No. 14-1209

In the Supreme Court of the United States

JOHN STURGEON, PETITIONER

v.

BERT FROST, IN HIS OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether Section 103(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3103(c), withdrew the National Park Service's authority to regulate activities on navigable waters within the National Park System in Alaska.

TABLE OF CONTENTS

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations:

Statutes and regulations—Continued: Page

Statutes and regulations—Continued: Page

Regulations—Continued: Page

Miscellaneous—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 3a) is reported at 768 F.3d 1066. The opinion of the district court (Pet. App. 35a-58a) is not published in the *Federal Supplement* but it is available at 2013 WL 5888230.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 2014. A petition for rehearing was denied on December 16, 2014 (Pet. App. 1a-2a). On February 20, 2015, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including March 31, 2015, and the petition was filed on that date. The petition was granted on October 1, 2015. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory and regulatory provisions are reproduced in an appendix to this brief, App., *infra*, 1a-10a.

STATEMENT

This case concerns whether Section 103(c) of the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371 (16 U.S.C. 3101 *et seq.*), deprives the National Park Service (NPS or Park Service) of the ability to apply parks rules on all navigable waters that lie within the boundaries of National Parks System lands in Alaska.

A. Statutory Background

1. The National Parks

a. Congress has reserved federal lands and waters as National Parks for more than a century. Congress established Yellowstone National Park—the first National Park—in 1872, when it directed the Secretary of the Interior to preserve the Park's "natural curiosities, or wonders," by ensuring "their retention in their natural condition," and to protect "the fish and game found within said park" against "capture or destruction for the purposes of merchandise or profit." Act of Mar. 1, 1872, ch. 24, § 2, 17 Stat. 33 (16 U.S.C. 22). More parks were established in the coming decades, including Yosemite National Park in 1890, Act of Oct. 1, 1890, ch. 1263, § 1, 26 Stat. 651; Grand Canyon National Park in 1919, Act of Feb. 26, 1919, ch. 44, 40 Stat. 1175; and several parks in Alaska—among the system's largest—from 1917 to 1925, see Act of Feb. 26, 1917, ch. 121, 39 Stat. 938 (Mount McKinley National Park); Proclamation of Sept. 24,

1918, 40 Stat. 1855 (Katmai National Monument); Proclamation of Feb. 26, 1925, 43 Stat. 1988 (Glacier Bay National Monument).

b. In 1916, Congress enacted the National Park Service Organic Act (Organic Act), 54 U.S.C. 100101 *et seq*. That statute consolidated authority to regulate National Parks in the Park Service, under the Secretary of the Interior, and directed the Secretary to manage the parks for the "fundamental purpose" of "conserv[ing] the scenery, natural and historic objects, and wild life" therein in a manner that "will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. 100101(a). Congress further directed the Secretary to "prescribe such regulations as the Secretary considers necessary or proper for the use and management" of the National Parks. 54 U.S.C. 100751(a).[1]

In 1976, Congress enacted an additional, express authorization for the Park Service to regulate activities on waters in the National Park System. That act provides that the Secretary has the power to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States," so long as the Secretary's regulations are not in derogation of the authority of the Coast Guard. Act of Oct. 7, 1976 (1976 Act), Pub. L. No. 94-458, § 1, 90 Stat. 1939; see 54 U.S.C. 100751(b) (current version).

c. Exercising those authorities, the Park Service has for generations adopted and enforced rules appli-

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[1] The Act of Dec. 19, 2014, Pub. L. No. 113-287, 128 Stat. 3096, recodified in Title 54 statutory provisions relating to NPS that had previously been located in Title 16.

cable on both navigable and non-navigable waters in National Parks. Regulations adopted in 1966 and in effect at the time of ANILCA's enactment in 1980 provided that Park Service regulations applied in federally owned or controlled areas.[2] See 36 C.F.R. 1.1(a) and (b) (1967); 31 Fed. Reg. 16,651 (Dec. 29, 1966).

Since that time, the Park Service has treated park waters, including navigable waters, as subject to regulation. Park Service regulations thus set forth rules concerning boating, fishing, and water sanitation, without regard to the navigability of the waters at issue. See 36 C.F.R. 2.13 (fishing), 2.24 (sanitation), 2.28 (swimming), 2.31 (water skiing); Part 3 (boating) (1967). Other regulations expressly governed only "navigable waters," setting forth rules for vessels within the parks that are on "navigable waters of the United States." See 36 C.F.R. 3.0, 3.11, 3.14 (1980). Site-specific rules also govern fishing, boating, and similar activities on particular rivers and lakes that plainly include navigable waters.[3] See, *e.g.* 36 C.F.R.

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[2] The Park Service stated that park rules applied to persons "within the boundaries of any federally owned or controlled areas administered by the National Park Service." 36 C.F.R. 1.1(a) (1967). They also provided that park rules were not applicable "on privately owned lands (including Indian lands owned either individually or tribally) within the boundaries of any park area," unless such lands were "under the legislative jurisdiction of the United States," 36 C.F.R. 1.1(b), generally meaning that the state government had partially or entirely ceded its legislative authority over the lands to the federal government, see 48 Fed. Reg. 30,252 (June 30, 1983) (citation omitted).

[3] Waters are navigable if they are "navigable in fact," meaning that "they are used, or are susceptible of being used, * * * as highways for commerce, over which trade and travel are or may be

7.3, 7.4(g)-(h), 7.9(a), 7.12(a), 7.14(a), 7.20(b), 7.22(b) and (e), 7.23(a)-(f) (1980).

2. The Alaska National Interest Lands Conservation Act And Its Predecessors

ANILCA, which set aside millions of acres of land in Alaska as units of the National Park System and other conservation systems, is the third in a series of major statutes addressing the allocation of federal lands in Alaska.

a. Pre-ANILCA statutes

The first modern statute to address allocation of lands in Alaska was the Alaska Statehood Act, which authorized admission of Alaska into the Union. Act of July 7, 1958 (Statehood Act), Pub. L. No. 85-508, § 1, 72 Stat. 339. That law authorized Alaska to select for conveyance to the State over 100 million acres of federal lands that were "vacant, unappropriated, and unreserved." § 6(b), 72 Stat. 340. The Statehood Act also made Alaska, like other States, subject to the Submerged Lands Act of 1953, 43 U.S.C. 1301 *et seq.*, which generally grants States "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States." 43 U.S.C. 1311(a).

Following enactment of the Statehood Act, the State's attempts to select lands led to conflicts with Native groups. The Statehood Act had not extinguished claims of aboriginal title, and some Alaska Native villages protested that lands selected by the State were consequently not "vacant, unappropriated,

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conducted in the customary modes of trade and travel on water." *The Daniel Ball*, 77 U.S. (10 Wall.) 557, 563 (1871); see *PPL Mont., LLC* v. *Montana*, 132 S. Ct. 1215 (2012).

and unreserved" for the purpose of Section 6(b) of the Statehood Act. See Robert T. Anderson, *Alaska Native Rights, Statehood, and Unfinished Business*, 43 Tulsa L. Rev. 17, 29 (2007). The Secretary of the Interior responded by temporarily suspending transfers of selected lands. 34 Fed. Reg. 1025 (Jan. 23, 1969).

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, sought to resolve those conflicting claims. ANCSA specified that "[a]ll aboriginal titles" and "claims of aboriginal title" in Alaska were "extinguished," 43 U.S.C. 1603(b), but also directed that certain lands be withheld from state selection and instead be available for Native groups and for parks. The Native lands were to be selected by Alaskan Native Corporations, 43 U.S.C. 1603(b), 1605, 1607, 1610-1615, and the park lands were to be withdrawn by the Secretary of the Interior, see 43 U.S.C. 1616(d)(2). ANCSA contemplated that the Secretary's withdrawals would later be approved by Congress, and specified that any withdrawals not approved within five years would be returned to the pool of lands available for State and Native selection. *Ibid.* In accordance with ANCSA, the Secretary designated particular lands within Alaska for federal preserves. Congress, however, failed to approve the withdrawals within the statutory five-year period. Rather than allowing the Secretary's designations to expire, President Carter then invoked his authority under the Antiquities Act of 1906, 16 U.S.C. 431 *et seq.*, to designate the Secretary's park selections as National Monuments. See, *e.g.*, Proclamation No. 4626, Yukon-Charley National Monument, 43 Fed. Reg. 57,113 (Dec. 5, 1978). The decision to do so trig-

gered a legal challenge by the State. See *Alaska* v. *Carter*, 462 F. Supp. 1155 (D. Alaska 1978).

b. ANILCA

ANILCA sought to put an end to these lands controversies. It took steps to effectuate the conveyance of Statehood Act land selections to the State and of ANCSA land selections to Native Corporations. See ANILCA §§ 1416-1431, 94 Stat. 2499-2533. And it fulfilled ANCSA's promise of reserving additional lands as congressionally approved park units in Alaska by "set[ting] aside approximately 105 million acres of federal land in Alaska for protection of natural resource values by permanent federal ownership and management." Pet. App. 21a-22a (citation omitted).[4] These federal lands were to be set aside in "conservation system units" (CSUs)—a term of art referring to "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument." 16 U.S.C. 3102(4).

ANILCA's Purposes. Congress set forth ANILCA's objectives expressly, in a statement that made clear that the statute was designed to ensure the conservation of the areas it set aside—including, specifically, their "waters," "freeflowing rivers," and "fish." 16 U.S.C. 3101. The statutory statement of purposes identified four objectives:

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[4] In enacting ANILCA, Congress rescinded President Carter's designations of National Monuments under the Antiquities Act, though many of the lands at issue were then placed within the conservation system units created or expanded by ANILCA itself. See 16 U.S.C. 3209.

- To preserve the "lands and waters" protected by the Act for "the benefit, use, education, and inspiration of present and future generations," based on their scenic, geological, wildlife, and other values, 16 U.S.C. 3101(a);
- To protect the areas' "natural landscapes," wildlife, "resources related to subsistence needs," historical locations, "rivers, and lands," and "wilderness resource values and related recreational opportunities," including opportunities for canoeing, fishing, and hiking "on wildlands and on freeflowing rivers," and to "maintain opportunities for scientific research and undisturbed ecosystems," 16 U.S.C. 3101(b);
- To "provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so," where "consistent with management of fish and wildlife" and other principles, 16 U.S.C. 3101(c); and
- To "obviate[] * * * the need for future legislation designating" new parks in Alaska, 16 U.S.C. 3101(d).

In addition, in each of the 13 provisions of ANILCA that either created or expanded a unit of the National Park System, Congress enacted an additional statement of purpose describing natural features of the National Park at issue that Congress intended to protect. In each case, Congress's purposes included protection of bodies of water such as rivers and lakes, protection of fish or marine mammal populations, or a combination thereof. See 16 U.S.C. 410hh, 410hh-1. For some National Parks, Congress's declared purposes included ensuring protection of particular iden-

tified waters. See 16 U.S.C. 410hh(1) (Aniakchak River); 16 U.S.C. 410hh(6) ("the Kobuk River Valley, including the Kobuk, Salmon, and other rivers"); 16 U.S.C. 410hh(8) (Noatak River); 16 U.S.C. 410hh(10) ("the entire Charley River basin").

