

SJR

20

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/5/97

FURTHER:

Date of 5-Day Notice: 3/6/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/11/97

Resources Committee considered **SENATE JOINT RESOLUTION NO. 20**

Requesting the United States Congress to accommodate Alaska's unique wetlands circumstances by amending the Clean Water Act to modify the wetlands regulatory program and to recognize Alaska's outstanding history of wetlands conservation.

and recommends:

- be replaced with CS SJR 20 (RES)
- adopt previous CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Chris Taylor</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>Rich Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>S. Resources</i>	<i>3/10</i>	<i>X</i>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill



SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

SPONSOR STATEMENT SENATE JOINT RESOLUTION 20

SJR 20 encourages Congress to amend the federal Clean Water Act to:

- a) continue existing activities related to airport safety, logging, mining, ice pads, roads, and snow removal without being determined to add to the "cumulative" loss of wetlands nationally;
- b) provide flexibility in Alaska wetlands permitting by allowing the establishment of general permits for the discharge of dredged or fill material into disposal sites;
- c) eliminate existing requirements to mitigate unavoidable impacts or to prove alternative sites do not exist;
- d) require the U.S. Army Corps of Engineers to customize a permitting process for lands conveyed under the Alaska Statehood Act and the Alaska Native Claims Settlement Act that does not include burdensome mitigation or avoidance requirements.

SJR 20 endorses the efforts of Senators Stevens and Murkowski to amend the Clean Water Act to modify the wetlands regulatory program through S. 49.

Despite the fact that Alaska has, since the 1700s maintained 99.5% of its wetlands - environmentalists have testified before this legislature and written in the National Wetlands Newsletter that Alaska is attempting to undermine the Clean Water Act in the name of development and oil and gas exploration. They claim that tourism will suffer. The rural villages in Alaska are the ones who suffer - 98% are surrounded by or are adjacent to wetlands and have no other option but to build schools, airstrips and basic community infrastructure over marshy areas. Alaska has 170,000,000 acres of wetlands, 88% of which are publicly owned. 60,000,000 of those wetlands are under some sort of federal protection (refuge, park, wilderness). Alaskans have proven we care about our environment and can develop a sustainable economy with minimal impacts. We need not carry the guilt of the rest of the nation. I urge you to support the resolution.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SJR 20

Revision Date 3/5/97 Dept. Affected _____
 Title Modify federal wetlands program for Alaska's needs BRU _____
 Component _____
 Sponsor Leman _____
 Requester _____ Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

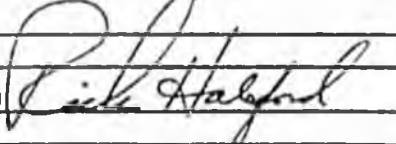
Estimate of any current year (FY97) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This resolution will have no fiscal impact on state departments.

Prepared by Senate Resources Committee Phone 465-4907
 Division _____ Date _____
 Approved by Senator Rick Halford, Chairman  Date 3/10/97
 Agency _____

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ALASKA WETLANDS COALITION

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Phone: (907) 279-1783 Fax: 276-3887

