02/17/16 OVERVIEW: UPDATE ON JOHN STURGEON SUPREME COURT CASE

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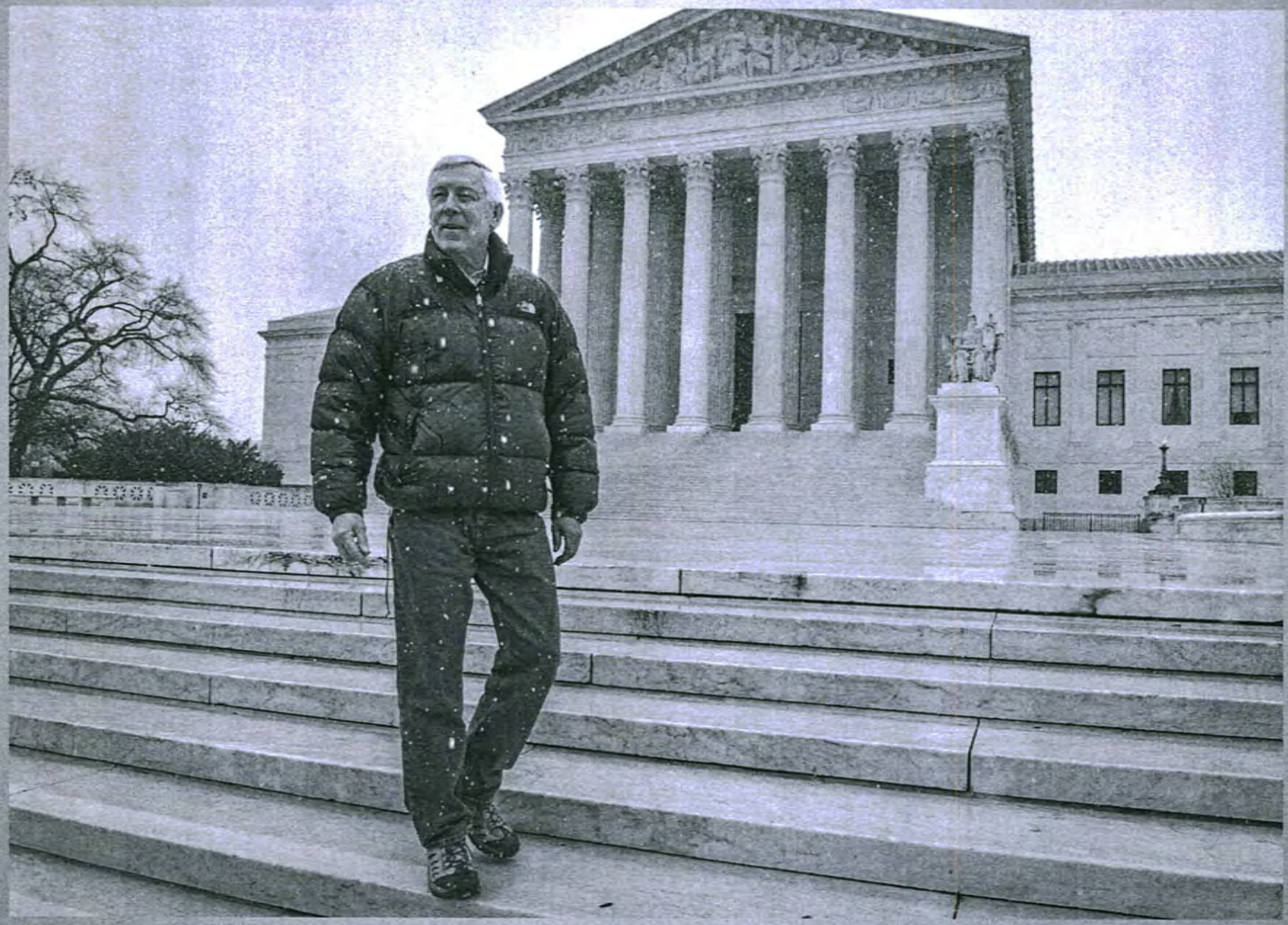
US Supreme Court

Sturgeon vs. Frost - NPS



January 20, 2016

Stopped by NPS enforcement agents September 2008 while on Navigable waters for operating a hovercraft.

