
SECOND SUBSTITUTE SENATE BILL 5428

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Metcalf, Owen, Oke, Barr and Snyder).

Read first time March 7, 1991.

1 AN ACT Relating to Pacific Ocean Resources Compact; adding a new
2 chapter to Title 90 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature hereby ratifies the
5 Pacific Ocean Resources Compact as set forth in section 2 of this act.
6 Except as provided in subsection (2) of this section, this compact
7 shall take effect after one or more of the states of Alaska,
8 California, Hawaii, or Oregon ratify the compact and consent is granted
9 by Congress as required by section 10, Article I of the Constitution of
10 the United States.

11 (2) In accordance with the consent of Congress granted in the
12 Coastal Zone Management Act, 16 U.S.C. Sec. 1456b, those portions of
13 this compact related to the regional coordination of the parties'
14 coastal management plans shall be in effect when one or more of the
15 states of Alaska, California, Hawaii, or Oregon become parties thereto.

1 Pursuant to 15 C.F.R. Sec. 932.31(b), this compact may be submitted to
2 the Associate Administrator of the National Oceanic and Atmospheric
3 Association for review for conflict with federal law or treaties, but
4 such review shall not delay or otherwise affect the effectiveness of
5 this compact between the parties.

6 (3) In addition to the states of Alaska, California, Hawaii, and
7 Oregon, the Province of British Columbia may become an associate party
8 to the compact, without voting power. Upon request of the Province of
9 British Columbia and approval of Congress, the Province of British
10 Columbia may become a full party to this compact with the same rights
11 and powers as the party states.

12 NEW SECTION. **Sec. 2.** The provisions of the Pacific Ocean
13 Resources Compact are as follows:

14 ARTICLE I

15 FINDINGS AND PURPOSE

16 A. The parties recognize:

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

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

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

26 (c) The economic reliance of each party upon renewable resources of
27 the ocean;

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

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

6 (2) Some marine resource activities, such as fisheries, are
7 currently highly managed with regard for their regional or
8 transboundary nature through existing state programs, regional
9 fisheries councils, interstate compacts, and international treaties.
10 Because there are existing formal mechanisms for interstate cooperation
11 and coordination for these marine resource activities, this compact is
12 not intended to encompass these activities.

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

- 16 (a) Prevention of oil and hazardous substance spills;
- 17 (b) Transportation of oil and other hazardous substances;
- 18 (c) Oil and hazardous substance spill response planning; and
- 19 (d) Environmental monitoring and research.

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

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

29 (6) The 1983 Presidential Proclamation of the two hundred-mile
30 United States Exclusive Economic Zone has created the opportunity for

1 all coastal states to more fully exercise and assert their
2 responsibilities pertaining to the protection, conservation, and
3 development of ocean resources under United States jurisdiction.

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

7 (8) Recent studies conducted in the wake of major accidental
8 releases of oil or hazardous substances have concluded that the
9 existing system of response to spills fails to provide adequate
10 protection to ocean resources in the following ways:

11 (a) Inadequate personnel training and qualifications;

12 (b) Weaknesses in vessel design and integrity;

13 (c) Insufficient traffic management;

14 (d) Gaps in regulatory oversight;

15 (e) Incomplete cost recovery by the states or provinces; and

16 (f) A lack of information about the marine and coastal
17 environments.

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

20 B. Therefore the purpose of this compact shall be:

21 (1) To assist in the promotion of interstate commerce by providing
22 uniform regulation of the transportation of oil or hazardous substance
23 within the compact zone;

24 (2) To provide a legal mechanism to regulate certain ocean
25 activities within the United States Exclusive Economic Zone that the
26 parties cannot now individually regulate;

27 (3) To enhance regional sovereignty over issues of critical
28 importance;

29 (4) To direct federal agencies to act in the best interest of the
30 region;

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

3 (6) To enhance the oversight and supervision of activities of
4 concern to the parties;

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

9 (a) Spill prevention;

10 (b) Transportation of oil and other hazardous substances;

11 (c) Spill response planning; and

12 (d) Environmental monitoring and research;

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

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

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

21 (11) To ensure that the citizens of the region have opportunities
22 to participate in discussions and deliberations of regional ocean
23 resources issues;

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

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

27 (b) The vessel transportation of oil and other hazardous
28 substances;

29 (13) To establish uniform safety standards for routes, crews, and
30 equipment for vessels transporting oil and hazardous substances within

1 the compact zone and to provide oversight for the implementation of
2 these standards and regulations by federal agencies, states, or
3 provinces and private industry;

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

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

11 ARTICLE II

12 DEFINITIONS

13 Unless the context clearly requires otherwise, the definitions in this
14 section apply throughout this compact.

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

17 (2) "Compact zone" means the portion of the oceans bordering the
18 parties within the two hundred-mile exclusive economic zone.

