

STATE OF ALASKA SENATE

2004

Source
SR 4

Senate
Resolve No.
5



Requesting the United States Congress to amend the federal Wilderness Act to authorize fishery enhancement programs and similar activities in wilderness areas.

BE IT RESOLVED BY THE SENATE:

WHEREAS The Wilderness Society and the Alaska Center for the Environment brought suit against the United States Fish and Wildlife Service in federal court to challenge the legality of the long standing sockeye salmon enhancement program in Tustumena Lake, which is located within the Kenai Wilderness, under provisions of the federal Wilderness Act (16 U.S.C. 1131 - 1136); and

WHEREAS the United States Fish and Wildlife Service has officially recognized and approved the sockeye salmon enhancement program in Tustumena Lake since before the Kenai Wilderness was created in 1980; and

WHEREAS the United States District Court for the District of Alaska ruled against The Wilderness Society and in favor of maintaining the sockeye salmon enhancement program in Tustumena Lake; and

WHEREAS a three-judge panel of the United States Court of Appeals for the Ninth Circuit also found that, despite the assertions of The Wilderness Society, the stocking of

sockeye salmon fry in Tustumena Lake was consistent with the Wilderness Act and the Alaska National Interest Lands Conservation Act; and

WHEREAS, on December 30, 2003, an en banc panel of the United States Court of Appeals for the Ninth Circuit ruled in *The Wilderness Society v. United States Fish and Wildlife Service* (Case No. 01-35266) that the stocking of hatchery-reared salmon fry into Tustumena Lake was an impermissible "commercial enterprise" that is prohibited by the Wilderness Act; and

WHEREAS loss of the sockeye salmon enhancement program in Tustumena Lake would result in a significantly reduced harvest of sockeye salmon in Cook Inlet and the Kasilof River; 100,000 adult fish, totaling 400,000 pounds of harvestable salmon, would be lost to subsistence, sport, and commercial fisheries; and

WHEREAS the lawsuit brought by The Wilderness Society is important to Alaska because it takes away the ability of the state to enhance fisheries in National Wildlife Refuge Wilderness areas in Alaska; and

WHEREAS Alaska has more than 98 percent of the nation's designated National Wildlife Refuge Wilderness areas and over 50,000,000 acres of Congressionally designated wilderness areas, more than all of the rest of the United States combined; and

WHEREAS the effects of the lawsuit brought by The Wilderness Society are not limited to Alaska and will detrimentally affect management of wilderness areas in the other states; and

WHEREAS the lawsuit brought by The Wilderness Society has broad economic implications throughout Alaska and the nation concerning the conduct of any commercially related activities, such as guiding, trapping, customary trade, commercial lodges, eco-tourism, and other similar operations, within or near wilderness areas; and

WHEREAS the decision of the en banc panel of the United States Court of Appeals for the Ninth Circuit could be broadly construed to prohibit other fish and wildlife management and research programs in wilderness areas designed to benefit a wide variety of users, including some that are commercial in nature; and

WHEREAS the en banc panel of the United States Court of Appeals for the Ninth Circuit did not find that the stocking of salmon fry in the wilderness area was inconsistent with wilderness or refuge values or with Congressionally established purposes for the

withdrawals; and

WHEREAS the en banc panel of the United States Court of Appeals for the Ninth Circuit found that the Tustumena Lake enhancement project is a commercial enterprise, even though it lacks the traditional hallmarks of a commercial enterprise; and

WHEREAS the decision of the en banc panel of the United States Court of Appeals for the Ninth Circuit relied upon an exceptionally broad definition of "commercial enterprise" as the term is used in the Wilderness Act and almost entirely ignores the Alaska National Interest Lands Conservation Act, which has long been interpreted to permit enhancement and rehabilitation projects in wilderness areas; and

WHEREAS the court's decision steps beyond what the United States Congress intended when it prohibited commercial enterprises in wilderness areas; and

WHEREAS the United States Fish and Wildlife Service should have the discretion to permit fishery enhancement programs in wildlife refuges and refuge wilderness areas if the activity is consistent with the wilderness and refuge values; and

WHEREAS the United States Department of Justice has determined that a further appeal of the decision of the United States Court of Appeals of the Ninth Circuit would not be appropriate under the rules of the United States Supreme Court; and

WHEREAS the only remaining opportunity to cure the adverse result of the lawsuit brought by The Wilderness Society is to amend the Wilderness Act to clarify that fishery enhancement projects in wilderness areas are not commercial enterprises; and

WHEREAS the Congress can amend the Wilderness Act to prevent noncommercial activities such as the sockeye salmon enhancement program in Tustumena Lake from being treated as a commercial enterprise and to avoid untoward consequences of the lawsuit brought by The Wilderness Society throughout the nation;

BE IT RESOLVED that the Alaska State Senate respectfully requests the United States Congress to amend the Wilderness Act (16 U.S.C. 1131 - 1136) to exclude noncommercial activities such as the sockeye salmon enhancement program in Tustumena Lake from being considered to be commercial enterprises under provisions of the Act.

COPIES of this resolution shall be sent to the Honorable Gale Norton, United States Secretary of the Interior; the Honorable Steve Williams, Director, Fish and Wildlife Service, U.S. Department of the Interior; the Honorable J. Dennis Hastert, Speaker of the U.S. House

of Representatives; the Honorable Ted Stevens, President Pro Tempore of the U.S. Senate and member of the Alaska delegation in Congress; the Honorable Pete V. Domenici, Chair, U.S. Senate Committee on Energy and Natural Resources; the Honorable James M. Inhofe, Chair, U.S. Senate Committee on Environment and Public Works; the Honorable Richard W. Pombo, Chair, U.S. House of Representatives Committee on Resources; and to the Honorable Lisa Murkowski, U.S. Senator, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.