

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

March 23, 2023

10:00 a.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative Louise Stutes
Representative Rebecca Himschoot

MEMBERS ABSENT

Representative Kevin McCabe
Representative CJ McCormick

COMMITTEE CALENDAR

HOUSE BILL NO. 95

"An Act relating to designation of state water as outstanding national resource water; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 95

SHORT TITLE: NATL. RES. WATER NOMINATION/DESIGNATION

SPONSOR(S): REPRESENTATIVE(S) RAUSCHER

03/06/23	(H)	READ THE FIRST TIME - REFERRALS
03/06/23	(H)	FSH, RES
03/23/23	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE GEORGE RAUSCHER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the prime sponsor, presented HB 95.

RYAN MCKEE, Staff
Representative George Rauscher
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided further explanation of HB 95, on behalf of Representative Rauscher, prime sponsor.

RANDY BATES, Director
Division of Water
Department of Environmental Conservation
Juneau, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 95 and answered questions.

LEILA KIMBRELL, Executive Director
Resource Development Council
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 95.

ACTION NARRATIVE

[10:00:47 AM](#)

CHAIR SARAH VANCE called the House Special Committee on Fisheries meeting to order at 10:00 a.m. Representatives Himschoot, C. Johnson, and Vance were present at the call to order. Representatives Stutes and Carpenter arrived as the meeting was in progress.

HB 95-NATL. RES. WATER NOMINATION/DESIGNATION

[10:01:05 AM](#)

CHAIR VANCE announced that the only order of business would be HOUSE BILL NO. 95, "An Act relating to designation of state water as outstanding national resource water; and providing for an effective date."

[10:01:17 AM](#)

The committee took an at-ease from 10:01 a.m. to 10:04 a.m.

[10:04:21 AM](#)

REPRESENTATIVE GEORGE RAUSCHER, Alaska State Legislature, as prime sponsor, introduced HB 95 via a PowerPoint presentation [hard copy included in the committee packet]. He stated that HB 95 is a reiteration of past legislation, and its purpose is to give the legislature the authority to designate bodies of water as Tier III, under the federal Clean Water Act standards. He

explained the history of the Clean Water Act, and he said that it mandates states to have a water-quality based control program known as Water Quality Standards, which must include water quality criteria and an antidegradation policy, ranked in a tier structure. On slide 4, he pointed out the tier system. He explained that Tier I and Tier II waters still accept pollution discharges, while Tier III waters do not accept pollution, as they are deemed "the best of the best." This highest level of protection is meant to protect a state's most outstanding waterbodies from pollutants. He pointed out the federal regulation which outlines high quality water.

[10:08:42 AM](#)

REPRESENTATIVE RAUSCHER continued to the next slide, which described the state's Department of Environmental Conservation (DEC) policy in designating bodies of water as Tier III. He moved to slide 7 which showed a map of the state's potential Tier III waters. He stated that HB 95 would quicken the process of designating these bodies of water.

[10:10:23 AM](#)

RYAN MCKEE, Staff, Representative George Rauscher, Alaska State Legislature, on behalf of Representative Rauscher, prime sponsor, provided further explanation of HB 95. He pointed out on slide 8 and slide 9 the provisions in Article 8, Section 2 and Section 13 of the state's constitution which gives the state the power to classify the bodies of water. He summarized that the proposed legislation would codify DEC's current tier policy. He explained that doing this could expedite the current nominated bodies of water.

[10:11:40 AM](#)

REPRESENTATIVE STUTES questioned who would nominate the bodies of water to the legislature.

REPRESENTATIVE RAUSCHER responded that any group of people could make these recommendations to their legislators.

REPRESENTATIVE STUTES, with a follow-up question, asked whether scientific information would be required.

REPRESENTATIVE RAUSCHER expressed the understanding that the legislature has not required scientific research. He continued that it would do due diligence by looking into the facts, but

the entity making the request would present the facts. The process in the legislature would move the request through committees. He stated there would be public testimony, which would also bring out the facts. He suggested that the process would be nonpolitical.

