

104TH CONGRESS
1ST SESSION

S. 49

To amend the Federal Water Pollution Control Act to modify the wetlands regulatory program corresponding to the low wetlands loss rate in Alaska and the significant 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 4, 1995

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 Federal Water Pollution Control Act to modify the wetlands regulatory program corresponding to the low wetlands loss rate in Alaska and the significant 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 Credit Procedures Act of 1994”.

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 rate of less than one-tenth of 1
8 percent through human and natural processes;

9 (2) according to the United States Fish and
10 Wildlife Service more than 221 million acres of wet-
11 lands existed at the time of Colonial America in the
12 area that is now the contiguous United States and
13 117 million of those acres, roughly 53 percent, have
14 been filled, drained, or otherwise removed from wet-
15 land status;

16 (3) Alaska contains more wetlands than any
17 other State, and more wetlands than all other States
18 combined;

19 (4) 88 percent of Alaska's wetlands are publicly
20 owned, whereas only 26 percent of the wetlands in
21 the contiguous 48 States are in public ownership;

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

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 to approximately 60 million acres of wetlands;

4 (7) more than 60 million acres of wetlands are
5 conserved in some form by land designations that re-
6 strict utilization or degradation of wetlands;

7 (8) 104 million acres of land were granted to
8 the State of Alaska at statehood for purposes of eco-
9 nomic development;

10 (9) approximately 43 million acres of land were
11 granted to Native Alaskans through regional and vil-
12 lage corporations and native allotments for their use
13 and between 45 percent and 100 percent of each
14 Native corporations' land is categorized as wetlands;

15 (10) development of basic community infra-
16 structure in Alaska, where approximately 75 percent
17 of the non-mountainous areas are wetlands, is often
18 delayed and sometimes prevented by the wetlands
19 regulatory program for minimal identifiable environ-
20 mental benefit;

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

1 (12) the 1972 Clean Water Act formed the
2 basis for a broad expansion of Federal jurisdiction
3 over wetlands by modifying the definition of “navigable waters” to include all “waters of the United
4 States”;
5

6 (13) in 1975, a United States district court ordered the Corps to publish revised regulations concerning the scope of the section 404 program, regulations that expanded the scope of the program to
7 include the discharge of dredged and fill material
8 into wetlands;
9
10

11 (14) the wetlands regulatory program was expanded yet again by regulatory action to include isolated wetlands, those that are not adjacent to navigable waters, and such an expansion formed the
12 basis for burdensome intrusions on the property
13 rights of Alaskans, Alaskan Native Corporations, the
14 State of Alaska, and property owners in Alaska;
15
16
17
18

19 (15) expansion of the wetlands regulatory program in this manner is beyond what the Congress
20 intended when it passed the Clean Water Act and
21 the expansion has placed increasing and unnecessary
22 economic and administrative burdens on private
23 property owners, small businesses, city governments,
24 State governments, farmers, ranchers, and others
25

1 for negligible environmental benefit associated with
2 wetland permits;

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

9 (17) Alaska villages, municipalities, boroughs,
10 city governments, and Native organizations are expe-
11 riencing increasing frustration with the constraints
12 of the wetlands regulatory program because it inter-
13 feres with the location of community centers, air-
14 ports, sanitation systems, roads, schools, industrial
15 areas, and other critical community infrastructure;

16 (18) policies that purport to achieve “no net
17 loss” of wetlands reflect a Federal response to the
18 53 percent loss of the wetlands base in the south 48,
19 a calculation that excludes Alaska wetlands;

20 (19) total wetlands loss in Alaska is less than
21 one-tenth of 1 percent of the total wetlands acreage
22 in Alaska;

23 (20) individual landowners in Alaska have expe-
24 rienced devaluations of up to 97 percent of their
25 property value due to wetlands regulations and the

1 tax base of many communities has diminished by
2 those regulations.

3 **SEC. 3. AMENDMENT TO THE FEDERAL WATER POLLUTION**
4 **CONTROL ACT.**

5 The Federal Water Pollution Control Act (33 U.S.C.
6 1251 et seq.) is amended—

7 (a) in section 101(a) (33 U.S.C. 1251(a)) by—

8 (1) striking “and” at the end of paragraph
9 (6);

10 (2) striking the period at the end of para-
11 graph (7) and inserting in lieu thereof “; and”;
12 and

13 (3) adding the following new paragraphs:

14 “(8) it is the national policy to—

15 “(A) achieve a balance between wetlands
16 conservation and adverse economic impacts on
17 local, regional, and private economic interests
18 and

19 “(B) to eliminate the regulatory taking of
20 private property by the regulatory program au-
21 thorized under section 404;

22 “(9) it is the national policy to encourage local-
23 ized wetlands planning, without mandating it and by
24 providing funds to encourage it, and such planning
25 shall allow local political subdivisions and local gov-

1 ernments to apply differential standards for the issu-
2 ance of wetlands permits based on factors that in-
3 clude the relative amount of conserved wetlands
4 habitat and the wetlands loss rate in the State in
5 which such political subdivision or local government
6 is located; and

7 “(10) it is the national policy that compen-
8 satory mitigation on wetlands or potential wetlands
9 located outside the boundaries of a State shall not
10 be required, requested, or otherwise utilized to offset
11 impacts to wetlands inside that State.”;

12 (b) in section 404(b) (33 U.S.C. 1344(b)) by
13 inserting immediately after “anchorage” the follow-
14 ing—