Yukon River near Eagle, Alaska

- While repairing my hovercraft I was approached by 3 uniformed and armed NPS employees
- They informed me my hovercraft was not allowed in NP Preserves and demanded I remove it immediately without starting it.
- I explained to them I was on State of Alaska Navigable waters . They didn't care.
- I have hunted this same area consecutively since 1971
- I have used my hovercraft there since 1991

Section 103 (c) of ANILCA says Fed regs don't apply on inholdings.

What does Section 103 (c) of ANILCA say?

The first sentence says

inholdings are not part of the park.

The second sentence

clearly says these lands won't be regulated as though they were part of a park

The third sentence

makes clear that if the Federal government wants to regulate these lands they have to go out and acquire them.

In September 2011, I filed a "public interest" lawsuit in Federal Court

Basics of the lawsuit

It is our belief that the NPS can not ban hovercrafts on Navigable waters owned by the State of Alaska.

Section 103 (C) of ANILCA specifically says Federal management regulation do not apply on inholdings. A point made crystal clear by the co-sponsors of ANILCA.

The legislative history of 103(c) is extensive. Rep. Sieberling, 125 Cong. Rec. 11158 (1979) (Rep. Sieberling was the sponsor of the amendment adding 103(c):

> ***"All this amendment does is restate and make clear beyond any doubt that any State, native or private lands, which may lie within the outer boundaries of the conservation system unit are not parts of that unit and are not subject to regulations which are applied to public lands which, in fact, are part of the unit.***
>
> ***...within the boundaries drawn on the map for the conservation unit does not in any way change the status of that State, native, or private land or make it subject to any of the laws or regulations that pertain to U.S. public lands, so that those inholdings are clearly not controlled by any of the public land laws of the United States."***

What is this lawsuit really about?

- This is a case about State sovereignty and the promises of Statehood
- This is a case about Federal Government overreach
- This is a case about the Federal Government keeping the promises it made in ANILCA to the people of Alaska
- This is a case about the Federal Government keeping the promises it made under the Alaska Natives Claims Settlement Act
- This is a case to tell the Federal Government they do have limits by law.

What does Alaska have to lose?

- Even though the State of Alaska owns all Navigable waters they could lose all management control within CSU's
- The State could lose management control over all its lands with the boundaries of parks, preserves and refuges
- Native Corporation have 18 mm acres of their 44 mm acres within ANILCA designated CSU's. They would have to follow Federal parks and refuges management rules on lands within CSU's.
- All private inholding would be subject to park and refuge rules

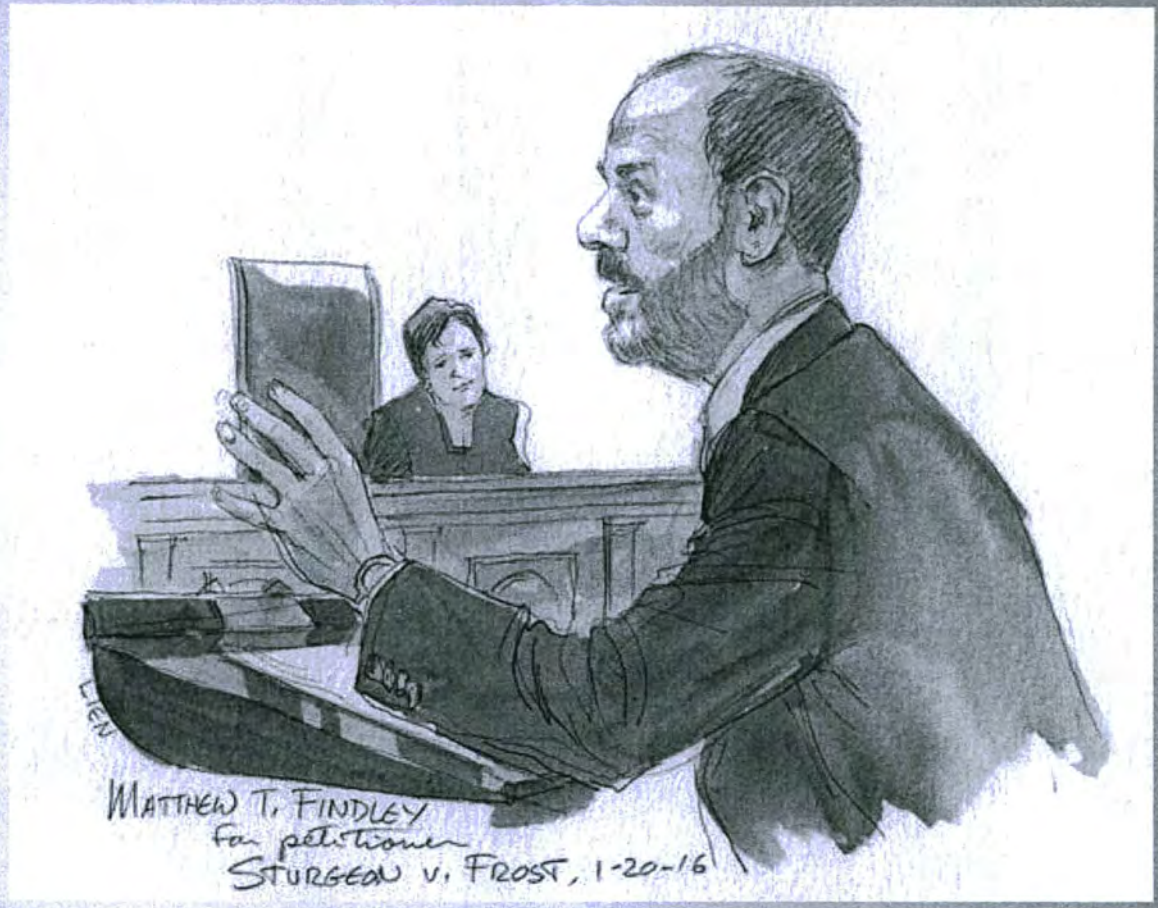
Route to the US Supreme Court- District Court then 9th Circuit

