 USCS § 2762.
Judicial review of National Labor Relations Board unfair labor practices proceedings, 29 USCS § 160.
Federal Coal Mine Health and Safety Act of 1969, inapplicability of this chapter, 30 USCS § 956.
Alteration of bridges, inapplicability of this chapter, 33 USCS § 524.
Acquisition of land for water resources development projects, inapplicability of this chapter, 33 USCS § 597.
Walsh-Healey Act, applicability of this chapter, 41 USCS § 43a.
Judicial review of government contracts, 41 USCS §§ 321 et seq.
Nondiscrimination in Federally assisted programs, applicability of this chapter, 42 USCS § 2000d-2.
Atomic Energy Act of 1954, applicability of this chapter, 42 USCS §§ 2231, 2239.
Helium Act, applicability of this chapter, 50 USCS § 167h.
National Security Agency personnel security procedures, inapplicability of this chapter, 50 USCS § 835.

REVIEW

DIRECTIVES

US §§ 701 et seq. were
324, 60 Stat. 237,
e Act". That Act was
title by Act Sept. 6,
US §§ 551 et seq. and

ability of this chapter, 7

3, applicability of this

ter, 15 USCS § 266.

of this chapter, 15 USCS

tion, 20 USCS § 351d.

4, inapplicability of this

stment, 28 USCS § 2762.

d unfair labor practices

9, inapplicability of this

33 USCS § 524.

projects, inapplicability

USCS § 45a.

321 et seq.

applicability of this chap-

apter, 42 USCS §§ 2231,

167h.

dures, inapplicability of

Military Selective Service Act, inapplicability of this chapter, 50 USCS Appx. § 463.

Export Control Act of 1949, inapplicability of this chapter, 50 USCS Appx. § 2412.

This chapter referred to in 2 USCS §§ 501, 502; 5 USCS §§ 559, 8902; 7 USCS § 1642; 10 USCS §§ 2397, 2397a, 2397c; 12 USCS §§ 1464, 1730, 1730a, 1749bb-17, 1786, 1815, 1818, 1959, 2266, 2268; 15 USCS §§ 57a, 266, 632, 687e, 1193, 1392, 1394, 1715, 1913, 2004, 2008, 2060, 2603, 2618, 2622, 3416, 4243; 16 USCS §§ 460aa-3, 460q, 823b, 1374, 1536, 1855, 2404, 3636; 17 USCS §§ 701, 803, 810, 908; 18 USCS §§ 843, 3625, 4218; 19 USCS § 1337; 20 USCS §§ 107d-2, 240, 641, 1683; 21 USCS §§ 360e, 360g; 22 USCS §§ 277d-24, 1623, 1645n, 3794, 4140; 25 USCS §§ 372-1, 954; 26 USCS § 9041; 29 USCS §§ 214, 721, 792, 113; 30 USCS §§ 956, 1411, 1415, 1416; 33 USCS §§ 524, 597; 35 USCS § 135; 39 USCS § 404, 410, 3001, 3008, 3012, 3603; 41 USCS § 43a; 42 USCS §§ 263f, 300j-9, 1395h, 1395oo, 2000d-2, 2022, 2231, 2236, 2239, 4104, 5405, 5851, 6105, 6303, 6306, 6973, 6976, 7276, 7525, 7622, 7920, 8220, 8227, 8412, 8433, 8441, 10132, 10155; 44 USCS § 2203; 45 USCS §§ 431, 1116, 1212; 47 USCS §§ 303, 305, 310, 409; 49 USCS Appx. §§ 1355, 1481, 1655, 1675, 1903, 2005, 2302, 2305, 2505, 2507, 2611; 50 USCS §§ 795, 835; 50 USCS Appx. §§ 463, 2159, 2412.

§ 701. Application; definitions

(a) This chapter [5 USCS §§ 701 et seq.] applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter [5 USCS §§ 701 et seq.]—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41 [41 USCS §§ 101 et seq.]; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix, and

(2) "person," "rule," "order," "license," "sanction," "relief," and "agency action" have the meanings given them by section 551 of this title.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 392.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation

U.S. Code

Revised Statutes and

Statutes at Large

(a)

5 USC § 1009
(introductory
clause).

June 11, 1946, ch 324, § 10
(introductory clause), 60
Stat. 243.

In subsec. (a), the words "This chapter applies, according to the provisions thereof," are added to avoid the necessity of repeating the introductory clause of former 5 USC § 1009 in 5 USCS §§ 702-706.

Subsec. (b) is added on authority of Act June 11, 1946, ch 324, § 2, 60 Stat. 237, as amended, which is carried into 5 USCS § 551.

In subsec. (b)(1)(G), the words "or naval" are omitted as included in "military".

In subsec. (b)(1)(H), the words "functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947" are omitted as executed. Reference to the "Selective Training and Service Act of 1940" is omitted as that Act expired on Mar. 31, 1947. Reference to the "Sugar Control Extension Act of 1947" is omitted as that Act expired on Mar. 31, 1948. References to the "Housing and Rent Act of 1947, as amended" and the "Veterans' Emergency Housing Act of 1946" have been consolidated as they are related. The reference to former 50 USC Appx § 1641(b)(2), is retained notwithstanding its repeal by Act Sept. 21, 1961, P. L. 87-256, § 111(a)(1), 75 Stat. 538, since § 111(c) of the Act provides that a reference in other Acts to a provision of law repealed by § 111(a) shall be considered to be a reference to the appropriate provisions of P. L. 87-256.

Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

References in text:

"Section 1884 of title 50, appendix," referred to in subsec. (b)(1)(H), terminated Apr. 30, 1954 by its own terms.

"Sections 1891-1902 of title 50, appendix," referred to in subsec. (b)(1)(H), terminated Apr. 30, 1954 under provisions of former 50 USC Appx. § 1894.

"Former section 1641(b)(2) of title 50, appendix," referred to in subsec. (b)(1)(H), was repealed by Act Sept. 21, 1961, P. L. 87-256, § 111(a)(1), 75 Stat. 538.

CROSS REFERENCES

Agency defined, 5 USCS § 551(1).

Agency action defined, 5 USCS § 551(13).

Form and venue of review proceeding, 5 USCS § 703.

Actions reviewable, 5 USCS § 704.

By operation of 5 USCS § 611, court is precluded from reviewing agency compliance with Regulatory Flexibility Act (5 USCS §§ 601 et seq.); although court will not consider agency compliance with regulatory flexibility analysis requirements, data in regulatory flexibility analysis constitutes part of record which is reviewed by court in determining whether rule is arbitrary, capricious, or abuse of discretion under 5 USCS § 706. *Thompson v Clark* (1984) 239 App DC 179, 741 F2d 401, 82 OGR 223.

