

December 29, 2019

To ADFG c/o Rick Green <rick.green@alaska.gov>

Re: ban on personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Area

I have always been impressed that ADFG had the wisdom to ban personal watercraft in Kachemak Bay Critical Habitat Area since 2001. I wish Resurrection Bay had the same ban.

Since personal watercraft (aka Jet Skis) are allowed Resurrection Bay, I have had many opportunities to observe them in action; most of the encounters were negative.

Jet Skis should not be allowed equal access; they are not remotely similar to other vessels. Jet Skis are low to the water with limited visibility, loud, and generally traveling fast. They can quickly change directions and speed unpredictably. Jet Skis often travel close to shore where they roar past and disrupt feeding, traveling, and resting marine wildlife including seabirds.

Did I mention loud? Even the four-stroke engines are jarringly loud like snow machines. The operators cannot hear any sounds that would help to locate wildlife. They disturb people who were enjoying the peaceful waterfront, kayaking, or paddle boarding.

Jet Ski operators do not monitor the marine channels used by other vessels. Tour boats, for example, note, monitor, and share information on the identification and location of marine life. The negative impact is magnified when Jet Skis travel in groups.

The result of their clueless operation is unavoidable violations of the Marine Mammal Protection Act as the Jet Skis suddenly encounter sea otters, harbor seals, sea lions, and even whales. Their range allows them to travel great distances, even 18 miles to the mouth of the Resurrection Bay where a Jet Ski narrowly avoided hitting a migrating gray whale. The rider had no idea the whale was there and kept going; the tour boat captains did, thanks to radio interactions, the higher viewpoint, and greater number of eyes looking for marine wildlife.

Other factors to consider are the cost and impact to emergency services and Good Samaritans when a Jet Ski operator gets in trouble. They are exposed to rapidly changing weather conditions in cold water, often in remote and inaccessible locations. Also, it is difficult to enforce the law when Jet Skis violate the Marine Mammal Protection Act as they are so small, quick, and anonymous in a big area with limited patrolling.

In Seward, the use of Jet Skis is increasing. More visitors from Anchorage and Mat Su trailer them down to Seward year-round. A few businesses are now advertising Jet Ski rentals and tours. Unfortunately, I expect this to grow, not decline, as it has grown Outside. While this may be good for business, it increases the detrimental impacts to marine wildlife and quiet recreational users, one of the main draws for our tourist industry.

Responsible stewardship of the Fox River Flats and Kachemak Critical Habitat Area does not support lifting the ban on personal watercraft. I only wish Resurrection Bay enjoyed the same protection.

Sincerely,  
Carol Griswold  
Seward, Alaska

**Fairbanks  
Fish & Game Advisory Committee**

**Interior Region  
Fish & Game Advisory Committees**

**Kirk Schwalm**  
Chairman  
PO Box 83825  
Fairbanks, AK 99708

|                 |                        |
|-----------------|------------------------|
| Central         | Middle Nenana River    |
| Delta Junction  | Middle Yukon River     |
| Eagle           | Minto-Nenana           |
| Fairbanks       | Ruby                   |
| GASH            | Stony Holitna          |
| Koyukuk River   | Tanana-Rampart-Manley  |
| Lake Minchumina | Upper Tanana Fortymile |
| McGrath         | Yukon Flats            |

Mr. Rick Green  
Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

sent via email to [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

Re: Fairbanks AC Comment on the Kachemak Bay and Fox River Critical Habitat Areas concerning repeal of the Personal Watercraft restrictions.

Dear Mr. Green,

At its regular meeting on December 11, 2019 the Fairbanks Fish and Game Advisory Committee discussed the Personal Watercraft restriction in the Critical Habitat Areas. We recommend the Department repeal the restriction.

The FAC has heard many requests for special restrictions affecting hunting, fishing and trapping. These requests are usually prompted by special interest groups. Many requests are for restrictions based on limiting area(s) of use, the type of access used, or limiting operational activities. Limiting the type of vehicle used is a common request.

Our committee believes Alaskans deserve equal access to commonly owned resources. Unless there are important and recognizable safety or environmental issues, we recommend against limiting users, especially by vehicle type. In the Kachemak Bay and Fox River CHAs, we cannot identify a difference between personal watercraft and other vessels now permitted in regards to public safety or environmental concerns. There are no engine exhaust, oil emission, or noise emission differences in motorized craft using the CHAs.

Thank you for the opportunity to comment.

  
Kirk Schwalm, Chairman



January 16, 2020

**Rick Green**

**Alaska Department of Fish and Game (ADF&G)**

**333 Raspberry Rd, Anchorage, AK 99518-1565**

Email: [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

**Re: Alaska Shorebird Group Comments on ADF&G's proposed repeal of 5 AAC 95.310**

Dear Mr. Green,

This letter represents the Alaska Shorebird Group comments on ADF&G's proposed repeal of 5 AAC 95.310 that prohibits the use of personal watercraft (aka jet skis) in the Fox River Flats and Kachemak Bay Critical Habitat Areas. We are strongly opposed to the change that would allow personal watercraft use and management in this internationally important area for shorebirds.

The Alaska Shorebird Group (ASG) was formed in 1997 and includes academic and private researchers, federal and state agency staff, conservation organizations, and shorebird enthusiasts. The goal of the group is to raise awareness about shorebirds in Alaska; to promote research, monitoring, management, conservation and education/outreach relevant to shorebirds in Alaska; to integrate the goals and objectives of the ASG with regional, national, and international programs; and to facilitate, coordinate, and enhance the exchange of shorebird information among biologists, managers, and the public. In this letter, we are representing the interests of these groups. The ASG currently has 153 members; more information can be found at <https://www.fws.gov/alaska/pages/migratory-birds/shorebirds>.

The Alaska Legislature created the Fox River Flats Critical Habitat Area in 1972 and the Kachemak Bay Critical Habitat Area in 1974 "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." (Alaska Department of Fish and Game 1993). The Kachemak Bay Critical Habitat Area is documented as an international critical migratory stopover area for at least a hundred thousand shorebirds using the Pacific Americas Flyway. The site is especially important for Western Sandpipers, Dunlin, Red-necked Phalaropes and Surfbirds that feed and roost on the wide diversity of shoreline habitats. The sheer numbers of birds prompted ADF&G to nominate the area as a Site of International Importance under the Western Hemispheric Shorebird Reserve Network in 1994 ([https://whsrn.org/whsrn\\_sites/kachemak-bay/](https://whsrn.org/whsrn_sites/kachemak-bay/)). Alaska Audubon has designated the marine waters of the Kachemak Bay Critical Habitat Area as an Important Bird Area (<https://www.audubon.org/important-bird-areas/kachemak-bay#>). Lastly, the Fox River Flats and the Kachemak Bay critical habitat areas are one of 28 internationally important shorebird sites across the entire Pacific Americas Flyway—from Tierra del Fuego to western Alaska (Senner et al.

2016). Collectively, these designations demonstrate the international conservation community's support for protection and conservation of the most important site for migrating shorebirds in the Pacific Flyway.

Jet skis, and other personal watercraft, are designed for recreation and are particularly problematic for wildlife. They are highly maneuverable, very fast, and as a result are very different than skiffs and boats. Jet skis tend to be used in small areas and shallow waters, which is precisely the same habitat that shorebirds rely on. Additionally, people driving jet skis do not move through an area, but remain and play for an extended period of time, which disrupts feeding shorebirds causing them to fly and waste valuable energy needed for continuing their migrations (Rodgers and Schwikert 2002, Peters and Otis 2005, Sabine et al. 2008, Lilleyman et al. 2016). In 2001, ADF&G underwent a robust public process and with the support of thousands of local and statewide voices, it banned jet skis by regulation in the Kachemak Bay Critical Habitat Area. In 2017 ADF&G conducted an exhaustive review of the scientific literature surrounding jet ski risks and impacts, and again supported the ban on personal watercraft in the Kachemak Bay Critical Habitat Area.

The inherent design and intended use of jet skis makes them incompatible with the purpose of the Kachemak Bay Critical Habitat Area, an area which is clearly vital to migratory shorebirds, and has international recognition as such. Over 99% of Alaskan waters are open to personal watercraft and Kachemak Bay Critical Habitat Area is one small area that should be protected.



Dr. Rebecca McGuire, Alaska Shorebird Group Chair

cc  
Governor Mike Dunleavy  
Rick Green  
Senator Gary Stevens  
Representative Sarah Vance

## References

- Alaska Department of Fish and Game. 1993. Kachemak Bay and Fox River Flats critical habitat areas management plan. Divisions of Habitat Restoration and Wildlife Conservation.
- Lilleyman, A., D.C. Franklin, J.K. Szabo, and M.J. Lawes. 2016. Behavioural responses of migratory shorebirds to disturbance at a high-tide roost. *Emu* 116: 111-118.
- Peters, K.A., and D.L. Otis. 2005. Using the risk-disturbance hypothesis to assess the relative effects of human disturbance and predation risk on foraging American oystercatchers. *Condor* 107(3):716-725.
- Rodgers, J.A., and S.T. Schwikert. 2002. Buffer-zone distances to protect foraging and loafing waterbirds from disturbance by personal watercraft and outboardpowered boats. *Conservation Biology* 16(1): 216-224.
- Sabine, J.B., III, J. Meyers, J.M., and C.T. Moore. 2008. Effects of human activity on behavior of breeding American Oystercatchers, Cumberland Island National Seashore, Georgia, USA. *Waterbirds* 31(1):70-82.
- Senner, S.E., B.A. Andres and H.R. Gates (Eds.) 2016. Pacific Americas Shorebird Conservation Strategy. National Audubon Society, New York, NY, USA.



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## VIA ELECTRONIC MAIL

Rick Green

Alaska Department of Fish and Game

333 Raspberry Rd

Anchorage, AK 99518-1565

[rick.green@alaska.gov](mailto:rick.green@alaska.gov)

### **Re: Audubon Alaska comments on Alaska Department of Fish and Game's Proposed Repeal of 5 AAC 95.310**

January 21, 2020

Dear Mr. Green,

Audubon Alaska strongly opposes lifting the prohibition on the use of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas. Audubon Alaska is the state office for the National Audubon Society, with over 1.6 million members nationwide and almost 4,000 in the state of Alaska. On behalf of our members and supporters, we urge you to make no changes to 5 AAC 95.310 and maintain the personal watercraft ban for Fox River Flats and Kachemak Bay. Both Kachemak Bay and Fox River Flats are recognized as important areas for birds and wildlife, and merit ongoing protections.

Kachemak Bay is a state-designated Critical Habitat Area, created by the Alaska legislature in 1974. The area is also an Important Bird Area (IBA) under Audubon's IBA program. The Kachemak Bay IBA is a marine IBA of global importance for Kittlitz's Murrelet, White-winged Scoter, Black Scoter, Pelagic Cormorant, and Marbled Murrelet.<sup>1</sup> This IBA is 257,137 acres of pelagic open water habitat and is utilized by people for fisheries, research, birdwatching, and ecotourism.<sup>2</sup> Kachemak Bay is also a critical migratory stopover site for shorebirds, including Western Sandpipers, Dunlin, Red-necked Phalaropes, and Surfbirds. This area is a Site of International Importance under the Western Hemispheric Shorebird Reserve Network (WHSRN)<sup>3</sup> and draws birders from Alaska and around the globe to witness the immense avian migration spectacle.<sup>4</sup>

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<sup>1</sup> <http://netapp.audubon.org/iba/Reports/4419> (Attachment A)

<sup>2</sup> <https://www.audubon.org/important-bird-areas/kachemak-bay> (Attachment B)

<sup>3</sup> [https://whsrn.org/whsrn\\_sites/kachemak-bay/](https://whsrn.org/whsrn_sites/kachemak-bay/)

<sup>4</sup> <https://kachemakshorebird.org/>

Fox River Flats was also designated as a Critical Habitat Area by the Alaska legislature in 1972, and is also designated as an IBA by Audubon. The Fox River Flats IBA lies at the mouth of Kachemak Bay and is a coastal IBA of global importance for Kittlitz's Murrelet, Marbled Murrelet, and Western Sandpiper.<sup>5</sup> Both Kittlitz's Murrelet and Marbled Murrelet are species that appear on Audubon Alaska's WatchList, meaning they are at risk due to their vulnerable and declining populations.<sup>6</sup> The Fox River Flats supports incredible numbers of birds, including over 95,000 individuals of 22 species during spring migration, 100,000 wintering waterfowl, and hundreds of thousands of shorebirds.<sup>7</sup>

Personal watercraft and jet skis cause a multitude of negative impacts to birds. The noise and movement from jet skis can disturb and injure birds by flushing birds off their nests, collisions, or disturbing molting birds during sensitive times of year. Jet skis are also able to access more shallow and secluded areas compared to many larger boats, and would have a disproportionate impact on wetlands, beaches, and coastal areas, which are the particular areas where migrating shorebirds and molting geese frequent. People using jet skis tend to linger in particular areas, which may disproportionately affect particular groups of birds. Moreover, jet skis move in a faster and more erratic pattern than boats, making it more difficult for birds to avoid personal watercraft.

The code restricting personal watercraft, 5 AAC 95.310 does not deny access to anyone but only moderates their mode of access and their impact, which is appropriate in areas of such high wildlife value and sensitivity. Just as some areas on land are open to hikers but closed to vehicles, so should some marine areas be closed to jet skis. Over 99% of waters in Alaska are open to personal watercraft, but a few small areas, including Kachemak Bay and Fox River Flats, should be protected from these impacts. Thank you for the opportunity to comment on this important topic. Please feel free to contact us with any questions, clarifications, or requests for additional information.

Sincerely,



Susan Culliney  
Policy Director  
susan.culliney@audubon.org

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<sup>5</sup> <https://www.audubon.org/important-bird-areas/fox-river-flats> (Attachment C)

<sup>6</sup> Warnock, N. 2017. The Alaska WatchList 2017. Audubon Alaska, Anchorage, AK 99501, available at [http://ak.audubon.org/sites/default/files/2017\\_akwatchlist\\_final\\_panels\\_highres.pdf](http://ak.audubon.org/sites/default/files/2017_akwatchlist_final_panels_highres.pdf) (Attachment D)

<sup>7</sup> <http://netapp.audubon.org/iba/Reports/1078> (Attachment E)

## **Attachments**

- A. Kachemak Bay Important Bird Area report (<http://netapp.audubon.org/iba/Reports/4419>)
- B. Kachemak Bay Important Bird Area profile (<https://www.audubon.org/important-bird-areas/kachemak-bay>)
- C. Fox River Flats Important Bird Area profile (<https://www.audubon.org/important-bird-areas/fox-river-flats>)
- D. Warnock, N. 2017. The Alaska WatchList 2017. Audubon Alaska, Anchorage, AK 99501.
- E. Fox River Flats Important Bird Area report (<http://netapp.audubon.org/iba/Reports/1078>)



|                           |              |                 |                 |
|---------------------------|--------------|-----------------|-----------------|
| <b>Name</b>               | Kachemak Bay |                 |                 |
| <b>Status</b>             | Identified   | <b>State</b>    | Alaska          |
| <b>Priority</b>           | Global       | <b>Counties</b> | Kenai Peninsula |
| <b>Proposed Criteria</b>  | A4i, A4ii    |                 |                 |
| <b>Confirmed Criteria</b> | A4i, A4ii    |                 |                 |

|                            |                     |                               |
|----------------------------|---------------------|-------------------------------|
| <b>Central Coordinates</b> | <b>Area (acres)</b> | <b>Elevation (meters)</b>     |
| 59.58531, -151.89792       | 635,401             | <b>Min:-161 Max: Avg:-161</b> |

**Bird Conservation Region**

Northern Pacific Rainforests

**SITE DESCRIPTION**

The Kachemak Bay IBA occupies 257,137 acres of pelagic open water habitat. The IBA is located in the Southeastern Cook Inlet - Kodiak Upwelling ecoregion within the Gulf of Alaska. The centroid of this IBA is 14.1 km from the nearest land. It Kachemak Bay IBA is owned and managed as: federal-other and state-other, and has the following primary uses: fisheries/aquaculture-other, ecological research, birdwatching, and ecotourism. It is exposed to the following threat types: aquaculture/fisheries, boats, habitat fragmentation, natural events-other, nutrient pollution, and water pollution The Kachemak Bay is an IBA for the following species: Kittlitz's murrelet, White-winged Scoter, Black Scoter, Pelagic Cormorant, and Marbled Murrelet. It contains an estimated 1,444 Kittlitz's murrelet (breeding), 18,090 White-winged Scoter (non-breeding), 6,046 Black Scoter (non-breeding), 4,457 Pelagic Cormorant (non-breeding), and 6,661 Marbled Murrelet (breeding). The following species are on the Audubon Alaska WatchList: Kittlitz's Murrelet and Marbled Murrelet.

**ORNITHOLOGICAL SIGNIFICANCE**

Kachemak Bay is an IBA for the following species: Kittlitz's murrelet, White-winged Scoter, Black Scoter, Pelagic Cormorant, and Marbled Murrelet. It contains an estimated 1,444 Kittlitz's murrelet (breeding), 18,090 White-winged Scoter (non-breeding), 6,046 Black Scoter (non-breeding), 4,457 Pelagic Cormorant (non-breeding), and 6,661 Marbled Murrelet (breeding). These estimates are based on the analysis of 201 non-breeding surveys and 1245 breeding surveys. These surveys were conducted between March 06, 1975 and September 20, 2009. The following species are on the Audubon Alaska WatchList: Kittlitz's Murrelet and Marbled Murrelet.

**SPECIES DATA AND CRITERIA**

| <u>Common Name</u>         | <u>Date</u>     | <u>Seasonal/Daily</u>  | <u>Season</u> | <u>Observed</u> | <u>Density (#/km<sup>2</sup>)</u> | <u>Units</u> | <u>Proposed</u> | <u>Confirmed</u> |
|----------------------------|-----------------|--|---------------|-----------------|-----------------------------------|--------------|-----------------|------------------|
| <u>Black Scoter</u>        | 1994            | D  | non-breeding  | 6,046           |                                   | Individuals  | -               | A4i              |
|                            | <b>Source :</b> | Smith M, Walker N, Free C, Kirchhoff M, Warnock N, and Stenhouse, I (2012) A standardized method for identifying marine Important Bird Areas using colony and at-sea survey data in Alaska. Audubon Alaska: Anchorage, AK. This IBA was identified through the analysis of 145 survey observations. Black Scoter were observed in 68 of these surveys. This species was observed most recently in 1994.          |               |                 |                                   |              |                 |                  |
| <u>Kittlitz's Murrelet</u> | 2006            | D  | breeding      | 1,444           |                                   | Individuals  | -               | A4ii             |
|                            | <b>Source :</b> | Smith M, Walker N, Free C, Kirchhoff M, Warnock N, and Stenhouse, I (2012) A standardized method for identifying marine Important Bird Areas using colony and at-sea survey data in Alaska. Audubon Alaska: Anchorage, AK. This IBA was identified through the analysis of 1164 survey observations. Kittlitz's Murrelet were observed in 233 of these surveys. This species was observed most recently in 2006. |               |                 |                                   |              |                 |                  |
| <u>Marbled Murrelet</u>    | 1994            | D  | breeding      | 6,661           |                                   | Individuals  | -               | A4ii             |
|                            | <b>Source :</b> | Smith M, Walker N, Free C, Kirchhoff M, Warnock N, and Stenhouse, I (2012) A standardized method for identifying marine Important Bird Areas using colony and at-sea survey data in Alaska. Audubon Alaska: Anchorage, AK. This IBA was identified through the analysis of 186 survey observations. Marbled Murrelet were observed in 53 of these surveys. This species was observed most recently in 1994.      |               |                 |                                   |              |                 |                  |
| <u>Pelagic Cormorant</u>   | 2008            | D  | non-breeding  | 4,457           |                                   | Individuals  | -               | A4i              |
|                            | <b>Source :</b> | Smith M, Walker N, Free C, Kirchhoff M, Warnock N, and Stenhouse, I (2012) A standardized method for identifying marine Important Bird Areas using colony and at-sea survey data in Alaska. Audubon Alaska: Anchorage, AK. This IBA was identified through the analysis of 674 survey observations. Pelagic Cormorant were observed in 438 of these surveys. This species was observed most recently in 2008.    |               |                 |                                   |              |                 |                  |
| <u>White-winged Scoter</u> | 1994            | D  | non-breeding  | 18,090          | 0.10                              | Individuals  | -               | A4i              |
|                            | <b>Source :</b> | Smith M, Walker N, Free C, Kirchhoff M, Warnock N, and Stenhouse, I (2012) A   |               |                 |                                   |              |                 |                  |

standardized method for identifying marine Important Bird Areas using colony and at-sea survey data in Alaska. Audubon Alaska: Anchorage, AK. This IBA was identified through the analysis of 80 survey observations. White-winged Scoter were observed in 16 of these surveys. This species was observed most recently in 1994.

#### OWNERSHIP

| <u>Assessment Date</u> | <u>% of IBA</u>  | <u>Ownership</u> |
|------------------------|--|------------------|
| 1/1/2012               | 58   | Federal/Other    |
|                        | 42   | State/Other      |
| 1/1/2012               | The Kachemak Bay IBA is owned and managed as: federal-other and state-other. |                  |

#### HABITAT

| <u>Assessment Date</u> | <u>% of IBA</u>   | <u>Habitat</u>   |
|------------------------|---|------------------|
| 1/1/2002               | 100   | Water/Open Water |
| 1/1/2002               | The Kachemak Bay IBA is characterized by the following habitat types: open water. The IBA is located in the Southeastern Cook Inlet - Kodiak Upwelling ecoregion with the Gulf of Alaska. The average water depth is -37.0 m and ranges from -161.1 m to 0.0 m. |                  |

#### LAND USE

| <u>Assessment Date</u> | <u>% of IBA</u>   | <u>Land Use</u>                                      |
|------------------------|---|--|
| 4/20/2012              | 30  | tourism/recreation/Birdwatching                      |
|                        | 30  | fisheries/aquaculture/Other                          |
|                        | 10  | nature conservation and research/Ecological Research |
|                        | 30  | tourism/recreation/Ecotourism                        |
| 4/20/2012              | The Kachemak Bay IBA is used for: fisheries/aquaculture-other, ecological research, birdwatching, and ecotourism. |  |

#### THREATS

| <u>Assessment Date</u> | <u>% of IBA</u> | <u>Threat</u>  |
|------------------------|-----------------|--|
| 2/15/2008              | 3               | Aquaculture/Fisheries                                |
|                        | 8               | Natural events/Other                                 |
|                        | 1               | Pollution/Nutrient pollution                         |
|                        | 7               | Pollution/Water pollution                            |
|                        | 7               | Disturbance to birds/Boats                           |
|                        | 5               | Industrialization/Urbanization/Habitat fragmentation |

#### CONSERVATION ISSUES

|           |  |
|-----------|--|
| 2/15/2008 | The Kachemak Bay IBA is threatened by: aquaculture/fisheries, boats, habitat fragmentation, natural events-other, nutrient pollution, and water pollution. |
|-----------|--|



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## Important Bird Areas

# Kachemak Bay

[Alaska](#)

The Kachemak Bay IBA occupies 257,137 acres of pelagic open water habitat. The IBA is located in the Southeastern Cook Inlet - Kodiak Upwelling ecoregion within the Gulf of Alaska. The centroid of this IBA is 14.1 km from the nearest land.

It Kachemak Bay IBA is owned and managed as: federal-other and state-other, and has the following primary uses: fisheries/aquaculture-other, ecological research, birdwatching, and ecotourism. It is exposed to the following threat types: aquaculture/fisheries, boats, habitat fragmentation, natural events-other, nutrient pollution, and water pollution

The Kachemak Bay is an IBA for the following species: Kittlitz's murrelet, White-winged Scoter, Black Scoter, Pelagic Cormorant, and Marbled Murrelet. It contains an estimated 1,444 Kittlitz's murrelet (breeding), 18,090 White-winged Scoter (non-breeding), 6,046 Black Scoter (non-breeding), 4,457 Pelagic Cormorant (non-breeding), and 6,661

Marbled Murrelet (breeding). The following species are on the Audubon Alaska WatchList: Kittlitz's Murrelet and Marbled Murrelet.

## Ornithological Summary

Kachemak Bay is an IBA for the following species: Kittlitz's murrelet, White-winged Scoter, Black Scoter, Pelagic Cormorant, and Marbled Murrelet. It contains an estimated 1,444 Kittlitz's murrelet (breeding), 18,090 White-winged Scoter (non-breeding), 6,046 Black Scoter (non-breeding), 4,457 Pelagic Cormorant (non-breeding), and 6,661 Marbled Murrelet (breeding). These estimates are based on the analysis of 201 non-breeding surveys and 1245 breeding surveys. These surveys were conducted between March 06, 1975 and September 20, 2009. The following species are on the Audubon Alaska WatchList: Kittlitz's Murrelet and Marbled Murrelet.

## Conservation Issues

The Kachemak Bay IBA is threatened by: aquaculture/fisheries, boats, habitat fragmentation, natural events-other, nutrient pollution, and water pollution.

## Ownership

The Kachemak Bay IBA is owned and managed as: federal-other and state-other.

## Habitat

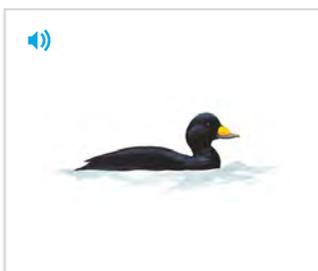
The Kachemak Bay IBA is characterized by the following habitat types: open water. The IBA is located in the Southeastern Cook Inlet - Kodiak Upwelling ecoregion with the Gulf of Alaska. The average water depth is -37.0 m and ranges from -161.1 m to 0.0 m.

## Land Use

The Kachemak Bay IBA is used for: fisheries/aquaculture-other, ecological research, birdwatching, and ecotourism.

