

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7546 SENATE LABOR & COMMERCE**

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. An action or decision of the  
31 compact may not be approved unless the action or decision receives a majority of the votes of

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

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## ARTICLE VIII

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### SUPPORT AGENCIES

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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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## ARTICLE IX

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### PARTIES' POWERS UNDER 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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## ARTICLE X

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### ABSENCE

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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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## ARTICLE XI

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### FUNDING

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

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

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(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.

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

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## ARTICLE XII

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### WITHDRAWAL FROM COMPACT

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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.

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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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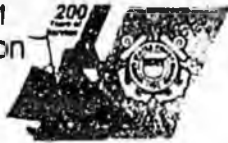
WORK DRAFT

WORK DRAFT

1 legislature.

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

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

03/19/91

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

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

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

#### BENEFITS

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

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

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

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

#### TECHNICAL DEFICIENCIES

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

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

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

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

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

#### OMISSIONS

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

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

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

Many of these ships carry large quantities of heavy fuel oil which looks and acts much like crude oil. These ships proceed into some of the most sensitive habitats in our state, through difficult navigational areas, with the added pressure of keeping precise time schedules. None of these ships have contingency plans, none have adequate pollution response or control equipment, none have adequately trained spill response personnel, and all are capable of protecting themselves from legal claims arising from a ship casualty. Of course none of us will be all that concerned with environmental protection when one of these ships goes to the bottom endangering the lives of 800 visitors to our state, but oil pollution will be a by-product of such a tragedy. You are courting disaster by not recognizing this threat and planning accordingly.

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

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

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

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

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

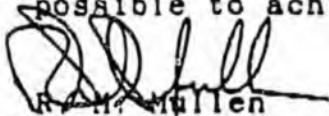
If you judge the threat to the environment by the relative persistence of the product, you can see how foolish it is for the state to treat oils of relatively equal persistence as a lesser threat than "Alaskan" crude oil. Yet this is exactly the situation created by the wording of HB 587. This is another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

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

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

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

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

  
R. M. Mullen  
Manager

# Samson Tug & Barge Company, Inc.

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

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

March 14, 1991

Dear Senator Cotten:

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

This bill, as with HB 567 of 1990, fails to recognize the largest potential for a major oil spill in Alaska or members of the compact. Certainly the Exxon Valdez made an impression, but historically how many tankships have had major spills in the last 12 years? How many large freight vessels and foreign flag passenger vessels have had major spills? A review of U.S. Coast Guard records will show a very real list. In Southeast Alaska and the nearby Canadian waters in recent years - the Lee Wang Zin, the Sundancer, the North Star, just to name a few who have grounded and spilled oil into the water. No, they are not carrying crude oil, but they all carry and use heavy bunker oil (persistent). Some of the old and the majority of the new foreign flag passenger vessels carry in the neighborhood of 1,000,000 gallons of this heavy oil. During the summer they transit throughout Southeast Alaska, Prince William Sound, Seward, and into Anchorage. They do not have onboard any major oil response equipment.

Scenario: At 0200 on a summer morning the foreign flag passenger vessel Rotterdam grounds on a charted pinnacle in the vicinity of the entrance to Glacier Bay, Alaska. Two fuel tank compartments have been holed and heavy bunker oil is leaking. Weather is Southeasterly winds 30 kts with gust to 40; tide is flooding. There are 1200 passengers onboard and the vessel has a 15 degree list.

With this scenario, we have search and rescue - 1800 persons (passengers and crew) in jeopardy, a grounded vessel that may or may not be salvageable, oil in the water and the potential for a lot more oil. They have no C-Plans, no response equipment, no trained personnel to respond, and minimum liability insurance for clean-up. This oil will be around for a long time and the impact will be tremendous and so will the public outrage. Why aren't these vessels required to comply will be the question?

Other oceangoing freight vessels, including fish processors, visit ports year round from Ketchikan to Dutch Harbor and the Pribilofs. These vessels meet the minimum federal pollution prevention regulations but carry very little oil response equipment onboard. If one of these vessels grounded, there would be little to no containment of heavy oil by the spiller.

