

Report Highlights

Why DLA Performed This Audit

The audit determines whether there is a need for the commission's continued existence and whether its termination date should be extended. The commission is set to terminate June 30, 2021, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

The audit makes no recommendations.

A Sunset Review of the Department of Natural Resources, Citizens' Advisory Commission on Federal Areas (CACFA)

April 8, 2020

Audit Control Number 10-20121-20

REPORT CONCLUSIONS

The audit concluded that, from the date of the prior audit in February 2015 through the time CACFA was defunded in June 2017, the commission operated effectively and did not significantly duplicate the efforts of other entities. During this period, the commission actively monitored the effects of federal regulation and management decisions in accordance with statutory duties. The audit also concluded that there is a continuing public need for the commission.

In accordance with AS 44.66.010(a)(10), the commission is scheduled to terminate June 30, 2021. We recommend the legislature extend the commission's termination date eight years, to June 30, 2029.

(Intentionally left blank)

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

May 19, 2020

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Citizens' Advisory Commission on Federal Areas and the attached report is submitted for your review.

DEPARTMENT OF NATURAL RESOURCES
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
SUNSET REVIEW

April 8, 2020

Audit Control Number
10-20121-20

The audit was conducted as required by AS 44.66.050(a). Per AS 44.66.010(a)(10), the commission is scheduled to terminate on June 30, 2021. We recommend that the legislature extend the commission's termination date to June 30, 2029.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

ACN	Audit Control Number
ANILCA	Alaska National Interest Lands Conservation Act
AS	Alaska Statute
ASLAG	Alaska State Lands Advisory Group
CACFA	Citizens' Advisory Commission on Federal Areas
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
DLA	Division of Legislative Audit
DNR	Department of Natural Resources
FY	Fiscal Year
PAAD	Public Access Assertion and Defense

CONTENTS

Report Sections	Organization and Function	1
	Background Information	5
	Report Conclusions	7
	Findings and Recommendations	13
	Objectives, Scope, and Methodology	15
Agency Response	Department of Natural Resources	21
Appendix	Appendix Summary	17
	Appendix A: Analysis of Public Need Criteria	19
Exhibits	Exhibit 1: Commission Duties - Alaska Statute 41.37.220	2
	Exhibit 2: CACFA FY 16 Expenditures and Funding Source	3
	Exhibit 3: Example of Federal Land Management Concerns Sturgeon v. Frost	6
	Exhibit 4: Comparison of CACFA, ANILCA Program, and PAAD Unit as of January 31, 2020	10
	Exhibit 5: CACFA Capital Expenditures and Funding Source FY 15 through FY 17	11

(Intentionally left blank)

ORGANIZATION AND FUNCTION

Citizens' Advisory Commission on Federal Areas

The Citizens' Advisory Commission on Federal Areas (CACFA or commission) was established in 1981, one year after the passage of the Alaska National Interest Lands Conservation Act (ANILCA). The commission was formed as a temporary advisory agency within the executive branch to communicate views of citizens and state officials regarding implementation of ANILCA's complex rules and regulations. As an advisory commission, CACFA does not have authority to issue regulations.

The commission was active from 1981 until 1999, at which time funding was eliminated. Alaska Statute 41.37 reestablished CACFA in 2007. CACFA operated from FY 08 through FY 17, when funding was again eliminated.

According to the Department of Natural Resources' website, CACFA is responsible for identifying and reducing potential negative impacts on Alaska and its citizens from federal actions on any of the over 200 million acres of federal land in the state. Per AS 41.37.220(a), the commission shall consider, research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state. The commission may request the attorney general file suit against a federal official or agency if the commission determines that the federal official or agency is acting in violation of an Act of Congress, congressional intent, or the best interest of the state.

The commission consists of 12 members: six appointed by the governor, three by the speaker of the house, and three by the senate president. All members are public appointments except for one senator and one representative, which are required to be appointed from the elected membership of the respective legislative bodies. Commission members serve without compensation, but are entitled to per diem and travel expenses. The commission's statutory duties are listed in Exhibit 1 on the next page.