WETLANDS "LOSS" COMPARISON

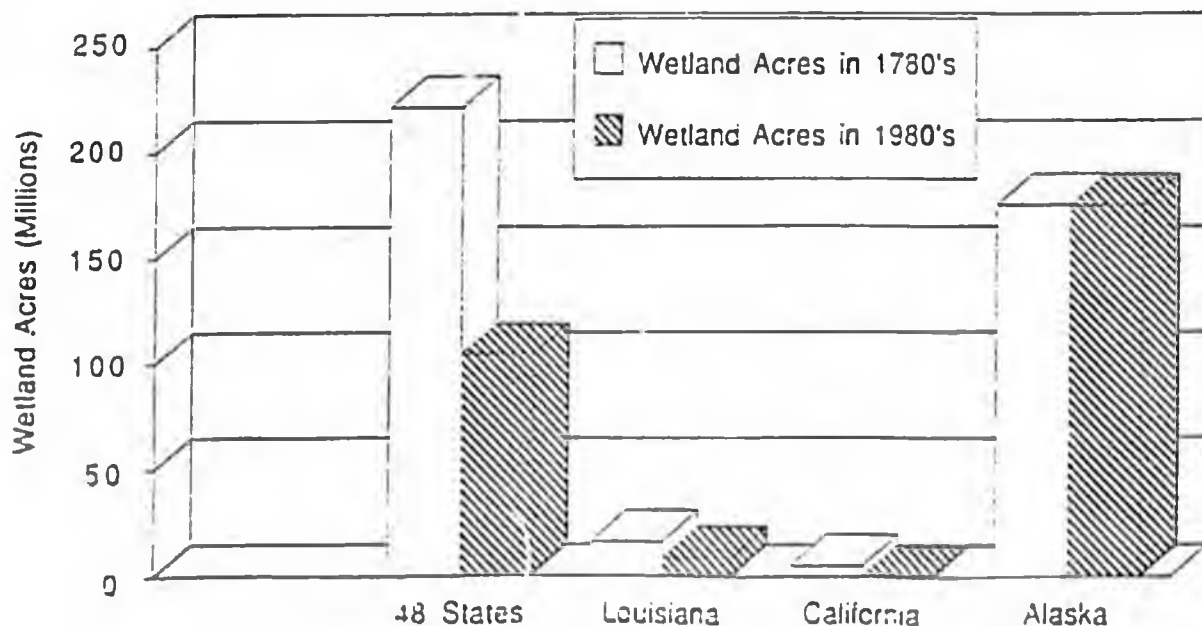
(Chart updated by the Alaska Wetlands Coalition, October 1995)

Louisiana	California	Alaska	48 States	
Total Surface Acres				
31,054,720	101,563,520	375,303,680	1,934,198,400	
Wetland Acres				
16,194,500	5,000,000	*174,883,900	221,129,638	Total Wetlands 1780's
8,784,200	454,000	174,683,900	104,374,314	Total Wetlands 1980's
7,410,300	4,546,000	200,000	116,755,324	Acres Lost Over 200 Years
Percentage Wetlands				
52.10%	4.90%	46.60%	11.40%	1780's Wetlands/Surface Area
28.30%	0.40%	46.50%	5.40%	1980's Wetlands/Surface Area
46%	91%	0.10%	53%	Percentage Lost Over 200 Years

According to U.S. Fish and Wildlife Service estimates, there were originally about 221 million acres of wetlands in the contiguous United States. By the 1980's, about 104 million acres (47%) remained. Therefore, wetlands reductions in the contiguous United States total about 117 million acres. (Data from Dahl, T.E. 1990. "Wetland Losses in the United States, 1780's to 1980's." U.S. Department of Interior, Fish and Wildlife Service, Washington, D.C.)

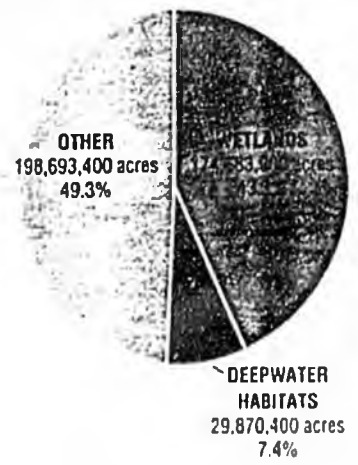
In Alaska, however, only about 200,000 (0.1%) of 174,883,900 million acres of wetlands have been affected by development. (Data from Hall, Frayer, and Wilen 1994. "Status of Alaska Wetlands." U.S. Fish and Wildlife Service, Alaska Region.)

