

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES**

March 22, 2022

12:01 p.m.

MEMBERS PRESENT

Representative Geran Tarr, Chair
Representative Jonathan Kreiss-Tomkins
Representative Andi Story
Representative Dan Ortiz
Representative Sarah Vance
Representative Kevin McCabe

MEMBERS ABSENT

Representative Louise Stutes, Vice Chair

OTHER LEGISLATORS PRESENT

Representative Mike Cronk

COMMITTEE CALENDAR

PRESENTATION: SKIPPER SCIENCE PROGRAM

- HEARD

HOUSE BILL NO. 397

"An Act relating to state ownership of submerged land within and adjacent to federal areas; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 397

SHORT TITLE: STATE OWNERSHIP OF SUBMERGED LAND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/14/22	(H)	READ THE FIRST TIME - REFERRALS
03/14/22	(H)	FSH, RES
03/22/22	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

LINDSEY BLOOM, Campaign Strategist

Salmon State
Juneau, Alaska

POSITION STATEMENT: Co-presented the Presentation: Skipper Science Program.

CHRISTOPHER TRAN, Natural Resource Specialist
Aleut Community of St. Paul Tribal Government
Anchorage, Alaska

POSITION STATEMENT: Co-presented the Presentation: Skipper Science Program.

BRENT GOODRUM, Deputy Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: On behalf of the House Rules Standing Committee, sponsor, by request of the governor, introduced HB 397.

JIM WALKER, Section Chief
Public Access Assertion and Defense
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Presented during the hearing on HB 397.

JESSIE ALLOWAY, Section Supervisor
Solicitor General Statewide
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 397.

ACTION NARRATIVE

[12:01:07 PM](#)

CHAIR GERAN TARR called the House Special Committee on Fisheries meeting to order at 12:01 p.m. Representatives Story, Ortiz, McCabe, and Tarr were present at the call to order. Representative Vance arrived as the meeting was in progress.

PRESENTATION: Skipper Science Program

[12:01:59 PM](#)

CHAIR TARR announced that the first order of business would be Presentation: Skipper Science Program

PRESENTERS

LINDSEY BLOOM
CHRISTOPHER TRAN

NOTE: The presentation was recorded and log notes were taken. The recording is available at the legislature's web site akleg.gov or by contacting the House Records Office at State Capitol, Room 3, Juneau, Alaska 99801 (mailing address), (907)465-2214, and after adjournment of the second session of the Thirty-Second Alaska State Legislature this information may be obtained by contacting the Legislative Reference Library at (907) 465-3808.

[12:16:08 PM](#)

ADJOURNMENT

The House Special Committee on Fisheries recessed to a call of the chair at 12:16 p.m.

[1:37:33 PM](#)

CHAIR GERAN TARR called the House Special Committee on Fisheries meeting back to order at 1:37 p.m. Representatives Story, McCabe, and Tarr were present at the call back to order. Representatives Vance and Kreiss-Tomkins (via teleconference) arrived as the meeting was in progress.

HB 397-STATE OWNERSHIP OF SUBMERGED LAND

[Contains discussion of SB 227.]

[1:38:04 PM](#)

CHAIR TARR announced that the final order of business would be HOUSE BILL NO. 397, "An Act relating to state ownership of submerged land within and adjacent to federal areas; and providing for an effective date."

[1:39:01 PM](#)

BRENT GOODRUM, Deputy Commissioner, Department of Natural Resources, On behalf of the House Rules Standing Committee, sponsor, by request of the governor, introduced HB 397. He stated that the bill pertains to the codification of state

submerged lands in federal areas. He stated that Alaska, as of statehood in 1959, had been granted ownership of land in its navigable rivers and lakes but that clear title had not been granted. He suggested that the status-quo of uncertainty and ambiguity of ownership, management, and control of navigable water bodies was not in the state's best interest. He stated that there exists a need for a different approach to land management.

[1:42:05 PM](#)

JIM WALKER, Section Chief, Public Access Assertion and Defense, Department of Natural Resources, presented during the hearing on HB 397. He drew attention to the presentation entitled, "HB 397 Research - Submerged Lands Presentation 3.22.22.pdf," [included in the committee packet] and read from slide 2, as follows [original punctuation provided]:

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 [and expressly] 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.

MR. WALKER noted that the state had been granted ownership via the Equal Footing Doctrine and the Alaska Statehood Act at the time of statehood, and via the Submerged Lands Act of 1953. He added that, if a [parcel of land] was designated as a federal Conservation Systems Unit (CSU) after statehood, then the state owns the lands beneath all navigable waterways.