Share this Important Bird Area   

## Birds in This Area



Black Scoter

*Melanitta americana*



Kittlitz's Murrelet

*Brachyramphus  
brevirostris*

[Marbled Murrelet](#)

[Pelagic Cormorant](#)

[White-winged Scoter](#)

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## Important Bird Areas

# Fox River Flats

[Alaska](#)

The Fox River Flats IBA comprises a broad expanse of low-lying marshland and intertidal mud flats at the head of Kachemak Bay in lower Cook Inlet. Three major glacial rivers flow into the estuary, depositing layers of silt and clay in a broad fan upon which the Fox River Flats tidal marsh has developed. The Flats are by far the largest marsh in Kachemak Bay, comprising approximately 7,100 acres of coastal marsh and mudflats.

## Ornithological Summary

Kachemak Bay is one of the most critical sites for migratory birds in the world; thousands of migrating waterfowl and millions of shorebirds pause along mud flats here each year. The Fox River delta is one of the most significant sites within the bay. On average, over 94,000 individuals of 22 species use this site during spring migration. Fox River Flats is the major spring staging area for geese and ducks in Kachemak Bay [7]. At high tide in both spring and fall, up to several thousand mallards, pintails, scoters and

mergansers congregate offshore of Fox River. The upper end of Kachemak Bay, including Fox River Flats, supports 100,000 wintering waterfowl [7].

Kachemak Bay is recognized as the second most important shorebird staging area in Alaska (following the Copper River Delta). It was designated as an International Shorebird Reserve because it supports greater than 100,000 shorebirds and/or 15 percent of a specie's flyway population on migration. The Kachemak Bay WHSRN site is formed by three main areas: Fox River Flats; Mud Bay and Mariner Park Lagoon; and the Kachemak Critical Zone. ). It has been hypothesized that small shorebirds cannot store enough energy to travel the vast distance from the Copper River Delta to their arctic breeding grounds; therefore, an intermediary stop on the mudflats of Kachemak Bay can be considerably important [9]. Over 600,000 shorebirds have been counted in the Fox River Flats in past years, although numbers have declined somewhat recently [5, 10].

Species of conservation concern that occur but do not meet criteria thresholds include the whimbrel (3- May 1993) and black oystercatcher (4- May 1993) [6] and trumpeter swans.

Shorebird passage: 1993 = 13,325 to 98,738; 1976 = 1 to 2 million; 1977 = 600,000; 1992 = 7,900 to 35,000.

## **Conservation Issues**

The flats and lower hillsides between Moose Creek and the mouth of Clearwater Creek are very popular for hunting and snowmachining. Properties in Fox River Flats, are threatened by residential development and logging pressures.

## **Ownership**

The Fox River Flats is mostly in state ownership. The flats also have a number of private in holdings that are used by the residents for agriculture and grazing. There is a Russian village and trails that connect the residents to Kachemak Bay on the west side of the Fox River.

## **Habitat**

Mixed forest; scrub; mudflats/sandflats; standing freshwater; river/stream; blanket bog; water-fringe vegetation.

Notes: patches of salt tolerant plants, such as Lyngby's sedge (*Carex lyngbyaei*), can be found in poorly drained patches in the upland transition zone. The following sequence characterizes the dominant marsh species (from seaward to upland elevations): 1) *Puccinellia grandis* (no common name), 2) Ramenski's sedge, 3) Lyngby's sedge, 4) pond aquatic communities 5) inland marsh, and 6) stream banks.

## Land Use

Agriculture-private in-holdings; hunting; nature conservation; tourism/recreation; other-cows and horses are grazed on the flats during the summer.

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Audubon ALASKA

# Alaska WatchList

2017 Red List of Declining  
Bird Populations



## What is the WatchList?

The Alaska WatchList is Audubon Alaska's science-based warning system to identify birds at risk. It is a tool to focus attention on vulnerable and declining bird populations across the state. The WatchList recognizes two levels of conservation concern. The Red List has the highest level of concern: species are currently declining or depressed from a prior decline. The Yellow List is of somewhat lesser concern: species are vulnerable, but populations are either increasing, stable, or unknown.

Attempting to recover species at the brink of extinction is difficult and costly. Working cooperatively to protect birds and their habitats before crises arise is far more effective. Hence, the primary aim of the WatchList is to encourage research, monitoring, and conservation by agencies, organizations, and concerned individuals to prevent birds from becoming threatened or endangered.

## Threats to Birds

Around the world, the greatest threat to bird populations is fragmentation, degradation, and loss of habitat. Over the last century, natural resource extraction, industrial development, urban encroachment, and climate change have driven these losses. Other threats to bird populations include pollution (such as oil spills and toxic contaminants), excessive harvest, introduced predators, and increased human disturbance.

In Alaska, we are fortunate to have relatively intact natural ecosystems and to have state and federal conservation units that protect large portions of the landscape. However, even in Alaska, there are serious concerns about habitat loss, as natural resource development, road building, and other human influences expand into remote areas.

Of course, birds know nothing about state and national boundaries. Migratory species often travel to distant locations where birds and their habitats may not have the same degree of protection as in Alaska and the United States. The WatchList calls attention to threats throughout the ranges of Alaska's birds.



## A Success Story

While we have added new species to the Alaska WatchList 2017, we are pleased to say some species have increased. One of them is the Emperor Goose.

A beautiful and unique goose, it spends its whole life in the Russian Far East and Alaska, moving from breeding grounds on both sides of the Bering Sea to coastal wintering areas along the Aleutians and the Alaska Peninsula like Izembek Lagoon and Kodiak Island. Based on significant declines of the population in the early 1980s, no fall/winter hunting has been allowed since 1986. Additionally, in 1987, the Yukon-Kuskokwim Delta Goose Management Plan reached an agreement that stopped the subsistence harvest of the Emperor Goose until a three-year average count of 80,000 birds was reached during the annual spring survey.

Since the hunting closure, the Emperor Goose population has rebounded, and in 2015, the three-year spring survey index hit 81,875 geese. While details are still being worked out, in the spring of 2017, a limited subsistence hunt resumed for rural residents in the Aleutians, Bristol Bay, and in western Alaska.

Given the increasing trend of this goose population along with tight regulations, we cautiously remove the Emperor Goose from our Red List in 2017. It stays as a vulnerable species, but it stands as testament to the power of science-based monitoring, local community efforts, and regulation of threatened and endangered species.



Emperor Goose / Milo Burcham



# Alaska WatchList 2017 – Red List

The WatchList identifies Alaska birds that are declining or vulnerable, therefore warranting special conservation attention. We graded all regularly occurring bird species in Alaska (and some subspecies) based on four criteria:

- Global population size: small populations are more vulnerable than large populations;
- Minimum range occupied seasonally: populations concentrated in a small area are more vulnerable than populations spread over large areas;
- Area importance (percent of global population occurring in Alaska): our stewardship responsibility is greater for species that have a large percentage of their population in Alaska than for species with a small percentage of their population in Alaska.
- Population trend (weighted x3): Declining populations are at greater risk than stable or increasing populations.

If a species or subspecies that qualified for the WatchList ( $\geq 20$  points) is either declining or depressed (population trend  $\geq 4$  points), they appear on the Red List. Non-declining, yet vulnerable, species scoring at least 20 points appear on the Yellow List. Further details and the Yellow List are available at [www.AudubonAlaska.org/Conservation/Alaska-Watchlist](http://www.AudubonAlaska.org/Conservation/Alaska-Watchlist).

The table below lists each Red List species and includes estimated global population, percent of that population dependent on Alaska at any time of year, and population status.

**Suggested Citation:** Warnock, N. 2017. The Alaska WatchList 2017. Audubon Alaska, Anchorage, AK 99501.

| SPECIES OR SUBSPECIES   | GLOBAL POPULATION | PERCENT IN ALASKA | POPULATION STATUS | NOTES  |
|---|-------------------|-------------------|-------------------|--|
| <b>Loons</b>  |                   |                   |                   |  |
| <b>Yellow-billed Loon</b><br><i>Gavia adamsii</i>                 | 24,000            | 15                | Depressed         | The largest of the loons, this Arctic-breeding loon is also the rarest. Recent (last ten years) surveys from the Arctic Coastal Plain indicate an increasing population, although numbers are still depressed. Pollutants picked up on non-breeding grounds in Asia have been identified as a potential problem for this species.  |
| <b>Grebes</b>   |                   |                   |                   |  |
| <b>Red-necked Grebe</b><br><i>Podiceps griseigena holboellii</i>  | 12,000            | 27                | Declining         | This subspecies breeds in e. Asia and North America. Alaska's largest and most common grebe, the Red-necked Grebe is a prevalent breeder on lakes and other bodies of water in interior Alaska. It is poorly monitored, but recent data from the Arctic Coastal Plain and the interior boreal forest region of Alaska (BCR <sup>4</sup> ) indicate declining breeding populations.   |
| <b>Tubenoses</b>  |                   |                   |                   |  |
| <b>Short-tailed Albatross</b><br><i>Phoebastria albatrus</i>      | 4,354             | 12                | Depressed         | The Short-tailed Albatross was formerly the most abundant albatross in the North Pacific, once numbering in the millions. Decimated by plume and egg hunters in the early 1900s, the species was believed extinct in the 1950s. Fortunately, a few juvenile birds at sea survived; eventually returning to Toroshima Island, near Japan, to breed. Today, the population is slowly increasing and expanding. Outside the breeding season, this species spends most of its time foraging in Alaska waters where it is exposed to bycatch in long-line fisheries. This species is federally listed as an endangered species. |
| <b>Cormorants</b>   |                   |                   |                   |  |
| <b>Red-faced Cormorant</b><br><i>Phalacrocorax urile</i>          | 200,000           | 10                | Declining         | The largest Red-faced Cormorant colonies are found in the western Aleutians. Surveys are complicated by overlap with other cormorant species, but in colonies where this species is differentiated, significant declines are occurring. Reasons for the declines are unknown.  |
| <b>Waterfowl</b>  |                   |                   |                   |  |
| <b>Canada Goose (Lesser)</b><br><i>Branta canadensis parvipes</i> | 4,319             | 100               | Declining         | The Lesser Canada Goose is a small race of the Canada Goose whose population is found in interior Alaska. Breeding Bird Survey data indicate both long and short-term declines in the interior boreal forest region of Alaska (BCR4). Reasons for the declines are unknown.  |
| <b>Greater Scaup</b><br><i>Aythya marila nearctica</i>            | 561,000           | 93                | Declining         | Greater Scaup breeding distribution overlaps with the conspecific Lesser Scaup, but it is more frequently found in northern Alaska and USFWS breeding waterfowl strata 8-11 in interior Alaska. Population trends are variable by location with suggested increases in northern Alaska and declines on the Yukon-Kuskokwim Delta. Christmas Bird Count data in recent years in Alaska also indicate declines in the wintering population.  |

<sup>1</sup> BCR = Bird Conservation Region



Dunlin / Pat Ulrich / Audubon Photography Awards

Violet-green Swallow / Christine Haines  
Audubon Photography Awards

Black Scoter / Kristine Sowl - USFWS

Orange-crowned Warbler / Milo Burcham

| SPECIES OR SUBSPECIES  | GLOBAL POPULATION | PERCENT IN ALASKA             | POPULATION STATUS | NOTES   |
|--|-------------------|-------------------------------|-------------------|---|
| <b>Spectacled Eider</b><br><i>Somateria fischeri</i>                         | 363,000           | 100<br>(of listed population) | Depressed         | Populations of Spectacled Eiders were federally listed as threatened following significant declines (more than 90%) in western Alaska, but have been slowly recovering over the past decade. Only 10% of the global population breeds in Alaska, but virtually all winter in Alaska waters. Tens of thousands of Spectacled Eiders congregate in ice-free waters south of St. Lawrence Island in winter.                          |
| <b>Steller's Eider (western population)</b><br><i>Polysticta stelleri</i>    | 117,500           | 70                            | Depressed         | The population of Steller's Eiders on the Arctic Coastal Plain is variable, with highest numbers in the Barrow area (several hundred birds). The majority of the world population winters in Alaska, from the eastern Aleutians to lower Cook Inlet. It is federally listed as a threatened species.  |
| <b>Black Scoter (western population)</b><br><i>Melanitta nigra americana</i> | 200,000           | 70                            | Declining         | The Black Scoter is a tundra and boreal breeder. Breeding surveys indicate significant declines on the Yukon-Kuskokwim Delta and the Arctic Coastal Plain. A popular subsistence species because of its high fat content, about 7,000 ducks are harvested annually on the Yukon-Kuskokwim Delta in western Alaska.  |
| <b>Grouse</b>  |                   |                               |                   |   |
| <b>Blue Grouse (Sooty)</b><br><i>Dendragapus obscurus sitkensis</i>          | 533,843           | 23                            | Declining         | Populations of Blue Grouse appear to be in decline, particularly in southeast Alaska and British Columbia (BCR5). This grouse is found in the forested regions of southeast Alaska, including the Tongass National Forest, and is poorly monitored.   |
| <b>Shorebirds</b>  |                   |                               |                   |   |
| <b>American Golden-Plover</b><br><i>Pluvialis dominica</i>                   | 500,000           | 56                            | Declining         | A long-distance migrant, the American Golden-Plover spends its non-breeding season in South America after traversing the Central Flyway of the US. Roughly 8% of all American Golden-Plovers breed in the 1002 Area of the Arctic National Wildlife Refuge. The global population is in decline, but reasons are unknown.   |
| <b>Lesser Yellowlegs</b><br><i>Tringa flavipes</i>                           | 660,000           | 38                            | Declining         | Recent Breeding Bird Survey data indicate declines in the interior boreal forest region of Alaska (BCR4). The reasons for these declines are unknown. Causes may include drying of boreal wetland habitat on its breeding grounds as a result of climate change, habitat degradation on its wintering grounds in Latin America, and hunting.  |
| <b>Bar-tailed Godwit</b><br><i>Limosa lapponica baueri</i>                   | 90,000            | 100                           | Declining         | This subspecies breeds only in Alaska and winters on the southeastern coast of Australia and in New Zealand. On the southward migration, it undertakes the longest nonstop flight of any shorebird species, covering over 7,000 miles and losing half its body weight in the process. Loss of intertidal habitat in the Yellow Sea has led to annual declines of >3% per year in recent years.                                    |
| <b>Red Knot</b><br><i>Calidris canutus roselaari</i>                         | 21,800            | 100                           | Declining         | Only a few thousand birds of this subspecies nest in Alaska, but all of the North American population migrates through Alaska. This subspecies, like others, is thought to be declining. Conservation concerns include low reproductive success on the breeding range. Hunting on the non-breeding grounds is a concern for other populations of Red Knot, but it is unknown if this is a concern for this population.            |
| <b>Pectoral Sandpiper</b><br><i>Calidris melanotos</i>                       | 1,680,000         | 70                            | Declining         | Roughly 13% of all Pectoral Sandpipers breed in the 1002 Area of the Arctic National Wildlife Refuge, but breeding numbers can vary greatly among years. In some years, birds may visit Alaska breeding grounds and then fly further east into Arctic Canada or west into Russia. The global population is in decline, but reasons are unknown.   |
| <b>Sharp-tailed Sandpiper</b><br><i>Calidris acuminata</i>                   | 160,000           | >60 <sup>2</sup>              | Declining         | The Sharp-tailed Sandpiper breeds in the Russian Arctic, but in the fall, a majority of the juvenile birds cross the Bering Sea to stage in western Alaska where they put on prodigious amounts of fat before flying back across the Pacific to wintering grounds in Australasia. Adult birds are rarely seen in Alaska. Declines are probably due to habitat degradation, especially along the Yellow Sea coast in eastern Asia. |

<sup>2</sup> Percentage of global population of juvenile population that occurs in Alaska



Kittlitz's Murrelet / Milo Burcham



Sooty Grouse / Kathleen Kitto  
Audubon Photography Awards



Western Wood-Pewee / Francesco Veronesi / Creative Commons



Buff-breasted Sandpiper / Peter Brannon  
Audubon Photography Awards



| SPECIES OR SUBSPECIES  | GLOBAL POPULATION | PERCENT IN ALASKA | POPULATION STATUS | NOTES  |
|--|-------------------|-------------------|-------------------|--|
| <b>Dunlin</b><br><i>Calidris alpina arctica</i>                  | 500,000           | 100               | Declining         | The <i>arctica</i> subspecies nests in northern Alaska and to a much lesser extent western Canada. This subspecies is relatively abundant, but appears to have undergone significant declines. <i>Arctica</i> has suffered an alarming rate of habitat loss on its wintering grounds in eastern Asia, especially at the Yellow Sea.  |
| <b>Buff-breasted Sandpiper</b><br><i>Tryngites subruficollis</i> | 56,000            | 25                | Declining         | The Buff-breasted Sandpiper is unique among North American shorebirds in having a lek mating system. It dropped from a population of millions in the 1800s to near extinction by 1920 as a result of unregulated market hunting and habitat loss. In Alaska, breeding occurs on the northeastern Arctic Coastal Plain. The bird migrates through the central US to wintering grounds in Argentina, Uruguay, and Brazil. The widespread conversion of grasslands to agriculture on its winter range is contributing to the ongoing decline, although the population may have recently stabilized. |

## Gulls and Terns

|   |           |     |           |   |
|---|-----------|-----|-----------|---|
| <b>Ivory Gull</b><br><i>Pagophila eburnea</i>                       | 19,500    | <10 | Declining | As its genus implies, the Ivory Gull is a species that is dependent on sea ice throughout its annual cycle. Perhaps the biggest long-term challenge for the Ivory Gull is the rapid decline of Arctic sea ice due to changing climate conditions, including rising temperatures. In Alaska Arctic waters, this gull occurs during fall and winter months. Usually not more than one to tens of birds are seen at a time. It is suspected that most Alaska birds come from Russian breeding colonies to the east and possibly from Canada to the west. |
| <b>Black-legged Kittiwake</b><br><i>Rissa tridactyla pollicaris</i> | 2,500,000 | 53  | Declining | The Black-legged Kittiwake is an abundant, colony-nesting seabird occurring throughout much of coastal Alaska (small numbers in northern Alaska). Once finished breeding, the bird moves out to pelagic realms around ocean shelf breaks. Numbers in the Gulf of Alaska dropped after the 1989 <i>Exxon Valdez</i> oil spill and have been in a long, steady downward trajectory over the last three and half decades. Current declines appear to be correlated with increasing ocean temperatures.   |
| <b>Red-legged Kittiwake</b><br><i>Rissa brevirostris</i>            | 306,000   | 68  | Declining | The rare cousin in the <i>Rissa</i> genus, Red-legged Kittiwakes only breed in the Bering Sea and at fewer than 10 locations. About 80% of the world's population breeds on St. George Island. Populations declined steeply from 2008-2013 from an all-time high. Reasons for the declines are not well understood.   |
| <b>Aleutian Tern</b><br><i>Onychoprion aleuticus</i>                | 31,131    | 18  | Declining | The Aleutian Tern is rare worldwide, with a breeding distribution split between Russia and the United States and a wintering distribution in Asia. The species is poorly monitored, but numbers at known colonies in Alaska have declined a staggering 92% in the last three decades. The reasons for declines in Alaska are unclear, and a redistribution of colonies to Russia has not been ruled out. Non-breeding habitat degradation in Asia is likely a factor.   |

## Alcids

|   |           |    |           |   |
|---|-----------|----|-----------|---|
| <b>Marbled Murrelet</b><br><i>Brachyramphus marmoratus</i>      | 385,000   | 70 | Depressed | The Marbled Murrelet is a non-colonial seabird that nests in the upper canopy of old-growth trees. The bird is federally listed as threatened in the lower 48 states, where loss of old-growth nesting habitat from logging is a suspected cause for declines. Threats in Alaska include marine regime shifts that affect food supply, predation by avian predators, incidental bycatch in gillnet fisheries, and logging of old-growth habitat. Population declines appear to have stabilized in the last decade.  |
| <b>Kittlitz's Murrelet</b><br><i>Brachyramphus brevirostris</i> | 33,583    | 95 | Depressed | The Kittlitz's Murrelet, like the Marbled Murrelet, is a non-colonial nester, but it is significantly less common, and it nests on non-vegetated rock on mountain tops. The bird breeds in scattered locations along the northern Gulf of Alaska and Bering Sea coast, and it is found as far north as the Chukchi Sea. Highest densities are found in fjords with glacial influence, including Glacier Bay, Icy Bay, and Prince William Sound. Populations declined until about 2000, but they appear to have stabilized. Principal threats include oil spills, habitat change (such as melting glaciers), and mortality from avian predators. |
| <b>Tufted Puffin</b><br><i>Fratercula cirrhata</i>              | 2,970,000 | 79 | Declining | The Tufted Puffin is a widespread breeder in Alaska waters. The largest breeding colonies are found in the eastern Aleutians and along the Alaska Peninsula (over 80% of Alaska's birds). Like the Horned Puffin, Tufted Puffin populations in the Gulf of Alaska are predicted to continue to decline, perhaps in response to global temperature increases.  |



Spectacled Eider / William Pohley / Audubon Photography Awards



Black-legged Kittiwake / Richard Hebbardt / Audubon Photography Awards



Pectoral Sandpiper / Milo Burcham



Marbled Murrelet / Milo Burcham

| SPECIES OR SUBSPECIES   | GLOBAL POPULATION | PERCENT IN ALASKA | POPULATION STATUS | NOTES   |
|---|-------------------|-------------------|-------------------|---|
| <b>Horned Puffin</b><br><i>Fratercula corniculata</i>           | 1,200,000         | 77                | Declining         | An abundant breeding seabird of western and southwestern Alaska waters, Horned (as well as Tufted) Puffins have been hit hard by die-offs in the past few years. The northern Gulf of Alaska breeding populations have decreased between 2007 and 2016, while the breeding populations of the southeast Bering Sea region have been variable during this period. Declines appear to be related to food scarcity caused by abnormally warm water around their breeding and feeding areas.  |
| <b>Owls</b>   |                   |                   |                   |   |
| <b>Snowy Owl</b><br><i>Bubo scandiacus</i>                      | 300,000           | 10                | Declining         | One of Alaska's most charismatic birds, the Snowy Owl mainly breeds in Arctic regions of western and northern Alaska, especially in years of high lemming activity. Data for the North American population indicate a declining population (-64% <sup>3</sup> ), and Arctic Coastal Plain breeding trend data also suggest declines, although numbers vary among years.   |
| <b>Hummingbirds</b>   |                   |                   |                   |   |
| <b>Rufous Hummingbird</b><br><i>Selasphorus rufus</i>           | 18,432,129        | 20                | Declining         | The diminutive Rufous Hummingbird is Alaska's only regularly breeding hummingbird. Found mainly in the southeast (and north up to Girdwood), BBS trend data for western US indicate significant declines as do North American trend data (-60% <sup>3</sup> ). Reasons for the declines are unknown.  |
| <b>Landbirds</b>  |                   |                   |                   |   |
| <b>Olive-sided Flycatcher</b><br><i>Contopus cooperi</i>        | 1,876,022         | 23                | Declining         | The Olive-sided Flycatcher has a low reproductive rate for a passerine. It breeds in montane and northern coniferous forests at forest edges and openings. Populations have declined 78% from 1970-2014 in North America. Significant long-term (1993-2015) decreases have been detected during BBS surveys of BCR's 4 & 5 in Alaska. A suspected cause is loss of forested habitat on its South American wintering grounds. This species favors post-forest fire habitat with standing dead trees, so fire suppression efforts may be detrimental. |
| <b>Western Wood-Pewee</b><br><i>Contopus sordidulus</i>         | 11,867,817        | 2                 | Declining         | The Western Wood-Pewee is an uncommon forest breeder in southcoastal, southcentral, and central Alaska. Significant population decreases were detected during BBS surveys of BCR's 4 & 5 in Alaska, both in the long and short-term, as well as nationally (-47% <sup>3</sup> ). This species is part of a suite of aerial insectivores in Alaska that are in decline.  |
| <b>Violet-green Swallow</b><br><i>Tachycineta thalassina</i>    | 8,497,913         | 5                 | Declining         | Violet-green Swallows have declined in North America in recent decades (-19% <sup>3</sup> ). This species is common in central and southcoastal Alaska, and populations have significantly declined (BCR's 4&5). This species is part of a suite of swallow species and other aerial insectivores in Alaska that are in decline.  |
| <b>Bank Swallow</b><br><i>Riparia riparia</i>                   | 25,716,241        | 10                | Declining         | The Bank Swallow has experienced great declines in North America in recent decades (-89% <sup>3</sup> ). Our smallest swallow and common only in central Alaska, the population has significantly declined in BCR 4. This species is part of a suite of swallow species and other aerial insectivores in Alaska that are in decline.  |
| <b>Gray-headed Chickadee</b><br><i>Poecile cinctus lathamii</i> | <5,000?           | 75                | Declining?        | The Gray-headed Chickadee may be North America's most poorly studied breeding bird species. A denizen of the harsh northern boreal woods, it is rarely seen, making it one of the most coveted species to spot in North America. There are some suggestions of declines in birds breeding along central and eastern rivers of the Arctic National Wildlife Refuge.  |
| <b>Orange-crowned Warbler</b><br><i>Oreothlypis celata</i>      | 79,918,135        | 37                | Declining         | Orange-crowned Warblers have declined in North America in recent decades (-30% <sup>3</sup> ). Common breeders throughout much of Alaska except western and northern tundra regions, this greenish warbler has significantly declined in BCR's 4 & 5.   |
| <b>Blackpoll Warbler</b><br><i>Setophaga striata</i>            | 58,721,922        | 26                | Declining         | One of the first songs to disappear for the hearing challenged, the high "zi-zi-zi" song of the breeding Blackpoll Warbler echoes around the boreal forest. Blackpoll Warbler populations have plummeted (-92% <sup>3</sup> ) in North America in recent decades, including in Alaska's boreal forest (BCR4).   |

<sup>3</sup> % change in population from 1970-2014 (PIF 2016)

## What Can You Do to Help?

If you are concerned about the future of Alaska's birds, here are ways you can help:

- Participate in citizen science projects, such as the Christmas Bird Count, Great Backyard Bird Count, or Alaska eBird ([www.eBird.org/ak](http://www.eBird.org/ak)), which gather valuable information about birds.
- Tell policymakers that birds are important to you.
- Volunteer for your local Audubon chapter or Audubon Alaska.
- Make a donation to Audubon Alaska to support bird conservation.
- Visit [www.AudubonAlaska.org](http://www.AudubonAlaska.org) to learn more, donate online, and subscribe to our email list.



