

107TH 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 22, 2001

Mr. STEVENS 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alaska Wetlands Con-
5 servation Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) according to the United States Fish and
4 Wildlife Service, approximately 170,200,000 acres of
5 wetlands existed in Alaska in the 1780s and approxi-
6 mately 170,000,000 acres of wetlands exist now,
7 representing a loss of less than one-tenth of 1 per-
8 cent through human and natural processes;9 (2) according to the United States Fish and
10 Wildlife Service more than 221,000,000 acres of
11 wetlands existed at the time of Colonial America in
12 the area that is now the contiguous United States
13 and that 117,000,000 of those acres, roughly 53
14 percent, have been filled, drained, or otherwise re-
15 moved from wetland status;16 (3) Alaska contains more wetlands than all of
17 the other States combined;18 (4) 88 percent of Alaska's wetlands are publicly
19 owned, while only 26 percent of the wetlands in the
20 48 contiguous States are publicly owned;21 (5) approximately 98 percent of all Alaskan
22 communities, including 200 of the 209 remote vil-
23 lages in Alaska, are located in or adjacent to wet-
24 lands;25 (6) approximately 62 percent of all federally
26 designated wilderness lands, 70 percent of all Fed-

1 eral park lands, and 90 percent of all Federal refuge
2 lands are located in Alaska, thus providing protec-
3 tion against use or degradation to approximately
4 60,000,000 acres of wetlands in Alaska;

5 (7) 104,000,000 acres of land were granted to
6 the State of Alaska at statehood for purposes of eco-
7 nomic development;

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

14 (9) development of basic community infrastruc-
15 ture in Alaska, where approximately 75 percent of
16 the nonmountainous areas are wetlands, is often de-
17 layed and sometimes prevented by the existing wet-
18 lands regulatory program, with minimal identifiable
19 environmental benefit;

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

24 (11) the 1972 Federal Water Pollution Control
25 Act, more commonly known as the Clean Water Act,

1 formed the basis for a broad expansion of Federal
2 jurisdiction over wetlands by modifying the definition
3 of “navigable waters” to include all “waters of
4 the United States”;

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

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

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

1 (15) for Alaska, a State with substantial con-
2 served wetlands and less than 1 percent private,
3 noncorporate land ownership, the burdens of the
4 current wetlands regulatory program unnecessarily
5 inhibit reasonable community growth and environ-
6 mentally benign resource development;

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

1 **SEC. 3. AMENDMENTS TO THE FEDERAL WATER POLLU-**
2 **TION CONTROL ACT.**

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

6 (1) striking “and” at the end of paragraph (6);
7 (2) striking the period at the end of paragraph
8 (7) and inserting in lieu thereof a semicolon; and
9 (3) adding at the end the following new para-
10 graphs:

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

17 “(9) it is the national policy to encourage local-
18 ized wetlands planning (without mandating such
19 planning and by providing funds to facilitate such
20 planning), and to allow greater flexibility for the
21 issuance of wetlands permits in States with substan-
22 tial conserved wetlands; and

23 “(10) it is the national policy that compen-
24 satory mitigation under section 404 for the develop-
25 ment of wetlands in a State with substantial con-
26 served wetlands shall not be required, requested, or

1 otherwise utilized to offset impacts to such wet-
2 lands.”.

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

9 “(A) shall not require mitigation to com-
10 pensate for wetlands loss and adverse impacts
11 to wetlands;

12 “(B) may include reasonable requirements
13 for the minimization of adverse impacts to wet-
14 lands; and

15 “(C) may include reasonable requirements
16 for the avoidance of impacts, but may not re-
17 quire the permit applicant to establish that al-
18 ternative sites do not exist.”.

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

23 “(3) Notwithstanding the requirements of para-
24 graphs (1) and (2), at the request of a State with
25 substantial conserved wetlands, the Secretary shall

1 issue a general permit on a Statewide basis for any
2 category of activities in such State. Any such permit
3 shall apply to the discharge of dredged or fill mate-
4 rial into disposal sites that are up to, at a minimum,
5 10 acres in size, and may not contain guidelines for
6 disposal sites that are more stringent than the
7 guidelines for such sites in that State under sub-
8 section (b).”.

9 (d) NONPROHIBITED DISCHARGES.—Section
10 404(f)(1) of the Federal Water Pollution Control Act (33
11 U.S.C. 1344(f)(1)) is amended by—

12 (1) striking the comma at the end of subpara-
13 graph (F) and inserting in lieu thereof a semicolon;
14 and

15 (2) adding at the end the following new sub-
16 paragraph:

17 “(G) in a State with substantial conserved
18 wetlands—

19 “(i) associated with airport safety
20 (ground and air);

21 “(ii) for the construction and mainte-
22 nance of log transfer facilities relating to
23 log transportation activities;

24 “(iii) for the construction of tailings
25 impoundments utilized for treatment facili-

ties (as determined by the development document) for the mining subcategory for which the tailings impoundments are constructed;

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

15 “(u) DEFINITIONS.—For purposes of this section—
16 “(1) the term ‘conserved wetlands’ means wet-
17 lands that are located in the National Park System,
18 National Wildlife Refuge System, National Wilder-
19 ness System, the Wild and Scenic River System, and
20 other similar Federal conservation systems, as well
21 as wetlands located in comparable types of conserva-
22 tion systems established under State or local author-
23 ity;

24 “(2) the term ‘economic base lands’ means
25 lands conveyed to, selected by, or owned by Alaska

1 Native entities pursuant to the Alaska Native
2 Claims Settlement Act (Public Law 92-203), as
3 amended, or the Alaska Native Allotment Act of
4 1906 (34 Stat. 197), as amended, and lands con-
5 veyed to, selected by, or owned by, the State of Alas-
6 ka pursuant to the Alaska Statehood Act (Public
7 Law 85-508), as amended; and

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

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

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

22 “(v) ALASKA NATIVE AND STATE OF ALASKA LAND
23 EXCEPTIONS.—

24 “(1)(A) Notwithstanding subsections (a) or (b),
25 upon application by the holder of economic base

1 lands, the Secretary shall issue a permit for the dis-
2 charge of dredged or fill material into the navigable
3 waters at a disposal site on such lands if such dis-
4 charge complies with reasonable guidelines estab-
5 lished by the Secretary under this subsection. The
6 guidelines established by the Secretary under this
7 subsection may be no more stringent than the guide-
8 lines established under subsection (b) for disposal
9 sites in a State with substantial conserved wetlands,
10 and must take into consideration the requirements
11 of subparagraph (B).

12 “(B) In considering the requirements otherwise
13 applicable under subsections (a) and (b) for use in
14 guidelines applicable to permits issued under this
15 paragraph, the Secretary shall—

16 “(i) balance the standards and policies of
17 this Act against the obligations of the United
18 States to allow economic base lands to be bene-
19 ficially used to create and sustain economic ac-
20 tivity;

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

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

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

16 “(3) The Secretary shall consult with and pro-
17 vide assistance to Alaska Natives (including Alaska
18 Native Corporations) and the State of Alaska re-
19 garding promulgation and administration of policies
20 and regulations under this section.”.

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