ANILCA's Parks and Their Waters. To achieve its statutory aims, Congress directed that the Secretary "shall administer the lands, waters, and interests therein" within new and expanded National Parks "as new areas of the National Park System," under the provisions of the Organic Act, the statute under which the Park Service had long regulated waters without regard to navigability. 16 U.S.C. 410hh-2. Congress also set out specific directives with which the Park Service was required to comply when regulating fishing and boating in these new and expanded parks. See ANILCA § 203, 16 U.S.C. 410hh-2; § 811, 16 U.S.C. 3121.

ANILCA placed other lands in Alaska within other types of federal preserves. Some lands were placed in wildlife refuges and national forests—with Congress again routinely specifying that the purpose of the designations included conservation of fish or waters, and again routinely setting standards anticipating federal regulation of fishing in the designated areas. See ANILCA §§ 301-306, 94 Stat. 2384-2396 (16 U.S.C. 668dd note) (wildlife refuges); § 501, 94 Stat. 2398 (16 U.S.C. 539) (forest areas); § 505, 94 Stat. 2405 (16 U.S.C. 539b) (fisheries).

In addition, 26 rivers were designated to be "Wild and Scenic Rivers" under the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. 1271 *et seq.* That statute requires that "[e]ach component of the national wild and scenic rivers system shall be administered in such

manner as to protect and enhance the values which caused it to be included in said system," with "primary emphasis" on "protecting its esthetic, scenic, historic, archeological, and scientific features." 16 U.S.C. 1281(a). For each of the rivers designated as "wild and scenic" in ANILCA, Congress expressly specified that the river was "to be administered by the Secretary of the Interior" pursuant to the WSRA. §§ 601-603, 94 Stat. 2413-2414; 16 U.S.C. 1274(a) and 1274 note.

ANILCA's Subsistence-Use Priority. To achieve ANILCA's objective of preserving subsistence use, Congress provided that on all "public lands" in Alaska, the taking of fish and wildlife for nonwasteful subsistence uses "shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." 16 U.S.C. 3114. ANILCA gave the State the option of assuming control of the implementation of that priority, by specifying that if the State "enact[ed] and implement[ed] laws of general applicability" that assured a priority consistent with ANILCA, the federal government would not implement its own rules for subsistence-use priority on public lands in Alaska. 16 U.S.C. 3115(d).

Section 103(c) of ANILCA. Section 103(c), which provides the basis for petitioner's claim in this case, was added to ANILCA's provision on "Maps" after ANILCA was passed by both the Senate and House of Representatives. § 103(c), 94 Stat. 2377; 16 U.S.C. 3103(c). Before the bill was enrolled and sent to the President, Congress passed a concurrent resolution to make certain technical "corrections." H.R. Con. Res. 452, 96th Cong., 2d Sess., 94 Stat. 3688 (1980) (House Resolution). The resolution's House sponsor ex-

plained that its provisions would not "change any of the major features of the Alaska National Interest Lands Conservation Act nor would they have the effect of altering provisions related to conservation areas" in Alaska. 126 Cong. Rec. 30,498 (1980) (statement of Rep. Udall). The resolution was passed with unanimous consent in both the Senate and House of Representatives. *Id.* at 31,108-31,109; see *id.* at 30,495-30,500.

Section 103(c) addresses the status of "lands"—defined as "lands, waters, and interests therein," 16 U.S.C. 3102(1)—that have been or would be "conveyed to the State, to any Native Corporation, or to any private party." 16 U.S.C. 3102(1), 3103(c). Because Congress sought to "include whole ecosystems and to follow natural features" in drawing the boundaries around conservation system units under ANILCA, substantial quantities of land that had been conveyed to the State and Native Corporations fell within the boundaries of such units. Pet. App. 22a (citation omitted). ANILCA distinguishes those lands from "public lands," which are defined as "lands, waters, and interests therein," the title to which is held by the federal government, except for land selected by the State or Native Corporations, 16 U.S.C. 3102(1)-(3); see 16 U.S.C. 3103(c).

Section 103(c) sets forth two rules relevant to private, State, and Native lands. First, it specifies that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit." 16 U.S.C. 3103(c). Second, it specifies that those lands which have been "conveyed to the State, to any Native Corporation, or

to any private party" are not to be subject to a particular category of regulations—"regulations applicable solely to public lands within such units" (*i.e.,* conservation systems units). *Ibid.*

3. Protection Of Waters In Alaska Following Enactment Of ANILCA

In the period following ANILCA's enactment, the Park Service continued to regulate navigable waters in National Parks within Alaska—without treating such regulations as foreclosed by the new statute. For instance, the Park Service set forth park-specific rules that covered particular navigable waters. See, *e.g.*, 36 C.F.R. 7.46(b) and (c) (1982) (rules for Naknek Lake and Naknek River in Katmai National Monument); U.S. Nat'l Park & Preserve, *Katmai Park General Management Plan* (1986) (describing Nanek Lake and Nanek River as navigable). In addition, Park Management Plans called for under ANILCA, see 16 U.S.C. 3191(a), also expressly stated that the Park Service understood that it was responsible for "manag[ing] all waters within the boundaries" of the National Parks in Alaska to protect fish, wildlife, and their habitats, in cooperation with the State—notwithstanding state ownership of the submerged lands beneath navigable waters. See, *e.g.*, *Gates of the Arctic General Management Plan* 98, 106 (1986); *Katmai General Management Plan* 54.

More recently, the Secretary has adopted regulations expressly premised on the conclusion that "public lands," for purposes of ANILCA, include navigable waters within National Parks. The Secretary first addressed that subject in regulations issued in connection with ANILCA's subsistence-use priority. In the decade following ANILCA's enactment, Alaska

had implemented its own subsistence-use priority for hunting and fishing, in accordance with the ANILCA provision authorizing state administration of the statute's subsistence-use priority. After Alaska's subsistence-use priority was invalidated by Alaska courts, however, the Departments of the Interior and Agriculture promulgated temporary regulations to implement ANILCA's subsistence-use priority on "public lands." Those regulations were issued following an abbreviated period for comment due to the "short time available" to replace the State's invalidated regime. 55 Fed. Reg. 27,114 (June 29, 1990). The temporary regulations initially construed "public lands" narrowly, as excluding navigable waters. *Id.* at 27,115.

After Native groups brought a legal challenge, however, the Secretary concluded that the definition of "public lands" under ANILCA includes navigable waters in which the United States has reserved water rights. See U.S. Br., *John* v. *United States*, No. 94-35481, 1994 WL 16058810, at *3-*4 (9th Cir. Sept. 19, 1994). The Ninth Circuit agreed that "public lands" include "those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d 698, 703-704 (9th Cir. 1995) (*Katie John I*), cert. denied, 576 U.S. 1036, and 517 U.S. 1187 (1986), adhered to *sub nom. John* v. *United States*, 247 F.3d 1032 (9th Cir. 2001) (per curiam). Thereafter, the Secretary promulgated regulations through notice-and-comment procedures concluding that the United States has reserved water rights in the navigable waters that lie within National Parks in Alaska, which made those waters "public lands" within the meaning of ANILCA.

50 C.F.R. 100.3(b); see 64 Fed. Reg. 1279 (Jan. 8, 1999); see also 62 Fed. Reg. 66,216, 66,217-66,218 (Dec. 17, 1997) (proposed rule).

Congress delayed for several years the implementation of the regulations that identified "public lands" in this manner, but then cleared the way for them to take effect. Temporary moratoria enacted in 1996 and 1998 gave the State an interval to amend its laws to enact a subsistence-use priority for public lands that would obviate the need for the federal regulations implementing the subsistence-use priority on the navigable waters that the Secretary determined to be "public lands" based on reserved water rights. See Department of the Interior and Related Agencies Appropriations Act, 1996 (1996 Appropriations Act), Pub. L. No. 104-134, Tit. III, § 336, 110 Stat. 1321-210; Department of the Interior and Related Agencies Appropriations Act, 1998 (1998 Appropriations Act), Pub. L. No. 105-83, Tit. III, § 316(a), 111 Stat. 50; Department of the Interior and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act), Pub. L. No. 105-277, Tit. III, § 339(a)(1), 112 Stat. 2681-295. Ultimately, however, Congress provided that the Secretary's regulations would take effect unless Alaska enacted a subsistence-use priority before October 1, 1999. See 1999 Appropriations Act § 339(b)(1), 112 Stat. 2681-295. When Alaska did not do so, the federal regulations took effect. See 16 U.S.C. 3102 note.

In addition, in nationwide regulations issued in 1996, the Park Service made clear that park rules apply on all "[w]aters subject to the jurisdiction of the United States, including navigable waters," within "[t]he boundaries of the National Park System." See

61 Fed. Reg. 35,133 (July 5, 1996) (36 C.F.R. 1.3(a)(2)). The Park Service explained that the rulemaking "clarifies and interprets existing NPS regulatory intent, practices and policies." *Ibid.*[5]

In promulgating that regulation, the Secretary considered and rejected Alaska's submission that "ANILCA § 103(c) preempts NPS's well-established authority on navigable waters," and that it was therefore improper for the Secretary to regulate navigable waters in National Parks in Alaska. 61 Fed. Reg. at 35,135. The Secretary emphasized that Section 103(c), which had been "characterized by Congress as a minor technical provision," should not "be read in isolation from the context of the whole act." *Ibid.* Interpreting ANILCA in a manner "consistent with its underlying protective purposes," including "to protect objects of ecological * * * interest," the Secretary rejected Alaska's argument that Section 103(c) bars

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[5] The Secretary explained that NPS had long treated its regulations as applicable on navigable waters within National Parks, and had issued regulations that depended on that premise. See 61 Fed. Reg. at 35,133 (citing examples). In 1987, however, a "non-substantive" amendment providing that NPS rules were generally not applicable on state lands led to a dispute concerning NPS's authority over navigable waters. *Id.* at 35,134 (citing 52 Fed. Reg. 35,238 (Sept. 18, 1987)). A person who had been issued a citation for shooting a seal in navigable waters of a National Park challenged his citation on the theory that the 1987 amendment had deprived NPS of authority on the waters in question, because States own the submerged lands beneath navigable waters in many National Parks. *Ibid.* The Secretary explained that the 1987 amendment had not been intended to alter NPS's practice of regulating use of navigable waters within parks. *Ibid.* The revised rule clarified that the prior practice remained valid, by making park rules applicable on all navigable waters, irrespective of "ownership of submerged lands." *Ibid.*

enforcement of Park Service rules on navigable waters in National Parks in Alaska. *Ibid.*