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|                           |                 |                 |                 |
|---------------------------|-----------------|-----------------|-----------------|
| <b>Name</b>               | Fox River Flats | <b>State</b>    | Alaska          |
| <b>Status</b>             | Recognized      | <b>Counties</b> | Kenai Peninsula |
| <b>Priority</b>           | Global          |                 |                 |
| <b>Proposed Criteria</b>  | A4i             |                 |                 |
| <b>Confirmed Criteria</b> | A4i             |                 |                 |

|                            |                     |                             |
|----------------------------|---------------------|-----------------------------|
| <b>Central Coordinates</b> | <b>Area (acres)</b> | <b>Elevation (meters)</b>   |
| 59.78333, -151.98333       | 13,363              | <b>Min: Max:289 Avg:144</b> |

**Bird Conservation Region**

Northwestern Interior Forests, Northern Pacific Rainforests

**SITE DESCRIPTION**

The Fox River Flats IBA comprises a broad expanse of low-lying marshland and intertidal mud flats at the head of Kachemak Bay in lower Cook Inlet. Three major glacial rivers flow into the estuary, depositing layers of silt and clay in a broad fan upon which the Fox River Flats tidal marsh has developed. The Flats are by far the largest marsh in Kachemak Bay, comprising approximately 7,100 acres of coastal marsh and mudflats.

**ORNITHOLOGICAL SIGNIFICANCE**

Kachemak Bay is one of the most critical sites for migratory birds in the world; thousands of migrating waterfowl and millions of shorebirds pause along mud flats here each year. The Fox River delta is one of the most significant sites within the bay. On average, over 94,000 individuals of 22 species use this site during spring migration. Fox River Flats is the major spring staging area for geese and ducks in Kachemak Bay. At high tide in both spring and fall, up to several thousand mallards, pintails, scoters and mergansers congregate offshore of Fox River. The upper end of Kachemak Bay, including Fox River Flats, supports 100,000 wintering waterfowl.

**SPECIES DATA AND CRITERIA**

| <u>Common Name</u>       | <u>Date</u> | <u>Seasonal/Daily</u> | <u>Season</u> | <u>Observed</u> | <u>Density (#km/2)</u> | <u>Units</u> | <u>Proposed</u> | <u>Confirmed</u> |
|--------------------------|-------------|-----------------------|---------------|-----------------|------------------------|--------------|-----------------|------------------|
| <u>Western Sandpiper</u> | 1977        | D                     | passage       | 500,000         |                        | Unknown      | -               | A4i              |

**OWNERSHIP**

| <u>Assessment Date</u> | <u>% of IBA</u> | <u>Ownership</u>  |
|------------------------|-----------------|---|
| 1/1/2008               | -               | unset   |
| 1/1/2008               |                 | The Fox River Flats is mostly in state ownership. The flats also have a number of private in holdings that are used by the residents for agriculture and grazing. There is a Russian village and trails that connect the residents to Kachemak Bay on the west side of the Fox River. |

**HABITAT**

| <u>Assessment Date</u> | <u>% of IBA</u> | <u>Habitat</u>  |
|------------------------|-----------------|---|
| 1/1/2008               | -               | Wetlands  |
|                        | -               | Shrubland   |
|                        | -               | Forested Upland   |
| 1/1/2008               |                 | Mixed forest; scrub; mudflats/sandflats; standing freshwater; river/stream; blanket bog; water-fringe vegetation. Notes: patches of salt tolerant plants, such as Lyngby's sedge ( <i>Carex lyngbyaei</i> ), can be found in poorly drained patches in the upland transition zone. The following sequence characterizes the dominant marsh species (from seaward to upland elevations): 1) <i>Puccinellia grandis</i> (no common name), 2) Ramenski's sedge, 3) Lyngby's sedge, 4) pond aquatic communities 5) inland marsh, and 6) stream banks. |

**THREATS**

| <u>Assessment Date</u> | <u>% of IBA</u> | <u>Threat</u>                          |
|------------------------|-----------------|--|
| 1/1/2008               | -               | Agricultural intensification/expansion |
|                        | -               | Invasive species                       |
|                        | -               | Disturbance to birds                   |

- Extraction Industry
- Industrialization/Urbanization
- Recreation/tourism

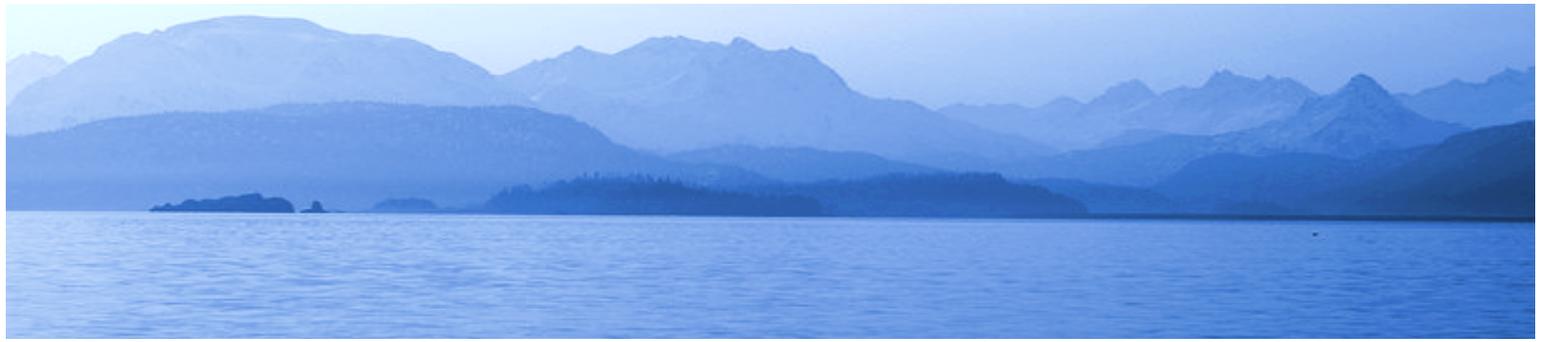
#### CONSERVATION ISSUES

1/1/2008

The flats and lower hillsides between Moose Creek and the mouth of Clearwater Creek are very popular for hunting and snowmachining. Properties in Fox River Flats, are threatened by residential development and logging pressures.

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National Audubon Society 2013 ®  
Important Bird Areas in the U.S.  
Available @ <http://www.audubon.org/bird/iba>



**Kachemak Bay State Parks Citizen Advisory Board  
PO Box 3248, Homer, AK 99603**

To  
Rick Green  
Special Assistant to the Commissioner  
State of Alaska, Department of Fish and Game  
333 Raspberry Rd.  
Anchorage, AK 99518-1565

Filed Electronically  
[rick.green@alaska.gov](mailto:rick.green@alaska.gov) .

Resolution 2019 - 2

A RESOLUTION OF THE KACHEMAK BAY STATE PARKS CITIZENS ADVISORY BOARD, EXPRESSING ITS REQUEST FOR NO ACTION BY ALASKA DEPARTMENT OF FISH AND GAME ON ALASKA RESCINDING REGULATION 5 AAC 95.310, OF THE ALASKA ADMINISTRATIVE CODE, DEALING WITH THE PROHIBITION OF PERSONAL WATERCRAFT USE IN THE FOX RIVER FLATS AND KACHEMAK BAY CRITICAL HABITAT AREAS

WHEREAS, the Alaska Legislature created the Kachemak Bay State Park in 1970 to “...protect and preserve [the park’s] unique and exceptional scenic value;”

WHEREAS, Kachemak Bay State Park was formed and designated as a special purpose site under the Alaska Constitution article 8, section 7;

WHEREAS, The Kachemak Bay State Parks Citizens Advisory Board was created in 1982 to provide a forum for the collection and expression of opinions and recommendations on matters relating to State Park units within the Kachemak Bay watershed; to promote thereby the protection of the resources of the Kachemak Bay State Parks including its scenery, vegetation, wildlife, soils, waters, historic features, and wilderness core and outdoor recreational opportunities; and to promote therefore communication between the public, state, and local government and the administrators of the Kachemak Bay State Parks.

WHEREAS, Kachemak Bay State Park provides important recreational and economic opportunities for local residents, and attracts tens of thousands of visitors each year who support a broad range of local businesses and jobs;

WHEREAS, the Alaska Department of Fish & Game (ADFG) recently opened a thirty (30) day public notice period to change rules regarding personal watercraft adopted to protect the Kachemak Bay Critical Habitat Area including waters inside the Kachemak Bay State Park.

WHEREAS, ADFG's rules have been in place since 2001, when a strong majority of local residents supported their enactment, and these rules are supported by ADFG staff;

WHEREAS, the Kachemak Bay State Parks Citizens Advisory Board held a public meeting on December 11, 2019, where a large majority of citizens spoke in favor of no action be taken by ADFG;

WHEREAS, ADFG adopted the current Kachemak Bay Critical Habitat Area Management Plan in 1993, and has been working with stakeholders, including City of Homer and State Parks staff, to revise it over the past several years;

WHEREAS, ADFG's proposed rule contains a "zero" fiscal note, thereby providing no additional funding for enforcement by state parks or other state personnel; and

WHEREAS, the State of Alaska has provided no explanation or rationale for ADFG's proposed rule change.

NOW THEREFORE BE IT RESOLVED, THE KACHEMAK BAY STATE PARKS CITIZENS ADVISORY BOARD DOES HEREBY REQUEST THE ALASKA DEPARTMENT OF FISH & GAME TO:

1. SUSPEND FURTHER ACTION ON RESCINDING REGULATION 5 AAC 95.310, OF THE ALASKA ADMINISTRATIVE CODE, DEALING WITH THE PROHIBITION OF PERSONAL WATERCRAFT USE IN THE FOX RIVER FLATS AND KACHEMAK BAY CRITICAL HABITAT AREAS
2. If ADFG opts to move ahead, provide an explanation how the State of Alaska will enforce the current personal watercraft ban in state park waters with current staffing levels if ADFG changes its rule;
3. Provide scientific and technical information supporting its proposed rule change in a timely manner so the Kachemak Bay State Parks Citizen Advisory Board and local residents can better-understand and comment on the issues presented;
4. As per the March 1995 Management Plan For Kachemak Bay State Park and Kachemak Bay State Wilderness Park, show how the cooperative agreement spelled out in this document between the Alaska Dept. of Fish and Game, Habitat Div. and the Alaska Dept. of Natural Resources Div. of Parks and Outdoor Recreation is going to be managed (see pages after page 122, pages 1-5) And

5. Extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change.

ADOPTED BY THE KACHEMAK BAY STATE PARKS CITIZENS ADVISORY BOARD ON THIS 11 DAY OF December, 2019

Robert Archibald  
Board Chairman,

Carol Harding  
Board Member

Aron Peterson  
Board Member

Kirsten Dixon  
Board Member

Nancy Hillstrand  
Board Member

Marc Romano  
Board Member

Curtis Jackson  
Board Member

Sera Baxter  
Board Member

Glen Green  
Board Member

Patrick Miller  
Board Member

Robert Ostrom  
Board Member

Jonathan Sharp  
Board Member

Jeffrey Lee  
Board Member

Kevin Walker  
Board Member

CC.

Governor Mike Dunleavy

ADF&G Commissioner Douglas Vincent Lang  
[doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov)

DNR Commissioner Corri A. Feige  
[corri.feige@alaska.gov](mailto:corri.feige@alaska.gov)

Alaska State Parks Director Ricky Gease  
[Langricky.gease@alaska.gov](mailto:Langricky.gease@alaska.gov)

Senator Gary Stevens  
[Senator.Gary.Stevens@akleg.gov](mailto:Senator.Gary.Stevens@akleg.gov)

Representative Sara Vance  
[Representative.Sarah.Vance@akleg.gov](mailto:Representative.Sarah.Vance@akleg.gov)

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**CITY OF HOMER  
HOMER, ALASKA**

Evensen /Aderhold

**RESOLUTION 20-007(S)**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA URGING THE STATE OF ALASKA TO RETAIN THE BAN ON PERSONAL WATERCRAFT IN THE KACHEMAK BAY AND FOX RIVER FLATS CRITICAL HABITAT AREAS UNDER 5 AAC 95.310 UNTIL THE DEPARTMENT OF FISH & GAME PROVIDES RESPONSES TO THE CITY'S PREVIOUS CONCERNS, AN ANALYSIS DETAILING THE CITY'S POTENTIAL LEGAL LIABILITY EXPOSURE, AND ADEQUATE FUNDING FOR THE CITY TO ADOPT AND ENFORCE NEW RULES IF 5 AAC 95.310 IS REPEALED

WHEREAS, The Homer Spit and Kachemak Bay provide important recreational and economic opportunities for local residents and attract tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Alaska Department of Fish & Game (ADFG) opened a thirty (30) day notice period on December 5, 2019, to repeal 5 AAC 95.310, state code that was adopted with strong community support in 2001 as one protection measure for the Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the Homer City Council passed Resolution 19-091(A), calling on ADFG to 1) provide scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better understand and comment on the issues presented; 2) extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change; and 3) provide an explanation why this rule change should not be considered as part of the ongoing revision process for Management Plans of Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the ADFG issued a supplemental notice extending the public comment deadline for fifteen (15) days, until January 21, 2020; and

WHEREAS, Despite Homer City Council Resolution 19-091(A), to date, the State of Alaska has provided no explanation or rationale for the proposed rule change to the City of Homer or the general public, and has not explained why this policy change should not occur under the management plan revision process; and

WHEREAS, ADFG adopted the current Management Plan for Kachemak Bay Critical Habitat Area in 1993; and

44

45 WHEREAS, In 1999 the Homer City Council adopted Resolution 99-111, stating that  
46 “extensive research from around the country demonstrates that personal watercraft pose  
47 threats to waterfowl, seabirds, shorebirds, marine mammals, other wildlife, and their habitat;  
48 cause excessive noise and water pollution; create increased accident rates and user conflicts;  
49 and could have a negative impact on Homer’s visitor industry;” and

50

51 WHEREAS, Over the past several years City of Homer staff have worked as part of a large  
52 stakeholder group with ADFG on the revision process of Kachemak Bay Critical Habitat Area  
53 Management Plan; since 2016 the City has participated in at least twenty (20) stakeholder  
54 meetings, spending significant time and City resources; and

55

56 WHEREAS, Rule changes affecting the Kachemak Bay Critical Habitat Area should be  
57 included in the management plan revision process, where they can be fully vetted by City of  
58 Homer staff and other stakeholders; and

59

60 WHEREAS, Personal watercraft (PWC) can be launched from local beaches and boat  
61 ramps owned by the City of Homer, and the City of Homer may be forced to adopt new rules to  
62 manage the launch and operation of PWCs in City-owned lands and waters; and

63

64 WHEREAS, Design and intended use of PWC are inherently different from skiffs and  
65 other boats, and a PWC’s ability to achieve high speeds, jump waves, and navigate extremely  
66 shallow waters in and around beaches, tidelands, and waters owned by the City of Homer  
67 presents new and unknown liability concerns; and

68

69 WHEREAS, Because ADFG has performed no analysis of the potential effects of PWCs on  
70 municipalities located within and adjacent to the Kachemak Bay Critical Habitat Area, the City  
71 of Homer has no ability to assess the liabilities and costs of rule implementation and  
72 enforcement if 5 AAC 95.310 is repealed, resulting in an unfunded mandate from the State of  
73 Alaska; and

74

75 WHEREAS, Over 99% of Alaskan waters are open to PWC use and Alaskans and tourists  
76 alike have ample access to Kachemak Bay, one of the most heavily used waterways in the  
77 State, through the use of private and commercial vessels.

78

79 NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska urges the  
80 State of Alaska to retain the ban on personal watercraft in the Kachemak Bay and Fox River  
81 Flats Critical Habitat areas under 5 AAC 95.310 until the Department of Fish & Game:

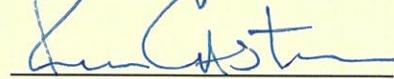
82

- 83 1. Provides adequate responses to Homer City Council Resolution 19-091(A);  
84 2. Provides an analysis detailing the City of Homer’s potential legal liability exposure if  
85 5 AAC 95.310 is repealed; and

86 3. Provides adequate funding for the City of Homer to adopt and enforce new rules if  
87 5 AAC 95.310 is repealed.  
88

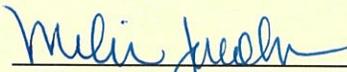
89 PASSED AND ADOPTED by the Homer City Council this 13 day of January, 2020.  
90

91 CITY OF HOMER

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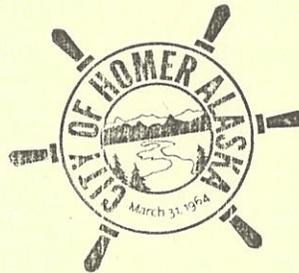
93  
94 KEN CASTNER, MAYOR

95 ATTEST:

96 

97  
98 MELISSA JACOBSEN, MMC, CITY CLERK

99  
100 Fiscal information: N/A



Brian Carter Boyd  
911 W. 8<sup>th</sup> Avenue, Suite 302  
Anchorage, Alaska 99501  
(907) 272-8401

January 15, 2020

[rick.green@alaska.gov](mailto:rick.green@alaska.gov)

Rick Green  
Assistant to the Commissioner  
Alaska Department of Fish & Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

Re: Proposed Repeal of the Jet Ski/Personal Water Craft Prohibition in the Kachemak Bay Critical Habitat Area and in the Fox River Flats Critical Habitat Area

Dear Mr. Green,

**The proposal to allow jet skis/personal water craft (“PWC”s) in the Kachemak Bay Critical Habitat Area and in the Fox River Flats Critical Habitat Area is bad public policy on both and environmental and on economic grounds. The repeal proposal should be rejected and the existing prohibition in 5 AAC 95.310 should stay in effect.** The proposal to implement such a repeal independent of the ongoing plan revision process for those Areas is equally bad administrative process policy by proposing to push the repeal in isolation from the ongoing plan revision. Handling public comments on the proposed repeal through a political appointee rather than through an experienced project manager and career staffer of the Department of Fish & Game (“ADF&G”) is similarly bad policy and appears to be out of compliance with the Alaska Administrative Procedures Act.

Much of the discussion on the proposed repeal that I’ve seen focuses on likely environmental impacts on wildlife from PWCs if the repeal occurs. My comments will address key environmental impacts below, but negative economic impacts on the tourist industry and Alaska’s economy also need to be part of the analysis, particularly to the extent that the Governor’s Office chooses to involve itself in ADF&G’s area of expertise. **The Kachemak Bay Critical Habitat Area is a world class tourist attraction which brings tens and perhaps hundreds of millions per year of Outside tourist dollars to Homer, to the Kenai Peninsula, and to Alaska. These tourists come for a wilderness experience that would be profoundly degraded and less attractive if PWCs are allowed in these Critical Habitat Areas. A tourist coming to Kachemak Bay for a wilderness experience does not get that experience if their activities have PWCs surrounding them, jumping over their wakes, making abrupt turns,**

**charging into shallow waters that most skiffs and motor boats can't enter, and scaring off the whales, sea otters, blue herons, loons, and other wildlife.**

**The Dunleavy administration proudly proclaims that is it open for business. Being open for business isn't just about encouraging new businesses—it's also profoundly about protecting existing businesses and economic activity.** I have a cabin near the Herring Islands. In our immediate vicinity in an area of a square mile or two are two luxury wilderness lodges, two kayaking tourism businesses (one guided and one self-guided), and two rental cabin businesses. One of the luxury lodges when last I checked was charging close to \$10,000 per person per week. From talking to some of the owners and employees and from media coverage relating to those businesses, **many of those visitors are coming from outside of Alaska, bringing Outside money to stimulate the economies of Homer, the Kenai Peninsula, and Alaska. Those independent Outside tourists are the gold standard for tourism's economic benefits, as they spend their money at Alaska-owned businesses, such as B&Bs, cabin rentals, and lodges, independent restaurants, and locally guided tours, rent locally-owned RVs, kayaks, bikes and scooters, and patronize gift shops, furriers, and artists. That is far more valuable activity to Alaska than a tour ship tourist traveler who seldom ventures from the tour group and where the profits of their travel go to an Outside company, rather than stay in Alaska with a locally-owned business. For my own friends and relatives coming from Outside to stay at our cabin, the draw is that it is a wilderness experience—an experience that is incompatible with PWC access.**

**The economic impact of these Outside tourist dollars being spent in Homer, at these Herring Island-area businesses, in Homer, flying into Anchorage and stopping over in Anchorage, and touring elsewhere in Alaska is far, far, far greater than the economic impact of Anchorage residents bringing their PWCs down to Homer, buying a little gas and maybe staying at a Homer B&B.** The PWC proponents might argue that they can start a destination business for people who will come from outside to rent PWCs and run about in Kachemak Bay or the Fox River Flats. I doubt it, but even if there were true, there would be no net economic benefit to Alaska if the new PWC rental business hurts and reduces the economic activity of the existing wilderness-based businesses.

**PWCs can already access almost all waters of the State of Alaska. It would be foolhardy in the extreme (and irrational, arbitrary, and capricious) to sacrifice all of the existing, sustainable and growing wilderness-based tourism that is focused in the Kachemak Bay Critical Habitat Area for the sake of PWC users being able to say that there are no waters that they cannot access (which is what a recent pro-repeal opinion piece in the Anchorage Daily News amounted to—we want to be able to go everywhere).** It isn't a question of equal access as some of these pro-repeal letters to the editor would have it, but rather a question of whether all means of access will be allowed. It really is no different than saying

that in an open fishing area, certain types of fishing gear are allowed but not others. Everyone has access, but the means of acceptable access are regulated. And in this analogy on allowable types of fishing gear, as in the question of jet skis in a critical habitat area, this is the area of ADF&G's expertise, not the Governor's.

I'm a business lawyer. I generally favor balanced and environmentally reasonable and responsible State actions and projects that promote economic growth and activity. This proposal, however, is ill considered and economically harmful to the State of Alaska. As discussed below, it's not balanced and environmentally reasonable and responsible either. It should be rejected.

Bottom line—the State should not mess with current economic success.

As far as harm to fish and wildlife resources are concerned, ADF&G has consistently for almost 20 years taken the position that PWCs are incompatible with both the Kachemak Bay Critical Habitat Area and the Fox River Flats Critical Habitat Area. Impacts from PWCs would be substantially greater than those from skiffs and motor boats. PWCs travel at much higher speeds than skiffs and motor boats. PWCs make faster, far more frequent and more unpredictable recreation and thrill-related turns and maneuvers in shallower water nearer to islands and shorelines than skiffs and motor boats. In my 20 plus years in Kachemak Bay, the skiffs and motor boats are almost invariably taking the shortest line between two points and tend to stay in deeper water away from shorelines where waterfowl populations are heaviest. PWCs would stress bird populations and cause them to take flight far more than a skiff or motorboat going from one place to another. Stressed wildlife has a higher mortality rate, whether it's whales, sea otters, blue herons, loons, eagles, and other wildlife. Having seen PWCs in action at Big Lake and elsewhere, the risk of PWCs striking any of these animals is vastly greater than is the case with skiff or motorboats.

**The harmful impacts of PWCs in the Kachemak Bay Critical Habitat Area and in the Fox River Flats Critical Habitat Area would also be far greater than in areas such as Big Lake, where there are plenty of lakes and ponds nearby that are too small for PWCs. Those smaller lakes and ponds offer waterfowl and other wildlife alternative habitat to which they can retreat to escape PWCs. That would not be the case if these Critical Habitat Area are opened, since all of the marine coastline would be accessible to PWCs and there would be no alternative habitat available.**

**Bottom line—PWCs are simply incompatible with the purpose of the Kachemak Bay Critical Habitat Area and the Fox River Flats Critical Habitat Area, as defined by the Alaska Legislature, to “protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary use.”**

On an administrative level, having a political appointee (rather than a career ADF&G employee with experience as a project manager for this type of action) collect comments on this standalone repeal raises question of whether ADF&G will have the opportunity to apply its expertise to implement the Alaska Legislature's directive that it "protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary use." That raises questions of whether the public comment and review process is being handled in compliance with the Alaska Administrative Procedures Act. Failure to comply with the Act's requirements can end up costing the State perceived legitimacy as well as a lot of money if the action taken is challenged in court.

Similarly, handling the repeal proposal as a standalone repeal, rather than including it as part of ongoing revisions to the management plan for the Kachemak Bay Critical Habitat Area and in the Fox River Flats Critical Habitat Area is bad public policy, for which no justification or explanation has been offered. If the State's decision makers truly want to understand the implications and potential consequences of this proposed repeal, it needs to be considered in the broader context of the overall management plan.