Exhibit 1

Commission Duties Alaska Statute 41.37.220

- (a) The commission shall consider, research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state.
- (b) The commission shall consider, research, and hold hearings on the effect of federal regulations and federal management decisions on the people of the state.
- (c) The commission may, after consideration of the public policy concerns under (a) and (b) of this section, make a recommendation on the concerns identified under (a) and (b) of this section to an agency of the state or to the agency of the United States that manages federal land in the state.
- (d) The commission shall consider the views, research, and reports of advisory groups established by it under AS 41.37.230 as well as the views, research, and reports of individuals and other groups in the state.
- (e) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.
- (f) The commission shall report annually to the governor and the legislature within the first 10 days of a regular legislative session.
-

The commission was funded by general funds and last received operational funding in FY 16. The financial schedule in Exhibit 2 presents CACFA's FY 16 expenditures and funding source. An FY 15 capital appropriation funded CACFA operations during FY 17.

The commission may employ staff and contract for services related to matters within its authority. When funded, commission staff included an executive director and a part-time natural resource specialist II, both of whom reported to the commission. Staff were responsible for administrative activities, including booking commissioner travel, updating CACFA's website, and public noticing commission meetings. The executive director responded to public inquiries and monitored the Federal Register to identify changes related to management of federal lands in Alaska.

Exhibit 2

CACFA FY 16 Operating Expenditures and Funding Source (Unaudited)

Operating Expenditures:	
Personal Services	\$148,051
Travel	34,545
Services	77,119
Commodities	2,080
Capital Outlay	59
Total Operating Expenditures:	\$261,854
Funding Source:	
General Fund Appropriation	\$272,900

Source: State accounting system.

(Intentionally left blank)

BACKGROUND INFORMATION

Concerns over federal overreach and unfulfilled commitments.

Numerous laws govern the ownership, use, and management of lands in Alaska. According to a Citizens' Advisory Commission on Federal Areas (CACFA or commission) advisory committee report,¹ the two most significant federal laws that impact federal lands in Alaska are the Alaska Native Claims Settlement Act passed in 1971 and the Alaska National Interest Lands Conservation Act (ANILCA) passed in 1980. These laws, along with the Alaska Statehood Act of 1958, dictate the split of Alaska lands between the State of Alaska, Alaska Native corporations, and the federal government.

Multiple state and federal agencies, Alaska citizens, and courts interpret the various laws governing land management. Federal agencies involved in the management of federal lands in Alaska include the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service, and the National Park Service. State agencies include Department of Natural Resources and Department of Fish and Game.

Federal management of land in Alaska has been widely criticized. *Sturgeon v. Frost*, a U.S. Supreme Court case, provides an example of alleged federal land management overreach (see Exhibit 3 on the next page). Concerns with federal overreach and unfulfilled commitments were the impetus for the creation of CACFA. House Bill 87, passed in 2007, reestablished the commission to advocate on behalf of Alaska citizens on issues related to federal management of Alaska land.

An advisory group created by CACFA stated that:

Alaska's federal public lands are a patchwork of conflicting management philosophies and objectives. As such, goals of conservation, development, wildlife abundance, biodiversity and fire prevention, access to resources

¹ *Recommended Petition by the State of Alaska to Congress and the Executive Branch for Transfer of Certain Federal Lands to the State and Power Sharing in Governance and Planning on Remaining Federal Lands* dated June 30, 2017, prepared by the Alaska State Lands Advisory Group, a CACFA advisory committee.

and state and private inholdings, and enjoyment by individuals are poorly met.²

According to prior commission and advisory committee members, while funded, CACFA acted as a government watchdog of agencies that were involved with the management of federal lands in Alaska. This allowed the commission to stay abreast of land management changes that federal agencies were trying to implement. The commission served as the liaison between Alaskan citizens and governmental agencies.

Exhibit 3

Example of Federal Land Management Concerns Sturgeon v. Frost

Sturgeon v. Frost is a case heard by the Supreme Court of the United States, dealing with the regulatory authority of the National Park Service over lands in Alaska under ANILCA.

Petitioner, John Sturgeon, traveled for decades by hovercraft up a stretch of the Nation River that lies within the boundaries of Alaska's Yukon-Charley Preserve, a unit of the federal park system managed by the National Park Service. On one trip, park rangers informed Sturgeon that Park Service regulations prohibit the use of hovercrafts on rivers within any federal preserve or park. Sturgeon complied with the order, but later sued the Park Service, seeking an injunction that would allow Sturgeon to resume using the hovercraft.

The lower courts denied relief; however, upon review the Supreme Court rejected the dismissal and remanded the case for consideration of two questions: whether the Nation River qualifies as public land for purposes of ANILCA, and, if not, whether the Park Service could nevertheless regulate Sturgeon's activities on the Nation River. After the second hearing in the lower courts, the case was again heard by the U.S. Supreme Court. The Supreme Court held that Alaska's Nation River is not public land and, like all non-public lands and navigable waters within Alaska's national parks, it is exempt under ANILCA from the National Park Service's ordinary regulatory authority.