The above noted vessels need to be added to the definitions under Article II and they need to be regulated, as they are the biggest threat to the waters of Alaska and the members of the compact.

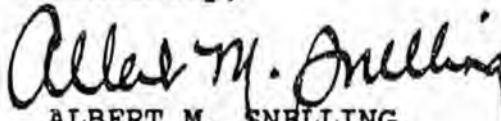
ADEC appears unwilling to acknowledge these vessels as potential threats, but the compact should, because they are threats.

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

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

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

Sincerely,



ALBERT M. SNELLING  
Safety Officer

cc: Senator Eliason

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DRAFT**

*MOVES STATE AUTHORITY  
TO ADVISORY WITH ERDS*

**PROPOSED AMENDMENTS TO**

**Senate Bill 500**

Sponsored by Senator BRADBURY; Senators BRENNEMAN, COHEN, GOLD, KITZHABER, SPRINGER, Representatives JOSL 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 enacted.

## SB 500

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) Enhanced 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.

## ARTICLE II

Definitions

27 As used in this compact:

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

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

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

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

42 (5) "Oil" means crude petroleum oil and any other hydrocarbons regardless of gravity, which  
43 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.  
11  
12

13  
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 before adoption of this compact

39 and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in ef-  
40 fect at the time the compact initiates its requirements under this subparagraph.

41 (d) Establish and maintain an informational clearinghouse related to spill response, including a  
42 directory of personnel, equipment, technical expertise, organizations and other resources available  
43 to assist as part of a regional oil or hazardous substance spill response.  
44

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

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

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

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

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

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

17 (k) Request the United States Coast Guard to enforce or assist in the enforcement of any regu-  
18 lations adopted by the compact.

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

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

26 (a) Accept grants and gifts.

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

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

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

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

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

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

39 (h) Appoint technical and advisory committees for the purpose of advising the compact on re-  
40 gional ocean resources issues, data needs and format and other purposes related to the compact's  
41 activities. A technical or advisory committee appointed by the compact shall not be subject to the  
42 provisions of the Federal Advisory Committee Act (P.L. 82-463, as amended).

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

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

#### ARTICLE VI

##### Pacific Ocean Resources Compact Organization

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

#### ARTICLE VII

##### Voting and Quorum

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

#### ARTICLE VIII

##### Support Agencies

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

#### ARTICLE IX

##### Parties' Powers Under Compact

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

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

3 ARTICLE X

4 Absence

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.

7 ARTICLE XI

8 Funding

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.

18 ARTICLE XII

19 Withdrawal from Compact

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

**DRAFT**

SB 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

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

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

ARTICLES	SB 500	SB 500 AMENDMENTS
<p>Article V: Pacific Ocean Resources Compact Authority</p>	<p>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.</p> <p>One contingency plan per vessel submitted to compact.</p> <p>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.</p> <p>Compact may issue subpoenas.</p>	<p>Amended to be consistent with Federal Law.</p> <p>Submission of one contingency plan clarified; compact supersedes all other contingency plans; one plan per vessel.</p> <p>Adds sec.1(a) (A) and (B) to Article V: Gives Compact elevated standing with respect to Coast Guard rule-making regarding routes, crews and equipment. Compact has ability to (A) request initiation of rule-making and (B) respond to Coast Guard Rule Making.</p> <p>Adds Sec. 1 (a) (C): Gives Compact authority to make recommendations to state, federal and other appropriate authorities.</p> <p>Sec. 1 (L) added: Compact has authority to assess fees. Sec. 2:</p> <p>Compact "may" do the following: (e) and (f) added: 2.(e) Compact may establish cost recovery plan.</p> <p>2.(f) Compact may establish uniform level of proof of financial responsibility.</p> <p>Compact may not issue subpoenas.</p>