Appeal from decision of United States Commissioner on application to take poor convict's oath as provided in 18 USCS § 3569 is provided by statute since task conferred upon commissioner is essentially administrative. *United States ex rel. Margolin v Shank* (1948, DC Conn) 83 F Supp 247, aff'd (CA2 Conn) 174 F2d 830.

Regulations controlling price issues constituted final agency action pursuant to § 10 of Administrative Procedure Act (5 USCS § 704) where (1) regulations were promulgated after notice and comment procedures, and (2) parties agreed that, absent judicial intervention, regulations are final, binding and enforceable against plaintiffs; mere possibility that Department of Energy might change its regulations at some future date does not make regulations any less final. *Northern Natural Gas Co. v United States Dept. of Energy* (1979, DC Del) 464 F Supp 1145.

Decision of Department of Energy to disclose information to accounting firm which was under contract to assist Department in administering petroleum price and allocation provisions was not "action committed to agency discretion by

law" within meaning of 5 USCS § 702(a)(2) so as to preclude judicial review thereof under Administrative Procedure Act. *Coastal States Gas Corp. v Department of Energy* (1979, SD Tex) 480 F Supp 813, motion den (CA5 Tex) 609 F2d 736.

"Committed to agency discretion" exception of 5 USCS § 701(a)(2) does not prevent review of agency action in case in which uninjured individual is alleged to have been wrongfully included in witness protection program. *Ruffalo v Civiletti* (1982, WD Mo) 539 F Supp 949, aff'd, remanded (CA8 Mo) 702 F2d 710, on remand (WD Mo) 565 F Supp 34, later proceeding (WD Mo) 590 F Supp 706.

Federal courts have jurisdiction to review compliance of state equalization formula with federal law, subject to finality requirement; school districts are not entitled to seek relief without first exhausting administrative remedies through regulatory channels established under applicable regulations. *Gwinn Area Community Schools v Michigan* (1983, WD Mich) 574 F Supp 736, aff'd in part and rev'd in part (CA6 Mich) 741 F2d 840.

Legal Services Corporation, which is not department or agency of federal government, is not subject to judicial review under standards of Administrative Procedure Act (5 USCS §§ 551 et seq.); however, court finds that standards of review analogous to those embodied in Administrative Procedure Act are appropriate in review of denial of grant. *National Clients Council, Inc. v Legal Services Corp.* (1985, DC Dist Col) 617 F Supp 480.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant

CIES GENERALLY

of 5 USCS § 702(a)(2) so
al review thereof under
ture Act. Coastal States
ent of Energy (1979, SD
motion den (CA5 Tex)

ncy discretion" exception
does not prevent review of
n which uninvolved indi-
ave been wrongfully in-
ction program. *Ruffalo v*
o) 539 F Supp 949, affd,
702 F2d 710, on remand
34, later proceeding (WD

jurisdiction to review
ualization formula with
to finality requirement;
it entitled to seek relief
administrative remedies
annels established under
Gwinn Area Community
983, WD Mich) 574 F
and revd in part (CA6

ration, which is not de-
ederal government, is not
iew under standards of
re Act (5 USCS §§ 551 et
finds that standards of
se embodied in Adminis-
re appropriate in review
nal Clients Council, Inc.
1985, DC Dist Col) 617

ion, or adversely
ing of a relevant
in a court of the
nd stating a claim
failed to act in an
t be dismissed nor
e United States
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lif on any other
authority to grant

JUDICIAL REVIEW

relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 392; Oct. 21, 1976, P. L. 94-574, § 1, 90 Stat. 2721.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC § 1009(a)	June 11, 1946, ch 324, § 10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

Amendments:

1976. Act Oct. 21, 1976, substituted this section for one which read: "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

CODE OF FEDERAL REGULATIONS

Food and Drug Administration, delegations of authority and organization, 21 CFR Part 5.

CROSS REFERENCES

Agency defined, 5 USCS § 551(1).
Agency action defined, 5 USCS § 551(13).
Form and venue of review proceeding, 5 USCS § 703.
Actions reviewable, 5 USCS § 704.
Scope of review, 5 USCS § 706.
Judicial review of certain administrative decisions regarding public contracts, 41 USCS §§ 43a, 321, 322.
This section is referred to in 2 USCS §§ 501, 502; 7 USCS § 2143; 16 USCS § 839f; 18 USCS §§ 843, 3625, 4218; 19 USCS § 1677c; 25 USCS § 954; 28 USCS § 2631; 42 USCS § 5405; 43 USCS § 1817; 50 USCS Appx. §§ 2168, 2412.

RESEARCH GUIDE

Federal Procedure L Ed:

1 Fed Proc, L Ed, Access to District Courts, §§ 1:436, 437.
2 Fed Proc, L Ed, Administrative Procedure, §§ 2:189, 191, 198-204, 207, 209-211, 213, 214, 217, 218, 230, 235, 237, 243, 245, 259.
4 Fed Proc, L Ed, Banking and Financing, §§ 8:107, 303, 802.
6 Fed Proc, L Ed, Civil Rights, §§ 11:229, 322, 529.
7 Fed Proc, L Ed, Commodity and Stock Exchanges, § 13:116.
7 Fed Proc, L Ed, Condemnation of Property, §§ 14:286, 335.
7 Fed Proc, L Ed, Consumer Product Safety, §§ 16:55, 63, 108, 120.
10A Fed Proc, L Ed, Economic Development and Stabilization, §§ 27:125, 128, 229.

SC) 666 F2d 34 (disagreed with by United States v California Care Corp. (CA9 Cal) 709 F2d 1241, later proceeding (CD Cal) 600 F Supp 18, affd (CA9 Cal) 766 F2d 1342) and later app (CA4 S.C.) 784 F2d 554)) and (disagreed with by Dr. John T. MacDonald Foundation, Inc. v Califano (CA5 Fla) 571 F2d 328, cert den 439 US 893, 58 L Ed 2d 238, 99 S Ct 250 and (disagreed with by National Asso. of Home Health Agencies v Schweiker, 223 App DC 209, 690 F2d 932, cert den 459 US 1205, 75 L Ed 2d 438, 103 S Ct 1193 and (disagreed with by V.N.A. of Greater Tift County, Inc. v Heckler (CA11 Ga) 711 F2d 1020, reh den (CA11 Ga) 718 F2d 1115 and cert den 466 US 936, 80 L Ed 2d 457, 104 S Ct 1908) and (disapproved by Heckler v Ringer, 466 US 602, 80 L Ed 2d 622, 104 S Ct 2013 (diverged from by Bowen v Michigan Academy of Family Physicians, 476 US 667, 90 L Ed 2d 623, 106 S Ct 2133 (disagreed with by multiple cases as stated in Owens v Brock (CA6 Tenn) 860 F2d 1363)) as stated in Medical Fund-Philadelphia Geriatric Center v Heckler (CA3 Pa) 804 F2d 33) as stated in American Federation of Home Health Agencies, Inc. v Heckler (CA11 Ala) 754 F2d 896)) and (disagreed with by Gallo v Mathews (CA5 Fla) 538 F2d 1148 (disapproved by Califano v Sanders, 430 US 99, 51 L Ed 2d 192, 97 S Ct 980) as stated in Association of American Medical Colleges v Califano, 186 App DC 270, 569 F2d 101, 43 ALR Fed 466) and (disapproved by Weinberger v Salfi, 422 US 749, 45 L Ed 2d 522, 95 S Ct 2457) as stated in Springdale Convalescent Center v Mathews (CA5 Ga) 545 F2d 943 (disapproved by Bowen v Georgetown University Hospital (US) 102 L Ed 2d 493, 109