Amici curiae who have filed briefs in support of John Sturgeon

Safari Club International
Pacific Legal Foundation
Southeastern Legal Foundation
State of Alaska
U.S. Senator Dan Sullivan (Alaska)
U.S. Senator Lisa Murkowski (Alaska)
U.S. Representative Don Young (Alaska)
Arctic Slope Regional Corporation
Cook Inlet Region, Inc.
Salamatof Native Association, Inc.
Doyon, Limited
NANA Regional Corporation
Calista Corporation
Ahtna, Inc.
Aleut Corporation
Bristol Bay Native Corporation
Gana-a'yoo, Limited
Tihteet'aii, Incorporated
Alaska Miners Association, Inc.
Alaska Oil and Gas Association
Alaska Chamber
Alaska Forest Association
Alaska Conservation Trust

SC hearing

- Outstanding lawyers – lead attorney was Matt Findley from Ashburn & Mason
- Experts say it is difficult to guess which way the court will rule by their questions
- However, in my layman's opinion I would much rather have been our attorney then the Federal attorney

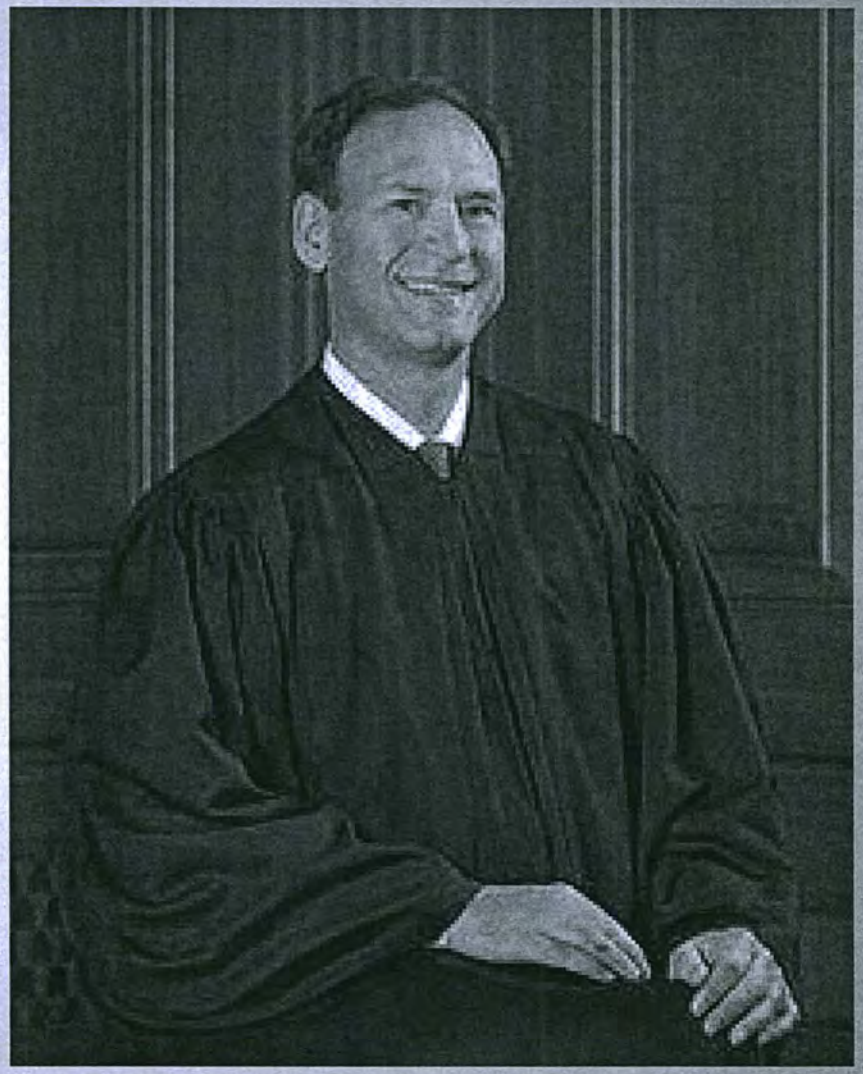


Justice Alito to Federal Lawyer

"you filed a 58 page brief and, as I read it, you didn't get to the reason that the Ninth Circuit based its decision on until page 49, and you devoted exactly a paragraph to it.

And why don't you concede that it's wrong? It's a ridiculous interpretation, is it not?

(Laughter.)



Total Cost of the Lawsuit

- Cost prior to US Supreme Court accepting the case (Ed Rasmuson has been my partner in this lawsuit from day 1) - **$325,000**
- Supreme Court portion - **$326,761**
- Total cost to Date - **$651,761**
- Donations for the Supreme Court portion to date **- $235,000**
- State of Alaska contribution to date - $0

Closing Statement :

The government's position here, they keep saying their authority is limited, and Mr. Chief Justice hit the nail on the head. They're relying on the Organic Act which allows them to enact any regulations they feel necessary at any time. They've already done that with the 9(b) oil and gas regulations, seeking to apply those to Non-Federal land within Alaska. ***And the hits are going to keep on coming unless this Court stops this interpretation and goes back to what 103(c) was meant to do, which was to prevent the Park Service from taking these lands that aren't owned by the government and regulating them as though they are part of the park.***

And the second point want I want to make-
