

# STATE OF ALASKA

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

*SARAH PALIN,  
Governor*

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February 13, 2009

Richard Svobodny  
Acting Attorney General  
State of Alaska  
Department of Law  
P.O. Box 110300  
Juneau, Alaska 99811-0300

Dear Mr. Svobodny:

In 1996, over the strong objections of the State of Alaska and others, the National Park Service adopted regulations which improperly extended its management and enforcement authorities over state owned navigable waters within units of the National Park System. While the agency has been fairly restrained in its enforcement of the regulations, there have been a growing number of encounters between National Park Service rangers and the public. It is our understanding that one citation has been issued and commercial operators have been required to get permits to operate on the Yukon River within the Yukon Charley Rivers National Preserve, even though they do not use the upland areas of the preserve.

The regulations at 36 CFR §1.2(a)(3) state that National Park Service regulations apply to waters located within the boundaries of the National Park System, including navigable waters, "without regard to ownership of submerged lands, tidelands or lowlands." This is contrary to ANILCA Section 103(c) which clearly states that only public lands are included as a portion of a conservation system unit and that state or private lands are not subject to the regulations applicable solely to public lands within such units. As defined by ANILCA, public lands do not include State owned lands, including the submerged lands beneath navigable waters.

In publishing its rulemaking the Park Service classified Section 103(c) as a "minor technical provision." To the contrary, addition of this section was a key revision included in the concurrent resolution that led to the final passage of ANILCA. Section 103(c)

clearly indicates that Congress recognized that the authority of the State to regulate its lands and waters was not to be superseded by federal agency regulations.

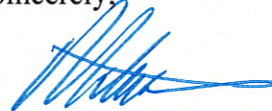
Since adoption of the regulations the State of Alaska, through your office and the ANILCA Program, has worked to find an administrative solution to this issue. While the National Park Service generally does not dispute state ownership of submerged lands underlying navigable waters, it maintains that the NPS Organic Act and other general statutory authorities grant it the necessary authority to regulate activities on navigable waters.

In view of the National Park Service position, it appears that there can be no administrative solution to this issue. Therefore, under the authority granted by AS 41.37.240, the Citizens' Advisory Commission on Federal Areas respectfully requests the Department of Law bring suit against the National Park Service and ask the court to set aside these regulations.

We should note that Senator Bunde and Senator Therriault have introduced Senate Concurrent Resolution (SCR) No. 3 which urges the Governor to file suit challenging these regulations. The Commission fully concurs with that resolution.

We believe that this action is in the best interest of the State and is necessary to protect the State's authorities over its lands and waters. The Commission is committed to providing any help and support it can in this matter. Please contact us if we can be of assistance.

Sincerely,



Rick Schikora  
Chairman

Cc: Gov. Palin  
Sen. Gary Stevens  
Sen. Con Bunde  
Sen. Gene Therriault  
Rep. Mike Chenault  
Comm. Tom Irwin  
Comm. Denby Lloyd