S Ct 468) and (disagreed with by Tallahassee Memorial Regional Medical Center v Bowen (CA11 Fla) 815 F2d 1435, cert den (US) 99 L Ed 2d 888, 108 S Ct 1573).

Suit challenging determination by fiscal intermediary as to reasonable cost reimbursable under Medicare Act to provider of services of extended care facility was not an unconsented suit against the government over which the District Court lacked jurisdiction. Schroeder Nursing Care, Inc. v Mutual of Omaha Ins. Co. (1970, ED Wis) 311 F Supp 405.

117. —Tax matters

Doctrine of sovereign immunity is inapplicable to bar action attacking Revenue Ruling as illegal act of Internal Revenue Service by plaintiffs alleging they are persons adversely affected and aggrieved within the meaning of the Administrative Procedure Act [5 USCS § 702], in that Administrative Procedure Act constitutes waiver of sovereign immunity and prima facie claim that acts by government officials are ultra vires prevents invocation of doctrine. Tax Analysts & Advocates v Shultz (1974, DC Dist Col) 376 F Supp 889, 74-2 USTC ¶ 13006, 34 AFTR 2d 74-5289.

For purposes of determining whether action falls within scope of 5 USCS § 702, court determines whether jurisdiction for nonmonetary relief has been specifically withdrawn by statute; 26 USCS § 7421 does not divest court of jurisdiction in suit to seek conveyance of property seized by IRS. Murray v United States (1984, DC ND) 585 F Supp 543, 84-2 USTC ¶ 9580, 54 AFTR 2d 84-5190, affd (CA8 ND) 751 F2d 271, 88-2 USTC ¶ 9411, 61 AFTR 2d 88-1245.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 392; Oct. 21, 1976, P. L. 94-574, § 1, 90 Stat. 2721.)

suit for declaratory judgment
 ible for suspension of deporta-
 Shaughnessy (1957) 352 US 599,
 77 S Ct 545.

urpose of procuring judicial re-
 trative order of Bureau of Land
 which denied applications for pa-
 n mining claims and canceled
 al entry is maintainable against
 nd Secretary of Interior is not
 arty to action. *Adams v Witmer*
 271 F2d 29, 1 FR Serv 2d 345.

rocess

t will dismiss petition seeking
 rtation order due to failure to
 Commissioner of Immigration
 ion, who was indispensable party
 Commissioner is only properly
 t where he resides and his "real"
 poses of litigation is in District of
 ovinnikoff v Miller (1950, CA3
 7.

order cannot be reviewed on peti-
 l review or habeas corpus under
 5 USCS § 703 since Commis-
 sion and Naturalization was
 arty to action and, even if named
 not have been served with pre-
 since his official residence is in
 olumbia. *Rodriguez v Landon*
 212 F2d 508.

int was labeled "petition for judi-
 abeas corpus" and complaint di-
 vrit of habeas corpus nor did
 pellant alien was in custody and
 complaint prayed for declaratory
 not appear from complaint the
 actual controversy between ap-
 named party before court, com-
 claim upon which relief could
 guez v Landon (1954, CA9 C

to brought suit because of
 Maryland federal housing admin-
 r finding him an unsatisfactory
 lowed to amend his complaint
 the jurisdiction of the federal
 under predecessor to 5 USC
 Federal Housing Administration
 256 F Supp 757.

proof

acks order of Interstate
 sion has burden of clearly
 establishing that errors of

law were committed which resulted in unreason-
 able or unjust order. *R-C Motor Lines, Inc. v*
United States (1965, MD Fla) 241 F Supp 124.

54. Timeliness of action

Although alien's administrative remedies were
 exhausted by order of December 21, 1954 in
 which Board of Immigration Appeals dismissed
 alien's appeal from deportation order, and com-
 plaint for declaratory judgment and injunctive
 relief was not filed until March 20, 1956, action
 will still be considered timely in view of failure
 of predecessor to 5 USCS § 703 to provide any
 time limit within which judicial review must be
 sought and since notice to report for deportation
 was dated March 16, 1956, and federal defend-
 ants have made no showing of prejudice result-
 ing from plaintiff's delay in filing complaint.
Petrovic v Holland (1956, DC Pa) 142 F Supp
 369.

Where defendant bank had been well aware of
 decision of Comptroller of Currency approving

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for
 which there is no other adequate remedy in a court are subject to judicial
 review. A preliminary, procedural, or intermediate agency action or ruling
 not directly reviewable is subject to review on the review of the final
 agency action. Except as otherwise expressly required by statute, agency
 action otherwise final is final for the purposes of this section whether or
 not there has been presented or determined an application for a declaratory
 order, for any form of reconsideration, or, unless the agency otherwise
 requires by rule and provides that the action meanwhile is inoperative, for
 an appeal to superior agency authority.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 392.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code
.....	5 USC § 1009(c)

Revised Statutes and
 Statutes at Large
 June 11, 1946, ch 324,
 § 10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable
 and the style of this title (5 USCS §§ 101 et seq.).

CODE OF FEDERAL REGULATIONS

Commodity Futures Trading Commission, implementation of the Equal
 Access to Justice Act in covered adjudicatory proceedings before the Com-
 mission, 17 CFR Part 148.

plaintiff bank's application for national banking
 charter but chose to take no action while orga-
 nizers of plaintiff bank were spending considera-
 ble time and money toward opening of new
 bank, and plaintiff made substantial changes in
 its economic position before defendants notified
 Comptroller of decision to seek judicial review,
 defendants were barred by laches from obtaining
 such review. *First Nat. Bank v Roeland Park*
State Bank & Trust Co. (1973, DC Kan) 357 F
 Supp 708.

55. Remand of proceedings to agency

In light of 5 USCS § 703, where District
 Court has power either to conduct trial de novo
 or remand to agency for further agency proceed-
 ings, such as in alien employment certification
 proceedings, better practice is to remand pro-
 ceedings to agency. *Secretary of Labor v Farino*
 (1973, CA7 Ill) 490 F2d 885.

