

SENATE SPECIAL CONCURRENT RESOLUTION NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS ELTON, Davis, Lincoln

Introduced: 3/10/03

Referred: State Affairs, Resources

A RESOLUTION

1 **Disapproving Executive Order No. 107, relating to the transfer of certain functions of**
2 **the Department of Fish and Game to the Department of Natural Resources and to the**
3 **transfer of certain functions within the Department of Natural Resources.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** the governor, under authority of art. III, sec. 23, Constitution of the State
6 of Alaska, has proposed in Executive Order No. 107 to transfer functions of the Department
7 of Fish and Game relating to fishways, anadromous fish streams, and forest resources and
8 practices to the Department of Natural Resources; and

9 **WHEREAS** Alaska's rivers, streams, and lakes produce the world's healthiest wild
10 sport, commercial, and subsistence fish populations, including unparalleled salmon, trout,
11 steelhead, char, arctic grayling, northern pike, and sheefish populations; and

12 **WHEREAS** many of the world's largest wild fish, including wild pacific salmon,
13 trout, char, sheefish, and arctic grayling live in Alaska's waters; and

14 **WHEREAS** the Alaska Department of Fish and Game, division of habitat and
15 restoration has done a much better job protecting wild fish than the responsible agencies of

1 other states, where wild fisheries have been decimated; and

2 **WHEREAS** there is a conflict between the mission of the Department of Natural
3 Resources and the Department of Fish and Game that threatens to undermine the effectiveness
4 of habitat protection functions placed within the Department of Natural Resources; and

5 **WHEREAS** the governor can ensure a properly run, efficient division of habitat and
6 restoration within the Department of Fish and Game through proper management and
7 directives from the department's commissioner; and

8 **WHEREAS** the division of habitat and restoration has in recent years demonstrated
9 its importance in convincing the United States Forest Service to finally require culverts large
10 enough to protect fish after many years by the Forest Service of allowing inadequate culverts
11 that kill fish; and

12 **WHEREAS** the division of habitat and restoration has been instrumental in
13 convincing instrumentalities of the federal government to allow projects that would otherwise
14 not have been permitted; and

15 **WHEREAS** a credible division of habitat and restoration within the Department of
16 Fish and Game will be instrumental in providing a science-based biological response to recent
17 studies by agencies as noteworthy as the National Academy of Sciences concluding that oil
18 exploration and development does long-term damage to the North Slope; and

19 **WHEREAS** five former commissioners of the Department of Fish and Game oppose
20 the transfer of habitat protection functions based on sound biological and policy foundations;
21 and

22 **WHEREAS** the permitting, monitoring, and enforcement system of the Department of
23 Fish and Game has evolved since Alaska Statehood and has become a model for other
24 jurisdictions; and

25 **WHEREAS** the habitat permitting, monitoring, and enforcement system in the
26 Department of Fish and Game has provided balanced and sustainable management of fish and
27 game resources in a manner that protects those resources while providing economic
28 opportunities; and

29 **WHEREAS** the Department of Fish and Game reviews about 2,000 permit requests
30 each year and 99 percent are granted within 15 days with only a small fraction of the other
31 one percent elevated to a dispute resolution process while still fewer are denied; and

1 **WHEREAS** Executive Order 107 dismantles the existing system of the State of
2 Alaska for maintaining important fish and game habitat and creates an untried habitat
3 permitting, monitoring, and enforcement regime in another department; and

4 **WHEREAS**, under the provisions of Executive Order 107, the Department of Natural
5 Resources is not under a legal obligation to consider the advice of the Department of Fish and
6 Game; and

7 **WHEREAS** Executive Order 107 strips all other legal responsibility for monitoring,
8 enforcing, and requiring compliance of anadromous fish stream permits and fishway permits
9 from the Department of Fish and Game; and

10 **WHEREAS** Executive Order 107 does not require the Department of Natural
11 Resources to consult with the Department of Fish and Game before issuing anadromous fish
12 stream permits or fishway permits; and

13 **WHEREAS** Executive Order 107 exceeds the governor's authority to make changes
14 only to the executive branch by requiring the Alaska Supreme Court to determine which
15 misdemeanors under the new law AS 41.14 are appropriate for disposition without a court
16 appearance; and

17 **WHEREAS** Executive Order 107 exceeds the governor's authority to make changes
18 only to the executive branch by requiring the Alaska Supreme Court to participate in an
19 advisory committee; and

20 **WHEREAS** Executive Order 107 exceeds the governor's authority to make changes
21 only to the executive branch by requiring chairs of the House and Senate Judiciary
22 Committees to participate in an advisory committee; and

23 **WHEREAS** Executive Order 107 exceeds the governor's authority to make changes
24 only to the executive branch by making changes to laws relating to retirement benefits for
25 certain state employees; and

26 **WHEREAS** fish and game habitat protection is an integral part of fish and game
27 management under the purview of the Department of Fish and Game, and Executive Order
28 107 may violate the requirement in art. III, sec. 22, Constitution of the State of Alaska,
29 providing that executive branch departments be grouped "as far as practicable according to
30 major purposes"; and

31 **WHEREAS** Executive Order 107 usurps legislative authority by creating powers that

1 do not now exist, conferring rule-making authority on the deputy commissioner of the
2 Department of Natural Resources and allowing the deputy commissioner to delegate outside
3 the agency, rather than simply transferring existing powers; and

4 **WHEREAS**, under the provisions of Executive Order 107, the deputy commissioner
5 of the Department of Natural Resources becomes the expert on fish and wildlife habitat and
6 all deference given the Department of Fish and Game on the effects of timber operations on
7 fish habitat will be accorded to the deputy commissioner of the Department of Natural
8 Resources; and

9 **WHEREAS** Executive Order 107 transfers responsibility for proper protection of fish
10 and game habitat from the Department of Fish and Game and the public Board of Fisheries
11 and Board of Game to the deputy commissioner of the Department of Natural Resources; and

12 **WHEREAS** art. III, sec. 23, Constitution of the State of Alaska, provides that unless
13 disapproved within 60 days of a regular session by resolution concurred in by a majority of
14 the members of the legislature in joint session, an executive order becomes effective at a date
15 designated by the governor;

16 **BE IT RESOLVED** by the Alaska State Legislature that Executive Order No. 107 is
17 disapproved.