

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 19, 2022

10:03 a.m.

MEMBERS PRESENT

Representative Geran Tarr, Chair
Representative Jonathan Kreiss-Tomkins
Representative Andi Story
Representative Dan Ortiz

MEMBERS ABSENT

Representative Louise Stutes, Vice Chair
Representative Sarah Vance
Representative Kevin McCabe

COMMITTEE CALENDAR

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

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|----------|-----|---------------------------------|
| 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 |
| 03/22/22 | (H) | Heard & Held |
| 03/22/22 | (H) | MINUTE (FSH) |
| 04/05/22 | (H) | FSH AT 10:00 AM GRUENBERG 120 |
| 04/05/22 | (H) | -- MEETING CANCELED -- |
| 04/14/22 | (H) | FSH AT 10:00 AM GRUENBERG 120 |
| 04/14/22 | (H) | -- MEETING CANCELED -- |
| 04/19/22 | (H) | FSH AT 10:00 AM GRUENBERG 120 |

WITNESS REGISTER

CHRISTY COLLES, Division Operations Manager
Division of Mining Land and Water
Department of Natural Resources
Anchorage, Alaska

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

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

POSITION STATEMENT: Presented during the hearing on HB 397.

JOHN STURGEON, Plaintiff in Supreme Court Case vs. National
Parks Service
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 397.

MIKE SEWRIGHT, Assistant Attorney General (Retired)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 397.

ACTION NARRATIVE

[10:03:17 AM](#)

CHAIR GERAN TARR called the House Special Committee on Fisheries meeting to order at 10:03 a.m. Representatives Kreiss-Tomkins, Story, Ortiz, and Tarr were present at the call to order.

HB 397-STATE OWNERSHIP OF SUBMERGED LAND

[10:04:32 AM](#)

CHAIR TARR announced that the only 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."

CHAIR TARR noted that the Department of Natural Resources (DNR) had provided follow up information to the committee pertaining its questions about HB 397.

[10:05:51 AM](#)

CHRISTY COLLES, Division Operations Manager, Division of Mining Land and Water, Department of Natural Resources, explained that the use of state-owned lands that exceed the generally allowed uses as defined in 11 AAC 96.020 are subject to authorization pursuant to constitutional, statutory, and regulatory mandates. She noted that the state coordinates permitting authorization with the federal government for state uplands, tidelands, and submerged lands for which state ownership is certain. She stated that the Division of Mining, Land, and Water (DMLW) does not receive applications for navigable waterways in federal conservation system units (CSUs). She noted that, should HB 397 pass, the division would receive more applications for permits, easements, and leases from the federal government and other entities. She noted that fees are waived for federal agency applicants in accordance with established regulations.

CO-CHAIR TARR drew attention to a letter [included in the committee packet,] entitled " HB 397 Research - Submerged Lands Response from DNR 3.31.22.pdf," and asked what existing processes would change pertaining to the permittable items listed in the letter, should HB 397 pass.

MS. COLLES answered that the authorizations listed already have an existing process for permitting or leasing and that the anticipated change would be that the federal government would be required to seek authorization for such items on state-owned navigable waters. She explained that non-government entities would apply for permitting via the state, rather than via the federal government.

[10:10:06 AM](#)

CO-CHAIR TARR expressed that there may exist concern with the nature of proposed submerged land use as being conducted in a conservation designated unit, and, specifically, concerns regarding material extraction activities. She asked whether it could be expected that the use of the submerged lands would likely significantly change.

MS. COLLES answered that, should the permitting of extraction activities be sought, the state would coordinate with the federal upland agencies in a manner similar to what occurs in current practice, including opportunities for public input during the permitting process. She noted that material extraction requires site designation and is subject to a full agency and public process in accordance with 38.05.945.

[10:12:31 AM](#)

JIM WALKER, Section Chief, Public Access Assertion and Defense, Division of Mining Land and Water, Department of Natural Resources, referred to the letter that had been provided to the committee in response to questions brought by the committee. He offered to provide a general overview of the types of activities and processes in which the division is involved. He stated that individual permitting applications would involve different processes depending on the type of permit being sought. He added that the passage of HB 397 would not amount to a "green light" to any type of activity and that permitting processes and relevant public engagement would still be required.

REPRESENTATIVE ORTIZ asked state's role in permitting the activities listed in the letter should HB 397 pass, and whether there existed problems in obtaining permits for such activities by the federal government and asked whether HB 397 was a proposed solution to such problems.

