



May 11, 2022

VIA EMAIL

Representative Tarr
Chair House Fisheries Committee
State Capitol Room 128
Juneau AK, 99801

RE: Testimony for SB 227/ HB 397 – State Ownership of Submerged Lands

Dear Members of the House Fisheries Committee,

Please accept this testimony in opposition to SB 227 – State Ownership of Submerged Lands. SB 227 is the Governor's attempt to memorialize in state statute the recent U.S. Supreme Court decision in the Sturgeon case.¹ Pursuant to the Submerged Lands Act, the state owns title to lands beneath navigable waters.² This title was transferred at statehood. SB 227 attempts to list all of the submerged lands it wants to claim title to beneath navigable waters to assert state control. Many of the waterways run through federal conservation system units.

However, regardless of what the state asserts in statute, the federal government through the Bureau of Land Management (BLM), not the state government, makes the determination of navigability especially on lands adjacent to and within federal conservation system units. There is no dispute about land ownership on state lands.

BLM has a process for the state to establish navigability for submerged lands in question by filing a Recordable Disclaimer of Interest.³ This process was specifically designed to avoid litigation and the litigation expense to both the state and federal government. BLM is actively processing these applications by the state and BLM has the power to waive some requirements when a water body is obviously navigable.⁴ In situations where the state identifies a conflict, the state can also file a quiet title action in court. These are the legal steps the state can take to resolve state ownership issues. **Despite the intent behind SB 227, DNR simply does not have the power under federal law to make the navigability determination and therefore assert state ownership.** Therefore, as a legal matter, SB 227 has no legal effect.

¹ Sturgeon v. Frost, 139 S. Ct. 1666 (March 26, 2019) (holding federal managers could not restrict the use of a hovercraft on the Nation River - a navigable water- even though it was within a federally owned conservation system unit because it was not federal land as defined by the Alaska National Interest Lands Conservation Act (ANILCA) but rather state-owned submerged lands.)

² 43 U.S.C. § 1311.

³ 43 U.S.C. §1745.

⁴ [Recordable Disclaimer of Interest | Bureau of Land Management \(blm.gov\)](https://www.blm.gov/recordable-disclaimer-of-interest)

While navigability questions are pending, the state can also proactively take another approach and enter into cooperative management agreements with federal land managers that meet the interests of both the state and federal government. DNR's assertion during presentations on SB 227 that conflicts are happening all over is unpersuasive. The examples provided by the department did not demonstrate a problem, but rather a complaint by a few individuals that did not want to fly their gear in and out at seasons end. The relevant question really is: Were the individuals able to access by boat and use the federal conservation system units for their guiding operations? The answer is yes. Cooperative management agreements can resolve many of the state's complaints if the Administration truly wanted to resolve any perceived issues.

The question of submerged lands ownership does not need to be contentious. However, if passed, the bill could create a slew of unintended consequences.

- SB 227 creates a potential unnecessary conflict with the federal government that can lead to further state/federal litigation and expense.
- If SB 227 was enacted, it has the potential to set up a conflict between federal land managers and citizens of the state if citizens were to rely on the state's list of state-owned submerged lands in statute to access and use federal public lands in a way that is contrary to federal law.
- SB 227 may also create a situation that emboldens some Alaskans to enter federal protected areas such as National Parks with the idea that they can do what they want. The average person is unlikely to understand that multiple jurisdictions apply which could put them directly in conflict with federal law enforcement.

Finally, I remain very concerned that the bill lacks a fiscal note. DNR testified that it intends to issue permits for use of submerged lands within federal conservation system units. If the state intends to issue permits to use what it believes are state owned submerged lands, then it would follow that the state should also have the ability to enforce the permits especially since the permits would be for activities in sensitive habitat and protected areas. During testimony, DNR responded that it did not intend to enforce the permits. For Alaskans who care about our fish and wildlife resources, this should raise a big red flag.

Thank you for the opportunity to provide testimony.

Sincerely,

Emily Anderson
Alaska Director
Wild Salmon Center