



Alaska Department of Natural Resources

Division of Mining, Land & Water

Presentation to House Fisheries Committee – HB 397

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THE NAVIGABLE WATERS ISSUE



- Alaska holds an estimated 800,000 miles of navigable rivers.
- Alaska holds an estimated 30 million acres of navigable lakes.
- Alaska owns the submerged lands beneath every navigable-in-fact river and lake, and beneath tidally influenced waters in the state--unless a valid pre-statehood withdrawal EXPLICITLY defeats state title.
- In Federal Conservation System Unit areas created in Alaska post-statehood, the submerged lands beneath navigable-in-fact and tidally influenced waters are state-owned lands.



FEDERAL AREAS WHERE SOA OWNS SUBMERGED LANDS



- **National Park Service:** Noatak National Preserve (NPr), Kobuk Valley National Park (NP), Bering Land Bridge NPr, Denali National Park and Preserve (NPP) (ANILCA additions), Wrangell-St. Elias NPP, Glacier Bay NPP, Katmai NPP, Kenai Fjords NP, Gates of the Arctic NPP, Lake Clark NPP, Yukon-Charley Rivers NPr, etc.
- **U.S. Fish and Wildlife Service:** Becharof National Wildlife Refuge (NWR), Innoko NWR, Izembek NWR, Kanuti NWR, Kenai NWR, Kodiak NWR, Koyukuk NWR, Nowitna NWR, Selawik NWR, Tetlin NWR, Togiak NWR, Yukon Delta NWR, Yukon Flats NWR, etc.
- **U.S. Forest Service:** Tongass National Forest, Chugach National Forest
- **Bureau of Land Management:** Beaver Creek Wild and Scenic River (WSR), Birch Creek WSR, Fortymile River WSR, Gulkana River WSR, Unalakleet River WSR, Delta River WSR, etc.



STATUS OF EFFORTS TO CLEAR TITLE 1959 TO PRESENT



The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable-in-fact and tidally influenced rivers and lakes in only:

- **Only 9 percent** of 800,000 river miles of submerged lands under state-owned rivers.
- **Only 16 percent** of 30,000,000 acres of submerged lands under state-owned lakes.



STURGEON V. FROST

136 S. CT. 1061 (2016)
139 S. CT. 1066 (2019)



US Supreme Court rules unanimously federal regulations do not supersede SOA ownership and management of navigable waters in ANILCA CSUs.



The Navigability Phase of the Initiative will involve these interrelated assertions of state ownership and authority:

Legislatively codify
state-owned
navigable waters in
federal areas

Intensify quiet title
litigation against the
federal government

Partner with users to
document navigable
waters usage for
strategic purposes

Release map of
state-owned
navigable waters in
federal areas

*“Unlocking
Alaska”*

Negotiate in good
faith with federal
authorities

Phase One -
Navigability

Aggressive approach
in state and federal
land planning
initiatives

Educate, energize
public on state
efforts and federal
failures

Assert state
management of
submerged lands in
federal areas

Increase number of
RDI applications
filed with the BLM



PROPOSED CODIFICATION LEGISLATION



- *Codifies SOA ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre-statehood withdrawal explicitly defeating state title.*
- *Sets forth specific navigable waters and submerged lands in federal areas statewide belonging to SOA.*
- *Sets forth example “susceptibility” criteria derived from caselaw to guide in navigability determinations.*



PROPOSED CODIFICATION LEGISLATION



- *Proposed statute contains an annual reporting requirement*
 - ***FIRST PHASE: All NPS areas statewide and Tongass National Forest.***
 - ***SECOND PHASE: USFWS refuges and Chugach National Forest.***
 - ***THIRD PHASE: Remaining USFWS refuges and BLM lands.***
 - ***FOURTH PHASE: Ongoing process of clarification, modification and amendment.***
- *Framework for proposed statute is based upon RS 2477 ROW codification project of 1990s [AS 19.30.400].*



PROPOSED CODIFICATION LEGISLATION



SELECTED SECTIONAL ANALYSIS

Section One: The purpose of the legislation is to:

- ***Underscore state ownership, management and control over submerged lands in federal areas.***
- ***List specific navigable waters in federal areas beneath which Alaska owns the submerged lands.***
- ***Create an annual reporting requirement to add to the listing and amend as necessary.***