There's a lot of discussion about whether ANILCA covers official navigable waters or not. The clear statement rule covers that question. And in that circumstance, it's a question of is anything in the statute clearly saying we are taking away State authority over navigable waters? You will not find the term navigable waters in the statute once. Let's contrast this to other park enabling legislation. This is for Olympic National Park, and you'll find this at 16 U.S.C. 251(n). And here's what it says: "The boundary of Olympic National Park Washington is hereby revised to include within the park all submerged lands and waters of Lake Ozette, Washington, and the Ozette River, There's your clear statement.

Alaskan's gave it our best,

we now wait for a ruling by June -

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arctic slope regional corporation

February 12, 2016

Senator Cathy Giessel
House Resources Committee
State Capitol
Juneau, AK 99801

Dear Senator Giessel,

On behalf of Arctic Slope Regional Corporation ("ASRC"), I am pleased to submit comments to your committee on the United States Supreme Court case, *Sturgeon v. Frost*. ASRC, via the filing of *amicus* briefs, has supported Mr. Sturgeon's efforts, as this case has highlighted yet another example of the federal government's attempt to extend its reach in an area where many of us thought clear lines were drawn in 1980 with the passage of the Alaska National Interest Lands Conservation Act ("ANILCA"). Through ANILCA, Congress balanced the conservation interests of the federal government with the economic development and subsistence interests of Alaska Native Corporations. Unless the ruling of the United States Court of Appeals for the Ninth Circuit is overturned by the Supreme Court, the ruling has the potential to dramatically upset this balance and undermine Alaska Native access and use of lands conveyed in the Alaska Native Claims Settlement Act of 1971("ANCSA").

ASRC is an Alaska Native Corporation, representing the Iñupiat people of the North Slope region of Alaska. We were created pursuant to the terms of ANCSA. ANCSA was designed to settle the aboriginal claims of Alaska Natives and authorized the transfer of roughly 45 million acres of land to twelve for-profit regional corporations and more than two hundred village corporations in the state. The legislation extinguished Alaska Native aboriginal land rights, and authorized and directed us to adopt a western corporate model to manage Native lands and natural resources for the benefit of our shareholders.