**For all of these reasons, the proposed repeal of the ban on PWCs in the Kachemak Bay Critical Habitat Area and in the Fox River Flats Critical Habitat Area should be rejected and the existing PWC prohibition should stay in effect.**

Sincerely,

Brian Carter Boyd

cc: [doug.vincent/lang@alaska.gov](mailto:doug.vincent/lang@alaska.gov)  
[ben.stevens@alaska.gov](mailto:ben.stevens@alaska.gov)  
[Matt.Gruening@akleg.gov](mailto:Matt.Gruening@akleg.gov)  
[Senator.Gary.Stevens@akleg.gov](mailto:Senator.Gary.Stevens@akleg.gov)

January 15, 2020

Rick Green  
Special Assistant to the Commissioner  
Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, Alaska 99518

Re: ADF&G proposal to Repeal 5 AAC 95.310 to allow PWC in Kachemak Bay and Fox River Flats Critical Habitat Areas

The Alaska Department of Fish and Game (ADF&G) proposes to repeal a regulatory ban on Personal Watercraft (PWC) in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHAs). I comment from the perspective of a year-round resident and concerned citizen of Homer, a 15-year Kachemak Bay wildlife/ecotour business owner and guide, and a former ADF&G Biologist (Wildlife and Habitat Division, 27 years). My recommendations are provided below, followed by more specific comments. Please read the full letter to better understand the basis of my concerns.

**Recommendation:** I oppose the repeal of 5 AAC 95.310 that would allow PWC in the Kachemak Bay and Fox River Flats CHAs. We urge ADF&G to uphold the May 9, 2017 staff/agency recommendation.

1. Public Review Process: While I appreciate the opportunity to comment, one cannot help but feel that it is for naught, as it appears a decision has already been made to repeal the ban. An ADF&G November 19, 2019 email states that:

The governor's office has decided to repeal the PWC prohibition for Kachemak Bay and Fox River Flats CHAs. The change will be conducted as a stand-alone regulation change pursuant to the Administrative Procedures Act, and will be done independently of the ongoing plan revision.

Numerous statements in the Alaska Daily News article (published December 29, 2019), <https://www.adn.com/alaska-news/2019/12/29/alaska-fish-and-game-proposes-lifting-jet-ski-ban-on-kachemak-bay/>) by ADF&G Special Assistant Rick Green and Personal Watercraft of Alaska representative Gina Poths seem confirm that Department's and Governor's commitment to repeal the ban on PWC. It also appears that the research by ADF&G biologists and associated deliberations with other ADF&G Divisions and State agencies has been disregarded or ignored.

No background, context, or other significant information was included with the proposal. In the absence of this information, we must rely on to media to fill in the holes. A December 9 KBBI interview with Mr. Green (<https://www.kbbi.org/post/adfgs-rick-green-lifting-ban-personal-watercraft-kachemak-bay#stream/0>) reveals some of background on the proposed change:

I can kind of tell you how we got where we are. The Personal Watercraft Club, The Alaska Outdoor Council and some other groups like that brought this to us and said, Hey, Look, we can't see a reason for this to happen – and asked us to review the prohibition.

Why would the department talk to just one group, and not extend the same courtesy to other affected groups of citizens? The ADF&G web page includes good guidelines of working with the public and scientific integrity that have not and should be followed:

Commissioner Priorities: “Building trust with the citizens we serve. Alaskans have entrusted their resources to our care and we must maintain constant dialog to ensure we are managing them in their best interest and well-being.”

Guiding Principles: #2 – Improve public accessibility to and encourage active involvement by the public in the department’s decision-making processes. #3 - “Build a working environment based on mutual trust and respect between the department and the public, and among department staff.” #4 – “Maintain the highest standards of scientific integrity and provide the most accurate and current information available.”

Source: ADF&G (<http://www.adfg.alaska.gov/index.cfm%3Fadfg%3Ddivisions.commissioner>)

These guidelines represent a more sincere, well-spirited goal to work with all affected public and user groups. Please establish and “maintain a constant dialog” with other affected citizens, businesses, and groups, not just a few special interest groups. To date, the public and decision-making processes are confusing, too short, contradictory, and disingenuous.

I close this discussion with a few excerpts from closing remarks in an interview with KBBI radio:

"No, I don't know that numbers are the main driving force. We're going to collect all the comments. I know we have some legalities that we have to go through, putting them all together and putting them in one process. But it should be pretty cut and dry, I would think, said Green.

And although Green says that numbers are not the deciding factor, he ended the conversation by encouraging an up or down vote.

"And if you're going to make comments and we certainly encourage everyone to, you just need to tell us whether you're in favor of it or opposed to it. And if you want to tell us why that's fine, but it's pretty much a toggle yes or no, I think," Green said.

Public input is very important, but it’s not just a yes or no vote. It a determination of compliance with CHA Statutory Purpose and Plan Guidelines.

2. Scientific Review and Evaluation of Impacts on Wildlife: Mr. Green appropriately referenced the CHA purpose in the interview: “... to protect and preserve habitat areas, especially crucial to the perpetuation of fish and wildlife. And to restrict all uses not compatible with that primary goal.” The goals of approved Kachemak Bay/Fox River Flats Management Plan (KBFRFMP) further clarified the intent and associated goals to protect both fish and wildlife *habitat* **and** the fish and wildlife *populations and use of the habitat*. ADF&G is still obligated show compliance with Statute and the goals. The Statute and Goals included below (KBFRFMP, pages 3, 5, and 6)

## PURPOSE (Statute)

The purpose of AS 16.20.500 - 16.20.690 is to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.

## GOALS

Activities that occur within the Kachemak Bay and Fox River Flats critical habitat areas will reflect the following goals in accordance with the purpose for which the areas were established (AS 16.20.500). All department management decisions in the Kachemak Bay and Fox River Flats critical habitat areas, whether affecting activities undertaken by the department, other agencies or the public, will be in accordance with these goals.

I. Fish and Wildlife Populations and Their Habitat - Manage the critical habitat areas to maintain and enhance fish and wildlife populations and their habitat. Minimize the degradation and loss of habitat values due to habitat fragmentation. Recognize cumulative impacts when considering effects of small incremental developments and action affecting critical habitat area resources.

### A. Wildlife

1. Protect important wildlife habitat including water quality.
2. Minimize harmful disturbance to wildlife, especially to marine mammals and nesting, rearing, staging and wintering waterfowl, shorebirds, and seabirds.
3. Maintain, protect, and if appropriate, enhance the quality and quantity of nesting, rearing, feeding, staging and wintering habitat for resident and migrant waterfowl, shorebirds, and seabirds.
4. Protect bald eagle nesting, perching, roosting, and feeding habitat.

### B. Fish

1. Protect natural substrate, aquatic vegetation, water quality and circulation patterns to maintain aquatic habitats.
2. Maintain water quality sufficient for the growth and propagation of fish, shellfish, and other aquatic life in fresh, estuarine and marine waters.
3. Maintain water quality at a level that would allow for harvest of raw mollusks or other raw aquatic life for human consumption.

II. Public Use – Manage the critical habitat areas to maintain and enhance public use of fish, wildlife and critical habitat area lands and water consistent with the other goals of this management plan.

- A. Maintain or improve public access to and within the critical habitat areas.
- B. Maintain or improve opportunities for hunting and fishing within the critical habitat
- C. Maintain or improve opportunities to recreate in the critical habitat areas.
- D. Maintain or improve opportunities for viewing, photography, education, and study of fish and wildlife.
- E. Provide information about the critical habitat areas to the public.

Mr. Green shared a simple analysis in the interview on impacts and purpose of changes are included below:

We didn't find personal watercraft and the definition of them to be any more in conflict with that goal than other small crafts.

If you are talking about a 14-foot, personal watercraft comparable to the visual of a 14-foot dinghy, I don't see a lot of difference except that personal watercraft might – the rider might be a little higher in air and easier to see than the guy in the skiff.

If you are talking about a 14-foot, personal watercraft comparable to the visual of 14-foot dinghy, Green says that there are economic benefits to consider and that ADF&G wants all Alaskan's to have access to Kachemak Bay and Fox River Flats.

According to ADF&G staff research, the relative impacts described above is true, provided the two types of watercraft are going same, constant speed. But a PWC and general boats are often used differently, and a PWC can access different areas and have different impacts. A literature review and analysis was completed by ADF&G Habitat and Wildlife Biologists in past assessments in 2000, and both updated and expanded in 2017. In 2017, Department biologists reviewed and summarized over 140 reports and publications and summarized their findings in 33-page table. Their summary and recommendations were presented in the May 9, 2017 department memo to Habitat and Wildlife Division Directors. Their recommendation` is included below:

**Recommendation** (emphasis added): Based on the updated literature review, most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today. Improvements in technology have addressed the pollution from 2-stroke engines that were one of the primary environmental concerns with PWC during the original 2000 literature review. However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.

In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted. A draft of this memo was circulated to affected staff in all department divisions (DWC, HAB, CF, SF) and this recommendation was widely supported.

This is a science-based recommendation. The recommendation recognizes the unique fish and wildlife habitat values of the KBFRF CHAs, and their Statutory obligation to avoid impacts from incompatible uses. It acknowledges PWC have similar habitat and water quality impacts in some circumstances (e.g., going from “point A to point B”, traveling similar speeds, and avoiding sensitive habitats or wildlife concentrations areas), and different impacts in others. In other instances, their impacts are very different, depending on how PWC are used ... often as “thrill craft.” PWC can be used for transportation, but many users often seek out calm, nearshore, shallow waters where boat cannot or do not inhabit. Such shallow areas are also where the highest concentrations of waterfowl, seabirds, and marine mammals are found in Kachemak Bay and Fox River Flats.

Mr. Green also noted the main purpose of the change:

If I was to put it in a nutshell, we put this proposal forward to increase access for Alaskans to the property that we all own equally. That’s our motive to increase access.

The existing ban does not prevent anyone from gaining access to the area. Instead, it limits to mode of access and type of uses that can occur. The review also revealed a number of documented conflicts among user groups in other areas. CHA goals do allow for increasing and maintaining public use and access, but not at the expense of protecting crucial habitat and wildlife that depend on them.

3. Impact on Other Traditional Uses and Businesses: Kachemak Bay was designated as a CHA because of its abundant fish and wildlife and unique and productive habitats. Dan Rosenberg, former ADF&G Wildlife Biologist/Waterfowl specialist for over 20 years, conducted winter waterfowl surveys for many years in PWS and Kachemak Bay (personal communication). He found Kachemak Bay to have particularly high concentrations of waterfowl, substantially higher concentrations than he found in Prince William Sound. Local observations confirm that many species continue to occupy nearshore habitats in large numbers through the summer and fall.

Many people live or visit Kachemak Bay to experience and enjoy the rich and quite waters of Kachemak Bay. Many tourism and guiding businesses are built around and depend on these rich resources. They invested a lot of money and time in their business, and fear how lifting the ban on PWC will affect the nearshore coastal resources and their business.

I am similarly concerned how the lifting PWC ban in these CHAs might affect wildlife resources and ultimately the touring businesses. Many businesses depend on the abundant, diverse, and undisturbed wildlife, most of which occurs in nearshore shallow waters along islands and shorelands on southeast side of Kachemak Bay. Many studies have shown adverse impact PWC may have on this habitats and wildlife, as well as conflicts with other traditional users. We fear the significant negative impact this will have resources and traditional other traditional resources. These businesses play a huge role in regional economy.

As an example, there are particularly productive and sensitive waters includes the nearshore waters off Glacier Spit. This area has expansive tideflats, which support large numbers

waterfowl, marine birds, sea otters and harbor seals. In theory, this area would not be affected by the proposals as these waters are in Kachemak Bay State Park, where PWC are prohibited. However, without user education, and increased enforcement, we fear that PWC users will either unknowingly or intentionally ignore closed areas in Park. Without a GPS or other markers, it would hard or impossible for users to know when they are in Park waters.

I frequently visit this area for tours or personal throughout the year. General recreation watercraft have little or no impact on wildlife, as the vast majority of boats avoid the shallow waters to avoid damage to hull, their outdrive, or the motor. Boats that utilize this shallow/nearshore area must travel slow (2-4 mph) and keep the motor raised so as not to risk damage to the boat. King salmon fishing is also a popular activity in this area, but they typically stay more offshore, are seaward of large concentrations of feeding birds, and by nature of the activity travel slow while fishing. Existing activities have little impact on the resources and birds and are less threatened by slow moving boats. Some birds move short distance laterally in water, and rarely take flight and leave the area. The animals have become accustomed to slow moving boats. Boats that travel down the bay to residences or fishing almost always seem to take the most direct route which is offshore

On the other hand, the departments literature PWC are capable of traveling in and often seek shallow protected waters. PWC often travel at fast speeds, vary their speed a lot, and spend a lot of time in shallow waters, potentially displacing these birds from area all together. ADF&G's review revealed that these are the kind of activities and areas have a high probability of disturbance to birds and marine mammals. Such impacts are not made up, they are real.

4. Impact on Marine Mammals and Potential Violations: The ADF&G staff analysis reviewed a number of papers on the affect general boating and PWC on marine mammals. Both general boating and PWC can have a negative effect on marine mammals. Perhaps one of the greatest concerns in Kachemak Bay and Fox River flats is their effect on use of seal haul-out areas. There are number of haul-out sites throughout the bay, especially in the inner bay, near Aurora Lagoon, Chugachik Island, and up the Fox River. Disturbance of seals on these sites in way that causes the seals to leave the site is illegal.

Most recreational boats have a minimal effect of seal haul-outs. The head of the bay is a popular spot for king salmon fishing. By the nature of this activity, these boats are traveling slow and at a steady speed and parallel to haul-out areas, circumstances which have little or no effect on the seals. Most the boats cannot get close enough to seal haul-outs on Chugachik Island as shallow waters and rocks keep boat from approaching the site. In contrast, PWC can get very close to haul-outs and their quick, sudden movements can cause the seals to abandon the haul-outs.

Another big concern is harbor seal pupping and rearing up the Fox River in May and June, where as many as 1000-2000 or more seals have been seen hauled out along the Fox River. Most of harbor seals in Kachemak Bay pup in this area in May and June, when very few seals are seen in Kachemak Bay. Pupping is a critical time in the harbor seal life cycle. A shallow watercraft PWC can easily travel up shallow rivers and do in a number of rivers of

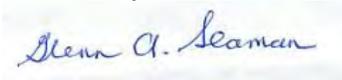
Alaska. A PWC traveling up the Fox River in spring/early summer would spook these seals, cause them leave the haul-out to seek refuge in the river. With the seal density so high, watercraft/seal collisions are likely. Such disruptive interactions might be considered a “taking” and illegal under the Marine Mammal Protection Act.

ADF&G should contact NMFS on matters concerning harbor seals and whales. There were some studies in ADF&G analysis showing the unique impact on marine mammals. NMFS guidelines are published at <https://www.fisheries.noaa.gov/alaska/marine-life-viewing-guidelines/alaska-marine-mammal-viewing-guidelines-and-regulations>.

5. Review of Changes in Context with Ongoing Revisions the KBFRF CHA Plan: It is unfortunate that this review was taken out of hands of a group of biologists and other agency professionals. All available information – the Department’s 2017 review, any more recent data, and local information – needs to be made more available to public and decision-makers. A deliberative planning process with lots of public involvement is both an effective way to accomplish this and consistent with the Department Priorities and Guidelines. We urge the department to evaluate this change as part of CHA planning process.

Thank you for the opportunity to comment.

Sincerely,



Glenn A. Seaman  
1435 Bay Avenue  
Homer, Alaska 99603



VIA EMAIL ONLY

(doug.vincent-lang@alaska.gov)

January 21, 2020

Doug Vincent Lang, Commissioner  
Alaska Department of Fish & Game  
Post Office Box 115526  
1255 West 8th Street  
Juneau, Alaska 99811-5526

RE: DUNLEAVY ADMINISTRATION EFFORTS TO REPEAL 5 AAC 95.310

## **I. INTRODUCTION**

Below find comments from Cook Inletkeeper, on behalf of its more than 8,500 members and supporters throughout Southcentral Alaska.

The reason Alaskans – regardless of political affiliation or ideology - increasingly turn-away from their government is because they cannot trust it. The Dunleavy Administration’s efforts to steamroll through a highly controversial rule change – and the Alaska Department of Fish & Game’s (ADFG) betrayal of basic public process and honest science – exemplify precisely why Alaskans have little faith in their elected and appointed officials.

ADFG’s Guiding Principles include:

- Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
- Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.

These words ring hollow in ADFG’s heavy-handed effort to overturn a longstanding and strongly-supported ban on “thrillcraft” in the Kachemak Bay & Fox River Critical Habitat Areas (KBFRCFA). In fact, they should be removed from ADFG’s Guiding Principles, because this rule change alone demonstrates they are but lip-service designed to convey the false impression to

Alaskans that you and ADFG seek “mutual trust and respect” and embrace “the highest standards of scientific integrity.” As climate change continues to batter our great state and to threaten the very resources and economies that support our local communities, the substantial time and resources dedicated to an issue that a strong majority of Alaskans decided long-ago is an affront to our people and our democracy.

## II. COMMENTS

### A. *ADFG’s Public Process Reveals a Pre-Determined Outcome & Ignores an Established Management Plan Review Process*

For the past three years, ADFG staff and numerous stakeholders have committed significant time and resources to meetings and dialogue to revise the 1993 management plan for the Kachemak Bay and Fox River Flats Critical Habitat Areas. The Planning Team for the management plan revision process includes representatives from state, federal and local governments, including the City of Homer, the Alaska Department of Natural Resources, the City of Seldovia, the Kenai Peninsula Borough, the National Oceanic & Atmospheric Administration, the U.S. Fish & Wildlife Service and the Alaska Division of State Parks.

These entities partook in the management plan revision process at ADFG’s request, and relied on ADFG’s representations that the revision process would be the primary vehicle for updating rules and policies for the CHA’s. According to City of Homer staff, they have attended at least 20 meetings to help revise the management plan, which translates into a significant commitment of time and tax payer money.

Then, out of nowhere, on November 19, 2019, ADFG staff sent an internal email to the KBFRFCHA Planning Team, stating:

“The Governor’s office has decided to repeal the PWC prohibition for Kachemak Bay and Fox River Flats CHAs (5 AAC 95.310 Personal watercraft use prohibited). This change will be conducted as a stand-alone regulation change pursuant to the Administrative Procedures Act, and will be done independently of the ongoing plan revision.”<sup>1</sup>

While ADFG has attempted to walk-back this statement, it cannot. ADFG has conceded publicly that Jetski interest groups contacted the Governor’s office, and that the proposed rule change is a direct result of those discussions. This pre-determined outcome not only makes a mockery out of the Alaska Administrative Procedures Act, but reflects a complete disregard for the thousands of Alaskans who opposed Jetskis in the CHAs in 2001. Furthermore, ADFG’s rule-

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<sup>1</sup> <https://inletkeeper.org/wp-content/uploads/2019/12/ADFG-Memo-PWC-20191119.pdf>

making – lobbed from left field with no public discussion or inquiry – makes the entire management plan revision process a waste of time and public money.

*B. Jetskis Are Wholly Different Than Skiffs & Boats, and Pose Unique Threats to Fish, Wildlife & People*

Anyone who argues there's an equivalence between PWC's and traditional craft is either dishonest, has not operated both types of vessels or has not done even basic research.

Jetskis and other PWC's are inherently different – by design and intended use – than traditional skiffs and boats. While PWC's certainly can do everything a skiff or boat can do, the inverse is not true: skiffs and boats cannot do what PWC's can do. That's because Jetskis and other PWC's are designed, marketed and sold as recreational "thrillcraft," made to accelerate quickly, obtain speeds of 60-70 mph, execute tight turns, jump waves and wakes, and run in very shallow water.

While traditional vessels typically transit from point A to point B, Jetskis tend to congregate in localized areas, running back and forth, jumping and spinning and creating a nuisance for anyone using or living along the water. Furthermore, because PWC's are designed to jump, they have a unique sound signature when their engines leave the water, creating disruptions to people and wildlife that are unlike those from skiffs and boats.

As the National Park Service has found, Jetskis are "high performance vessels designed for speed and maneuverability and are often used to perform stunt-like maneuvers."<sup>2</sup> This definition comports with what most objective observers understand, i.e., that a 12-14' watercraft with a 200-300 horsepower engine is not in any way similar to a traditional vessel. While the political appointees at ADFG may persist in the illusion PWC's cause the same types of harm as traditional craft, the overwhelming scientific evidence – couple with basic common sense – easily refutes this contention.

*C. ADFG is Violating the Law & Ignoring the Science Supporting the Ban*

The law governing the Kachemak Bay and Fox River Flats CHA's is unequivocal; the purpose of the CHA's is to "protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose."<sup>3</sup>

As discussed herein, the design and intended use of Jetskis and other PWC's pose unique risks to wildlife. ADFG recognized these unique risks when it adopted the Jetski ban in 2001, and

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<sup>2</sup> 65 Fed. Reg. 15,078.

<sup>3</sup> AS 16.20.500 (emphasis added).

again in 2017, when staff conducted a scientific literature review<sup>4</sup> and circulated a memo which states:

Based on the updated literature review, most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today. Improvements in technology have addressed the pollution from 2-stroke engines that were one of the primary environmental concerns with PWC during the original 2000 literature review. However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.

In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted. A draft of this memo was circulated to affected staff in all department divisions (DWC, HAB, CF, SF) and this recommendation was widely supported.<sup>5</sup>

So, ADFG's own staff habitat and wildlife experts – not some biased political appointees - have concluded that the ban is necessary to effectuate the purposes of the CHA's and that the scientific literature continue to support leaving the ban in place.

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<sup>4</sup> 2017 Literature Review of Impacts of Personal Watercraft (2017) (available at: <https://inletkeeper.org/wp-content/uploads/2019/12/Enc-2-Annotated-biblio-PWC-Impacts-May-2017.pdf>).

<sup>5</sup> Memo from Tammy Massie & Joe Meehan, ADFG to David Rogers & Bruce Dale, ADFG (May 9, 2017)(emphasis added) (available at: <https://inletkeeper.org/wp-content/uploads/2019/12/Memo-DWC-and-Habitat-PWC-Recommendation-May-2017.pdf>)

In addition to the scientific literature relied upon by ADFG's own experts, there is a wealth of science showing how Jetskis and PWC's pose unique risks and create unique harms to wildlife.<sup>6</sup>

The Monterey Bay National Marine Sanctuary – managed by NOAA – took a hard look at the unique threats and impacts posed by PWCs in the process of banning them throughout virtually the entire sanctuary.

In fact, NOAA staff asked and answered the very question ADFG's political appointees apparently cannot answer for themselves:

**“Is there scientific and public information demonstrating that [jetskis and PWC's] cause a unique disturbance to marine wildlife?”**

Yes. ... Some have claimed that scientific studies, observations, and public testimony about negative impacts upon marine wildlife by MPWC don't exist, or they prefer to dismiss the findings of the evidence presented and demand more studies, advocating that wildlife within the sanctuary be put at risk to conduct such studies. NOAA has reviewed evidence of MPWC disturbance impacts from around the United States, including the states of California and Washington, and has concluded that the nature of harmful MPWC impacts upon seabirds and marine mammals is consistent across the country.

In several assessments of MPWC impacts upon protected water areas around the United States between 1994 and 2004, the National Park Service found that MPWC can operate closer to shore at high speeds and make quicker turns than other types of motorized vessels. MPWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels. Wildlife impacts from MPWC disturbance can include interruption of normal activity and alarm or flight; avoidance and displacement, loss of habitat use, decreased reproductivity success, interference with movement, direct mortality, interference with courtship, alteration of behavior,

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- <sup>6</sup> See, e.g., • [Burger, 1998: Effects of MPWCs \(516KB PDF\\*\)](#)
- [Green et.al., 2002: Monitoring Impacts of Harbor Seals \(5.8MB PDF\\*\)](#)
  - [Kelly, 1997: Audubon Canyon Analysis \(406KB PDF\\*\)](#)
  - [Miksis-Olds, 2006: Manatee Response to Environmental Noise \(4.5MB PDF\\*\)](#)
  - [Osborne, 1996: Preliminary Assessment of Impacts of Personal Watercraft \(471KB PDF\\*\)](#)
  - [Rogers & Smith, 1997: Buffer Zone Distances to Protect Foraging and Loafing Waterbirds \(623KB PDF\\*\)](#)
  - [Snow, 1989: A Review of Personal Watercraft \(1.1MB PDF\\*\)](#)
  - [Snow, 1989: A Review of Personal Watercraft Appendices \(9.3MB PDF\\*\)](#)
  - [Sutherland & Ogle, 1975: Effect of Jet Boats on Salmon Eggs \(647KB PDF\\*\)](#)
  - [US Dept of Commerce 2008: Final Environmental Impact Statement](#) (multiple pdfs)
  - [US Dept of Interior, 1998: Proposed Rule - PWC \(41KB PDF\\*\)](#)
  - [US Dept of Interior, 2000: Final Rule - PWC \(188KB PDF\\*\)](#)
  - [US Dept of Interior, 2004: Gulf Islands PWC Environmental Assessment \(3MB PDF\\*\)](#)

change in community structure and nest abandonment (U.S. Dept. of Interior, 1998). As a result of these findings and public testimony nationwide, the National Park Service concluded that MPWC use is inappropriate in most areas of the National Park System (including the Golden Gate National Recreational Area adjacent to Monterey Bay National Marine Sanctuary) and implemented regulations broadly prohibiting their use in 2000.

Research indicates that impacts associated with MPWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions to wildlife and an accumulation of impacts in a shorter period of time (Snow, 1989). MPWC are generally of smaller size, with a shallower draft (4 to 9 inches) than most other kinds of motorized watercraft. The smaller size and shallower draft of MPWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of motorized watercraft (U.S. Dept. of Interior, 1998). These characteristics greatly increase the potential for MPWC to disturb fragile nearshore habitats and organisms.

Research in Florida found that MPWC cause wildlife to flush at greater distances and trigger more negative behavioral responses than automobiles, all-terrain vehicles, pedestrians, and motorboats. This was partially attributed by the scientists to a common operational profile of MPWC in which they accelerate and decelerate repeatedly and unpredictably and travel at high speed directly toward shore. By comparison, conventional motor boats generally slow down as they approach shore (Rodgers and Smith, 1997). A study of harbor seal reactions to vessel disturbance in San Francisco Bay between 1998 and 2001 concluded that watercraft exhibiting sudden speed and directional changes were much more likely to flush seals than vessels passing at a steady speed and constant course (Green and Grigg, 2001). Scientific research also indicates that even at slower speeds, MPWC pose a significantly stronger source of disturbance to birds than conventional motorboats. Levels of disturbance are further increased when MPWC are operated at high speeds or outside of established boating channels (Burger, 1998). Research in the Imperial National Wildlife Refuge directly attributed declining nesting success of grebes, coots, and moorhens to the noise and physical intrusion of MPWC (Snow, 1989).