WETLANDS "LOSS" COMPARISON



From Studies in Alaska Wetlands
and Deepwater Habitats
1974

Figure 1
Alaska Wetlands and Deepwater Habitats



Figures 2, 3
Surface Area of Alaska and Lower 48 States

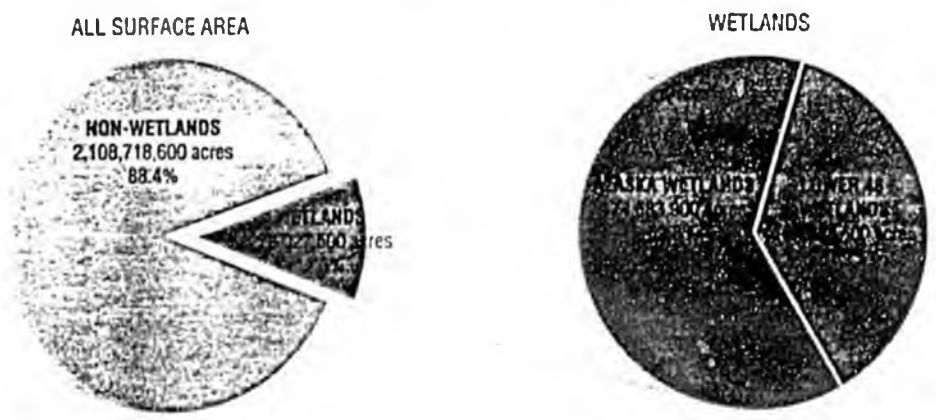
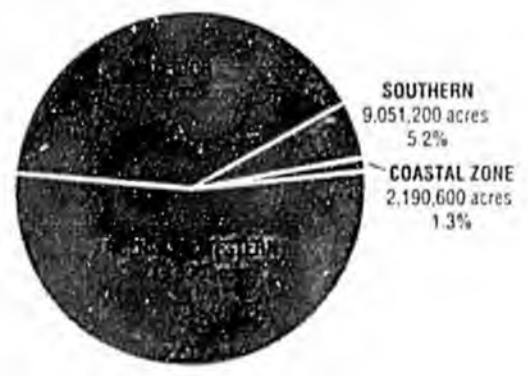


Figure 4
Distribution of Alaska Wetlands by Region



S 49 IS
105th CONGRESS
1st Session

To amend the wetlands regulatory program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska, to protect Alaskan property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages.

IN THE SENATE OF THE UNITED STATES

January 21, 1997

Mr. STEVENS (for himself and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the wetlands regulatory program under the Federal Water Pollution Control Act to provide credit for the low wetlands loss rate in Alaska and recognize the significant extent of wetlands conservation in Alaska, to protect Alaskan property owners, and to ease the burden on overly regulated Alaskan cities, boroughs, municipalities, and villages.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Alaska Wetlands Conservation Act'.

SEC. 2. FINDINGS.

The Congress finds that--

(1) according to the United States Fish and Wildlife Service, approximately 170,200,000 acres of wetlands existed in Alaska in the 1780s and approximately 170,000,000 acres of wetlands exist now, representing a loss of less than one-tenth of 1 percent through human and natural processes;

(2) according to the United States Fish and Wildlife Service more than 221,000,000 acres of wetlands existed at the time of Colonial America in the area that is now the contiguous United States and that 117,000,000 of those acres, roughly 53 percent, have been filled, drained, or otherwise removed from wetland status;

(3) Alaska contains more wetlands than all of the other States combined;

(4) 88 percent of Alaska's wetlands are publicly owned, while only 26 percent of the wetlands in the 48 contiguous States are publicly owned;

(5) approximately 98 percent of all Alaskan communities, including 200 of the 209 remote villages in Alaska, are located in or adjacent to wetlands;

(6) approximately 62 percent of all federally designated wilderness lands, 70 percent of all Federal park lands, and 90 percent of all Federal refuge lands are located in Alaska, thus providing protection against use or degradation to approximately 60,000,000 acres of wetlands in Alaska;

(7) 104,000,000 acres of land were granted to the State of Alaska at statehood for purposes of economic development;

(8) approximately 43,000,000 acres of land were granted to Alaska Natives through regional and village corporations and Native allotments for their use and between 45 percent and 100 percent of each Native corporation's land is categorized as wetlands;