ASRC owns nearly 5 million acres of land on Alaska's North Slope. Almost half of our approximately 13,000 shareholders live in or around eight extremely remote Arctic villages in one of the most isolated and challenging environments in the world. Through ANCSA, Congress authorized ASRC to use the North Slope's natural resources to benefit the Iñupiat people both financially and culturally. Consistent with this unique legislation, ASRC is a for-profit business committed to providing benefits to its shareholders, including dividends, and to promoting the preservation and perpetuation of Iñupiat culture and traditions.

Corporate Headquarters • PO Box 129 • Barrow, Alaska 99723-0129 • 907.852.8533 or 907.852.8633 • FAX 907.852.5733

Nearly ten years after passing ANCSA, Congress enacted ANILCA. The purpose of ANILCA was two-fold: to preserve the natural landscapes in Alaska and its wildlife, while also allowing rural residents to maintain their subsistence way of life. Congress was clear that ANILCA was not intended to impede upon Native Corporations' control of Native lands conveyed under ANCSA. Rather, Congress repeatedly emphasized in ANILCA that regulation under that Act was to be limited to "public lands," which were by definition specifically limited to "Federal lands" in Alaska (specifically excluding certain State and Native Corporation lands). ANILCA established "units" which would be federally regulated as new or expanded national parks, preserves, monuments or wildlife refuges. At the time, Congress made clear that only the "public lands" within such boundaries would "be deemed to be included as a portion of such unit."

Over 120 million of Alaska's federally owned acres are now protected within federal conservation system units ("CSUs"). ANILCA-created CSUs ultimately have surrounded over eighteen million acres of Native Corporation-owned land. Eleven of Alaska's twelve regional corporations and many of its over 200 village corporations own inholdings within ANILCA CSUs, and many Native people live on these lands in rural villages.

More than 380,000 acres of ASRC lands are "inholdings," situated within the Gates of the Arctic National Park, the Alaska Maritime National Wildlife Refuge, and the Arctic National Wildlife Refuge ("ANWR"), all federal CSUs created or expanded by ANILCA. ASRC shareholders reside in two villages located on its inholdings within CSUs—Anaktuvuk Pass within Gates of the Arctic National Park and Kaktovik on the coastal plain within ANWR. These inholdings are necessary to ASRC's shareholders for subsistence use and economic development. The health of, and access to, caribou herds, fish, water fowl, Dall sheep, muskoxen, marine mammals, and other subsistence food populations are critically important to ASRC's shareholders. Many of the inholding acres also have high potential for oil and gas development, other mineral development, tourism, and other economic uses that could support our communities.

In *Sturgeon*, the U.S. District Court for the District of Alaska and the Ninth Circuit Court of Appeals both incorrectly interpreted the plain language in section 103(c) of ANILCA to expand federal authority over non-federal inholdings, including millions of acres of lands owned by Native Corporations. The plain language of section 103(c), supported by the structure and context of ANILCA as a whole and the legislative history of that Act, unambiguously limits federal regulatory authority to "public lands."

Under the Ninth Circuit's reading of ANILCA, forty percent of private ANCSA lands may now be subject to this vast federal regulatory scheme. Innumerable activities integral to economic and social life on inholdings can fall within the regulatory ambit of the federal government. The potential day-to-day consequences of applying the general National Park Service ("NPS") regulations – which are specifically at issue in *Sturgeon* – to private inholdings are stunning. Buildings may not be constructed in national parks without advance approval from the federal government. Hunting and fishing on park lands are subject to extensive restrictions and permitting requirements. Even gathering berries requires written findings from a park superintendent. Modes of transportation critical in rural Alaska such as snowmobiles, ATVs, watercraft, and even bicycles, are all limited to locations approved by the NPS. Aircraft—another critical aspect of access to rural Alaska communities—may be used only in designated locations

and by permit. Commercial activities are circumscribed and regulated. Research may be conducted only by specific institutions and agencies and only under the regulatory watch of the NPS. Public meetings, demonstrations and distribution of printed materials all require permits and federal government oversight.

Federal regulatory authority over ANCSA lands is an issue of tremendous economic and social importance to Alaska Native Corporations. Indeed, shortly after the Ninth Circuit's decision, the NPS proposed oil and gas regulations that would–for the first time–apply to ANCSA lands. In doing so, the NPS cited to the Ninth Circuit's decision in *Sturgeon* as a basis for its authority.