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CHAIR TARR asked for additional information on the Equal Footing Doctrine, the Alaska Statehood Act, and the Submerged Lands Act of 1953.

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MR. WALKER explained that the Equal Footing Doctrine exists in the U.S. Constitution and provides that every state that enters the union after the initial colonies would enter the union on the same footing and has the same "deal" with the federal government regarding ownership of land beneath every navigable-in-fact and tidally influenced water in the state. He stated that the doctrine was important to prevent the state from becoming a ward of the federal government. He asserted that the content of HB 397 was equivalent to what had been provided to the other 49 states. He explained that the Federal Submerged Lands Act and the Alaska Statehood Act further build on the doctrine.

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JESSIE ALLOWAY, Section Supervisor, Solicitor General Statewide, Department of Law, answered questions during the hearing on HB 397. She noted that the Submerged Lands Act expands the Equal Footing Doctrine to include lands three miles from the coastline. She noted that the doctrine and the Submerged Lands Act, in conjunction with the Alaska Statehood Act, would include lands beneath all navigable water and tidelands.

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MR. WALKER drew attention to slide 3 which depicted a list of areas that had become federal CSUs post-statehood. He stated that the bill only considers federal areas created post-statehood and identifies state-owned lands for which the legislature may wish to eliminate all doubt regarding ownership. He stated that, since the date of statehood, only 9 percent of 800,000 river miles of submerged lands under state-owned rivers and only 16 percent of 30,000,000 acres of submerged lands under state-owned lakes have been acknowledged by the federal government as state-owned.

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REPRESENTATIVE MCCABE asked for an explanation of federal acknowledgment and whether that would mean issuance of a title or based on the outcome of a court case.

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MR. WALKER answered that both examples offered by Representative McCabe were means by which ownership of lands is conferred. He added that the federal government could issue a navigability

determination via the Bureau of Land Management (BLM). He added that acknowledgment could be obtained through the Recordable Disclaimer of Interest (RDI) process, which was created as an instrument of the Federal Land Policy and Management Act of 1976, for cases in which the state and federal government agree on the status of navigability and the federal government issues a disclaimer that it has no interest in the land. He explained that the RDI process was developed as a quick and easy way to address such issues, but that the experience of the RDI process was neither quick nor easy. He added that many instances had required over a decade and occurred at a high cost, and he provided the example of the RDI claim related to Becharof Lake, the second largest lake within the state of Alaska. He explained that Becharof Lake is, at its deepest point, 450 feet deep and has an average depth of 100 feet, and it covers hundreds of surface miles. He suggested that it was obvious that the lake is navigable, and the state had filed an RDI application. He stated that the initial filing period took over two years and cost \$10,000 for the federal government to determine that "you can float a boat in it."

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MR. WALKER further added that there exists "quiet title litigation" under the federal Quiet Title Act by which the state sues to seek a court ruling of state ownership. He explained that the state had success with cases involving the Knik River, the Stikine River, and the Mosquito Fork River. He stated that the Mosquito Fork judicial ruling had opined that the federal government had acted in bad faith and the State of Alaska had been awarded attorney fees and costs. He stated that litigation takes a long time. He stated that HB 397 would provide a means by which the state may assert ownership by identifying the navigable waters [as listed in the bill.]

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REPRESENTATIVE VANCE asked whether the amount of \$10,00 would apply to each lake or stream. She noted that there were listed over 1,800 such waterways, and more expected in the future.

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MR. WALKER answered yes. He stated that Becharof Lake had been selected as an obviously navigable waterway and the example had proven the time and cost required for the federal process. He stated that [smaller waterways] would require more than 2 years

for the BLM to conduct navigability studies and would involve additional administrative costs. He offered the example of the Stikine River RDI request, and he explained that the RDI process had stalled, and the state was forced to pursue quiet title litigation, which took more than a decade to obtain an affirmative court declaration that the Stikine River is navigable. He stated that HB 397 was conceived to expedite that process, and that the waterways identified in HB 397 had undergone the same meticulous assessment within the federal areas in the proposed bill, and that the state had listed the lands of which it was certain it would prevail ownership in court. He stated that federal land managers hold the position that, should a designation of navigability not exist, the default position is that it is not navigable. He stated that HB 397 would be a bold proclamation of ownership of presumptively navigable waters.

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REPRESENTATIVE VANCE asked how a state law would aid the State of Alaska in federal court.