(9) development of basic community infrastructure in Alaska, where approximately 75 percent of the nonmountainous areas are wetlands, is often delayed and sometimes prevented by the existing wetlands regulatory program, with minimal identifiable

environmental benefit;

(10) the 1899 Rivers and Harbors Act formerly regulated disposition of dredge spoils in navigable waters, which did not include wetlands, to keep navigable waters free of impairments;

(11) the 1972 Federal Water Pollution Control Act, more commonly known as the Clean Water Act, formed the basis for a broad expansion of Federal jurisdiction over wetlands by modifying the definition of 'navigable waters' to include all 'waters of the United States';

(12) in 1975, a United States district court ordered the Army Corps of Engineers to publish revised regulations concerning the program to implement section 404 of the Clean Water Act, which expanded the scope of the program to include the discharge of dredged and fill material into wetlands;

(13) the wetlands regulatory program was expanded yet again by regulatory action to include isolated wetlands (wetlands that are not adjacent to navigable waters), and such an expansion formed the basis for burdensome intrusions on the property rights of Alaskans, Alaskan Native Corporations, and the State of Alaska;

(14) expansion of the wetlands regulatory program in this manner is beyond what the Congress intended when it passed the Clean Water Act and has placed unnecessary economic and administrative burdens on private property owners, small businesses, city governments, State governments, farmers, ranchers, and others, while providing negligible environmental benefits;

(15) for Alaska, a State with substantial conserved wetlands and less than 1 percent private, noncorporate land ownership, the burdens of the current wetlands regulatory program unnecessarily inhibit reasonable community growth and environmentally benign resource development;

(16) Alaska villages, municipalities, boroughs, city governments, and Native organizations are increasingly frustrated with the constraints of the wetlands regulatory program because it interferes with the location of community centers, airports, sanitation systems, roads, schools, industrial areas, and other critical community infrastructure;

(17) policies intended to achieve 'no net loss' of wetlands reflect a response to the 53 percent loss of the wetlands base in the 48 contiguous States, and do not take into account the large percentage of conserved wetlands in Alaska; and

(18) individual landowners in Alaska have lost up to 97 percent of their property value and Alaskan communities have lost a significant portion of their tax base due to wetlands regulations.

SEC. 3. AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT.

(a) NATIONAL POLICY- Section 101(a) of the Federal Water Pollution Control Act (33 U.S.C. 1251(a)) is amended by--

(1) striking 'and' at the end of paragraph (6);

(2) striking the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(3) adding at the end the following new paragraphs:

(8) it is the national policy to (A) achieve a balance between wetlands conservation and adverse economic impacts on local, regional, and private economic interests, and (B) eliminate the regulatory taking of private property by the regulatory program authorized under section 404;

(9) it is the national policy to encourage localized wetlands planning (without mandating such planning and by providing funds to facilitate such planning), and to allow greater flexibility for the issuance of wetlands permits in States with substantial conserved wetlands; and

(10) it is the national policy that compensatory mitigation under section 404 for the development of wetlands in a State

with substantial conserved wetlands shall not be required, requested, or otherwise utilized to offset impacts to such wetlands.'

(b) DISCHARGE PERMITS- Section 404(b) of the Federal Water Pollution Control Act (33 U.S.C. 1344(b)) is amended by inserting after the period at the end the following new sentence: 'Notwithstanding the preceding sentence, such guidelines with respect to disposal sites in any State with substantial conserved wetlands--

`(A) shall not require mitigation to compensate for wetlands loss and adverse impacts to wetlands;

`(B) may include reasonable requirements for the minimization of adverse impacts to wetlands; and

`(C) may include reasonable requirements for the avoidance of impacts, but may not require the permit applicant to establish that alternative sites do not exist.'