PROPOSED CODIFICATION LEGISLATION



SELECTED SECTIONAL ANALYSIS

Sections Two through Six:

- *Define geographical scope of legislation (post-statehood federal areas).*
- *Charge DNR with responsibility to conduct ongoing navigability research to determine state title to submerged lands within relevant federal areas.*
- *Define key navigability terms for purposes of legislation including ordinary high-water mark, mean high water line, etc.*



PROPOSED CODIFICATION LEGISLATION



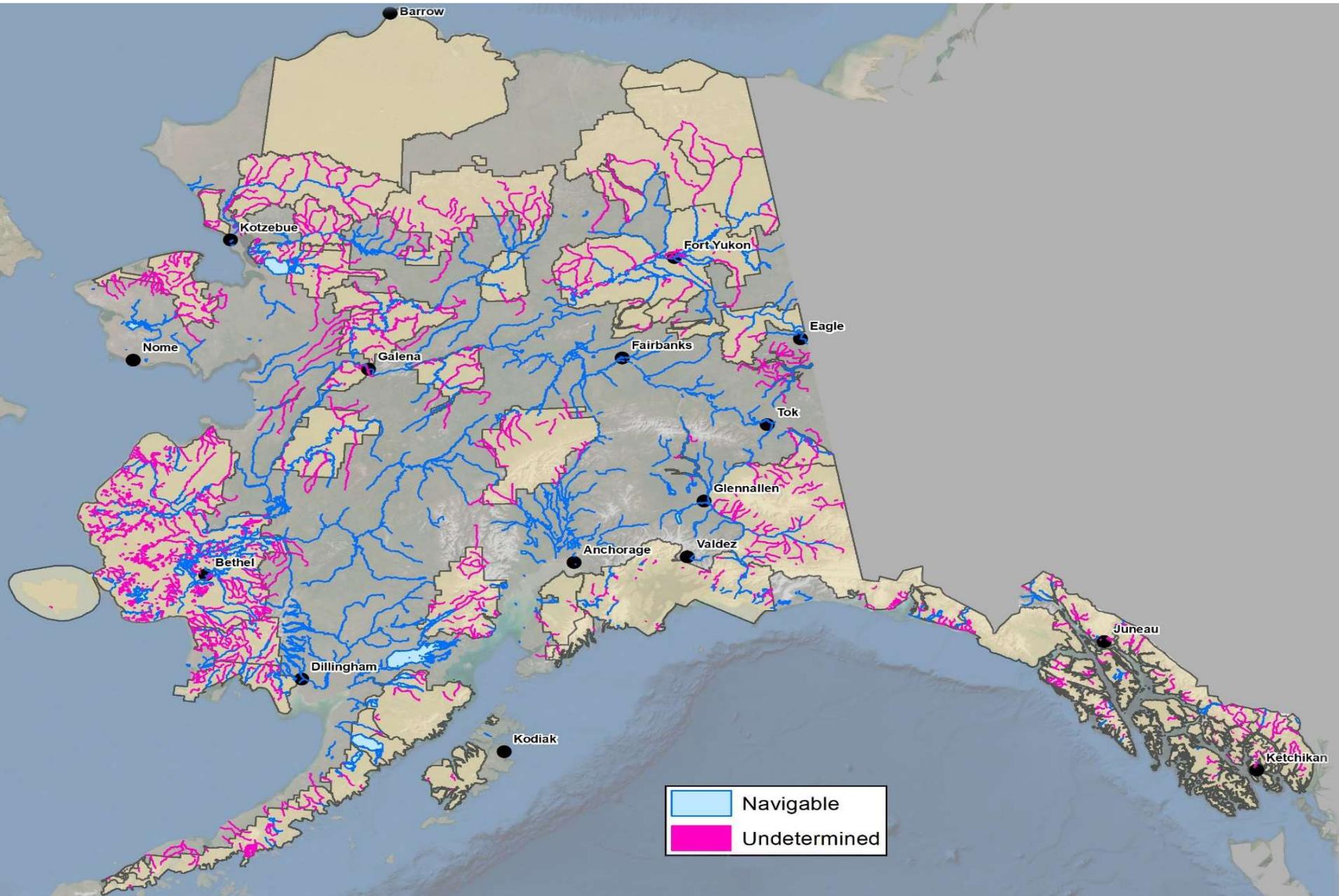
SELECTED SECTIONAL ANALYSIS

Section Seven:

