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June 29, 2020

Don Striker
Acting Regional Director
National Park Service
Alaska Regional Office
240 West 5th Ave.
Anchorage, AK 99501

RE: RIN 1024-AE63 Proposed Rule “National Park Service Jurisdiction in Alaska” April 30, 2020

Dear Mr. Striker:

The Alaska Miners Association (AMA) writes to comment on the National Park Service (NPS) proposed revisions to regulations to implement the decision of the United States Supreme Court *on Sturgeon v. Frost*.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska’s mining industry.

AMA supports the proposed revisions to NPS regulations that implement the March 26, 2019, US Supreme Court’s unanimous decision in *Sturgeon v. Frost*. AMA has supported John Sturgeons’ lawsuit to defend state management of state-owned lands and waters that led to this Supreme Court ruling. The Supreme Court clearly recognized Congress’s intent to exclude state, Native corporation and other private lands from Conservation System Units established through passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. The Court decision confirmed that ANILCA Section 103(c) limits federal regulation of Conservation System Units in Alaska to federally owned lands.

We encourage the NPS to engage in cooperative management among state, federal, and private landowners as envisioned in ANILCA to address concerns over management of nonfederal lands and waters within the exterior boundaries of Park units.

We are concerned that several aspects of the proposed rule could lead to future issues with interpretation, and request the following additional clarifications or modifications in the final NPS rule:

1. **Avoid use of the phrase “ordinary regulatory authority” or define it to mean only the authorities granted by the Organic Act and ANILCA.** The use of this phrase may lead to future confusion as it inaccurately implies NPS has authorities to administer lands and waters within park units beyond that granted by the Organic Act, as amended, and by ANILCA. The Supreme Court in *Sturgeon II* repeatedly used the correct reference to the Organic Act, as amended, as the basis of NPS authority to administer

system units. NPS has no alternative authority to regulate activities. We recognize that other agencies such as the Army Corps of Engineers and Environmental Protection Agency have regulatory authorities that apply to both federal and nonfederal lands, but Congress did not grant NPS those general authorities.

2. **The proposed rule at 36 CFR 1.2(f) should be more precise.** The preamble to the proposed rule describes (84 FR 23936) NPS intent is “to clarify that” only public lands as defined in ANILCA are a unit of the park system within the unit boundaries and non-public lands are not regulated as part of the unit. We support the intent and the explanation, but suggest the following revision of the proposed rule to close potential loopholes in the definitions of “legislative jurisdiction” and “park areas,” as well as “boundaries.” We recommend that NPS revise 36 CFR 1.2(f) to read: “(f) In Alaska, only the public lands (federally owned lands) within park unit boundaries are deemed a part of the unit, and non-public lands (including state, Native corporation, and other non-federally owned lands) shall not be regulated as part of the park unit.”
3. **It light of the Supreme Court’s decision, NPS should review, and as necessary revise, its national regulations to clarify that they are preempted by ANILCA’s exceptions.** Shortly after ANILCA passed in 1980, NPS adopted Alaska-specific regulations in 1981 to closely implement Congress’ directions in ANILCA to limit federal jurisdiction to federally owned lands. In recent years, NPS has revised or adopted national regulations that at times fail to recognize Alaska exceptions created by ANILCA, at times attempting to expand NPS national regulations to expand jurisdiction to non-federally owned land, as well as state waters, the hovercraft regulations being an example. In order to fully comply with the Court’s decisions in *Sturgeon*, NPS should confirm the Alaska exemption applies to other 36 CFR parts 1-9 regulations. For example, the final rule (81 FR 77973) on November 4, 2016, committed to reconsider the Alaska exemption in its part 9B Non-federal oil and gas rights after a final *Sturgeon* decision.

The Alaska Miners Association supports the proposed rule and requests the additional suggested modifications to reduce any future ambiguity about NPS authorities, consistent with the Supreme Court decision.

Thank you for the opportunity to comment.



Deantha Crockett
Executive Director