The Secretary has separately construed Section 103(c) as being inapplicable in the rare cases in which Park Service rules are expressly written to apply to inholdings within parks, rather than to apply only to public lands within parks. See 59 Fed. Reg. 65,948, 65,950 (Dec. 22, 1994). The issue arose when the Secretary had issued a regulation, pursuant to statutory authorization, that barred the operation of new solid-waste disposal sites "within the boundaries of all units of the National Park System." *Id.* at 65,957 (36 C.F.R. 6.2(a)). That regulation is written to apply on all lands, "whether federally or nonfederally owned." *Ibid.* The Secretary declined to create an exception for private inholdings in Alaska based on Section 103(c). The Secretary explained that Section 103(c) bars application on inholdings only of "regulations applicable *solely* to public lands within" conservation system units. *Id.* at 65,950 (quoting 16 U.S.C. 3103(c)). Section 103(c) does not bar application of the regulation at issue there, the Secretary reasoned, because a regulation written to apply to both public and private lands within park boundaries is not a regulation that applies "solely to public lands" within the parks. *Ibid.*

4. The Current Regulatory Framework

Under the national regulatory framework in place today, Park Service rules, which expressly apply to all navigable waters "located within the boundaries of the National Park System," 36 C.F.R. 1.2(a)(3), address such matters as pollution and sanitation, *e.g.*, 36 C.F.R. 2.14, the introduction and removal of fish, plants, and wildlife, *e.g.*, 36 C.F.R. 2.1, 2.2, 2.3, 2.5,

and sanitation and noise standards for boats and other vessels, *e.g.*, 36 C.F.R. 3.1-3.19. One such system-wide rule bars "operation or use of hovercraft." 36 C.F.R. 2.17(e).[6]

In addition to applying to persons on navigable waters within National Parks, Park Service rules generally apply to persons within "federally owned lands and waters" within National Parks, 36 C.F.R. 1.2(a)(1), but not to persons "on *non*-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries," 36 C.F.R. 1.2(b) (emphasis added). The only circumstances in which park rules have been made generally applicable on private lands are those in which such application is necessary to fulfill the purpose of a NPS-administered interest (such as a federal easement), see 36 C.F.R. 1.2(a)(5), and the rare cases in which the Park Service has issued a regulation "specifically written to be applicable on such lands and waters," 36 C.F.R. 1.2(b). Under these principles, the Secretary has issued or proposed regulations applicable on private lands only in the case of activity on inholdings that poses a danger to park lands themselves. See 36 C.F.R. Pt. 6 (solid-waste disposal sites within National Park boundaries); 36 C.F.R. 9.1 (mining within National Park boundaries); see also 80 Fed. Reg. 65,572, 65,575 (Oct. 26, 2015) (proposed regula-

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[6] Hovercraft are vehicles that travel over land or water on fan-generated, pressurized air cushions. See 48 Fed. Reg. at 30,258. NPS promulgated its hovercraft rule after concluding (as maintained by commenters who supported the rule) that hovercraft would "introduce a mechanical mode of transportation into locations where the intrusion of motorized equipment by sight or sound is generally inappropriate." *Ibid.*

tion requiring permitting of oil and gas facilities operating on private lands within parks, based on evidence of "at least 10 instances of sites with oil spills or leaks resulting in contamination of soils and water").

B. The Proceedings In This Case

1. In 2007, Park Service rangers observed petitioner repairing a hovercraft inside the Yukon-Charley Rivers National Preserve (Yukon-Charley Preserve), a unit of the National Park System in Alaska. Petitioner was on a gravel bar adjoining the Nation River, a tributary of the Yukon. Pet. App. 8a & n.1. The rangers warned petitioner that hovercraft may not be operated in the Yukon-Charley Preserve, *ibid.*, because regulations prohibit "[t]he operation or use of hovercraft" on federally-owned land and on all navigable waters in National Parks, 36 C.F.R. 1.2(a)(3), 2.17(e).

Petitioner asserted that he was not required to comply with Park Service regulations because he was on a navigable river. Pet. App. 8a. Nevertheless, he removed his hovercraft from the Yukon-Charley Preserve, and refrained from using his hovercraft on waters within the Preserve during the next two hunting seasons. *Id.* at 8a-9a.

2. In 2011, petitioner filed suit in federal district court, challenging the Park Service's authority to enforce any park rules on navigable waters within National Parks in Alaska, and seeking declaratory and injunctive relief permitting hovercraft use on the navigable portions of the Nation River within the Yukon-Charley Preserve. He contended that the Park Service had been stripped of any ability to regulate navigable waters in National Parks throughout Alaska by Section 103(c) of ANILCA. See Pet. App. 36a, 52a-

53a; see also *id.* at 55a-57a. Respondents argued that navigable waters are not covered by Section 103(c) of ANILCA, and that in any event, the hovercraft rule applicable on all navigable waters within National Parks is not a "regulation[] applicable solely to public lands within" conservation system units. D. Ct. Doc. 84, at 11-24 (Mar. 8, 2013) (citation omitted); see Pet. App. 54a.

The district court granted summary judgment to respondents. Pet. App. 35a-58a. The court explained that the proper framework of review was that of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), because the dispute involved a challenge to an agency's construction of a statute that it administers. Pet. App. 51a-52a. The court concluded that petitioner's claim failed at the first step of this analysis, because it was foreclosed by the plain statutory text. *Id.* at 52a, 56a-57a. Section 103(c), the court explained, exempted certain lands within "conservation system units" from rules that are "applicable solely to public lands within such units." *Id.* at 55a (citation omitted). That provision, the court concluded, did not affect the applicability of the Park Service's hovercraft rule, because it is not a rule "applicable solely to public lands within conservation system units." *Id.* at 57a. In light of that conclusion, the court stated that it need not decide whether the limitations of Section 103(c) are applicable on navigable waters in National Parks. See *id.* at 52a-54a.

3. A unanimous panel of the court of appeals affirmed. Pet. App. 3a-34a.

The court of appeals agreed with the district court that petitioner's challenge to the application of the Park Service's hovercraft rule on National Park wa-

ters was "foreclosed by the plain text" of Section 103(c). Pet. App. 7a. The court wrote that the first sentence of Section 103(c) clarified that "the boundaries of CSUs 'do[] not in any way change the status of that State, native, or private land' lying within those boundaries." *Id.* at 23a (brackets in original) (quoting 125 Cong. Rec. 11,158 (1979) (statement of Rep. Seiberling)). The second sentence, the court continued, limited federal regulatory authority over privately held lands in "conservation system units," by specifying that such lands "shall not be subject to 'regulations applicable solely to public lands within such units.'" *Id.* at 23a-24a (quoting 16 U.S.C. 3103(c)).

The court of appeals determined that the quoted text "unambiguously forecloses" petitioner's Section 103(c) challenge to application of NPS's hovercraft rule. Pet. App. 25a. That text, the court explained, "only exempts nonfederal land from 'regulations applicable *solely* to public lands within [CSUs].'" *Ibid.* (brackets in original) (quoting 16 U.S.C. 3103(c)). The hovercraft regulation, however, was "not so limited," because it "applies to all federal-owned lands and waters administered by NPS nationwide, as well as all navigable waters lying within national parks." *Id.* at 25a-26a.

Because the court of appeals resolved (Pet. App. 25a) petitioner's challenge on that ground, it concluded that it need not decide whether—as respondents argued, C.A. Br. 42-47—navigable waters within National Parks in Alaska are not among the private, Native, and State conveyances covered by Section 103(c). Pet. App. 26a & n.6; see *id.* at 34a.[7]

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[7] The court of appeals also ordered the dismissal, on standing grounds, of the State's complaint as an intervenor seeking to bring

SUMMARY OF ARGUMENT

ANILCA created and expanded National Parks, Wild and Scenic Rivers units, and other federal preserves in Alaska for stated purposes that include protecting "freeflowing rivers," "waters," and "fish." 16 U.S.C. 3101. Section 103(c) of that same enactment did not deprive the Secretary of the Interior of the ability to execute that directive through the regulation of navigable waters.

A. Navigable waters within National Parks in Alaska are not subject to the limitations in Section 103(c) of ANILCA. Section 103(c) addresses the treatment of lands that have been conveyed to the State, Native Corporations, and private parties, which it contrasts with "public lands." 16 U.S.C. 3103(c). It thus constrains the Park Service's regulation of the State, Native, and private inholdings that were brought within park boundaries when ANILCA drew boundaries around entire ecosystems. But Section 103(c) does not control the treatment of navigable waters, which were never conveyed to the State, Native Corporations, or private parties. And because the federal government holds title to interests in those waters under the doctrine of reserved water rights,

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its own challenge to NPS enforcement of park rules on navigable waters within National Parks in Alaska. See Pet. App. 9a-10a, 14a-20a. The district court had rejected the State's claims on the merits. *Id.* at 57a-58a. The court of appeals, however, concluded that the State lacked standing, because it had not shown injury to a legally protected interest from enforcement of the regulations. In particular, the court explained, the State had not shown any way in which the regulations interfered with any ongoing state activity, *id.* at 16a, and it "did not identify any actual conflict between NPS's regulations and its own statutes and regulations," *id.* at 17a.

the Park Service may regulate those waters consistent with ANILCA's definition of "public lands."

Other provisions of ANILCA confirm that Congress understood both that navigable waters would be "public lands" and that they would be subject to Park Service regulation. Congress demonstrated these understandings by creating parks for the specific purpose of protecting rivers; by setting forth a subsistence-use scheme that would make little sense if navigable waters were not public lands; and by constraining the Secretary's authority over particular types of fishing and boating. Congress's enactment of Section 103(c) as a subsection within ANILCA's "Maps" section, through a unanimous consent resolution making "corrections" to the bill, also confirms that Section 103(c) was not meant to bring about the sweeping withdrawal of Park Service authority that petitioner posits.

Chevron deference and congressional ratification would each defeat petitioner's position, even if the text and structure of ANILCA alone did not. The Secretary has reasonably concluded that ANILCA's subsistence-use priority, which is applicable only on "public lands," may be applied on navigable waters within National Parks. And the Park Service regulations reflecting that approach have been ratified by Congress. Further, the Secretary has also rejected by regulation petitioner's position that Section 103(c) bars application of park rules to navigable waters within the National Park System in Alaska.

B. Petitioner's challenge would lack merit even if navigable waters were subject to Section 103(c). By its terms, Section 103(c) has no effect on the circumscribed class of park rules that are permissibly writ-

ten to apply to lands within park boundaries regardless of whether they are federally owned. Section 103(c) specifies that Native, State, and private lands do not become public lands simply because they fall within park boundaries. 16 U.S.C. 3103(c). It then provides that Native, State, and private lands are not to be subject to a particular class of regulations: "regulations applicable *solely* to public lands within such [conservation system] units." *Ibid.* (emphasis added). This directive does not bar the Park Service from enforcing in Alaska the narrow class of parks rules applicable to *both* public and nonpublic lands within park boundaries, because such regulations are not, on any construction, "regulations applicable *solely* to public lands within" conservation system units. *Ibid.*

ANILCA elsewhere confirms that the Secretary retains the authority to regulate nonpublic lands within National Parks in Alaska under limited circumstances. ANILCA specifically directs the Park Service to consider "issuance and enforcement of regulations" governing activities in "privately owned areas" within the boundaries of National Parks in Alaska, where such regulation is needed to serve the purposes of the park unit as a whole. 16 U.S.C. 3191(b)(7). Congress would not have directed the Park Service to consider "issu[ing] and enforc[ing]" rules for privately owned areas if Section 103(c) barred the Secretary from issuing or enforcing such regulations. *Ibid.*

Statutory context and legislative history reinforce the limited scope of Section 103(c). Congress would not have adopted Section 103(c) as one of a number of mere "corrections" if it altogether eliminated a power to regulate inholdings that can be critical to the pro-

tection of park lands themselves. Nor would Members of Congress have characterized a withdrawal of the Park Service's limited but critical authority to apply rules on inholdings (which on petitioner's view include all navigable waters) as a minor change, unrelated to conservation areas.

