

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 29, 2023

1:00 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 98

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 98

SHORT TITLE: STATE OWNERSHIP OF SUBMERGED LAND

SPONSOR(S): REPRESENTATIVE(S) SADDLER

03/06/23	(H)	READ THE FIRST TIME - REFERRALS
03/06/23	(H)	JUD, RES
03/29/23	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE DAN SADDLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 98.

MARY JACKSON, Staff
Representative Dan Saddler

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for HB 98, on behalf of Representative Saddler, prime sponsor.

JOHN STURGEON, President
Safari Club Alaska
Anchorage, Alaska

POSITION STATEMENT: Offered invited testimony in support of HB 98.

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

POSITION STATEMENT: Offered invited testimony and co-provided a PowerPoint presentation, titled "State Ownership of Submerged Lands," during the hearing on HB 98.

DANNY HOVANCSEK, Specialist
Department of Natural Resources
Juneau, Alaska

POSITION STATEMENT: Offered invited testimony and co-provided a PowerPoint presentation, titled "State Ownership of Submerged Lands," during the hearing on HB 98.

RON OPSAHL, Assistant Attorney General
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 98.

ACTION NARRATIVE

[1:00:22 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives Gray and Vance were present at the call to order. Representatives Carpenter, Groh, Eastman, and C. Johnson arrived as the meeting was in progress.

The committee took an at-ease from 1:00 p.m. to 1:04 p.m.

HB 98-STATE OWNERSHIP OF SUBMERGED LAND

[1:04:39 PM](#)

CHAIR VANCE announced that the only order of business would be HOUSE BILL NO. 98, "An Act relating to state ownership of submerged land underlying navigable water within the boundaries of and adjacent to federal areas; and providing for an effective date."

[1:04:55 PM](#)

REPRESENTATIVE DAN SADDLER, Alaska State Legislature, prime sponsor, presented HB 98. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

HB 98 seeks to end the federal government's decades-long, unjust denial of a fundamental element of Alaska's statehood: control of navigable waters in Alaska and ownership of the lands beneath.

The 1959 Statehood Act transferred 105 million acres of federal land to Alaska. In addition, the U.S. Constitution and federal law also made the state owner of navigable waters and the lands beneath them at the instant of statehood.

Navigable waters are the lakes, rivers and streams that supported, or could have supported, in-state travel at the time of Statehood. They provide travel routes, recreational access, hunting opportunities, aquatic habitat and more, and represent corridors of commercial travel critical to Alaska's prosperity. All other states assumed undisputed control of such lands and waters inside their borders upon joining the Union.

Despite their obligation to do so, federal authorities have dragged their heels in granting Alaska clear title to its submerged lands. Instead, they've forced the state to prove the navigability of waterways on a case-by-case basis at a rate that would take hundreds of years to conclude.

Enough is enough. HB 98 simply but confidently declares Alaska's title to the beds of navigable waters, including those within federal parks, wildlife refuges, forests and other conservation units, unless specifically withdrawn before Statehood. It identifies

and enumerates water bodies within federal areas in which the State has a title interest. And it directs the Department of Natural Resources to make progress reports to the Legislature on its continuing effort to delineate navigable waters in federal areas in Alaska. The need for this bill is dramatized by the case of Alaska hunter John Sturgeon, who fought and won two U.S. Supreme Court decisions clarifying that Alaskans have the right to use navigable waters inside federal areas, and that federal regulations do not trump state ownership, even in conservation units created by the Alaska National Interest Lands Conservation Act in 1980.

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MARY JACKSON, Staff, Representative Dan Saddler, Alaska State Legislature, on behalf of Representative Saddler, prime sponsor, provided a sectional analysis of HB 98 [included in the committee packet], which read as follows [original punctuation provided]:

Section 1 - Amends uncodified law by adding a new section to describe the purpose of the bill.

