

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6078 HOUSE RESOURCES

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Bristol Bay Borough

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RESOLUTION 89-25

RELATING TO ALASKA NOT BEING SUBJECTED TO A BLANKET NATIONAL POLICY FOR "NO NET LOSS" OF WETLANDS

- WHEREAS, the Domestic Policy Council is considering advancing a national "no net loss of wetlands" policy for Presidential approval; and
- WHEREAS, the perceived need for a "no net loss" policy is caused by wetlands loss in the continental United States, not Alaska; and
- WHEREAS, the original concept of wetlands has become increasingly expanded since the Clean Water Act was implemented; and
- WHEREAS, 80% of the total land mass of Alaska is still owned by the Federal or State governments who already exercise strict control over its development; and
- WHEREAS, Alaska's wetlands area cover approximately 1700 million acres and only 80,000 acres (0.05%) of Alaska's wetlands have been altered since 1867; and
- WHEREAS, Alaska's wetlands are not endangered from a quantitative or qualitative perspective; and
- WHEREAS, most coastal communities in Alaska are undertaking port and harbor development and expanding marine repair facilities and rely on water based transportation for the marine highway system, fishing, processing, recreation and tourism; and
- WHEREAS, said port facilities and other infrastructure will be built to some degree on wetlands; and
- WHEREAS, local communities have been actively attempting to diversify their economies away from the petroleum sector and such diversification is extremely dependent on the aforementioned infrastructure; and
- WHEREAS, Alaska is actively trying to attract more business to support its rich fisheries and bring it ashore, supporting the home fleet and creating value-added jobs to build its economy; and

WHEREAS, local communities in Alaska have already undertaken responsible management of wetlands resources through development of coastal management programs which are incorporated into the overall Alaska Coastal Management Program and approved in accordance with the requirements of the coastal Zone Management Act (CZMA) in addition to the Alaska Corps of Engineers Section 404 permitting program; and

WHEREAS, an absolute prohibition on any further "loss" or "use" of wetlands is inappropriate in relatively undeveloped Alaska and will be an onerous detriment to the coastal communities of Alaska without producing any beneficial effect on the wetlands situation in the continental United States; and

WHEREAS, the Army Corps of Engineers has classified all of Bristol Bay Borough as wetlands using air photography and a not net loss policy would completely stop development in the Borough; and

WHEREAS, the Army Corps of Engineers will not perform site specific determinations regarding the presence of wetlands;

NOW 'THEREFORE BE IT' RESOLVED, that the Bristol Bay Borough Assembly respectfully requests that President Bush, in coping with wetlands problems in other states, will consider the negative effects a "no net loss policy" will have on vital economic development in Alaska and will avoid subjecting Alaska to a blanket policy which portends so much potential harm to its communities.

PASSED AND APPROVED BY THE ASSEMBLY OF THE BRISTOL BAY BOROUGH this 4th

day of December, 1989.



Mayor

ATTEST:



Betty A. Bonin
Borough Clerk

MATANUSKA-SUSITNA BOROUGH

ASSEMBLY RESOLUTION SERIAL NUMBER 89-255

"A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY REQUESTING THAT PRESIDENT GEORGE BUSH DIRECT THE ENVIRONMENTAL PROTECTION AGENCY AND THE U.S. ARMY CORPS OF ENGINEERS TO DELAY ANY IMPLEMENTATION OF A NEW NATIONAL WETLANDS POLICY UNTIL THE DOMESTIC POLICY COUNCIL HAS FORMULATED A MORE REASONABLE AND FLEXIBLE NATIONAL POLICY"

WHEREAS, the Environmental Protection Agency and the U.S. Army Corps of Engineers have developed a new national wetlands policy that requires "no net loss" of wetlands; and

WHEREAS, the Environmental Protection Agency and the U.S. Army Corps of Engineers have entered into a Memorandum of Agreement to implement this policy; and

WHEREAS, the Memorandum of Agreement eclipses the policy process of the President's Domestic Policy Council and the States of the Union; and

WHEREAS, the present Memorandum of Agreement does not contain sufficient decision making criteria and will therefore lead to ad hoc decision making at the local level; and

WHEREAS, the present Memorandum of Agreement does not contain sufficient flexibility to recognize regional differences; and

WHEREAS, the present Memorandum of Agreement considers Alaska, which contains one-fifth of the land mass of the nation and has only lost .05% of its wetlands, as the lower 48 States which have lost 54% of their wetlands; and

WHEREAS, Alaskan wetlands are different than other wetlands within the nation because Alaskan wetlands are mostly underlain by permanently frozen ground that makes it impossible for these lands to provide many of the functions for which wetlands in the lower 48 States are valued; and

WHEREAS, the present Memorandum of Agreement will have a chilling effect on economic development projects of the Matanuska-Susitna Borough such as the Port of Alaska, South Denali Visitor Center, Hatcher Pass Ski Resort as well as many others; and

WHEREAS, the present Memorandum of Agreement will have a deleterious effect on public safety projects since erosion and flood control projects will be subject to the "no net loss" criteria;

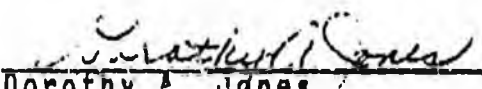
WHEREAS, a reasonable accommodation to the wetlands issue may be found in wetland protection programs for Alaska that concentrate on classification and protection of productive wetlands that actually provide vital fish and wildlife and water quality benefits; and

WHEREAS, an accommodating approach will allow states in which cumulative wetlands losses are less than 5% to 20% of the state's total wetlands to be excluded from provisions of a national "no net loss" policy until the threshold has been met and exceeded; and

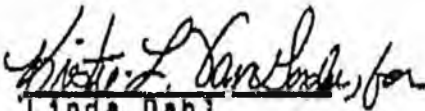
WHEREAS, an approach stressing avoidance and minimization of wetlands disturbances is preferred.

NOW, THEREFORE, BE IT RESOLVED: that the Assembly of the Matanuska-Susitna Borough strongly opposes the current "no net loss" national wetlands policy and urges the EPA and Corps to delay implementation of the present "no net loss" wetland policy and use the President's Domestic Policy Council work to redraft wetland policy to recognize regional differences, incorporate flexibility and define a set of criteria for implementation.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough this 19 day of December, 1989.


Dorothy A. Jones
Mayor
Matanuska-Susitna Borough

ATTEST:


Linda Dahl
Borough Clerk

MIKE
Your copy
BUS H
8/11/7

EFFECTIVE DEC. 15, 1979



**MEMORANDUM OF AGREEMENT¹
BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY
AND THE DEPARTMENT OF THE ARMY CONCERNING
THE DETERMINATION OF MITIGATION UNDER THE
CLEAN WATER ACT SECTION 404(b)(1) GUIDELINES**



I. Purpose

The United States Environmental Protection Agency (EPA) and the United States Department of the Army (Army) hereby articulate the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act (CWA) Section 404(b)(1) Guidelines ("Guidelines"). This Memorandum of Agreement (MOA) expresses the explicit intent of the Army and EPA to implement the objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including wetlands. This MOA is specifically limited to the Section 404 Regulatory Program and is written to provide clarification for agency field personnel on the type and level of mitigation required to demonstrate compliance with requirements in the Guidelines. The policies and procedures discussed herein are consistent with current Section 404 regulatory practices and are provided in response to questions that have been raised about how the Guidelines are implemented.

Although the Guidelines are clearly applicable to all discharges of dredged or fill material, including general permits and Corps of Engineers (Corps) civil works projects, this MOA focuses on standard permits (33 CFR 325.5(b)(1))¹. This focus is intended solely to reflect the unique procedural aspects associated with the review of standard permits, and does not obviate the need for other regulated activities to comply fully with the Guidelines. EPA and Army will seek to develop supplemental guidance for other regulated activities consistent with the policies and principles established in this document.

This MOA is a directive for Corps and EPA personnel and must be adhered to when considering mitigation requirements for standard permit applications. The Corps will use this MOA when making its determination of compliance with the Guidelines with respect to mitigation for standard permit applications. EPA will use this MOA in developing its positions on compliance with the Guidelines for proposed discharges and will reflect this MOA when commenting on standard permit applications.

¹Standard permits are those individual permits which have been processed through application of the Corps public interest review procedures (33 CFR 325) and EPA's Section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits do not include letters of permission, regional permits, nationwide permits, or programmatic permits.

II. Policy

A. The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under Section 404.² The types of mitigation enumerated by CEQ are compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: avoidance, minimization and compensatory mitigation. The remainder of this MOA will speak in terms of these more general types of mitigation.

B. The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal of no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources. This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. The determination of what level of mitigation constitutes "appropriate" mitigation shall be based on the values and functions of the aquatic resource that will be impacted. This determination shall not be based upon characteristics of the proposed project such as need, societal value, or the nature or investment objectives of the project's sponsor. "Practicable" shall be defined as in Section 230.10(a)(2) of the Guidelines. However, the level of mitigation determined to be appropriate and practicable under Section 230.10(d) may lead to individual permit decisions which do not fully meet this goal because the mitigation measures necessary to meet this goal are not feasible, not practicable, or would accomplish only inconsequential reductions in impacts. Consequently, it is recognized that no net loss of wetlands functions and values may not be achieved in each and every permit action. However, it remains a goal of the Section 404 regulatory program to contribute to the national goal of no overall net loss of the nation's remaining wetlands base. EPA and Army are committed to working with others through the Administration's interagency task force and other avenues to help achieve this national goal.

C. In evaluating standard Section 404 permit applications, as a practical matter, information on all facets of a project, including potential mitigation, is typically gathered and reviewed at the same time. Notwithstanding this procedural approach, the Corps will, except as indicated below, first make a determination that potential impacts have been avoided to the maximum extent practicable; remaining unavoidable impacts will then be

²(except where Section 404(b)(2) applies).

mitigated to the extent appropriate and practicable by requiring steps to minimize impacts and, only as a last resort, compensate for aquatic resource values. This sequence will be considered satisfied where the proposed mitigation is in accordance with specific provisions of a Corps and EPA approved comprehensive plan that ensures compliance with the compensation requirements of this MOA, as set forth at Section II.B (examples of such comprehensive plans may include Special Area Management Plans, Advance Identification areas (Section 230.80), and State Coastal Zone Management Plans). In some circumstances, it may be appropriate to deviate from the sequence when EPA and the Corps agree the proposed discharge is necessary to avoid environmental harm (e.g., to protect a natural aquatic community from saltwater intrusion, chemical contamination, or other deleterious physical or chemical impacts), or EPA and the Corps agree that the proposed discharge can reasonably be expected to result in environmental gain. This environmental gain must be solely attributable to the project itself, exclusive of benefits which may accrue from proposed compensatory mitigation.

In determining "appropriate and practicable" measures to offset unavoidable impacts, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes. The Corps will give full consideration to the views of the resource agencies when making this determination.

1. **Avoidance.**³ Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative.⁴ The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a)(1) requires that, to be permissible, an alternative must be the least environmentally damaging practicable alternative. In addition, Section 230.10(a)(3) sets forth rebuttable presumptions that 1) alternatives for non-water dependent activities that do not involve special aquatic sites⁵ are available and 2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts in the selection of the least environmentally damaging practicable alternatives for the purposes of requirements under Section 230.10(a).

2. **Minimization.** Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit

³Avoidance as used in this MOA does not include compensatory mitigation.

⁴It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(e)).

⁵Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.

(3)

conditions. Subpart H of the Guidelines describes several (but not all) means for minimizing impacts of an activity.

3. **Compensatory Mitigation.** Appropriate and practicable compensatory mitigation will be required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. Compensatory actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands) should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation). If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area (i.e., in close physical proximity and, to the extent possible, the same watershed). In determining compensatory mitigation, the functional values lost by the resource to be impacted must be considered. In most cases, in-kind compensatory mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type, careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, restoration should be the first option considered.

In the situation where the Corps is evaluating a project where a permit issued by another agency requires compensatory mitigation, the Corps may consider that mitigation as part of the overall application for purposes of public notice, but avoidance and minimization shall still be sought.

Mitigation banking may be an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank. Where a mitigation bank has been approved by EPA and the Corps for purposes of providing compensatory mitigation for specific identified projects, use of that mitigation bank for those particular projects will be considered as meeting the requirements of Section ILC.3 of this MOA, regardless of the practicability of other forms of compensatory mitigation. Additional guidance on mitigation banking will be provided. Simple purchase or "preservation" of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.

III. Other Procedures

A. Potential applicants for major projects should be encouraged to arrange preapplication meetings with the Corps and appropriate federal, state or Indian tribal, and local authorities to determine requirements and documentation required for proposed permit evaluations. As a result of such meetings, the applicant often revises a proposal to avoid or minimize adverse impacts after developing an understanding of the Guidelines

requirements by which a future Section 404 permit decision will be made, in addition to gaining an understanding of other state or tribal, or local requirements.

B. In achieving the goals of the CWA, the Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources. Measures which can accomplish this can be identified only through resource assessments tailored to the site performed by qualified professionals because ecological characteristics of each aquatic site are unique. Functional values should be assessed by applying aquatic site assessment techniques generally recognized by experts in the field and/or the best professional judgment of federal and state agency representatives, provided such assessments fully consider ecological functions included in the Guidelines. The objective of mitigation for unavoidable impacts is to offset environmental losses. Additionally for wetlands, such mitigation will provide, at a minimum, one for one functional replacement (i.e., no net loss of values)⁶, with an adequate margin of safety to reflect the expected degree of success associated with the mitigation plan, recognizing that this minimum requirement may not be relevant in some cases, as discussed in Section II.B of this MOA.

C. The Guidelines are established as the environmental standard for Section 404 permit issuance under the CWA. Aspects of a proposed project may be affected through a determination of requirements needed to comply with the Guidelines to achieve these CWA environmental goals. Other reviews, such as NEPA and the Corps public interest review, cannot be used to nullify any Guidelines requirements or to justify less rigorous Guidelines evaluations.

D. Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the condition is actually achieved. Any time it is determined that a permittee is in non-compliance with mitigation requirements of the permit, the Corps will take action in accordance with 33 CFR Part 326. Monitoring should not be required for purposes other than these, although information for other uses may accrue from the monitoring requirements. For projects to be permitted involving mitigation with higher levels of scientific uncertainty, such as some forms of compensatory mitigation, long term monitoring, reporting and potential remedial action should be required. This can be required of the applicant through permit conditions.

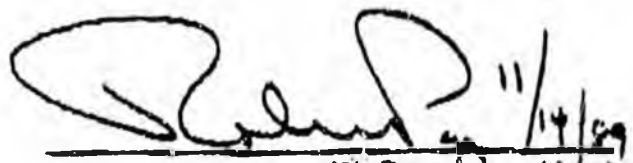
⁶In most cases a minimum of 1 to 1 acreage replacement of wetlands will be required to achieve no net loss of values. However, this ratio may be greater where the functional values of the area being impacted are demonstrably high. Conversely, the ratio may be less than 1 to 1 for areas where the functional values associated with the area being impacted are demonstrably low and the likelihood of success associated with the mitigation proposal is high.

EPAA Army MOA Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines

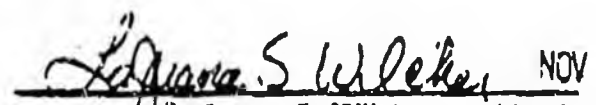
E. Mitigation requirements shall be conditions of standard Section 404 permits. Army regulations authorize mitigation requirements to be added as special conditions to an Army permit to satisfy legal requirements (e.g., conditions necessary to satisfy the Guidelines) [33 CFR 325.4(a)]. This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or unenforceable, the permit shall be denied.

F. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved. Furthermore, formal policy guidance on or interpretation of this document shall be issued jointly.

G. This MOA shall take effect thirty (30) days after the date of the last signature below, and will apply to those completed standard permit applications which are received on or after the effective date. This MOA may be modified or revoked by agreement of both parties, or revoked by either party alone upon six (6) months written notice.



Robert W. Page (date)
Assistant Secretary of the Army
(Civil Works)



LaJuana S. Wilcher (date) NOV
Assistant Administrator for Water
U.S. Environmental Protection Agency



National Audubon Society

ALASKA-HAWAII REGIONAL OFFICE
308 G STREET, SUITE 219, ANCHORAGE, ALASKA 99501 (907) 276-7034

OIL INDUSTRY THREATENS ALASKA WETLANDS

POSITION STATEMENT
OF THE
NATIONAL AUDUBON SOCIETY'S
ALASKA-HAWAII REGIONAL OFFICE

Anchorage, Alaska

January 10, 1990

Alaskans are being misled about the meaning of new federal policies on getting permits to develop in wetlands. The pressure is coming from the oil industry and other development interests who are passing along incorrect information in an apparent attempt to attack our nation's Clean Water Act.

Targets of their wrath include a recently released Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the Corps of Engineers regarding how damage to public wetland resources should be avoided or mitigated, and how President Bush's policy of "no net loss" of our nation's wetlands should be implemented in regulatory programs.

Contrary to what the misinformed critics are saying, the MOA does not establish new wetlands policy for Alaska. Furthermore, the President's "no net loss" goal does not mean that all development activities will be thwarted in our state.

The federal Clean Water Act requires that permits be obtained by developers when they damage wetlands by dredging or filling. What the MOA really does is provide a higher level of predictability and consistency for determining appropriate mitigation for the permitting process. It also attempts to avoid capricious and arbitrary decisions by the regulatory agencies. Thus it addresses concerns voiced for many years by both development and conservation interests.

For example, the MOA makes clear that a reasonable, logical, sequential approach to wetlands permitting will be taken. First, a permit would be issued for only the least damaging practical project alternative where wetlands cannot be avoided. This encourages good planning. However, in cases where public interest values are significant and where damage proves unavoidable, the permit would require that reasonable steps be taken to minimize the adverse impacts. Finally, compensatory mitigation actions would be required only as a last resort in cases where major adverse impacts prove unavoidable in high value wetlands even after all appropriate and practical steps have been taken to minimize the damage. Such compensatory actions might be to restore already degraded wetlands in the area, enhance important functions of existing wetlands, or provide functional replacement of wetlands if other compensatory options are not available or feasible.

The goal of "no net loss" does not require recreation of the exact conditions that existed before a wetlands development project commenced. Instead, it requires that reasonable efforts be made to replace important wetland functions and public values. This is essential if we are to continue to have adequate supplies of clean water, habitats for fish and wildlife, and thriving businesses and outdoor recreational activities that are dependent on wetlands.

For example, all that might be required in building in a portion of a wetland whose primary values are storage of floodwater and recharging groundwater, would be to install culverts and insure adequate cross-drainage flow.

Even though wetlands coverage in Alaska is considerable, the critics fail to mention that resource values of the various wetland types vary greatly one to the other. Some are low value, others medium value, while many are high value in terms of biological productivity and public interest. For example, high value coastal salt marsh in Alaska comprises only 7 percent of the nation's total.

In addition, wetland losses in some areas of Alaska have been dramatic. The U.S. Fish and Wildlife Service estimates that approximately 50 percent of wetlands in the Anchorage bowl and 30 percent in Juneau's Mendenhall Valley have already been lost to development.

Although Alaska's wetlands are estimated to compromise 170 million acres of Alaska's land base, the National Wetlands Inventory shows that only about 21 million (11 percent) are coastal wetlands and deepwater habitat. Yet it is these near shore zones that are particularly important as spawning, feeding and rearing areas for fish and shellfish that support Alaska's multi-billion dollar fishing industry. The proximity of these habitats to adjacent uplands makes them particularly vulnerable to human development pressures.

Despite various types of coastal wetlands being dramatically different from interior tundra wetlands, they too are included in industry's "exempt Alaska campaign".

According to the National Fisheries Service (NMFS), if Alaska is made exempt from the "no net loss" wetland policy and MOA, ... "OUR ABILITY TO CONSERVE COASTAL WETLANDS HABITATS VITAL TO MAINTENANCE OF ALASKA'S FISHERIES WILL BE SEVERELY COMPROMISED."

It appears that the principal reason for much of the misinformation fueling the current anti-wetlands campaign is the oil industry's special interest to reduce regulatory constraints on construction in wetlands on the North Slope. This is all set forth in a 1989 report entitled Effects of Petroleum Operations in Alaska Wetlands, authored by oil-industry consultant Robert Senner.

Scientists with the U.S. Fish and Wildlife Service, Alaska Department of Fish and Game and other organizations have concluded that the Senner report was never subjected to peer review and contains numerous technical flaws largely related to the improper use of references. They also found that it fails to recognize the great diversity of arctic wetlands and their unique wildlife inhabitants, and the basic ecological

principles involved in the functioning of wetlands. It improperly attempts to shift responsibility for establishing wetlands mitigation requirements from government to industry.

Furthermore, the report erroneously concludes that arctic wetlands are understocked and thus not limiting to populations of fish and wildlife.

It is inevitable that a campaign based on inaccurate and misleading reporting such as in the Senner report risks damaging the credibility to all parties who choose to associate themselves with it, including over-anxious politicians or uninformed citizens.

Industry is saying, again based on misinformation in the Senner report, that North Slope wetlands are not as valuable as other wetlands so should be exempted from protection under the Clean Water Act's section 404 permitting requirements.

The fact is, many North Slope wetlands are unique in the nation. For example, no other state has diverse types of tundra wetlands underlain by permafrost that produce millions of shorebirds and waterfowl annually; species like golden plovers, sandhill cranes, tundra swans, white-fronted geese, king eiders, Arctic loons, pintail ducks and many others. Migratory birds like these travel to other states and nations where they are enjoyed by millions of people. We have international treaty obligations to protect them.

Furthermore, Alaska's tundra wetlands serve as an important safety net to many continental waterfowl populations. In years of severe drought in the great duck factory of the prairie states and Canadian provinces, many displaced birds must fly north to Alaska just to survive until another nesting season. Without such a safety net, many duck populations would be even more severely depressed than they already are.

As wetlands destruction continues in other areas of the continent, Alaska is becoming increasingly important for duck species in trouble. For example, in 1988 60 percent of the continent's pintail ducks were found in Alaska. This species has declined from a population high of 10 million in 1956 to a current all time low of 2.5 million, or 55 percent below average. Meanwhile, the continent's total duck population is the lowest on record.

Because of the plight of our ducks, conservationists and sportsmen throughout the continent have banded together in an unprecedented effort to save them. They are doing this under the umbrella of the North American Waterfowl Management Plan. Should Alaska be exempted from the "no net loss" wetland policy, this plan could be placed in serious jeopardy.

No other state has tundra wetlands that provide such big game species as caribou and muskox with vital habitat for calving and feeding during the Arctic summer. And no other state has grizzly bears, polar bears, wolves and wolverines foraging around tundra wetlands.

Not to be overlooked is the fact that Alaska wetlands produce hundreds of millions of dollars worth of salmon, char, herring, pike, grayling and a variety of other fish pursued by sportsmen, subsistence users and commercial fishermen each year.

All this is not to ignore the fact that the serenity and beauty of the vast pristine wetlands of Alaska contribute to making Alaska our nation's last great wilderness.

One of the most disturbing aspects to the current anti-wetlands campaign is the assertion that because Alaska has not been able to undertake unchecked draining and filling of wetlands in order to promote economic growth as other states were able to do before the mid-1900's, the state should be exempted until at least 5 to 20 percent of our wetlands are gone.

This argument erroneously suggests that all Alaska wetlands are the same and aren't worth protecting. It would condemn an additional 8 to 32 million acres to destruction regardless of their many values before wetland conservation would be given serious consideration here.

This would be a giant step backward in protecting Alaska's wetlands-based economies and lifestyles. Such thinking reminds me of the famous British historian Arnold Toynbee when he said, "The only thing we learn from history is that we don't learn from history".

It will be important to determine how would the public will fit into industry's wetlands destruction scenario? What if someone's favorite duck march, fishing hole, moose hunting ground, subsistence use area, wildlife viewing retreat or neighborhood greenbelt were involved? How many Alaskans will really be willing to leave it up to industry to decide the fate of such wetlands from them? And then once the destruction is done, to allow the wetland developers to walk away without making compensation for damages? This appears to be exactly what they are asking for.

Following the tragic Exxon Valdez oil spill, the oil industry mounted a multi-million dollar public relations campaign to improve its image. Television commercials and the print media show its operations in harmony with the environment. Promises are again being made to trust the oil companies to develop the Arctic National Wildlife Refuge in an "environmentally responsible way". But the question has to be

asked: IS THE INDUSTRY'S CURRENT ANTI-WETLANDS CAMPAIGN THE STANDARD BY WHICH THEY WOULD TREAT WILDLIFE RICH TUNDRA AND COASTAL WETLANDS ON THE ARCTIC NATIONAL WILDLIFE REFUGE'S COASTAL FLAIN?

The current oil-industry backed misinformation campaign on Alaska's wetlands is misguided, and puts Alaska out of step with the rest of the nation in terms of wetlands conservation.

It commits Alaska to going blindly down the road to exploitation saying that it has nothing to learn from the tragic mistakes of our sister states. Furthermore, it only confirms in the minds of many Americans that we are a greedy oil state willing to compromise the spectacular beauty of our countryside and its unmatched wildlife abundance for even greater industry profits and bigger dividend checks. And we wonder why so many Americans voice such strong support for an Alaska National Interest Lands Conservation Act (ANILCA).

A much wiser and more sensible approach would be for our political leaders to help get diverse wetland interest groups working together on the issue, and to provide them with factual information. It is time that we recognize and take pride in Alaska's diverse wetlands for all their many values to society. It is time to make a strong commitment to their conservation, and to realize that this can be done while at the same time promoting sustainable development. In the end, our economic stability, the quality of our lives, and our image as stewards of the Great Land will be much the better for it.

Dave Cline
January 10, 1990



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 2, '1990

MEMORANDUM FOR: F - William W. Fox, Jr.
FROM: *for* F/AKR -- Steven Pennoyer *James H. Bonds*
SUBJECT: No Net Loss of Wetlands and Alaska

President Bush's proposed policy of No-Net-Loss of Wetlands has generated considerable interest, concern, and even hysteria here in Alaska, despite the fact that, to date, specifics of this policy remain undefined. Almost every other day we see another media article that suggests that this Policy will "cripple" Alaska's economy. Alaska's elected officials and the oil companies have undertaken an active campaign to have Alaska excluded both from any policy developed by the Domestic Policy Council and from the EPA/COE Memorandum of Agreement (MOA) concerning mitigation. If they are successful, our ability to conserve coastal wetland habitats vital to the maintenance of Alaska's fisheries will be severely compromised. NMFS needs to launch its own campaign to 1) assert the importance and value of coastal wetland habitats in Alaska, 2) outline the inaccuracies in the arguments made by those who seek to exclude Alaska from national wetland policies, 3) support EPA and the COE in their proposed mitigation MOA, and 4) work with other agencies to obtain needed data on the areal extent and loss rates of specific wetland habitat types in Alaska. Our overall short-term goal should be to ensure that, at a minimum, western and southeastern Alaska's coastal wetlands are included in all national policy/programs that are developed.

Most of the concerns expressed by elected officials and industry representatives center around the regulation of fill in tundra wetlands associated with north slope oil and gas development. Studies to date show that these tundra wetlands provide limited fisheries habitat values. Therefore, F/AKR generally does not object to the issuance of permits for tundra fill. Conversely, coastal marine, estuarine, and riverine wetland habitats in western and southeastern Alaska provide vital spawning, rearing, and feeding area for many of Alaska's premier commercial and sport fisheries, e.g., five species of Pacific salmon, steelhead trout, herring, and Dungeness, tanner, and king crab. The current "exempt Alaska campaign" lumps all of Alaska's wetlands into one exclusion category without acknowledging the major differences both in fisheries values and, very probably, in loss rates between coastal wetlands and interior tundra wetlands.



Much of the pro-exclusion arguments (See attachment) seems to rest on the "fact" that Alaska has lost about 0.05% of its wetland base to human development. This loss estimate appears to have originated in a report (Senner 1989) prepared for ARCO Alaska, Inc. and BP Exploration (Alaska) Inc. We have reviewed this document and find that this loss estimate is not substantiated with data or even a thorough discussion of the methods used to derive the estimate. The only wetland loss estimates we are aware of for coastal wetlands in Alaska indicate that, at least locally, coastal wetland loss rates are much higher. Adamus et al. (1987) estimated that Juneau wetlands have been reduced by 13% since 1948. Wetland reductions in the Anchorage area for 1982-1987 were estimated at nearly one-third (27-31%) of the community's 1982 wetland base (Municipality of Anchorage 1988).

Without differentiation by habitat type and geographic area, the significance of wetland losses to fisheries is obscured. According to estimates, wetlands comprise 170,000,000 acres of Alaska's land area. However, according to the National Wetlands Inventory (Hall 1988), only 20,961,566 (11%) of these acres are coastal wetland and deepwater habitat. The majority of this coastal wetland habitat (90%) consists of estuarine subtidal habitat. Estuarine intertidal vegetated wetlands comprise only 1.7% of the state's coastal wetland area, and marine and estuarine intertidal unvegetated flats comprise the other 8.3%. These shallow nearshore zones are particularly important as spawning, feeding, and rearing areas for fishery resources. However, their proximity to upland makes these areas particularly vulnerable to human development pressure.

We have been working diligently to ensure that the same level of protection mandated in the Clean Water Act is afforded to coastal wetlands in Alaska as in the rest of the United States (Faris et al. 1988). Because of the frontier perspective and geographic isolation, this has been an extremely difficult task. If Alaska is excluded from the no-net loss policy and the COE/EPA MOA, our habitat conservation efforts will be dealt a serious setback. We cannot allow regulatory agencies and industry to get the message that wetlands in Alaska are less important than wetlands in the rest of the country.

Coastal wetlands in Alaska continue to support the Nation's largest fisheries and one of the State of Alaska's greatest industries. Additionally, these wetlands generally provide the important societal functions of water quality improvement, floodwater desynchronization, sediment and shoreline stabilization, nutrient export, and buffers to storm and other surface water disturbances. These coastal wetlands warrant additional measures for their protection and maintenance. It is imperative that NMFS direct a concerted effort to ensure that Alaska coastal wetlands are not excluded from any national

policies or programs. An increased commitment is also needed to ascertain accurate habitat-specific data on Alaska's wetlands.

We await your direction on what approach you wish the agency to take in these matters. The Alaska Region Habitat Conservation Division staff are prepared to assist in this effort.