If any ambiguity were present, *Chevron* deference would resolve it. In regulations in place for 20 years, the Secretary has interpreted Section 103(c) to constrain application only of regulations that are applicable "solely to public lands," and not of those regulations permissibly written to apply to nonpublic lands within park boundaries.

Petitioner is incorrect to suggest that the Secretary's understanding of Section 103(c) is unreasonable because it would allow the Park Service to subject private, State, and Native conveyances to pervasive regulation. The Park Service has only circumscribed authority to regulate lands that are within the boundaries of a National Park, but not part of the National Park itself. As a result, by clarifying that private, State, and Native conveyances are not public lands, Section 103(c) ensures that such inholdings have substantial protections against Park Service regulation.

Section 103(c) does not forbid the Park Service from making its hovercraft regulation (among other rules) applicable on navigable waters within National Parks. Congress has given the Secretary broad authority to regulate waters located within areas of the National Parks. Acting under that authority, the Park Service has adopted a regulation making park rules applicable on navigable waters in National Parks, without regard to ownership of land or waters. See 36 C.F.R. 1.2. A regulation designed in that way is not a

regulation applicable "solely to public lands" within park units. Accordingly, Section 103(c) does not bar the application of Park Service rules against hovercraft use on navigable rivers within National Parks in Alaska.

ARGUMENT

SECTION 103(c) OF ANILCA DOES NOT STRIP THE NATIONAL PARK SERVICE OF AUTHORITY TO ENFORCE RULES FOR NAVIGABLE WATERS WITHIN THE BOUNDARIES OF NATIONAL PARKS

ANILCA created and expanded National Parks, Wild and Scenic Rivers designations, Wildlife Refuges, and other federal preserves in Alaska for stated purposes that include protecting "freeflowing rivers," "waters," and "fish." 16 U.S.C. 3101. Section 103(c) of that same enactment did not deprive the Park Service of its ability to execute that directive through the regulation of navigable waters. Petitioner's view to the contrary rests on two errors. First, it erroneously treats navigable waters within National Parks as among the State, private, and Native lands described in Section 103(c). Second, it misunderstands the limits imposed by Section 103(c), which are not implicated by the rules that petitioner protests.

A. The Navigable Waters in National Parks Are Not Covered By The Limitations In Section 103(c)

Petitioner's challenge under Section 103(c) fails at the threshold, because navigable waters are not subject to the limitations in that provision. Not only is that the best understanding of Section 103(c), but it is the understanding adopted in the Secretary's formal rulemakings concerning both "public lands" and "navigable waters," and the understanding Congress rati-

fied in 1998 when it directed that the Secretary's "public lands" regulations should go into effect.

1. The navigable waters in National Parks do not fall within the terms of Section 103(c)

Section 103(c) addresses the treatment under ANILCA of lands that have been conveyed to the State, Native Corporations, and private parties, which the statute contrasts with "public lands." 16 U.S.C. 3103(c). Navigable waters within the National Park System are not subject to that provision. Such waters have never been conveyed to the State or any other party. And they are subject to regulation under ANILCA's definition of "public lands."

a. Navigable waters are not lands "conveyed to the State, to any Native Corporation, or to any private party"

Section 103(c) imposes limits on the Park Service's authority to regulate certain types of lands within National Parks in Alaska by providing that "[n]o lands which, before, on, or after" the date of ANILCA's enactment "are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units." 16 U.S.C. 3103(c).

Statutory language and context make clear this sentence's obvious application: It limits federal regulation of the State, Native, and private inholdings that were brought within the borders of conservation system units when ANILCA drew boundaries around entire ecosystems. See Pet. App. 22a. Those inholdings included lands that ANILCA was transferring to the State or Native groups as selections under ANCSA and the Statehood Act, see ANILCA §§ 901-

911, 94 Stat. 2430-2447, by means of what Congress described throughout ANILCA as "conveyances," see, *e.g.*, § 906, 94 Stat. 2437 (entitled "State selection and conveyances"); § 1406, 94 Stat. 2494 (entitled "Conveyance of partial estates"); § 1410, 94 Stat. 2496 (entitled "Interim conveyances and underselections"); § 1421, 94 Stat. 2509 (entitled "Conveyance to the State of Alaska"); § 1437, 94 Stat. 2546 (entitled "Conveyances to Village Corporations").

By its terms, however, that language does not affect the Park Service's longstanding authority to regulate navigable waters within National Parks—which, in contrast to Alaska's Statehood Act selections, are not lands "conveyed to the State." 16 U.S.C. 3103(c). Petitioner's basis for claiming that navigable waters within National Parks were conveyed to the State is the Submerged Lands Act. Pet. Br. 33. But—as its title indicates—the Submerged Lands Act provides that States generally hold "title to and ownership of the lands *beneath* navigable waters," and title to "the natural resources *within* such lands and waters," 43 U.S.C. 1311(a) (emphasis added), not title to the navigable waters themselves. That is because "[n]either sovereign nor subject can acquire anything more than a mere usufructuary right" in navigable waters. *Federal Power Comm'n* v. *Niagara Mohawk Power Corp.*, 347 U.S. 239, 247 n.10 (1954) (citation omitted); see *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725, 744-745 (1950) ("As long ago as the Institutes of Justinian, running waters, like the air and the sea, were *res communes*—things common to all and property of none."); *Federal "Non-Reserved" Water Rights*, 6 Op. O.L.C. 328, 365-366 (1982). The Submerged Lands Act thus does not transform the pro-

tection of inholdings contained in Section 103(c) into a retraction of traditional Park Service regulatory power over navigable waters in National Parks.

Petitioner's attempt to bolster his water-conveyance theory by pointing to the federal–state balance misunderstands that balance. Petitioner suggests that "[p]ermitting federal regulation of navigable waterways" notwithstanding "state ownership of the submerged lands beneath" would "subvert the public trust doctrine," which recognizes that "title to the lands under the navigable waters . . . necessarily carries with it control over the waters above them." Pet. Br. 36-37 (citation omitted). But while there is no dispute concerning the State's right to manage, develop, and use the natural resources within such lands and waters, see 43 U.S.C. 1311(a), petitioner is profoundly mistaken in suggesting that States have exclusive control of the navigable waters themselves, barring the exercise of all federal authority. To the contrary, this Court has explained that even when a State owns the submerged lands beneath a river, the federal government retains its own regulatory powers, including "the paramount power of the United States to control such waters" pursuant to the dominant federal navigational servitude, *PPL Mont., LLC* v. *Montana*, 132 S. Ct. 1215, 1228 (2012) (citation omitted); *United States* v. *Twin City Power Co.*, 350 U.S. 222, 224-225 (1956); the ability to utilize reserved rights "necessary for the beneficial use[] of * * * government property," *United States* v. *Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 703 (1899), and others, see *Alaska* v. *United States*, 545 U.S. 75, 116-117 (2005) (Scalia, J., concurring in part and dissenting in part) ("If title to submerged lands passed to

Alaska, the Federal Government would still retain significant authority to regulate activities in the waters of Glacier Bay by virtue of its dominant navigational servitude, other aspects of the Commerce Clause, and even the treaty power.").

b. The United States has title to interests in navigable waters within National Parks in Alaska

Section 103(c) provides that "[o]nly those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit"—thereby limiting regulation of lands that are not "public lands." 16 U.S.C. 3103(c). ANILCA defines "public lands" as "lands, waters, and interests therein" to which the United States holds title. 16 U.S.C. 3102(1)-(3); *Amoco Prod. Co.* v. *Village of Gambell*, 480 U.S. 531, 548 n.15 (1987).

This limitation in Section 103(c) provides no basis to challenge a regulation of navigable waters within National Parks, because the United States holds title to substantial "interests" in those waters by virtue of its reserved water rights. See *Gambell*, 480 U.S. at 549 n.15 (noting that under ANILCA, even if the federal government does not hold title to submerged lands on the Outer Continental Shelf, those lands may be "public lands" based on the United States' "interest" in such lands).

This Court has long held that federal land reservations include interests in appurtenant waters that are necessary to effectuate the purposes for which the land is reserved. *Cappaert* v. *United States*, 426 U.S. 128, 138 (1976) ("[W]hen the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by

implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation."); see *United States* v. *New Mexico*, 438 U.S. 696, 709-711 (1978) (reservation of water for National Park System units implied by broad conservation purposes of Organic Act). Those usufructuary water rights are property interests. *Niagara Mohawk Power Corp.*, 347 U.S. at 251 (Federal Water Power Act "treats usufructuary water rights like other property rights"); see *Gerlach Live Stock Co.*, 339 U.S. at 736 ("Congress has recognized the property status of water rights vested under California law."). Accordingly, "[t]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska* v. *Babbitt*, 72 F.3d 698, 703-704 (9th Cir. 1995), cert. denied, 576 U.S. 1036, and 517 U.S. 1187 (1986), adhered to *sub nom. John* v. *United States*, 247 F.3d 1032 (9th Cir. 2001) (per curiam).

As the Secretary of the Interior and the Secretary of Agriculture concluded in regulations promulgated pursuant to notice-and-comment procedures, under those principles, the United States has reserved water rights in the navigable waters that lie within National Parks. Congress has set out the purposes for which National Park lands are reserved in Alaska in the Organic Act and in ANILCA itself, in each case setting forth purposes that require the use of the waters appurtenant to park lands. In particular, the Organic Act provides that the Secretary is to manage parks for the "fundamental purpose" of conserving the scenery, natural objects, and wildlife therein. 54 U.S.C. 100101(a). And in ANILCA, Congress expressly stat-

ed that its purposes in reserving new lands to be administered under the Organic Act included safeguarding waters; protecting aquatic wildlife; preserving opportunities for marine recreation; and preserving opportunities for subsistence use, including subsistence fishing. 16 U.S.C. 3101.

In light of these purposes, the Secretary was correct—and certainly reasonable—in concluding that reserved water rights in navigable waters within the boundaries of National Parks are necessary to achieve the objectives of the relevant reservations. See 64 Fed. Reg. at 1279; 50 C.F.R. 100.3(b); see also 62 Fed. Reg. at 66,217-66,218 (proposed rule) (explaining doctrine of reserved water rights and considering alternative applications to waters within National Park units in Alaska). And because those reserved water rights constitute an "interest" in the navigable waters within the National Parks, such waters are part of the United States' "public lands" and are not removed from the sphere of permissible regulation by ANILCA Section 103(c). See *Gambell*, 480 U.S. at 548 n.15.