Section 2 - Amends AS 38.04.062(a) to

Page 2, line 1, revises the phrase "at the time" to become "on the date", and adds the clause ', including submerged land underlying navigable water listed in AS in AS 38.04.063 that is within the boundaries of and adjacent to federal areas.' Provides clarity that the State owns all submerged lands under navigable from the date of statehood, including lands within the boundaries of sand adjacent to federal lands. AS 38.04.062(a) declares that 'the state owns all submerged land underlying navigable water to which title passed to the state at the time the state achieved statehood under the equal footing doctrine or 43 U.S.C. 1301 - 1315 (Submerged Lands Act of 1953).'

Section 3 - Amends AS 38.04.062(d) by (Page 2, line 10), revising the phrase "at the time" to become "on the date", and adds the following sentence: 'The commissioner shall conduct ongoing research to identify submerged land underlying navigable water within the boundaries of and adjacent to federal areas

to determine state title to corresponding submerged land underlying navigable water.'

Section 4 - amends AS 38.04.062(c) by revising the phrase "at the time" to become "on the date".

Section 5 - amends AS 38.04.062(d) by referencing the list of navigable waters described fully in new AS 38.04.063 and revises the phrase "at the time" to become "on the date".

Section 6 - Amends AS 38.04.062(e) by inserting the clause '(b) or (c) of (new section 3 and 4).' Subsection (e) operates as a disclaimer for determinations of navigability by the DNR commissioner, providing that they do not create an interest in real property, may not be recorded, and do not constitute final agency action. Because the proposed edits to AS 38.04.062 create new obligations for the DNR commissioner concerning navigable waters in federal areas, which may include navigability determinations made because of administrative or judicial proceedings, '(b) or (c) of' was inserted before 'this section' to distinguish the commissioner's non-binding determinations from determinations that have binding effect.

Section 7 - amends by revising the phrase "at the time" to become "on the date".

Section 8 - Adds new subsections (h) - (j) to AS 38.04.062 that creates an obligation on DNR to report annually to the legislature. Subsection (h) requires the commissioner to submit an annual report to the legislature by the first day of each regular session identifying navigable waters within the boundaries of and adjacent to federal areas that are not listed in AS 38.04.063(b) and any modifications or changes to navigable waters within the boundaries of and adjacent to federal areas that have been previously identified and listed in AS 38.04.063(b) Subsection (i) provides that the commissioner's failure to include or identify navigable waters in accordance with the requirements of AS 38.04.062 does not relinquish any state right in the submerged lands underlying those navigable waters. Subsection (i) is intended to preserve the state's rights to submerged lands. Subsection (j) provides

that a navigability determination of the commissioner is based on evidence consistent with the definition of 'navigable water' at AS 38.04.062(g) and consideration of the factors listed in AS 38.04.062(j) (1-4).

Section 9 - Amends AS 38.04 by adding a new section AS 38.04.063 concerning state ownership of submerged within federal areas. This section makes clear that since statehood, that the State owns, claims, occupies, possesses, manages, and controls all submerged lands underlying navigable waters listed in (b) of this new section of statute, except as provided under AS 38.04.062(f). It further identifies navigable waterbodies that are currently known within the boundaries of and adjacent to federal areas. This section was drafted to model existing AS 19.30.400 which codifies state claims of rights-of-way granted under former 43 U.S.C. 932 (Revised Statute 2477). Page 4 to page 87.

Section 10 - Amends AS 38.04.910 by adding new paragraphs for definitions, renumbering existing definitions, and adding proposed definitions for 'federal areas,' 'mean high water,' 'mean high water line,' 'ordinary high water mark,' and 'submerged land.'

Section 11 - repeals existing 38.04.06(g) which is current definition.

Section 12 - Amends the uncodified law of the state to add a new section providing that Section 9 of the bill is retroactive to January 3, 1959. This bill will require a special vote of two-thirds of the members of each house because the proposed retroactive effective date for this section varies from the standard language providing for an effective date 90 days after enactment.