Through ANCSA, Congress specifically intended that Native corporations would utilize ANCSA lands largely for economic development benefiting the Native people of Alaska. Through ANILCA, Congress made clear that the establishment of new conservation units would not impede Native corporations' control of their own lands. ASRC seeks to pursue responsible economic development while maintaining our Iñupiat traditions. We are significantly challenged by the climate, by the cost of energy, by the lack of transportation infrastructure and distance to markets, and by the regulatory environment in which we work. In *Sturgeon*, the Ninth Circuit Court of Appeals has upended the balance established by Congress in ANCSA and ANILCA by allowing federal regulatory authority to be extended to millions of acres of Native Corporations' lands through the very statutory provision meant to limit that authority.

Fortunately, the Supreme Court granted *certiorari* to review the Ninth Circuit's decision and oral arguments were held on January 20, 2016. We remain cautiously optimistic that the decision of the Ninth Circuit, which one of the Supreme Court justices characterized as "ridiculous," will be overturned.

We appreciate the committee taking the time to review the pending *Sturgeon* case. As stated above, the outcome of this case can have dramatic impacts to Native Alaskans in our region and across the entire state of Alaska.

Sincerely,

Richard Glenn
Executive Vice President of Lands & Natural Resources
Arctic Slope Regional Corporation

Cc: Senate Resources Committee Members

SCI
FIRST FOR HUNTERS
PO Box 770511
Eagle River, AK 99577

February 14, 2016

The Honorable Cathy Giessel, Chair
Senate Resources Committee
Alaska State Capitol
Juneau, AK 99801

Re: Alaska Senate Resources Committee hearing on Sturgeon v. Frost and federal overreach.

Dear Senator Giessel:

On behalf of Safari Club International (SCI), I would like to thank you and your colleagues on the Senate Resources Committee for this opportunity to present our views on the importance of the Sturgeon lawsuit as it relates to state management of our fish and wildlife resources. SCI is the world leader in supporting conservation based sustainable use of renewable wildlife resources, and the leading advocate for the freedom to hunt. We are the only major hunter-conservationist group to maintain full time advocates for hunting in Washington, D.C., and of all the entities that filed amicus briefs on behalf of Sturgeon, we are the only group that represents hunter-conservationists.

We are grateful to Mr. Sturgeon for pursuing this case and to all the many groups that also filed amicus briefs. This is a public interest lawsuit of utmost importance to Alaska and her citizens, as well as the rest of the states. The merits of the case have been thoroughly discussed by the plaintiff and all the many groups who participated with supporting briefs. In reading those briefs, there can be no doubt that the federal land management agencies have not only ignored the intent of the law, but have violated the law itself. It is a travesty that our justice system failed to recognize these facts, and we can only hope that the U.S. Supreme Court will act to correct this miscarriage of justice.

The list of infractions perpetrated by the National Park Service (NPS) is long, and, unfortunately, is growing. Under the regulations adopted by the NPS in 1996 they asserted authority to regulate uses such as types of watercraft, recreational activities and commerce on state waterways within the exterior boundaries of park areas. Beginning in 2000 they began implementing these regulations by taking steps to:

- Advise hunters, guides, fishermen, and others of NPS prohibitions on types of watercraft and permits required to conduct guiding and other commercial activities;
- restrict numbers of river floaters in a state navigable waterway for aesthetic reasons;
- prohibit catch and release fishing in the Alagnak River and Nonviunuk Lake due to perceived mortality in a closely-managed state sport fishery;
- prohibit state-permitted non-rural residents fishing with a net in a state managed fishery in Lake Clark because that 'methods and means' is not allowed in parks and NPS only recognizes subsistence conducted under the federal subsistence board regulations;
- prohibit persons not residents of the Wrangell-St. Elias National Park resident zone from using a fish wheel in the upper Copper River because it is a prohibited method under the national regulations except by persons fishing under the federal subsistence regulations;
- restrict methods of access used by fish and wildlife protection officers, i.e., threatened to cite the brown shirts for conducting enforcement with personal watercraft in the Naknek River;
- prohibit a landowner from moving a piece of heavy equipment below Ordinary High Water on state gravel in a navigable waterway from the highway to his inholding;
- require commercial use permits and insurance for dog mushers taking tourists on trips for pay on frozen state waterways;
- prohibit types of watercraft for public transportation, such as hovercraft and airboats; and require commercial boat operators to get permits, including ferry service on the Yukon River.