Source: Supreme Court majority opinion: Sturgeon v. Frost 587 U.S. ____ (2019).

² *Recommended Petition by the State of Alaska to Congress and the Executive Branch for Transfer of Certain Federal Lands to the State and Power Sharing in Governance and Planning on Remaining Federal Lands* dated June 30, 2017, prepared by the Alaska State Lands Advisory Group, a CACFA advisory committee.

REPORT CONCLUSIONS

In concluding whether the Citizens' Advisory Commission on Federal Areas' (CACFA or commission) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which is included as Appendix A of this report. Under the State's "sunset" law, the factors are to be considered in assessing whether an entity has demonstrated a public policy need for continued operations.

From the date of the prior audit in February 2015 through the time CACFA was defunded in June 2017, the commission operated effectively and did not significantly duplicate the efforts of other entities. During this period, the commission actively monitored the effects of federal regulation and management decisions in accordance with statutory duties. The audit also concluded that there is a continuing public need for the commission.

In accordance with AS 44.66.010(a)(10), the commission is scheduled to terminate June 30, 2021. We recommend the legislature extend the commission's termination date eight years to June 30, 2029.

Detailed report conclusions are as follows.

Declining state operating budgets led to the elimination of CACFA funding.

Beginning in FY 17, funding CACFA has not been a priority. While not a consistent priority for either the governor or the legislature, both entities supported the commission at separate times. The legislature approved funding for the commission in FY 17; however, the governor vetoed the appropriation. Funding for the commission in FY 18 and FY 19 was not included in the governor's request, nor the final operating bills passed by the legislature. The legislature approved funding in FY 20, but the governor vetoed the appropriation. The governor's amended FY 21 budget included funds to restore CACFA in recognition of the continued need for the commission. The proposed funding was not included in the legislature's approved budget.

The commission actively monitored the effects of federal regulations and management decisions.

The commission operated effectively until it was defunded in FY 17. The commission held three meetings per year as required by CACFA bylaws. All of the meetings allowed time for public comment and were public noticed. CACFA also kept Alaska citizens informed through a newsletter called the “Alaska Land Updates” which was published quarterly on the commission’s website. The newsletters provided information to the public on upcoming deadlines for comment on land management topics, relevant court cases, and effects of federal management plans on lands within Alaska.

The executive director monitored the Federal Register³ for new information related to CACFA’s mission, provided comments on proposed changes, and brought relevant information to the commission’s attention. If determined necessary, the commission sent a comment letter to the applicable federal agency. Per the prior executive director, comment letters formally summarized CACFA’s concerns with proposed management plans and changes to regulations and laws. The commission sent 14 comment letters and provided testimony four times from February 2015 through August 2016. Letters and testimony were directed to federal agencies and congressional subcommittees.⁴

According to a prior CACFA member, CACFA invited federal agencies to present information and discuss federal plans and policies via panel discussions to help facilitate communication between the public and state and federal agencies. Meetings generally lasted for one or two days and included multiple presentations from individuals representing federal agencies such as the U.S. National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and State agencies such as Department of Natural Resources (DNR) and Department of Fish and Game.

³ The Federal Register contains federal government agencies’ rules, proposed rules, and public notices.

⁴ Congressional subcommittees that CACFA provided testimony to include the U.S. Senate Committee on Environment and Public Works Subcommittee on Fisheries, Water, and Wildlife; and the U.S. Senate Committee on Energy and Natural Resources.

The commission and other agencies have similar missions, but do not significantly duplicate efforts.

Per the prior CACFA executive director, the director and staff assisted between 15 and 20 Alaska citizens at a time with issues related to federal land management by helping write complaints and requests for information, and guiding citizens to the appropriate agencies. In addition, staff accompanied citizens to permit and informational meetings to provide support and expertise.

Two DNR entities, the Alaska National Interest Lands Conservation Act (ANILCA) program and the Public Access Assertion and Defense (PAAD) Unit, have missions similar to CACFA. The ANILCA program is the lead coordinating agency for interagency State participation in the implementation of ANILCA. The program represents the views of the State government by coordinating input from State departments on ANILCA-related federal regulations and federal management plans within the state. The PAAD Unit is located in DNR's Mining, Land, and Water division. The overarching goal of the PAAD Unit is to protect public rights to lands beneath navigable waters and right-of-way access to lands not reserved for public use. The PAAD Unit does not provide comments to federal agencies on management plans and thus has a narrower scope than CACFA.