5 USCS § 704, n 154

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he was entitled to be granted insurance under National Service Life Insurance Act since letter from Veterans Administration notifying plaintiff that his application for insurance had been rejected did not inform him of any administrative appeal nor could court find any provision for such review. *Unger v United States* (1948, DC Ill) 79 F Supp 281.

Since Veterans Administration regulations clearly provide right to administrative hearing before OFCC can impose any sanction as result

of VA's initial finding that company is not in compliance with equal opportunity clause in its contract, claims of company that appeal procedure in regulation subject it to threat of irreparable injury is far too speculative to avoid requirement in 5 USCS § 704 that exhaust its administrative remedies. *American Cyanamid Co., Lederle Laboratories Div. v Roudebush* (1976, SD NY) 411 F Supp 1220, 12 BNA FEP Cas 1147, 12 CCH EPD ¶ 11006.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 393.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
.....	5 USC § 1009(d)	June 11, 1946, ch 324, § 10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

CROSS REFERENCES

This section is referred to in 2 USCS §§ 501, 502; 7 USCS § 2143; 15 USCS §§ 78y, 1262, 1474, 3416; 16 USCS §§ 839f, 1855, 3636; 18 USCS §§ 843, 3625, 4218; 25 USCS § 954; 42 USCS §§ 5405, 7172; 50 USCS Appx. §§ 2168, 2412.

RESEARCH GUIDE

Federal Procedure L Ed:

2 Fed Proc, L Ed, Administrative Procedure, §§ 2:189, 198, 213, 214, 217, 218, 230, 235, 237, 243, 245, 255, 256, 258, 264.

4 Fed Proc, L Ed, Banking and Financing, §§ 8:107, 303

6 Fed Proc, L Ed, Civil Rights, §§ 11:229, 317, 322, 352.

7 Fed Proc, L Ed, Condemnation of Property, §§ 14:334, 335.

7 Fed Proc, L Ed, Consumer Product Safety; 16:55, 63, 76, 91, 108, 120.

10A Fed Proc, L Ed, Economic Development and Stabilization, § 27:128.

not constitute irreparable injury; (2) cost of compliance would have to be considered necessary business expense and not loss of profits serving as basis for assertion of irreparable injury; (3) threat of civil penalty was de minimis; and (4) appellees failed to prove that absent injunction pendente lite they would be subject to criminal sanctions. *A. O. Smith Corp. v FTC* (1976, CA3 Del) 530 F2d 515, 1976-1 CCH Trade Cases ¶ 60730.

29. Food and Drug Administration

Court will not issue preliminary injunction requested by drug manufacturer to enjoin approval of competitor's drug since public interest is best served by allowing FDA to interpret its own regulations and operate unimpeded by courts so long as it operates within legislatively delegated authority. *Glaxo, Inc. v Heckler* (1985, ED NC) 623 F Supp 69, later proceeding (ED NC) 640 F Supp 933.

30. Interstate Commerce Commission

Federal court will enjoin order of Interstate Commerce Commission allowing certain railroads to reduce rates on certain interstate shipments where record of proceedings before Interstate Commerce Commission, considered independently from plaintiff motor carriers' affidavits, demonstrate that if suspended rates were permitted to go into effect, plaintiff motor carriers could not be compensated for losses sustained and many might be forced out of business or into bankruptcy and to deprive motor carriers of opportunity to have action of ICC judicially reviewed and to obtain protection of court in maintaining status quo pending such review would give order of ICC preferred position which Congress did not intend. *Pacific Inland Tariff Bureau v United States* (1955, DC Or) 129 F Supp 472, supp op (DC Or) 134 F Supp 210.

31. Postal Service

Notwithstanding invalidity of interim order of Post Office Department impounding, without notice or hearing, petitioner's mail on ground of unlawful use of mails, no relief from such order,

pending petitioner's appeal to Court of Appeals from adverse decision of District Court, will be granted by Circuit Justice, where Department of Justice advises that final administrative order on legality of petitioner's use of mail will be made shortly, since this order, if adverse to petitioner, can be reviewed by Court of Appeals and any mail intercepted under interim order will be kept separate from other mail until judicial review is had. *Standard v Olesen* (1954, US) 98 L Ed 1151, 74 S Ct 768 [per Douglas, J., as Circuit Justice].

Preliminary injunction directing interim detention of plaintiff's mail by Postal Service is proper in action seeking judicial review of Postal Service administrative decision which found that plaintiff had obtained monies through United States mails by false advertising and issues stop mail order in regard thereto. *Baslee Products Corp. v United States Postal Service* (1973, DC NJ) 356 F Supp 841.

Although Postal Reorganizational Act provides in 39 USCS § 410(a) that Postal Service is not subject to judicial review provisions of Administrative Procedure Act (5 USCS § 705), yet Postal Reorganizational Act does preserve, by 39 USCS § 1005(a)(1), to preference eligible veterans employment rights and procedures accorded them by 5 USCS §§ 7501 et seq.; those rights which accompany reduction-in-rank decision presumably are protected by right to judicial review pursuant to Chapter 7 of Title 5, including issuance of injunctions under 5 USCS § 705. *Lester v United States Postal Service* (1979, DC Ariz) 465 F Supp 545.

32. Securities and Exchange Commission

Jurisdiction of federal court to entertain suits to enjoin SEC investigation is predicated on allegations to effect that SEC "has plainly exceeded its statutory authority or threatens irreparable injury in clear violation of individual's rights". *International Waste Controls, Inc. v SEC* (1973, SD NY) 362 F Supp 117, CCH Fed Secur L Rep ¶ 94111, affd (CA2 NY) 485 F2d 1238.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and

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(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (D) without observance of procedure required by law;
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Sept. 6, 1966, P. L. 89-554, § 1, 80 Stat. 393.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC § 1009(e)	June 11, 1946, ch 324, § 10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title (5 USCS §§ 101 et seq.).

Other provisions:

Abbreviation of record. Act Aug. 28, 1958, P. L. 85-791, § 35, 72 Stat. 941, which authorized the abbreviation of the record on the review or enforcement of orders of administrative agencies and review on the original papers, provided that: "This Act [for full classification of this Act, consult USCS Tables volumes] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [5 USCS §§ 551 et seq.]."

CROSS REFERENCES

- Power to prescribe departmental regulations, 5 USCS § 301.
- Rules, opinions, orders, records, and proceedings to be made public, 5 USCS § 552.
- Proceedings constituting rulemaking, 5 USCS § 553.
- Proceedings constituting adjudications, 5 USCS § 554.
- Actions reviewable by court, 5 USCS § 704.
- Record on review and enforcement of agency orders, 28 USCS § 2112.
- Review of orders of certain federal agencies, 28 USCS §§ 2341 et seq.
- Applicability of this chapter to Postal Service, generally, 39 USCS § 410.
- Applicability of this chapter to proceedings relating to nonmailable matter, 39 USCS § 3001.