19 (3) "Hazardous substance" or "hazardous substances" means any
20 element or compound that, when it enters in or upon the water, presents
21 an imminent and substantial danger to the public health or welfare or
22 the environment, including but not limited to fish, animals,
23 vegetation, or any part of the natural habitat in which they are found.
24 "Hazardous substance" includes but is not limited to a substance
25 designated under 33 U.S.C. Sec. 1321(b)(2)(A), any element, compound,
26 mixture, solution or substance designated under 42 U.S.C. Sec. 9602,
27 any hazardous waste having characteristics identified under or listed
28 under 42 U.S.C. Sec. 6921, any toxic pollutant listed under 33 U.S.C.

1 Sec. 1317(a), and any imminently hazardous chemical substance or
2 mixture with respect to which the Administrator of the United States
3 Environmental Protection Agency has taken action under 15 U.S.C. Sec.
4 2606.

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

7 (5) "Oil" means crude petroleum oil and any other hydrocarbons
8 regardless of gravity, which are produced at the well in liquid form by
9 ordinary production methods, and any petroleum products or
10 petrochemicals of any kind and in any form whether crude, refined, or
11 a petroleum by-product, including petroleum, fuel oil, gasoline,
12 lubricating oils, oily sludge, oily refuse, or mixed with other wastes,
13 liquefied natural gas, or propane.

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

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

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

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

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

24 ARTICLE III

25 OPERATIVE DATES

26 (1) Except as provided in paragraph (2) of this Article, this
27 compact shall become effective when one or more of the States of
28 Alaska, California, Hawaii, or Washington ratify the compact and the

1 consent of Congress is or has been granted as required by Article I,
2 section 10 of the Constitution of the United States.

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

6 ARTICLE IV

7 PACIFIC OCEAN RESOURCES COMPACT

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

19 (2) The term of each representative shall be four years. A
20 representative shall hold office until a successor is appointed and
21 qualified but the successor's term shall expire four years from legal
22 date of expiration of the term of the predecessor. Vacancies occurring
23 in the office of a representative for any reason or cause shall be
24 filled for the unexpired term by the party represented by the vacancy.
25 Any party may remove the representative for that party in accordance
26 with the statutes of the party concerned. Each representative may
27 delegate to a deputy the power to be present and participate, including

1 voting as the representative or substitute, at any meeting of or
2 hearing by or other proceeding of the compact.

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

8 ARTICLE V

9 PACIFIC OCEAN RESOURCES COMPACT AUTHORITY

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

11 (a) Facilitate the prevention of oil and hazardous substance spills
12 through the establishment of uniform safety standards for routes,
13 crews, and equipment for vessels transporting oil and hazardous
14 substances to the extent that the parties and the federal government
15 have such authority within the compact zone;

16 (b) Ensure a coordinated network of oil and hazardous substance
17 spill response plans and programs of the parties, federal agencies, and
18 private organizations;

19 (c) By regulation, establish the requirements for submission of and
20 approval by the compact of a contingency plan by any vessel
21 transporting oil or hazardous substance in the compact zone. Such
22 requirements shall be at least as stringent as the requirements for
23 spill response plans under section 4202 of the Oil Pollution Act of
24 1990, P.L. 101-380. A plan developed in accordance with the
25 regulations adopted by the compact and approved by the compact shall
26 satisfy the requirements of section 4202 of the Oil Pollution Act and
27 any requirements of an individual party for submitting a vessel
28 contingency or spill response plan. In establishing regulations under

1 this paragraph, the compact shall work closely with officials of the
2 parties to assure that the vessel contingency plans required under this
3 compact are at least as comprehensive as similar plans required by the
4 parties and to integrate, to the fullest extent possible, any
5 requirements for vessel contingency plans in effect at the time the
6 compact initiates its requirements under this paragraph.