Of the three entities, CACFA is the only entity that represents the views of Alaskan citizens concerning federal land management plans within the state. CACFA's mission, user group, oversight, organization, composition, and core activities differ from the ANILCA program and PAAD Unit as described in Exhibit 4 on the following page.

Capital funding was used by CACFA to address federal overreach concerns.

During the 2014 legislative session, CACFA received a \$200,000 capital appropriation to address concerns resulting from federal overreach within the state. The capital funding was used for two projects. First, CACFA's library was scanned and digitized. According to the prior executive director, the commission scanned and digitized over 40,000 documents to create a searchable

Exhibit 4

Comparison of CACFA, ANILCA Program, and PAAD Unit as of January 31, 2020

	CACFA	ANILCA Program	PAAD Unit
Mission	Identify and reduce potential negative impacts on Alaska and its citizens from federal actions on federal lands in the state	To ensure that ANILCA is properly implemented and State interests are appropriately considered in federal land management decisions	Protect public rights associated with navigable and public waters, and easements across federal and private lands
User Group	Alaska citizens, legislature, and governor	State of Alaska executive branch	State of Alaska executive branch
Oversight	Provides annual report summarizing prior year activities to legislature and governor; DNR commissioner does not oversee CACFA's activities	Reports to DNR commissioner, who oversees ANILCA's activities	Reports to DNR commissioner, who oversees PAAD's activities
Core Activity	Comments on any federal land management issue in the state	Coordinates State response and comments on ANILCA-related federal land issues	Collects evidence to support access and navigability issues within the state
Organization	State commission historically located in DNR Commissioner's Office	State program organized under DNR's Office of Project Management and Permitting	State program organized under the Division of Mining, Land, and Water
Composition	Ten volunteer citizens and two legislators	Three State employees	Five State employees

Source: DNR management and website.

database. Second, a CACFA advisory committee completed a report of federal land management issues, which is discussed below. Exhibit 5 summarizes CACFA capital expenditures from FY 15 through FY 17.

Exhibit 5

**CACFA Capital Expenditures
and Funding Source
FY 15 through FY 17
(Unaudited)**

Capital Authorization	\$200,000
Expenditures:	
Personal Services	\$ 45,872
Travel	29,282
Advisory Group Report*	74,478
Scanning and Digitizing	30,990
Other	14,137
Total Capital Expenditures	<u>\$194,759</u>
Lapsed at the end of FY 19	<u><u>\$ 5,241</u></u>

Source: State of Alaska accounting system.

* Advisory group report was produced by the Alaska State Lands Advisory Group (ASLAG).

According to DNR’s budget documents, the governor and legislature were to examine the future role of CACFA once the capital project was complete. Per inquiry with the Office of the Governor, the administration believes there is a continued public need for CACFA.

Creation of the Alaska State Lands Advisory Group resulted in a summary report.

During FY 15, CACFA established ASLAG, consisting of nine public members, to determine the viability of transferring federal lands to Alaska. ASLAG prepared a 50 page report,⁵ released June 30, 2017, regarding the transfer of certain federal lands to the State and power sharing in governance and planning on remaining federal lands. In the report, the committee identified what it considers to be broken promises and violations of ANILCA, and other federal statutes and compacts. The report provides a comprehensive summary of federal land management issues as of June 2017.

CACFA was unable to complete planned projects due to lack of funding.

Once funding was eliminated, the executive director's day-to-day activities were no longer performed. Alaska citizens were unable to request assistance with issues related to federal management areas and the Federal Register was no longer monitored to identify changes to federal land management laws or policies.

Per inquiry with prior commission members and the prior executive director, at the time CACFA's funding was eliminated, the commission was working on the following three efforts:

- Creating a comprehensive package of recommendations for key amendments to ANILCA. The preliminary effort began with drafting proposed amendments to Title XI that were designed to produce legislation in 2020 for ANILCA's 40th anniversary.
- Allowing the public search of commission records by redacting information from digitized records that cannot be legally disclosed.
- Preparing several petitions to federal agencies to change regulations that the commission viewed as violating or failing to implement ANILCA provisions.

⁵ *Recommended Petition by the State of Alaska to Congress and the Executive Branch for Transfer of Certain Federal Lands to the State and Power Sharing in Governance and Planning on Remaining Federal Lands* dated June 30, 2017, prepared by the Alaska State Lands Advisory Group, a CACFA advisory committee.