15 “: *Provided, however,* That the guidelines adopt-
16 ed pursuant to clause (1) for a State with substan-
17 tial conserved wetlands areas—

18 “(A) shall not include requirements or stand-
19 ards for mitigation to compensate for wetlands loss
20 and adverse impacts to wetlands;

21 “(B) may include requirements or standards for
22 minimization of adverse impacts to wetlands; and

23 “(C) may include standards or requirements for
24 avoidance of impacts only if the permit applicant is

1 not required to establish that upland alternative
2 sites do not exist.”;

3 (c) in section 404(e) (33 U.S.C. 1344(e)) by in-
4 serting at the end the following new paragraph—

5 “(3) Notwithstanding the requirements of para-
6 graphs (1) and (2), at the request of a State with
7 substantial conserved wetlands areas, the Secretary
8 shall issue general permits for such States and the
9 requirements under which such general permits are
10 issued shall contain a regulatory standard for dis-
11 charge of dredged or fill material into navigable wa-
12 ters in such State, including wetlands, that is no
13 greater than the standard under subsection (b).”;

14 (d) in section 404(f)(1) (33 U.S.C. 1344(f)(1))
15 by—

16 (1) striking the comma at the end of sub-
17 paragraph (F) and inserting in lieu thereof a
18 semicolon; and

19 (2) adding the following new subpara-
20 graphs—

21 “(G) associated with airport safety (ground
22 and air) in a State with substantial conserved
23 wetlands areas, and in any case associated with
24 airport safety (ground and air) when the Sec-
25 retary of Transportation determines that it is

1 advisable for public safety reasons and deems it
2 necessary;

3 “(H) for construction and maintenance of
4 log transfer facilities associated with log trans-
5 portation activities;

6 “(I) for construction of tailings impound-
7 ments utilized for treatment facilities (as deter-
8 mined by the development document) for the
9 mining subcategory for which the tailings im-
10 poundment is constructed;

11 “(J) for construction of ice pads and ice
12 roads and for purposes of snow storage and re-
13 moval,”; and

14 (e) by adding at the end of section 404 (33
15 U.S.C. 1344) the following new subsections—

16 “(s) DEFINITIONS.—For purposes of this section the
17 term—

18 “(1) ‘conserved wetlands’ means wetlands that
19 are located in the National Park System, National
20 Wildlife Refuge System, National Wilderness Sys-
21 tem, the Wild and Scenic River System, and other
22 similar Federal conservation systems, combined with
23 wetlands located in comparable types of conservation
24 systems established under State and local authority
25 within State and local land use systems.

1 “(2) ‘economic base lands’ means lands con-
2 veyed to, selected by, or owned by Alaska Native en-
3 tities pursuant to the Alaska Native Claims Settle-
4 ment Act, Public Law 92–203, as amended, or the
5 Alaska Native Allotment Act of 1906 (34 Stat. 197),
6 and lands conveyed to, selected by, or owned by the
7 State of Alaska pursuant to the Alaska Statehood
8 Act, Public Law 85–508, as amended.

9 “(3) ‘State with substantial conserved wetlands
10 areas’ means any State which—

11 “(A) contains at least 15 areas of wetlands
12 for each acre of wetlands filled, drained, or oth-
13 erwise converted within such State (based upon
14 wetlands loss statistics reported in the 1990
15 United States Fish and Wildlife Service Wet-
16 lands Trends report to Congress entitled ‘Wet-
17 lands Losses in the United States 1780’s to
18 1980’s’); or

19 “(B) the Secretary of the Army determines
20 has sufficient conserved wetlands areas to pro-
21 vided adequate wetlands conservation in such
22 State, based on the policies set forth in this
23 Act.

24 “(t) ALASKA NATIVE AND STATE OF ALASKA
25 LANDS.—

1 “(1) IN GENERAL.—The Secretary shall issue
2 individual and general permits pursuant to the
3 standards and requirements of subsections (a) and
4 (b) for a State with substantial conserved wetlands
5 areas.

6 “(2) PERMIT CONSIDERATIONS.—For permits
7 issued pursuant to this section for economic base
8 lands, in addition to the requirements in subsections
9 (a) and (b), the Secretary shall—

10 “(A) balance the standards and policies of
11 this Act against the obligations of the United
12 States to allow economic base lands to be bene-
13 ficially used to create and sustain economic ac-
14 tivity;

15 “(B) with respect to Alaska Native lands,
16 give substantial weight to the social and eco-
17 nomic needs of Alaska Natives; and

18 “(C) account for regional differences in the
19 abundance and value of wetlands.

20 “(3) GENERAL PERMITS.—For permits issued
21 under this section on lands owned by Alaska villages,
22 the Secretary shall issue general permits for disposi-
23 tion of dredged and fill material for critical infra-
24 structure including water and sewer systems, air-
25 ports, roads, communication sites, fuel storage sites,

1 landfills, housing, hospitals, medical clinics, schools,
2 and other community infrastructure in rural Alaska
3 villages without a determination that activities au-
4 thorized by such a general permit cause only mini-
5 mal adverse environmental effects when performed
6 separately and will have only minimal cumulative ad-
7 verse effects on the environment.

8 “(4) OTHER CONSIDERATIONS.—The Secretary
9 shall consult with and provide assistance to Alaska
10 Natives (including Alaska Native Corporations) and
11 the State of Alaska regarding promulgation and ad-
12 ministration of policies and regulations under this
13 section.”.

○

S 49 IS——2