

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.

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## 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

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## 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 defini-  
3       tion of “navigable waters” to include all “waters of  
4       the United States”;

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

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

18          (14) expansion of the wetlands regulatory pro-  
19      gram in this manner is beyond what the Congress  
20      intended when it passed the Clean Water Act and  
21      has placed unnecessary economic and administrative  
22      burdens on private property owners, small busi-  
23      nesses, city governments, State governments, farm-  
24      ers, ranchers, and others, while providing negligible  
25      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;

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

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

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-



1                   ties (as determined by the development  
2                   document) for the mining subcategory for  
3                   which the tailings impoundments are con-  
4                   structed;

5                   “(iv) for the construction of ice pads  
6                   and ice roads and for the purposes of snow  
7                   storage and removal; or

8                   “(v) resulting from any silviculture  
9                   activity or practice undertaken on eco-  
10                  nomic base lands.”.

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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