

Alaska Department of Fish and Game Comments

Wildlife Proposal WP26-41-42

Wildlife Proposal WP26-41 and WP26-42 would eliminate the unit-specific provision allowing the take of caribou and moose from a boat moving under power in Game Management Unit (GMU) 18.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** these proposals as they would remove federal regulations that regulate activities that are technically within the State's jurisdiction. The State's authority to regulate state-owned submerged lands and navigable waters within federal conservation system units in Alaska is recognized in numerous provisions in ANILCA and further supported in judicial findings. Existing provisions allowing caribou and moose to be harvested from a boat moving under power is inconsistent with state hunting regulations.

Executive Order 15153, Sec. 3(b)(xxii) directs the Department of the Interior to conduct meaningful consultation with State fish and wildlife agencies prior to enacting land management plans or regulations affecting hunting and fishing opportunities on public lands. This directive was reinforced by Secretarial Order 3447, which calls for removing unnecessary barriers to hunting and fishing, expanding access where compatible, improving coordination with State agencies, and ensuring transparent review of any proposed restrictions.

Background

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution as affirmed in *Utah v. United States*, 482 U.S. 193 (1987). Under the doctrine, all states under the Union on an equal footing with respect to sovereign rights and powers, title to the beds of navigable waters vested in the newly formed State of Alaska in 1959.

On December 2, 1980, the Alaska National Interest Lands Conservation Act (ANILCA) became law. This act created or added 150 million acres to various federal conservation system units (CSU). In ANILCA, Congress did not take away the state's power to regulate state-owned submerged lands within federal CSUs in Alaska. Numerous provisions in ANILCA recognize and respect the state's authority over state-owned land. Because these "withdrawals" occurred after the date of statehood, there is no disagreement between the state and federal governments that navigable waters within the various CSU's are owned by the state.

Sturgeon v. Frost (*Sturgeon I*), 577 U.S. 424 (2016), concerned the National Park Service's (NPS) attempt to prohibit the use of a hovercraft on the Nation River within the Yukon-Charley Rivers National Preserve. The Supreme Court unanimously found that the Ninth Circuit had misinterpreted ANILCA, emphasizing that Section 103(c) restricts federal regulatory authority within conservation system units only to federally owned public lands. The Court held that

ANILCA is unique to Alaska and must be applied according to its explicit terms.

After remand, the Ninth Circuit again found in favor of NPS authority, and the case returned to the Supreme Court. In *Sturgeon v. Frost* (*Sturgeon II*), 587 U.S. 207 (2019), the Court again ruled unanimously for Sturgeon. The Court held definitively that navigable waters within CSUs—where the State of Alaska owns the underlying submerged lands—are 'non-public' lands for the purposes of ANILCA.

These two landmark decisions affirm the State of Alaska's regulatory jurisdiction over navigable waters and clarify that ANILCA protects the State's authority from being displaced by federal land management regulations within CSUs.