Section 13 - Provides for an immediate effective date under AS 01.10.070(c).

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REPRESENTATIVE SADDLER introduced Mr. Sturgeon to provide invited testimony.

[1:14:07 PM](#)

JOHN STURGEON, President, Safari Club Alaska, paraphrased the following prepared remarks [included in the committee packet], which read as follows [original punctuation provided]:

The Safari Club International Alaska Chapter and Kenai Peninsula Chapter support House Bill 98 STATE OWNERSHIP OF SUBMERGED LAND.

Founded in 1971, Safari Club International is the country's leading hunter rights advocate and additionally promotes worldwide wildlife conservation. SCI's approximately 50,000 members and 200 Chapters represent all 50 of the United States as well as 106 other countries. The Safari Club International Alaska Chapter (SCI AK) and Kenai Peninsula Chapter (KPSCI) are 501c4 conservation non-profit corporations. SCI AK was established in Alaska in 1977, and currently has 670 members. Our joint mission statement is "First for Hunters - First for Wildlife."

HB 98 asserts that, by operation of law, submerged lands under navigable waters in areas managed by federal agencies were conveyed to the state from the United States pursuant to the Equal Footing Doctrine of the U.S. Constitution, the federal Submerged Lands Act, and the Alaska Statehood Act. Since statehood, navigability determinations have been made through administrative processes and litigation brought by the state pursuant to the federal Quiet Title Act. This bill is intended to bring clarity to state ownership of submerged lands in federal areas and to claim, occupy, and possess all such submerged lands as state sovereign property.

Having navigable waters under State management is critical to the people of Alaska. Under state management Alaskans will actually be able to access and use these resources whereas, under federal management, that will always be in question. We will never be able to predict what regulations ever-changing administrations will implement. After 13 years, \$1.6 million, and two unanimous U.S. Supreme Court decisions (*Sturgeon v. Frost I & II*) it should be clear to the Federal Government that Alaska has the right to manage all navigable waters within the state.

Unfortunately, the feds are ignoring the will of the court and not acknowledging the right of the State to manage its navigable waters. To date, the feds have only approved the transfer of 9% of the State's navigable waters since Statehood.

We thank Representative Saddler for introducing HB 98 and fully support the legislature's efforts to bring submerged lands-and therefore navigability-under state control.

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The committee took a brief at-ease.

[1:19:31 PM](#)

JIM WALKER, Section Chief, Public Access Assertion and Defense, Department of Natural Resources (DNR), directed attention to a PowerPoint presentation, titled "State Ownership of Submerged Lands," dated 3/29/23.

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MR. WALKER outlined the navigable waters issue on slide 2, which read 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 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

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MR. WALKER continued to slide 3, which listed the following federal areas where the State of Alaska owned submerged lands [original punctuation provided]:

- National Park Service: Noatak National Preserve (NPr), Kobuk Valley National Park (NP), Bering Land Bridge NPr, Denali National Park and Preserve (NPP) (ANILCA additions), Wrangell St. Elias NPP, Glacier Bay NPP, Katmai NPP, Kenai Fjords NP, Gates of the Arctic NPP, Lake Clark NPP, Yukon Charley Rivers NPr, etc.
- U.S. Fish and Wildlife Service: Becharof National Wildlife Refuge (NWR), Innoko NWR, Izembek NWR, Kanuti NWR, Kenai NWR, Kodiak NWR, Koyukuk NWR, Nowitna NWR, Selawik NWR, Tetlin NWR, Togiak NWR, Yukon Delta NWR, Yukon Flats NWR, etc.
- U.S. Forest Service: Tongass National Forest, Chugach National Forest
- Bureau of Land Management: Beaver Creek Wild and Scenic River (WSR), Birch Creek WSR, Fortymile River WSR, Gulkana River WSR, Unalakleet River WSR, Delta River WSR, etc.