MR. WALKER stated that the division receives numerous complaints from individuals attempting to obtain permits for permissible activities on state submerged lands when those activities are within federal CSUs. He stated that the nature of the complaints received had suggested federal overreach. He added that there exists a "complete lack" of federal requests for permitting for activities and infrastructure on state lands. He stated that HB 397 was proposed to address individual complaints and the alleged lack of federal cooperation in the state permitting process by providing clarity on where state and federal jurisdictions begin and end.

[10:17:13 AM](#)

CO-CHAIR TARR asked for a specific example of a complaint received by the division.

MR. WALKER offered that there had been a situation that had occurred in Crescent Lake, in Lake Clark National Park and Preserve. He stated that surrounding areas had never been explicitly withdrawn at the time of statehood from state title and were, therefore, state-owned lands. He stated that the federal government had denied permits to commercial guides and others to place mooring buoys and guides had been prevented from storing boats along the high-water mark during the winter months. He added that guides had been required to fly boats in and out surrounding the fishing season, which was neither

practical nor, in some instances, safe. He stated that a request to permit the storage of boats via the state, rather than via the federal government, would result in safer operations. He stated that not all requested permits are granted. He stated that the division had issued permits to individuals requesting them [in accordance with the permitting process] for entities who had not been granted permits by the federal government.

CO-CHAIR TARR asked for an additional example or whether the example provided was representative of the general nature of the complaints.

MR. WALKER offered another example that had occurred in Geographic Bay near Katmai National Park & Preserve and which is state-owned land. The complaint had alleged that a commercial fishing vessel had attempted to legally place fishing nets and had been cautioned that, should the nets be placed, the fisher would be issued a federal citation. He stated that the fisher had foregone the fishing opportunity due to the threat of federal citation and he suggested that the threat was tantamount to federal interference with one's livelihood. He offered another example that had occurred in various locations in which local guides had conducted activities on state submerged land in which federal law enforcement had advised guides that they were not permitted to engage in such activities, despite the operators having been granted state permits for such activities in accordance with state law.

[10:23:17 AM](#)

REPRESENTATIVE STORY asked what the rationale or any known concerns would have been for the federal government to deny applications for boat storage.

MR. WALKER allowed that he did not have specific knowledge of the rationale for the denial of such permits and postulated that that wilderness value, aesthetics, and soundscapes likely comprised the rationale and had been cited as reasons for denial of other permits.

REPRESENTATIVE STORY speculated that concern regarding pollutants onboard stored vessels could be a matter of concern. She stated her understanding that HB 397 was accompanied by a zero fiscal note and asked whether a predicted increase in permit requests to the division would require additional staff.

MR. WALKER stated that HB 397 would memorialize rights that had been in existence since statehood according to the Equal Footing Doctrine, the Federal Submerged Lands Act, and the Alaska Statehood Act which rule the submerged lands under every navigable waterway within its borders unless the submerged were withdrawn with a valid, pre-statehood withdrawal that explicitly and expressly includes the submerged land. He stated that HB 397 would not add any [lands] and would confirm and announce state ownership, management, and control of these areas. He stated that there would be an increase expected in permitting applications but cautioned that it would be speculative to attempt to predict by how much. He suggested that, should HB 397 pass, the division would provide information to the legislature regarding the number of requests and other future needs that could result. He referred to the earlier example given regarding [complaints about] Geographic Bay and suggested that there exist differences in perception based on federal employees' experience in the Lower 48 that may have contributed to the decisions to deny permits. He stated that federal employees are often not aware of the Alaska National Interest Lands Conservation Act (ANILCA), and the U. S. Supreme Court ruling in Sturgeon v. Frost, and that the rules governing Alaska are unique. He stated that attempted law enforcement activities may be valid in other areas in the Lower 48 but they may not be applicable to Alaska. He stated that the passage of HB 397 would be tantamount to a bold statement asserting the state's ownership, management, and control of submerged lands.

[10:29:09 AM](#)

REPRESENTATIVE STORY asked for an estimate of the number of complaints received by the division and asked whether a resolution process exists and how difficult it was.

MR. WALKER answered that the division does not maintain statistics related to such complaints. He offered that resolution of complaints require escalation to high-level state and federal government officials and usually contain some threat of litigation as an incentive towards federal cooperation. He restated that the passage of HB 397 would clarify precisely the boundaries of state-owned lands.

REPRESENTATIVE ORTIZ referred to the letter from DNR dated March 30, 2022 and noted the list of additional permitting that would be performed by DNR should HB 397 pass, and asked whether there would exist a need for additional staff and resources including those which may be required in cases that involve litigation.