Alaska Legislative Digest

An Inside View of Alaska Policy

PUBLISHERS:

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Business Office: 349-7711

3037 South Circle

Anchorage, AK 99507

Fax: (907) 522-1761

April 3, 1992

No. 12/92

Revenue: No state bond capacity from now to "political forever"

Department of Revenue last week painted a gloomy picture for the Senate HESS Committee on the state's ability to issue general obligation bonds either this year, or virtually at any time running up to the year 2000. What the DOR projection did was ring the bell that echoed jeopardy for the state's favorable "Aa" bond rating. But the hollow forecast also conjured up the question of what a bond rating is worth if you can't "use it" for bonding? The forecast of debt capacity measured against revenue forecasts injects some real questions and concerns over the advisability of attempting G.O. bonds for capital construction in 1992. In a letter to House Finance Co-Chair Mike Navarre, Revenue Commissioner Darrel Rexwinkel provided three revenue scenarios measured against low, mid, and high range revenue scenarios. Using a general guideline of state debt payment at 5% of unrestricted revenue, the mid-case scenario showed only limited debt capacity, totalling only several hundred million dollars for only one year (1997) between now and the year 2000.

Designed to cool the rush to bond ?

The projection is a dash of cold water on the possibility of bonding for a portion of the state capital budget this year. The DOR message suggests the state can forget about bonding until the next century, but it's a thesis that doesn't quite ring right. Some legislators say the commissioner's projection is designed to cool legislative interest in bonding for 1992. But they also say they would not be surprised if the administration has a bond plan of its own, and, at some point, would move to accept legislatively-inspired bonds, conditioned on their being collateralized by some kind of debt fund that resembles the governor's past debt proposals. A collateral fund might allow the state to do limited bonding without jeopardy to the state rating, and allow the governor to claim something resembling a "win."

State rating is of value "to others"

A valid consideration posed by the department is the value of the State's "Aa" rating to subsidiary state institutions and financing authorities, as well as to local governments and their related financing authorities.

(Continued on page 8)

In this Week's Digest

Is there a strategy on school funding
for gubernatorial vetoes?Page 2

Status of BillsPages 4 & 5

Non-crude liability agreements
may be nearPage 7

Motor fuel dedicated fund, is it
fuel for a deal ?Page 6

Water fees and instream flow, could
they "get married"?Page 7

Is the big move on gas just that ?

Legislators are trying to make sense out of
Hickel's big pronouncement on natural gas,
but are wary that again it is "another speech
in search of substance". . . . See Page 8.

... Local Government ...

Retirement Incentive will happen: House State Affairs last week approved CSSB-337, authorizing reopening of the retirement incentive program for state, municipal, school, and university employees. The bill is now in Judiciary, which is expected to schedule the bill soon.

SB-394: School counseling grants: Passed the Senate, and now in House HESS. Provides for funding of local district pilot counseling programs with grants of up to \$50,000 and for up to three consecutive years.

Other School Bills: HB-314, school district cooperative grants moved from Senate HESS to Senate Finance. SB-430: Qualifications of teachers, teacher loan fund, moved to Senate Rules. HB-326: Requirements Limited Teacher Certificates, has passed House and is now in the Senate.

TRS cost Bills: HB-471 (Ellis) appropriating for additional costs of districts for teacher's retirement funding (TRS) is in House Finance. HB-485, requiring again a state contribution to TRS, is also in House Finance. Similar bills by Sen. Duncan, SB-425 and SB-426, are still in Senate HESS.

House Budget Schedule

The House will pass its version of the fiscal 1993 operating budget if it meets the schedule laid out by the leadership. The Finance Committee is expected to send the roughly \$2.2 billion spending package to the floor by April 8, with a House reconsideration vote coming on April 10. Ordinarily, the lengthy floor amendment attempts, a traditional minority strategy, might see completion of House operating budget work on the 89th day of the session. But things may be different this year.

Instead of House Republicans fighting to cut the Democratic majority's proposal, lawmakers of all stripes could may be attempting to return their district's axed spending items to the bill. *The goal of a \$200 million spending reduction, agreed upon by the administration and legislative leadership, was losing supporters in the House as actual cuts were made in specific programs.* A closed House majority caucus, March 7, stretched for four hours, with some lawmakers pushing for only a \$100 million cut.

CSHB-50 Supplemental passes: A \$60-million FY-92 supplemental funding bill is headed for the governor after a floor fight in the House to accept the Senate version. The Senate deleted roughly \$9-million in House funding, attempting to keep the bill to major supplemental items. The deleted funds were largely funds for service non-profits vetoed last June by Gov. Hickel, and which the House was trying to restore. The Senate reasoned that most of those cuts had been largely adjusted for, and felt funding emphasis should be to maintain funding for non-profits in the new FY-93 budget.

Key supplemental items:

\$19.9-million for school foundation.

\$16.3-million for aid dependent children.

\$15.5-million oil & gas litigation

School Funding Strategy

There is, of course, no announced strategy on school funding. But as budgets are closed it appears likely we will not see the School Foundation appropriation in the budget, and that it will materialize as a separate bill. House Finance has vehicles, such as HB-50, in place; Senate Finance has SB-20. *Meanwhile SB-7, the \$63,000 authorization, is floating in limbo between the House and Senate, which means it can be moved on to the governor in a flash.*

When will there be action? Of course, the answer is "when the time comes." But that is likely somewhere around April 20, leaving time for Hickel's veto clock to run out prior to adjournment of the Legislature May . There may, or may not, be a fight over a veto because the bills will arrive on the governor's desk when he also has bills in motion that he wants. If there is a veto, SB-7 will require two-thirds to override. But the appropriation will require a tougher three-fourths.

HB-516, Tenure/RIF: HESS hearing on HB-516 was delayed until this week, in part because school superintendents will be in town.

Will BIDCOs transplant to Alaska ?

A new form of financial institution showing signs of success in Michigan could be transplanted to Alaska through a bill now under consideration in the House. BIDCOs, Business and Industrial Development Corporations, are proving themselves in Michigan as a private sector entity that fills the gap between the conservative lending policies of commercial banks and the high risk/high gain field of venture capital. The creator of BIDCOs, Steven Rohde, a career financial consultant with experience in federal and state government and the private sector, readily conceded at a House Labor & Commerce hearing that BIDCOs haven't been around long enough to be termed a proven success. Nine BIDCOs now operating in Michigan are doing well and two more are coming on line soon. Rep. Bettye Davis (D-Anch.) is sponsoring legislation to establish BIDCOs in Alaska. Her 35-page bill is undergoing major changes to customize it to fit Alaskan circumstances, and is scheduled for another session April 9 before the Labor & Commerce Committee.