Attachment

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cc: ADFG, Juneau
FWS, Juneau, Anchorage
ADEC, Juneau, Redburn
F/PR, Foster, Hall, Risenhoover
F/NER74 - Bigford
F/SER1 - Mager
Mark Dalton, Anchorage Dept. of Econ. Dev. Plan.

EPA, Anchorage, Seattle
CE, W.W. Kakel
F/AKR, Morris, Smith
ADNR
ADGC

- ROBERT W. BYRD, WEST VIRGINIA, CHAIRMAN
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United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6028

December 1, 1989

The Honorable Richard G. Darman
Director
Office of Management and Budget
Old Executive Office Building
17th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20503

Dear Dick:

There are serious problems with a recently promulgated Corps of Engineers/ Environmental Protection Agency Memorandum of Agreement [MOA] concerning permits under section 404 of the Clean Water Act. The agencies maintain that this MOA is merely a clarification of existing mitigation policy in light of the national goal of no overall net loss of wetland functions and values. We disagree.

While the application of this MOA to Alaska has the potential for disaster, it is objectionable on much broader grounds. It is not a clarification of existing policy. The Corps admits that the "no overall net loss" goal had not been articulated before this MOA. It is, in fact, a new policy setting an objective of no net loss of wetlands, and directing the agencies to use existing mitigation policies to achieve that objective.

As such, it undercuts and supercedes efforts within the Administration and in Congress to articulate a workable no overall net loss policy for wetlands protection. Further, it has been promulgated without opportunity for public comment, in violation of the Administrative Procedures Act.

Either of these objections would justify revocation of this MOA -- a step which we urge be taken immediately. And in addition to policy and procedural issues, there are substantive problems with it as well. Putting it simply, implementation of this MOA can not be done with the flexibility which the agencies claim to have worked into the document.

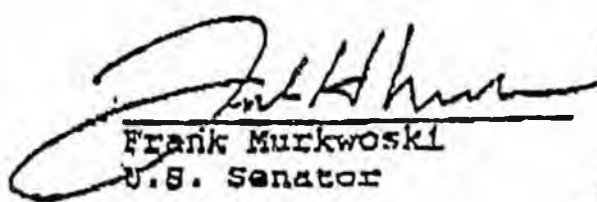
The Honorable Richard G. Darman
December 1, 1989
Page Two

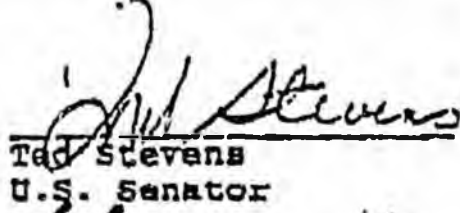
Both agencies admit that no measuring stick has been agreed to for determining whether they are meeting this new goal. The Corps does not know if it is trying to achieve no net loss of wetland functions at a District, Region, State or National level. The MOA claims to recognize that no net loss may not be achieved in each permit. But in the absence of guidance, the agencies will -- by default -- try to achieve no net loss on a permit by permit basis.

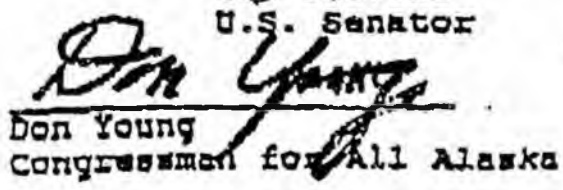
The MOA effectively requires no net loss to be the objective in each permit decision. Under the MOA, this objective would be abandoned only under limited circumstances. The absence of an alternative measuring stick forces a decision in each case between abandoning the national goal and rejecting the claim of special circumstance. This is particularly critical in Alaska. As you know, 60% of Alaska is estimated to be wetlands. While the "South 48" has lost 54% of its wetlands, Alaska has a net loss to date of .05% of its wetlands. We want to be part of the national program and we want to protect our wetlands, but an area 1/5th the size of the whole United States should be looked at as a whole and not on a permit by permit basis.

There is a need for a national wetlands policy, which should include a goal of no overall net loss. Alaska can play a constructive role in shaping a flexible but effective wetlands policy, and can be accommodated by such a policy.

However, this MOA does not advance that cause. It is more of a barrier than a help to developing a workable wetlands policy. It should be revoked. If it is not going to be revoked, then it should be withdrawn and subjected to appropriate public comment. At the very least it should be limited to the 48 contiguous states and a special study made of Alaska's need for a policy of protection of special wetlands and a recognition of our right to use our Statehood and Native lands to assure survival of our state.


Frank Murkwoski
U.S. Senator


Ted Stevens
U.S. Senator


Don Young
Congressman for All Alaska



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

October 3, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

You have committed your Administration to the goal of reversing the loss of our nation's wetlands. Your White House Domestic Policy Council will begin in the coming weeks to take action on this national wetlands policy by revising existing administrative and regulatory tools. To aid in this task, several recommendations were developed by the National Wetlands Policy Forum, chaired by Governor Kean of New Jersey, and in which Alaska has participated. The forum also is recommending actions that can be taken by the Congress and by the states.

Alaska has a large portion of the nation's wetlands--about 170 million acres, or nearly double the acreage found in the contiguous United States. Most of Alaska's wetlands remain in their natural state. In contrast to losses of more than 200,000 acres of wetlands per year in many other parts of the United States, the acres of Alaskan wetlands lost as a result of development since territorial days are something less than 80,000 acres. Alaska is committed to the continued protection and wise stewardship of these areas.

Alaska's wetlands are distinguishable not only by their quantity and relatively undisturbed state, but by physical characteristics as well. Alaska's wetlands are diverse and often continuous over large areas. Among them are America's only high latitude wetlands, many characterized by permafrost.

For example, vast areas of North Slope tundra are considered "wetlands" because they have standing water and saturated soils during part of the year. However, the reason these

arctic or high latitude soils are "wet" is because they are underlain by permafrost--soil that remains constantly below freezing and thereby impermeable, trapping rain and snowmelt on the surface.

Because of the unique features of many, but not all Alaskan wetlands, it is important to the State that policies reflect the physical differences that distinguish our wetlands from those in other parts of the United States. While "no net loss" is a laudable national goal, it has been recognized that it must be balanced by evaluation of the nation's wetlands not only by acreage, but also by physical characteristics and function.

Wetlands can function in more ways than one; as wildlife habitat, as natural flood control mechanisms, as water purifiers, as recreation areas, as the nursery grounds for marine organisms. But not all wetlands perform all these functions. For example, North Slope tundra wetlands do provide wildlife habitat, however, these areas do not perform the hydrologic and water purification functions typical of wetlands in the contiguous United States.

This qualifier is essential for evaluating Alaskan wetlands. It has been embraced by the National Wetlands Forum, the National Governors' Association, and others. We have achieved consensus in these forums that national policy should be no overall net loss of the nation's remaining wetlands base, as defined by acreage and function. We urge you to include such a clarifying statement in any regulatory proposals aimed at conservation and restoration of America's wetlands.

It also is essential that States retain the flexibility to conduct management and regulatory programs that reflect the special characteristics of their wetlands. For example, in Alaska, wetlands underlain by permafrost pose unique scientific challenges to successful restoration activities. We are examining a variety of approaches to avoid wetland alteration, but where it is unavoidable, to minimize it, and compensate for it. We must make sure our capacity to respond to unique circumstances and to tailor our mitigation efforts is not constrained by a nationwide, one-of-a-kind approach. Whatever national goal your Administration sets in executive action or regulatory policy must be tempered by the recognition that the goal may have to be implemented differently in various regions of the country.

The President

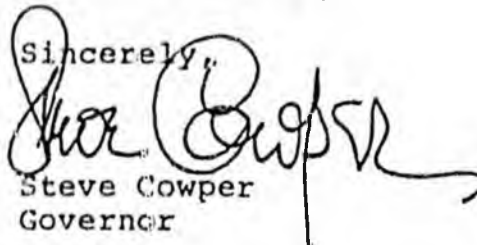
- 3 -

October 3, 1989

We look forward to working with you to devise a national strategy that will ensure that America's wetland resources and their valuable contribution to wildlife habitat and water quality are protected.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

cc: Secretary, Department of the Interior
Secretary, Department of Commerce
Administrator, Environmental Protection Agency
Commander, U.S. Army Corps of Engineers
Chairman, President's Council on
Environmental Quality



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 7, 1989

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I wrote to you in October regarding your goal of no net loss of our valuable national wetlands. At that time, I expressed the desire of the State of Alaska to work with your Administration toward this goal in a manner that recognizes regional differences and the need for flexibility.

It was our understanding that your Domestic Policy Council was undertaking a thorough and considered review of a variety of options and approaches to developing a National Wetlands Policy, and that this was the forum in which to make our views known. It was therefore quite a surprise to see that the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) already have executed an agreement on mitigation guidelines to implement a "no net loss" policy.

Although both agencies contend that this agreement is nothing more than a restatement of existing policy, it appears from our analysis to make major changes in the way federal agencies are required to make decisions about activities in wetlands. Furthermore, the so-called "guidelines" do not provide any policy or criteria; they provide only unrestrained discretion at the local agency level. This is not an expression of "national wetlands policy". It is an example of ad hoc decision making. As such, this memorandum will have a chilling effect on community expansion and economic development, because it leaves permit applicants without any certainty about how decisions will be made from region to region, state to state, or even within one state.

While those who participated in the National Wetlands Forum looked for some flexibility in national wetlands policy, this memorandum eclipses the policy process and leaves States without a role in decisions affecting their economic futures. In our

case, it will affect activities on the entire North Slope, from state and federal lands that hold petroleum potential to the development on acreage that was conveyed by the federal government to the Arctic Slope Regional Corporation established pursuant to the Alaska Native Claims Settlement Act.

Our objections, however, do not turn on the philosophical implications of the agreement. My main purpose in writing is to register our dismay at the process by which this document was executed. If it is, indeed, nothing more than a clarification of existing authority, why was it necessary for the EPA and Corps to execute it at this time, well ahead of the Domestic Policy Council process through which we believed the Administration's goals would be articulated?

This agreement was signed well before the Domestic Policy Council's Wetlands Task Force had completed its work. While we all were assured our views would become part of national wetlands consideration, a critical operating element of those deliberations--mitigation requirements--has been locked in by two agencies operating independently of the policy-making process. Further, although the document purports to provide policy and guidelines, it does neither. Instead, the agreement bestows virtually unfettered discretion upon regional agency personnel who are not at a policy-making level. By doing so, the agreement does not clarify or codify existing regulation, nor does it provide any certainty to permit applicants.

Most importantly, it is our view that the memorandum is a significant enough change in the regulatory posture of the two agencies that it should have been subject to the requirements of the Administrative Procedure Act. It affects policy that heretofore has been characterized by extensive public involvement. Indeed, it is the importance of wetlands to a variety of diverse public interests that motivated the Forum and your Administration to focus on the topic in the first place. It is disturbing that we have here the first manifestation of wetlands policy, and the public was absent.

Mr. President, preservation of our dwindling national wetlands base is a laudable goal, and I support you in it. However, it will take time to tailor actions that will work in the diverse regions of our nation. We had hoped that your Administration was taking the time to develop a thoroughly considered policy. This MOA is not in keeping with that approach and we urge you, for procedural reasons, to ask the agencies to withdraw it.

December 7, 1989

Thank you for your consideration of our views on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper". The signature is written in a cursive style with a large, looping initial "S".

Steve Cowper
Governor

cc: The Honorable Ted Stevens, Senator
The Honorable Frank Murkowski, Senator
The Honorable Don Young, Member of Congress
The Honorable Clayton Yeutter, Secretary of Agriculture
The Honorable Robert Mosbacher, Secretary of Commerce
The Honorable James Watkins, Secretary of Energy
The Honorable William Reilly, Administrator of EPA
The Honorable Jack Kemp, Secretary of HUD
The Honorable Manuel Lujan, Jr., Secretary of Interior
The Honorable Samuel Skinner, Secretary of Transportation

BY REP. COTTEN, Menard, Barnes

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 61

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

Requesting the President not to imple-

6

ment the "no net loss" of wetlands

7

policy as to the State of Alaska.

8

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

WHEREAS the Domestic Policy Council, the United States Environmental

10

Protection Agency, the United States Army Corps of Engineers, the United

11

States Fish and Wildlife Service, and other federal agencies are advancing

12

a new wetlands policy for the nation; and

13

WHEREAS the proposed policy calls for "no net loss" of wetlands in the

14

United States; and

15

WHEREAS the rationale for a "no net loss" policy is based on the loss

16

of 54 percent of the total wetlands in the continental United States; and

17

WHEREAS less than one percent of the 170,000,000 acres of wetlands in

18

the state have been affected by encroachment; and

19

WHEREAS Alaska has land characteristics that are unique to the state

20

and require special consideration in a wetlands policy for the nation; and

21

WHEREAS the "no net loss" policy fails to recognize that permafrost

22

qualifies as wetlands; and

23

WHEREAS Alaska, through its state and municipal governments, has done

24

an outstanding job in protecting and preserving highly valued wetlands; and

25

WHEREAS the subjection of the state to a "no net loss" policy con-

26

ceived without an understanding of Alaska's unique characteristics would

27

prevent the reasonable, responsible, and appropriate development of wet-

28

lands in Alaska; and

29

WHEREAS the future development and extraction of Alaska's natural

1 resources and diversification of the state's economy would be deleteriously
2 affected by subjection to this "no net loss" policy;

3 BE IT RESOLVED that the Alaska State Legislature urges the President
4 of the United States to determine that application of a "no net loss"
5 policy to wetlands in Alaska would not be in the best interest of the state
6 or nation, and would jeopardize the energy security of our nation; and be
7 it

8 FURTHER RESOLVED that the President direct federal agencies to account
9 for the unique circumstances and needs of the State of Alaska in developing
10 and implementing national wetlands policy.

11 COPIES of this resolution shall be sent to the Honorable George Bush,
12 President of the United States; Lieutenant General Henry J. Hatch, Chief of
13 Engineers, Commanding General, U.S. Army Corps of Engineers; William K.
14 Reilly, Administrator, U.S. Environmental Protection Agency; and to the
15 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
16 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
17 tion in Congress.

