



State of Alaska

Clean Water Act, Section 404 Dredge & Fill – Assumption

Randy Bates

Director, Division of Water

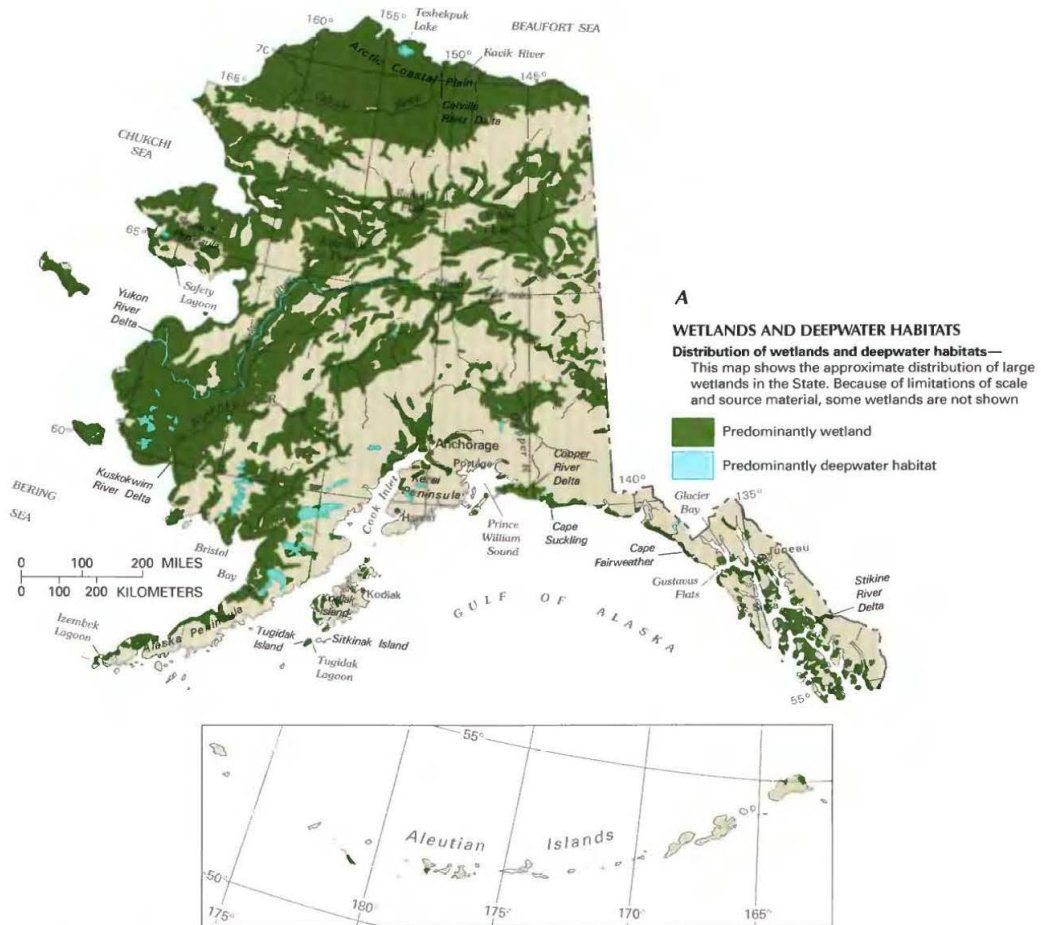


Alaska's Landscape

Alaska's wetlands cover approximately 174 million acres, or about 43% of Alaska's surface area

- ▶ May include tundra, permafrost, marshes, and bogs
- ▶ Most construction and resource and community development projects require Section 404 permits





Source: U.S. Geological Survey
 National Water Summary- Wetland Resources: State Summaries (1996)



Existing Statutory Authority

In 2013, the Legislature passed Senate Bill 27, which mandated: “The Department of Environmental Conservation . . . **shall** . . . take reasonable steps to assume primacy of the [404] program.”





Steps Toward Assumption:

- ▶ FY 2023 – Alaska Legislature provided DEC with \$1 million to produce a 404 assumption feasibility report.

"It is the Intent of the Legislature that \$1 million is appropriated for the purpose of the Department of Environmental Conservation to complete a feasibility study on the assumption of primacy of Section 404 of the Clean Water Act. The report will be submitted to the four co-chairs of the Finance Committees and Division of Legislative Finance by February 1, 2023."



Clean Water Act Section 404 Dredge and Fill Program Assumption

Feasibility Report



Prepared for
Alaska Department of Environmental Conservation
Anchorage, Alaska

Prepared by Jade North, LLC
Anchorage, Alaska

January 25, 2023



<https://dec.alaska.gov/water/wetlands-404>



Feasibility Study Recommendation - Page 46

“Given the ***state’s rights*** under cooperative federalism, the importance of the natural environment and natural resources to the ***people and economy of Alaska***, the importance of ***wetland permitting*** in Alaska, and the potential for ***influencing resource protection and development*** policies, ***the recommended course of action is for the State of Alaska to assume the 404 program over assumable WOTUS.***”



Cost Analysis

- ▶ ~\$4.7M annually
- ▶ 32 FT positions
- ▶ Costs include
 - ▶ Training, equipment, and travel
 - ▶ Legal consultation, regulation development
 - ▶ Coordination with agencies
 - ▶ Development of assumption application in 2 years
- ▶ Cost and PCN count based on assumption of ~75% of the US Army Corps of Engineers permitting responsibilities



Benefits of Assumption

- Improved resource protection
- Increased program efficiency
- Effective allocation of agency resources
- Improved integration with other agency programs
- Increased regulatory program stability
- Increased control over projects affecting the health of the State's environment and economy
- Greater control over compensatory mitigation



Challenges of Assumption

- ▶ Cost (no federal subsidy)
- ▶ Clarity over assumable waters





Next Steps to Assumption

1. Evaluate 404(g) draft proposed rule, WOTUS rule, determine if assumption remains a viable and meaningful option
- 2. Obtain funding and hire staff**
3. Prepare application to EPA