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MR. WALKER highlighted the status of efforts to clear title from 1959 to present on slide 4, which read as follows [original punctuation provided]:

The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable in fact and tidally influenced rivers and lakes in only:

- 9 percent of 800,000 river miles of submerged lands under state owned rivers
- 16 percent of 30,000,000 acres of submerged lands under state owned lakes

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MR. WALKER said a primary impetus for the bill was Sturgeon v. Frost, in which the U.S. Supreme Court ruled unanimously that federal regulations did not supersede the State of Alaska (SOA) ownership and management of navigable waters in Alaska National Interest Lands Conservation Act (ANILCA) Conservation System Units (CSUs), as outlined on slide 5.

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REPRESENTATIVE GROH inquired about the acronym "CSU."

MR. WALKER responded, "Conservation System Unit (CSU)." He said CSU was another way to describe federal areas in the state that were specifically created by the Alaska National Interest Lands Conservation Act (ANILCA).

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REPRESENTATIVE GRAY questioned why the bill was necessary if the state owned the submerged land and navigable waters.

MR. WALKER explained that the federal government was typically favored in litigation if the ownership of land was ambiguous. He emphasized that the bill would call the question on water deemed ambiguous by the federal government and compel a decisive response. He expressed his hope that if HB 98 were to pass, companion legislation would be put forward by Alaska's federal delegation that encompassed all the work associated with the bill.

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MR. WALKER, in response to a follow-up question from Representative Gray, opined that it was his team's duty to intervene between the federal government and individual citizens whenever possible. He indicated that if someone, in reliance on the list [of submerged lands], chose to recreate in a manner that was acceptable under state law and was challenged by some federal law enforcement agency, the state would have the right to involve itself in that litigation and to vindicate those rights on behalf of all Alaskans.

REPRESENTATIVE GRAY stated, "It makes sense to me that we would have an expectation that our federal delegation would need to do some work, since basically, we're asking the federal government to do something." He asked whether that was correct.

MR. WALKER confirmed that the goal was for the federal government to follow the law that was established in cases, such as Sturgeon v. Frost. He added that the bill would give explicit definition to the abstract concept that Alaska owned all the submerged lands.

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DANNY HOVANCSEK, Public Access Specialist, DNR, resumed the presentation on slide 6, explaining the numerous interrelated

assertions of state ownership authority that formed the statehood defense of navigable waters.

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MR. HOVANCSEK outlined the codification in the proposed legislation on slide 7, which read as follows [original punctuation provided]:

1. Codifies State of Alaska (SOA) ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre statehood withdrawal explicitly defeating state title
2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA
3. Enshrines foundational elements of relevant case law to guide in navigability determinations
4. Establishes annual reporting requirement to legislature

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MR. HOVANCSEK continued to detail the proposed codification on slide 8, which read as follows [original punctuation provided]:

1. Codifies SOA ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre statehood withdrawal explicitly defeating state title

- **Underscore state ownership, management and control** of lands owned by the state since statehood
- **Clarify and educate:** Clearly enumerates the extent of state management authority within federal boundaries
 - Increases public understanding and aids in management
 - Correlates with publicly maintained records and maps
- **Reflect reality:** Accurately depicts land ownership and state boundaries with ongoing quality control

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MR. HOVANCSEK proceeded to explain the proposed codification on slide 9, which read as follows [original punctuation provided]:

2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA

- **First phase:** All NPS and USFS areas statewide plus Tetlin National Wildlife Refuge
- **Second phase:** Remaining USFWS refuges
- **Third phase:** All BLM lands
- **Fourth phase:** Ongoing process of clarification, modification and amendment

Framework for proposed statute is based upon RS 2477 Right-of-Way codification project in 1990s [AS 19.30.400].

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MR. HOVANCSEK discussed and contrasted the map on slide 10, depicting state-owned navigable waters federally acknowledged to date, with the map on slide 11 showing state-owned navigable waters after proposed codification.