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

Prepared by M. Brown  
for Sen. Bill Bradbury

## BUMMARY OF FEDERAL OIL SPILL LEGISLATION

### HR 1485 CONFERENCE COMMITTEE REPORT

#### TITLE I - Oil Pollution Liability and Compensation

##### SUBTITLE A - Prevention

##### 1) Liability

- 1) Tank vessel - The greater of \$1200/gross ton or \$10,000,000 if the vessel is greater than 3,000 gross tons  
\$2,000,000 if the vessel is less than 3,000 gross tons
- 2) Any other Vessel - \$800/gross ton or \$500,000 whichever is greater
- 3) Offshore Facility - except deep water port, the total of all removal costs plus \$75,000,000\*
- 4) Onshore Facility and Deep Water Port - \$350,000,000

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

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

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

##### 4) Preservation of State Authorities

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

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

#### TITLE II - Conforming Amendments

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

### **TITLE III - International Oil Pollution Prevention**

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

### **TITLE IV - Prevention and Removal**

#### **1) Alcohol and Drugs:**

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

#### **2) Vessel Traffic Service Systems Study to-**

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

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

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

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

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

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

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

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

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

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

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

#### **SUBTITLE B - Removal**

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

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

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

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

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

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

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

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

A tank vessel or facility plan shall be:

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

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

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

7) Drills

#### SUBTITLE C - Penalties

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

#### TITLE V - Prince William Sound

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

Under the Institute is an advisory board and a scientific technical committee

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

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

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

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

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

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

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

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

#### **TITLE VI - Miscellaneous**

#### **TITLE VII - Research and Development**

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

#### **TITLE VIII - Trans-Alaska Pipeline System**

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

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

#### **3) Penalties**

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

September 1990

THE ROLE OF THE STATES  
UNDER THE FEDERAL OIL SPILL LAW

American Petroleum Institute  
Office of General Counsel

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## THE ROLE OF THE STATES UNDER THE FEDERAL OIL SPILL LAW

### I. BACKGROUND

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

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

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

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

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

## II. LIABILITY

### A. Strict Liability for All Damages

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

1. removal costs incurred by the U.S. or a State;
2. all damages for economic losses, including injury and lost use of real and personal property and lost income or profits, recoverable by any citizen or business in any state;
3. natural resource damages, recoverable by a State under an assessment by State trustees, for all costs of assessing damages and restoring the State's natural resources, including the "lost use" value of such resources pending restoration;
4. lost State government revenues, including lost taxes, royalties, rents, fees, or net profit shares;
5. subsistence uses of damages natural resources; and

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

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

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

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

B. The Necessity of Liability Limits

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

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

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

limits on the liability of petroleum facilities and vessels.

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

C. The Fund

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

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

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

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

Sec. 1012(g).

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

### III. FINANCIAL RESPONSIBILITY

Section 1019 of the new law provides:

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

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

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

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

Summary of Federal Financial Responsibility Requirements

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

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

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

#### IV. GOOD SAMARITAN PROTECTION FOR OIL SPILL RESPONDERS

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

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

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

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

V. FEDERAL PRIMACY IN SPILL RESPONSE AND CONTINGENCY PLANNING.

A. Response Chain of Command

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

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

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

Recent examples of such conflicts resulted in delayed response

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

B. Contingency Planning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### No Duplication

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

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

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

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

Date of Enactment: August 18, 1990

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

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

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 MAR 19, 1991 2:41PM #491 P.23

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

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

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

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

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

FROM: API-HEAD 8300  
 TO: 6760719074654979  
 MAR 19, 1991 2:44PM #491 P.28

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

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

**AMERICAN PETROLEUM INSTITUTE SURVEY OF  
STATE OIL SPILL LIABILITY LAWS  
VAN NESS, FELDMAN, SUTCLIFFE & CURTIS**

**OCTOBER 4, 1989  
(UPDATED OCTOBER 29, 1990)**

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TO: 6760719074654979  
MAR 19, 1991 2:45PM #491 P.30