The state would license and regulate BIDCOs

HB 536 would allow the Department of Commerce & Economic Development to license BIDCOs. Under the terms of Davis' original bill, a BIDCO license applicant must demonstrate proof of a net worth of at least \$1 million in specified securities, although the department would have the authority to reduce the net worth requirement. The requirement may also be satisfied by demonstration of firm financing commitments indicating the applicant will have the proper net worth when business transactions begin.

Rohde emphasized the need for well trained and experienced officers of BIDCOs, able not only to properly manage their institution but provide clients with hands-on consultation to the point of being "figurative" partners. Typical BIDCOs have three full time managers. BIDCO target clients are small and medium size businesses with "moderate risk" proposals, Rohde said. A salient feature of BIDCOs is a "very entrepreneurial" management style focusing on future, rather than immediate, profits. Among the incentives to achieve these goals is the ability to convert BIDCO loans, granted at nine percent interest in Michigan, to grants based on proven ability to create jobs and increase sales. Credits would range from \$500 to \$2,500 per year for each job created according to a specified formula. *(Continued on page 6)*

Anchorage School Crisis: A strike May 1st ?

The Anchorage school strike situation has taken an unhappy turn. Teachers are reportedly angered by the arbitration report and by press reports on those reports. The teachers are also angered about a 10% settlement with principals. The arbitration report generally favored teacher salary positions, but made only a finding for 7.5% spread over three years, based on uncertainty of the district's revenues. Teachers say this may not match inflation for those three years, and that the union will be leaving accrued COLA losses dating to 1987, and before, on the table. Oddly, if binding arbitration were in place, teachers would be compelled to accept the arbitration finding. Ironically, teachers had proposed, as an initial offer in negotiations, that the district and union agree to binding arbitration in event of impasse. The district refused. Now it looks like Anchorage teachers may be falling into a kind of spontaneous momentum where a strike is inevitable. Some 2,000 Anchorage teachers crowded into Egan Convention Center a week ago, and the mood seemed to indicate that what had previously been some uncertainty within teaching ranks had now shifted to consensus. However, since teachers are now under PERA, they will have to follow an established labor procedure, taking a formal strike vote before they can strike. If a strike occurs it may happen about May 1st.

... Status of Bills ...

House Committee Action

--SB-334: Re: NatPetroleum Reserve, spl. revenue fund (from Senate).....To FIN
 --SB-340: Prohibit employers discriminate legal use products off workTo HESS, L&C, JUD
 --HB568: Re: Appointment of person administers work comp (JUD)To L&C & SA
 --HJR-84: Confirmation of head Division of Insurance (JUD)To L&C, JUD, FIN
 --HB-569: Regulations implement longevity bonus program (Admin review Com)To SA & JUD
 --SB-125: Re: Pharmacies located outside the state (passed Senate)To HESS, L&C, FIN
 --SB-442: Exempting certain comm health aides from overtime law (passed Senate)To L&C

House Committee Action

--HB-99: Require equal pay work of comparable worth (FIN "Mixed rec")To RLS
 --HB-305: Repeal sections that would repeal mandatory auto Insurance (FIN "do")To RLS
 --HB-348: Group life/health self insurance by employees (SA CS "do")To JUD
 --HB-350: Certain home rule/unified cities provide areawide police (CRA "do")To JUD
 --HB-426: Work comp students in uncompensated wk-study (JUD CS mix)To RLS
 --HB-437: Practice naturopathy (FIN CS "mixed rec")To RLS
 --HB-465: Recycle & manage solid/hazard waste by agencies (SA "no rec")To FIN
 --HB-510: Criminal offense against disabled and elderly (JUD CS "do").....To FIN
 --HB-511: Re: Public home care providers (JUD CS "mixed")To FIN
 --HB-534: Re: Civil and human rights (SA CS "do").....To JUD
 --HJR-13: require candidate governor received 40% of vote (JUD CS "do")To FIN
 --HJR-76: Propose amend constitution rights of victims (JUD CS "do")To FIN
 --HB-369: Price paid to fishermen for salmon (RCS "no rec")To L&C
 --HB-460: Advisory vote on statewide health care (HESS CS "do").....To SA
 --HB-490: Possession fish & game, aquatic plants (JUD CS "do")To RCS

Bills Introduced in House

--HB-492: Collateral offered village corporation under ANILCA (L&C CS "do")To FIN
 --HB-398: Require disclosure in real estate sales, (JUDCS "no rec")To RLS
 --CSSB-33/: Retirement incentive program public employees (SA "do")To JUD
 --HB-426: Worker comp coverage work-study students (was in Rules)added FIN referral

House Floor Action

--CSHB-155: Remodel facilities make accessible handicapped andelderlyPassed 40 to 0
 --HB-447: Require person under 13 wear floatation devicePassed 38 to 0
 --CSSB-261: Re: Pub Safety adopt regs conform fed on com vehicle operators.....Passed 40 to 0
 --HB-52: re: Support for children not minors & their representationPassed 30 to 0
 --HB-326: Requirements limited teaching certificatesPassed 33 to 0
 --CSHB-393: Taking of fish and game by proxy for disabled.....Passed 31 to 7
 --HB-433: Increasing total number Superior Court judges 30 to 31Passed 38 to 0
 --HB-454: Re: Transfer of ownership of a motor vehicle (held third reading until April 1)
 --HB-445: Required alcohol server education by licencee & staff(Held thrid reading to April 1)

Heard in the halls

One of the things that really put fire behind last week's SB-16 override vote were letters from the National Right to Work Committee urging support of the governor's veto. This brought general labor full force into the fray. Indications are that this "letter" is now being used as a rallying flag by labor to fire up union local members.

Rumors now are that the Alaska labor movement as a whole may use a teachers strike, should it happen, as a vehicle for demonstrating unity and muscle in the labor movement .

... Status of Bills ...