[10:14:06 AM](#)

REPRESENTATIVE STUTES expressed the understanding that there are no real scientific studies required to establish a body of water as Tier III.

MR. MCKEE stated that the nominator of the body of water would be responsible for providing all the information and the associated costs of gathering the information. In response to a follow-up question, he reiterated that there is no specific checklist of scientific data required to make these designations.

[10:16:02 AM](#)

RANDY BATES, Director, Division of Water, Department of Environmental Conservation, expressed DEC's support of HB 95. He defined Tier III waters as having exceptional recreational and ecological significance, with these qualities maintained and protected from degradation in perpetuity. He continued that Tier III would bestow the highest level of water quality protection under the federal Clean Water Act, as it restricts a wide range of activities. He stated that these restrictions include road building, construction, recreational activities, seafood processing, municipal wastewater discharge, stormwater discharge, land fill activities, gravel quarry activities, and any other activity which would affect the water.

[10:18:58 AM](#)

MR. BATES said the designation of a Tier III body of water would require that the quality of the water and area be maintained and protected, and any current quality should reflect the reasons for designation at the time of designation. In response to Representative Stutes' earlier question, he stated that a designation request must at least include information in relation to the water quality at the time of designation. He continued that there is no law which requires science to be behind tier designation; however, there would need to be enough information so DEC would know how to manage the water, such as the quality of the temperature or clarity. He explained that

this would mean there would be no new or increased discharges into the waterbody if the discharge would result in the degradation of the water. He advised that this also has long term effects on the adjacent land.

MR. BATES expressed the opinion that the widespread impacts of a Tier III designation would move the land and water usage outside the criteria of DEC's expertise. He stated that DEC supports the proposed legislation for three reasons: (1) the legislative process would provide a full public process to evaluate the designations, involving all interested parties; (2) the legislative process would allow a full discussion of the consequences, restrictions, or impacts of other activities, including future, un foreseeable activities; and (3) the legislative body is the proper forum to establish land and water use designation.

MR. BATES continued that HB 95 would codify the consistent practice of how lands and waters across the state would be designated for conservation. He expressed the importance of the legislature having control over this, so it would not be in the hands of a single division director, commissioner, or at the discretion of the courts.

[10:22:48 AM](#)

MR. BATES, in response to a series of questions from Representative Stutes, stated that there have been five proposed designations of Tier III waters. He stated that the oldest request was in 2012 and the latest was in 2017. He stated that DEC has responded to all the proposers, with the recommendation that it go through the legislative process. In response, he stated that there have been no Tier III designations. He reiterated that the ramifications of a Tier III designation are so significant that it would exceed DEC's authority to establish a limit on land use applications, and this is one of the major components of the proposed legislation. He expressed DEC's belief that the power for state appropriation and land use designations would be properly vested by the legislature.

MR. BATES, in response to Representative Stutes, stated that nothing in law relates to the fact that a Tier III designation could not be reversed. He expressed the understanding that if the legislature oversees these designations, determinations would be made on science and available knowledge, and this information would be presented by the designators to the legislature. He stated that if a designation is reversed, the

legislature would then use this previously presented information to determine how the conditions have changed.

10:28:34 AM

CHAIR VANCE expressed the understanding that this would be similar to the legislative authority for designating land usage for parks.

MR. BATES responded in the affirmative. He continued that DEC uses similar types of designations for restricted land use in terms of parks and habitat. In response to a follow-up question concerning any possible change to the federal regulation, he expressed the understanding that the federal rule has not changed since implementation in 1983. He sought to clarify the Clean Water Act. He reiterated the designations of the three tiers and pointed out that the federal rule requires states to have a process to designate Tier III waters; however, how this is managed is specific to the state's program, which is the antidegradation process found in the regulations in Alaska.

CHAIR VANCE expressed the desire to ensure any federal code or statute change would not have unintended effects. She expressed the understanding that it would be highly unlikely to change the Tier III designation process.