Petitioner does not dispute (Br. 38) that there are "reserved water rights held by the government" in the navigable waters of National Parks in Alaska. Nor does he take issue with the decisions treating "waters with associated federal reserved water rights [as] 'public lands'" for the "purpose of giving effect to ANILCA's subsistence provisions in Title VIII." *Ibid.* (citing *Katie John I*, 72 F.3d at 702 n.9, 704, and *John* v. *United States*, 720 F.3d 1214, 1245 (9th Cir. 2013) (*Katie John II*), cert. denied, 134 S. Ct. 1759 (2014)).

Instead, petitioner argues (Br. 38) that the federal reserved water rights in National Parks are merely

"related to subsistence" and that the attendant federal interest cannot form a basis for conservation-focused rules. That argument, however, misunderstands both the ANILCA framework and the nature of the government's reserved water rights. As to the ANILCA framework, the Park Service's authority to regulate "waters with associated federal reserved water rights" (Pet. Br. 38) under ANILCA simply reflects that the federal title to a property interest in those waters makes regulation of the waters a regulation of "public lands." 16 U.S.C. 3102(13); see *Gambell*, 480 U.S. at 548 n.15. So long as the government is regulating "public lands" under ANILCA, the limitations in Section 103(c) have no application. Petitioner's alternative approach, in which "waters with associated federal reserved water rights" would be "public lands" for some purposes, but not for others, cannot be squared with the structure of ANILCA, which sets out a single definition of "public lands" that applies across the statute's subsistence-use *and* conservation provisions. 16 U.S.C. 3102(3); see *Gambell*, 480 U.S. at 546 n.13 (single definition of "public lands" that applies across multiple ANILCA provisions).[8]

In any event, Congress's identification of the purposes of the land reservations in ANILCA leaves no room for petitioner's suggestion (Br. 38-39) that the

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[8] For his contrary view of ANILCA's operation, petitioner cites only *Cappaert*. But *Cappaert* did not address ANILCA at all. And the holding petitioner invokes—that when the government has reserved rights it may withdraw from appurtenant waters "only that amount of water necessary to fulfill the purpose of the reservation"—is irrelevant here, where the government is not seeking to withdraw waters, but rather to show that it has an "interest" in them. Pet. Br. 38 (citation omitted).

federal government has reserved water rights in the navigable waters of National Parks for purposes of subsistence use, but not for purposes of conserving park ecosystems, including park waters, rivers, and fish. Congress expressly identified each of those objectives as purposes of the reservations of land. See 16 U.S.C. 410hh, 3101. And it cannot seriously be contended that ANILCA's subsistence-use purposes require reservation of appurtenant waters, but its conservation purposes do not.

2. Other ANILCA provisions confirm that navigable waters within National Parks may be regulated as "public lands" under ANILCA

Other provisions of ANILCA strongly support the conclusion that Congress understood the United States to have the requisite interest in navigable waters to regulate them as public lands under ANILCA.

First, as noted above, Congress stated clearly (and repeatedly) that its purposes in placing new areas in Alaska under the Park Service's regulatory authority through ANILCA included "to protect and preserve * * * rivers," 16 U.S.C. 3101(b), to protect the "waters" in the new and expanded units, 16 U.S.C. 3101(a), and to preserve opportunities for canoeing and fishing on "freeflowing rivers," *ibid.* It did the same in its statement of purposes regarding the designation of particular units for inclusion in the National Park System, including in a number of designations that state an intent to protect particular navigable waters that it identified by name—including the "Aniakchak River," 16 U.S.C. 410hh(1), "the Kobuk River Valley, including the Kobuk, Salmon, and other rivers," 16 U.S.C. 410hh(6), and "the Noatak River," 16 U.S.C. 410hh(8), and "the entire Charley River

Basin," 16 U.S.C. 410hh(10). Those provisions demonstrate that Congress regarded rivers to be a central part of the National Parks themselves, rather than state-owned features outside of the parks.

Second, ANILCA's provisions relating to subsistence use demonstrate that Congress regarded navigable waters within the National Park System as public lands. Congress stated that it sought through ANILCA to "provide the opportunity for rural residents engaged in a subsistence way of life," 16 U.S.C. 3101(c), including "customary and traditional" fishing activities, 16 U.S.C. 3113, "to continue to do so." 16 U.S.C. 3101(c). It therefore provided that customary subsistence hunting and fishing activities would be allowed on "public lands"—*i.e.*, federal "lands, waters, and interests therein," 16 U.S.C. 3102(1)—within the National Park System, 16 U.S.C. 410hh-2, and that such subsistence fishing would be accorded priority over non-subsistence fishing on all "public lands," 16 U.S.C. 3114. Those provisions seeking to protect a "subsistence way of life"—and subsistence fishing in particular—would make little sense on petitioner's reading of "public lands" under ANILCA as excluding navigable waters, because subsistence fishing is an activity that "has traditionally taken place in navigable waters." *Katie John I*, 72 F.3d at 702; cf. *Alaska Pac. Fisheries* v. *United States*, 248 U.S. 78, 87-89 (1918) (concluding that tribe's erection of fish trap in navigable waters adjacent to reservation lands was permissible because those waters should be considered part of the reservation, in light of the reservation's purpose of facilitating subsistence hunting and fishing). Congress could not have "provide[d] the opportunity for rural residents engaged in a subsist-

ence way of life to continue to do so," 16 U.S.C. 3101(c), through a statute that did not protect the types of fishing that qualify as a subsistence way of life under the statute. Nor is it plausible that Congress would have created a detailed regulatory scheme to protect "subsistence fishing" that was applicable only in places where subsistence fishing does not traditionally occur.

In addition, a number of other provisions of ANILCA demonstrate that Congress intended that the Secretary would retain the authority to regulate navigable waters in National Parks in Alaska. Congress made clear that it understood the Secretary to have that authority in ANILCA's provisions designating particular areas as part of the National Park System in order to protect their rivers. It would be wholly unreasonable to suppose that Congress, in ANILCA, placed particular areas under National Park Service management so that the Secretary could protect their waters, see 16 U.S.C. 3101(a) and (b); 16 U.S.C. 410hh, but simultaneously deprived the Secretary of power to regulate all navigable portions of those waters to achieve that objective.

Other provisions of ANILCA further confirm that, at a minimum, Congress did not understand Section 103(c) to strip the Park Service of its power to regulate navigable waters. For instance, Title VI of ANILCA decrees that 26 rivers are "to be administered by the Secretary of the Interior" as "wild and scenic rivers" within either National Parks or Wildlife Refuges. §§ 601-603, 94 Stat. 2412-2414. Under the Wild and Scenic Rivers Act, a river that Congress designates to be "administered by the Secretary of the Interior through the National Park Service" is made

"part of the [N]ational [P]ark system," and it is to be administered pursuant to the "general statutory authorities relating to areas of the national park system," 16 U.S.C. 1281(c), for the purpose of "protect[ing] and enhanc[ing] the values which caused [the river] to be" so designated, 16 U.S.C. 1281(a). Designation of such rivers in Alaska as "wild and scenic" thus reflects Congress's understanding that the Park Service could in fact administer the rivers pursuant to its general statutory authorities. Such designations are inconsistent with a reading of Section 103(c) as forbidding the Park Service from regulating all *navigable* portions of those waters "as a portion of" any conservation system unit, including as a portion of any Wild and Scenic River System unit or any National Park System unit. See 16 U.S.C. 3102(4) (defining "conservation system unit" to include "any unit in Alaska of the National Park System" or of the "National Wild and Scenic Rivers Systems").

The many ANILCA provisions that confirm or constrain Park Service regulations of fishing or boating—without regard to navigability—further demonstrate that Congress understood that the Park Service's authority over those activities would remain in place. For example, ANILCA provides that:

- Motorboats may be used in conservation systems units "subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units," 16 U.S.C. 3170; see 16 U.S.C. 3121 (permitting motor boats "on public lands");
- The Secretary may issue "regulations prescribing * * * restrictions relating to * * * fishing," 16 U.S.C. 3201; see 16 U.S.C. 3204;

- "[T]he Secretary may take no action to restrict unreasonably the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law," 16 U.S.C. 410hh-4; and
- "Subject to reasonable regulation, the Secretary shall administer the [Yukon Delta National Wildlife] refuge so as to not impede the passage of navigation and access by boat on the Yukon and Kuskokwim Rivers," § 303(7)(D), 94 Stat. 2393.

None of those provisions suggests that the Secretary's ability to issue regulations turns on whether waters are navigable. And a number of them would be strange indeed if the statute applied only in non-navigable portions. For instance, it would be hard to make sense of a provision barring the Secretary from impeding "passage of navigation and access by boat on the Yukon and Kuskokwim Rivers" if the Secretary lacked authority over navigable waters, because the Yukon and Kuskokwim Rivers within the Yukon Delta Wildlife Preserve are navigable. See, *e.g.*, *United States* v. *Wilde,* No. 10-cr-21, 2013 WL 6237704 (D. Alaska Dec. 3, 2013), aff'd, 585 Fed. Appx. 336 (9th Cir. 2014) (noting that Yukon River is navigable); Bureau of Land Mgmt., *Final Summary Report: Federal Interest in Lands Underlying Kuskokwim River in the Kuskokwim Bay Subregion, Alaska* (May 2013), http://www.blm.gov/style/medialib/blm/ak/aktest/rdi/kuskokwimriv.Par.1507.File.dat/Kuskokwim%20River%20Final%20Report%205113.pdf.

Similarly, it is far-fetched to imagine that Congress would have found it necessary or appropriate to include statutory safeguards for motorboating and

commercial fishing if it believed the Park Service could regulate such activities only on non-navigable waters, especially in the absence of any evidence that motorboating or commercial fishing occur with any frequency on waters that are not navigable. And even if Congress had not made clear in these provisions that it understood the Secretary to have authority over boating and fishing in all park waters, petitioner's understanding of Section 103(c)'s implications for park waters would still be implausible. Because the State generally does not hold title to *non*-navigable stretches of rivers in National Parks and other conservation system units, petitioner appears to believe that Congress intended Section 103(c) to create a patchwork of jurisdiction, in which the Park Service would be free to regulate pursuant to its longstanding authorities over park waters on non-navigable stretches, but would be divested of authority by Section 103(c) where the waters became navigable.