Bills Introduced in Senate

--SSSB-267: Notice Bd Fisheries, re: moratorium fishery entrants (Zharoff) To RCS
 --HB-155: Facility & vehicle accessibility for the disabled (passed House) To FIN
 --HB-326: Requirements limited teacher certificate, define teacher (passed House) To HESS, FIN
 --HB-324: State procurement preference for persons disability (passed House) To SA, JUD, FIN
 --HB-393: Taking of fish and game by proxy for disabled (passed House) To RCS & JUD
 --HB-443: Increasing superior court judgeships 30 to 31 (passed House) To JUD & FIN
 --SB-461: Establish University Alaska Office Public Safety (JUD) To HESS & FIN
 --SB-462: Re: Certain actions result malpractice by physician (HESS) To JUD
 --SB-463: Burden proof against physician in civil actions (HESS) To JUD

Senate Committee Actions

--SJR-40: Identified hydro sites, energy transmission, SE-Alaska (RCS CS "do") To RLS
 --SB-373: Loan guarantee program assistive technology (HESS CS "do") To FIN
 --SB-394: Ak school counseling grant program (FIN "do pas") To RLS
 --SB-412: HSS program for designation safe homes runaway minors (HESS CS "do") To FIN
 --SB-447: Earthquake safety plans, procedures in schools (HESS "do") To FIN
 --SB-109: Re: Time for filing certain civil actions (TRANS "do pass") To L&C
 --SB-448: Sale of Kuparuk River royalty oil to Petro Star Valdez venture (RCS "do") To FIN
 --SB-449: Transfer limited entry permit re: judicial execution (JUD CS "do") To RLS
 --HB-247: Licensure of dentists, including by credentials (HESS CS "do") To RLS
 --HB-376: Re: Rights of victims crimes, guilty by insanity (JUD "do") To RLS
 --HB-385: Re: Video display terminals (SA "do pass") To L&C
 --SB-443: Subsistence taking of fish and game (RCS "mixed recs") To JUD
 --SJR-5: Constitutional amend confirm members Perm Fund Bd (JUD "do") To FIN

Senate Committee Actions

--SB-323: Substance abuse certain persons licensed under law (FIN "do") To RLS
 --SB-391: Impaired public drinking water, alternate (FIN "do") To RLS
 --SB-430: Qualifications teachers, teacher loan fund (FIN CS "do") To RLS
 --SB-440: Issuance sport fishing, hunting license, suspension other state (RCS "do") To JUD
 --HCR-23: Creation School Foundation Task Force (HESS "do pass") To RLS
 --HB-128: relating to the Office of Municipal Clerk (CRA CS "do") To RLS
 --HB-314: Est. Cooperative grant program school districts (HESS "do") To FIN

Senate Floor Action

--SB-125: Re: Pharmacies located outside of the state Passed 14 to 0
 --HJR-48: Re: Pan American energy alliance Passed 18 to 0
 --SB-442: Exempt certain community health aides from overtime law Passed 16 to 1
 --HB-50: State supplemental appropriation bill Passed 13 to 4
 --SJR-40 Re: Energy transmission and surface transportation, SE-AK Passed 15 to 0
 --SB-245: Purchases by state heavy equipment, trucks (returned to Finance)
 --SB-119: Exemption regional elec authorities taxes & assessments Passed 16 to 0
 --SB-394: Create school counseling program grant fund Passed 15 to 1
 --SB-449: Transfer limited entry permit due to judicial execution Passed 16 to 0

Heard the in Halls ...

Miners' groups are pressing the administration to accept an alternative mental health lands settlement that would end environmental litigation. The idea is also picking up steam in the legislature. Also on coal: The administration is floating the idea of a temporary rail rate subsidy for coal exports, hoping to retain a Korean sales contract.

... Business ...

Is the fuel tax dedication "bargainable?"

The proposal for a constitutionally dedicated motor fuel tax, HJR-23, By Sen. Lloyd Jones, has made it to Senate Finance Committee. The measure is also a priority of the Hickel Administration. Mustering the necessary two-thirds vote required for a constitutional amendment will not be easy, especially in the House. The dedication is generally acknowledged as preparatory to capturing a major increase sometime in the future in the state motor fuel tax, money needed for DOT transportation maintenance and improvements. The amendment must buck a general philosophy among lawmakers, and one ingrained in the state constitution, that is counter to the idea of dedicated funds.

Despite all that, HJR-23 is now in position where it could find enough friends in the closing days of the session, especially if the governor "plays some poker".

SB-355, Development Districts: This legislation by Sen. Sturgulewski continues the ARDOR program, which provides annual grants to development districts around the state that facilitate private and public development initiatives. The bill has moved to House Finance, almost assuring passage.

Small items to watch: These small bills that can affect business. Impacts may not be substantial, but business people take notice. SB-363 will probably pass this year, requiring posting of notices regarding sexual harassment. HB-441, relates to the disclosure of employers of information about past employees, and has passed the House. House Labor and Commerce Committee submitted HB-570, providing protection for both public and private employees who "blow the whistle" on their employers. Another bill moving along, CSHB-445, requires 'alcohol server' education.

BIDCOs in Alaska (Cont'd)

(Continued from page 3) The bill would allow the Alaska Industrial Development and Export Authority (AIDEA) to make loans for capitalizations of BIDCOs. BIDCOs have created "thousands" of new jobs in Michigan, Rohde said. Another longer term incentive allows a BIDCO to receive a warranty to acquire stock in a client company, providing the opportunity for greater profit as its efforts prove fruitful.

HB-398: Real estate disclosure

Legislation requiring buyers of real property to be provided with a disclosure list noting the status of structures, utility systems, major appliances and other features is poised for a final House passage vote.

HB 398, sponsored by Rep. Pat Parnell (D-Anch.), was passed out of the House Judiciary Committee, March 30. Failure of the seller or his real estate agent to provide an accurate statement would, in itself, not be grounds for termination of a sales agreement, but the owner and/or agent would be liable for actual damages discovered after the sale if pertinent information were negligently omitted from the statement. Willful omission would result in triple the actual damage amount.

CSHB-328: New notice for "changed regs"

The House Finance Committee is wrestling with Rep. Dave Donley's CSHB-328, which would require supplemental public notice and review when an agency substantially changes proposed regulations from the form of their original public notice. Legislators like the general concept of what Donley is trying to do, but are concerned that the already painful slow regulatory adoption process will be further bogged down. On one side, there is the problem of agencies substantially overreaching their authority and pushing changed regulation into law with little review and notice of these "later alterations." On the other side is concern over how additional notice would function when hard deadlines are confronted.

The Donley measure already seeks to deal with some of those hard deadlines, exempting the Board of Fisheries, of Game, Commercial Limited Entry Commission, certain emergency regulations, and regulations necessary to meet federal requirements and deadlines. Another problem is that the bill would require new notice when proposed regulations are "substantially changed." The Department of Law claims that while the intent of such language seems clear, that they would have to advise agencies to take a conservative approach. This would mean, a Department of Law spokesperson said, that if there is doubt the regulations would have to go through the "re-notice process." However, a cog in the regulatory wheel also appears to be the Department of Law itself, which does not necessarily provide the review of regulation a high work load priority.

... Resources ...

Water fee bill is amended, moved

Legislation allowing the state to begin selling its water moved out of the House Labor and Commerce Committee last week after addition of an amendment that would require the state to pay parties that return water to a stream cleaner than it was when removed—a reference to placer miners. Other amendments set up a closely controlled system under which water rights for export sale are not transferrable, although the sale contract itself is. HB 550, proposed by Gov. Hickel, was substantially amended by the committee during four hearings. The bill now limits water use fees to a maximum of \$1 per acre foot (325,851 gallons) per year for nonconsumptive uses of more than 50 acre feet annually. Exempted from the fee are state agencies, non-profit organizations, municipally owned or operated hydroelectric plants and users of less than 50 acre feet per year. Under amendments developed by Rep. David Finkelstein (D-Anch.) water intended for sale by the state would first be appropriated to the Department of Natural Resources, in effect removing it administratively from the common property category.