MR. WALKER stated his belief that no additional cost would occur, should HB 397 pass. He explained that the state is currently involved in multiple litigations that he characterized as being a result of federal intransigence. He suggested that the passage of HB 397 would establish clear jurisdiction over the items listed in the letter and would provide clarity to which lands are state-owned. He suggested that the burden of litigation would be reduced, and the federal government would no longer be allowed to withhold or refuse permits and would instead be obligated to challenge a permit rather than obstruct the granting of permissible activities. He noted that the passage of HB 397 would not add to the existing workload since it would not increase any land holdings of the state. He offered an example in which [federal] upland owners had been given an opportunity to comment on proposed permits such as one for a dock, and the landowners had publicly opposed the granting of the permit and, since the submerged land was state-owned, the upland [federal] owners could not [unilaterally] deny the permit. He reminded the committee of the instance in Geographic Bay in which the federal government had denied a fisher his rights to fishing and thereby his rights to earn a living via the threat of a federal citation for activities permitted under state law.

[10:38:28 AM](#)

JOHN STURGEON, Plaintiff in Supreme Court Case vs. National Parks Service, stated that he had been a party in a 2019 U. S. Supreme Court Case involving the State of Alaska's navigable waters. He offered background information regarding navigable waters and noted that, in many places throughout rural Alaska, navigable waterways function as transportation routes for approximately 80 percent of Alaska's population. He characterized the Yukon, Kuskokwim, Stikine, and Susitna Rivers as transportation superhighways since the arrival of the first indigenous settlers. He stated that the founding fathers had designated navigable waters as being owned by the states. He added that, at the time of statehood, under the Fairness Doctrine, Alaska had been granted the title to all navigable waters in the state. He explained that, in 2007, he had been hunting moose on a tributary to the Yukon River, near Eagle, Alaska, within the Yukon-Charley Rivers National Preserve. He stated that he had been operating a 10-foot hovercraft and had been approached by law enforcement officers from the National Park Service and informed that hovercrafts were not permissible in national park lands. He informed the officers that he was

operating on state-owned waters and questioned the officers' jurisdiction, and the officers asserted that the federal government owned the upland lands and, as a result, had management jurisdiction rights over the waterway. He stated that, although he had not received a citation during the encounter, a 13-year federal court case had ensued with a cost of \$1.6 million, funded by donations. He stated that the case he was involved in was one of 8,000 related cases submitted in 2019 and was one of only 41 of the cases that were accepted [by the courts.] He stated that the unanimous ruling in his favor ruled that all navigable waters and submerged lands in the State of Alaska were state-owned and of vital importance to Alaska's citizens and economy. He stated that, since the unanimous U. S. Supreme Court ruling, no changes to navigable waters had been granted to the state. He added that only 9 percent of navigable waters in Alaska had been transferred from the federal government to the state in the 63 years since statehood. He offered his opinion that the federal government was intentionally withholding management rights of navigable waters from the State of Alaska. He stated that the federal government manages lands for maximum biodiversity and the state manages lands for maximum sustained yield and that the state has management tools in place. He urged the passage of HB 397.

[10:44:37 AM](#)

MIKE SEWRIGHT, Assistant Attorney General (Retired), testified in support of HB 397. He offered details on his background as a lifelong Alaskan. He stated that he had been a lead attorney at the Department of Law in cases dealing with navigable waters in Alaska and had been lead counsel in cases that addressed navigable waters standards. He emphasized the concept of certain rivers in Alaska being [equivalent to] superhighways in Alaska. He stated that the federal government generally did not challenge the question of navigability of the main rivers in Alaska but that it questioned the navigability status of smaller rivers. He noted that there exist a large number of navigable waters, as listed in the bill. He stated that the U. S. Supreme Court had endorsed waterways in Alaska as navigable should they be used for or be susceptible to use for commercial travel including travel by small watercraft. He offered the headwaters of the Nation River as an example. He stated his understanding that the importance of HB 397 would be to state the State of Alaska's position of ownership of the waterways.

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MR. SEWRIGHT stated that the passage HB 397 would be a legislative statement that the state owns the waterways, and he characterized it as an important bill. He suggested that HB 397 was not a partisan bill and had been carefully drafted, and he encouraged the passage of HB 397.

[10:50:55 AM](#)

CHAIR TARR announced that HB 397 was held over.

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[10:51:32 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 10:51 a.m.