(c) GENERAL PERMITS- Section 404(e) of the Federal Water Pollution Control Act (33 U.S.C. 1344(e)) is amended by inserting at the end the following new paragraph:

`(3) Notwithstanding the requirements of paragraphs (1) and (2), at the request of a State with substantial conserved wetlands, the Secretary shall issue a general permit on a Statewide basis for any category of activities in such State. Any such permit shall apply to the discharge of dredged or fill material into disposal sites that are up to, at a minimum, 10 acres in size, and may not contain guidelines for disposal sites that are more stringent than the guidelines for such sites in that State under subsection (b).'

(d) NONPROHIBITED DISCHARGES- Section 404(f)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1344(f)(1)) is amended by--

(1) striking the comma at the end of subparagraph (F) and inserting in lieu thereof a semicolon; and

(2) adding at the end the following new subparagraph:

`(G) in a State with substantial conserved wetlands--

`(i) associated with airport safety (ground and air);

`(ii) for the construction and maintenance of log transfer facilities relating to log transportation activities;

`(iii) for the construction of tailings impoundments utilized for treatment facilities (as determined by the development document) for the mining subcategory for which the tailings impoundments are constructed; and

`(iv) for the construction of ice pads and ice roads and for the purposes of snow storage and removal,'.

(e) DEFINITIONS- Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), as amended, is amended further by adding at the end the following new subsections:

`(u) DEFINITIONS- For purposes of this section--

`(1) the term 'conserved wetlands' means wetlands that are located in the National Park System, National Wildlife Refuge System, National Wilderness System, the Wild and Scenic River System, and other similar Federal conservation systems, as well as wetlands located in comparable types of conservation systems established under State or local authority;

`(2) the term 'economic base lands' means lands conveyed to, selected by, or owned by Alaska Native entities pursuant to the Alaska Native Claims Settlement Act Public Law 92-203), as amended, or the Alaska Native Allotment Act of 1906 (34 Stat. 197), as amended, and lands conveyed to, selected by, or owned by, the State of Alaska pursuant to the Alaska Statehood Act (Public Law 85-508), as amended; and

`(3) the term 'State with substantial conserved wetlands' means any State which--

`(A) contains at least 15 acres of conserved wetlands for each acre of wetlands filled, drained, or otherwise

converted within such State (based upon wetlands loss statistics reported in the 1990 United States Fish and Wildlife Service Wetlands Trends report to Congress entitled 'Wetlands Losses in the United States 1780's to 1980's'); or

(B) the Secretary of the Army determines has sufficient conserved wetlands to provide adequate wetlands conservation in such State, based on the policies set forth in this Act.

(v) ALASKA NATIVE AND STATE OF ALASKA LAND EXCEPTIONS-

(1) (A) Notwithstanding subsections (a) or (b), upon application by the holder of economic base lands, the Secretary shall issue a permit for the discharge of dredged or fill material into the navigable waters at a disposal site on such lands if such discharge complies with reasonable guidelines established by the Secretary under this subsection. The guidelines established by the Secretary under this subsection may be no more stringent than the guidelines established under subsection (b) for disposal sites in a State with substantial conserved wetlands, and must take into consideration the requirements of subparagraph (B).

(B) In considering the requirements otherwise applicable under subsections (a) and (b) for use in guidelines applicable to permits issued under this paragraph, the Secretary shall--

(i) balance the standards and policies of this Act against the obligations of the United States to allow economic base lands to be beneficially used to create and sustain economic activity;

(ii) with respect to Alaska Native lands, give substantial weight to the social and economic needs of Alaska Natives; and

(iii) consider the abundance and value of conserved wetlands in the State in which such economic base lands are found.

(2) The Secretary shall issue general permits under subsection (e) (1) for categories of activities on economic base lands relating to the development of rural Alaska community infrastructure (including water and sewer systems, airports, roads, communication sites, fuel storage sites, landfills, housing, hospitals, medical clinics, and schools) without determining whether or not such activities will cause only minimal adverse environmental effects when performed separately, or whether or not such activities will have only minimal cumulative adverse effects on the environment.

(3) The Secretary shall consult with and provide assistance to Alaska Natives (including Alaska Native Corporations) and the State of Alaska regarding promulgation and administration of policies and regulations under this section.'