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MR. WALKER stated that HB 397 would pursue active management of the lands listed in the bill and suggested that Ms. Alloway offer comments to the question regarding federal courts. He added that, should the federal government take issue with the state's management of those lands, it would be permitted to sue the State of Alaska as landowner.

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CHAIR TARR noted that there had been complexities in land selection processes between the State of Alaska and Native corporations predating statehood. She asked if the delays that Mr. Walker had described were comparatively similar.

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MR. WALKER offered that the land selection process was separate from that which is outlined in the proposed bill, and that the lands in the bill were within federal jurisdiction. He added that the title of submerged lands passed and were vested to the state via the Equal Footing Doctrine and separate from the land selection process described by Chair Tarr. He allowed that the answer to the question regarding the length of time involved was

one that the state had been pursuing for many years via litigation and other processes. He suggested that there exist additional time impacts when the federal counterparts are "dragging their feet." He stated that when the federal government does not consult the State of Alaska as an adjoining landowner or as one which owns lands within federal jurisdiction, that federal land managers may follow the process that occurs in other states. He stated that Alaska was different from other states by the existence of inholdings within federal areas and large tracts of state submerged lands. He stated his belief that federal land managers would prefer status-quo rather than engaging with the state as a separate sovereign.

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CHAIR TARR asked how recently the matters involving the Knik River, Stikine River, and Mosquito Fork River had resolved.

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MR. WALKER stated that there exist numerous pending cases and offered the North Fork and Middle Fork of the Fortymile River, the Middle Fork of the Koyukuk, the Bettles River, and the Dietrich River are all currently involved in litigation. He noted that 180-day notice, which is required prior to quiet title litigation, had been given for the Mulchatna River, the Chilikadrotna River, Twin Lakes, and Turquoise Lake, among others. He offered that recent cases had included the Mosquito Fork River, the Knik River, and the Stikine River, among others. He added that no substantive progress was being made on any of the pending RDI applications in more than two years. He offered that the RDI process involving the [inaudible] river had taken five years during which the federal government had been preparing a notice for the federal register. He stated that HB 397 would not solve all the problems associated with land ownership but would amount to "a solid base hit."

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MR. WALKER stated that the impetus for the drafting of HB 397 had been the outcome of Sturgeon v. Frost, which had been ruled in unanimous favor of Mr. Sturgeon's assertion that his use of the state-owned Nations River would not be subjugated to federal management.

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MR. WALKER drew attention to slide 6 of the presentation, which depicted a larger DNR strategy to address the existing problems associated with state land ownership. He noted that the state has taken an active management role in lands that were conferred to the State of Alaska at statehood. Mr. Walker allowed that the bill was lengthy and attributed its length to the list of waterways. He stated that the remainder of the bill would codify state ownership, management, and control of those lands. He stated that susceptibility to navigability contained in the bill had been derived from case law.

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MR. WALKER referred to slide 8, which addresses the task of the evaluation of all post-statehood federal areas and noted that HB 397 would provide for phases of implementation, the first of which had been completed. He noted that, should HB 397 pass, there would exist a reporting requirement that would commence with the results of the evaluation set forth in the Second Phase to identify [objectively] navigable waterways in U.S. Fish & Wildlife Services (USFWS) refuges and the Chugach National Forest that would result in future proposed legislation to amend the statute to add those navigable and tidal influence waters. He explained that the third phase would conclude the work with the USFWS involved lands and would incorporate the lands under BLM management. He noted that the fourth phase would be the ongoing process of clarification, modification, and amendment of all the areas, such as in a case in which a pending litigation produces an outcome and would require an update to the statute.

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MR. WALKER summarized the selected sectional analysis on slides 9 - 11, which read as follows [original punctuation provided]:

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.

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.

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.

MR. WALKER next drew attention to slide 12 which depicts areas highlighted in blue, which are rivers and lakes determined to be navigable, and areas highlighted in red, which are rivers and lakes which have not been determined to be navigable. He noted that slide 13 depicts the same waterways, should HB 397 pass. He noted that the large geographical area depicted on maps of the entire state did not provide sufficient detail to adequately demonstrate the significance of the waterways concerned.

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MR. WALKER drew attention to slide 13, on which a map depicts the Noatak National Preserve and the Kobuk Valley National Park. He explained that the waterways shaded in blue were determined to be navigable, the areas shaded in purple were areas in which there was a conflict in determination of navigability, and the areas shaded in pink were areas in which navigability was undetermined. He drew attention to slide 14, which depicted the changes in status of navigability, should HB 397 pass.