6-1871J
Bradley
1/11/90

Original sponsor(s): SEN. FRANK, Kelly, Coghill, Sturgulewski, Uehling, Pearce, Faiks, Zharoff, Fahrenkamp, Jones, Fischer, Binkley, Adams, Halford, Szymanski, Duncan, Rodey, Pourchot

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 54 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 *Relating to*
6 ~~Opposing~~ the "no net loss of wetlands"
7 *and opposing the MOA between*
8 policy ~~of~~ the United States Army Corps
9 of Engineers and the United States
10 Environmental Protection Agency.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS the Domestic Policy Council, the United States Environmental
11 Protection Agency, the United States Army Corps of Engineers, the United
12 States Fish and Wildlife Service, and other federal agencies are advancing
13 a new wetlands policy for the nation; and

14 WHEREAS the November 15, 1989, Memorandum of Agreement between the
15 United States Corps of Engineers and the United States Environmental Pro-
16 tection Agency fails to distinguish Alaska's fundamentally different wet-
17 lands from those of the other states; and

18 WHEREAS the "no net loss" policy stems from the 54 percent wetlands
19 loss in the continental United States; and

20 WHEREAS the definition of wetlands has expanded significantly since
21 the Clean Water Act was originally implemented; and

22 WHEREAS Alaska has land characteristics that are unique to the state
23 and require special consideration in a wetlands policy for the nation; and

24 WHEREAS 88 percent of the total land mass of the state is owned by the
25 federal and state government, and the state ~~presently does an outstanding~~
26 ~~job in~~ *is committed to* protecting and preserving highly valued wetlands; and

27 WHEREAS under the existing definition of wetlands, up to 170,000,000
28 acres of Alaska are wetlands in contrast to the other states where only a
29 small percentage of the area is wetlands; and

1 WHEREAS the "no net loss wetlands" ^{MOA}~~policy~~ fails to recognize the
2 unique nature of permafrost in the state as well as the vast areas of the
3 state that cannot be developed; and

4 WHEREAS the subjection of the state to a "no net loss" policy con-
5 ceived without an understanding of Alaska's unique characteristics would
6 prevent the reasonable, responsible, and appropriate development of wet-
7 lands in Alaska; and

8 WHEREAS the future development and extraction of Alaska's natural
9 resources and diversification of the state's economy would be deleteriously
10 affected by subjection to a "no net loss" policy that did not consider
11 Alaska's unique circumstances; and

12 WHEREAS the wetland areas of the state cover up to 170,000,000 acres
13 and only 80,000 acres, approximately 0.05 percent of the wetlands, have
14 been altered since 1867;

15 BE IT RESOLVED by the Alaska State Legislature that George Bush,
16 President of the United States, is respectfully requested to rescind the
17 application to the state of the wetlands Memorandum of Agreement; and be it

18 FURTHER RESOLVED that the Alaska State Legislature urges the President
19 of the United States to determine that application of a "no net loss"
20 policy to wetlands in Alaska that does not consider Alaska's unique circum-
21 stances would not be in the best interest of the state or nation; and be it

22 FURTHER RESOLVED that the President direct federal agencies to account
23 for the unique circumstances and needs of the State of Alaska in developing
24 and implementing national wetlands policy; and be it

25 FURTHER RESOLVED that the President direct the White House Domestic
26 Policy Council to propose a wetlands conservation strategy that recognizes
27 the role of the states and provides resources for them to plan wetlands
28 conservation strategies, allows for regional diversity, allows the national
29 goal to be pursued through individual state wetlands management programs,

1 and provides flexible approaches that recognize the uniqueness of Alaskan
2 wetlands.

3 COPIES of this resolution shall be sent to the Honorable George Bush,
4 President of the United States; Lieutenant General Henry J. Hatch, Chief of
5 Engineers, Commanding General, U.S. Army Corps of Engineers; William K.
6 Reilly, Administrator, U.S. Environmental Protection Agency; and to the
7 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
8 the Honorable Don Young, U.S. Representative, members of the Alaska delega-
9 tion in Congress.

S J R

55

IN MARCH OF 1989, THE NATIONAL WEATHER SERVICE PRESENTED A PLAN TO CONGRESS TO MODERNIZE AND RESTRUCTURE THEIR OPERATIONS NATIONWIDE. WHILE THIS PLAN MAY UPGRADE WEATHER SERVICE OFFICES IN THE LOWER 48, IT WOULD VIRTUALLY CEASE PROVIDING ANY LOCAL WEATHER SERVICES THROUGHOUT RURAL ALASKA.

AS IT STANDS, THE PROPOSAL WOULD ELIMINATE 14 OF ALASKA'S 17 WEATHER SERVICE OFFICES, LEAVING ONLY THREE FORECAST STATIONS- LOCATED IN FAIRBANKS, ANCHORAGE AND JUNEAU- FULLY STAFFED. THIS PROPOSAL WOULD ELIMINATE THE WEATHER SERVICE STATIONS IN BARROW, KOTZEBUE, NOME, UNALAKLEET, MCGRATH, BETHEL, KING SALMON, ST. PAUL, COLD BAY, KODIAK, HOMER, VALDEZ, YAKUTAT AND ANNETTE ISLAND. MANY OF THESE STATIONS HAVE ALREADY HAD THEIR STAFFING REDUCED AND ARE ABLE TO PROVIDE ONLY THE MOST BASIC WEATHER SERVICES.

THE FISHERMEN, MARINERS AND AVIATORS OPERATING IN THE THOUSANDS OF MILES OF COASTLINE AND PRIME FISHING GROUNDS IN THE GULF AND BERING SEA, BRISTOL BAY, AND SOUTHEAST REGIONS WILL NO LONGER HAVE QUICK ACCESS TO UPDATED LOCAL WEATHER FORECASTS. NEITHER WILL THE AVIATORS WHO FLY TO THE REMOTE AREAS OF THE INTERIOR.

WEATHER SERVICE FORECASTS PROVED INVALUABLE THIS PAST SUMMER DURING THE CLEAN-UP EFFORTS FOLLOWING THE EXXON VALDEZ OIL SPILL WHEN AIR TRAFFIC IN THE PRINCE WILLIAM SOUND, NORTH GULF COAST AND KODIAK AREAS QUADRUPLED.

BY CONTRAST, THE NEXT LARGEST STATE, TEXAS, WILL HAVE NINE FULL SERVICE WEATHER STATIONS- 3 TIMES WHAT ALASKA WILL BE LEFT WITH

IF THE CURRENT WEATHER SERVICE PROPOSAL IS ACCEPTED,

AT THE URGING OF THE MANY ALASKAN COMMUNITIES WHO DEPEND ON THESE IMPORTANT WEATHER FORECASTS, THE NATIONAL WEATHER SERVICE, THE DEPARTMENT OF COMMERCE AND THE OFFICE OF MANAGEMENT AND BUDGET WHO DEvised THE PLAN-ARE CURRENTLY REVIEWING IT. THEY PLAN TO COMPLETE THEIR REVIEW BY THE END OF THIS MONTH. IF WE ARE TO IMPACT THE REVIEW PROCESS, NOW IS THE TIME.

IT IS IMPORTANT THAT WE SEND THIS STRONG MESSAGE TO THE NATIONAL WEATHER SERVICE AND THE DEPARTMENT OF COMMERCE THAT WE REJECT THE PROPOSED PLAN AND URGE THEM INSTEAD TO DEVELOPE A PLAN THAT WILL CONTINUE TO PROVIDE THE VITAL WEATHER SERVICES THAT ARE SO NECESSARY TO PRESERVE LIFE AND PROPERTY IN THE DIVERSE CONDITIONS EXISTING IN ALASKA.

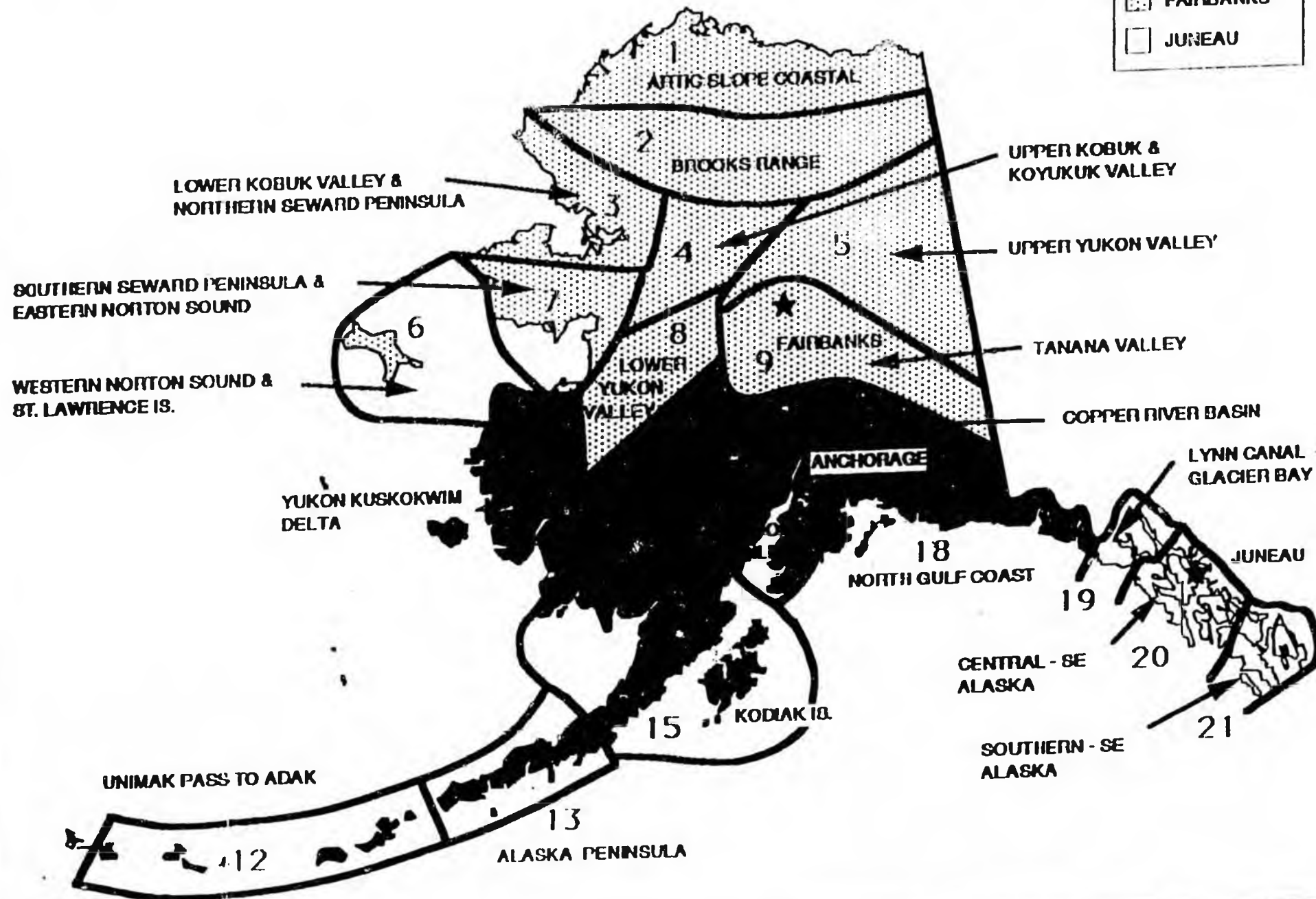
THIS RESOLUTION WILL SERVE TO INFORM THE NATIONAL WEATHER SERVICE THAT ALASKANS ACROSS THE STATE INSIST ON A LEVEL OF SERVICE COMMENSURATE WITH THE ENVIRONMENTAL DEMANDS WE FACE IN OUR TRAVELS AND DOING OUR WORK.

ALASKA AREA FORECAST (FA) SECTORS

NOTE: FA AREAS EXTEND TO 100 MILES OFFSHORE

LEGEND

- ANCHORAGE
- FAIRBANKS
- JUNEAU



Ted Stevens

United States Senator For Alaska

October 26, 1989



FOR IMMEDIATE RELEASE

Contact: Press Office
(907) 224-3200

STEVENS OPPOSES NATIONAL WEATHER SERVICE PLAN FOR ALASKA

A plan to modernize the National Weather Service nationwide would reduce rather than improve the forecasting information available to Alaskans, Senator Ted Stevens said today.

During a Senate Commerce Committee hearing on a major restructuring of the National Weather Service, Stevens noted that the plan would eliminate local forecasting services at 17 service stations in Alaska. The staff at those stations currently collect meteorological data for forecast stations in Anchorage, Fairbanks and Juneau and provide local weather information for fishermen, pilots and other members of their communities.

National Weather Service officials today informed Stevens that the three forecast stations in Anchorage, Fairbanks and Juneau would remain open and provide information to the communities that would no longer receive information from a service station.

Stevens questioned the ability of a forecaster in Anchorage to be able to match a local weather service staff person's ability to tell pilots about weather conditions.

"Now we're going to have the fellow who tells us it's all right to land ... is two mountain ranges and 1500 miles away. That's the distance from St. Louis to San Francisco. [Is a weather forecaster in St. Louis] going to tell the people in San Francisco you're clear to land?" Stevens asked.

Using a map showing Alaska superimposed over the lower 48, Stevens pointed out that the nation's largest state will not have an equitable share of National Weather Service offices under the modernization plan. While Alaska will be left with only three forecast stations, the second-largest state of Texas will have ten. A total of 112 forecast stations will be located in the lower 48 states, Stevens was told.

-BOB-

Stevens noted that the National Weather Service is required to certify that the proposed modernization will not cause a degradation of service. He suggested that certification will not be able to be made in Alaska, where residents rely on accurate forecasts for air and water transportation.

"If there's any place that's sensitive to your business, it's my state...", Stevens said. "Could you certify that this plan ...would not reduce the services to my people who rely on weather data?" Stevens asked Dr. Joe Friday, Assistant Administrator for Weather Services.

Friday said that based on Stevens' information, he would take a second look at the plan for Alaska.

Stevens also questioned the effectiveness of new radar that will be installed in Alaska under the modernization plan. The doppler NEXRAD radar cannot "see" over mountain ranges and therefore would offer only limited coverage in Alaska, Stevens said.

During today's hearing, Stevens read letters from Alaskans who oppose the National Weather Service modernization.

Kodiak mayor Bob Brodie wrote, "As the country's largest fishing port...it is vital that our fishing fleet and our many small plane pilots have the most complete weather information possible."

Local governments in Kodiak, Valdez and Gambell have passed resolutions in opposition to the modernization, Stevens said.

National Weather Service service stations are currently located in Anchorage, Fairbanks, Juneau, Barrow, Kotzebue, Nome, Unalakleet, McGrath, Bethel, King Salmon, St. Paul, Cold Bay, Kodiak, Homer, Valdez, Yakutat and Annette Island.

Under the modernization plan, many of the stations will be automated. Personnel may remain at other stations. However, they will only send data to the forecast stations in Anchorage, Fairbanks and Juneau. They will not provide local weather information or briefings to area residents.

###

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 14, 1990

FURTHER REFERRALS:

Date of Committee Action: 2/20/90

The RESOURCES Committee considered:

SJR 55

SENATE JOINT RES. NO. 55

NATIONAL WEATHER SERVICE IN ALASKA

Relating to the proposed restructuring of the National Weather Service in Alaska.

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] _____ [] a new title
- [] have attached amendment(s)
- [X] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [X] zero fiscal note(s) Senate DRNO. 1/24/90
- [] zero fn/analysis _____

SIGNING DO PASS:

Cliff Davidson

Bill Hulse

Bob Sharp

SIGNING:

(Check approp. column)

	Do Not PASS	No Rec	Amend
<u>[Signature]</u>		X	

[Signature]
Chairman's Signature

HOUSE COMMITTEE REPORT

2/14

(5)

Date Referred: February 2, 1990

FURTHER REFERRALS:

RESOURCES

Date of Committee Action: 2/13/90

The TRANSPORTATION Committee considered:

SJR 55

SENATE JOINT RES. NO. 55

NATIONAL WEATHER SERVICE IN ALASKA

Relating to the proposed restructuring of the National Weather Service in Alaska.