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MR. HOVANCSEK discussed and contrasted the map on slide 12, depicting Noatak and Kobuk Valley National Parks federally acknowledged navigable waters, with the map on slide 13 showing Noatak and Kobuk Valley National Parks navigable waters after codification.

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REPRESENTATIVE GRAY inquired about the value of having state-ownership of submerged land.

MR. HOVANCSEK said ownership, as it related to Mr. Sturgeon, decreed the ability for managers to dictate the use of that land. He provided several examples, such as the type of boats, generators, and docks that could be used on the land.

REPRESENTATIVE GRAY considered the example of a dock surrounded by federal navigable water and asked whether both the state and federal government would require an application in that instance.

MR. HOVANCSEK said it would depend on the exact nature of the dock. He added that the bill sought to ensure Alaska's seat at the table for these important conversations.

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REPRESENTATIVE ALLARD asked whether other states were similarly inundated by the federal government. Additionally, she asked how the federal government would benefit from ownership of the submerged lands.

MR. HOVANCSEK emphasized that these lands had been owned by Alaskans since statehood, reiterating that the benefit to Alaskans was resource control. He said that other states had not faced similar experiences, due partially, to the young history of Alaska's statehood. He conveyed that Alaska's submerged lands were more attractive, and its problems were more complicated, indicating that the state faced stronger opposition based on the quality and quantity of the resources at hand.

REPRESENTATIVE ALLARD commended the presenters for their commitment to Alaska.

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MR. WALKER resumed the presentation on slide 14, which further outlined the codification as follows [original punctuation provided]:

3. Enshrined foundational elements of relevant case law to guide in navigability determinations

• **Susceptibility criteria to guide DNR in making navigability determinations including, but not limited to:**

o Watercraft Type: Round raft, Canoe, Jon boat, Jet boat

□ Alaska v. Ahtna, Inc., 891 F. 2d 1401 (9th Cir. 1989) (Gulkana River).

o Susceptibility: Documented modern day use is sufficient

□ Alaska v. United States, Case No. 3:12 cv 00114 SLG (D. Alaska 2016) (Mosquito Fork (Fortymile))

o Navigability doesn't require a clear channel, two way traffic, or historical evidence if the river is susceptible to navigation.

□ PPL Montana, LLC v. Montana, 132 S. Ct. 1215 (2012); Utah v. United States, 403 U.S. 9 (1971); United States v. Utah, 283 U.S. 64 (1931).

MR WALKER proceeded to discuss proposed codification on slide 15, which read as follow [original punctuation provided]:

3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations

- Section Ten:
 - Define geographical scope of legislation
 - Post-statehood federally owned lands
 - Define key navigability terms for purposes of legislation including
 - Ordinary high-water mark
 - Navigability
 - Submerged land
 - Federal area

[2:03:47 PM](#)

MR. WALKER summarized slide 16, which read as follows [original punctuation provided]:

4. Establishes annual reporting requirement to legislature

Charges DNR with responsibility to conduct ongoing navigability research to determine state title to submerged lands within relevant federal areas

- Ensures non-exhaustive codified list best reflects reality
 - Ensures public facing document is accurate
- Further refinement and fine tuning as our quiet title litigation continues
- Provides leadership to federal authorities and a path forward to settle ambiguity so that land management benefiting the public will follow

[2:04:18 PM](#)

MR. WALKER concluded the proposed legislation on slide 17, which read as follows [original punctuation provided]:

Alaska's ownership of Submerged Lands beneath navigable -in -fact and tidally influenced rivers and lakes is one of the fundamental promises of Statehood.

It's been 64 years. It is time for the Federal Government to keep its promise to the State of Alaska. HB 98 is a bold step in that direction.

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REPRESENTATIVE EASTMAN sought further clarification on the use of canoes and asked how the canoe of today had evolved from those used prior to statehood.