There is no indication that Congress intended such an unworkable approach. Determinations of navigability relevant to the Submerged Lands Act are made "on a segment-by-segment basis," requiring an assessment of the usefulness of particular segments for purposes of trade and travel at the time of statehood. *PPL Mont.*, 132 S. Ct. at 1229. Those determinations are often difficult, and in Alaska, the remoteness of rivers and the fact that many rivers debouch from glaciers and flow shallowly across the landscape for some distance can make navigability determinations even more piecemeal and complex. Thus, as the State of Alaska has explained, seeking to determine the navigability of a particular stretch of river will commonly depend on gathering information that "is both

time consuming and expensive" to obtain, particularly in light of "Alaska's undeveloped and remote character"; require application of a navigability test that has been the subject of "a lot of disagreement" when applied "to the specific uses of Alaska's lakes, rivers and streams"; and yield an answer that is "always subject to legal challenge, since only the courts can authoritatively determine title to submerged lands." Alaska Dep't of Natural Res., Mining, Land & Water, *State Policy on Navigability*, http://dnr.alaska.gov/mlw/nav/nav_policy.htm (last visited Dec. 16, 2015). It is improbable that Congress would have intended to make the scope of federal authority over park waters turn on such costly and uncertain determinations.

Petitioner seeks support (Br. 37-38) for his conception of Section 103(c) as radically limiting Park Service power over waters from a separate ANILCA provision that addresses "existing rights" to "water resources." 16 U.S.C. 3207. But such an interpretation of Section 3207 is inconsistent with the ANILCA provisions discussed above, which are premised on federal regulatory authority over waters within the new and expanded National Parks. And it is inconsistent with the text of Section 3207, which seeks only to maintain existing federal and state authorities in particular water-related fields. The first portion of Section 3207 invoked by petitioner states that ANILCA does not "affect[] in any way any law governing appropriation or use of, or Federal right to, water on lands within the State of Alaska." 16 U.S.C. 3207(1). But neither petitioner nor the State identifies any law "governing appropriation or use of, or Federal right, to water" within Alaska that is displaced by the Park Service's regulation of such subjects as boating, fish-

ing, and hovercraft use on waters within the National Parks. *Ibid.* Similarly, the second sentence invoked by petitioner states that ANILCA should not be construed as "expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control." 16 U.S.C. 3207(2). But the Park Service's exercise of jurisdiction and responsibility over navigable waters in National Parks *maintains* the allocation of regulatory authority, without expanding or diminishing it.

Moreover, the remainder of Section 3207 undermines petitioner's understanding of Section 103(c) as contracting the Park Service's Organic Act and 1976 Act authorities over navigable waters within National Parks. The introductory clause of Section 3207 expressly states that nothing in ANILCA shall be construed as diminishing either "the power" or the "authority of the United States." 16 U.S.C. 3207. And Section 3207(3) specifies that ANILCA shall not be construed as repealing, modifying, or superseding any existing authority of an agency with "regulatory functions" in relation to "water resources" development—unless the repeal, modification, or superseder is "specifically set forth in this Act." 16 U.S.C. 3207(3). Yet if the Court were to accept petitioner's apparent view that Park Service authorities to regulate fishing, boating, and transportation are regulation of "water resources development" for purposes of Section 3207(2), then petitioner's authority-constricting interpretation of ANILCA would be foreclosed by Section 3207(3). His interpretation would supersede, modify, or repeal existing authorities as to what petitioner appears to consider "water resources development" with respect to park units in Alaska.

3. The addition of Section 103(c) as a "correction[]" confirms that it should not be construed to rescind the Park Service's authority

The placement of Section 103(c) provides an additional indication that it is not to be read as the sweeping withdrawal of the Park Service's authority to safeguard park waters that would result from petitioner's narrow reading of "public lands" in tandem with his expansive view of Section 103(c)'s preclusion.

Rather than placing the text of Section 103(c) in one of the ANILCA provisions setting forth or limiting the Secretary's substantive authority, Congress placed it in a section entitled "Maps." 16 U.S.C. 3103. Because Congress does not "hide elephants in mouseholes," *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 468 (2001), if Congress had designed Section 103(c) to rescind the Secretary's longstanding authority to regulate navigable waters in parks, refuges, and other preserves, it surely would not have made Section 103(c) a third subsection "buried in the 'maps' section" of the ANILCA statute. Pet. App. 42a.

Petitioner seeks to explain this placement by asserting that a "maps" section is a "'natural place to locate' a provision setting forth the regulatory regime that would apply to the territory being allocated in those maps." Pet. Br. 27 n.9 (citation omitted). That is not so, as even a glance at the substance of ANILCA's provisions reveals. Many ANILCA provisions are devoted entirely to "setting forth the regulatory regime," *ibid.*, that applies to territory within National Parks and other conservation system units. In contrast, the "maps" section is principally focused on the availability of physical maps themselves—through provisions requiring the Secretary to place unit maps

"on file and available for public inspection," 16 U.S.C. 3103(a), to arrange for maps and descriptions to be placed on file with Congress and published in the Federal Register, and to address "minor" adjustments of boundary lines, 16 U.S.C. 3103(b). That is an improbable place for a section that, as petitioner would have it, rescinded longstanding Park Service authority over the waters and rivers that ANILCA expressly sought to protect.

The manner in which Congress added Section 103(c) to ANILCA reinforces that conclusion. When ANILCA initially was passed by the Senate and House of Representatives, it left the Park Service's longstanding authority to regulate park waters in place by expressly directing the Secretary to "administer the lands, waters, and interests" within new and expanded National Parks "as new areas of the National Park System" under the provisions of the Organic Act. See 16 U.S.C. 410hh-2. Section 103(c) was then added to ANILCA, along with other modest changes, through a concurrent resolution. The text of the resolution explained that it contained only "corrections" to the bill that both Houses had passed. House Resolution 94 Stat. 3688. A "correction[]" would not be an apt description of a significant withdrawal of Park Service authorities. And it is improbable that a Congress seeking to achieve the purpose of protecting waters, rivers, and fish in new and expanded parks would have voted to rescind or rework Park Service authority to regulate navigable waters by a unanimous vote in this manner, just days after conferring the authority to regulate those waters on the Park Service. See 16 U.S.C. 410hh-2.

4. The legislative history also shows that Congress did not intend Section 103(c) to effect a sweeping withdrawal of Park Service authority

The legislative history confirms that Section 103(c) was not designed to make any broad change in the Secretary's authority over navigable waters. In offering the concurrent resolution that added Section 103(c) to ANILCA, the House sponsor emphasized that no portion of the resolution would "change any of the major features of the Alaska National Interest Lands Conservation Act" or "have the effect of altering provisions related to conservation areas." 126 Cong. Rec. at 30,498 (statement of Rep. Udall). And in both the House and Senate, Section 103(c) was labeled a "minor revision[]"—a label plainly inapplicable to an amendment that would rescind or revise longstanding authority to regulate navigable waters throughout National Parks, Wildlife Refuges, and Wild and Scenic Rivers in the State of Alaska. *Ibid.;* 126 Cong. Rec. 31,108 (1980); see 125 Cong. Rec. at 11,156 (statement of Rep. Seiberling) (describing amendment to add text of Section 103(c) to bill as "technical," "noncontroversial," and not a "substantive amendment[]").

Petitioner plumbs the legislative record (Br. 27-29) for statements in which Members of Congress set forth their views on ANILCA's distinction between "public lands" and "State, native, or private land" (Br. 29). But the statements on which petitioner relies are more relevant for what they do not say. Petitioner identifies no occasion at any point in ANILCA's history in which any Member of Congress suggested that the rivers and lakes ANILCA sought to protect would be treated as state inholdings under the statute. And

he identifies no point at which any Member suggested that ANILCA would alter the Park Service's longstanding authority to regulate such navigable waters. In contrast, Members indicated that they understood that ANILCA would enable federal park managers to safeguard the rivers placed within park units, as the statute itself makes pellucidly clear. See, *e.g.*, *Alaska National Interest Lands Conservation Act of 1979,* H.R. Rep. No. 97, 96th Cong., 1st Sess. Pt. I 457 (1979); 124 Cong. 14,673 (1978) (statement of Rep. Kostmayer); 125 Cong. Rec. 11,158 (1979) (statement of Rep. Bereuter).

5. The Secretary's reasonable interpretation of "public lands" is entitled to deference

If the Court were nevertheless to conclude that the text and structure of ANILCA do not unambiguously support the Secretary's regulatory authority here, the Secretary's reasonable regulations interpreting the term "public lands" in ANILCA are entitled to *Chevron* deference, and should be sustained. As petitioner acknowledges (Br. 21), the Secretary is entitled to deference to her reasonable interpretations of the scope of her authority under ANILCA. See *National Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 666-667 (2007); *City of Arlington, Tex.* v. *Federal Commc'ns Comm'n*, 133 S. Ct. 1863, 1874 (2013).

On several occasions, the Secretary has adopted regulations expressly establishing that navigable waters are not subject to the limitations in Section 103(c). Regulations that implement the ANILCA "subsistence use" priority, which is applicable only on "public lands" in Alaska, reflect the reasonable conclusion that "public lands" include navigable waters

within National Parks in Alaska, by virtue of federal reserved water rights. See *Katie John I*, 72 F.3d at 703-704 (explaining and adopting Secretary's conclusion that "public lands" under ANILCA include waters in which the United States has "reserved water rights"); 64 Fed. Reg. at 1276 (identifying navigable waters within National Parks in Alaska as "Federal land units in which reserved water rights exist," and consequently as "public lands"). That reasonable conclusion is fatal to petitioner's argument that "navigable waters" are subject to the limitations in Section 103(c) for lands that are not "public lands."

Second, in 1996, the Secretary specified by regulation that park rules apply on navigable waters within the boundaries of all National Parks, rejecting the argument that Section 103(c) barred application of park rules to navigable waters in National Parks in Alaska. 61 Fed. Reg. at 35,133; see 36 C.F.R. 1.2(a)(3). The Secretary explained that those regulations codified the Park Service's longstanding practice. 61 Fed. Reg. at 35,133. And the Secretary rejected the "State of Alaska's contention that ANILCA § 103(c) preempts NPS's well-established authority on navigable waters." *Id.* at 35,133, 35,135. In particular, the Secretary explained, such an interpretation could not be sustained when Section 103(c) is read in light of "the context of the whole act," including its stated "underlying protective purposes: to protect objects of ecological, cultural, geological, historical, prehistorical, and scientific interest." *Id.* at 35,135. That construction—which is at a minimum a reasonable interpretation of the text in light of the statute as a whole—also compels rejection of petitioner's con-

struction of Section 103(c) as withdrawing the Park Service's authority over navigable waters.

6. Congress has ratified the Secretary's interpretation of "public lands"

Congress's subsequent ratification of the Secretary's subsistence-use regulations also defeats petitioner's construction of Section 103(c). Congress addressed, in several appropriations acts, the Secretary's proposed regulations that identified "public lands" based on reserved water rights. Congress made clear in doing so that it understood that the subsistence-use regulations implemented a construction of "public lands" in ANILCA as including "navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior." 1998 Appropriations Act § 316(b)(3), 111 Stat. 50 (adding Subsection (b) to 16 U.S.C. 3111 (1994)) (discussing *Katie John I*). Congress imposed temporary moratoria on the implementation of those regulations, affording the State an opportunity to enact a statute assuming control of the subsistence-use priority. See 1996 Appropriations Act § 336, 110 Stat. 1321-210; 1998 Appropriations Act § 316(a), 111 Stat. 50; 1999 Appropriations Act § 339(a)(1), 112 Stat. 2681-295. And it set forth modifications of the subsistence-use scheme (but not of the "public lands" definition) that would take effect if the State enacted a subsistence-priority statute. § 316(b), 111 Stat. 50.