RECOMMENDATIONS:

- be replaced with _____ the same title
- be replaced with _____ a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____


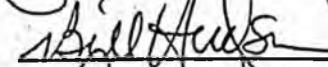
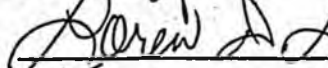
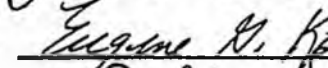
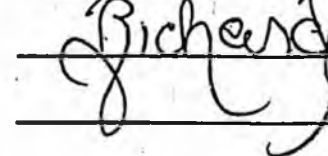
- fiscal note(s) _____
- zero fiscal note(s) Senate Transp 1/24
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

SIGNING <u>DO</u> PASS:		SIGNING: (Check approp. column)		
		Do Not Pass	No Rec	Amend
	GERUSSENDORF			
	HUDSON			
	LEMAN			
	KUBIAK			
	EASTER			


Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: 1/23/90
 Title: restructuring of the weather service in Alaska
 Sponsor: Senator Zharoff
 Requestor: _____

Agency Affected: _____
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate Transportation Committee Phone: 465-3743
 Division: _____ Date: 1/23/90

Approved by Chairman _____ Date: _____
 Commissioner [Signature]
 Agency: _____

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

S J R

58

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: SJR 58
Advisory Committees
Sponsor: Szymanski
Requestor: S. Resources

Agency Affected: Environmental Conservation
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

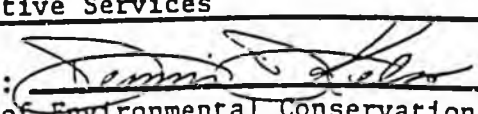
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PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The FY 90 effect would also be a zero impact.

Prepared by: Gail Gatton
Division: Administrative Services

Phone: 465-2600
Date: 1/22/90

Approved by Commissioner: 
Agency: Department of Environmental Conservation

Date: January 22, 1990

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 26, 1990

FURTHER REFERRALS:

Date of Committee Action: 2/1/90

The RESOURCES Committee considered:

SJR 58

SENATE JOINT RES. NO. 58 ADVISORY COMMITTEES/OIL CONTINGENCY PLANS

Endorsing a proposal in pending federal legislation to establish citizens' advisory committees to assist in the development and implementation of oil discharge contingency response plans.

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[X] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact _____
[X] zero fiscal note DEC
[] zero with analysis _____

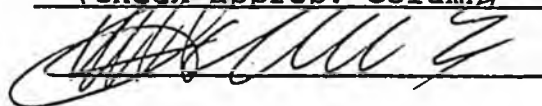
- [] fiscal note(s) _____
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

Mike Davis

SIGNING:

(Check ~~approp.~~ column)

	Do Not Pass	No Rec	Amend
		←	

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: SJR 58
Advisory Committees
Sponsor: Szymanski
Requestor: S. Resources

Agency Affected: Environmental Conservation
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

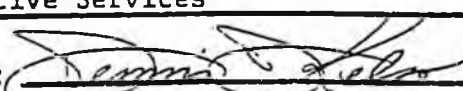
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PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The FY 90 effect would also be a zero impact.

Prepared by: Gail Gatton
Division: Administrative Services

Phone: 465-2600
Date: 1/22/90

Approved by Commissioner: 
Agency: Department of Environmental Conservation

Date: January 22, 1990

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

January 22, 1990

TO: Representative Curt Menard
Chair, House Resources Committee

FROM: Senator Mike Szymanski *MS*

SUBJECT: SENATE JOINT RESOLUTION 58, relating to the
establishment of citizens' advisory committees in
federal legislation.

I expect that Senate Joint Resolution 58, which passed out of Senate Resources Committee today, will be referred to the House Resources Committee this week.

I would appreciate it if you would schedule this resolution or a hearing next week in the House Resources Committee. The House/Senate Conference committee is expected to convene to discuss the oil spill legislation and the citizens advisory committee consensus language within two weeks; so, time is an element.

I am enclosing a packet of information and back-up for your information.

If you have any questions, please contact me or my staff, Paula Terrel.

Thank you for your consideration of this request.

enclosure

Senate District E

Mar-Su Borough • Sitka Anchorage • Bar/Indian • Girdwood • Nikiski • Cooper Landing • Hope • Seward • Prince William Sound



Alaska State Legislature

Senator Mike Szymanski

While in Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4978

Interim:
3111 C Street, Suite 510
Anchorage, Alaska 99503
(907) 561-7617
or
165 E. Parks Highway
Wasilla, Alaska 99687
(907) 376-6453

INDEX OF CONTENTS

- 1) Letter from Ann Rothe, President of the Regional Citizens Advisory Committee, explaining the evolution and purpose of the Committee and the status of federal legislation.
- 2) Regional Citizens Advisory Committee Members
- 3) Consensus Language for the Conference Committee which has been drafted and approved by the Regional Citizens Advisory Committee and endorsed by Senator Stevens and Senator Murkowski;
- 4) Federal legislation which will be considered in conference committee, including
 - a. Congressional Record - House with the Young amendment.
 - b. H.R. 1465, page 143
 - c. S. 686 by Senator Murkowski
- 5) List of Conferees
- 6) Resolution of support from the City of Cordova
- 7) Resolution of Support from the Kenai Peninsula Borough

REGIONAL CITIZENS ADVISORY COMMITTEE
750 West Second Avenue, Suite 200
Anchorage, Alaska 99501
(907) 694-9068

January 17, 1990

Senator Bettye Fahrenkamp, Chairman
Alaska State Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to express the support of the Regional Citizens Advisory Committee for Senate Joint Resolution No. 58 now under consideration by your committee.

The formation of the Regional Citizens Advisory Committee (RCAC) was a cooperative effort between Alyeska Pipeline Service Company (Alyeska) and citizens of Prince William Sound and adjacent areas impacted by the Exxon Valdez oil spill. Efforts to organize this group were guided by recognition of the fact that participation of an informed citizenry is essential to insuring that potential environmental impacts from the operation of the Trans Alaska Pipeline Terminal, including operation of oil tankers served by the terminal, are minimized.

For your information, I have attached a copy of the list of the members of RCAC. The members came together in June of 1989 for two purposes:

- 1) To review Alyeska's revised oil spill prevention and response plan for Prince William Sound; and
- 2) To develop a plan of action for the formation of a permanent citizens' oversight group to monitor operation of the Trans Alaska Pipeline Terminal and oil tanker traffic served by terminal.

RCAC members provided Alyeska with our comments on the Prince William Sound Oil Spill Prevention and Response Plan released August 1. Our comments were incorporated into major revisions

to the plan released December 31. We are presently reviewing these revisions and will submit our comments to Alyeska in mid February.

Our chosen course of action for developing a permanent citizens oversight group was to incorporate as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code and enter into a contract with Alyeska that requires them to provide funding for the citizens group and establishes a formal and verifiable process for insuring that the advice provided by the citizens group is given serious consideration by the company.

We were chartered as a nonprofit corporation by the State of Alaska on December 26, 1989. The organizational meeting of the newly incorporated Regional Citizens Advisory Committee was held January 15. At that meeting, we elected our corporation officers and approved bylaws. Contract negotiations with Alyeska are nearing completion and we anticipate we will have a final contract ready to sign by the end of this week.

While we were organizing RCAC here in Alaska, we were aware that the concept of a citizens advisory committee had been included in oil spill legislation pending in Congress. We carefully reviewed Title V of Senate Bill 686 (authored by Senator Murkowski) and Title VIII of House Bill 1465 (authored by Senator George Miller of California), which deal with the establishment of citizens oversight groups. We felt Senator Murkowski's legislation most closely reflected what we felt was needed, except that it did not provide enough regional representation.

We rewrote Senator Murkowski's Title V to provide broader citizen oversight and took our language to Washington, D.C. in the hope that we could get it included in HB 1465 before it passed the House. Although we were asking for our language to be inserted very late in the House debate on the bill, Congressman Don Young agreed that he would see what he could do. After reviewing the direction of the debate on HB 1465, Congressman Young thought our language would have greater success if he could find another vehicle for its passage. He changed the federal oversight authority outlined in our language from the Environmental Protection Agency (EPA) to the U.S. Coast Guard and attached it to the Coast Guard appropriations bill which passed the House November 7, 1989.

When the House version of the Coast Guard appropriations bill reached the Senate, Young's Amendment (our language) was deleted. The Senate felt the Young Amendment should not have

been attached to Coast Guard appropriations, but should be considered along with S 686 and HB 1463 by the House-Senate conference committee for oil spill legislation to be convened in February. We intend to carry our language to conference committee staff next week.

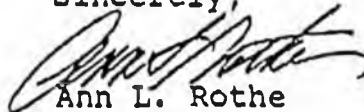
I have included for your information our final recommendations on this language. Please note that we have given the federal oversight authority back to the EPA because we felt our concerns over the operation of the Trans Alaska Pipeline Terminal and tanker traffic through Prince William Sound fall primarily in their purview as the lead federal agency charged with responsibility for enforcement of the Clean Water Act. We have contacted the offices of Senators Stevens and Murkowski and Congressman Young, and have received assurances that they will help us in our efforts.

In the meantime, we are continuing the task of building our organization. We have established four working subcommittees: Oil Spill Prevention and Response, Port Operations and Vessel Traffic Systems, Terminal Operations and Environmental Monitoring, and Scientific Research and Review. We intend to hold public meetings over the next three months in locations throughout the region represented by our committee to take public comment regarding the scope and purpose of these subcommittees and seek nominations for subcommittee members. In addition, we will seek nominations for ex-officio members from the state and federal regulatory agencies responsible for overseeing terminal operations and tanker traffic in the Sound.

I hope this provides you with an understanding of the purpose and commitment of the Regional Citizens Advisory Committee. On behalf of our committee, I respectfully request that you give your strong support to SJR No. 58.

If you have further questions regarding the Regional Citizens Advisory Committee, please do not hesitate to contact me.

Sincerely,



Ann L. Rothe
President

Enclosures

cc: Members, Regional Citizens Advisory Committee

December 12, 1988
RCAC MEMBERS

NAME	ADDRESS	PHONE	FAX
BOB BRODIE CITY OF KODIAK	710 MILL BAY RD. KODIAK, AK 99615	486-3224(WK) 486-3079(HM)	486-4009
JIM BUTLER KENAI PENINSULA	144 N. DINKLEY AVE SOLDOTNA, AK 99669 560-27-0535	262-7815(WK) 283-5633(HM)	262-1892
CHARLES CHRISTIANSEN LARSEN BAY	BOX 8 LARSEN BAY, AK 99615	847-2211	847-2239
BILL WALKER CITY OF VALDEZ	509 W. 3rd AVE. ANCHORAGE, AK 99501	263-8251 274-7522	263-8320
CHRIS GATES CITY OF SEWARD	5th & ADAMS BOX 167 CITY HALL SEWARD, AK 99664	224-3331(WK) 224-8667(HM)	224-3248
MARILYN LELAND C.D.F.U.	BOX 939 CORDOVA, AK 99574 SS# 384-48-2011	424-3447(WK) 424-7773(HM)	424-3430
JOHN McMULLEN PWSAC	PWSAC OFFICE CORDOVA, AK 99574 SS# 386-32-5722	424-7511(WK)	424-7514
DAVE MOFFAT CITY OF WHITTIER	BEGICH TOWERS CONDO 504 WHITTIER, AK 99693 SS# 179-16-2663	472-2327(WK) 472-2443(HM)	472-2404
STACY PASCAL CHUGACH ALASKA CORP.	3000 A STREET SUITE 400 ANCHORAGE, AK 99503	563-8866(WK) 272-2272(HM)	563-8402
TIM ROBERTSON CITY OF SELDOVIA	DRAWER B SELDOVIA, AK 99663	234-7469(WK) 234-7491(HM)	234-7430
ANN ROTHE NAT'L WLD. FEDERATION	750 W. 2ND AVE SUITE 200 ANCHORAGE, AK SS# 479-70-4492	258-4800(WK)	258-4811
JEROME SELBY KODIAK ISLAND BOROUGH	710 MILL BAY RD KODIAK, AK 99615	486-5736(WK)	486-2886
MARGE TILLON CITY OF HOMER	P.O. BOX 935 HOMER, AK 99603	235-7085(HM)	235-7085
MEAD TREADWELL CITY OF CORDOVA	FIRST STREET BOX 1210 CORDOVA, AK 99574	424-6248(WK) 277-3042(HM)	424-6000

12/06/89 DRAFT
ACAC RECOMMENDATIONS FOR FEDERAL LEGISLATION
GOVERNING CITIZENS OVERSIGHT OF TERMINAL AND TANKER OPERATIONS
IN ALASKA

ACAC recommends that the Conference Committee include the Amendment to H.R. 1465 offered by Rep. Young dated 11/7/89 with our suggested changes in the Committee's final bill on oil spill prevention, liability and compensation. Mr. Young's amendment with our recommended changes is provided below:

SEC. ____ . TERMINAL AND TANKER OVERSIGHT AND MONITORING

(a) SHORT TITLE.--This title may be sited as the "Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1989."

(b) DEMONSTRATION PROGRAMS.--

- (1) ESTABLISHMENT.--There are established two Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as "Programs") to be carried out in the State of Alaska.
- (2) ADVISORY FUNCTION.--The function of these programs shall be advisory only.
- (3) PURPOSE.--Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located south of the latitude at Point Possession and north of the latitude at [AMATUL] Amatuli Island, including offshore facilities in Cook Inlet.
- (4) SUITS BARRED.--No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section except for the performance of contracts.

(c) OIL TERMINAL FACILITIES AND OIL TANKER OPERATION ASSOCIATION.--

- (1) ESTABLISHMENT.--There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter referred to as the "Association") for each of the Programs established in subsection (b).
- (2) MEMBERSHIP.--Each Association shall be comprised of four individuals as follows:
 - (A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators;
 - (B) One individual shall be designated by the owners and operators of the crude oil tankers call and the terminal facilities and shall represent those owners and operators;
 - (C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State Government; and
 - (D) One individual shall be an employee of the Federal Government, shall be designated by the President, and shall represent the Federal Government.
- (3) RESPONSIBILITIES.--Each Association shall be responsible for reviewing policies relating to the operation and maintenance of the oil terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of their respective terminals. Each Association shall provide a forum among the owners and operators of the terminal facilities, the owners and operators of crude oil tankers calling at those facilities, the United States, and the State of Alaska to discuss and to propose resolution of all permits, plans, and site-specific regulations governing the activities and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities and of crude oil tankers calling at those facilities.

(d) REGIONAL CITIZENS' ADVISORY COUNCILS.--

- (1) MEMBERSHIP.--Each Council shall be comprised of voting and non-voting members and follows:

- (A) VOTING MEMBERS.--Voting members shall be Alaska residents and, except as provided in clause (vii) of this paragraph, shall be appointed by the Governor from a list of nominees provided by each of the following interests, with one representative appointed to represent each of the following interests, taking into consideration the need for regional balance on the Council--
- (i) local commercial fishing industry organizations, the members of which depend on the fisheries resources of the waters in the vicinity of the terminal facilities;
 - (ii) the aquaculture association(s) in the vicinity of the terminal facilities;
 - (iii) Alaska Native Corporations and other Alaska Native organizations the members of which reside in the vicinity of the terminal facilities;
 - (iv) environmental organizations the members of which reside in the vicinity of the terminal facilities;
 - (v) recreational organizations the members of the which reside in or use the vicinity of the terminal facilities;
 - (vi) the Alaska State Chamber of Commerce, to represent the locally based tourist industry;
 - (vii) (I) for the Prince William Sound terminal facilities Council, one representative selected by each of the following municipalities: Cordova, Whittier, Seward, Valdez, Kodiak, the Kodiak Island Borough, and the Kenai Peninsula Borough;
 - (II) for the Cook Inlet terminal facilities Council, one representative selected by each of the following municipalities: Homer, Seldovia, Anchorage, Kenai, Kodiak, the Kodiak

Island Borough, and the Kenai Peninsula Borough.