MR. WALKER declined to speak on behalf of his counterparts in Tennessee, Georgia, or South Carolina when they pursued the navigability litigation. He acknowledged that maybe, canoes should have been asserted as a traditional water craft. He pointed out that the Supreme Court, as well as the Circuit Court of Appeals' decisions all supported the use of canoes. He conveyed that Alaska had a strong tradition of utilizing canoes for various occupations and endeavors in 1959.

REPRESENTATIVE EASTMAN asked how other states would be impacted by Alaska prevailing in this endeavor.

MR. WALKER submitted that western state governments would particularly benefit from Alaska prevailing on these issues.

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REPRESENTATIVE EASTMAN asked to what extent the definition of navigable waters would impact the other treaties concerning the federal government.

MR. WALKER noted that there was a federal withdrawal for the boundary with Canada, which included the submerged lands. He discussed the history of trade between Canada and the United States, which would strengthen the state's case in regard to the river flowing from Canada through Alaska.

REPRESENTATIVE EASTMAN inquired about the list [of state ownership of submerged land] in Section 9 of the bill.

MR. WALKER pointed out that Mr. Sturgeon prevailed in Sturgeon v. Frost because the Nation River had already been determined to be navigable through litigation. He said the goal of the proposed legislation was to firmly declare state ownership of submerged lands, which would benefit anyone facing federal prosecution in the future, similar to Mr. Sturgeon.

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REPRESENTATIVE EASTMAN asked why some water may have been excluded from the list in Section 9.

MR. WALKER clarified that the list concerned federal areas only. He said the list would be exponentially longer if it were to include everything from north to south, and from sea to the Canadian border.

REPRESENTATIVE EASTMAN considered a scenario in which someone was to file a mining claim for some portion of the waterway in Juneau, for example. He asked how the state would respond.

MR. WALKER said any application would be adjudicated on its merits on a case-by-case basis if the waterway was state-owned land.

CHAIR VANCE noted that the 2023 Department of Law (DOL) federal lands and litigation report was included in the committee packet for reference.

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REPRESENTATIVE C. JOHNSON recalled his experience claiming historic trails and asked how confident DNR was in its assessment of navigable water.

MR. WALKER said "a river speaks for itself" if it's in its natural and ordinary condition whereas a trail needs management. He said he was highly confident that everything on the list was navigable. He discussed the difference between assessing trails and rivers.

REPRESENTATIVE C. JOHNSON shared an anecdote in which an individual had posited the navigability of a waterfall-like waterway on the Copper River because he had successfully launched a boat on it. He asked how that scenario would be considered.

MR. HOVANCSEK indicated that the state would assess such a scenario on a river-by-river basis, as long as the river was in its natural and ordinary condition.

REPRESENTATIVE C. JOHNSON asked how Native lands were considered in terms of navigability and federal ownership.

MR. WALKER clarified that Native lands were private property and therefore, beyond the purview of HB 98, which was limited to federal lands. In response to the scenario posed by Representative C. Johnson, he confirmed that the navigability would be determined on a case-by-case basis. He added that the state could potentially own the submerged lands on rivers located on Native lands. He said the state was always working with Native corporations to achieve agreements as to use and management of those particular waterways.

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REPRESENTATIVE CARPENTER asked whether an assessment had been conducted on the consequences of the retroactivity clause in Section 12 of the bill.

RON OPSAHL, Assistant Attorney General, Department of Law, offered to follow up with the requested information.

REPRESENTATIVE CARPENTER asked whether prior litigation involving private citizens had been adjudicated in such a way that could be impacted by the retroactivity clause.

MR. WALKER offered to follow up on the question of retroactivity. He reminded the committee that the legislation pertained to federal lands only.

CHAIR VANCE asked why "at the time" was changed to "on the date" the state achieved statehood in Section 7 of the bill.

MR. OPSAHL shared his understanding that "at the time" would have referenced a time on the clock, whereas "on the date" referred to a date on the calendar.