FROM: API-HEAD 8300

STATE OIL SPILL LIABILITY LAWS

COMPENSATORY LIABILITY										
CLEAN UP				DAMAGES						
STATE	STATUTE	STANDARD <sup>1</sup>	LIMIT <sup>2</sup>	3RD PARTY		NATURAL RESOURCES		SPILL FUND		
				STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES <sup>3</sup>
Wa.	§22-22-9	Negl.	No	--	--	Negl.	--	--	--	--
Alaska	§46.03.822, §46.03.780, §46.08.020, §43.55.200	Strict	No	Strict	No	Strict	No	50 Mil	\$.05/barrel; reimbursements; penalties; appropriations	CI, NR
Ariz.	§49-283, §49-285	Strict	No	--	--	--	--	No	Reimbursements; Fees, Penalties	CI
Ark.	§8-4-103(b)	Strict	No	--	--	Strict	No	--	--	--
Calif.	Harbor §151, §293; Fish §2014, §2015, §5655; Water §13440	Strict	No	Strict	No	Strict	No	100 Mil	\$.25/barrel; Reimbursements; penalties; appropriations	CI/3dP/ NR
Colo.	§25-8-606	Strict	No	--	--	--	--	--	--	--
Conn.	§22a-451	Strict	No	--	--	--	--	80 Thous	Reimbursements; penalties	CI
Del.	§6204, §6205, §6207, §6208	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	Strict	Tran: 300/GT, up to 30 Mil; Fac: 50 Mil	--	--	--
Fla.	§376, §206 §377	Strict	Tran: Lesser of 50 MIL, or \$625 PGT; Fac: 25 Mil	Strict	No	Strict	No	50 Mil (\$100 MIL, if offshore drilling is approved)	\$.02/Barrel	CI/3dP/ NR
Ga.	§12-5-51, §12-14-1	Strict	No	--	--	Strict	No	--	--	--

MAR 19, 1991 2:45PM #491 P.31

TO:6760719074654979

FROM:API-HEAD 8300

STATE OIL SPILL LIABILITY LAWS

COMPENSATORY LIABILITY										
CLEAN UP				DAMAGES*						
STATE	STATUTE	STANDARD <sup>1</sup>	LIMIT <sup>2</sup>	3RD PARTY		NATURAL RESOURCES		SPILL FUND		
				STANDARD	LIMIT	STANDARD	LIMIT	LIMIT	SOURCE	AUTH. USES <sup>3</sup>
Hawaii	§342-8, §12-8D	Strict	No	--	--	Strict	--	No	appropriations, reimbursements, penalties	CI
Idaho	§52-101	--	--	--	--	--	--	--	--	--
Ill.	85§1705; 111-1/2§1042; 56§2.1	Strict	No	--	--	Strict	No	--	--	--
Ind.	§13-7-12-3, §14-2-6-7	Tort	No	--	--	Strict	No	--	--	--
Iowa	§455B.392	Strict	Tran: 5 Mil Fac: 50 Mil	--	--	Strict	Tran: 5 Mil Fac: 50 Mil	--	--	--
Kans.	§65-171u §65-171v §65-171w	Strict	No	--	--	Strict	No	5 Thous	Appropriations; Reimbursements	CI
Ky.	§224.110	--	--	--	--	Strict	No	--	--	--
La.	§30:2025(E) §30:2077 §30:2025 §30:2034	Strict	No	Strict	No	Strict	No	1/2 Mil	Haz Waste Fund; reimbursement	CI
Maine	38§548 38§552 38§551	Strict	No	Strict	No	Strict	No	6 Mil	\$.04 Per barrel; reimbursements, penalties, fees	CI, 3dP
Md.	§4-405 Envr. §4-411 §4-408 §4-409 §4-417	Strict	No	Strict	No	Strict	No	5 Mil	\$.0075/barrel; Fees; penalties	CI, NR