In October of this past year the NPS adopted regulations granting themselves the authority to shorten seasons, set bag limits, prohibit methods and means, and, in Northwest Alaska, prohibited hunting caribou from a boat in the state waterways, thus prohibiting a traditional harvest access method by recreational and subsistence users alike in a state waterway. These authorities would apply to nonfederal land under the District Court and Appeals Court decisions.

The irony of the lower court decisions in Sturgeon is that NPS regulations would apply to state and private lands and waters, including ANSCA lands, and the more liberal ANILCA provisions would apply to NPS lands. To be clear, the lower court decision would allow for the application of more restrictive regulations on nonfederal lands, while the ANILCA protections for hunting, trapping and access designed to protect the "Alaskan Way of Life" would only apply on federal lands. We would submit that such an arrangement is patently absurd.

Recently the U.S. Fish and Wildlife Service (USFWS) joined in by publishing proposed rules that seem to take advantage of the 9th Circuit's ruling in Sturgeon and are similar to those adopted by the NPS. If adopted these rules would further abrogate the provisions of the Statehood Compact, the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA) in favor of undefined values promulgated by the agencies themselves.

Our concerns are growing due to the expanding determination of federal bureaucrats to "write their own rules" rather than follow the will of Congress. The briefs filed in the Sturgeon case do a great job of illustrating this point. However, this situation isn't unique, nor is it restricted to Alaska. SCI has been battling federal agency decisions for some time now, and in some cases have partnered with the State of Alaska as was evident in the Endangered Species Act (ESA) listing of polar bears.

Recently SCI's governmental affairs team began a major effort to combat the growing assault on hunting. Like Alaska, our resources are limited and rather than continue to enter into lawsuits to rein in overreach, we have begun to engage Congress asking for definitive measures to remedy actions taken that don't follow Congressional intent or the law. This effort was the result of growing problems related to an increased willingness of federal agencies to "make up" law favoring increased and unwarranted restrictions on America's hunting public.

Meetings are now taking place with other major groups like the NRA to build strategies to sustain hunting. SCI already has a strong working relationship with the Wild Sheep Foundation and we are building upon that success. Here in Alaska our Alaska and Kenai Chapters are members of the Advisory Council to the Legislative Outdoor Caucus as are the Matanuska Valley Sportsmen, the Alaska Professional Hunter's Association, the Kenai River Sportfishing Association, the Outdoor Heritage Foundation, the Alaska Chapter of the Wild Sheep Foundation and others.

SCI is also working with the above groups and the National Assembly of Sportsmen's Caucuses of which the Alaska Legislature is a member to join in our effort to request definitive legislation from Congress clarifying that the various states have primary management authority over fish and wildlife within their boundaries.

National polling research shows that 77 per cent of the American public supports hunting. Hunters were responsible for creating America's first national park, Yellowstone, and they led the effort to establish national forests and wildlife refuges. Anglers and hunters have also been the primary funding source for fish and wildlife conservation for over 75 years.

We believe it is time for our political leaders to stand up to those who are trying to outlaw this vital part of Rural American culture and to reflect the substantial support hunting has among the citizens of this country. We applaud the efforts on all our behalf of Mr. Sturgeon and must state our deep concern that in a country that is based on the rule of law and the rights of individuals that such an effort by a private citizen was even necessary.

On behalf of hunters throughout the nation, we wish to express our deep appreciation to this committee, Mr. Sturgeon, and all those entities that filed an amicus brief. SCI will not abandon this effort and stands ready to join with you in preserving the rights of Alaskans and all Americans.

Sincerely,

Eddie Grasser

Eddie Grasser
Vice President
Government Affairs Committee Chair

Oral Testimony of

Doug Vincent-Lang, Safari Club International

to the

Senate Energy and Public Works Committee

February 9, 2016

Senator Sullivan and members of the Committee, thank you for inviting me to discuss the regulatory changes proposed by the U.S. Fish and Wildlife Service (Service) pertaining to wildlife management on Alaska's national wildlife refuges. My name is Doug Vincent-Lang. Today I will speak as a representative of Safari Club International (SCI) and from my perspective as a former state wildlife manager. SCI is the world leader in preserving the freedom to hunt and promoting wildlife conservation, and the Alaska Chapter is the most effective hunter conservationist group in Alaska.

Wildlife conservation in Alaska is not only a matter critical to our quality of life, it is also a critical matter of social justice for many of our communities who depend on nature's bounty for food security. Recognizing this, it is not surprising that the framers of the Alaska Constitution required management of my state's fish and game for their sustained yields and it's many benefits.

