

CS FOR HOUSE CONCURRENT RESOLUTION NO. 2(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 5/5/99

Referred: Resources

Sponsor(s): REPRESENTATIVES COGHILL, Barnes, Green, Masek, Dyson

A RESOLUTION

**1 Relating to the sovereignty of the State of Alaska and the sovereign right of the
2 State of Alaska to manage the natural resources of Alaska.**

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 WHEREAS the State of Alaska is a sovereign state within the United States of
5 America having entered the United States under the Alaska Statehood Act, which provides that
6 Alaska is a sovereign state of the United States on an equal footing with all other states; and

7 WHEREAS the Alaska statehood compact guarantees that Alaska has the exclusive
8 authority to manage its fish and wildlife resources and that all submerged lands and fish are
9 the exclusive property of the State of Alaska; and

10 WHEREAS art. I, sec. 1, Constitution of the State of Alaska, declares that "all persons
11 are equal and entitled to the equal rights, opportunities, and protection under the law"; and

12 WHEREAS art. VIII, sec. 3, Constitution of the State of Alaska, provides that the fish
13 and wildlife resources in Alaska are reserved to the people for common use; and

14 WHEREAS art. VIII, sec. 3, Constitution of the State of Alaska, incorporates the
15 public trust doctrine that requires that all Alaskans, as beneficiaries of the public trust, shall
16 be treated impartially and without preference in regard to the use of assets of the public trust;

1 and

2 **WHEREAS** it is in the best interest of all Alaskans that the replenishable resources
3 of Alaska be biologically managed by the State of Alaska for abundance; and

4 **WHEREAS** the Constitution of the State of Alaska prohibits special privileges and
5 preferential allocations of natural resources based on race, color, creed, sex, national origin,
6 or residency; and

7 **WHEREAS** the United States Supreme Court in *New York v. United States*,
8 505 U.S. 144 (1992), ruled that the task of ascertaining the constitutional line between federal
9 and state power has given rise to many of the court's most celebrated cases and that, in such
10 cases, the division of authority between the federal government and the state requires specific
11 inquiry into whether a power exercised by the Congress has been given to the Congress in the
12 Constitution of the United States or whether the power is one that the Tenth Amendment of
13 the Constitution of the United States expressly reserves for the states; if a power is an attribute
14 of state sovereignty reserved by the Tenth Amendment of the Constitution of the United
15 States, it is necessarily a power that the Constitution of the United States did not confer upon
16 the Congress; "The question is not what power the Federal Government ought to have, but
17 what powers in fact have been given by the people" *Id.* at 157, citing *United States v. Butler*,
18 297 U.S. 1, 63 (1936); and

19 **WHEREAS** the United States Supreme Court stated in *United States v. Alaska*, 521
20 U.S. 1 (1997), that the Alaska Statehood Act expressly provides that the Submerged Lands
21 Act applies to Alaska and that Alaska is entitled to ownership of submerged lands under the
22 equal footing doctrine and the Submerged Lands Act; and

23 **WHEREAS** ownership of submerged lands carries with it the power to control fishing
24 and other public uses of submerged lands and the superjacent waters, which is an essential
25 attribute of state sovereignty; and

26 **WHEREAS** the United States Supreme Court has ruled in *Printz v. United States*, 521
27 U.S. 98 (1997), that the Constitution of the United States established a system of dual
28 sovereignty that bestows only discrete enumerated powers on the Congress, that all other
29 powers not delegated to the federal government by the Constitution of the United States are
30 reserved to the states or to the people, and that the Constitution of the United States does not
31 confer upon the Congress the power to regulate state governments, the power to require a state

1 to legislate in accordance with the direction of the Congress, or the power to compel a state
2 to implement administrative action; and

3 **WHEREAS** the supremacy clause makes the "law of the land" only those laws of the
4 United States that are made in pursuant to and in conformity with the Constitution of the
5 United States; and

6 **WHEREAS** the Congress passed the Alaska National Interest Lands Conservation Act
7 (ANILCA), the provisions of which violate the Alaska statehood compact, the public trust
8 doctrine, and the constitutions of the State of Alaska and the United States by denying citizens
9 constitutionally guaranteed protections; and

10 **WHEREAS** ANILCA is currently being interpreted to provide management authority
11 over the fish and wildlife resources of Alaska to the federal government to authorize
12 discriminatory allocation of those resources and to infringe upon the State of Alaska's
13 sovereign authority and sovereign right to manage and allocate its own resources; and

14 **WHEREAS** provisions of ANILCA directly interfere with the authority of the State
15 of Alaska to constitutionally provide for the equal protection of all Alaskans and to manage
16 the fish and wildlife resources of Alaska in accordance with the Constitution of the State of
17 Alaska and in conformity with the public trust doctrine; and

18 **WHEREAS** a legitimate dispute exists between the State of Alaska and the Congress
19 as to whether the Congress may require the State of Alaska to violate its own constitution; as
20 to whether the Congress of the United States has the authority to enact legislation that
21 authorizes federal agencies to manage or allocate submerged lands, fish, and wildlife in Alaska
22 by providing discriminatory allocation of Alaska's resources; and as to whether the provisions
23 of ANILCA violate the sovereignty of the State of Alaska and the Constitution of the United
24 States;

25 **BE IT RESOLVED** that the Alaska State Legislature finds that a legitimate dispute
26 exists between the State of Alaska and the Congress as to whether the Congress may interfere
27 with state management and allocation of the resources of Alaska, by mandating that the State
28 of Alaska provide for discriminatory allocation of Alaska's fish and wildlife resources and as
29 to whether the Congress may empower agencies of the federal government to manage the
30 resources of the sovereign State of Alaska and to provide for discriminatory allocation of those
31 resources; and be it

1 **FURTHER RESOLVED** that the Alaska State Legislature declares that it is the duty
2 of the Alaska State Legislature, the Governor of the State of Alaska, and each elected official
3 to uphold and defend the Constitution of the State of Alaska and the sovereignty of the State
4 of Alaska; and be it

5 **FURTHER RESOLVED** that the Alaska State Legislature finds that it is necessary
6 to defend the sovereignty of the State of Alaska by taking this dispute between the State of
7 Alaska and the Congress directly to the United States Supreme Court for final resolution; and
8 be it

9 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests
10 Governor Tony Knowles, on behalf of the State of Alaska, to request the United States
11 Department of the Interior to agree that final resolution of this matter requires that this dispute
12 be taken directly to the United States Supreme Court and that, until the United States Supreme
13 Court rules as to the constitutionality of the Alaska National Interest Lands Conservation Act,
14 the State of Alaska retains full authority to manage all fish and wildlife resources of Alaska
15 under Alaska state law.