

Forest Service Response to Questions Related to HB 397/Navigable Waters/Submerged Lands
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1. Does the Forest Service have a position on the bill as a whole?

No, the Forest Service does not take official positions on legislation. The U.S. Department of Agriculture may choose to take a position on legislation and if it does so, the Forest Service would support that position. The Department has not taken a position on Alaska HB 397.

2. Does the Forest Service have concerns about individuals using these waterways and submerged lands in a way that is permitted by the State but not by the Forest Service?

The Forest Service's management concerns depend on the particular lands at issue. With respect to the Mendenhall Lake and River, the Forest Service takes the topic of motorized use very seriously, as it is the agency's responsibility to manage the area principally for non-motorized recreation use while keeping the area in its natural condition and balancing the need to reduce risks to public health and safety. As always, we prefer to manage these lands through advice and education rather than enforcement, as we know residents and visitors to the Mendenhall love and respect nature and wildlife on this amazing landscape.

3. Is the Forest Service allowing for motorized use of Mendenhall Lake after the announcement Governor Dunleavy made this week?

The Forest Service has not changed how it is managing Mendenhall Lake and River within the boundaries of the Tongass National Forest. The Forest Service currently authorizes special use permits for commercial outfitting and guiding in the Mendenhall Glacier Recreation Area and limits motorized use of Mendenhall Lake to emergency and administrative purposes at this time.

4. Can you summarize the resources the Forest Service uses to enforce and monitor activities on waterways in National Forest in Alaska?

The Forest Service monitors activity within the National Forest System through our full program of work that includes natural resource management and recreation management. (<https://www.fs.usda.gov/managing-land>). Our special use administrators work with permittees to ensure compliance with requirements applicable to their activities. Additionally, and as needed, law enforcement personnel operate as full partners within the Forest Service organization in carrying out the agency's mission, especially in upholding Federal laws and regulations that protect natural resources, agency employees, and the public.

5. Can you please summarize the process the Forest Services currently uses to permit activities on submerged lands and waterways within the Forest Service?

The Forest Service issues special use permits to authorize use of National Forest System lands for a wide variety of activities. Whether particular lands and waterways are, or are

not, within the National Forest System is a fact-specific determination. The Agency issues permits to commercial and noncommercial entities and to individuals for private, non-exclusive use. Typical uses authorized include outfitting and guiding, commercial filming, communication sites, roads or utility lines, large gatherings, and uses under authority of the Alaska National Interest Lands Conservation Act (ANILCA). Additional information can be found at: <https://www.fs.usda.gov/detail/r10/passes-permits/?cid=stelprdb5402837>.

6. Can you please list some of the activities that are permitted by the Forest Service on submerged lands in Alaska?

The U.S. Department of Agriculture recognizes state ownership of the beds of navigable waters generally under the “equal footing doctrine” as confirmed by the Submerged Lands Act of 1953 and applied to the State of Alaska through the Alaska Statehood Act. The Forest Service has a difference of opinion with the State of Alaska about whether certain water bodies, including Mendenhall Lake and River, are navigable and therefore whether their beds are under state ownership. The Forest Service authorizes use of National Forest System lands and may include a reference to certain water bodies as a descriptor of the permit area. For instance, the Forest Service may issue a special use permit for flightseeing tours and describe the number of landings allowed on a particular lake. Other examples of Forest Service permits that may include submerged lands include permits related to mining activities, hydroelectric activities, fish hatcheries and net pens, and a float plane dock.