Ultimately, however, after the State failed to enact a subsistence-use priority, Congress expressly directed that the subsistence-use regulations take effect, without any modification of their approach to "public lands." § 339, 112 Stat. 2681-296; see 16 U.S.C. 3102 note. Because the regulations Congress

ratified are premised on the treatment of navigable waters as regulable under ANILCA based on reserved water rights, Congress's ratification of those regulations refutes petitioner's contrary classification of navigable waters in this case.

B. The Park Service Rule Is Not Foreclosed By Section 103(c) In Any Event Because It Is Not A Rule "Applicable Solely To Public Lands" Within Conservation System Units

Even if the limitations in Section 103(c) applied to navigable waters, they would not prohibit the Park Service from adhering in Alaska to its longstanding approach of enforcing rules on navigable waters in order to protect park ecosystems. Section 103(c) prohibits subjecting State, Native, and private-held land to regulations "applicable solely to public lands" within conservation system units, but it does not disturb application of, at a minimum, the narrow class of regulations permissibly written to apply to *both* public lands and nonpublic lands within such units. Particularly because the Secretary has concluded as much in longstanding regulations entitled to *Chevron* deference, see 59 Fed. Reg. 65,948 (Dec. 22, 1994), petitioner's challenge to the application of the regulation in this case must fail.

1. Section 103(c) does not bar the Park Service from enforcing in Alaska the regulations that are applicable to public and nonpublic lands within National Park boundaries

The text of Section 103(c) and of ANILCA's management-plan section each unambiguously establishes that, at a minimum, ANILCA does not deprive the Park Service of its authority to apply within Alas-

ka the narrow but important class of park regulations, including the regulation at issue here, that are *not* "applicable solely to public lands" within National Parks in Alaska.

a. The plain text of Section 103(c) itself establishes that, at most, it forecloses application to conveyed land in Alaska of park rules solely for *public lands*—not rules for public and nonpublic lands alike within the National Parks. Its first sentence specifies that Native, State, and private lands do not become public lands simply because they fall within park boundaries. See 16 U.S.C. 3103(c) ("Only those lands within the boundaries of any conservation system unit which are public lands * * * shall be deemed to be included as a portion of such unit."). It thus establishes that the Park Service may not treat inholdings in Alaska as though they were themselves public lands, subject to the panoply of park rules applicable to such lands. Cf. Pet. Br. 23 (stating that the first sentence establishes that non-federal land is "not part of the National Park System" and that "NPS may not manage it as though it were"). But in the narrow circumstances in which the Park Service may and does regulate all lands within park boundaries—as expressly authorized under statutes concerning mining, solid-waste treatment sites, and navigable waters within National Parks—Section 103(c)'s first sentence does not by its terms forbid the Park Service from implementing regulations written without regard to land ownership.[9]

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[9] Congress has also recognized this distinction between lands that are merely "within the boundaries" of a National Park and the federal lands that actually constitute parts of the park in provisions concerning parks outside of Alaska. Compare 16 U.S.C. 392 (discussing "privately owned lands within the boundaries of the

The provision's second sentence provides no more support than the first for petitioner's view that Section 103(c) prohibits enforcement of *all* park rules on park inholdings—even the narrow class of park rules that apply to federal and non-federal land alike. The second sentence specifies that conveyances to States, Native Corporations, and private individuals are not to be subject to a particular class of regulations: the "regulations applicable *solely* to public lands within such [conservation system] units." 16 U.S.C. 3103(c) (emphasis added).

"[C]onservation system units" are expressly defined in ANILCA to refer to lands that are "in Alaska," 16 U.S.C. 3102(4). Accordingly, the second sentence of Section 103(c) is reasonably understood as a limit on rules "applicable solely to public lands," 16 U.S.C. 3103(c), within units that are "in Alaska," 16 U.S.C. 3102(4). Under that reading, it bars the Park Service from deviating through special rules in Alaska from the Park Service's well-settled regulatory regime, in which inholdings have long been treated differently than public lands within the parks. See 36 C.F.R. 1.2 (1967). In contrast, it has no effect on park rules that apply nationwide.

Even if the second sentence in Section 103(c) is read as petitioner would read it, however—as restricting "regulations applicable solely to public lands" in

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Hawaii National Park"); 16 U.S.C. 403-2 (discussing private land "within the authorized boundaries of" Shenandoah National Park) with 16 U.S.C. 403-1 (particular lands are "made a part of the Shenandoah National Park, subject to all laws and regulations applicable thereto"); 16 U.S.C. 403k-1 (converting "lands within the boundaries of Great Smoky Mountains National Park" into "a part of the national park").

any National Parks generally—the rule would afford no support for petitioner's position that Section 103(c) bars application of park rules (such as the navigable-waters provision at issue here), that are written to apply to *all* lands within park boundaries, rather than only to public land, see 36 C.F.R. 1.29(a)(3). That is because even if the word "solely" is read to modify only "public lands" (see Pet. Br. 27), Section 103(c) still preempts only those park regulations "applicable *solely* to public lands" within the parks. It has no effect on the narrow class of NPS regulations that are applicable to *both* public and nonpublic lands within park boundaries. 16 U.S.C. 3103(c) *(*emphasis added).

The third sentence of Section 103(c) likewise furnishes no support for petitioner's view. That sentence reinforces the distinction between the lands that are part of parks and the lands that are merely within park boundaries, by providing that if the State, a Native Corporation, or another owner lawfully conveys lands to the Secretary, those lands shall then "become part of the unit, and be administered accordingly." 16 U.S.C. 3103(c). That sentence thus again simply indicates that non-federal lands may not ordinarily be "administered" as though they were "part of the park." *Ibid.* But it does not remotely indicate that the Secretary lacks in Alaska the power he has elsewhere to adopt, in certain specific circumstances, regulations applicable on lands that are not themselves part of a National Park, but lie within its boundaries.

b. ANILCA elsewhere confirms this interpretation by directing the Secretary to consider adopting the types of regulations for nonpublic lands within National Parks that petitioner's reading of Section 103(c) would bar. In 16 U.S.C. 3191(b)(7), Congress directed

the Park Service to include in its management plans for each new or expanded National Park in Alaska a description "of privately owned areas, if any, which are within such unit"; a description "of activities carried out in, or proposed for, such areas"; and the "present and potential effects of such activities on such unit." *Ibid.* It then directs the Park Service to address in its plan "methods (such as cooperative agreements and *issuance and enforcement of regulations*) of controlling the use of such activities to carry out the policies of [ANILCA] and the purposes for which such [conservation system] unit is established or expanded." *Ibid.* (emphasis added). Congress would not have directed the Secretary to consider "issuance and enforcement of regulations" to address activities in "privately owned areas" in National Parks in Alaska if ANILCA altogether barred the Secretary from "issu[ing]" or "enforc[ing]" regulations within those areas. *Ibid.*; see pp. 35-39, *supra* (discussing ANILCA provisions establishing Congress's understanding that the Secretary would retain authority to regulate navigable waters within conservation system units).

c. The placement and context of Section 103(c) reinforce that conclusion. As discussed above, Congress chose not to place Section 103(c) in one of the numerous provisions in ANILCA that expand or constrain the Secretary's substantive authority over lands within the Parks. See pp. 41-42, *supra*. Instead, Congress placed Section 103(c) in a section called "[m]aps," with other provisions that address classification of lands, rather than setting out new substantive rules. And Congress enacted Section 103(c) under the label of "corrections" through a concurrent resolution adopted

by unanimous consent. See pp. 11, 42-43, *supra*. That placement and method of enactment reinforce the conclusion that Section 103(c) was not meant to deprive the Park Service in Alaska of the limited but critical authority it has elsewhere in the country to make some rules applicable to inholdings in order to protect park lands themselves.

2. The legislative history confirms that, at a minimum, park regulations that are applicable to both public and nonpublic lands are unaffected by Section 103(c)

The legislative history confirms that Section 103(c) creates no Alaska-specific rule that strips the Park Service of the ability to enforce rules on inholdings in the narrow class of circumstances in which the Park Service has permissibly specified that a rule is applicable to public and nonpublic land alike.

First, as discussed at pp. 42-43, *supra*, Section 103(c) was explained as a "minor revision[]" that would not "have the effect of altering provisions relating to conservation areas." 126 Cong. Rec. at 30,498; see 126 Cong. Rec. at 31,108; 125 Cong. Rec. at 11,156. But the section would indeed "alter[] provisions relating to conservation areas"—with the risk of exposing those areas to significant degradation—if it were read to bar application in Alaska of park rules permissibly written to apply to inholdings. When such rules are in place, they reflect the determination that certain potentially hazardous or polluting activity on nonfederal lands within park boundaries could place the public lands themselves at risk. See 36 C.F.R. Pt. 6 (solid-waste disposal sites within National Park boundaries); 36 C.F.R. Pt. 9 (mining within National Park boundaries); see also 80 Fed. Reg. at 65,572,

65,575 (proposed rule regarding permitting of oil-and-gas operations, in response to oil spills, leaks, and contamination from oil and gas facilities within park boundaries). Depriving the Park Service of the ability to enforce such rules on inholdings in Alaska would not be a "minor" change, or one unrelated to protections of "conservation areas." Such descriptions of Section 103(c) would be especially inapt if navigable waters were among the "state lands" that would be withdrawn entirely from Park Service regulatory authority, because protection of such waters within parks has long been central to the Park Service's conservation mission.

Moreover, in discussing ANILCA's definition of "public lands," Members of Congress explained that private inholdings *would* be subject to rules that apply to public and private lands alike. The Senate Report expressly stated that "[f]ederal * * * regulations of general applicability *to both public and private lands*" would be "unaffected by the passage of" ANILCA. *Alaska National Interest Lands,* S. Rep. No. 413, 96th Cong., 1st Sess. 303 (1979) (emphasis added). Conversely, as the court of appeals explained, Members of Congress routinely described the rules that would be inapplicable to inholdings as the rules for "public lands." Pet. App. 27a-28a (quoting Senate Report and floor statements); cf. Pet. Br. 28-29 (quoting similar statements).