When you consider the uniqueness of Alaska's relationship with it's wildlife resources, the historic intent and incredible wisdom of the framers of the U.S. Constitution that reserved certain powers to the individual states become crystal clear. This includes the recognition that it is the

responsibility of the states to manage and control their natural resources for their unique needs. And, for Alaska, Congress specifically recognized and guaranteed Alaska's right to manage and control its resources under our state constitution as part of our statehood compact.

Over the past decade, Alaska has begun to experience increased intrusions by federal agencies into our sovereign responsibilities and authorities under our constitutional mandates that seem unresolvable given increasingly divergent and divisive philosophical conservation goals.

The intrusions are wide ranging. They include misuse of the Endangered Species Act where even species such as the ringed seal that currently numbers in the millions can be listed solely based on speculative models forecasting possible reductions over 100 year timeframes. Such listings are unnecessary and allow federal agencies to exert management control over the species and their landscapes.

The National Park Service recently finalized new regulations governing wildlife in Alaska over my state's objection. In these regulations, the Park Service preempted state subsistence hunting regulations despite there being no conservation concerns. The Park Service told the state the action was necessary given that the preempted state regulations potentially impacted undefined park values and biological integrity. In short, state hunting regulations adopted under an open public process were preempted

because they were simply perceived by a federal manager to have some undefined impact on park values or natural diversity.

Now we see the U.S. Fish and Wildlife Service propose new rules that administratively exert federal management control over wildlife in Alaska. The proposed rule making by the Service is perhaps the most significant intrusion into state management authority I am aware of. The implementation of this rule will not only fundamentally alter the federal government's long standing wildlife management relationship with Alaska, but because of its national reach would also affect all the states' ability to manage wildlife in their jurisdictions.

Key to my concern is the Service's contention that they must manage for the concepts of "biological integrity, diversity and environmental health" that is contained in their Biological Integrity Policy and that these values supersede all other purposes. I do not believe that this is what Congress intended either under the Refuge Improvement Act or the Alaska National Interest Lands Conservation Act (ANILCA), both of which granted deference to state management.

By moving the Biological Integrity Policy into regulation the Service is requiring that all management be a "hands off" or passive management approach versus the active management traditionally employed by Alaska to ensure for human use and benefit.

So why is it a problem? Let me give you a real example. On Unimak Island Service biologists have told the State of Alaska that the primary purpose for the management of this island is to provide for biological integrity and natural diversity. On this island, indigenous caribou have a real potential to become extirpated unless active management action is taken. The state determined that the management of key predators was necessary to prevent the extirpation of caribou. However, the Service determined that under their biological integrity and natural diversity guidelines it would be acceptable for caribou to "blink out" of existence, as this is "natural" and the Service took legal steps to prevent the state from taking any action. At this time, the caribou herd remains on the verge of extirpation, and does not provide for any uses, including subsistence that is a specific purpose of Alaska national wildlife refuges.

The application of the biological integrity policy by the Service is deeply troubling, especially as these regulations become codified and put into use. Will Alaska be allowed to continue to actively manage ungulates such as deer, moose, caribou and elk to allow for increased harvests? Will Alaska be allowed to manage its sheep and bear populations for trophy hunting opportunities? Will Alaska be allowed to continue to manage its salmon runs for optimal sustained yield? Will subsistence hunters be required to adopt fair chase standards?

Taken together we are seeing an unprecedented administrative intrusion by federal agencies into our traditional role as the principle manager of fish and wildlife in our state, despite Congressional assurances to the contrary

through a variety of legislative "savings clauses". This is increasingly impacting our ability to fulfill the sustained yield mandates of the Alaska State Constitution which was recognized and adopted in Congressional legislation establishing statehood for Alaska. It is directly impacting state management of fish and game and, given that federal management agencies often have quite differing goals, we are seeing real impacts on hunting and fishing opportunity and our ability to manage for these opportunities.

I suspect what we are experiencing in Alaska will soon be coming to your states, challenging the wisdom of the framers of the U.S. Constitution that reserved the powers to manage and control their resources to the various states. We must work collectively to preserve these rights and prevent federal administrative intrusions into these rights. The state fish and game management model is a proven success that should be built on, not replaced with a new, centralized, one-fit-all, federal conservation model.

We need Congressional action to stop these administrative intrusions. We urge your action to not allow these regulations to move forward. I applaud Senator Sullivan's efforts toward this end. We need to ensure that the successful state fish and game management model is not preempted or compromised by federal administrative actions.

Thank you for the opportunity to speak with you today.