Numerous shoreline roost sites exist within the sanctuary and research has shown that human disturbance at bird roost sites can force birds to completely abandon an area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly, 1997). Seabirds such as common murre and sooty shearwaters often form large aggregations on the surface waters of the sanctuary. Feeding aggregations of sooty shearwaters can

often number in the thousands and cover significant offshore areas. These feeding flocks are ephemeral in nature and their movement is dictated by the availability of their prey. These seabirds are especially susceptible during these critical periods and disturbance could have negative impacts on them. Repeated disturbance of seabirds by MPWC in quiet estuarine areas of the Gulf of the Farallones National Marine Sanctuary led to a complete prohibition of MPWC operations in that sanctuary. MPWC operations would pose the same risk to birds in Elkhorn Slough, a critical estuary within MBNMS.

Researchers note that MPWC may be disruptive to marine mammals because MPWC change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC do not produce low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996). Acoustics research conducted in Sarasota Bay, Florida (Miksis-Olds, 2006) showed a marked difference in manatee responses to MPWC sound signatures compared to sound signatures from other types of vessels. All manatees in the study group exhibited acute panic responses to MPWC, except for one animal, which was deaf. Possible disturbance effects of MPWC on marine mammals in MBNMS could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and evasion behavior by whales (Gentry, 1996; Richardson et al., 1995).

MPWC operation poses particular risk to sensitive estuarine and stillwater areas within the sanctuary, such as Elkhorn Slough. Research in Florida shallow water areas indicates that MPWC can increase turbidity and may redistribute benthic invertebrates, and that such impacts may be prolonged as a result of repeated use by multiple machines in a limited area. That research has also shown that MPWC can increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). Past research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by MPWC.”<sup>7</sup>

Courts too have recognized the unique impacts and harm caused by PWC’s:

“Before discussing this further, we ought to examine what made jet skis and other thrill craft the headache. The record is full of evidence that machines of this sort threatened the Monterey Bay National Marine Sanctuary. NOAA received written comments and testimony from marine scientists, researchers,

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<sup>7</sup> See Monterey Bay National Marine Sanctuary, Resource Management Issues: Motorized Personal Watercraft FAQ (emphasis added)(available at: [https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc\\_faq13](https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc_faq13))

federal agencies, state agencies, state and local governments, business organizations, and more than a hundred citizens on the issue of regulating these machines. Everyone agreed-personal watercraft interfered with the public's recreational safety and enjoyment of the Sanctuary and posed a serious threat to the Sanctuary's flora and fauna. The concept of a “sanctuary” entails elements of serenity, peace, and tranquility. Yet the commenters described instances of personal watercraft operators harassing sea otters and other marine mammals, disturbing harbor seals, damaging the Sanctuary's kelp forests, menacing swimmers, divers, kayakers, and other recreational users, and generally disrupting the esthetic enjoyment of the Sanctuary. All concerned recommended either prohibiting personal watercraft outright or restricting them to specific areas in the Sanctuary. No one urged NOAA to do nothing about the problem.<sup>8</sup>

Finally, PWC use in Alaska has resulted in numerous anecdotal complaints coming from the Big Lake area, and an incident in Resurrection Bay rose to a high enough level of significance to garner coverage in Alaska’s statewide newspaper (“Federal authorities are looking for two jet skiers after receiving tips they were “pursuing and riding over-top” humpback whales in Resurrection Bay...”).<sup>9</sup>

#### *D. This Issue is Not About Public Access*

When asked why ADFG was moving to repeal the ban on Jetskis in the CHA’s, ADFG Special Assistant told a local radio “[i]f I was to put it in a nutshell, we put this proposal forward to increase access for Alaskans to the property that we all own equally. That’s our motive is to increase access.”<sup>10</sup>

Of course, that rationale is nonsense. Alaskans and tourists alike have ample access to Kachemak Bay using traditional private or commercial craft. By simply making the argument, however, ADFG undermines its credibility and reinforces the notion it’s simply pressing for a pre-determined outcome.<sup>11</sup> And not surprisingly, this phony “access” issue is the very same red

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<sup>8</sup> Personal Watercraft Industry Association v. Dept. of Commerce (1995)(emphasis added) (available at: <https://caselaw.findlaw.com/us-dc-circuit/1035962.html>).

<sup>9</sup> Alex DeMarben, Jet skiers may have harassed whales in Resurrection Bay sought by federal authorities, Dept. 14, 2017 (available at: <https://www.adn.com/alaska-news/wildlife/2017/09/14/jet-skiers-who-may-have-harassed-whales-in-resurrection-bay-sought-by-federal-authorities/>)

<sup>10</sup> KBBI, ADF&G's Rick Green on lifting the ban on personal watercraft in Kachemak Bay (Dec. 10, 2019) (available at: <https://www.kbbi.org/post/adfgs-rick-green-lifting-ban-personal-watercraft-kachemak-bay#stream/0>)

<sup>11</sup> In the wake of the U.S. Supreme Court’s *Sturgeon* decision, ADFG and other motorized access interest groups appear to feel empowered to open everyplace to motorized vehicles. Yet ADFG restricts uses and equipment all

herring Outside PWC trade groups and manufacturers are using to rationalize lifting the Jetski ban.<sup>12</sup>

*E. ADFG Has Provided No Rationale for its Decision & Has Been Dismissive of Public Engagement*

Despite the fact ADFG is moving to overturn a long-standing rule based on scientific findings in 2001, ADFG has wholly failed to provide any reasonable rationale, findings or justification for its proposed repeal of the ban on jetskis in the KBFRFCHA. The public notices for this matter provide no indication why ADFG is seeking to change the rule, and ADFG has refused to address the matter in any meaningful way in response to written questions submitted by the City of Homer and others.

In a local radio interview, ADFG Special Assistant Rick Green said:

"The purpose is to protect and preserve habitat areas, especially crucial to the perpetuation of fish and wildlife. And to restrict all other uses not compatible with that primary goal. We didn't find personal watercraft and the definition of them to be any more in conflict with that goal than other small crafts."<sup>13</sup>

Yet in an email to me from Mr. Green on December 10, 2019, Mr. Green acknowledged "I have no written findings with which to share as ours were verbal consultation and deliberations with our staff biologists and our habitat biologists at the Alaska Department of Fish and Game over the past 11 or 12 months."<sup>14</sup> However, despite numerous phone calls, Inletkeeper could not identify any ADFG "staff biologists" or "habitat biologists" who engaged in the "deliberations" cited by Mr. Green. As a result, it appears ADFG is simply not telling Alaskans the truth about how and why it's proposing such a draconian rule change.

Furthermore, ADFG's entire process has been dismissive of Alaskans and our local governments. ADFG issued the public notice in early December, and provided a scant thirty (30) days to comment over the busy holiday season. Despite the controversy around this issue, ADFG refused to hold a public hearing, further deepening public mistrust.

Local citizens concerned about ADFG's proposed habitat rollbacks did not sit idly by in the face of ADFG's minimal public process. The Kachemak Bay State Park Advisory Committee held two

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the time to promote conservation. For example, large engines are barred from large segments of the Kenai River to protect our fisheries resources.

<sup>12</sup> Chris Manthos, *All Alaskans should have access to Kachemak Bay*, Anchorage Daily News (Jan. 13, 2020)(<https://www.adn.com/opinions/2020/01/14/all-alaskans-should-have-access-to-kachemak-bay/>)

<sup>13</sup> See, KBII, *Supra*, Note 2 (emphasis added).

<sup>14</sup> Email from Rick Green, ADFG, to Bob Shavelson, Cook Inletkeeper (Dec. 10, 2019) (emphasis added).

public meetings, where support for the ban remained overwhelming. In response, the Committee passed a resolution on December 11, 2019, supporting the ban and calling on ADFG to embrace a more legitimate public process.

Similarly, on December 16, 2019, the Homer City Council took public comment strongly against lifting the ban, and unanimously passed Resolution 19-091(A), which asked ADFG to:

1. Provide scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better-understand and comment on the issues presented;
2. Extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change; and
3. Provide an explanation why this rule change should not be considered as part of the ongoing revision process for the Kachemak Bay Critical Habitat Area Management Plan.<sup>15</sup>

Remarkably, ADFG did not respond to the City of Homer’s request for information in a timely manner, despite the abbreviated public comment period. And rather than extend the public comment period ninety (90) days as requested by the City of Homer, ADFG provided only fifteen (15) days. In a subsequent resolution adopted January 13, 2020 – Resolution 20-007(s) – the Homer City Council took note of ADFG’s unprofessional and discourteous behavior:

WHEREAS, despite Homer City Council Resolution 19-091(A), the State of Alaska has to date provided no explanation or rationale for the proposed rule change to the City of Homer or the general public, and has refused to explain why this policy change should not occur under the management plan revision process.<sup>16</sup>

That resolution went on to oppose ADFG’s habitat rollbacks in Kachemak Bay until ADFG:

1. Provides adequate responses to Homer City Council Resolution 19-091(A);
2. Provides an analysis detailing the City of Homer’s potential legal liability exposure if 5 AAC 95.310 is repealed; and
3. Provides adequate funding for the City of Homer to adopt and enforce new rules if 5 AAC 95.310 is repealed.

Finally, on January 16, ADFG responded to the City of Homer first resolution, writing a terse

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<sup>15</sup> <https://www.cityofhomer-ak.gov/resolution/resolution-19-091a-proposed-regulation-change-personal-watercraft-use-kachemak-bay>

<sup>16</sup> <https://www.cityofhomer-ak.gov/resolution/resolution-20-007s-urging-state-retain-personal-watercraft-ban-respond-citys-concerns>

letter that failed to provide any context or meaning around ADFG's proposed rule change.<sup>17</sup> Notably, ADFG has to date failed to address the issues of liability exposure and additional taxpayer spending posed by the Homer City Council.

*F. Zero Fiscal Note Fails to Capture Legal Liability & Need for Additional Enforcement*

The public notice for the proposed rule includes a zero fiscal note, despite the fact the state will need additional enforcement to ensure PWCs do not enter Kachemak Bay State Park, which is adjacent to and overlaps with the CHA, and where Jetskis are currently banned.

Furthermore, the state has not offered to provide local municipalities – such as the Cities of Homer and Seldovia – with the support or funds needed to enact and enforce new ordinances. As the City of Homer aptly noted in Resolution 20-007(s), this failure to support local municipalities amounts to an unfunded mandate.

*G. The Proposed Rule Violates ADFG's Own Policies*

Alaska prides itself on the effective management of its salmon resources, and the fresh and salt waters of Kachemak Bay support a variety of wild salmon runs. One of the pillars of the state's salmon management scheme is the Policy for the Management of Sustainable Salmon Fisheries (aka, the Sustainable Salmon Policy).<sup>18</sup> That policy states in relevant part:

(c) Management of salmon fisheries by the state should be based on the following principles and criteria: (1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows: (A) salmon spawning, rearing, and migratory habitats should be protected as follows: (i) salmon habitats should not be perturbed beyond natural boundaries of variation; (ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal; (iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed; (iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways; (v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water

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<sup>17</sup> Letter from Rick Green, ADFG, to Katie Koester, City of Homer (Jan. 16, 2020) (available at: <https://inletkeeper.org/wp-content/uploads/2020/01/ADFG-Response-to-HCC.pdf>)

<sup>18</sup> 5 AAC 39.222.

quality, and water quantity;<sup>19</sup>

If ADFG moves forward with a repeal of the Jetski ban, it will be violating its own Sustainable Salmon Policy by failing to protect salmon habitat and assess and address impacts in nearshore and freshwater salmon habitats. As a result, ADFG's willingness to ignore its own policies with respect to salmon and salmon habitat protection erodes yet another layer of public trust in ADG's management of Alaska's fish resources.

#### *H. The Unique Qualities of Kachemak Bay Drive a Thriving Local Economy*

Kachemak Bay is renowned the world over for its spectacular scenery and amazing biological productivity, and the list of designations assigned to the area attest to its unique qualities. Kachemak Bay was Alaska's first state park, and its only state wilderness park. It's been recognized by the World Bank as one of 150 locations worldwide warranting Marine Protected Area status. The Western Hemisphere Shorebird Reserve Network declared Kachemak Bay to possess "International Importance" due to its rich feeding grounds and its location on the Pacific Americas Flyway. And in addition to two Critical Habitat Areas for Kachemak Bay and Fox River Flats, the area is also part of the Natural Estuarine Research Reserve network.

Not surprisingly, these attributes attract Alaskans and tourists alike who are looking to get away from the noise and the crowds of our increasingly congested world. Tens of thousands of people flock to Kachemak Bay each summer to fish, kayak, hike, camp, sail and boat, and these users drive millions of dollars into the local Kenai Peninsula economy each year. As discussed above, Jetskis and PWC's threaten these activities. Accordingly, it makes little sense to upend this sustainable economic driver simply so the Dunleavy Administration can – in the wake of the recent decision in the *Sturgeon* case - embrace an ideological pursuit to allow Jetski access everywhere in the state.

### **III. Conclusion**

As you know, the vast majority of Alaska's fresh and salt waters are currently open to Jetskis, and the current regulatory scheme reflects more than a fair "compromise" around the use of these thrillcraft in Alaska waters. In light of all the other pressing issues facing Alaska's resources, it's a sad indictment the Dunleavy Administration has chosen to fan the flames of such a divisive issue rather than work in the best interests of Alaskans to protect our heritage. I truly hope the comments you receive – and the available science showing the unique impacts posed by PWC's – leads you to a sensible decision.

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<sup>19</sup> 5 AAC 39.222(c). While this is but one subsection of the Sustainable Salmon Policy, the entire policy embraces a precautionary approach to resource management which ADFG is ignoring by trying to lift the ban.

All documents and links cited above are incorporated herein by reference. Please feel free to contact me with any response to comments at 3734 Ben Walters Lane, Homer, AK 99603; 907.299.3277; or bob@inletkeeper.org.

Yours for Cook Inlet,

A handwritten signature in black ink, appearing to read "Bob Shavelson", enclosed in a thin black rectangular border.

Bob Shavelson  
Inletkeeper

Cc: (VIA EMAIL ONLY)  
Rick Green, ADFG (rick.green@alaska.gov)  
Representative Sarah Vance (representative.sarah.vance@akleg.gov)  
Senator Gary Stevens (senator.gary.stevens@akleg.gov)

To: Rick Green ADF&G

From: Alison O'Hara

Re: Jet Ski Ban

Date: December 11, 2019

I am opposed to jet skis being allowed in the Kachemak Bay Critical Habitat Area.

I own and operate True North Kayak Adventures in Kachemak Bay. This is my 28th year in business. Our base camp is located on Yukon Island which I have circumnavigated about 3000 times by sea kayak. This has given me a decent baseline for boating activities in Kachemak Bay, including jet skis, and how they affect wildlife, birds and folks recreating in the bay. I have experienced what it is like to try to guide with jet skis buzzing around. Basically, it's a game changer. Jet skis transform a peaceful journey exploring, watching and listening to a nature into a loud, stressful and potentially dangerous environment. Jet skis have a large carbon footprint for hauling one sometimes two passengers.

In my experience, commercial fishing boats, pleasure boats, water taxis and charter boats don't have the same impact at all. These boats stay quite a ways off shore and therefore aren't as disturbing. They also are usually on a point to point trajectory, are quiet and travel about 15 to 20 knots as opposed to jet skis which can go upwards of 65 knots. Their intent is thrill not transportation to and from fishing grounds, private property or the state park.

Jet skis have many other areas to recreate in throughout the State of Alaska (about 99% of it).. We said it in 2001, 2011, 2016 and we're saying it now. Jet skis have no place in the Kachemak Bay Critical Habitat area.

January 21, 2020

Rick Green  
ADF&G, Special Assistant  
State of Alaska

Emailed to: [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

Re: Proposed repeal of 5 AAC 95.310

Dear Mr. Green:

We oppose the repeal of 5 AAC 95.310, which currently bans the use of so-called personal watercraft (“jet ski”) in the Fox River and Kachemak Bay Critical Habitat Areas (“CHAs”).

When the Legislature created the CHAs it declared that the “purpose of AS 16.20. 500 - 16.20. 690 is to protect and preserve habitat areas *especially crucial* to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.” AS 16.20.500 (emphasis added). We believe that the operation of jet skis is incompatible with the primary purpose of the CHAs and, in any event, that the ADF&G’s proposal to repeal the jet ski prohibition is otherwise procedurally defective at this time.

The Alaska Legislature has adopted the following public governance policy:

(a) It is the policy of the state that

- (1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;
- (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) the people of this state do not yield their sovereignty to the agencies that serve them;
- (4) *the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;*
- (5) *the people's right to remain informed shall be protected so that they may retain control over the instruments they have create ...*

AS 44.62.312 (emphasis added). In service to those policy ends, the Administrative Procedures Act (“APA”), AS 44.62, imposes certain procedural requirements on agencies to ensure that the public has the opportunity to be fully informed and to

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comment on proposed regulations, and in the end to prevent the adoption of regulations that only serve a personal whim or political preference and not the broader public interest.

Among the APA's procedural requirements for rule making is the publication of a Public Notice that includes "an informative summary of the proposed subject of agency action." AS 44.62.200(a)(3). The APA does not define the term "subject" in (a)(3), so one must look to the dictionary. Popular dictionaries commonly define "subject" as the actual substance of anything, the originating cause, reason or motive.

In 2001, when 5 AAC 95.310 was first adopted, ADF&G determined that the use of jet skis in the CHAs was an incompatible use. *See id.* Alaska Admin. Code, Reg. 158, 5/3/2001. Incompatibility was the "subject," i.e., the cause, reason or motive that prompted ADF&G to adopt the regulation. That is, of course, as it should be, since the statute creating the CHAs states as its secondary purpose the goal to "restrict all other uses not compatible with" the primary purpose to "protect and preserve habitat". AS 16.20.500.

ADF&G's Public Notice here does not identify and give an informative summary of the real "subject" of the proposed agency action. It states that ADF&G proposes to change the jet ski regulations by removing the prohibition on their use.\* That describes the proposed action: repealing the ban in the current regulation. But it does not identify the subject. The underlying subject ADF&G must address in the proposed action --- the actual substance, the originating cause, reason or motive --- relates to whether the operation of jet skis is a compatible or an "incompatible use" in the CHAs. It is this compatibility subject about which ADF&G's notice must inform the public about.

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\* ADF&G's Public Notice reads in part:

BRIEF DESCRIPTION

The Department of Fish and Game proposes to change regulations on personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

\* \* \*

5 AAC 95.310 is proposed to be repealed. The purpose of this repeal is to remove the prohibition on personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

*Id.*

Thus, the current Public Notice is not “informative” of the “subject”. AS 44.62.200. The notice doesn’t state what is the cause, the reason or the motive driving ADF&G to suddenly propose an action to repeal a two-decades old regulation. The notice impermissibly leaves it to the public to guess what is the driving force behind ADF&G’s proposed action and to guess what issues to address in comments. This is inconsistent with APA’s rule-making requirements and with the public governance policy that animate them. *See* AS 44.62.312 (quoted above). It deprives the public of its “right to remain informed so that they may retain control over the instruments they have created.” *Id.* (a)(5).

Even if the Public Notice met the technical requirements of AS 44.62.200, nonetheless ADF&G’s approach here is inconsistent with the APA and AS 44.62.312. ADF&G has made its proposal apparently without recently investigating the issues concerning compatibility, or otherwise preparing any background information concerning the subject which the public might review before making comments. *See* Rick E. Green and Mike Frank email exchange dated January 7, 2020 (Mr. Green: “Nothing ... has been published concerning personal watercraft and their status in Kachemak Bay Critical Habitat Area recently.”). Again, this leaves the public to engage in guesswork during the rule making, which serves no useful purpose and, in fact, is counter productive.

Moreover, the lack of any recent analysis strongly suggests that ADF&G is acting cavalierly. Little or no timely analysis is a veritable signpost of arbitrary and capricious decision-making. On this point bear in mind that the CHAs contain habitat that the Legislature found was “especially crucial” to the perpetuation of fish and wildlife. AS 16.20.500. Even statutes creating state parks do not typically employ such acute language when describing a habitat’s importance. The “especially crucial” language is in effect a legislative direction to ADF&G to apply a highly rigorous level of scrutiny when ADF&G examines a proposed use for compatibility. Because Executive Branch agencies must protect fish and wild life under the public trust created in Article VIII of the Alaska Constitution, a close examination is especially warranted. Yet the required rigorous examination obviously has not been undertaken here.

ADF&G’s longstanding management Plan for the CHAs indicates that the Plan’s goals and policies would be used as a guide for determining whether a regulation was appropriate. This promise is embodied in a regulation as well. *See* 5 AAC 95.610. Thus, at the time of its adoption the current regulation banning the use of jet skis had to be found consistent with the Plan’s goals and policies; in fact, apparently no one has ever seriously contested that determination, or the regulation’s consistency with statutory law. In proposing to repeal the regulation without first proposing and adopting modifications to the Plan’s goals and policies, ADF&G has put the planning cart before the regulatory horse. This again is contrary to the aforementioned public governance policies. There is no reason for the public to engage in the ongoing CHA planning process if the regulatory outcome is already foreordained by the agency.

Many years ago DNR and ADF&G entered into a Cooperative Management Agreement (*see* appendix to the management Plan for the two Kachemak Bay state parks) that requires them to consult, cooperate and coordinate concerning park and CHA management issues of mutual interest and importance. The CHAs are a subset area within the boundaries of the parks. DNR Division of Parks and Recreation regulations include a ban on the use of jet skis within the parks; in fact, before the regulations were adopted the park Plan had noted that jet skis caused adverse impacts to fish and wildlife, habitat, and other user groups. ADF&G's proposed action to repeal the jet ski ban applicable to the CHAs undercuts DNR's regulatory ban inside the parks. Repeal of ADF&G's ban would make it much more difficult for DNR to enforce its own ban within the parks. Given that, ADF&G's proposal reflects a lack of agency cooperation and coordination, which is inconsistent with promises it made in the Cooperative Agreement. As long as DNR chooses to ban jet skis within the parks, ADF&G should do so as well in the CHAs.

Should ADF&G proceed ahead with its proposed action, it must demonstrate that it has engaged in reasoned decision-making. This requires it to analyze the significant issues that may reflect on the purposes for which the CHAs were created, the preservation of fish and wildlife and the especially crucial habitat they use.

We are uncertain what motivates ADF&G's proposed action, so we are uncertain what issues we should address. But it is clear to us that as a minimum ADF&G must explain why jet skis should be permissible in the CHAs when, for example, they have been banned in Kachemak Bay state parks administered by DNR, and banned as well in Shuyak State Park and Shoup Bay State Marine Park. *See* 11 AAC 20.805, -.760(b). They are also banned in a portion of Kenai Lake, whose fresh water fish and wildlife values are far less than those in the Kachemak Bay environs. Even so, where permitted in Kenai Lake, jet skis may not be operated at speeds greater than five miles per hour or create a wake within 300 feet from shore, and may not be operated at all between 10 p.m. and 10 a.m. 11 AAC 20.867. The CHAs deserve at least the level of protection from jet skis afforded Kenai Lake, and marine habitat elsewhere in Alaska.

ADF&G also must analyze the potential adverse impacts from the use of jet skis on threatened and endangered species, and candidate species and species of special concern, that may use or historically used the CHAs. Indeed, ADF&G is required by law to protect the critical habitat of threatened and endangered species, whether or not it has chosen to list them under the state (as opposed to the federal) endangered species act. *See* AS 16.20.485. ADF&G should review its own lists, those lists maintained by the USFWS and NOAA Fisheries and by knowledgeable NGOs, like the Audubon Society, to determine which species use the CHAs and determine how they might be impacted by jet ski use.

Notably, since adoption of the jet ski ban for the CHAs and the two Kachemak state parks, the Cook Inlet beluga whale was listed as endangered in 2008 under

federal law, and NOAA Fisheries designated much of Kachemak Bay as critical habitat for the whale in 2011. ADF&G must, therefore, determine whether jet skis might have an adverse impact on beluga whales as the Cook Inlet population of the whale recovers and returns to the Bay.

Again, we oppose repeal of ADF&G's regulation banning the use of jet skis in the CHAs. The inherent design of jets skis, their high speed and potential for erratic maneuvering pose too great a risk to other users and to the fish and wildlife of Kachemak Bay.

Thank you for considering these comments.

Mike and Diane Frank



## Friends of Alaska National Wildlife Refuges National Friends of the Year 2010

[www.alaskarefugefriends.org](http://www.alaskarefugefriends.org)

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**Treasurer**  
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21 January 2020

Rick Green  
Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

Re: Proposed repeal of 5 AAC 95.310

Dear Mr. Green,

The Friends of Alaska National Wildlife Refuges (Friends) wish to register our strong opposition to the proposed repeal of 5 AAC 95.31 that prohibits the use of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

The Friends is a statewide volunteer citizen organization that works with the U.S. Fish and Wildlife Service (FWS) to accomplish their federally-mandated mission to protect, preserve, and enhance the habitats and wildlife on national wildlife refuges. Friends works closely with FWS on all 16 National Wildlife Refuges in Alaska. The Alaska Maritime National Wildlife Refuge headquarters is located in Homer, Alaska, and the Refuge includes islands whose wildlife would be damaged by the operation of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

Many thousands of migratory seabirds use the Maritime Refuge islands as a base from which they feed in Kachemak Bay. Recently, large die-offs of these seabirds have occurred in the area of Kachemak Bay, apparently due to a shortage of forage fish. Operation of personal watercraft in and around Kachemak Bay will undoubtedly disturb the ability of these seabirds to obtain food that is critical to their survival.