(B) NON-VOTING MEMBERS.--One ex-officio, non-voting representative shall be designated by, and represent, each of the following--

- (i) Environmental Protection Agency;
- (ii) Coast Guard;
- (iii) U.S. Forest Service;
- (iv) Department of the Interior;
- (v) Alaska Department of Environmental Conservation;
- (vi) Alaska Department of Fish and Game;
- (vii) Alaska Department of Natural Resources; and
- (viii) Division of Emergency Services, [ALASKA DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS]; Alaska Department of Military and Veterans Affairs.

(3) TERMS.--

(A) THREE YEARS.--The voting members of each council shall be appointed for a term of three years except as provided for in subparagraph (3) (B) of this paragraph.

(B) INITIAL APPOINTMENTS.--The terms of the first appointments shall be--

(i) for the appointments by the Governor of the State of Alaska, one third shall serve for three years, one third shall serve for two years, and one third shall serve for one year; and

(ii) for the representatives of municipalities required by subsection (d) (2) (A) (vii) < a drawing of lots among the appointees shall determine that one third of that group serves for three years, one third serves for two years, and the remainder serve for one year.

(4) SELF-GOVERNING.--Each Council shall elect its own chairperson, select its own staff, and make policies with regard to its internal operating procedures. After the initial organizational meeting called by the [SECRETARY OF

TRANSPORTATION) Administrator of the Environmental Protection Agency under subsection (i) of this section, each Council shall be self-governing.

(5) DUAL MEMBERSHIP PROHIBITED.--No individual selected as a member of the Council shall serve on the Association.

(6) DUTIES OF THE COUNCIL.--Each Council shall--

(A) provide advice and recommendations to the Association on policies, permits, and site-specific regulations relating to the operation and maintenance of terminal facilities and crude oil tankers which affect or may affect the environment in the vicinity of the terminal facilities;

(B) monitor through the committee established under subsection (e) of this section, the environmental impacts of the operation of the terminal facilities and crude oil tankers;

(C) monitor those aspects of terminal facilities and crude oil tanker operations and maintenance which affect or may affect the environment in the vicinity of the terminal facilities;

(D) review through the committee established under subsection (f) of this section, the adequacy of oil spill prevention and contingency plans for the terminal facilities and the adequacy of oil spill prevention and contingency plans for crude oil tankers operating in Prince William Sound or Cook Inlet;

(E) recommend to the Association --

(i) standards and stipulations for permits and site-specific regulations intended to minimize the impact of terminal facilities and crude oil tanker operations on the environment in the vicinity of the terminal facilities;

(ii) modifications in terminal facilities operations and maintenance intended to

minimize the impact of terminal facilities operations on the environment in the vicinity of the terminal facilities and to minimize the risk of oil spills;

(iii) modifications of crude oil tanker operations and maintenance in Prince William Sound and Cook Inlet intended to minimize the risk and mitigate the impact of oil spills; and

(iv) modifications to the oil spill prevention and contingency plans for terminal facilities and for crude oil tankers in Prince William Sound and Cook Inlet intended to enhance the ability to prevent and respond to an oil spill.

(F) create additional committees of the Council as necessary to carry out the above functions, including a scientific and technical advisory committee to the Prince William Sound Council.

(7) NO ESTOPPEL.--No Council shall be held liable under state or federal law for costs or damages as a result of rendering advice pursuant to this title. Nor shall any advice given by a council, association or program representative or agent be grounds for estopping the interests represented by each Council from seeking damages and other appropriate relief [IN THE EVENT OF A SPILL].

(8) SCIENTIFIC WORK.--In carrying out its research development and monitoring functions, each Council shall review the scientific work undertaken by or on behalf of the terminal operators or crude oil tanker operators as a result of a legal requirement to undertake that work. Each Council shall also review the relevant scientific work undertaken by or on behalf of any government entity relating to the terminal facilities or crude oil tankers. To the extent possible, to avoid unnecessary duplication, the Council shall coordinate its work with the scientific work performed by or on behalf of the terminal operators and with the scientific work performed by or on behalf of the operators of the crude oil tankers.

(e) COMMITTEE FOR TERMINAL AND OIL TANKER OPERATIONS AND ENVIRONMENTAL MONITORING.--

- (1) MONITORING COMMITTEE.--Each Council shall establish a standing Terminal and Oil Tanker Operations and Environmental Monitoring Committee (hereinafter referred to as the "Monitoring Committee") to devise and manage a comprehensive program of monitoring the environmental impacts of the operations of terminal facilities and of crude oil tankers while operating in Prince William Sound and Cook Inlet. The membership of the Monitoring Committee shall be made up of members of the Council, citizens and recognized scientific experts selected by the Council.
- (2) DUTIES.--In fulfilling its responsibilities, the Monitoring Committee shall--
 - (A) advise the Council on a monitoring strategy that will permit early detection of environmental impacts of terminal facilities operations and crude oil tanker operations while in Prince William Sound and Cook Inlet;
 - (B) develop monitoring programs and make recommendation to the Council on the implementation of those programs;
 - (C) at its discretion, select and contract with universities and other scientific institutions to carry out specific monitoring projects authorized by the Council pursuant to an approved monitoring strategy;
 - (D) complete any other tasks assigned by the Council; and
 - (E) provide written reports to the Council which interpret and assess the results of all monitoring programs.

(f) COMMITTEE FOR OIL SPILL PREVENTION, SAFETY, AND EMERGENCY RESPONSE.--

- (1) TECHNICAL OIL SPILL COMMITTEE.--Each Council shall establish a standing technical committee (hereinafter referred to as the "Oil Spill Committee") to review and assess measures

designed to prevent oil spills and the planning and preparedness for responding to, containing, and cleaning up oil spills. The membership of the Oil Spill Committee shall be made up of members of the Council, citizens and recognized technical experts selected by the Council.

- (2) DUTIES.--In fulfilling its responsibilities, the Oil Spill Committee shall--
- (A) periodically review the respective oil spill prevention and contingency plans for the terminal facilities and for the crude oil tankers while in Prince William Sound or Cook Inlet, in light of new technological developments and changed circumstances;
 - (B) monitor periodic drills and testing of the oil spill contingency plans for the terminal facilities and for crude oil tankers while in prince William Sound and Cook Inlet;
 - (C) study wind and water currents and other environmental factors in the vicinity of the terminal facilities which may affect the ability to prevent, respond to, contain, and clean up an oil spill;
 - (D) identify highly sensitive areas which may require specific protective measures in the event of a spill in Prince William Sound or Cook Inlet;
 - (E) monitor developments in oil spill prevention, containment, response and cleanup technology;
 - (F) periodically port organization, operations, incidents, and the adequacy and maintenance of vessel traffic systems designed to assure safe transit of vessels pertinent to terminal operations;
 - (G) periodically review the standards for tankers bound for, loading at, exiting from or otherwise using the terminal facilities; and
 - (H) Complete any other tasks assigned by the Council; and
 - (I) provide written reports to the Council outlining its findings and recommendations.

(g) AGENCY COOPERATION.--On and after the expiration of the 180-day period following the date of enactment of this section, each Federal department, agency, or other instrumentality shall, with respect to all permits, site-specific regulations, and other matters governing the activities and actions of the terminal facilities which affect or may affect the vicinity of the terminal facilities, consult with the appropriate Council prior to taking substantive action with respect to the permit, site-specific regulation, or other matter. This consultation shall be carried out with a view to enabling the appropriate Association and Council to review the permits, site-specific regulations, or other matters and make appropriate recommendations regarding operations policy or agency actions. Prior consultation shall not be required if an authorized Federal agency representative reasonably believes that an emergency exists requiring action without delay.

(h) RECOMMENDATIONS OF THE COUNCIL.--In the event that the Association does not adopt or significantly modifies before adoption any recommendation of the Council made pursuant to the authority granted to the Council in subsection (d), the Association shall provide, in writing, within five days of its decision, to the Council notice of its decision and a written statement of reasons for its rejection or significant modification of the recommendation.

(i) ADMINISTRATIVE ACTIONS.--Appointments, designations, and selections of individuals to serve as members of the Associations and Councils under this section shall be submitted to the [SECRETARY OF TRANSPORTATION] Administrator of the Environmental Protection Agency prior to the expiration of the 120-day period following the date of the enactment of this section. On or before the expiration of the 180-day period following the enactment of this section, the [SECRETARY] Administrator shall call an initial meeting of each Association and Council for organizational purposes.

(j) LOCATION AND COMPENSATION.--

- (1) LOCATION.--Each Association and Council established by this title shall be located in the State of Alaska.
- (2) COMPENSATION.--No member of an Association or Council shall be compensated for the member's services as a member of the Association or Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, at a

rate established by such Association or Council not to exceed the rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code. However, each Council may enter into contracts to provide for compensation and expenses to members of the committees created under subsections (d), (e), and (f) of this section.

(k) FUNDING.--

(1) REQUIREMENT.--Approval of [THE] all contingency plans and licenses required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers shall be effective only so long as the respective Association and Council for a facility are funded pursuant to paragraph (2) of this section.

(2) RESPONSIBILITY.--

(A) PRINCE WILLIAM SOUND.--The owners and operators of terminal facilities or crude oil tankers in Prince William Sound shall provide, for the establishment and operation of the environmental oversight and monitoring program in Prince William Sound, \$2,000,000 annually, adjusted annually by the Anchorage Consumer Price Index.

(B) OIL SPILL FUND.--Subject to appropriations laws, the Secretary of the Treasury shall make available from the Oil Spill Liability Trust Fund to the [SECRETARY OF TRANSPORTATION] Administrator of the Environmental Protection Agency such sums, in addition to those available pursuant to subparagraph (A), as the [SECRETARY] Administrator deems necessary to operate the Prince William Sound Program established by this section.

(C) COOK INLET PROGRAM.--

(1) Subject to appropriations laws, the Secretary of the Treasury shall make available from the Oil Spill Liability Fund to the [SECRETARY OF TRANSPORTATION] Administrator of the Environmental Protection Agency such sums as the

QUESTIONS—For purposes of this section—

(1) "tanker" means a self-propelled work vessel that is constructed or adapted to carry oil in bulk in the cargo space; and

(2) "barge" means a nonself-propelled vessel constructed or adapted to carry oil in bulk as cargo.

SECTION 1115. FUEL REPORT CLAIM FRAUD

Section 664(c) of title 18, United States Code, as amended by section 1014, is amended by striking "collected under this section" and substituting "collected under any law" after "collected" the first time it appears.

(2) in paragraph (2) by inserting "under any law" after "collected" the first time it appears.

SECTION 214. REVIEW OF CRIMINAL RECORDS IN ISSUING AND RENEWING MARINE LICENSES

Chapter 71 of title 46, United States Code is amended—

(1) in section 7103—

(A) by redesignating subsection (3) as subsection (4); and

(B) by inserting after subsection (4) the following:

"(5) The Secretary shall conduct a review of the criminal record of each individual who applies for a license under this section," and

(2) in section 7104—

(A) by inserting "(4)" before "A license"; and

(B) by adding at the end the following:

"(b) The Secretary shall conduct a review of the criminal record of each holder of a license issued under this part who applies for renewal of that license under this section."

SECTION 216. BUREAU FOR THE COLLECTION OF MILITARY RECORDS

Not later than 6 months after the date of the enactment of this act, the Secretary of Transportation shall—

(1) amend part 62 of title 38, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1952 of title 10, United States Code, to ensure that an application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.

SECTION 217. COOPERATION OF MARITIME ADMINISTRATION VESSELS

Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary of the Secretary of Commerce as the result of a default under title XI of the Merchant Marine Act, 1916 (16 App. U.S.C. 1271-1273), to determine whether any of those vessels are suitable for use by the Coast Guard.

SECTION 218. PROHIBITION AGAINST REDUCTION IN SERVICES

Notwithstanding any other law, the Secretary of Transportation may not reduce the level of Coast Guard activity during fiscal year 1990 to increase drug law enforcement if amounts made available from all sources to carry out Coast Guard activities are equal to or greater than the amounts used to carry out Coast Guard activities during fiscal year 1988.

SECTION 219. SUSPENSION AND REVOCATION OF SEAMEN'S LICENSES FOR ALCOHOL ABUSE

(a) In general.—Chapter 17 of title 46, United States Code, is amended by adding the following new section:

"§ 7104. Alcohol abuse as grounds for revocation

(a) The Secretary shall suspend or revoke a license, certificate of registry, or merchant mariner's document if the Secretary determines the holder is a current or chronic abuser of alcohol.

(b) Any determination by the Secretary to suspend or revoke a license, certificate of registry, or merchant mariner's document under this section shall be based on the severity of abuse of alcohol by the holder and the length of time necessary to control that abuse.

(c) The Secretary shall conduct necessary investigations to determine if a holder is a current or chronic abuser of alcohol if the Secretary receives information regarding any alcohol-related misconduct of the holder.

(d) A suspension of a license, certificate of registry, or merchant mariner's document under subsection (a) shall remain in effect until the former holder provides sufficient proof that the former holder is no longer a current or chronic abuser of alcohol."

SECTION 220. REQUIREMENT TO REPORT SEXUAL OFFENSES

(a) In general.—Chapter 101 of title 46, United States Code is amended by—

(1) striking section 10104; and

(2) adding the following new section:

"§ 10104. Requirement to report sexual offenses

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of \$5,000."

SECTION 221. SOUTHEAST LIGHTHOUSE PRESERVATION

(a)(1) The Secretary of the department in which the Coast Guard is operating shall convey, by any appropriate means, all right, title and interest of the United States in the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation hereafter referred to as the "Foundation" of the town of New Shoreham, Rhode Island.

(2) The purpose of this conveyance is to establish and maintain a nonprofit center for the public at the Block Island Southeast Lighthouse for interpretation and preservation of the culture of the United States Coast Guard and Block Island's maritime history.

(b) The conveyance shall be made—

(1) without payment of consideration;

(2) subject to the condition that if the property, or any part of the property, ceases to be used for the purpose of this section, title to all such property shall be deemed to have immediately reverted to the United States; and

(3) subject to such other terms and conditions as the Secretary of the department in which the Coast Guard is operating may impose.

(c) The conveyance shall include provisions necessary to ensure that—

(1) the light, antennas, sound signal, and associated equipment which are active aids to navigation shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow an interference in any manner with national title without written permission of the United States;

(3) there is no transfer to the United States the right to relocate, remove, or alter any navigational aid or structure on any other part of the property as may be necessary for a navigational purpose;

(4) the United States shall have the right, at any time, to enter the property without notice to maintain navigational aids; and

(5) the United States shall have an agreement for access to the property to maintain navigational aids.

(d) The Secretary of the department in which the Coast Guard is operating shall identify, describe, and determine the property to be conveyed under this section.

(e) For purposes of this section, "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal, and land necessary to carry out the purposes of this section located to the town of New Shoreham, Rhode Island.

SECTION 222. ALCOHOL ABUSE AS GROUNDS FOR REVOCATION

(a) The Secretary shall suspend or revoke a license, certificate of registry, or merchant mariner's document if the Secretary determines the holder is a current or chronic abuser of alcohol.

(b) Any determination by the Secretary to suspend or revoke a license, certificate of registry, or merchant mariner's document under this section shall be based on the severity of abuse of alcohol by the holder and the length of time necessary to control that abuse.

