



Freeze-up on the Fortymile | Photos Courtesy of David Likins

# Alaska Lands Update

January 2016

Issue 51

## **STURGEON V. FROST HEADS TO THE SUPREME COURT**

On January 20, oral arguments will be presented to the U.S. Supreme Court in the case of Sturgeon v. Frost.

Around eight years ago, on the state-owned banks of the Nation River within the external boundaries of the Yukon-Charley Rivers National Preserve, John Sturgeon was informed that the hovercraft he'd been using for years was banned within national parks and preserves. Mr. Sturgeon was asked to leave, facing possible citation. He was not allowed, even, to operate his hovercraft on state lands in order to exit the preserve boundaries. Sturgeon loaded his hovercraft onto a friend's boat, exited the preserve and brought a legal challenge to application of the federal rules to him and his hovercraft.

Section 103(c) of the Alaska National Interest Lands Conservation Act (ANILCA) was intended to and exists to prevent the application of federal park rules to non-federal lands within park boundaries. Since Sturgeon was operating wholly on state lands while passing through the preserve to his moose

hunting grounds, the only rules that would be applied to him would be state rules (which allow hovercrafts).

After years in court, both the U.S. District Court in Alaska and the 9th Circuit Court of Appeals rejected Sturgeon's challenge, finding Section 103(c) of ANILCA only prevents the application of rules specific to park lands in Alaska, not rules that apply to all park lands. Sturgeon appealed to the U.S. Supreme Court and, against overwhelming odds, the Court agreed to review his case. This will be the second time the Court has reviewed a case regarding a provision of ANILCA.

For the nation, this case provides the Court with an opportunity to weigh in on the ability for federal agencies to manage non-federal lands and receive deference from the court system in how to interpret the law. For Alaska, this provides a neutral review of a statutory interpretation that would allow millions of acres of state and private lands in Alaska to be subjected to the rules applicable to neighboring federal lands. A decision from the Court is expected this summer. Court documents are available on the CACFA Website at <http://dnr.cacfa.gov/commis/cacfa>.

*Due to staffing issues, the Alaska Lands Update will be available at least quarterly, and on a monthly basis whenever possible. Thank you for your patience and continued interest!*

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# New Rules for Parks and Refuges

## NPS RULE: PROPOSED V. FINAL

### FISH & WILDLIFE SERVICE

On January 8, 2016, the USFWS released its **proposed rulemaking on the non-subsistence take of wildlife, public participation and closure procedures for wildlife refuges in Alaska.**

Proposed changes to existing regulations at 50 CFR 36 include: prohibiting predator control in Alaska refuges unless authorized by a Refuge Manager in specified situations; defining “predator control” as intentionally reducing the population of predators to benefit prey species; prohibiting specific methods and means of take; updating to reflect federal management of subsistence harvest; replacing current notice and comment requirements for public use closures and restrictions; providing a 60-day maximum for emergency closures and allowing for review of temporary closures at least every three years; adding a criteria for closure to conserve the “natural diversity, biological integrity, and environmental health” of the refuge; limiting requirements for public hearing and consultation to closures related to the take of fish or wildlife; and, making the USFWS Website the primary means of public notice, with other methods used only where available.

The proposed rule also requests public comment on what should qualify as “bait” for use in harvesting bears.

Comments on the proposed rule may be submitted through **8pm Alaska Time on Tuesday, March 8, 2016**, at the [www.regulations.gov](http://www.regulations.gov) portal for “FWS-R7-NWRS-2014-0005.”

**Not online?** Comments may be submitted by mail or hand-delivery to Public Comments Processing, Attn: FWS-R7-NWRS-2014-005, Division of Policy, Performance and Management Programs, US Fish & Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803. Contact Stephanie Brady at (907)306-7448 for more information.

### NATIONAL PARK SERVICE

The NPS has finalized its rulemaking on hunting, trapping, fishing and other public uses in parks and preserves in Alaska. The following summary outlines how the new regulations operate:

**Prohibited Activities:** current hunting and trapping practices which are not allowed in parks and preserves are listed in a new section at 36 CFR 13.42(g). Prohibitions not listed in this new section may be provided in a list, updated annually and available at park headquarters and online.

**Future Prohibited Activities:** all state authorizations/actions “with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes” are not “adopted” in preserves and associated harvest is prohibited. Non-adoption is automatic, but a list of prohibitions under this new provision will be updated at least annually and made available at park headquarters and online.

**Subsistence Closures:** the new rule adds the authority to temporarily restrict subsistence activities under the revised process at 36 CFR 13.490. The requirement for “adequate notice and public hearing in the affected vicinity and other locations as appropriate” has been replaced with a requirement for “public notice” and “a public hearing” near the affected park unit in non-emergencies.

**Public Use Closures:** closures will only be made through regulation if certain criteria are met, instead of within certain timeframes. A written determination will be issued in non-emergencies and posted online. Notice and public participation requirements have been significantly changed for both imposing and lifting closures. There is no longer a separate process for facility closures.

