

105TH CONGRESS
1ST SESSION

S. 49

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

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

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

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Alaska Wetlands Con-
3 servation Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds that—

6 (1) according to the United States Fish and
7 Wildlife Service, approximately 170,200,000 acres of
8 wetlands existed in Alaska in the 1780s and approxi-
9 mately 170,000,000 acres of wetlands exist now,
10 representing a loss of less than one-tenth of 1 per-
11 cent through human and natural processes;

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

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

21 (4) 88 percent of Alaska’s wetlands are publicly
22 owned, while only 26 percent of the wetlands in the
23 48 contiguous States are publicly owned;

1 (5) approximately 98 percent of all Alaskan
2 communities, including 200 of the 209 remote vil-
3 lages in Alaska, are located in or adjacent to wet-
4 lands;

5 (6) approximately 62 percent of all federally
6 designated wilderness lands, 70 percent of all Fed-
7 eral park lands, and 90 percent of all Federal refuge
8 lands are located in Alaska, thus providing protec-
9 tion against use or degradation to approximately
10 60,000,000 acres of wetlands in Alaska;

11 (7) 104,000,000 acres of land were granted to
12 the State of Alaska at statehood for purposes of eco-
13 nomic development;

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

20 (9) development of basic community infrastruc-
21 ture in Alaska, where approximately 75 percent of
22 the nonmountainous areas are wetlands, is often de-
23 layed and sometimes prevented by the existing wet-
24 lands regulatory program, with minimal identifiable
25 environmental benefit;

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

5 (11) the 1972 Federal Water Pollution Control
6 Act, more commonly known as the Clean Water Act,
7 formed the basis for a broad expansion of Federal
8 jurisdiction over wetlands by modifying the defini-
9 tion of “navigable waters” to include all “waters of
10 the United States”;

11 (12) in 1975, a United States district court or-
12 dered the Army Corps of Engineers to publish re-
13 vised regulations concerning the program to imple-
14 ment section 404 of the Clean Water Act, which ex-
15 panded the scope of the program to include the dis-
16 charge of dredged and fill material into wetlands;

17 (13) the wetlands regulatory program was ex-
18 panded yet again by regulatory action to include iso-
19 lated wetlands (wetlands that are not adjacent to
20 navigable waters), and such an expansion formed the
21 basis for burdensome intrusions on the property
22 rights of Alaskans, Alaskan Native Corporations,
23 and the State of Alaska;

24 (14) expansion of the wetlands regulatory pro-
25 gram in this manner is beyond what the Congress

1 intended when it passed the Clean Water Act and
2 has placed unnecessary economic and administrative
3 burdens on private property owners, small busi-
4 nesses, city governments, State governments, farm-
5 ers, ranchers, and others, while providing negligible
6 environmental benefits;

7 (15) for Alaska, a State with substantial con-
8 served wetlands and less than 1 percent private,
9 noncorporate land ownership, the burdens of the
10 current wetlands regulatory program unnecessarily
11 inhibit reasonable community growth and environ-
12 mentally benign resource development;

13 (16) Alaska villages, municipalities, boroughs,
14 city governments, and Native organizations are in-
15 creasingly frustrated with the constraints of the wet-
16 lands regulatory program because it interferes with
17 the location of community centers, airports, sanita-
18 tion systems, roads, schools, industrial areas, and
19 other critical community infrastructure;

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

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

5 **SEC. 3. AMENDMENTS TO THE FEDERAL WATER POLLU-**
6 **TION CONTROL ACT.**

7 (a) NATIONAL POLICY.—Section 101(a) of the Fed-
8 eral Water Pollution Control Act (33 U.S.C. 1251(a)) is
9 amended by—

10 (1) striking “and” at the end of paragraph (6);

11 (2) striking the period at the end of paragraph

12 (7) and inserting in lieu thereof a semicolon; and

13 (3) adding at the end the following new para-
14 graphs:

15 “(8) it is the national policy to (A) achieve a
16 balance between wetlands conservation and adverse
17 economic impacts on local, regional, and private eco-
18 nomic interests, and (B) eliminate the regulatory
19 taking of private property by the regulatory program
20 authorized under section 404;

21 “(9) it is the national policy to encourage local-
22 ized wetlands planning (without mandating such
23 planning and by providing funds to facilitate such

1 planning), and to allow greater flexibility for the is-
2 suance of wetlands permits in States with substan-
3 tial conserved wetlands; and

4 “(10) it is the national policy that compen-
5 satory mitigation under section 404 for the develop-
6 ment of wetlands in a State with substantial con-
7 served wetlands shall not be required, requested, or
8 otherwise utilized to offset impacts to such wet-
9 lands.”.

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

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

18 “(B) may include reasonable requirements for
19 the minimization of adverse impacts to wetlands;
20 and

21 “(C) may include reasonable requirements for
22 the avoidance of impacts, but may not require the
23 permit applicant to establish that alternative sites do
24 not exist.”.

