

State of Alaska
Department of Law

Gregg D. Renkes
Attorney General
P.O. Box 110300
Juneau, Alaska 99811
NEWS RELEASE



Press Contact: Theresa Woelk

907-465-6711
FAX: 907-465-2075
www.law.state.ak.us

FOR IMMEDIATE RELEASE: March 12, 2004

State Seeks to Become Party in Tustumena Salmon Enhancement Project Appeal

(Juneau, AK) –Attorney General Gregg Renkes this week filed a motion to intervene in the case of *The Wilderness Society v. United States Fish & Wildlife Service* with Ninth Circuit Court of Appeals in San Francisco. An *en banc* panel of the court ruled against the United States Fish & Wildlife Service (USFWS) in December, preventing the agency from issuing a permit to allow the Alaska Department of Fish and Game’s (ADF&G) 30-year-old sockeye salmon enhancement project in Tustumena Lake.

For the last several years, the Cook Inlet Aquaculture Association (CIAA) conducted the enhancement project under contract with the state. The court held the project to be a prohibited “commercial enterprise” under the Wilderness Act because of its impact on the Cook Inlet salmon fishery. Tustumena Lake is a designated Wilderness area in the Kenai National Wildlife Refuge.

“This decision is important to Alaska because it takes away our ability to enhance fisheries in National Refuge Wilderness areas and in Alaska we have more than 98 percent of the Nation’s designated National Wildlife refuge Wilderness areas,” Attorney General Gregg Renkes pointed out. “The state should have been protecting its interests in this lawsuit from the beginning, but the Knowles Administration decided not to enter the case brought by the Wilderness Society. At this late date, our effort to enter this lawsuit is truly a long shot, but necessary.”

The motion asks the court to allow the state’s intervention as a defendant in the case because of Alaska’s strong interest in the continuation of this project. The project benefits sport, personal use and commercial fisheries in Cook Inlet and the Kasilof River, all of which the state manages for the maximum benefit of its people.

Loss of the project would result in a significantly reduced number of sockeye salmon in Cook Inlet and the Kasilof River. The state receives revenues from taxes on sales of fish that are a part of the enhancement project and on sport fishing licenses bought for use on the Kasilof River. The state would suffer economic losses if the project does not continue.

According to Jeff Regnard, regional manager for the Division of Commercial Fisheries in ADF&G, loss of the Tustumena enhancement program would also reduce by 20 percent the

available fish for sport and personal use fisheries. The six million fry destined for the Tustumena Lake, which may be destroyed as a result of the Ninth Circuit's order, would result in a return of 100,000 adult fish, totaling 400,000 pounds of harvestable salmon in commercial fisheries.

The Wilderness Society and the Alaska Center for the Environment filed the original case in 1998. The district court granted summary judgement in favor of the USFWS and the plaintiff groups appealed to the Ninth Circuit Court of Appeals. A three-judge panel of the court affirmed the lower court's decision in favor of the USFWS. However, on December 20, 2003, the Court, sitting *en banc*, reversed the decision and remanded the case back to the lower court, directing that the decision of the USFWS be set aside and the enhancement project enjoined.

The Court of Appeals reached its decision by adopting an exceptionally broad definition of "commercial enterprise" as the term is used in the Wilderness Act, almost entirely excluding the Alaska National Interest Lands Conservation Act (ANILCA), which has long been interpreted to permit enhancement and rehabilitation projects in wilderness areas. The court found that the Tustumena enhancement project is a commercial enterprise, even though it lacks the traditional hallmarks of a commercial enterprise.

"The court's decision steps beyond what Congress intended when it prohibited commercial enterprises in wilderness areas," Renkes said. "The program does benefit commercial fishermen, but it also benefits recreational and personal use fisheries. Regardless of the ultimate beneficiaries, unless an operational activity taking place within the wilderness is of a directly commercial character, it should be up to the Fish and Wildlife Service to decide if the activity might be permitted consistent with the wilderness and refuge values."

Officials are also worried that the court's decision could have far reaching consequences in and outside Alaska. Any activity that has a commercial benefit, including recreational activities, commercial guiding and eco-tourism could be prohibited.

"The decision's potential reach is limited only by imagination," Attorney General Renkes said. "Under this ruling, any activity that has a commercial benefit – even if enjoyed far from the wilderness – may be considered a "commercial enterprise" and barred from the wilderness. Few activities are so insulated from commerce as to be assured that they are outside the scope of the Court's new rules. If allowed to stand, the Ninth Circuit's decision may be used to burden or eliminate legitimate non-commercial activities in the wilderness that Congress never meant to bar."

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