MR. WALKER noted that the public relies on the maps before the committee and that the projected changes to the maps had been made conservatively and, in the public's best interest. He stated that HB 397 would force the federal government to honor its promise made at statehood that Alaska owns submerged lands under navigable waters statewide.

CHAIR TARR invited Ms. Alloway to offer additional comments.

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MS. ALLOWAY referred to an earlier question regarding potential impacts on federal litigation and stated that the state may only bring quiet title litigation should there exists a controversy. She noted that the federal government often takes no position regarding ownership and, as a result, the state may not file suit. She stated that, should HB 397 pass, the state would be asserting its rights of ownership and the burden would shift to the federal government to sue for ownership following a navigability determination.

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REPRESENTATIVE VANCE stated her support of matters being codified into law rather than being determined by a court, and asked what the role the commissioner would be in determining navigability [of certain waterways] under section 4 of the bill.

MR. WALKER answered that the Public Access Assertion and Defense section has a knowledgeable staff that consider all sources to assess whether a particular waterway is navigable and whether the state would prevail in court. He stated that the staff would consider historical use, and noted that historical records may be lacking, so the staff would also consider aerial imagery captured at the time of statehood and accounts of personal use, among other factors. He stated that navigability could be determined by either historical use or susceptibility for use for navigation. He allowed that proving susceptibility for use for navigation may seem to be a difficult task but offered that, court cases have determined that, if a waterway is in its natural and ordinary condition and not modified by man since statehood and can be boated in currently, then the waterway was navigable at statehood. He referred to an earlier question posed by Chair Tarr to learn of additional rivers that had been the subject of litigation and contested proceedings, and named Dennison Fork River, Fortymile River, Delta River, Kisaralik River, and the Kuskokwim River. He noted that the Kuskokwim River's recent determination [as navigable] had been made by the Interior Board of Land Appeals, which is the administrative appellate body within the U. S. Department of the Interior.

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REPRESENTATIVE VANCE asked what would happen if litigation occurred concerning a river that had not been determined navigable by the commissioner.

MR. WALKER answered that, should the state be sued, it would prepare proof to establish navigability. He stated that the evidence would include historical evidence, current evidence such as boat travel at different water levels and ArcGIS data obtained by unmanned aircraft. He added that the state would be well-equipped to address litigation. He offered the example of Lake Clark, which had been involved in public complaints of federal interference with the use and enjoyment of the lake. He stated that individuals had been denied permits for certain activities and that some commercial guides had applied for permits via the Southcentral Regional office of DNR, which had prompted research that revealed that no navigability determination had been made. He stated that the Public Access Assertion and Defense had been delegated authority from the commissioner to make such determination and, for Lake Clark, the determination of navigability was issued.

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MR. WALKER explained that the DNR Southcentral Region office established the types of permits that should be required via a public process that included notification of the upland property owner. He noted that the federal government advised that the state "should not" take the action. He characterized the response as appropriate between sovereigns, and that HB 397 would promote such a relationship.

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REPRESENTATIVE STORY noted incidents concerning the Lake Clark area asked for further examples of federal interference.

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MR. WALKER answered that DNR had received numerous complaints regarding Crescent Lake including federal law enforcement conducting time consuming watercraft safety inspections. He shared that commercial operators had complained that federal requirements could pose costly safety risks. He offered an example in which another complainant had alleged harassment regarding mooring buoys.

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REPRESENTATIVE STORY asked whether there existed any state law enforcement regarding permitted activities and how would it be conducted, should HB 397 pass.

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MR. WALKER opined that there could exist a new need for additional law enforcement and that the management of the issuance of permits was in place. He stated that the matter of jurisdiction would provide for more transparent management structure to the public.

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CHAIR TARR referred to section 6 and asked whether the definition of submerged lands would be consistent with the federal definition.

MR. WALKER answered that it would be consistent and much of it had been derived from federal case law.

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CHAIR TARR asked whether management of adjacent lands would change, and what other permits may be required, should HB 397 pass.

MR. WALKER answered that he would defer to regional land management offices for a complete answer and offered to follow up with the committee. He noted that permit types would include moorage permits, boat storage permits, dock permits, and infrastructure permits.

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REPRESENTATIVE STORY asked what impact the passage of HB 397 would have on cases that were pending in court.

MR. WALKER answered that active litigation would be allowed to conclude in the court and would not be affected by the passage of HB 397. He noted that, should the state prevail in pending litigation, it would have a positive impact to further a more cooperative relationship with the federal government and would support future amendments as provided in the bill [to include additional waterways.]

2:42:51 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 2:42 p.m.