3. The Secretary's construction of Section 103(c) as limiting only park rules "applicable solely to public lands" is entitled to deference

Because the Secretary has reasonably construed Section 103(c) to bar enforcement on private, State, and Native inholdings of only those park regulations

that are applicable solely to "public lands," petitioner's claim would fail under *Chevron* principles even if the statute were ambiguous.

a. In regulations that have been in effect for 20 years, the Secretary expressly rejected the position that Section 103(c) prohibits, in Alaska, the enforcement of park rules that are permissibly written to reach non-federal lands within park boundaries. Those regulations implemented a congressional directive that the Secretary promulgate regulations to address risks from the operation of solid-waste disposal sites "within the boundary of any unit of the National Park System." Act of Oct. 19, 1984, Pub. L. No. 98-506, 98 Stat. 2338. Implementing that mandate, the Secretary adopted regulations to guard against environmental harm from solid-waste disposal sites on all lands within park boundaries. See 59 Fed. Reg. at 65,948.

In making that solid-waste disposal regulation applicable to both public and nonpublic lands in National Parks nationwide (including in Alaska), the Secretary expressly rejected the argument that Section 103(c) required an Alaska exception. See 59 Fed. Reg. at 65,950. The Secretary explained that determining whether Section 103(c) mandated an Alaska exception required deciding whether Section 103(c) made regulations implementing the solid-waste statute "inapplicable to all non[-]federal lands in National Park Systems units in Alaska," or whether it "simply mean[t] that the non-federal lands are not to be administered as part of the conservation unit in the same manner as federal lands." *Ibid.*

The Secretary construed Section 103(c) to have the latter meaning. 59 Fed. Reg. at 65,950. The Secre-

tary explained that, as a result of "the presence of the word 'solely'" in Section 103(c), it does not bar the application in Alaska of park rules permissibly written to apply to "nonfederal lands in units of the National Park System." *Ibid.* Since the regulations being addressed are applicable to all lands "within the boundaries of any unit of the National Park System," the Secretary concluded that they do not "apply 'solely to public lands[']' within the units." *Ibid.* Because the Secretary's thorough analysis of Section 103(c)—one that has been in force for approximately 20 years—is, at a minimum, a reasonable reading of the statute, petitioner's contrary view should be rejected.

b. Petitioner is mistaken in contending (Br. 30-31) that the Secretary's interpretation of ANILCA would open inholdings to pervasive regulation by the Park Service. The Park Service does not have broad or plenary power to regulate those lands that fall within park boundaries but are not part of the park itself. The Organic Act, for example, permits only those regulations that are appropriately considered "necessary or proper" for use or management of the parks. 54 U.S.C. 100751(a). And setting aside the regulation of navigable waters, the only occasions on which the Secretary has regulated, or sought to regulate, *non*-public lands within National Parks in Alaska have involved limits on potentially hazardous or polluting activity necessary to protect *public* lands within the Parks. See pp. 16-18, *supra*.

Given the limitations of the Secretary's Organic Act authorities, Section 103(c) ensures substantial protection for private, State, and Native conveyances, by making clear that such conveyances are inholdings, and can only be regulated as such. It is petitioner's

view, in contrast, that produces strange results—by exposing National Parks in Alaska, but nowhere else in the country, to the risks of harm from hazardous activity on inholdings that the Park Service has adopted regulations to address.

4. The Park Service regulation making park rules applicable on navigable waters within the boundaries of National Parks is not barred by the limitations in Section 103(c)

Applying the foregoing principles, the limitations of Section 103(c) cannot bar the Park Service from prohibiting petitioner from using his hovercraft on the navigable waters within National Parks in Alaska.

Congress has expressly authorized the Secretary to adopt regulations that address navigable waters within National Parks, without regard to land ownership. It appears to have been undisputed that the Organic Act itself conferred authority on the Park Service to regulate navigable waters in National Parks—even though, under the Submerged Lands Act theory advanced by petitioner here, navigable waters would be state-owned lands in National Parks throughout the United States. Thereafter, Congress expressly authorized the Park Service to promulgate regulations of navigable waters within park boundaries, by granting the Secretary the expansive authority to issue regulations "concerning boating and other activities on or relating to waters located within [National Park] System units, including waters subject to the jurisdiction of the United States." 54 U.S.C. 100751(b). Navigable waters are waters subject to the jurisdiction of the United States. See *United States* v. *Rands*, 389 U.S. 121, 123 (1967); *United States* v. *Appalachian Elec. Power Co.*, 311 U.S. 377 (1940).

Acting on that statutory authorization, the Park Service has adopted a regulation specifying that park rules apply on all navigable waters, whether they constitute public lands or not. While Park Service rules generally apply only within the boundaries of "federally owned lands and waters," 36 C.F.R. 1.2(a)(1), the Park Service has written its regulation concerning navigable waters to apply to all navigable waters "located within the boundaries of the National Park System." 36 C.F.R. 1.2. That language was adopted for the express purpose of applying park rules to navigable waters, without regard to the resolution of any dispute concerning their ownership. 61 Fed. Reg. at 35,133.

Because that regulation is permissibly written to apply on both public and nonpublic lands within park boundaries, it would be unaffected by Section 103(c) even if navigable waters within National Parks were deemed entirely state-owned. The regulation would obviously be unaffected if Section 103(c) is understood to address enforcement only of those regulations that are "applicable solely to public lands within" park units in Alaska, 16 U.S.C. 3103(c), but not regulations applicable nationwide. There is no doubt that the Park Service acted here pursuant to nationally applicable authority, rather than Alaska-specific rules.

But the navigable-waters regulation is valid even if Section 103(c) is given a broader reading. Section 103(c) pertains only to the enforcement of regulations applicable "solely to public lands" within National Parks. The regulation extending park rules to navigable waters within National Parks is not such a regulation, but is instead one of the narrow class of regulations permissibly written to apply to both public and

nonpublic lands within park boundaries. Its enforcement is therefore unaffected by Section 103(c), even if navigable waters within National Parks were deemed state-owned land in which the federal government lacks any interest.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 16 U.S.C. 3101 provides:

Congressional statement of purpose

(a) Establishment of units

In order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values, the units described in the following titles are hereby established.

(b) Preservation and protection of scenic, geological, etc., values

It is the intent of Congress in this Act to preserve unrivaled scenic and geological values associated with natural landscapes; to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; to preserve in their natural state extensive unaltered arctic tundra, boreal forest, and coastal rainforest ecosystems; to protect the resources related to subsistence needs; to protect and preserve historic and archeological sites, rivers, and lands, and to preserve wilderness resource values and related recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting, within large arctic and subarctic wildlands and on free-

flowing rivers; and to maintain opportunities for scientific research and undisturbed ecosystems.

(c) Subsistence way of life for rural residents

It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.

(d) Need for future legislation obviated

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

2. 16 U.S.C. 3102 provides in pertinent part:

Definitions

As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and the Alaska Statehood Act)—

(1) The term "land" means lands, waters, and interests therein.

(2) The term "Federal land" means lands the title to which is in the United States after December 2, 1980.

(3) The term "public lands" means land situated in Alaska which, after December 2, 1980, are Federal lands, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(C) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C. 1618(b)].

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

* * * * *

3. 16 U.S.C. 3103 provides:

Maps

(a) Filing and availability for inspection; discrepancies; coastal areas

The boundary maps described in this Act shall be on file and available for public inspection in the office of the Secretary or the Secretary of Agriculture with regard to the National Forest System. In the event of discrepancies between the acreages specified in this Act and those depicted on such maps, the maps shall be controlling, but the boundaries of areas added to the National Park, Wildlife Refuge and National For-

est Systems shall, in coastal areas not extend seaward beyond the mean high tide line to include lands owned by the State of Alaska unless the State shall have concurred in such boundary extension and such extension is accomplished under the notice and reporting requirements of this Act.

(b) Changes in land management status; publication in Federal Register; filing; clerical errors; boundary features and adjustments

As soon as practicable after December 2, 1980, a map and legal description of each change in land management status effected by this Act, including the National Wilderness Preservation System, shall be published in the Federal Register and filed with the Speaker of the House of Representatives and the President of the Senate, and each such description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Secretary. Whenever possible boundaries shall follow hydrographic divides or embrace other topographic or natural features. Following reasonable notice in writing to the Congress of his intention to do so the Secretary and the Secretary of Agriculture may make minor adjustments in the boundaries of the areas added to or established by this Act as units of National Park, Wildlife Refuge, Wild and Scenic Rivers, National Wilder-

ness Preservation, and National Forest Systems and as national conservation areas and national recreation areas. For the purposes of this subsection, a minor boundary adjustment shall not increase or decrease the amount of land within any such area by more than 23,000 acres.

(c) Lands included within unit; acquisition of land by Secretary

Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after December 2, 1980, are conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

4. 54 U.S.C. 100101 provides in pertinent part:

Promotion and regulation

(a) IN GENERAL.—The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the funda-

mental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

* * * * *

5. 54 U.S.C. 100751 provides in pertinent part:

Regulations

(a) IN GENERAL.—The Secretary shall prescribe such regulations as the Secretary considers necessary or proper for the use and management of System units.

(b) BOATING AND OTHER ACTIVITIES ON OR RELATING TO WATER.—The Secretary, under such terms and conditions as the Secretary considers advisable, may prescribe regulations under subsection (a) concerning boating and other activities on or relating to water located within System units, including water subject to the jurisdiction of the United States. Any regulation under this subsection shall be complementary to, and not in derogation of, the authority of the Coast Guard to regulate the use of water subject to the jurisdiction of the United States;

* * * * *

6. 16 U.S.C. 410hh provides in pertinent part:

Establishment of new areas

The following areas are hereby established as units of the National Park System and shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act:

* * * * *

(10) Yukon-Charley Rivers National Preserve, containing approximately one million seven hundred and thirteen thousand acres of public lands, as generally depicted on map numbered YUCH–90,008, and dated October 1978. The preserve shall be managed for the following purposes, among others: To maintain the environmental integrity of the entire Charley River basin, including streams, lakes and other natural features, in its undeveloped natural condition for public benefit and scientific study; to protect habitat for, and populations of, fish and wildlife, including but not limited to the peregrine falcons and other raptorial birds, caribou, moose, Dall sheep, grizzly bears, and wolves; and in a manner consistent with the foregoing, to protect and interpret historical sites and events associated with the gold rush on the Yukon River and the geological and paleontological history and cultural prehistory of the area. Except at such times when and locations where to do so would be inconsistent with the purposes of the preserve, the Secretary

shall permit aircraft to continue to land at sites in the Upper Charley River watershed.

7. 36 C.F.R. 1.2 provides in pertinent part:

Applicability and scope

(a) The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within:

(1) The boundaries of federally owned lands and waters administered by the National Park Service;

(2) The boundaries of lands and waters administered by the National Park Service for public-use purposes pursuant to the terms of a written instrument;

(3) Waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands;

(4) Lands and waters in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81);

(5) Other lands and waters over which the United States holds a less-than-fee interest, to the extent necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.

(b) The regulations contained in parts 1 through 5, part 7, and part 13 of this chapter do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries, except as provided in paragraph (a) or in regulations specifically written to be applicable on such lands and waters.

(c) The regulations contained in part 7 and part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in parts 1 through 5 and part 12 of this chapter.

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8. 36 C.F.R. 2.17 provides in pertinent part:

Aircraft and air delivery.

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(e) The operation or use of hovercraft is prohibited.

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