MR. BATES responded in the affirmative. He stated that there are much higher profile federal rules coming out, and he expressed the understanding that there is no talk about rule changes on this provision.

10:33:50 AM

REPRESENTATIVE HIMSCHOOT questioned the reasoning behind the proposed legislation.

MR. BATES responded that the bill would move the designation authority out of DEC's purview. He reiterated that it has to do with land use designation, such as a park, and this exceeds DEC's authority. He suggested that also a public process is needed, and this exists in the legislature. In response to a follow-up question, he stated that this is the reason the prospective bodies of water have not been through the Tier III process. These petitions have been submitted to DEC, but DEC has recommended that these petitioners pursue an avenue through the legislature.

REPRESENTATIVE HIMSCHOOT questioned his recommendations for inputting science in the process.

MR. BATES responded that this would depend on the designation in the area, as each area would have key criteria. For example, if the water were being gauged by temperature, the water would be managed specifically so any activities would not impact the temperature. He stated that whatever the water quality criterium is, the water would be managed for this. The criteria could include, for example, the presence of a [high mineral count], temperature variation, residue, clarity, or recreational purposes. He stated that there are multiple reasons for designating areas. He suggested that the designator would want to include enough information to identify why the designation would be appropriate and what the designation is for, so DEC can manage the water accordingly.

[10:39:52 AM](#)

REPRESENTATIVE HIMSCHOOT expressed appreciation for the use of local expertise. She requested an explanation of Tier I and some examples.

MR. BATES responded that there are different sources of information concerning Tier I. He referred to the handout included in the committee packet, titled "Developing a Tier III Nomination and Designation Process in Alaska." He pointed out that on page 4 there is an explanation of the three tiers, with the description for Tier I being waters which do not currently meet water quality standards for one or more parameters. He said this could be because of temperature, a highly mineralized area, or a human pollutant. He said most of the waters in Alaska are Tier II waters, and Tier I would be a step below this. He stated that these tiers are not listed, but the tiers are looked at when there is a project review or activity permit request.

[10:42:18 AM](#)

REPRESENTATIVE STUTES, concerning a Tier III designation, questioned whether there could be development upstream.

MR. BATES responded in the affirmative; however, this would concern the impact of the activity in that it cannot degrade or contribute to a change in the water quality.

[10:44:33 AM](#)

CHAIR VANCE, per the current five requests for Tier III water status in the state, questioned the reasoning behind these requests.

MR. BATES responded that he would provide a list to the committee members after the meeting. He briefly went through the list. Concerning Southeast Alaska, he pointed out the Chilkat River around Haines. He stated that this request was submitted by the Village of Klukwan for cultural significance, ecological importance, economic importance, subsistence importance, recreational use, and constitutional responsibilities. He stated that another Tier III designation was submitted by the Yakutat Tlingit Tribe for the Yakutat Foreland, and it was submitted for the interconnected wetland which functions as a watershed for the protection of fish habitat.

[10:47:48 AM](#)

CHAIR VANCE posited that there would be a variety of reasons, and she questioned whether only a portion of a river could be designated.

MR. BATES responded that the designation could be any portion of or the entire waterbody.

MR. BATES continued reviewing the list and stated that the Kuktuli River in the Bristol Bay area was proposed for a designation of Tier III status, and this was submitted in a 50-page report by a number of interested parties. This river system was described in the summary as an "ecological powerhouse" located in the headwaters of the Bristol Bay watershed, which is considered the most productive sockeye salmon fishery in the world. He next addressed the proposal for the Chandalar River. This was proposed by two individuals, submitted on a single page, with the reasoning that it is a spawning bed for chum salmon and ecological significance for the entire area. He stated that the fifth request is for the Donjek River in Northeast Alaska because it has exceptional ecological value for recreational uses and sustains rich resources, which support the local Indigenous culture. He stated that there is scientific information included in this request. He pointed out that this shows the range of the designation requests so far.

CHAIR VANCE questioned any minimum thresholds which must be reached before a proposal is considered.