Several changes were made between the NPS’ proposed rule, issued September 4, 2015, and the October 23 final rule. Here are some of the notable changes:

- bans the harvest of black bears over bait or using dogs under a state permit;
- exempts the harvest of muskrats at pushups or feeding houses from prohibition on disturbing/destroying dens;
- adds requirement for a “written determination” of justification prior to implementing or lifting a non-emergency closure or restriction, to be posted on the NPS Website;
- eliminates the provisions governing “openings” at 36 CFR 13.50(g), including the requirements for a *Federal Register* notice and a public hearing on request “in the affected vicinity and other locations as appropriate”;
- adds unique provisions for emergency closures to the take of fish or wildlife;
- only applies the 60-day maximum to emergency closures to the take of fish or wildlife, instead of to *all* emergency closures (other emergency closures can last “the duration of the emergency”);
- adds requirement for “one or more public meetings near the affected NPS unit” before imposing a non-emergency closure or limit to taking fish or wildlife;
- removes the “effective” date for closures and restrictions as when the prohibition is posted to the NPS Website. There is no “effective” date or moment identified in the final rule.
- eliminates the provisions governing “facility closures and restrictions” at 36 CFR 13.50(h), removing unique criteria, duration and notice requirements; and,
- reinstates consultation with the State and adds consultation with the Federal Subsistence Board for closures and limits to subsistence uses of fish or wildlife.

**Contact CACFA** at [dnr.cacfa@alaska.gov](mailto:dnr.cacfa@alaska.gov) or (907)269-3645 to request a full list of substantive changes between the former regulations, the proposed and the final regulations.

# What's Happening With . . .

## LANDS INTO TRUST

Alaska's lawsuit is proceeding in the District of Columbia Circuit Court of Appeals; while the appeal is in progress, the Interior Department may not take lands into trust in Alaska.

A potentially relevant seminar will be held in Anchorage on March 3 and 4 entitled "Tribal Sovereignty and Economic Development." More information can be obtained from the organizer at <https://www.lawseminars.com/detail.php?SeminarCode=16TRIBLAK>.

## KING COVE ROAD

An Alaska U.S. District Court judge has dismissed the lawsuit targeting the Interior Department's refusal to authorize a limited-use road from King Cove to Cold Bay, 11 miles of which would pass through part of the Izembek Refuge.

A legislative rider in the 2016 federal appropriations/spending bill that would have required a land exchange and road construction was removed from the bill passed by Congress in December.

## CLEAN WATER ACT

The final rulemaking from the Environmental Protection Agency on how and where to implement the Clean Water Act was prohibited from taking effect in Alaska by a federal judge in response to a lawsuit filed by Alaska and 12 other states. The 6th Circuit Court of Appeals recently prohibited the rule from taking effect nationwide.

## ANILCA ANNIVERSARY

December 2, 2015, marked the 35th anniversary of the signing of ANILCA. On December 3, to coincide with this occasion, the U.S. Senate Committee on Energy and Natural Resources, chaired by our Senator Lisa Murkowski, held an oversight hearing on ANILCA implementation. CACFA was represented on the witness panel by Senator John Coghill. The Governor and others also provided in-person testimony.

CACFA's testimony at the hearing, and supplemental testimony regarding specific questions asked after the hearing, are posted on the CACFA Website.

To view the hearing online, and to access and download opening statements and witness testimonies, visit the hearing website at <http://www.energy.senate.gov/public/index.cfm/2015/12/hearing-to-receive-testimony-on-implementation-of-the-alaska-national-interest-lands-conservation-act-of-1980-including-perspectives-on-the-acts-impacts-in-alaska-and-suggestions-for-improvements-to-the-act>.

Anyone wishing to provide input to the Committee on the implementation of ANILCA may submit their testimony **before 1pm Alaska Time on Friday, January 15**, to Darla Ripchensky, PMP, Chief Clerk, U.S. Senate Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington D.C. 20510, [Darla\\_Ripchensky@energy.senate.gov](mailto:Darla_Ripchensky@energy.senate.gov) (email address contains an underscore after "Darla").

The **Tongass National Forest** has released its **Proposed Amended Land and Resource Management Plan** and the associated **Draft Environmental Impact Statement (DEIS)**. The revised plan will guide forest management for the next 15 to 20 years and is the first plan amendment to be developed under the U.S. Forest Service's 2012 Planning Rule at 36 CFR 219.

The plan amendment implements the U.S. Secretary of Agriculture's July 2013 memo directing the Tongass to transition to "young-growth" forest management while preserving a viable timber industry in Southeast Alaska.

The plan amendment will change how Transportation and Utility Systems are handled throughout the forest and in particular land use designations. The plan also re-identifies lands as suitable or unsuitable for timber production.

More information on the plan amendment and DEIS, including documents for download and review, may be found at <http://www.fs.usda.gov/goto/R10/Tongass/PlanAmend>. A schedule of public meetings from January 11-22 may be accessed online at <http://www.fs.usda.gov/detailfull/tongass/landmanagement/?cid=fseprd475243>.

Comments on the plan revision may be submitted **by Monday, February 22**, to [comments-alaska-tongass@fs.fed.us](mailto:comments-alaska-tongass@fs.fed.us).