1 (c) GENERAL PERMITS.—Section 404(e) of the Fed-
2 eral Water Pollution Control Act (33 U.S.C. 1344(e)) is
3 amended by inserting at the end the following new para-
4 graph:

5 “(3) Notwithstanding the requirements of para-
6 graphs (1) and (2), at the request of a State with
7 substantial conserved wetlands, the Secretary shall
8 issue a general permit on a Statewide basis for any
9 category of activities in such State. Any such permit
10 shall apply to the discharge of dredged or fill mate-
11 rial into disposal sites that are up to, at a minimum,
12 10 acres in size, and may not contain guidelines for
13 disposal sites that are more stringent than the
14 guidelines for such sites in that State under sub-
15 section (b).”.

16 (d) NONPROHIBITED DISCHARGES.—Section
17 404(f)(1) of the Federal Water Pollution Control Act (33
18 U.S.C. 1344(f)(1)) is amended by—

19 (1) striking the comma at the end of subpara-
20 graph (F) and inserting in lieu thereof a semicolon;
21 and

22 (2) adding at the end the following new sub-
23 paragraph:

24 “(G) in a State with substantial conserved
25 wetlands—

1 “(i) associated with airport safety
2 (ground and air);

3 “(ii) for the construction and mainte-
4 nance of log transfer facilities relating to
5 log transportation activities;

6 “(iii) for the construction of tailings
7 impoundments utilized for treatment facili-
8 ties (as determined by the development
9 document) for the mining subcategory for
10 which the tailings impoundments are con-
11 structed; and

12 “(iv) for the construction of ice pads
13 and ice roads and for the purposes of snow
14 storage and removal.”.

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

19 “(u) DEFINITIONS.—For purposes of this section—

20 “(1) the term ‘conserved wetlands’ means wet-
21 lands that are located in the National Park System,
22 National Wildlife Refuge System, National Wilder-
23 ness System, the Wild and Scenic River System, and
24 other similar Federal conservation systems, as well

1 as wetlands located in comparable types of conserva-
2 tion systems established under State or local author-
3 ity;

4 “(2) the term ‘economic base lands’ means
5 lands conveyed to, selected by, or owned by Alaska
6 Native entities pursuant to the Alaska Native
7 Claims Settlement Act Public Law 92–203), as
8 amended, or the Alaska Native Allotment Act of
9 1906 (34 Stat. 197), as amended, and lands con-
10 veyed to, selected by, or owned by, the State of Alas-
11 ka pursuant to the Alaska Statehood Act (Public
12 Law 85–508), as amended; and

13 “(3) the term ‘State with substantial conserved
14 wetlands’ means any State which—

15 “(A) contains at least 15 acres of con-
16 served wetlands for each acre of wetlands filled,
17 drained, or otherwise converted within such
18 State (based upon wetlands loss statistics re-
19 ported in the 1990 United States Fish and
20 Wildlife Service Wetlands Trends report to
21 Congress entitled ‘Wetlands Losses in the
22 United States 1780’s to 1980’s’); or

23 “(B) the Secretary of the Army determines
24 has sufficient conserved wetlands to provide

1 adequate wetlands conservation in such State,
2 based on the policies set forth in this Act.

3 “(v) ALASKA NATIVE AND STATE OF ALASKA LAND
4 EXCEPTIONS.—

5 “(1)(A) Notwithstanding subsections (a) or (b),
6 upon application by the holder of economic base
7 lands, the Secretary shall issue a permit for the dis-
8 charge of dredged or fill material into the navigable
9 waters at a disposal site on such lands if such dis-
10 charge complies with reasonable guidelines estab-
11 lished by the Secretary under this subsection. The
12 guidelines established by the Secretary under this
13 subsection may be no more stringent than the guide-
14 lines established under subsection (b) for disposal
15 sites in a State with substantial conserved wetlands,
16 and must take into consideration the requirements
17 of subparagraph (B).

18 “(B) In considering the requirements otherwise
19 applicable under subsections (a) and (b) for use in
20 guidelines applicable to permits issued under this
21 paragraph, the Secretary shall—

22 “(i) balance the standards and policies of
23 this Act against the obligations of the United

1 States to allow economic base lands to be bene-
2 ficially used to create and sustain economic ac-
3 tivity;

4 “(ii) with respect to Alaska Native lands,
5 give substantial weight to the social and eco-
6 nomic needs of Alaska Natives; and

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

10 “(2) The Secretary shall issue general permits
11 under subsection (e)(1) for categories of activities on
12 economic base lands relating to the development of
13 rural Alaska community infrastructure (including
14 water and sewer systems, airports, roads, commu-
15 nication sites, fuel storage sites, landfills, housing,
16 hospitals, medical clinics, and schools) without deter-
17 mining whether or not such activities will cause only
18 minimal adverse environmental effects when per-
19 formed separately, or whether or not such activities
20 will have only minimal cumulative adverse effects on
21 the environment.

22 “(3) The Secretary shall consult with and pro-
23 vide assistance to Alaska Natives (including Alaska

1 Native Corporations) and the State of Alaska re-
2 garding promulgation and administration of policies
3 and regulations under this section.”.

○