

**SENATE RESOLUTION NO. 4**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE RESOURCES COMMITTEE**

**Introduced: 5/3/04**  
**Referred: Resources**

**A RESOLUTION**

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

3 **BE IT RESOLVED BY THE SENATE:**

4 **WHEREAS** The Wilderness Society and the Alaska Center for the Environment  
5 brought suit against the U.S. Fish and Wildlife Service in federal court to challenge the  
6 legality of the long standing sockeye salmon enhancement program in Tustumena Lake,  
7 which is located within the Kenai Wilderness, under provisions of the federal Wilderness Act  
8 (16 U.S.C. 1131 - 1136); and

9 **WHEREAS** the U.S. Fish and Wildlife Service has officially recognized and  
10 approved the sockeye salmon enhancement program in Tustumena Lake since before the  
11 Kenai Wilderness was created in 1980; and

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

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

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

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

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

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

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

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

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

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

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

1 withdrawals; and

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

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

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

12 **WHEREAS** the U.S. Fish and Wildlife Service should have the discretion to permit  
13 fishery enhancement programs in wildlife refuges and refuge wilderness areas if the activity is  
14 consistent with the wilderness and refuge values; and

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

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

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

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

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

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