Several species of marine mammals, including the endangered Steller sea lion, threatened humpback whales, orcas, and northern sea otters, frequent the shores of Maritime Refuge islands. Recently, dead whales have been found ashore in nearby areas,

Alaska Maritime NWR

Alaska Peninsula NWR

Arctic NWR

Becharof NWR

Innoko NWR

Izembek NWR

Kanutai NWR

Kenai NWR

Kodiak NWR

Koyukuk NWR

Nowitna NWR

Selawik NWR

Tetlin NWR

Togiak NWR

Yukon Delta NWR

Yukon Flats NWR

apparently caused by starvation. Operation of personal watercraft in these areas will disturb these animals, interfere with their feeding activities, and limit the ability of thousands of visitors to observe and enjoy the presence of these magnificent animals.

In 2001, ADF&G conducted an extensive public process, including an analysis of the existing scientific literature concerning the impacts of personal watercraft on wildlife. Many local and statewide citizens, including members of Friends, voiced their support of a ban on the operation of personal watercraft in Kachemak Bay. Following their exhaustive review of the public testimony and the scientific evidence, ADF&G banned jet skis by regulation in the Kachemak Bay Critical Habitat Area. In 2017 ADF&G conducted an exhaustive review of the scientific literature surrounding jet ski risks and impacts, and again supported the ban on personal watercraft in the Kachemak Bay Critical Habitat Area.

There is no reasonable justification for reversing the long-standing and carefully-considered ban on the operation of personal watercraft in Kachemak Bay. Until such time that ADF&G produces a body of peer-reviewed scientific evidence and local public support that the operation of personal watercraft in Kachemak Bay would not pose a threat to the wildlife that depend on its waters and food supply, we urge ADF&G to maintain the thoroughly-vetted and publicly-supported ban on the operation of personal watercraft in Kachemak Bay.

Sincerely,

A handwritten signature in cursive script that reads "David C. Raskin". The signature is written in black ink and is positioned above the printed name and title.

David C. Raskin, Ph.D.  
President

To: Rick Green, Alaska Department of Fish & Game

From: Ruth Wood, Talkeetna, Alaska

Date: January 21, 2020

Re: Comments on Proposal to repeal 5 AAC 95.310 in order to remove the prohibition on personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

Via Email To: [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

I write to vehemently object to the Proposal to repeal 5 AAC 95.310.

First, ADF&G's mission is "to protect, maintain, and improve the fish, game, and aquatic plant resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle."

Repealing this ban on personal watercraft (PWC) in the Fox River Flats and Kachemak Bay Critical Habitat Areas is in direct conflict with ADF&G's Mission to protect the fish, game, and aquatic plant resources of the state.

Repealing this ban on PWC is in direct conflict with ADF&G's Guiding Principals: 1. Provide for the greatest long-term opportunities for people to use and enjoy Alaska's fish, wildlife, and habitat resources. and 4. Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.

The public notice states, "The purpose of this repeal is to remove the prohibition on personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas." There is no evidence, scientific or otherwise, presented support this statement.

This lac of purpose is disturbing because, PWC are known to cause damage in sensitive habitat. The EPA in a publication titled, "Bon Voyage to Bad Boating Habits," notes the following:

*"... your personal watercraft (such as a Jet Ski) poses some of the same threats to the environment as the big boats. And because of the size, such watercraft have access to environmentally sensitive areas that are too small for access by larger boats. To make matters worse, some twocycle engines can discharge up to 40 percent of their oil and gas into the water!"*

*Wake from personal watercraft and boats also contributes to water quality degradation. Large waves produced by personal watercraft erode shorelines, disturb*

*sensitive shoreline vegetation, and degrade fish and wildlife habitat. What can you do to watch your wake?*

- *Learn at what speed your boat or jet ski produces wake.*
- *Reduce your speed before you reach a speed marker, not after you pass it.*
- *Obey all posted speed limits.*
- *Operate your boat or watercraft only in appropriate water depths.*
- *Avoid cutting through seagrass beds.*
- *Operate your boat or watercraft so that no wake is created within 150 feet of the shore."*

This last is important because the public notice says under Fiscal Information that the proposed change is not expected to require an increased appropriation. That cannot be accurate. If PWC are to be allowed in a critical habitat area, there will have to be regulations based on criteria such as those above. The means staff will be required to research and write regulations and staff will be required to enforce regulations. To repeal this ban on PWC without simultaneously issuing regulations would be negligent.

The Alaska Department of Fish & Game (ADF&G) puts its integrity on the line when it issues such a sloppy notice. You cannot have the purpose of repealing a section of code be to remove what the code says. That is a circular argument at its worst. What is the reason that ADF&G wants to repeal this ban? What research has ADF&G done to determine that it will not put the wildlife and habitat at risk by removing the ban on PWC? If ADF&G thinks this repeal is necessary, they must do the work to show there is a valid reason for doing so, and they must support that reason with valid science. The Alaska State Constitution demands it, "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."

Furthermore, the Alaska Administrative Code has other provisions regarding Kachemak Bay and the Fox River Flats Critical Habitat Areas. The code requires the department to use the management goals and policies for the critical habitat areas and their resources in determining whether proposed activities are compatible with protections, "[5 AAC 95.610. Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan](#) The goals and policies of the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan dated December 1993 are adopted by reference. The plan presents management goals and policies for the critical habitat areas and their resources which the department will use in determining whether proposed activities in the critical habitat areas are compatible with the protection of fish and wildlife, their habitats, and public use of the critical habitat areas. Under [5 AAC 95.420](#), a special area permit is required for certain activities occurring in a designated state critical habitat area. The department will review each special area permit application for consistency with the goals and policies of the management plan adopted by reference in this section. A special area permit for the Kachemak Bay Critical Habitat Area or the Fox River Flats Critical Habitat Area will be approved, conditioned, or denied based on the criteria set out in the goals and policies in the

*Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan, and on the standards contained elsewhere in [5 AAC 95](#)."*

If ADF&G has determined that repealing the ban on PWC is compatible with the protection of fish and wildlife, their habitats, and public use of the critical habitat areas, they have not shared such determination with the public. They have certainly presented no information to support their proposal.

I recently read that the Kachemak Bay State Park Advisory Board, after public comments, approved a draft letter to ADF&G Special Assistant Rick Green, asking that the department suspend work on rescinding the repeal until ADF&G can provide a science-based explanation for the repeal and schedule a more thorough public comment process. In the draft letter, the board points out that the proposed rule contains no fiscal note for funding of additional enforcement of the current ban on personal watercraft in state park borders. This request supports my above arguments.

Commissioner Feige erred in rescinding the adoption of the the Kachemak Bay State Park and Kachemak Bay State Wilderness Park Management Plan. That plan was adopted after extensive public review, and changes in the AAC should not be made independent of a new draft plan being released for public scrutiny.

Furthermore, when ADF&G conducted a public scoping for the revision of the Kachemak Bay and Fox River Flats Critical Habitat Area Management Plan, the department did a thorough review of published scientific publications including considerable new (i.e., since the ban was adopted in 2001) studies on possible impacts of PWC on birds, fish, marine mammals, etc., and determined that there was no new scientific information to support lifting the ban. **Therefore, ADF&G's own research is in direct conflict with this proposal.**

I read an action alert from advocates of lifting the ban urging commenters to say that this is about fair and equal access for Alaskans to Alaskans public water. **This is not about fair and equal access for Alaskans to Alaskans public water. All Alaskans have the same legal access to Kachemak Bay. That argument would lead to removing all limits to access to all of Alaska's land and waters. We limit access to protect the critical resources that all Alaskans use and enjoy.**

I have also read arguments that conservation concerns are addressed by current regulations that apply to all boats in Alaska. That argument is both fallacious and ludicrous. First, a PWC is not a boat. It is a toy that travels at excessive speeds into areas a boat cannot access. Second, we are not talking about all of Alaska, but a critical habitat area, and the scientific evidence says PWC will have a negative impact on fish and wildlife and habitat.

Aquatic vegetation is important. A PWC's drive's suction and the force of the jet can cause damage to aquatic vegetation. Furthermore, invasive plants is a huge concern in Alaska. If a PWC's drive is not flushed thoroughly after every use, "exotic" species, like zebra mussels and invasive plants, can stow away inside the craft. They can then be transported to other bodies of water. ADF&G has not demonstrated that repealing the ban on PWC won't introduce elodea into the critical habitat areas.

All older models and some newer models of personal watercraft use two-stroke engines, which can vent oil and gasoline into the water with their exhaust. How does ADF&G propose to monitor this and manage the pollution.

Noise is always an issue for those of us who enjoy quiet recreation, but it is especially important for protection of plants and marine animals in shallow waters. How does ADF&G propose to monitor study and determine damage and mitigate that damage should it occur.

In conclusion, ADF&G has presented no legitimate purpose for repealing 5 AAC 95.310. AdF&G has done no work to demonstrate that repealing 5 AAC 95.310 will not cause harm, perhaps permanent, to areas identified by the Alaska Legislature as critical habitat, and all available evidence suggests repealing the ban will cause harm in critical habitat areas. A repeal will have fiscal consequences. The proposal to repeal 5 AAC 95.310 should be dropped immediately.

I appreciate the opportunity to comment, but wish the department had provided more data to inform my comments.



Kachemak Bay Conservation Society  
3734 Ben Walters Ln, Homer, AK 99603  
907 235.8214  
kbayconservation@gmail.com

January 20, 2020

Rick Green  
Alaska Department of Fish and Game  
333 Raspberry Rd, Anchorage, AK

CC: Doug Vincent-Lang, Governor Dunleavy,  
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Representative Sarah Vance, [Sarah.Vance@akleg.gov](mailto:Sarah.Vance@akleg.gov)

Dr. Mr. Green:

*The Kachemak Bay Conservation Society's mission is to protect the environment of the Kachemak Bay region and greater Alaska by encouraging sustainable use and stewardship of natural resources through advocacy, education, information, and collaboration.*

**THE ALASKA DEPARTMENT OF FISH AND GAME MUST UPHOLD THE PRIMARY PURPOSE OF THE CRITICAL HABITAT AREA.**

The purpose of the Kachemak Bay and Fox River Flats Critical Habitat Area (CHA) is “to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose” (AS 16.20.500). The Alaska Department of Fish and Game (the department) was given the responsibility to protect the fish and wildlife of the CHA for all Alaskans by the legislature. In proposing to repeal 5 AAC 95.310, the ban on PWC in the CHA, the department does not state how this action is in keeping with its “primary purpose” to “protect and preserve” Kachemak Bay and Fox River Flats. This omission is a violation of the directives of the legislature and thereby a violation of the will of Alaskans.

As "no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute" (A.S. 44.62.030), this proposed regulation is not valid unless it protects and preserves habitat areas crucial to the perpetuation of fish and wildlife; the department has given the public no reason whatsoever to believe that purpose of the



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proposed regulation meets this criteria. Instead, it makes a circular statement regarding purpose. The department's stated purpose is not the protection of or preservation of "habitat areas especially crucial to the perpetuation of fish and wildlife;" instead its purpose is to "repeal prohibition on personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas." The department's evasion of the crucial issue of how the regulation would uphold the founding statute of the CHA is unacceptable; it is an evasion of the department's responsibility to all Alaskans to protect fish and wildlife for the good of all Alaskans, as designated by the legislature; it is an evasion of the department's responsibility to act as scientific body; it is an evasion of its constitutional responsibility to fairness; and it is an evasion of its responsibility to public process, transparency and integrity vis a vis the CHA.

Further, the lack of evidence and analysis on the part of the department to justify the proposed regulation presents a significant legal problem, as "it is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself" (Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50, 1983).

## **PUBLIC PROCESS**

Kachemak Bay Conservation Society rejects Mr. Green's repeated public statements denigrating the value of public comments and the evidence they may supply,<sup>1</sup> and instead we rely on the Alaska Statute on Record of Public Comment (AS 44.62.215), which requires that agencies account for evidence submitted in the public process:

"In the drafting, review, or other preparation of a proposed regulation, amendment, or order of repeal, an agency...shall keep a record of its use or rejection of factual or other substantive information that is submitted in writing as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action"

The legal standards outlined in the following section further clarify the requirement that all "relevant factors" inform the agency's "reasonable and not arbitrary" final determination. Any lower standard, and our institutions devolve into corruption and demagoguery.

## **THE ALASKA DEPARTMENT OF FISH AND GAME IS OBLIGED TO UPHOLD ITS DUTY TO EQUAL PROTECTION OF THE THE PUBLIC.**

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<sup>1</sup> "And if you're going to make comments and we certainly encourage everyone to, you just need to tell us whether you're in favor of it or opposed to it. And if you want to tell us why that's fine, but it's pretty much a toggle yes or no, I think," Rick Green, as quoted in "ADF&G's Rick Green on lifting the ban on personal watercraft in Kachemak Bay" By Kathleen Gustafson. KBBi AM 890, December 10, 2019. Online at: <https://www.kbbi.org/post/adfgs-rick-green-lifting-ban-personal-watercraft-kachemak-bay#stream/0>



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All Alaskans should be able to trust a fair and transparent process that is based on scientific evidence and fair analysis. The department appears to have fallen below this standard; in this sense, this public process is not only about PWC in the Kachemak Bay and Fox River Flats Critical Habitat Areas but about what our state stands for and who our agencies work for.

In describing the motivation for the proposed regulatory change to the press, Mr. Green has made statements about concerns of fairness, “All the citizens of Alaska own Kachemak Bay and there’s a group of them that are being prohibited from using that.”<sup>2</sup>

We would like to preface this discussion by distinguishing between individuals and gear types. The department has a common practice of regulating gear, and this is not a violation of “equal protection.” For example, commercial boats are only allowed to fish one net at a time; while it would be convenient for fishers to be able to carry backup gear to have on hand when their gets damaged, carrying of back-up gear is prohibited because the department cannot reasonably enforce the policy that only one net be used at a time. Sport and subsistence fisheries as well as and game managers rely heavily on gear and area regulations as a way of to maintain sustainable yeild.

Now, we will take Mr. Green at his word that he and the department are concerned about fairness. We agree that the department has a solemn duty to uphold the articles of the constitution that guarantee all citizens equal protection under the law, a right to due process, and an expectation that land and waters acquired by the state will be preserved for the use, enjoyment, and welfare of all the people of Alaska.”<sup>3</sup> In the light of these founding principles, we demand that the department manage the CHA fairly. Fair management means that the interests of all user groups in Kachemak Bay and the Fox River Flats will be considered and valued in regulation.

There are a wide array of conflicts of interests between PWC users and other user groups in Kachemak Bay and Fox River Flats. The evidence we present below—which was readily available to the department in its deliberations—clearly indicates that allowing PWC into the Kachemak Bay and Fox River Flats Critical Habitat Areas would come at a significant cost to the rest of the users. And so, Mr. Green, we hold you to your word and demand that you act in

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<sup>2</sup> Peninsula Clarion, *Fish and Gam proposes repeal of ban on personal watercraft in areas of Kachemak Bay* (Dec. 11, 2019), available at <https://www.peninsulaclarion.com/news/fish-and-game-proposes-repeal-of-ban-on-personal-watercraft-in-areas-of-kachemak-bay/>.

<sup>3</sup> Article 1 of the Alaska Constitution reads: “This constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.” Article 7 states: “No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.” Article 8 reads: “The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”



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fairness to all Alaskans. Consider the following conflicts and for greater detail please refer to the section “Relevant Research on PWC”:

There are serious potential conflicts of interest between commercial, sport, and subsistence fisheries in Kachemak Bay, which include salmon, crab, halibut and cod fisheries; there are also potential conflicts between PWC and mariculture.

There are serious potential conflicts between PWC users and bear, moose and duck and goose hunters.

There are serious potential conflicts between PWC and birders, hikers, kayakers, whale-watchers, and a great number of tourism businesses who are deeply invested in those and other activities. With regard to kayakers, safety is a real concern; for more information please refer back to ADF&G’s 2017 Literature Review included as an attachment to this letter. Please also note that no agency has been delegated and funded to protect public safety.

The proposed regulation places no restrictions on PWC use that would indicate that the department is concerned about protecting the interests of any of these groups. As such, the proposed rule violates Article 1, Article 2 and Article 8 of the Alaska Constitution.<sup>4</sup> Such limitations have been used across the country, and they include evidence-based setbacks from the intertidal, restrictions around seal haul outs, bird nesting grounds, setnet sites, historical areas for sport- and subsistence fishing, historical areas for kayaking and swimming (PWC are notoriously dangerous for kayakers and swimmers<sup>5</sup>).

If the department would like to balance the interests of PWC user and other users, it must identify funding and personnel to enforce the necessary restrictions on PWC. Please note that lack of funding and personnel to enforce restrictions was the reason that the draft management plan work group rejected the proposal by Mr. Green to allow PWC in the CHA. Please see details in Appendix C.

It is unacceptable that the department has conducted no analyses of these conflicts and serious potential losses faced by this very broad and diverse set of user groups. It would seem to be in

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<sup>4</sup> Article 1 of the Alaska Constitution reads: “This constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.” Article 7 states: “No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.” Article 8 reads: “The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”

<sup>5</sup> ADF&G Literature Review of Impacts of Personal Watercraft, 2017. Included as an attachment.



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violation of the constitution to ignore the welfare of these user groups while seeking to serve the interests of one relatively small user group. There is no constitutionally justifiable reason to prioritize the interests of one particular user group over others. The remedy is a fair-minded and evidence-based analysis of the conflicts of interests and any attempt to balance interests must be accompanied by a demonstration of agencies financial and technical ability to regulate PWC behaviors.<sup>6</sup> In the consideration of other user groups' interests, it must be remembered that the extent to which these many of these groups will be impacted is the extent to which fish and wildlife and their habitats will be harmed by the introduction of PWC. Ultimately, the department must fall back on its "primary purpose" to preserve and protect the fish and wildlife of the CHA, as designated but the Alaska Legislature. Only the legislature can decide to abandon that purpose.

## **RELEVANT RESEARCH ON PWC:**

### **ADF&G ASSESSMENTS:**

Following the scoping comment period on the critical habitat areas management plan, in 2017 ADF&G staff revisited the literature review conducted during the regulation's original adoption and found "there has been considerable new research on the potential impacts of PWCs to protected areas," citing and reviewing an additional 140 articles not utilized in the previous literature review.<sup>7</sup> The topics of these 140 new articles include: "effects of PWC and other recreational boating impacts on marine mammals, birds, fish, and other organisms; ecological and water quality impacts; PWC noise; user group conflicts and other management and legal implications."<sup>8</sup>

Based on its updated literature review, ADF&G staff concluded in 2017 that "most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today" and "there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted."<sup>9</sup> In making its conclusion and recommendation to maintain the regulation, the authors noted that "this recommendation was widely supported" by staff in four department divisions, including the Commercial Fisheries and Sport Divisions. The

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<sup>6</sup> Gorzelany J.F. 2004. Evaluation of Boater Compliance with Manatee Speed Zones along the Gulf Coast of Florida. *Coastal Management* 32:215-226.

<sup>7</sup> *ADF&G Memorandum on Personal Watercraft Regulations, Kachemak Bay Critical Habitat Area. May 9, 2017. Included as an attachment.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*



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department must speak directly to the studies included in that literature review and the conclusions drawn when the department explains its final determination if it is to maintain its integrity and follow the rule of law.<sup>10</sup>

#### RELEVANT PRECEDENTS:

PWC have, through scientific and public processes, been banned or restricted for the protection of fish and wildlife in numerous areas. The department must assess the science that went into these processes:

11 National Parks  
Padre Island National Seashore  
Monterey Bay National Marine Sanctuary  
Farallones National Marine Sanctuary

#### BEHAVIOR:

Please note that research on behavioral characteristics of PWC are valid independent of motor type (2- vs 4-stroke); in fact, older studies may be more conservative, as 4-stroke PWC have become more powerful, faster and more nimble. The following analysis is largely extracted from assessments done by NOAA, and additional background information can be found online or at the NOAA offices.<sup>11</sup>

In several assessments of PWC impacts upon protected water areas around the United States between 1994 and 2004, the National Park Service found that PWC can operate closer to shore at high speeds and make quicker turns than other types of motorized vessels.<sup>12</sup> PWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels. Research indicates that impacts associated with PWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions to wildlife and an accumulation of impacts in a shorter period of time (Snow, 1989; Asplund, 2000; Davenport and Davenport, 2006). PWC are generally of smaller size, with a shallower draft (4 to 9 inches) than most other kinds of motorized watercraft. The smaller size and shallower draft of PWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of

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<sup>10</sup> *Ibid*, Enclosures 2 and 3.

<sup>11</sup> [https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc\\_faq13](https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc_faq13). Additional information can be found at the offices of the Monterey Bay National Marine Sanctuary with the Head of Enforcement, Emergency Response, and Regulations, Scott Kathey (831) 647-4251 | [scott.kathey@noaa.gov](mailto:scott.kathey@noaa.gov).

<sup>12</sup> For full set of references see the National Oceanic and Atmospheric Administration's webpage at <https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/science.html>



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motorized watercraft (U.S. Dept. of Interior, 1998). These characteristics greatly increase the potential for PWC to disturb fragile nearshore habitats and organisms.

Research in Florida found that PWC cause wildlife to flush at greater distances and trigger more negative behavioral responses than automobiles, all-terrain vehicles, pedestrians, and motorboats. This was partially attributed by the scientists to a common operational profile of PWC in which they accelerate and decelerate repeatedly and unpredictably and travel at high speed directly toward shore. By comparison, conventional motor boats generally slow down as they approach shore (Rodgers and Smith, 1997). A study of harbor seal reactions to vessel disturbance in San Francisco Bay between 1998 and 2001 concluded that watercraft exhibiting sudden speed and directional changes were much more likely to flush seals than vessels passing at a steady speed and constant course (Green and Grigg, 2001). Scientific research also indicates that even at slower speeds, PWC pose a significantly stronger source of disturbance to birds than conventional motorboats. Levels of disturbance are further increased when PWC are operated at high speeds or outside of established boating channels (Burger, 1998). Research in the Imperial National Wildlife Refuge directly attributed declining nesting success of grebes, coots, and moorhens to the noise and physical intrusion of PWC (Snow, 1989).

Numerous shoreline roost sites exist within the CHA and research has shown that human disturbance at bird roost sites can force birds to completely abandon an area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly, 1997). In a study of the responses of Common terns to boats vs. PWC, terns respond with significantly more upflights to PWCs that raced by and circled than to motor boats that remained in the channel (Burger, 2003). Researchers at Great White Heron National Wildlife Refuge in the Florida Keys observed that disturbances by PWC contributed to poor reproductive success of nesting ospreys (Estes, B. 2001). Repeated disturbance of seabirds by PWC in quiet estuarine areas of the Gulf of the Farallones National Marine Sanctuary led to a complete prohibition of PWC operations in that sanctuary.

Researchers note that PWC may be disruptive to marine mammals because PWC change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because PWC do not produce low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996). Acoustics research conducted in Sarasota Bay, Florida (Miksis-Olds, 2006) showed a marked difference in manatee responses to PWC sound signatures compared to sound signatures from other types of vessels. All manatees in the study group exhibited acute panic responses to PWC, except for one animal, which was deaf. Possible disturbance effects of PWC on marine mammals in the CHA could include shifts in activity patterns and site abandonment by harbor seals; site abandonment by porpoises; injuries from



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collisions; and evasion behavior by whales (Gentry, 1996; Richardson et al., 1995; Szaniszló, 1999.; Miller 2008).

PWC operation poses particular risk to sensitive estuarine and stillwater areas within the CHA, such as Beluga Slough or the Fox River Flats. Research in Florida shallow water areas indicates that PWC can increase turbidity and may redistribute benthic invertebrates, and that such impacts may be prolonged as a result of repeated use by multiple machines in a limited area. PWC, with their exceptionally shallow drafts, have increased traffic in regions of water bodies which have historically seen little boating (Beachler, 2003), and release disproportionately large amounts of fuel emissions into shallow waters that otherwise would not be disturbed by other forms of boating (Depree 2007). Research has also shown that PWC can increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). Past research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by PWC.

One of the most significant differences between noise from PWC and noise from motorboats is that PWC continually leave the water, which magnifies noise in two ways. First, without the muffling effect of water, the engine noise is typically 15 dB louder<sup>2</sup>, and second, the smacking of the craft against the water surface results in a loud “whomp” or a series of them (Komanoff and Shaw 2000). Also, with the rapid maneuvering and frequent speed changes, the impeller has no constant “throughput” and no consistent load on the engine. Consequently, the engine speed rises and falls, resulting in a variable pitch. In general, sounds with prominent impulses are often perceived as more annoying than a constant sound with the same equivalent sound pressure level (EPA 1979).

NOISE:

We will open our discussion of noise with information from information from Scott Kathey, Federal Regulatory & Enforcement Coordinator, Monterey Bay National Marine Sanctuary, National Oceanic and Atmospheric Administration, exchanged in Email correspondence with Kachemak Bay Conservation Society. Mr. Kathey states:

“A popular past-time for recreational MPWC use is launching off of waves and breaking surf, resulting in brief airborne maneuvers, where the craft completely leave the water. Sound emission improvements of newer craft are largely negated in such instances since the engine and impellers are completely out of the water. Aside from decibel levels, a unique sound signature common to MPWC operations is repeated rapid acceleration and deceleration (i.e. revving of the throttle) as the craft maneuver and "dig out" of tight turns. This sound pattern



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(regardless of decibel level) is more startling to wildlife than a vessel following a steady course at a steady speed.”<sup>13</sup>

When weighing the merit of this evidence, please consider that it was challenged in court in 1995, in a U.S. Circuit Court of Appeals for the District of Columbia. The decision upheld the ban on PWC on the merit of evidence and against arguments the restriction was “unfair”:

“An agency does not have to ‘make progress on every front before it can make progress on any front.’ *United States v. Edge Broadcasting Co.*, 113 S. Ct. 2696, 2707 (1993). Agencies often must contend with matters of degree. Regulations, in other words, are not arbitrary just because they fail to regulate everything that could be thought to pose any sort of problem. *Las Vegas v. Lujan*, 891 F.2d 927, 935 (D.C. Cir. 1989); *Louisiana v. Verity*, 853 F.2d 322, 332 (5th Cir. 1988). This is a common principle, well known not only in administrative law cases but also in constitutional cases raising equal protection challenges to economic regulation...