REPRESENTATIVE EASTMAN opined that the reason provided by Mr. Opsahl was not substantive. He suspected that there was a greater reason, such as uniformity with another statute. He inquired about the true intent of revising the phrase "at the time" to become "on the date" in Section 7.

MR. OPSAHL offered to follow up on the requested information.

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REPRESENTATIVE GRAY asked whether there was a benefit to determining state ownership of frozen rivers.

MR. WALKR clarified that the determination of title ownership must be made while the water is in liquid state. He confirmed that there was a benefit to state ownership of frozen submerged lands.

REPRESENTATIVE GRAY asked whether the federal government had ever intervened in the ability to drive over a frozen waterway.

MR. HOVANCSEK said there was a court case regarding Slop Bucket Lake that prohibited the state from determining navigability in its frozen condition. Otherwise, he said this was a nonissue.

MR. WALKER advised checking with federal land managers before engaging in such activities if there was any uncertainty.

CHAIR VANCE asked Mr. Sturgeon to speak to the benefit of interfacing with the state versus federal government regarding navigability.

MR. STURGEON shared a personal anecdote involving his alleged violation of a regulation concerning hovercrafts. In response to a prior question regarding the importance of submerged lands, he shared the example of hunting the gravel bars on large rivers.

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REPRESENTATIVE EASTMAN asked whether the harvesting of resources on these waterways was impacted by the proposed legislation.

MR. HOVANCSEK stated that the management of fishing was not impacted by the bill.

REPRESENTATIVE EASTMAN sought to clarify why the harvesting of fish was not involved.

MR. HOVANCSEK indicated that the state was already regulating the freshwater fish, as freshwater fish were held in trust by the state for the general public. Alternatively, a saltwater species would be federally regulated, he said.

REPRESENTATIVE EASTMAN asked how that came to be the case and how the state could be certain that in the future, the federal government would not restrict fishing in waterways that had been deemed navigable.

MR. WALKER said he was not expert on fish and game law. He deferred to his colleagues within the Alaska Department of Fish & Game (ADF&G).

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REPRESENTATIVE CARPENTER asked whether access, regulation, and taxation of submerged land could be managed by the state if the bill were to pass.

MR. WALKER acknowledged that the clarity offered by the proposed legislation would assist in all those issues aside from taxation.

REPRESENTATIVE CARPENTER said he had misspoken. Rather than taxation, he said he was interested in regulation and potential fee structures on state-owned water and asked whether the bill could be an avenue for exploring that.

MR. WALKER answered yes, the ability to charge fees for the use of state property was within the legislature's purview.

MR. WALKER, in response to a hypothetical scenario posed by Representative Eastman, said if there was a pre-statehood withdraw, it was not included in the legislation; further, he stated that he was unaware of any management decision made by the state that would seem at odds with the bill.

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REPRESENTATIVE GRAY shared his understanding that high-water marks could be impacted by ice jams and tidal changes. He asked how high water marks were determined.

MR. HOVANCSEK defined "high water mark" as the line on the shore established by fluctuations of water leaving an impression on the bank - the evidence for which could be a clear natural line impressed upon the bank, shelving, change in soil characteristics, destruction of terrestrial vegetation, or the presence of litter and debris.

MR. WALKER clarified that ice jams were an exceptional event.

[2:45:05 PM](#)

CHAIR VANCE sought final comments from the bill sponsor.

[2:45:20 PM](#)

REPRESENTATIVE SADDLER said he intended the legislation to respectfully push the federal government to resolution and to clarify important aspects of Alaska's sovereignty. He described the bill as the next step in Alaska's long journey towards assuming its rightful status as a full-fledged state on equal footing. He noted that the list [in Section 9 of the bill] would continue to grow and evolve as DNR continued to make assertions on navigability, and in doing so, create an opportunity to bring more Alaska Native names to the numerous unnamed bodies of water.

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CHAIR VANCE announced that HB 98 would be held over.

[2:48:29 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:48 p.m.