FINDINGS AND RECOMMENDATIONS

The Citizens' Advisory Commission on Federal Areas' (CACFA or commission) prior 2015 audit⁶ made two recommendations:

- The commission's executive director should strengthen procedures to ensure public notice requirements are met.
- The commission's executive director should implement procedures to ensure commission meeting minutes are recorded and transmitted.

The prior audit recommendations were both resolved. Testing of CACFA and subcommittee meetings held from February 2015 through June 2017 found public notices were made timely and meeting minutes were recorded and transmitted.

No new recommendations are made as a part of this audit.

⁶ Performance Audit of the Department of Natural Resources, Citizens' Advisory Commission on Federal Areas (ACN 10-30079-15).

(Intentionally left blank)

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Citizens' Advisory Commission on Federal Areas (CACFA or commission) to determine if there is a demonstrated public need for its continued existence.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the commission should be extended.
2. To determine if the commission is operating in the public's interest.
3. To determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of operations and performance of the commission was based on criteria set up in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the commission. We reviewed the commission's activities from February 1, 2015, through January 31, 2020. Financial information is presented, unaudited, from July 1, 2015, through June 30, 2017.

Methodology

During the course of the audit, the following were reviewed and evaluated:

- The prior special audit report (ACN 10-30079-15) to identify issues affecting CACFA and to identify prior audit recommendations.
- Commission meeting minutes, annual reports, website, and Alaska Statutes to gain an understanding of commission functions, responsibilities, goals, and objectives. This included determining compliance with statutes concerning the nature and extent of public input.

-
- Public notice documentation to ascertain whether public notices for commission and subcommittee meetings were published as required by Alaska Statutes.
 - Financial coding structures were obtained from the agency and financial amounts were reviewed for reasonableness; however, the amounts included in this report were not audited.
 - Various state and news related websites to identify complaints against the commission or other commission related concerns.
 - Documents from State of Alaska operating bills and governor proposed budgets, as well as inquiry with Division of Legislative Finance staff to gain an understanding of the commission's authorized funding and status from FY 17 through FY 21.

In addition, prior commission members, a prior commission executive director, a prior advisory group member, Department of Fish and Game staff, and Department of Natural Resources (DNR) staff were interviewed to identify and evaluate various issues related to commission activities. Areas of inquiry included commission operations, DNR support, duplication of efforts, and the commission's goals and objectives during the audit period. In addition, a letter of inquiry was sent to the governor to identify whether the governor believed there was a continuing public need for the commission.

No controls significant to the audit objectives were identified or tested.

APPENDIX SUMMARY

Appendix A provides the sunset criteria used in developing our conclusion regarding whether the Citizens' Advisory Commission on Federal Areas termination date should be extended.

(Intentionally left blank)

APPENDIX A

Analysis of Public Need Criteria AS 44.66.050(c)

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

1. the extent to which the board or commission has operated in the public interest;
2. the extent to which the operation of the board or commission has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
3. the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
4. the extent to which the board or commission has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
5. the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
6. the efficiency with which public inquiries or complaints regarding the activities of the board or commission filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
7. the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

-
-
8. the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and in the area of activity or interest;
 9. the extent to which statutory, regulatory, budgetary, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
 10. the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
 11. the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

Agency Response from the Department of Natural Resources



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF THE COMMISSIONER

550 West 7th Avenue, Suite 1400
Anchorage, AK 99501-3561
Main: 907.269-8431
Fax: 907-269-8918

October 07, 2020

RECEIVED

OCT 07 2020

LEGISLATIVE AUDIT

Kris Curtis, CPA, CISA
Legislative Auditor
Legislative Budget and Audit
PO Box 113300
Juneau, AK 99811-3300

Re: Confidential Preliminary Audit Report, Department of Natural Resources, Citizens Advisory Commission on Federal Areas.

Dear Ms. Curtis,

Thank you for the opportunity to provide a written response to the Preliminary Audit Report on the Citizens Advisory Commission on Federal Areas.

Recommendation: Prior recommendations from the 2015 audit were resolved and no new recommendations were made as part of this audit.

Response: The department concurs with this recommendation and the recommendation to extend the commission's termination date eight years to June 30, 2029.

Agency Contact: Kyle Moselle, Executive Director

Sincerely,

A handwritten signature in blue ink that reads "Corri Feige".

Corri Feige, Commissioner
Department of Natural Resources