Current law requires DNR only to consider whether the appropriation's effect on fish or wildlife habitat. Finkelstein's amendment also declares that water rights appropriated for sale are not transferrable. He and DNR Water Division Director Ric Davidge assured Republicans Robin Taylor, of Wrangell, and Jim Zawacki, of Girdwood, that the intent of the amendment would not mean the loss of a water right if a business were sold. Taylor's own amendment put an entirely new twist on the bill. It allows DNR to refund water use fees, or provide credits against future fees, to users who return water to a stream in a condition "more suitable for human consumption" or fish and game habitat than when it was appropriated. Zawacki suggested that the same inspection system used to find water polluters could be applied for the rebate system. No figures were available on the cost of such refunds to the state. The bill is now in House Resources.

A deal on water bills? Water legislation sponsored by Rep. Cliff Davidson, but opposed by the administration, would assure sufficient flows of water would remain in a lake or stream to protect fish and game. A deal allowing both water bills measures to become law is becoming possible as the session end approaches.

SB-405: Non-crude liability deal: Reports are that a compromise is being fashioned on the non-crude carriers liability problem. SB-405 will probably soon move out of Senate Oil and Gas providing for a two-year waiver from the strict-liability features of the spill liability law. Indications are that House Oil and Gas has concurred in the deal, which means the bill will probably now move along swiftly.

Pacific Ocean Compact bills moving

Bills that would join Alaska in an ocean pollution control compact is moving fast in both bodies. SB 102, prepared by Sen. Sam Cotten's Senate Oil & Gas Committee, and HB 135, sponsored by Rep. Cliff Davidson would allow the Pacific Ocean Resources Compact to takeover federal enforcement authority for protection of U.S. waters from spills of petroleum products and other hazardous substances. Compact members would include California, Washington, Alaska, Hawaii and Oregon, which has already passed the bill, and British Columbia as either an advisory or fully participating member.

The Southeast Alaska Petroleum Resource Organization (SEAPRO), a Ketchikan-based cooperative of oil users, and Sitka-based Samson Tug & Barge Co., Inc., both noted that cruise ships, some carrying one million gallons of heavy bunker oil, would not fall under the control of the compact, nor would large fishing industry vessels such as processors or tenders. They also suggested that the compact should have jurisdiction over vessels smaller than the 5,000 gross weight tonnage minimum set in the bills. Samson Tug expressed concern with route specification, and possible prohibition from nighttime use of some transit points. SEAPRO also noted that non-crude products such as kerosene or gasoline, which evaporate with relative speed, are far less threatening to the environment than crude oils. However, they also note that Bunker C oil, and even asphalt, are "non-crude" products but could be highly damaging to the environment. SEAPRO suggests adoption of industry references to "persistent" and "nonpersistent" with reference to the threat to the environment. HB 135 is now before the Resources Committee. SB 102 is before the Senate Finance Committee.

A good state bond rate is of value to local institutions

(Continued from page 1) The quality of the state's rating does have a valid relationship to the ratings of these other institutions. Oddly, this means the state's lack of current bonding is purported to improve the ability and quality of these others to issue bonds—but the state itself can't bond. But does this make sense? The DOR forecast may be shaded on the gloomy side, but it undoubtedly presents a valid thesis in a broad relative sense. Obviously at some point the state must again use managed debt to construct needed facilities, and more important, maintain existing facilities. The state now has a sizable physical plant, and significant portions of that plant are also now of some extended age. It takes some kind of annualized capital outlay just to take care of the state's own existing plant? What's the bill for that? We're not sure, but it would not surprise us if the annual cost is in the range of \$200-million just for direct state plant. This means a state capital budget should start at about \$200-million before meeting new demands. If we take the DOR projection of capacity at face value, the question may not be so much whether we bond, but rather when. If the state's rating is really of value to subordinate financing institutions and authorities, then the state might consider a delay in issuing bonds. However, sooner or later the state will have to consider that "when" has arrived, and consider the reality of issuing debt despite a penalty in rating.

How much does moral pledges for school debt limit state capacity

Another interesting feature outlined in the DOR letter was that the state's capacity, measured as a percentage against unrestricted revenue, includes the state's "moral" pledge of debt for school bonds. Now, this means that a community, take Ketchikan for example, issues school bonds and runs its debt capacity up close to the limit. Then the state pledges to support that same debt as a moral pledge, pushing the state's capacity also to the hilt. While bond rating services certainly need a reliable picture of many kinds of state fiscal obligation, the assignment of debt burden to both governments seems like a bit of double-entry in computing debt capacity. If the state does suffer the "full capacity" burden of moral pledges to local debt, it would seem like the state just as well put that debt to a statewide vote and absorb the debt as a G.O. obligation. This would at least allow the local government to reclaim debt capacity. In many respects local school bond debt is "double-barrel" backed debt. It has the legal full faith pledge of the local government, and the support of revenues provided by the state. We also issue state veterans' housing bonds that are commonly called double-barrel—supported by a state full faith pledge and the income stream of the housing. As we understand it, this double-barrel situation is, oddly, treated the other way in assessed in computing state capacity. -- By Mike Bradner

Heinze: Hickel's new gas man!

Governor Hickel has left lawmakers wondering with two major announcements this week. One was that the state should abandoned its competitive oil and gas leasing system in favor of some kind of "free entry explore and develop" approach. Such talk makes nice grist for a speech, but appeared to be met with skepticism by lawmakers. Next, Hickel declared some kind of initiative to boost the opportunity for an Alaska natural gas pipeline to tidewater—for export to the far east. Hickel, a former part owner in the Yukon-Pacific gas line project, announced he was moving Natural Resources Commissioner Harold Heinze to be a "point man" on getting the gas pipeline project going. Lawmakers are a bit skeptical of the move, for two reasons. First, gas line opportunities will depend on far east market conditions bring North Slope gas owners and Far East buyers together. Next, rumors have been running in Legislative halls for the past several weeks that Heinze was in trouble, and would be moved. One report had him replacing Charlie Bussell at the energy authority. So, the move to be "the gas man" has lawmakers wondering if the big commotion over gas just isn't to make a new spot for Heinze. But others point out that Heinze is well backgrounded for such a project. His former employer, ARCO, is one of the three big North Slope gas owners. ARCO showed some interest in far east gas exports in years past, but after intensive study, the company now feels the feasibility of a gas pipeline is well into the next century.