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

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

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

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

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

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

1 (j) Establish sanctions and a schedule of civil penalties for
2 violations of the rules or regulations of the compact adopted in
3 accordance with 5 U.S.C. Secs. 551 through 559 and 701 through 706.

4 (k) Request the United States Coast Guard to enforce or assist in
5 the enforcement of any regulations adopted by the compact related to
6 the prevention of and response to oil or hazardous substance spills in
7 the compact zone.

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

10 (a) Accept grants and gifts;

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

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

16 (d) Conduct public hearings on matters pertaining to the purposes
17 of this compact;

18 (e) Issue subpoenas;

19 (f) In accordance with the provisions of 5 U.S.C. Secs. 551 through
20 559 and 701 through 706, enforce the rules and regulations adopted by
21 the compact to carry out the authority of the compact as set forth in
22 this Article;

23 (g) Appoint technical and advisory committees for the purpose of
24 advising the compact on regional ocean resources issues, data needs,
25 and format and other purposes related to the compact's activities. A
26 technical or advisory committee appointed by the compact shall not be
27 subject to the provisions of the Federal Advisory Committee Act, P.L.
28 92-463, as amended;

29 (h) Allow a variance from the provisions of this compact or rules
30 or regulations adopted by the compact pursuant to this Article. A

1 variance shall be based on a showing by the person or entity seeking
2 the variance that the activity allowed under the variance will have no
3 regional impact and that the variance is economically necessary. Under
4 no circumstances may a variance result in the regulation of the
5 transportation of oil or hazardous substance according to standards
6 less stringent than standards imposed under federal law.

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

11 ARTICLE VI

12 PACIFIC OCEAN RESOURCES COMPACT ORGANIZATION

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

25 ARTICLE VII

26 VOTING AND QUORUM

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

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

5 ARTICLE VIII

6 SUPPORT AGENCIES

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

10 ARTICLE IX

11 PARTIES' POWERS UNDER COMPACT

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

17 ARTICLE X

18 ABSENCE

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

22 ARTICLE XI

23 FUNDING

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

7 (2) The annual contribution of each party shall be figured to the
8 nearest one hundred dollars.

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

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

15 ARTICLE XII

16 WITHDRAWAL FROM COMPACT

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

21 NEW SECTION. **Sec. 3.** The three representatives of the state
22 of Washington to the Pacific Ocean Resources Compact shall be as
23 follows: (1) A member appointed by the governor; (2) a member of the
24 senate appointed by the president of the senate; and (3) a member of
25 the house of representatives appointed by the speaker of the house of
26 representatives. The member appointed by the governor shall serve as
27 the chair of the representatives of the state of Washington.

1 NEW SECTION. **Sec. 4.** The term of the members appointed by the
2 president and the speaker shall be dependent upon continued membership
3 in the house from which appointed. Vacancies occurring during the term
4 of compact representatives shall be filled for the unexpired term by
5 the appointment of a successor in the same manner as for the vacating
6 member. The member appointed by the governor shall serve at his or her
7 pleasure.

8 NEW SECTION. **Sec. 5.** The representative appointed to the
9 compact from the state of Washington by the governor shall be entitled
10 to compensation in accordance with RCW 43.03.240, except that if such
11 representative is a state employee, reimbursement for subsistence and
12 travel expenses shall be as provided for such employee under chapter
13 43.03 RCW. Representatives who are legislative members shall be
14 compensated as for legislative business pursuant to chapter 44.04 RCW.

15 NEW SECTION. **Sec. 6.** There is hereby granted to the compact
16 representatives from this state all the powers provided for in said
17 compact and all powers necessary or incidental to carry out the
18 compact. The compact representatives may employ or contract for such
19 professional, technical, and clerical assistance as may be required to
20 aid them in carrying out their functions under the compact and this
21 chapter.

22 NEW SECTION. **Sec. 7.** All departments, agencies, and officers
23 of this state and its subdivisions are directed to cooperate with the
24 compact and its representatives in the furtherance of any of its
25 activities pursuant to the compact.

1 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
2 constitute a new chapter in Title 90 RCW.

3 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
4 this act, referencing this act by bill number, is not provided by June
5 30, 1991, in the omnibus appropriations act, this act shall be null and
6 void.