(c) The Secretary shall conduct necessary investigations to determine if a holder is a current or chronic abuser of alcohol if the Secretary receives information regarding any alcohol-related misconduct of the holder.

(d) A suspension of a license, certificate of registry, or merchant mariner's document under subsection (a) shall remain in effect until the former holder provides sufficient proof that the former holder is no longer a current or chronic abuser of alcohol."

SECTION 223. REQUIREMENT TO REPORT SEXUAL OFFENSES

(a) In general.—Chapter 101 of title 46, United States Code is amended by—

(1) striking section 10104; and

(2) adding the following new section:

"§ 10104. Requirement to report sexual offenses

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of \$5,000."

SECTION 224. SOUTHEAST LIGHTHOUSE PRESERVATION

(a)(1) The Secretary of the department in which the Coast Guard is operating shall convey, by any appropriate means, all right, title and interest of the United States in the Block Island Southeast Lighthouse to the Block Island Southeast Lighthouse Foundation hereafter referred to as the "Foundation" of the town of New Shoreham, Rhode Island.

(2) The purpose of this conveyance is to establish and maintain a nonprofit center for the public at the Block Island Southeast Lighthouse for interpretation and preservation of the culture of the United States Coast Guard and Block Island's maritime history.

(b) The conveyance shall be made—

(1) without payment of consideration;

(2) subject to the condition that if the property, or any part of the property, ceases to be used for the purpose of this section, title to all such property shall be deemed to have immediately reverted to the United States; and

(3) subject to such other terms and conditions as the Secretary of the department in which the Coast Guard is operating may impose.

(c) The conveyance shall include provisions necessary to ensure that—

(1) the light, antennas, sound signal, and associated equipment which are active aids to navigation shall continue to be operated and maintained by the United States;

(2) the Foundation will not interfere or allow an interference in any manner with national title without written permission of the United States;

(3) there is no transfer to the United States the right to relocate, remove, or alter any navigational aid or structure on any other part of the property as may be necessary for a navigational purpose;

(4) the United States shall have the right, at any time, to enter the property without notice to maintain navigational aids; and

(5) the United States shall have an agreement for access to the property to maintain navigational aids.

(d) The Secretary of the department in which the Coast Guard is operating shall identify, describe, and determine the property to be conveyed under this section.

(e) For purposes of this section, "Block Island Southeast Lighthouse" means the lighthouse and attached keeper's dwelling, several ancillary buildings, a fog signal, and land necessary to carry out the purposes of this section located to the town of New Shoreham, Rhode Island.

SECTION 225. TERMINAL AND TANKER OVERSIGHT AND MONITORING

(a) SHORT TITLE.—This section may be cited as the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1989.

(b) DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—There are established two Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as "Programs") to be carried out in the State of Alaska.

(2) AGENCY FUNCTIONS.—The function of these Programs shall be advisory only.

(3) PURPOSE.—Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located south of the latitude at Point Possession and north of the latitude at Amatuk Island, including offshore facilities in Cook Inlet.

(4) SUITABLE HARBOR.—No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section.

SECTION 226. OIL TERMINAL FACILITIES AND OIL TANKER OPERATIONS ASSOCIATION

(1) ESTABLISHMENT.—There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter referred to as "Association") for each of the Programs established in subsection (b).

(2) MEMBERSHIP.—Such association shall be composed of four individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators;

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators;

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government; and

(D) One individual shall be an employee of the Federal Government, shall be design-

ated as the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1989.

(b) DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—There are established two Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as "Programs") to be carried out in the State of Alaska.

(2) AGENCY FUNCTIONS.—The function of these Programs shall be advisory only.

(3) PURPOSE.—Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located south of the latitude at Point Possession and north of the latitude at Amatuk Island, including offshore facilities in Cook Inlet.

(4) SUITABLE HARBOR.—No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section.

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(2) MEMBERSHIP.—Such association shall be composed of four individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators;

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators;

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government; and

(D) One individual shall be an employee of the Federal Government, shall be design-

ated as the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1989.

(b) DEMONSTRATION PROGRAM.—

(1) ESTABLISHMENT.—There are established two Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Demonstration Programs (hereinafter referred to as "Programs") to be carried out in the State of Alaska.

(2) AGENCY FUNCTIONS.—The function of these Programs shall be advisory only.

(3) PURPOSE.—Prince William Sound Program shall be responsible for environmental monitoring of the terminal facilities in Prince William Sound and the crude oil tankers operating in Prince William Sound. The Cook Inlet Program shall be responsible for environmental monitoring of the terminal facilities and crude oil tankers operating in Cook Inlet located south of the latitude at Point Possession and north of the latitude at Amatuk Island, including offshore facilities in Cook Inlet.

(4) SUITABLE HARBOR.—No program, association, council, committee or other organization created by this section may sue any person or entity, public or private, concerning any matter arising under this section.

SECTION 228. OIL TERMINAL FACILITIES AND OIL TANKER OPERATIONS ASSOCIATION

(1) ESTABLISHMENT.—There is established an Oil Terminal Facilities and Oil Tanker Operations Association (hereinafter referred to as "Association") for each of the Programs established in subsection (b).

(2) MEMBERSHIP.—Such association shall be composed of four individuals as follows:

(A) One individual shall be designated by the owners and operators of the terminal facilities and shall represent those owners and operators;

(B) One individual shall be designated by the owners and operators of the crude oil tankers calling at the terminal facilities and shall represent those owners and operators;

(C) One individual shall be an employee of the State of Alaska, shall be designated by the Governor of the State of Alaska, and shall represent the State government; and

(D) One individual shall be an employee of the Federal Government, shall be design-

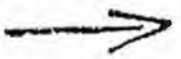
ated as the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1989.

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101ST CONGRESS
1ST SESSION

H. R. 1465

IN THE SENATE OF THE UNITED STATES



NOVEMBER 15 (legislative day, NOVEMBER 6), 1989
Received

AN ACT

To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the "Oil
5 Pollution Act of 1989".

6 (b) TABLE OF CONTENTS.—The contents of this Act
7 are as follows:

Task Force p. 143.

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1 with the Interagency Committee and the agencies represent-
2 ed on the Interagency Committee.

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3 (10) The applicant shall disseminate results of oil pollu-
4 tion prevention, removal, mitigation, and environmental ef-
5 fects research and development, as appropriate, through
6 technology transfer, training, and other educational pro-
7 grams.

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8 (g) FUNDING —Not to exceed \$28,000,000 of amounts
9 in the Fund shall be available annually, without fiscal year
10 limitation, to carry out this section. For each of fiscal years
11 1990, 1991, 1992, 1993, and 1994, \$1,000,000 of such
12 amount shall be available for each regional center established
13 under subsection (f).

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14 **TITLE VIII—TRANS-ALASKA**
15 **PIPELINE SYSTEM**

14

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16 SEC. 8001. SHORT TITLE.

16

17 This title may be cited as the "Trans-Alaska Pipeline
18 System Reform Act of 1989".

17 U.S.

18

19 SEC. 8002. REFERENCES TO TRANS-ALASKA PIPELINE
20 AUTHORIZATION ACT.

19

20

21 Except as otherwise expressly provided, whenever in
22 this title an amendment or repeal is expressed in terms of an
23 amendment to, or repeal of, a section or other provision, the
24 reference shall be considered to be made to a section or other

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1 provision of the Trans-Alaska Pipeline Authorization Act (43
2 U.S.C. 1651-1655).

3 **Subtitle A—Improvements to Trans-**
4 **Alaska Pipeline System**

5 **SEC. 8101. LIABILITY WITHIN THE STATE OF ALASKA AND**
6 **CLEANUP EFFORTS.**

7 (a) CAUSE OF ACCIDENT.—Section 204(a)(1) of the
8 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
9 1653(a)(1)) is amended by striking out "caused by" in the
10 first sentence and inserting in lieu thereof "caused solely by".

11 (b) REMOVAL OF LIMITATION.—Section 204(a) of the
12 Act (43 U.S.C. 1653(a)) is amended—

- 13 (1) by striking out paragraph (2); and
- 14 (2) by redesignating paragraphs (3), (4), and (5) as
15 paragraphs (2), (3), and (4), respectively.

16 (c) CLEANUP EFFORTS.—Section 204(b) of the Act (43
17 U.S.C. 1653(b)) is amended in the first sentence—

- 18 (1) by inserting after "any area" the following:
19 "in the State of Alaska";
- 20 (2) by inserting after "any activities" the follow-
21 ing: "related to the trans-Alaska pipeline system, in-
22 cluding operation of the terminal,"; and
- 23 (3) by inserting after "other Federal" the first
24 place it appears the following: "or State".

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1 SEC. 8102. TRANS-ALASKA PIPELINE LIABILITY FUND.

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2 (a) TERMINATION OF CERTAIN PROVISIONS.—Section
3 204(c) of the Act (43 U.S.C. 1653(c)) is amended by adding
4 at the end the following new paragraph:

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5 "(13) Paragraphs (1) through (14) shall apply to claims
6 pending against the Fund, but only with respect to incidents
7 occurring before the date of the enactment of the Trans-
8 Alaska Pipeline System Reform Act of 1989."

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9 (b) CAUSE OF ACCIDENT.—Section 204(c)(2) of the
10 Trans-Alaska Pipeline Authorization Act (43 U.S.C.
11 1653(c)(2)) is amended by striking out "caused by" in the
12 first sentence and inserting in lieu thereof "caused solely by".

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13 (c) DAMAGES.—Section 204(c) of the Act (43 U.S.C.
14 1653(c)) (as amended by subsection (a)) is further amended by
15 adding at the end the following new paragraph:

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16 "(14) For any claims against the Fund, the term 'dam-
17 ages' shall include, but not be limited to, the net loss of
18 taxes, revenues, fees, royalties, rents, or other revenues in-
19 curred by a State or a political subdivision of a State due to
20 injury, destruction, or loss of real property, personal proper-
21 ty, or natural resources, or diminished economic activity due
22 to the discharges."

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23 (d) PAYMENT OF CLAIMS BY FUND.—Section 204(c)(3)
24 of the Act (43 U.S.C. 1653(c)(3)) is amended by adding at
25 the end the following: "The Fund shall pay a valid claim
26 under this section, including such \$14,000,000, if the owner

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1 or operator of a vessel has not paid any such claim within 90
2 days after such claim has been submitted to such owner or
3 operator. Upon payment of any claim, the Fund shall be sub-
4 rogated under applicable State and Federal laws to all rights
5 of any person entitled to recover under this subsection, sub-
6 ject to the limit of liability of the owner and operator under
7 this Act. In any action brought by the Fund against an owner
8 or operator or an affiliate thereof to recover amounts under
9 this paragraph, the Fund shall be entitled to recover pre-
10 judgment interest, costs, and reasonable attorney's fees."

11 (e) OFFICERS OR TRUSTEES.—Section 204(c)(4) is
12 amended—

13 (1) by inserting "(A)" after "(4)"; and

14 (2) by adding at the end the following:

15 "(B) No present or former officer or trustee of the Fund
16 shall be subject to any liability incurred by the Fund or by
17 the present or former officers or trustees of the Fund, other
18 than liability for gross negligence or willful misconduct.

19 "(C)(i) Subject to clause (ii), each officer and each
20 trustee of the Fund—

21 "(D) shall be indemnified against all claims and li-
22 abilities to which he or she has or shall become subject
23 by reason of serving or having served as an officer or
24 trustee, or by reason of any action taken, omitted, or
25 neglected by him or her as an officer or trustee; and

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1 “(ii) Payment of the reasonable costs (but not
2 more than \$5,000,000 annually) of the Presidential
3 Task Force and the audit of the trans-Alaska pipeline
4 system.

5 “(B) Amounts may only be made available under sub-
6 paragraph (A)(i) to the State of Alaska if the State matches
7 such amounts on a dollar-for-dollar basis.”.

* 8 SEC. 3103. PRESIDENTIAL TASK FORCE.

9 The Act is amended by adding at the end thereof the
10 following new section:

11 “PRESIDENTIAL TASK FORCE; ADVISORY COUNCIL

12 “SEC. 207. (a) ESTABLISHMENT OF TASK FORCE.—

13 (1) There is hereby established a Presidential Task Force on
14 the Trans-Alaska Pipeline System (hereinafter referred to as
15 the ‘Task Force’) composed of the following nine members
16 appointed by the President:

17 “(A) One member appointed to serve as cochair-
18 man of the Task Force.

19 “(B) One member nominated by the Governor of
20 Alaska who will serve as cochairman of the Task
21 Force.

22 “(C) Three members, 1 of whom shall be nomi-
23 nated by the Secretary of the Interior, 1 by the Ad-
24 ministrator of the Environmental Protection Agency,
25 and 1 by the Secretary of Transportation, and all of
26 whom shall be Federal employees.

1	“(D) Three members, 1 of whom shall be nomi-	1 wh
2	nated by the Commissioner of Fish and Game, 1 by	2 ve:
3	the Commissioner of Environmental Conservation, and	3 St:
4	1 by the Commissioner of Natural Resources of the	4 ce:
5	State of Alaska, and all of whom shall be State	5 sa
6	employees.	6
7	“(E) One member nominated by the National	7 D
8	Academy of Engineering.	8 h
9	“(2)(A) Except as provided in subparagraphs (B) and	9 F
10	(C), members shall be appointed for terms of 3 years.	10 f
11	“(B) Of the members first appointed—	11
12	“(i) three shall be appointed for a term of 3 years;	12
13	“(ii) three shall be appointed for a term of 4	13
14	years; and	14
15	“(iii) three shall be appointed for a term of 5	15
16	years.	16
17	“(C) Any member appointed to fill a vacancy occurring	17
18	before the expiration of the term for which his or her prede-	18
19	cessor was appointed shall be appointed only for the remain-	19
20	der of such term. A member may serve after the expiration of	20
21	his or her term until a successor has taken office.	21
22	“(3) Members shall, to the extent approved in appro-	22
23	priation Acts, receive the daily equivalent of the minimum	23
24	annual rate of basic pay in effect for grade GS-15 of the	24
25	General Schedule for each day (including travel time) during	25

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1 which they are engaged in the actual performance of duties
2 vested in the Task Force, except that members who are
3 State, Federal, or other governmental employees shall re-
4 ceive no compensation under this paragraph in addition to the
5 salaries they receive as such employees.

6 “(4) The cochairmen of the Task Force shall appoint a
7 Director to carry out administrative duties. The Director may
8 hire such staff and incur such expenses on behalf of the Task
9 Force as are authorized by the Task Force and for which
10 funds are available.

11 “(5) Employees of the Task Force shall not, by reason
12 of such employment, be considered to be employees of the
13 Federal Government for any purpose.

14 “(b) DUTIES OF TASK FORCE.—(1) The Task Force
15 shall conduct a comprehensive audit and review of operations
16 of the trans-Alaska pipeline system, make recommendations
17 to the President, the Congress, and the Governor of Alaska,
18 and function as a forum for improved oversight and enforce-
19 ment of safety and environmental laws related to the trans-
20 Alaska pipeline system.

21 “(2) The scope of the audit shall include matters related
22 to operations of the trans-Alaska pipeline system and the ter-
23 minal at the Port of Valdez, Alaska.