The record is full of evidence that machines of this sort [jet skis and other thrill craft] threatened the Monterey Bay National Marine Sanctuary. NOAA received written comments and testimony from marine scientists, researchers, federal agencies, state agencies, state and local governments, business organizations, and more than a hundred citizens on the issue of regulating these machines. Everyone agreed personal watercraft interfered with the public's recreational safety and enjoyment of the Sanctuary and posed a serious threat to the Sanctuary's flora and fauna.”<sup>14</sup>

## **LEGAL STANDARD FOR ADMINISTRATIVE PROCEDURE**

Mr. Green has commented to the press that the proposed regulation change is based on access issues:

“The Kachemak Bay Critical Habitat Area is a piece of trust land owned by all the citizens of Alaska, there is a segment of them that are banned from accessing it with their watercraft..and this opens it up to them.”<sup>15</sup>

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<sup>13</sup> Please refer to full comments on noise of modern 4-stroke PWC by NOAA in Appendix B.

<sup>14</sup> *PWIA v. the Department of Commerce, NOAA*, 48 F.3d 540, (D.C. Cir. 1995)

<sup>15</sup> KTUU, *New regulation would allow jet skis in Kachemak Bay* (Dec. 3, 2019), available at <https://www.ktuu.com/content/news/New-regulation-would-allow-jet-skis-in-Kachemak-Bay-565768981.html>.



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In this assessment, the department has failed to consider, measure, or assess injuries other groups may suffer as a result of providing access rights to PWC. The department must assess “critical information concerning the injury which the landholder would suffer” to if the decision is not to be considered arbitrary.<sup>16</sup> Injury to commercial, sport, and substance fisheries must be considered; costs associated with regulating the crafts for public safety and pursuant to the marine mammal act must be assessed; losses to the city and tourism businesses due to declines in visitors who value the quiet and ecological richness and diversity marine mammals, shorebirds that extensive research has shown are harmed and displaced by PWC. Lastly, the department must consider the broad constituency of Alaskans for whom Kachemak Bay and the Fox River Flats were designated as Critical Habitat Areas that merit special protection. These areas were protected for the benefit of all Alaskans by statute, and must continue to be protected for all Alaskans.

The lack of information presented by the department as a basis for the regulation change in contrast to the broad extent of information supporting the ban, which the department has ignored, strongly suggests that the regulation is arbitrary and unlawful:<sup>17</sup>

"It is well established that where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary. See *Hanlay v. Mitchell*, 460 F.2d 640, 646 (2d Cir.1972) ("it is 'arbitrary and capricious' for an agency not to take into account all relevant factors in making its determination"); *Citizens to Preserve Overton Park v. Volpe*, [401 U.S. 402](#), 416, 91 S. Ct. 814, 823-24, 28 L. Ed. 2d 136, 153 (1971) ("to make this finding [whether an administrative decision is arbitrary, capricious, etc.] the court must consider whether the decision was based on a consideration of the relevant factors ...")."<sup>18</sup>

Further, please consider the following Alaska Supreme Court Ruling regarding arbitrary regulations and the need for decisional documents:

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<sup>16</sup> “The standard of arbitrariness was clearly satisfied in this case, since critical information concerning the injury which the landholder would suffer was not considered.” (*Department of Transp. & Pub. Facilities v. 0.644 Acres 613 P.2d 829* [1980]).

<sup>17</sup> On a telephone call on December 5, when Kachemak Bay Conservation Society asked on what basis Mr. Green believed that PWC were no different from boats, Mr. Green stated that he owned a boat and spent a lot of time outside of Seward in Resurrection Bay, where PWC are permitted, and he’d never seen them cause any trouble. This is not a scientific basis for a decision and indicates that the department does not believe that it requires such basis.

<sup>18</sup> *State of Alaska, Department of Transportation and Public Facilities, Petitioners, v. 0.644 Acres, More or Less, Robert E. Cooper, Virginia G. Cooper, Respondents* (Alaska 1980).



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“We turn first to a brief discussion of the applicable standard of review. "Where, as here, the question is as to the merits of agency action on matters committed to agency discretion, our scope of review is limited to whether the decision was arbitrary, unreasonable or an abuse of discretion." North Slope Borough v. LeResche, 581 P.2d 1112, 1115 (Alaska 1978); Hammond v. North Slope Borough, 645 P.2d 750, 758-59 (Alaska 1982). Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary. State v. 0.644 Acres, More Or Less, 613 P.2d 829, 833 (Alaska 1980). As one distinguished judge has put it, the role of the court is to ensure that the agency "has given reasoned discretion to all the material facts and issues." The court exercises this aspect of its supervisory role with particular vigilance if it "becomes aware, especially from a combination of danger signals, that the agency has not really taken a *'hard look'* at the salient problems and has not genuinely engaged in reasoned decision making.[Leventhal, Environmental Decision Making and the Role of the Courts, 122 U.Pa.L.Rev. 509, 511 (1974)]....

A decisional document, done carefully and in good faith, serves several salutary purposes. It facilitates judicial review by demonstrating those factors which were considered. It tends to ensure careful and reasoned administrative deliberation. It assists interested parties in determining whether to seek judicial review. And it tends to restrain agencies from acting beyond the bounds of their jurisdiction” Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 97 n. 11 (Alaska 1974).”<sup>19</sup>

In the above Alaska Supreme Court ruling, Alaskan agencies were held to standards of review set by the US Supreme Court. It is then logical to consider more recent US Supreme Court standards of review for the arbitrary and capricious standard, which are very clear about the need for reasoned judgement based on facts :

An agency must offer a “rational connection between facts and judgment to to pass muster under the ‘arbitrary and capricious' standard...

An agency changing its course by rescinding a regulation is obligated to supply a reasoned analysis for the change...

While the scope of review under the ‘arbitrary and capricious’ standard is narrow, and a court is not to substitute its judgment for that of the agency, the agency nevertheless must examine the relevant data and articulate a satisfactory

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<sup>19</sup> Southeast Alaska Conservation Council v. State, 665 P.2d 544, 548-49 (Alaska 1983).



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explanation for its action. In reviewing that explanation, a court must consider whether the decision was based on a consideration of the relevant factors and whether there was a clear error of judgment.”<sup>20</sup>

## CONCLUSION

This complex matter has many facets, but in some ways it is very simple. The legislature has determined that the preservation and protection of fish and wildlife in Kachemak Bay and Fox River Flats Critical Habitat Areas is the best interests all Alaskans and that such special designation is constant with the constitutional requirement for equal protection under the law. It is the department’s duty to uphold that directive from the legislature. Consistent with this mandate, the department must explain how it is that, given all the information about how PWC present a unique threat to fish and wildlife, permitting them in the CHA is consistent with that mandate.

Sincerely,

Roberta Highland

President, Kachemak Bay Conservation Society

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<sup>20</sup> U.S. Supreme Court Motor Veh. Mfrs. Ass'n v. State Farm Ins., 463 U.S. 29 (1983).



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## APPENDIX

### A. Public Statements by Mr. Green on proposed restrictions.

Kachemak Bay Conservation Society talked to Mr. Green on phone on December 5th. In this conversation Mr. Green said that the basis for the change was that members of a PWC club had convinced him that there was no meaningful distinction between PWC and other watercraft and that the impacts to fish and wildlife were no more significant than the impacts of other watercraft. Case law cited in the body of these comments indicates that the Administrative Procedures Act prohibits regulatory changes that do account for significant scientific evidence.

When pressed for the basis of this position, Mr. Green reported that he often took his boat out of Resurrection Bay in Seward and had never observed any harm done to fish and wildlife by PWC. This reply was unscientific, and moreover reflected a lack of understanding of the importance of scientific study.

When asked how the department would protect the safety of PWC and other users in these as well as prevent harassment of fish and wildlife, Mr. Green said that the Coast Guard would act as the enforcement agency. When asked if the department had any agreement with the Coast Guard on enforcement, Mr. Green said that there was no such agreement.

To date, ADF&G has not provided any substantive rationale on the record for why it is repealing the personal watercraft prohibition regulation. Documents attached to the public notice merely note that the proposed repeal originated from “staff of state agency” and that the “[r]eason for the proposed action” is “[t]o repeal prohibition on personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas.”<sup>21</sup> Moreover, Rick Green, ADF&G’s Special Assistant to the Commissioner and the agency point of contact for this proposed repeal, informed CIK in an email that the agency has “no written findings with which to share as ours were verbal consultation and deliberations with our staff biologists and our habitat biologists at the Alaska Department of Fish and Game over the past 11 or 12 months.”<sup>22</sup>

Meanwhile, in the media, Mr. Green has provided the following indications of the agency’s rationale and decision:

- Special interest group requests: “Rick Green, a special advisor to the Fish and Game Commissioner and the point of contact for the proposed change, said this push came about now because interested user groups, including the Personal Watercraft Club of Alaska and the

<sup>21</sup> Email from Tammy Massie, Habitat Biologist, ADF&G, to KBFRFCHA planning team (Nov. 19, 2019 @ 8:24:13 PM EST).

<sup>22</sup> Email from Rick Green, ADF&G, to Bob Shavelson, CIK (Dec. 10, 2019 @ 1:33 PM AST).



Alaska Outdoor Council, have been coming to Fish and Game throughout the last year asking for the critical habitat areas to be opened.”<sup>23</sup> “I can kind of tell you how we got where we are. The Personal Watercraft Club, The Alaska Outdoor Council and some groups like that brought this to us and said, Hey, look, we can’t see a reason for this to happen - and asked us to review the prohibition,’ said Green. Special Assistant Green’s page on the ADF&G website says he is a lifetime member of the Alaska Outdoor Council.”<sup>24</sup>

- Repeal furthers ADF&G guiding principles and public access: “The proposed change also revolves around a public access issue, according to Green. He said one of the Fish and Game guiding principals is to provide for the greatest long-term access to fish and wildlife resources for people, and that this regulation change would be in line with that. ‘All the citizens of Alaska own Kachemak Bay and there’s a group of them that are being prohibited from using that,’ he said.”<sup>25</sup> “The Kachemak Bay Critical Habitat Area is a piece of trust land owned by all the citizens of Alaska, there is a segment of them that are banned from accessing it with their watercraft,’ he said. ‘And this opens it up to them.”<sup>26</sup> “Green says there are economic benefits to consider and that ADF&G wants all Alaskan’s to have access to Kachemak Bay and Fox River Flats. ‘If I was to put it in a nutshell, we put this proposal forward to increase access for Alaskans to the property that we all own equally. That’s our motive is to increase access.”
- Repeal would not harm fish and wildlife: “We already allow watercraft into the critical habitat area,’ Green said, referencing boats that go in and out of the Homer Harbor and frequent the bay. ‘And we don’t see personal watercraft as being any more damaging to fish and wildlife perpetuation than a 16-foot (boat).”<sup>27</sup>

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<sup>23</sup> Peninsula Clarion, *Fish and Gam proposes repeal of ban on personal watercraft in areas of Kachemak Bay* (Dec. 11, 2019), available at <https://www.peninsulaclarion.com/news/fish-and-game-proposes-repeal-of-ban-on-personal-watercraft-in-areas-of-kachemak-bay/>.

<sup>24</sup> KBBI, *ADF&G’s Rick Green on lifting the ban on personal watercraft in Kachemak Bay* (Dec. 10, 2019), available at <https://www.kbbi.org/post/adfgs-rick-green-lifting-ban-personal-watercraft-kachemak-bay>.

<sup>25</sup> Id.

<sup>26</sup> KTUU, *New regulation would allow jet skis in Kachemak Bay* (Dec. 3, 2019), available at <https://www.ktuu.com/content/news/New-regulation-would-allow-jet-skis-in-Kachemak-Bay-565768981.html>.

<sup>27</sup> Peninsula Clarion, *supra* note 4.



**Kachemak Bay Conservation Society**  
3734 Ben Walters Ln, Homer, AK 99603  
907 235.8214  
kbayconservation@gmail.com

**B. Email to Kachemak Bay Conservation Society from Scott Kathey, Federal Regulatory & Enforcement Coordinator, Monterey Bay National Marine Sanctuary, National Oceanic and Atmospheric Administration.**

Jan 13, 2020, 5:10 PM (15 hours ago)

**Scott Kathey - NOAA Federal**

to me, Erica, Karen

Penelope,

Please see the information on our website about [management of Motorized Personal Watercraft \(MPWC\)](#) within MBNMS.

The "[Frequently Asked Questions \(FAQs\) About MPWC](#)" link has some useful information and links pertaining to specific questions, such as, "[Is there scientific and public information demonstrating that MPWC cause a unique disturbance to marine wildlife?](#)" The response to that question includes a [list of references](#) (some are post-2003 publications) that might be of interest to you.

In an open marine system (such as an open coast, broad bay or wide inlet), pollution concerns from MPWC are not typically at issue. Four-stroke technology, though it provides cleaner emissions, does not change wildlife disturbance concerns caused by unpredictable navigation patterns and high-speed maneuvers common to MPWC operations. MPWC owners tend to operate in pairs or groups, thus expanding their footprint in an area considerably more than a single vessel transiting through at relatively slow speed. MPWC riders often focus operations in a given location, making repeated runs, doubling back and criss-crossing their previous courses at accelerated speeds. Such intense operations can be particularly disturbing if conducted next to seabird aggregations or marine mammal haul-outs. A popular past-time for recreational MPWC use is launching off of waves and breaking surf, resulting in brief airborne maneuvers, where the craft completely leave the water. Sound emission improvements of newer craft are largely negated in such instances since the engine and impellers are completely out of the water. Aside from decibel levels, a unique sound signature common to MPWC operations is repeated rapid acceleration and deceleration (i.e. revving of the throttle) as the craft maneuver and "dig out" of tight turns. This sound pattern (regardless of decibel level) is more startling to wildlife than a vessel following a steady course at a steady speed. Also, when an MPWC is airborne, even for a brief period of time, the operator has no ability to adjust course should wildlife or a person



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surface or cross in front of the vessel. The aforementioned operating characteristics combine to create a unique risk of disturbance to wildlife, particularly in remote and sensitive areas. Though newer 4-stroke MPWC have improved emissions and quieter engines (in water) over their predecessors, they are also bigger, faster, and more powerful. They have considerably more range and endurance and can access points far from their launch sites, while retaining the quick acceleration and dexterity of the smaller craft.

Scott

Scott Kathey

Federal Regulatory & Enforcement Coordinator

Monterey Bay National Marine Sanctuary

National Oceanic and Atmospheric Administration

U.S. Department of Commerce

99 Pacific Street, Suite 455A

Monterey, CA 93940

Phone: 831-647-4251

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### **C. Record of discussions on PWC Management at the Kachemak Bay and Fox River Flats CHA Management Plan Revision Planning Team Meeting on December 20, 2019.**

Kachemak Bay Conservation Society attended nearly all the meetings for the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan Revision. On October 24, 2019 policies for PWC were discussed by the team.<sup>28</sup> A representative for Kachemak Bay Conservation Society attended the meeting and signed in with staff at the beginning of the meeting. Below our description of the proceedings. These notes should be verifiable by Tammy Massy, the ADF&G staff leading the meeting, as well as any the other agency representatives present.

There were a number of agencies either present or on the phone, with about 10 people in attendance: the City of Homer was represented, as well as the National Estuarine Research Reserve System, NOAA, State Parks, and the Coast Guard, and possibly the someone from the Harbormaster's office; from ADF&G, there were habitat biologists, wildlife biologists and commercial salmon fishery biologists. Assistant to the Commissioner of Fish and Game, Rick Green, was on the phone with two members of a PWC club.

PWC discussions began with Tammy Massy saying that there was public comment from the scoping phase both from those who supported PWC use in the CHA and those who wanted the ban upheld. ADF&G staff agreed that as the department has a regulation banning PWC, the management plan could not allow use of PWC. One ADF&G staff member mentioned that some comments from a PWC group indicated that the group was considering suing the department over the regulation. In the light of a potential suit, the legitimacy and legality of the policy was discussed at some length. While it was agreed that PWC have become quieter and cleaner since the ban was instituted, the following concerns remained—

- They are significantly louder than boats because they skim over the top of the water.
- PWC tend to be used for recreation and change direction at high speeds, which makes them particularly disturbing to fish and wildlife the CHA was designed to protect, especially while nesting/pupping and rearing young.
- PWC are known to have tendency to go into shallow areas that are especially sensitive habitat.
- The shallow areas where PWC tend to recreate are often breeding and rearing grounds for marine mammals, seabirds, and fishes.
- Migratory birds, waterfowl, seals and seal haul outs, otters and whales are of particular concern.

There was unanimous agreement that the above considerations were significant enough to uphold and justify the ban, except for one voice of decent on the phone: Rick Green spoke up on the

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<sup>28</sup> Public Notice for the meeting available at <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=191730>.



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phone, saying he was calling in with two members of a PWC club and he and/or they proposed—it was unclear who exactly was making the proposition—that as behavior was the primary concern of agency staff, it was behavior that should be regulated, not the PWC themselves.

This point was considered by the agencies present. All who responded to Mr. Green made variations on the same point: there is no capacity to regulate PWC behavior in the CHA. It was raised that there is already a significant problem of habitat degradation from 4-wheeler use on the Fox River Flats that the department has been unable to regulate. One fishery biologist pointed out that ADF&G has a common practice of regulating gear when it cannot reasonably enforce behavior restrictions to protect fish and wildlife, for example, commercial boats are only allowed to fish one net at a time; while it would be convenient for fishers to be able to carry backup gear to have on hand when their gets damaged, carrying of back-up gear is prohibited because the department cannot reasonably enforce the policy that only one net be used at a time. Sport fisheries and game managers regulate gear to maintain sustainable populations of fish and wildlife. It was discussed whether State Parks could manage PWC, and it was decided that as there is only one ranger for the park, that would not be possible. The Coast Guard made no offer to assist in management. After about ten minutes of discussion, consensus was reached that there should be no change to the PWC ban, and discussion moved on to the next subject.

Letter to Editor: 10/18/11

Dear Editor:

Prior to the Parks Advisory Board Meeting on 9/17 I was asked to present on behalf of the PWC Assoc. of Anchorage, advocating on their behalf. I was late arriving at the meeting, and arrived in the middle of a slide show. After the PWC Assoc. presented, only then was I informed that we could speak only if "representing a group." Clearly, by the audience, I could see the deck was well stacked against the PWC Assoc. I was totally impressed with how the meeting was reined in by the Board Chairman, and was going to go home, until I heard Shannon Mc Bride Moran speak on behalf of "Women and men from around town, parents, concerned citizens in the community, people that recreate and do business in the state park and lots of other businesses" (not to mention the groups that she really did represent) that's when it became personal and owning a commercial and charter fishing corporation, owning my own B&B I decided that at that moment in time I had much to say on behalf of these tourist related industries, not so much for PWC's now, but for the tourist industry in general. I regret saying I was representing the B&B Association, rather than it's industry. Also, I was



Mr Rick Green,

As the chair and on behalf of the Homer F&G advisory committee I am writing to express our objection to the manner in which the PWC ban in the Kachemak bay critical habitat area has been proposed for revocation.

We do not believe that the public process has been observed in this action, and strongly feel additional comment period should be provided. Having such short notice for input, especially during the holiday season when many stakeholders are otherwise occupied seems to be an end-run around what Alaskans, as participants in a resource based owner-state are entitled to.

This is not a time sensitive issue, there is no legitimate reason to ramrod it without opportunity for concerned residents of the affected area to have further input. There has been no revelatory data submitted to justify this action, and we strongly suggest that the comment period be significantly extended to allow an opportunity for disparate viewpoints to come together and work on a solution to this issue. Extension of the comment deadline would allow for a more transparent public process and the possibility of working towards an outcome that is acceptable to all parties.

To reiterate, our objection is to a lack of input in the public process, please extend the comment period.

Sincerely

Dave Lyon, chair, Homer F&G Advisory Committee



# MEMORANDUM

## Department of Fish and Game

333 Raspberry Road  
Anchorage, Alaska 99518-1599

To: David Rogers, Director, Division of Habitat  
Bruce Dale, Director, Division of Wildlife Conservation

From: Tammy Massie, Habitat Biologist, Division of Habitat *TMM*  
Joe Meehan, Lands & Refuges Program Coordinator, Division of Wildlife Conservation *JM*

Date: May 9, 2017

Subject: Personal Watercraft Regulations, Kachemak Bay Critical Habitat Area

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In 2001, after extensive public and agency outreach and review, the department adopted regulations to prohibit the use of personal watercraft (PWC) in Kachemak Bay and Fox River Flats Critical Habitat Areas (5 AAC 95.310). Since that time, there have been several requests from PWC advocates (individuals and organizations) to review the regulation and consider revising or rescinding it.

**Background:** During the 2016 public scoping period for the revision of the Kachemak Bay and Fox River Flats CHA Management Plan, a primary topic of public input was whether or not to retain the prohibition on PWCs, even though these regulations were not intended to be part of the management plan revision. The following table summarizes those comments as well as those received during the original regulation adoption period.

| Comment period  | For PWC ban                          | Against PWC ban           |
|---|--------------------------------------|---------------------------|
| December 1999 to February 2000                                      | 292 (+12 organizations)              | 86 (+2 organizations)     |
| September 2000 to October 2000                                      | 1,474 (+76 business owners petition) | 361                       |
| 2000 (Referenced in other public comments, but not direct comments) | 1,692 Moratorium on PWC petition     | 1,269 Pro-access petition |
| September to November 2016  | 133                                  | 78                        |

Table 1. Summary of readily available counts of public comments from ADF&G public comment periods pertaining to PWC use in Kachemak Bay CHA.

During the original regulation adoption period (1999-2001), 85 published sources of literature were reviewed including scientific and popular publications; federal, state and local agency management documents and staff reports; publications and reports from private organizations; and statement and testimony from biological and physical scientists and resource managers. These citations were summarized and provided to the public and department managers during the regulation adoption process (Enclosure 1).

Since the original 2000 literature review, there has been considerable new research on the potential impacts of PWCs to protected areas. An annotated bibliography containing approximately 140 articles not reviewed in the 2000 literature review was recently compiled, reviewed and summarized (Enclosure 2). The topics addressed in this bibliography include effects of PWC and other recreational boating impacts on marine mammals, birds, fish, and other organisms; ecological and water quality impacts; PWC noise; user group conflicts and other management and legal implications. Much of the information available from this literature review does not precisely match the conditions of Kachemak Bay or Fox River Flats CHAs in that it is not specific to northern latitude marine waters with a wide range of biological and human uses. However, several generalizations can be drawn from the literature as a whole and they may assist department leadership on how to approach PWC regulation in Kachemak Bay and Fox River Flats CHAs. (Enclosure 3)

**Recommendation:** Based on the updated literature review, most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today. Improvements in technology have addressed the pollution from 2-stroke engines that were one of the primary environmental concerns with PWC during the original 2000 literature review. However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.

In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted. A draft of this memo was circulated to affected staff in all department divisions (DWC, HAB, CF, SF) and this recommendation was widely supported.

Please let us know if you have any questions or need additional details.

|                     |                |
|---------------------|----------------|
| cc: Al Ott          | Megan Marie    |
| Ginny Litchfield    | Tony Kavalok   |
| Maria Gladziszewski | Howard Golden  |
| Jeff Selinger       | Jason Herreman |
| Sue Goodglick       | Jason Schamber |
| Mark Fink           |                |

To: Alaska Department of Fish and Game, 333 Raspberry Road, Anchorage, AK 99518

Attention Rick Green ([rick.green@alaska.gov](mailto:rick.green@alaska.gov))

Subject: Repeal of 5 AAC 95.310

January 7, 2020

To Whom It May Concern:

I would like to state my support for repealing 5 AAC 95.310, which prohibits the use of personal watercraft (PWC) in the Fox River Flats and Kachemak Bay Critical Habitat Areas. I have been recreating in Kachemak Bay since 1964, utilizing small watercraft for sport fishing and personal use subsistence. Allowing PWC's would be preferable for me and my family to enhance our recreational opportunities.

PWC's should never have been banned. PWC technology has evolved dramatically since the original ban 19 years ago, and they use efficient low-emission gas combustion engine technology (typically 4-stroke injected engines) and emit the same or less exhaust and noise and are subject to the same conservation requirements as other motorized boats or watercraft currently allowed in the Fox River Flats and Kachemak Bay Critical Habitat Areas. Most importantly, PWC will have less impact on near shore environments when beaching craft as compared to boats or skiffs, which are larger and heavier. Reasonable rules and restrictions to operating any motorized PWC, boat or watercraft may need to be implemented on or near limited areas of the Homer Spit only, if not already implemented, to ensure safety and separation from non-motorized watercraft operating in high-congestion areas.