- ***Assigns the annual legislative reporting requirement.***
- ***Lists example susceptibility criteria (derived from relevant caselaw) to guide DNR in making navigability determinations including, but not limited to:***
 - ***The types of watercraft to be used in assessing navigability.***
 - ***Documented personal use establishes that a river is susceptible to navigation.***
 - ***Navigability does not require a clear channel for navigation, two-way traffic, or historical evidence if the river is susceptible to navigation.***

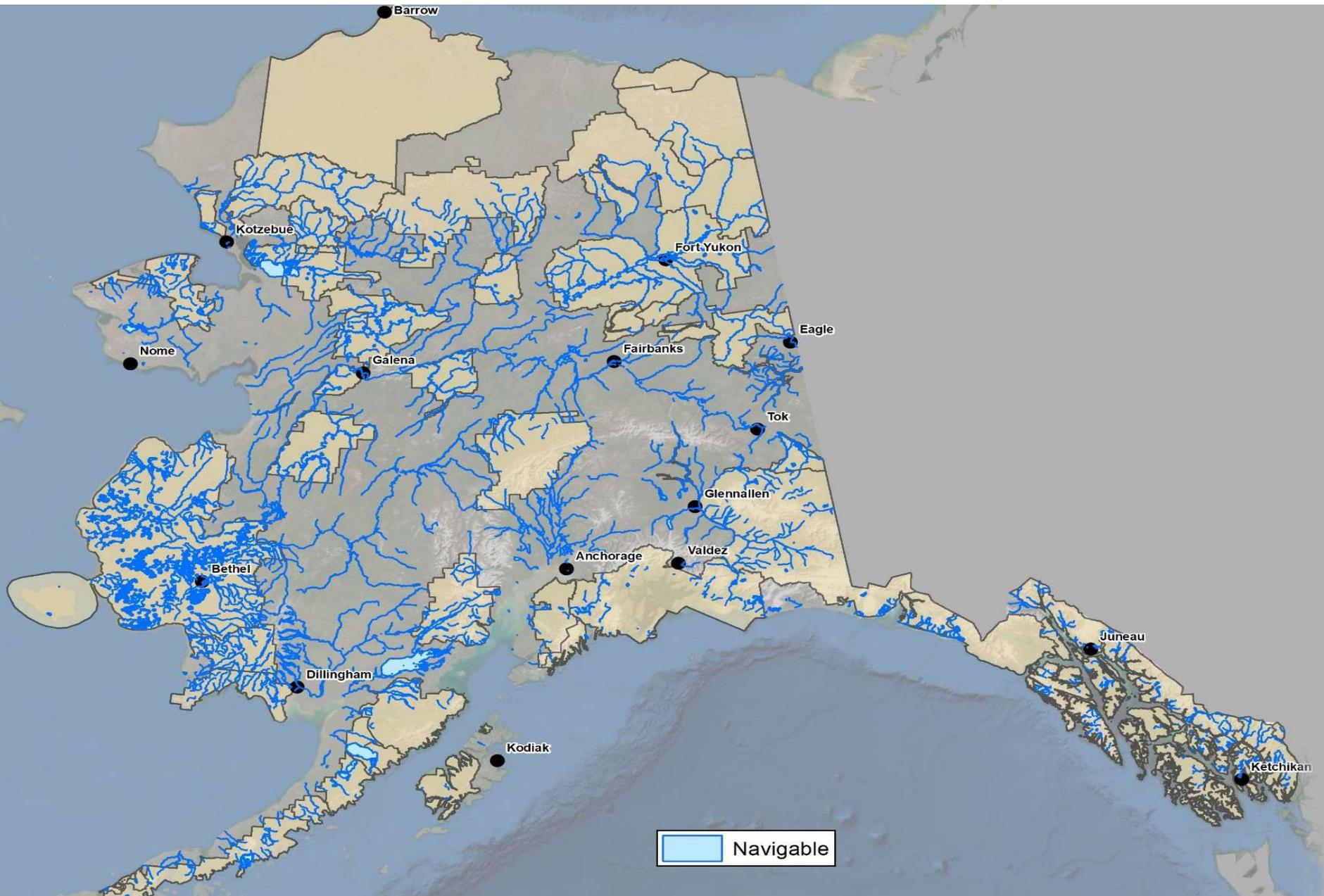


STATE-OWNED NAVIGABLE WATERS FEDERALLY ACKNOWLEDGED TO DATE





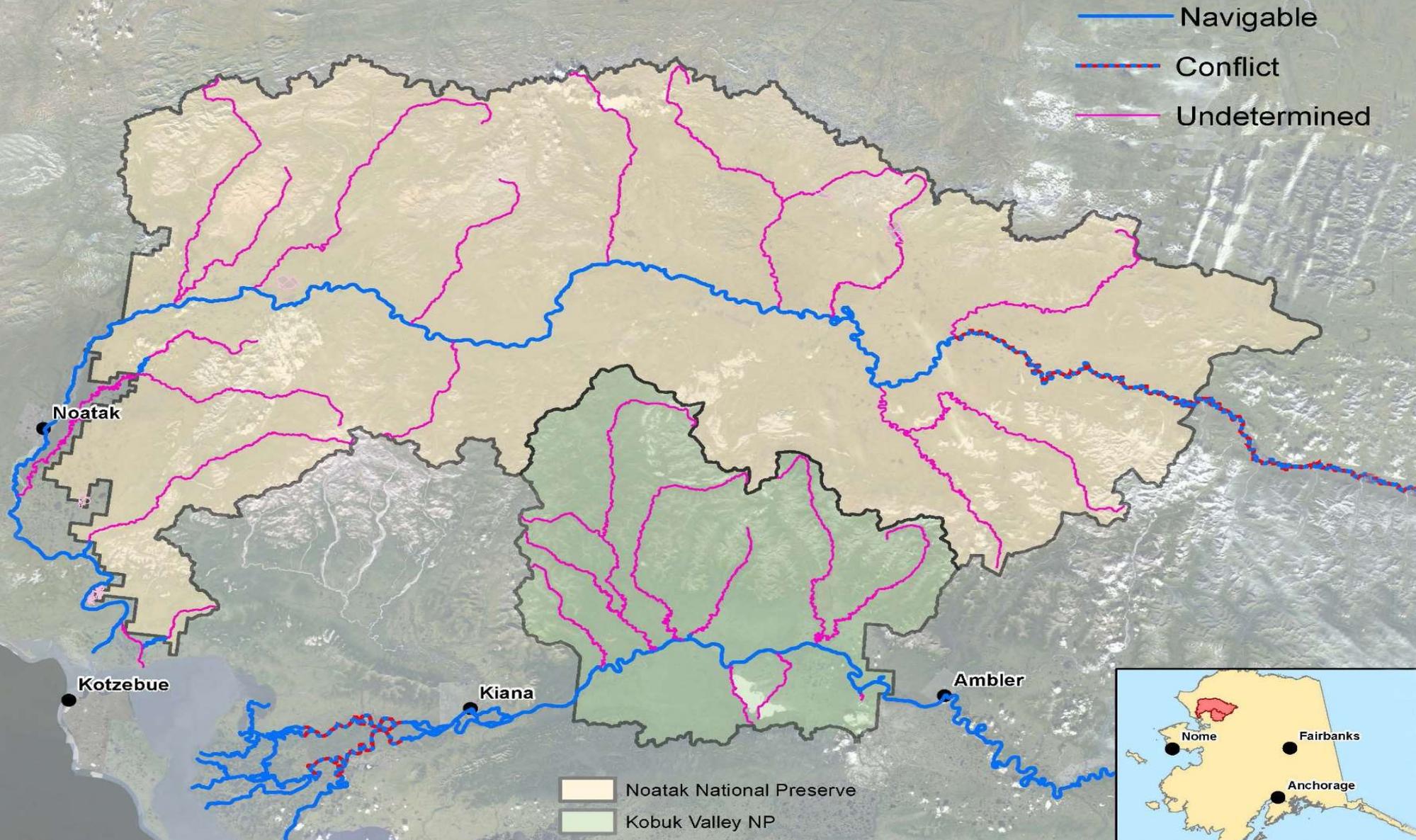
STATE-OWNED NAVIGABLE WATERS AFTER PROPOSED CODIFICATION





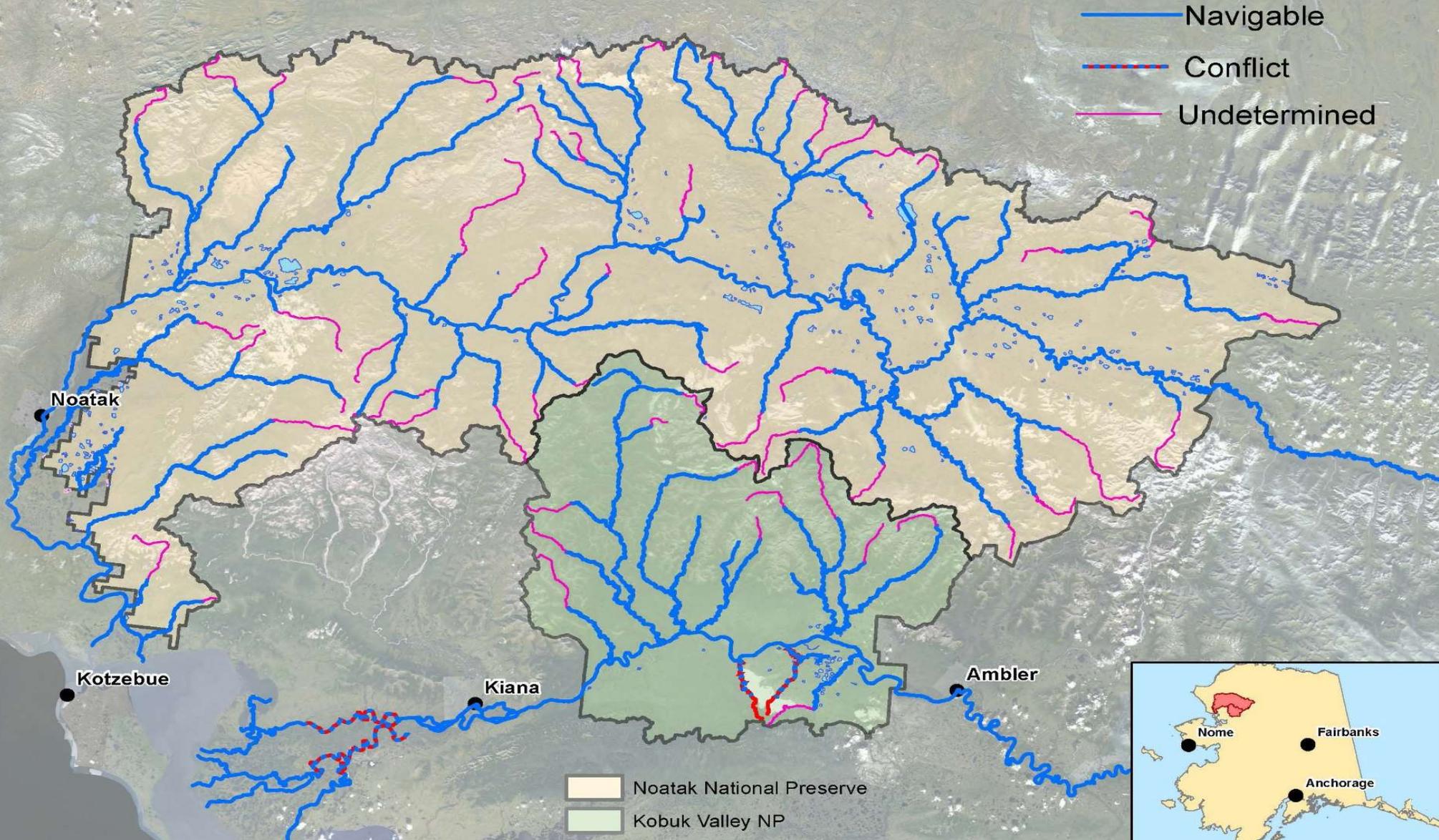
NOATAK NP/KOBUK VALLEY NP

FEDERALLY ACKNOWLEDGED NAVIGABLE WATERS TO DATE





NOATAK NP/KOBUK VALLEY NP NAVIGABLE WATERS AFTER CODIFICATION





PROPOSED LEGISLATION



Alaska's Ownership of Submerged Lands beneath Navigable-in-fact and Tidally Influenced Rivers and Lakes is One of the Fundamental Promises of Statehood.

It's been 62 years. It is time for the Federal Government to keep its promise to the State of Alaska. HB 397 is a BOLD step in that direction.



QUESTIONS?