24 “(3) As part of such audit, the Task Force shall conduct
25 a comprehensive review of the trans-Alaska pipeline system

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1 in order to specifically advise the President, the Congress,
2 and the Governor of Alaska concerning—

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3 “(A) whether the holder of the Federal and State
4 right-of-way is, and has been, operating in full compli-
5 ance with applicable agreements and laws;

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6 “(B) the operational and structural soundness of
7 the pipeline, terminal, and related onshore facilities;

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8 “(C) necessary improvements for the pipeline, ter-
9 minal, and related onshore facilities in terms of oper-
10 ational safety, public health, and environmental protec-
11 tion;

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12 “(D) necessary improvements in the oil spill re-
13 sponse capabilities and contingency plans for the pipe-
14 line, terminal, and related onshore facilities; and

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15 “(E) necessary improvements in security for the
16 pipeline, terminal, and related onshore facilities.

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17 “(4)(A) The Task Force shall retain at least 1 independ-
18 ent consulting firm with technical expertise in engineering,
19 transportation safety, the environment, and other applicable
20 areas to assist the Task Force in carrying out this subsection.

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21 Such firm shall have extensive experience in carrying out
22 audits of the nature to be carried out by the Task Force.

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23 “(B) Contracts with any such firm shall be entered into
24 on a nationally competitive basis, and the Task Force shall
25 not select any firm with respect to which there may be a

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1 conflict of interest in assisting the Task Force in carrying out
2 its audit and review.

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3 “(5) The Task Force shall provide an opportunity for
4 public comment on its activities and shall consult on a regular
5 basis with the Trans-Alaska Pipeline Terminal Advisory
6 Council established pursuant to subsection (c).

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7 “(6) The Task Force shall transmit (and make available
8 to the public), within 6 months after the date of enactment of
9 this paragraph, a report to the President and the Congress of
10 its findings, conclusions, and recommendations made as a
11 result of carrying out such audit.

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12 “(7) The President shall, within 90 days after receiving
13 the Task Force's report, transmit a report to the Congress
14 and the Governor of Alaska containing comments on
15 whether—

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16 “(A) the Alyeska Pipeline Service Company or its
17 successor is, and has been, operating in full compliance
18 with the right-of-way permits granted for the trans-
19 Alaska pipeline;

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20 “(B) the President intends to direct the Secretary
21 of the Interior to exercise authority pursuant to section
22 203(e) of the Trans-Alaska Pipeline Authorization Act
23 to amend or modify the Federal right-of-way agree-
24 ment;

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1 “(C) the President intends to recommend to the
2 Governor of Alaska that the State right-of-way agree-
3 ment be amended or modified; and

4 “(D) the President intends to take other measures
5 to implement the Task Force's findings and recommen-
6 dations.

7 “(S) The Task Force shall prepare an annual report on
8 its activities and submit such report to the President, the
9 Congress, and the Governor of Alaska.

10 “(9) The Comptroller General of the United States, and
11 any of his or her duly authorized representatives, shall have
12 access, for purposes of audit and examination, to any books,
13 documents, papers, and records of the Task Force that are
14 pertinent to the funds received and expended by the Task
15 Force.

16 “(10) The Task Force shall cease to exist on the date
17 which is 10 years after the date of enactment of this para-
18 graph.

19 “(11) With respect to safety, operations, and other mat-
20 ters related to the pipeline facilities (as such term is defined
21 in section 202(4) of the Hazardous Liquid Pipeline Safety
22 Act of 1979) of the trans-Alaska pipeline, the Task Force
23 shall not perform any functions which are the responsibility of
24 the Secretary of Transportation under the Hazardous Liquid
25 Pipeline Safety Act of 1979.

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1 “(c) TRANS-ALASKA PIPELINE TERMINAL ADVISORY
2 COUNCIL.—(1) Not later than 90 days after the date of en-
3 actment of this Act, the operator of the trans-Alaska pipeline
4 system, on behalf of the companies which possess the Federal
5 right-of-way granted by the Secretary of the Interior, shall
6 establish and fund the reasonable costs of the Trans-Alaska
7 Pipeline Terminal Advisory Council (hereinafter referred to
8 as the ‘Advisory Council’).

9 “(2) The Advisory Council shall assist the owners and
10 operator of the trans-Alaska pipeline and Federal and State
11 officials in developing policies, permits, plans, and regulations
12 relating to the monitoring, operation, and maintenance of the
13 terminal and related facilities of the trans-Alaska pipeline
14 that may affect safety, public health, and the environment.
15 The Advisory Council shall serve as a forum for the industri-
16 al users, owners, and operators of the terminal facilities to
17 work cooperatively with residents of interested communities.

18 “(3) The Governor of Alaska may appoint to the Advi-
19 sory Council the following members from among the resi-
20 dents of Valdez, Cordova, and other communities:

- 21 “(A) one member who shall serve as chairman;
- 22 “(B) two members of the fishing industry;
- 23 “(C) two members of Alaska Native organiza-
24 tions;

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1 “(E) The Chairman of the Advisory Council shall ap-
2 point a Director to carry out administrative duties. The Di-
8 rector may hire such staff and incur such reasonable expenses
4 on behalf of the Advisory Council as are authorized by the
5 Advisory Council and for which funds are available.

6 “(F) Employees of the Advisory Council shall not, by
7 reason of such employment, be considered to be employees of
8 the Federal Government for any purpose.

9 “(5) Industrial users, owners, and operators of the ter-
10 minal facilities shall cooperate fully with the Advisory Coun-
11 cil through frequent consultation and attendance at meetings
12 and by granting reasonable access to the Advisory Council to
13 all facilities and requested documents and information.

14 “(6) The Advisory Council may establish such technical
15 advisory committees as it deems necessary.

16 “(7) The Advisory Council shall prepare an annual
17 report on its activities and submit such report to the Task
18 Force established by subsection (a), the Governor of Alaska,
19 the Congress, and the public.

20 “(8) The Advisory Council shall cease to exist on the
21 date which is ten years after the date of enactment of this
22 Act.”.

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Proposed Senate language

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1 SEC. __. TERMINAL AND TANKER OVERSIGHT AND MONITORING.

2 (a) SHORT TITLE.—(1) This section may be cited as
3 the "Oil Terminal and Oil Tanker Environmental Over-
4 sight and Monitoring Act of 1989".

5 (2) The Congress finds that—

6 (A) the March 24, 1989, grounding and rupture
7 of the fully loaded oil tanker, the *Exxon Valdez*,
8 spilled 11 million gallons of crude oil in Prince Wil-
9 liam Sound, an environmentally sensitive area;

10 (B) many people believe that complacency on
11 the part of the industry and government personnel
12 responsible for monitoring the operation of the
13 Valdez terminal and vessel traffic in Prince William
14 Sound was one of the contributing factors to the
15 *Exxon Valdez* oil spill;

16 (C) one way to combat this complacency is to
17 involve local citizens in the process of preparing,
18 adopting, and revising oil spill contingency plans;

19 (D) a mechanism should be established which
20 fosters the long-term partnership of industry, govern-
21 ment, and local communities in overseeing compli-
22 ance with environmental concerns in the operation of
23 crude oil terminals;

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1 (E) such a mechanism presently exists at the
2 Sullom Voe terminal in the Shetland Islands and this
3 terminal should serve as a model for others;

4 (F) because of the effective partnership that has
5 developed at Sullom Voe, Sullom Voe is considered
6 the safest terminal in Europe;

7 (G) the present system of regulation and over-
8 sight of crude oil terminals in the United States has
9 degenerated into a process of continual mistrust and
10 confrontation;

11 (H) only when local citizens are involved in the
12 process will the trust develop that is necessary to
13 change the present system from confrontation to con-
14 sensus;

15 (I) a pilot program patterned after Sullom Voe
16 should be established in Alaska to further refine the
17 concepts and relationships involved; and

18 (J) similar programs should eventually be estab-
19 lished in other major crude oil terminals in the
20 United States because the recent oil spills in Texas,
21 Delaware, and Rhode Island indicate that the safe
22 transportation of crude oil is a national problem.

23 (b) DEMONSTRATION PROGRAMS.—

24 (1) ESTABLISHMENT.—There are established two
25 Oil Terminal and Oil Tanker Environmental Over-

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1 sight and Monitoring Demonstration Programs (here-
2 inafter referred to as "Programs") to be carried out
3 in the State of Alaska.

4 (2) ADVISORY FUNCTION.—The function of these
5 Programs shall be advisory only.

6 (3) PURPOSE.—The Prince William Sound Pro-
7 gram shall be responsible for environmental monitor-
8 ing of the terminal facilities in Prince William Sound
9 and the crude oil tankers operating in Prince William
10 Sound. The Cook Inlet Program shall be responsible
11 for environmental monitoring of the terminal facili-
12 ties and crude oil tankers operating in Cook Inlet lo-
13 cated South of the latitude at Point Possession and
14 North of the latitude at Amatul Island, including off-
15 shore facilities in Cook Inlet.

16 (4) SUITS BARRED.—No program, association,
17 council, committee or other organization created by
18 this section may sue any person or entity, public or
19 private, concerning any matter arising under this sec-
20 tion.

21 (c) OIL TERMINAL FACILITIES AND OIL TANKER OPER-
22 ATIONS ASSOCIATION.—

23 (1) ESTABLISHMENT.—There is established an
24 Oil Terminal Facilities and Oil Tanker Operations
25 Association (hereinafter referred to as "Associa-

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1 tion") for each of the Programs established in sub-
2 section (b).

3 (2) MEMBERSHIP.—Each Association shall be
4 comprised of four individuals as follows:

5 (A) one individual shall be designated by
6 the owners and operators of the terminal facili-
7 ties and shall represent those owners and opera-
8 tors;

9 (B) one individual shall be designated by
10 the owners and operators of the crude oil tank-
11 ers calling at the terminal facilities and shall
12 represent those owners and operators;

13 (C) one individual shall be an employee of
14 the State of Alaska, shall be designated by the
15 Governor of the State of Alaska, and shall rep-
16 resent the State government; and

17 (D) one individual shall be an employee of
18 the Federal Government, shall be designated by
19 the President, and shall represent the Federal
20 Government.

21 (3) RESPONSIBILITIES.—Each Association shall
22 be responsible for reviewing policies relating to the
23 operation and maintenance of the oil terminal facili-
24 ties and crude oil tankers which affect or may affect
25 the environment in the vicinity of their respective

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1 terminals. Each Association shall provide a forum
2 among the owners and operators of the terminal fa-
3 cilities, the owners and operators of crude oil tankers
4 calling at those facilities, the United States, and the
5 State of Alaska to discuss and to propose the resolu-
6 tion of all permits, plans, and site-specific regula-
7 tions governing the activities and actions of the ter-
8 minal facilities which affect or may affect the envi-
9 ronment in the vicinity of the terminal facilities and
10 of crude oil tankers calling at those facilities.

11 (d) REGIONAL CITIZENS' ADVISORY COUNCILS.—

12 (1) MEMBERSHIP.—There is established a Re-
13 gional Citizens' Advisory Council (hereinafter re-
14 ferred to as "Council") for each of the programs es-
15 tablished by subsection (b).

16 (2) MEMBERSHIP.—Each Council shall be con-
17 posed of voting members and non-voting members,
18 as follows:

19 (A) VOTING MEMBERS.—Voting members
20 shall be Alaska residents and, except as provid-
21 ed in clause (iii) of this paragraph, shall be ap-
22 pointed by the Governor of the State of Alaska
23 from a list of nominees provided by each of the
24 following interests, with one representative ap-
25 pointed to represent each of the following inter-

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1 ests, taking into consideration the need for re-
2 gional balance on the Council—

3 (i) local commercial fishing industry
4 organizations, the members of which
5 depend on the fisheries resources of the
6 waters in the vicinity of the terminal facili-
7 ties;

8 (ii) aquaculture associations in the vi-
9 cinity of the terminal facilities;

10 (iii) Alaska Native Corporations and
11 other Alaska Native organizations the
12 members of which reside in the vicinity of
13 the terminal facilities;

14 (iv) environmental organizations the
15 members of which reside in the vicinity of
16 the terminal facilities;

17 (v) recreational organizations the
18 members of which reside in or use the vi-
19 cinity of the terminal facilities;

20 (vi) the Alaska State Chamber of
21 Commerce, to represent the locally based
22 tourist industry;

23 (vii)(I) for the Prince William Sound
24 terminal facilities Council, one representa-
25 tive selected by each of the following mu-

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1 municipalities: Cordova, Whittier, Seward,
2 Valdez, Kodiak, the Kodiak Island Bor-
3 ough, and the Kenai Peninsula Borough;

4 (II) for the Cook Inlet terminal facili-
5 ties Council, one representative selected by
6 each of the following municipalities:
7 Homer, Seldovia, Anchorage, Kenai, the
8 Kodiak Island Borough, and the Kenai Pe-
9 ninsula Borough.

10 (B) NON-VOTING MEMBERS.—One ex-offi-
11 cio, non-voting representative shall be designat-
12 ed by, and represent, each of the following—

13 (i) Environmental Protection Agency;

14 (ii) Coast Guard;

15 (iii) U.S. Forest Service;

16 (iv) Department of the Interior;

17 (v) Alaska Department of Environ-
18 mental Conservation;

19 (vi) Alaska Department of Fish and
20 Game;

21 (vii) Alaska Department of Natural
22 Resources; and

23 (viii) Division of Emergency Services,
24 Alaska Department of Community and Re-
25 gional Affairs.

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1 (3) TERMS.--

2 (A) THREE YEARS.—The voting members of
3 each Council shall be appointed for a term of
4 three years except as provided for in subpara-
5 graph (3)(B) of this paragraph.

6 (B) INITIAL APPOINTMENTS.—The terms of
7 the first appointments shall be—

8 (i) for the appointments by the Gover-
9 nor of the State of Alaska, one-third shall
10 serve for three years, one-third shall serve
11 for two years, and one-third shall serve for
12 one year; and

13 (ii) for the representatives of municipi-
14 palities required by subsection
15 (d)(2)(A)(vii), a drawing of lots among the
16 appointees shall determine that one-third of
17 that group serves for three years, one-third
18 serves for two years, and the remainder
19 serves for one year.

20 (4) SELF-GOVERNING.—Each Council shall elect
21 its own chairperson, select its own staff, and make
22 policies with regard to its internal operating proce-
23 dures. After the initial organizational meeting called
24 by the Secretary of Transportation under subsection

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1 (i) of this section, each Council shall be self-govern-
2 ing.

3 (5) DUAL MEMBERSHIP PROHIBITED.—No individ-
4 ual selected as a member of the Council shall serve
5 on the Association.

6 (6) DUTIES.—Each Council shall—

7 (A) provide advice and recommendations
8 to the Association on policies, permits, and site-
9 specific regulations relating to the operation and
10 maintenance of terminal facilities and crude oil
11 tankers which affect or may affect the environ-
12 ment in the vicinity of the terminal facilities;

13 (B) monitor through the committee estab-
14 lished under subsection (e) of this section, the
15 environmental impacts of the operation of the
16 terminal facilities and crude oil tankers;

17 (C) monitor those aspects of terminal fa-
18 cilities' and crude oil tankers' operations and
19 maintenance which affect or may affect the vi-
20 cinity of the terminal facilities;

21 (D) review through the committee estab-
22 lished under subsection (f), the adequacy of oil
23 spill prevention and contingency plans for the
24 terminal facilities and the adequacy of oil spill
25 prevention and contingency plans for crude oil