MR. BATES said there is no minimum threshold. He stated that the burden would be on the proposer to present the information collected to make a compelling case for the designation, as DEC does not have written rules on this. The decisions would be made on a case-by-case basis.

[10:52:26 AM](#)

REPRESENTATIVE HIMSCHOOT questioned whether a Tier III designation would affect rivers that are also in Canada.

MR. BATES expressed uncertainty. He stated that he would report back to the committee on this. He stated that DEC is involved in a review of Canada's activities, but it does not have permitting authorities there. He added that what many states do not have, that Alaska has, is water rights rules, water quality standards, and fish habitat rules. He stated that because of this the different agencies communicate and coordinate on reviews, which may have an effect on bodies of waters in the state.

[10:53:53 AM](#)

CHAIR VANCE supposed that an adjacent river to Canada was designated as a Tier III body of water and activity in Canada affected the water quality. She questioned who would be responsible for maintaining the water quality.

MR. BATES responded that this question is beyond the scope of what he prepared for; however, he acknowledged the engaged process DEC has with Canada in a bilateral working group. He stated that water quality monitoring has taken place for years, and at this point no water quality issues have been reported. He stated that the entities in Canada would notify the agency of any mining or road building which may affect the area. He stated that the water quality standards in British Columbia is very comparable to Alaska's standards.

[10:57:02 AM](#)

LEILA KIMBRELL, Executive Director, Resource Development Council (RDC), provided invited testimony on HB 95. She stated that for 47 years RDC has advocated for diversity in the state's private economic sectors and to expand the state's economic base through

the responsible development of its natural resources. She stated that RDC is a statewide trade association made up of the fishing, tourism, forestry, mining, and oil and gas industries, and it collaborates with its partners and with policy makers to ensure Alaska has a strong and diverse economy through responsible development. On behalf of RDC, she expressed support for HB 95, as it would provide a solution to codifying the federal requirements. She reiterated the description of the tier system.

MS. KIMBRELL expressed the opinion that the federal requirements for clean water maintenance already exist in Alaska, and a Tier III designation would take this a step further without any added benefit to the environment. She expressed the opinion that any economic activity which would potentially degrade Tier II waters would be prohibited. She listed the activities that a Tier III designation would impact. She advised that a Tier III designation could become a tool for antidevelopment interest, as seen in the five proposals discussed. She pointed out that mining, oil and gas, federal land planning, and Alaska Native corporate land selection as been seen as threats to certain bodies of water. She continued that a further problem is that a Tier III designation would not just apply to the water, but to the land and tributaries around it. She expressed the opinion that this would prohibit development; therefore, RDC supports that this responsibility be solely on the legislature, as it makes many other similar land designations.

[11:01:53 AM](#)

MS. KIMBRELL expressed the understanding that DEC already has existing policies; however, for federal compliance this would need to be codified. She provided a description of the process of designating a body of water through the legislature, and she stated that this complies with the Clean Water Act, and HB 95 is a "simple housekeeping measure." She stated that the legislature having the power to designate the bodies of water as Tier III is consistent with the state's constitution in setting aside state waters and lands for development. She urged the committee to move the bill forward.

[11:03:52 AM](#)

REPRESENTATIVE CARPENTER questioned whether the Tier III designation would enable litigation which otherwise would not be allowed.

MR. BATES responded that if the designation decision were to come from DEC, the decision would be subject to judicial review. He reiterated this concern, and he expressed the understanding that if the legislature made the decision, it would not be challengeable in court. He added that this question might be outside of his bounds; however, this is DEC's position.

REPRESENTATIVE CARPENTER stated that he meant to direct this question to ongoing activities on industrial lands. He questioned whether an entity would be exposed to litigation with a Tier III water designation even if the activity is not affecting the water quality.

MR. BATES expressed uncertainty and said that he would report to the committee with an answer.

[11:06:45 AM](#)

CHAIR VANCE announced that HB 95 was held over.

[11:07:59 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:08 a.m.