MAR 19, 1991 2:47PM #491 P.32  
 TO: 6760719074654979  
 FROM: AF1-TEHU 0300

STATE OIL SPILL LIABILITY LAWS

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

MAR 19, 1991 2:48PM #491 P.33

TO: 6760719074654979

FROM: API-HEAD 8300

STATE OIL SPILL LIABILITY LAWS

STATE	STATUTE	STANDARD <sup>2</sup>	LIMIT <sup>4</sup>	3RD PARTY		NATURAL RESOURCES		SPILL FUND		AUTH. USES <sup>1</sup>
				STANDARD	LIMIT	STANDARD	LIMIT	SOURCE		
N.Y.	New Law §181, §174	Strict	Trans: 300PGT; Fac: 50 MI	Strict	Trans: 300PGT; Fac: 50 MI	Strict	Trans: 300PGT; Fac: 50 MI	25 MI	\$ .04/Barrel; Reimbursements; fees; penalties	CU 3dP/ NR
N.C.	§143-215.940 §143-215.04P §143-215.87	Strict	No	Strict	No	Strict	No	No	Appropriations; reimbursements; penalties	CI, NR
N. Dak.	§61-28	--	--	--	--	--	--	--	--	--
Ohio	§6111	--	--	--	--	--	--	--	--	--
Ola.	§900	--	--	--	--	--	--	--	--	--
Oreg.	§466.590, §466.640, §466.670, §468.790, §468.795, §468.800	Strict	No	Strict	No	Strict	No	No	Fees; penalties; reimbursements	CI
Pa.	35P.S. §691	--	--	--	--	--	--	--	--	--
R.I.	§16-12.3-1 §46-12-1 §46-12.4-1	Strict	No	Strict	No	Strict	No	No	appropriations, penalties, reimbursements	CI
S.C.	§48-1-90(a) §48-43-560 §48-43-600	Strict	No	Adv	No	Strict	No	--	--	--
S. Dak.	§34A-13-9 §34A-12-12 §34A-2-76 §34A-2-96	Strict	No	--	--	Strict	No	5 MI	Fees; penalties	CI
Tenn.	§69-3-100	--	--	--	--	--	--	--	--	--

CLEAN UP  
COMPENSATORY LIABILITY  
DAMAGES<sup>3</sup>



MAK 19. 1991 2:51PM R491 P.36

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**Endnotes Key**

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

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

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

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

# Alaska State Legislature



Legislative Research Agency

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November 20, 1990

RECEIVED  
DEC 21 1990

## MEMORANDUM

TO: Representative Kay Brown

FROM: Glenn T. Graff  
Legislative Analyst

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

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

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

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

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

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

### Contingency Planning Requirements

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

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

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

#### Performance Standards

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

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

#### Liability and Penalties

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

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

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

#### Financial Responsibility Requirements

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

#### Financing Spill Prevention and Clean Up

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

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

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

Representative Brown  
November 28, 1990  
Page 4

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

#### Institutional Structure

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

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

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

Attachments

TABLE 1  
Oil Spill Contingency Planning Statutes for California

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

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

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

Source: California Statutes

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

**TABLE 2**  
**Oil Spill Contingency Planning Statutes for Alaska**

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

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.0462)