**Not online?** Comments may be submitted by fax to (907)228-6292 or by mail to Forest Supervisor, Tongass National Forest, Attn: Forest Plan Amendment, 648 Mission Street, Ketchikan, AK 99901. Contact Susan Howle at (907)228-6340 for more information.

**No formal comment periods are currently open for Bureau of Land Management land use plans in Alaska. The following websites provide documents and updated information on current efforts of interest:**

**Squirrel River Management Plan:** <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=36163>

**Eastern Interior Resource Management Plan:** <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=1100>

**Bering Sea-Western Interior Resource Management Plan:** <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=36665&dctmId=0b0003e8804de363>

**Central Yukon Resource Management Plan:** <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=45823>

The **Chugach National Forest** is inviting public comment on its **Proposed Forest Plan**. The plan revision is in its second phase; certain modifications and new content are available for review at:

<http://go.usa.gov/cBWvQ>

Comments on the plan revision may be submitted through **Friday, February 19**, using the online comment form at the above website.

**Not online?** Comments may be submitted by mail or hand-delivery to Chugach National Forest's Supervisor's Office, Attn: Forest Plan Revision, 161 East 1st Street, Door 8, Anchorage, AK 99501. Contact Mary C. Rasmussen at (907)743-9500 for more information.

The **U.S. Fish and Wildlife Service** is accepting comments on **proposed regulatory amendments regarding the exercise of oil and gas rights in wildlife refuges** at 50 CFR parts 28 and 29.

The proposed amendments apply to non-federal activities in a national wildlife refuge related to non-federal oil and gas exploration and development, including access to resources, where the surface estate is federally owned and managed by the USFWS. Among a number of new requirements proposed, new operations will be required to request a permit, provide information, pay fees for access, post financial assurances and submit to new penalties. Access in Alaska will be governed by ANILCA and regulations at 43 CFR 36.

Comments on the proposed rule may be submitted through **8pm Alaska Time on Tuesday, February 9**, at the [www.regulations.gov](http://www.regulations.gov) portal for "FWS-HQ-NWRS-2012-0086."

**Not online?** Comments may be submitted by mail or hand-delivery to Public Comments Processing, Attn: FWS-HQ-NWRS-2012-0086, Division of Policy, Performance and Management Programs, US Fish & Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803. Contact Scott Covington at (703)358-2427 for more information.

The **National Park Service** is proposing to **require an admission fee to Jeff. Smiths Parlor Museum in Skagway**. A public meeting was held on December 15, 2015. Admission to the museum will be timed and ticketed, with an NPS escort, and only 10 visitors will be allowed inside at one time. Tickets will be available for advance online purchase at [recreation.gov](http://recreation.gov). Public tours begin May 2016. The proposed admission fee is \$5 and free to children under six.

Comments on the proposed fee and limits may be submitted through **10pm Alaska Time on Sunday, January 31**, at <http://parkplanning.nps.gov/document.cfm?parkID=15&projectID=61780&documentID=69957>.

**Not online?** Information on how to submit comments may be requested from Ben Hayes at (907)983-9206.

The **National Park Service** issued a notice that it has received an application from the Alaska Industrial Development and Export Authority (AIDEA) for a **right-of-way across Gates of the Arctic National Preserve**. In accordance with ANILCA 201(4)(c), the notice starts a 30-day period where other interested parties may apply for access across the preserve.

This application coincides with the AIDEA project to develop a road accessing the Ambler Mining District in northwest Alaska, which is rich in copper, zinc, lead and gold resources. The project is in its early stages of compliance with the National Environmental Policy Act and ANILCA Titles II and XI. More information on the project can be found at <http://www.ambleraccess.org/projects/ambler/index.html>.

Applications for access may be submitted to Superintendent Greg Dudgeon, Gates of the Arctic National Park and Preserve, 4175 Geist Road, Fairbanks, AK 99709, and must be postmarked by **Wednesday, January 13**. More information can be obtained by calling (907)457-5752 or emailing [yuga\\_ambler\\_road@nps.gov](mailto:yuga_ambler_road@nps.gov) (email address contains two underscores).

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

101 Airport Road | Palmer, AK 99645  
[dnr.cacfa@alaska.gov](mailto:dnr.cacfa@alaska.gov)  
<http://dnr.alaska.gov/commis/cacfa>

As of August 2015, the Commission no longer has a staffed office in Fairbanks.

**The Commission's next meeting will be in Juneau on January 29 & 30 at the State Capitol Building.**

## COMMISSIONERS

### Senate-Appointed

Rod Arno ~ Wasilla  
Sen. John Coghill ~ North Pole  
Warren Olson ~ Anchorage

### House-Appointed

Rep. Wes Keller ~ Wasilla  
Gail Phillips ~ Anchorage  
Ron Somerville ~ Juneau

### Governor-Appointed

Mark Fish ~ Big Lake  
Teresa Hanson ~ Fairbanks  
Charlie Lean ~ Nome  
Kathleen Liska ~ Anchorage  
Susan Smith ~ Chokosna  
Frank Woods ~ Dillingham