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

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

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

Source: California Statutes

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

**TABLE 4**  
**Performance Standards for Preventing Oil Spills in Alaska**

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

Source: Alaska Statutes

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

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

Topic and Description	Statute Reference
<b>LIABILITY, PENALTIES AND OFFENSES</b>	
Operator or owner absolutely liable for damages, without regard to fault, for property damage by the state, county, city, or other person.	H&N 293
Responsible party absolutely liable for damages incurred by any party and court costs. Not liable if spill due to an act of war, natural disaster or unrelated third party.	Gov 8670.56.5*
Persons responsible for oil entering water during exploration liable for damages to any injured party.	H&N 294
For intentionally or negligently discharging oil into water civilly liable for up to \$6,000.	H&N 151*
Failure to report a spill of one barrel of oil or more results in a \$500 - \$5,000 fine and/or up to one year in prison.	WC 13272
Knowingly failing to follow an order of the administrator, notify the Coast Guard about a disabled tanker, or discharging oil into marine waters may result in not more than one year in prison and a fine of \$5,000 - \$50,000 per day. Failing to notify the emergency service office, operating without a contingency plan or failing to follow a contingency plan may result in not more than one year in prison and/or a fine of \$2,500 - \$250,000.	Gov 8670.64
Except as otherwise provided, persons who knowingly violate provisions in the Government Code or Division 7.8 of the Public Resources Code may be fined up to \$50,000 and one year in prison.	Gov 8670.65
Intentional or negligent acts in violation of an oil spill provision in SB 2040 punishable by a civil penalty of \$25,000 - \$500,000 per day.	Gov 8670.66
Intentional or negligent acts in violation of an oil spill provision in SB 2040 punishable by an administrative penalty of up to \$100,000 per day.	Gov 8670.67
Unlawful to pollute waters including petroleum.	F&G 5650*
Guilty of a misdemeanor for discharging oil or ballast from any vessel.	H&N 153 H&N 152
Persons guilty of a misdemeanor, for each day unapproved substances for cleanup are used.	WC 13169*
No oil may be deposited in waters.	PR 6673*
Persons causing or permitting an oil spill are liable civilly for administrative penalties of up to \$10 per gallon (minus recovery) without regard to fault, and up to \$30 per gallon (minus recovery) if there was negligence.	Gov 8670.67.5
Persons intentionally neglecting cease and desist orders or causing discharge into waters are civilly liable for an administrative penalty of \$500 - \$5,000 per day, or \$15,000 per day if a cleanup abatement order is issued. When a cease and desist order is not violated, administrative penalty is up to \$10 per gallon or \$20 per gallon if imposed by superior court.	WC 13350
Administrator may issue a complaint alleging facts for basis of liability, and responsible party may request a hearing.	Gov 8670.68

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

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

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

Sources: California Statutes

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

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

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

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

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

Source: Alaska Statutes

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

**TABLE 7**  
**Comparison of Financial Responsibility Requirements between California and Alaska**

California	Statute Reference	Alaska	Statute Reference
Accepted proof: Insurance, self-insurance, surety bond, or letter of credit	Gov 8670.37.54*	Accepted proof: Insurance, self-insurance, guarantee, surety, letter of credit, or other approved proof.	AS 46.04.04D
May be issued for vessel or for company that owns oil, for pipeline or for marine facility. Marine facility must have a copy of vessel's certificate.	Gov 8670.37.51	Issued for vessel, terminal facility, pipeline, or oil exploration and production facility	AS 46.04.04C
Owners of multiple facilities may have only one certificate but it may be cancelled for other facilities or vessels in the event of an oil spill.	Gov 8670.37.55		
Certificates not valid for more than two years.	Gov 8670.37.57		
Possession of certificate is conclusive evidence that the party is liable for spill damage.	Gov 8670.37.53		
Amount: Vessels must prove financial responsibility for \$500,000,000 (\$750,000,000 by 1995 and \$1,000,000,000 by 2000). Amount may be reduced for small barges. Marine facilities must show responsibility for a reasonable worst case scenario considering amount of oil and frequency of shipments.	Gov 8670.37.53	Amount per incident: Crude oil terminal \$50,000,000, noncrude oil terminal \$25 per barrel; tank vessel with crude oil \$300 per barrel, \$100,000,000 maximum; noncrude oil tank vessel \$100 per barrel, \$35,000,000 maximum. Small vessels may be exempted.	AS 46.04.04J
		Amounts to change every three years reflecting changes in consumer price index.	AS 46.04.04J
		Exemptions: Crude oil terminals with less than 5,000 barrels or noncrude terminals with less than 10,000 barrels.	AS 46.04.05J
		Service of process required in-state with an exception for insurance clubs.	AS 46.04.04

\* Gov stands for the California Government Code

Sources: Alaska and California Statutes.

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