Citizens operating PWC should have the same rights and equal access, in all Alaska State waters, as any other motorized boat or watercraft. Any legitimate public or governmental concern to limit or ban PWC in the Fox River or Kachemak Bay Critical Habitat Areas should then also equally restrict or ban all other types of motorized boat or watercraft from these same areas, as the latter have the same or higher environmental impact. However, I am neither advocating for nor am aware of any current environmental or conservation concern for restricting or banning any type of recreational motorized watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

Please register my opinion to repeal the ban on Personal Watercraft operating in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

Thank you,

David Agosti

14251 Jarvi Drive

Anchorage, AK 99515

Alaska Department of Fish and Game  
Attention; Rick Green  
333 Raspberry Rd,  
Anchorage, Alaska 99518-1565

[rick.green@alaska.gov](mailto:rick.green@alaska.gov)

Re: Proposed use of jet skis in Kachemak Bay

I have a home fronting Kasitsna Bay. There are many good reasons why I am adamantly opposed to jet ski use in the Kachemak Bay area. The following is from a Department of Natural Resources (DNR) publication: 'Ranking among the richest marine environments in the world, Kachemak Bay supports over 231 species of birds, including 90% of Cook Inlet's wintering sea birds, 450 species of marine invertebrates, and 100 species of fish, including all five species of Pacific salmon.' Most of Kachemak Bay is designated a Critical Habitat Area. That is one of the reasons why DNR opposed jet ski use and why the Alaska Department of Fish and Game biologists originally opposed jet ski use. In the December 1999 and October 2000 hearings on this issue the public overwhelmingly opposed the use of jet skis. Nothing much has changed.

According to a recent article in the Homer News, you said repealing the prohibition does not go against the purpose of a Critical Habitat Area. According to Alaska code 16.20.500, the purpose of Fish and Game critical habitat areas "is to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and **to restrict all other uses not compatible with that primary purpose.**" "We already allow watercraft into the critical habitat area," Green said, referencing boats that go in and out of the Homer Harbor and frequent the bay. "And we don't see personal watercraft as being as being any more damaging to fish and wildlife perpetuation than a 16-foot (boat)."

Jet skis are not normally used for fishing or transportation to and from a cabin or house, in Alaska, nor will they typically not be used as such in Kachemak Bay. Jet skis are used for play. Just go to the lakes in the Matanuska Susitna Valley in the summer and you can see and hear their use about 24 hours a day. From my house view of Kasitsna Bay I have seen large pods of killer whales, humpback whales, seals, sea lions, Dall porpoise, many sea otters, and large flocks of seabirds on the water. As jet skis are usually used for playing, operators frequently reach top speeds of up to about 65 miles per hour. Given the large number of diving and surfacing sea mammals and birds in the area, the chances of a collision are much higher than a typical, much slower, moving boat. At these high speeds, it is much less likely a surfacing sea mammal or sea bird or the jet ski operator can react in time to avoid a collision. This will be even worse if newer, quieter electric jet skis are used as surfacing marine mammals and birds may not hear these rapidly approaching vehicles in time to react. Jet skis are also able to operate in much shallower water than most other personal watercraft, yet the impact to the fragile intertidal areas has not been addressed. These intertidal area support a complex array of invertebrates (including clams) that are vital to the Kachemak Bay ecosystem.

There are four eagle nests fronting Kasitsna Bay in just my small area of the bay near MacDonald Spit. There are other coastal nesting areas to the east. This may bring up federal issues, as eagles are protected under federal law. Most of the proposed use of jet skis use will be in the protected bays where people have homes and cabins, as much of the time it is much too rough to play in exposed waters. Boats only go in out of these bays for access to cabins and fishing. Boats do not roar around and play in these bays at high speeds.

### **My personal observations:**

I have had a place fronting Kasitsna Bay since the early 1980s. My opposition to the use of jet skis is from first hand observation. On numerous occasions prior to the ban I have seen people on jet skis circle the inside of the bay for hours, sometimes chasing birds and sea otters. Even when not chasing wildlife the noise goes on for hours. It is truly obnoxious.

The noise pollution caused by jet skis in Kachemak Bay would severely impact the vacationers, residents and cabin owners. There are businesses that rent cabins and kayaks in this area. Kayaking is popular in this area due to its pristine beauty and peacefulness. Why would anybody come back to these places and listen for hours on end to the ongoing noise from jet skis? There are also many salmon set net sites in the area. Jet ski use for hours on end will chase the salmon away from these nets.

This proposed regulation is a bald face attempt to get around the earlier prohibition of these jet skis. No hearings have been scheduled. There has been hardly any public notice about the intent to allow jet skis, nor much of a comment period. It is plain that the Alaska Department of Fish and Game is under political pressure to overturn the ban. It appears the 'fix' is in. Overturning the ban in this way guarantees litigation. An example of what happens when proper procedures were not followed is illustrated by **Kachemak Bay Watch, Inc. v. Dept. of Natural Resources (4/11/97), 935 P 2d 816.**

If you have any questions, please contact me via email [tom.dunagan@gmail.com](mailto:tom.dunagan@gmail.com) or by phone (907-229-9894).

Resident of Seldovia

Thomas R. Dunagan

CC: Brian Blossom, [brian.blossom@alaska.gov](mailto:brian.blossom@alaska.gov)  
Jack Blackwell, [jack.blackwell@alaska.gov](mailto:jack.blackwell@alaska.gov)  
Jason Okuly, [jason.oluly@alaska.gov](mailto:jason.oluly@alaska.gov)  
Jason Herreman, [jason.herreman@alaska.gov](mailto:jason.herreman@alaska.gov)  
Michael Booz, [michael.booz@alaska.gov](mailto:michael.booz@alaska.gov)  
Wyatt Rheafournier, [wyatt.rhea-fournier@alaska.gov](mailto:wyatt.rhea-fournier@alaska.gov)

Janet Rumble, [janet.rumble@alaska.gov](mailto:janet.rumble@alaska.gov)

Ted Otis, [ted.otis@alaska.gov](mailto:ted.otis@alaska.gov)

Glenn Hollowell, [glenn.hollowell@alaska.gov](mailto:glenn.hollowell@alaska.gov)

Tammy Massie, [tammy.massie@alaska.gov](mailto:tammy.massie@alaska.gov)

not speaking for the Alaska Charter Association, but for the “Homer Halibut Association as mentioned, a coalition that meets the first Tues. of every month, 3PM at Cosmic Kitchen, open to businesses or others who did not receive a CHP permit, and who are committed to fighting legally for their right to charter for halibut in area 3A. (Anyone wanting more information on this meeting please call me.)

Among others, Shannon stated that she opposed PWC’s on the grounds of “safety to wildlife” I found this amusing.

Having worked on the fastest, and largest of vessels, I know for a fact, that in the last few years, one of the biggest threats to marine life around here is the Orca. I have personally witnessed several of their blood baths on otters, and king salmon in Eldred Passage. I have also known of fast ferries taking out otters while dodging debris, a charter vessel that hit a humpback whale, commercial long liners that dynamite whales, numerous porpoise, seals, sharks caught in Upper Cook Inlet gillnets, these incidents are only minor, compared to the really big problems our critical habitat is facing.

Apparently, in creating the critical habitat laws, people were so interested in keeping one boating group out (PWC’s) that they never even considered

the damage to the habitat that the tankers and cruise ships that come into our waters do everyday. (Does Exxon Valdez ring a bell people?) Oh, that could never happen here. Just like it was never suppose to happen at Bligh Reef in 1988. These tankers, (and cruise ships, empty their gray water in our bays, (sometimes this water is held in holds and arrives here from a foreign country, then released into our pristine waters). This could be why we are seeing new types of marine life. Black water, (raw ground up sewage) is allowed to be dumped 3 miles off our shore. Ferries, cruise ships, charter vessels, etc. can and do, dump 3 miles off our shores, and sometimes in our harbor and upper bay.

Tankers are coming in to meet their pilots several miles from hazards to navigation, islands, shoals, and the Homer Spit all for the convenience of picking up or returning their pilots to the pilot station off Yukon Island, so close to home. Most of these tankers are not double hulled, they can drag anchor, they can and do loose power at times, there have been accidents and incidents in our bay with them, and there will be more.

There is no escort tug for tankers entering our critical habitat, especially in winter storms, but by golly, we better keep those terrible jet skis out of our bay or they could do some real damage! If you really care

about the critical habitat, why was this group overlooked?

I do apologize if I offended anyone or any organization. I am passionate about equal rights, discrimination on any level makes me crazy, and furthermore, having my person threatened, my business threatened, obscene phone calls, nasty emails, makes me want to fight even harder for equal rights for all mariners and all tourists who want to visit Homer. I'm totally embarrassed that threats were made to the PWC Association of Anchorage, at this public meeting, and I believe the City of Homer, the Homer Chamber of Commerce, and the Parks Advisory Board, should write this group a note of apology.

With an open mind and heart  
Respectfully yours,

Brenda Hays  
Homer, Ak.

*Brenda Hays 12/14/18*  
*I say Yes*  
*with Parks Board*

RESEARCH ARTICLE

# Extreme mortality and reproductive failure of common murrelets resulting from the northeast Pacific marine heatwave of 2014-2016

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**Data Availability Statement:** All relevant data are within the manuscript and its Supporting Information Files, with the exception of data found elsewhere: Beach survey and necropsy data from studies conducted by the USGS Alaska Science Center (DOI: <https://doi.org/10.5066/P9E8RE9I>); pathology/necropsy data from the USGS National Wildlife Health Center (DOI: <https://doi.org/10.5066/P904Y5E0>); Beach survey data available from COASST ([www.COASST.org](http://www.COASST.org)), BeachCOMBERS (<https://data.cencos.org>), and

## Abstract

About 62,000 dead or dying common murrelets (*Uria aalge*), the tropically dominant fish-eating seabird of the North Pacific, washed ashore between summer 2015 and spring 2016 on beaches from California to Alaska. Most birds were severely emaciated and, so far, no evidence for anything other than starvation was found to explain this mass mortality. Three-quarters of murrelets were found in the Gulf of Alaska and the remainder along the West Coast. Studies show that only a fraction of birds that die at sea typically wash ashore, and we estimate that total mortality approached 1 million birds. About two-thirds of murrelets killed were adults, a substantial blow to breeding populations. Additionally, 22 complete reproductive failures were observed at multiple colonies region-wide during (2015) and after (2016–2017) the mass mortality event. Die-offs and breeding failures occur sporadically in murrelets, but the magnitude, duration and spatial extent of this die-off, associated with multi-colony and multi-year reproductive failures, is unprecedented and astonishing. These events co-occurred with the most powerful marine heatwave on record that persisted through 2014–2016 and created an enormous volume of ocean water (the “Blob”) from California to Alaska with temperatures that exceeded average by 2–3 standard deviations. Other studies

Beach Watch ([www.farallones.org/BeachData/BeachWatchData.php](http://www.farallones.org/BeachData/BeachWatchData.php)), raw data requests at [COASST@uw.edu](mailto:COASST@uw.edu), [jharvey@mml.calstate.edu](mailto:jharvey@mml.calstate.edu), [jan.roletto@noaa.gov](mailto:jan.roletto@noaa.gov), respectively, with data use agreement. Murre breeding biology data are available upon request from the U.S. Fish and Wildlife Service National Wildlife Refuges (NWR) (<https://www.fws.gov/refuges/>) including San Francisco Bay NWR Complex, Castle Rock NWR, Oregon Coastal NWR Complex, and the Alaska Maritime NWR, and from Pointblue Conservation Science ([jjahncke@pointblue.org](mailto:jjahncke@pointblue.org)). Data on pelagic distribution of murre in Supporting Information were from the USGS North Pacific Pelagic Seabird Database (NPPSD) (<https://doi.org/10.5066/F7WQ01T3>). Data on sea surface temperatures were from the Hadley Center Sea Ice and Sea Surface Temperature (HadISST) data set freely available at (<https://www.metoffice.gov.uk/hadobs/hadisst/>).

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indicate that this prolonged heatwave reduced phytoplankton biomass and restructured zooplankton communities in favor of lower-calorie species, while it simultaneously increased metabolically driven food demands of ectothermic forage fish. In response, forage fish quality and quantity diminished. Similarly, large ectothermic groundfish were thought to have increased their demand for forage fish, resulting in greater top-predator demands for diminished forage fish resources. We hypothesize that these bottom-up and top-down forces created an “ectothermic vise” on forage species leading to their system-wide scarcity and resulting in mass mortality of murre and many other fish, bird and mammal species in the region during 2014–2017.

## Introduction

Marine heatwaves (hereafter “heatwaves”), defined as prolonged periods where ocean temperatures are much warmer than usual [1,2], have recently emerged as a major mode of ocean-climate variability that can significantly alter marine ecosystem structure, phenology and marine species distributions [3,4]. Heatwaves have become more prevalent and intense over the last century [4]. Under climate change projections of 2–3.5°C warming relative to pre-industrial levels, the expected intensity, frequency, spatial extent and duration of heatwaves by the end of the twenty-first century may well cause unprecedented and irreversible changes to marine ecosystem functionality and stability [5]. Here we examine impacts of a recent severe heatwave on marine ecosystems of the northeast Pacific and discuss some potential mechanisms by which extreme ocean heating has affected pelagic food-webs in this region.

During late 2013, a warm temperature anomaly developed in near-surface (upper ~100m) waters well offshore in the Gulf of Alaska (GOA) which grew to encompass a large area of the northeast Pacific Ocean [6]. Offshore sea surface temperatures (SSTs) during the winter of 2013–2014 exceeded 3 standard deviations in some areas and persisted over much of the central GOA through March 2015 [6]. While the offshore anomaly diminished somewhat through the summer of 2014, positive SST anomalies over the entire northeast Pacific re-intensified towards the end of 2014, moved into the coast [7] and persisted into the fall and winter of 2015–2016 [3]. Maximum temperature anomalies at times exceeded 3–6°C throughout the range of the heatwave from southern California [7] to the GOA [3], and extended to depths of ca. 50–200 m [8,9]. The period in which temperatures exceeded climatological thresholds for a sustained period (Aug 2014– July 2016) has been classified as a “severe” (Category III) heatwave [10]. At the time of publication, the spatial extent, magnitude and duration of this heatwave were the largest on record [4,6].

Some immediate biological effects of this unprecedented heatwave were equally extreme. For example, phytoplankton production in the central north Pacific waters was greatly reduced [11]; the largest harmful algal bloom in recorded history extended from California to the GOA in 2015 [12,13]; a massive die-off of planktivorous Cassin’s auklets (*Ptychoramphus aleuticus*) occurred from central California to British Columbia in the winter of 2014–2015 [14], a marked increase in mortality of pinnipeds was noted in southern California [15], and an unusually large die-off of baleen whales occurred in the GOA in 2015–2016 [16].

We report on another extreme biological impact of the 2014–2016 heatwave: The widespread die-off and chronic reproductive failure of a trophically dominant piscivorous marine bird, the common murre (*Uria aalge*), over much of their northeast Pacific distributional range from the southeast Bering Sea south to the California Current System (CCS). Murre die-

offs occur irregularly in the Pacific and Atlantic oceans, often on wintering grounds, during stormy conditions, and under circumstances where food supplies are depleted or unavailable [17,18]. They have also been linked with warm water anomalies, such as the strong El Niño events in 1983, 1993, and 1998 [19–21].

Here we document the magnitude of the 2015–2016 murre die-off in terms of its spatial extent, duration, absolute numbers of dead or dying birds recovered, and relative magnitude of deposition on beaches relative to long-term baselines. We used data collected by systematic and repeated surveys for beached birds conducted by citizen science participants in the northeast Pacific [22], opportunistic surveys conducted in Alaska by government, university and private organizations, community reports, and records from bird rehabilitation centers. We also document concurrent reproductive failures of murres at multiple breeding colonies from Alaska to California. We hypothesize that the northeast Pacific heatwave was a source of simultaneous bottom-up and top-down forcing, and we discuss potential mechanisms for the disruption of food supplies that resulted in murre mortality and reproductive failure.

## Materials and methods

### Oceanography

We used sea surface temperature (SST) data from the Hadley Center Sea Ice and Sea Surface Temperature (HadISST) data set [23] to illustrate temperature perturbations related to the northeast Pacific heatwave. A time series of average SST anomalies (SSTa) for the GOA and the California Current System (CCS) were calculated for years 1870–2018. Areas that were analyzed separately included the GOA region: 50°N–61°N, 160°W–126°W; CCS northern region: 40°N–46°N, 126°W–124°W; CCS central region: 35°N–40°N, 126°W–120°W; and CCS southern region: 31°N–35°N, 120°W–117°W. The seasonal cycle was calculated by averaging all values of each month for the period 1870–2018. We subtracted the seasonal cycle (mean SST) from the SST to obtain the anomaly time series (SSTa). We estimated annual rates of SST change between years by calculating  $\Delta\text{SST} = \text{SST}_{\text{Year}N+1} - \text{SST}_{\text{Year}N}$  and then calculated a 5-year running average to obtain an annual index of SST change rate ( $^{\circ}\text{C year}^{-1}$ ).

### Ethics statement

Specimens that were salvaged for necropsies and testing for disease, biotoxins, etc., were collected under U.S. Fish and Wildlife Service (USFWS) permit, i.e., the Migratory Bird Master Permit/Import-Export (MB025076-0) and State of Alaska Department of Fish and Game (ADF&G) Scientific Permit issued to the USFWS Regional Director. U.S. Geological Survey personnel operated under the same permits, as issued to the Alaska Biological Science Center USFWS (MB789758-2) and the ADF&G.

### Beach surveys

Effort-standardized surveys for beachcast marine birds at monthly or more frequent intervals were conducted at predetermined survey sites by participants of three beached bird citizen science programs: Beach Coastal Ocean Mammal/Bird Education and Research Surveys (Beach-COMBERS) [24], Beach Watch [25], and the Coastal Observation and Seabird Survey Team (COASST) [22] (Table 1). Standardization was achieved primarily by measuring the distance of beach transects (generally less than a few km) and calculating encounter rates as [birds found]/[km searched]. Other protocols designed to make comparisons among beaches, date and location more accurate usually included: walking the same area of beach each visit, surveying a strip centered on the most recent high-tide wrack line and adjacent zones, identifying

**Table 1. Standardized beached bird survey effort, number of murres reported on surveys, and murres reported by members of the public or delivered to rehabilitation centers between May 2015 and Apr 2016.** Sources: COASST- Coastal Observation and Seabird Survey Team, DOI- Department of the Interior agencies, B.Watch- Beach Watch, COMBERS- BeachCOMBERS.

| Location       | Standardized beach surveys |       |        |       |         | Number of murres reported |        |       | TOTAL |
|----------------|----------------------------|-------|--------|-------|---------|---------------------------|--------|-------|-------|
|                | Source                     | Start | #sites | #surv | #km tot | Surveys                   | Public | Rehab |       |
| Chukchi        | COASST                     | 2006  | 5      | 25    | 47      | 14                        |        | 0     | 14    |
| Aleutians      | COASST                     | 2006  | 7      | 34    | 39      | 10                        | 200    | 0     | 210   |
| Bering Sea     | COASST                     | 2006  | 9      | 110   | 114     | 23                        | 300    | 0     | 323   |
| Gulf of Alaska | COASST                     | 2006  | 52     | 423   | 359     | 4289                      |        | 0     | 4289  |
| Gulf of Alaska | DOI                        | 2015  | 114    | 164   | 381     | 20240                     | 21435  | 552   | 42227 |
| SE Alaska      | COASST                     | 2006  | 11     | 91    | 124     | 11                        | 383    |       | 394   |
| Salish Sea     | COASST                     | 1999  | 210    | 1771  | 2075    | 10                        |        |       | 10    |
| N Washington   | COASST                     | 1999  | 37     | 310   | 492     | 884                       |        | 24    | 908   |
| S Washington   | COASST                     | 1999  | 41     | 381   | 564     | 914                       |        | 108   | 1022  |
| N Oregon       | COASST                     | 2001  | 55     | 476   | 645     | 1249                      |        | 332   | 1581  |
| S Oregon       | COASST                     | 2001  | 34     | 232   | 345     | 353                       |        | 3     | 356   |
| N California   | COASST                     | 2006  | 47     | 403   | 428     | 357                       |        | 52    | 409   |
| C California   | B.Watch                    | 1994  | 40     | 975   | 1516    | 2927                      |        | 680   | 3607  |
| SC California  | COMBERS                    | 1994  | 46     | 403   | 1125    | 5071                      |        | 1614  | 6685  |
| TOTALS         |                            |       | 708    | 5798  | 8253    | 36352                     | 22318  | 3365  | 62035 |

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species from field guides and photographs, marking carcasses to avoid duplicate counting, and searching during ebbing or low tides [22,24–27]. All three programs provide participants with extensive training in both survey protocol and carcass identification (which were verified photographically). Because BeachCOMBERS (34.04°–36.98°N) and Beach Watch (37.12°–38.97°N) programs occur only along the California coast, we assumed all unidentified murres were common murres. For COASST surveys conducted from northern California to northern Washington (39.13°–48.34°N) we made the same assumption. In the Gulf of Alaska (bounded from SE Alaska corner 54.75°N, -130.30°W, to northern Cook Inlet 61.31°N, -150.71°W, and west to Unimak Pass 54.29°N, -165.06°W), both common and thick-billed murres (*Uria lomvia*) were possible and species were identified based on bill morphology and facial plumage [28]. Less than 1% of all murres in the COASST dataset were identified as thick-billed murres, and most of those were in the Bering Sea (as far north as 68.80°N, -163°W, as far west as 52.30°N, 176.08°E). For simplicity, we assumed that unidentified murres were common murres.

All carcasses found were marked or removed to prevent recounting. For analysis of carcass deposition per effort (km walked), we divided program surveys into two categories: event (May 1, 2015 to April 30, 2016) and baseline (all surveys prior to May 2015). Because each program was created at different points in time (Table 1), and expanded at different rates, we calculated two baselines: (1) 2006–2015 across all programs (i.e. baseline period was invariant across locations); (2) program-specific start year through 2015. We only use the first baseline (2006–2015) for analyses in this paper, even though it meant discarding data, because it differed little from program-specific baselines (S1 Text) and it standardizes data for program comparisons.

Additional surveys were undertaken in Alaska, including 164 standardized [26], effort-controlled surveys conducted on 114 beaches by several Department of Interior agencies (U.S. Geological Survey [USGS], U.S. Fish and Wildlife Service, National Park Service) and opportunistic data collected by the public on beaches, inland or at sea (beach-walker, hiker, hunter, boater) or other wildlife biologists at 260 sites visited for other purposes. Public Opportunistic data occasionally included an estimate of beach survey effort (in linear km), but survey effort

and carcass numbers were most often approximated. Some murrees were also encountered inland and along lakeshores, and locations were attributed to a single point source.

### Specimen collections and necropsies

Specimens were collected during the study period (May 1, 2015 to April 30, 2016) and examined in three different efforts:

**Rehabilitation centers.** We contacted 72 bird rescue and rehabilitation (“rehab”) centers from southern California to Alaska (S1 Table) to obtain data on common murrees recovered from beaches by the public and examined by veterinarians or other staff during 2015–2016 (S1 Fig). Of 66 that responded, 29 reported no common murre recoveries and 37 reported intakes totaling 3,365 murrees. Of those, 2,868 birds were visually or manually examined for condition or diagnosis (e.g., sick, emaciated, dead on arrival, injured, oiled) at the time of intake, with ultimate disposition subsequently recorded (e.g., died, rehabilitated and released, etc.). Birds described variously as emaciated, thin, starving, skinny, underweight, or malnourished were simply categorized as emaciated. No birds were excluded from the tally of total birds encountered because: 1) there is always some background deposition of murrees on beaches due to other mortality factors in addition to starvation, and so these should not be excluded as we compare 2015–2016 mortality rates against historical averages, and, 2) murrees may be oiled or injured as they drift towards shore in coastal waters with heavy boat traffic and chronic oil pollution, 3) the diagnoses are not mutually exclusive. The majority (90%) of birds died prior to or soon after intake. The remaining 10% were released back into the wild, often without rehabilitation where facilities were limited, and their survival rate was likely low. Just under half of birds (and few from Alaska) were weighed on intake ( $n = 1,568$ ) and aged ( $n = 1,298$ ) based on morphometrics and/or plumage following Pyle et al. [29]. Subsets of each of these samples were created to delineate juvenile (HY) from older birds (AHY, includes adults, subadults) birds (S2 Table).

**USGS National Wildlife Health Center (NWHC).** Common murre carcasses were collected from multiple coastline locations along the GOA ( $n = 89$ ) and southern Bering Sea ( $n = 14$ ) and shipped to the NWHC for diagnostic examination by American Veterinary Medical Association certified pathologists [30]. We sought out birds that were “fresh”, i.e., they had been dead less than a couple days to a week, all body parts were intact, and birds had not been scavenged or have exposed muscle or bone [27]. Measurements, ancillary laboratory testing and postmortem findings to support cause of death determination varied by individual specimens based on carcass and tissue postmortem quality (S2 Table). Weight ( $n = 90$ ) and sex ( $n = 87$ ) were recorded. Age class ( $n = 101$ ) was determined from bursa of Fabricius, thymus and gonad development as: juvenile (HY), and subadult or adult (AHY). Samples were collected from the proventriculus or cloaca, if available, and analyzed for saxitoxin ( $n = 39$ ) and domoic acid ( $n = 9$ ) exposure at the National Oceanographic and Atmospheric Administration, Northwest Fisheries Science Center, Seattle, Washington, US using enzyme-linked immunosorbent assay (ELISA; [31]).

**USGS Alaska Science Center.** Fresh (see above) common murre carcasses ( $n = 117$ ) collected off Alaskan beaches ( $n = 88$ ) between 1 November 2015 and 11 April 2016 or provided by Alaska rehab centers ( $n = 29$ ), were necropsied by agency biologists in Anchorage, Alaska (S2 Table). Not all characteristics were assessed on all birds, and subsets of data were collected for each parameter, including mass ( $n = 97$ ), body condition, which we rank-scored by visually assessing amounts of pectoral muscle ( $n = 101$ ) and subcutaneous fat ( $n = 102$ ) [32], age ( $n = 36$ ) and sex ( $n = 105$ ) [33]. Birds were aged as hatch year (HY) if they had a bursa [34,35] and if gonads were not developed, if plumage (outermost underwing primary covert) were

white-tipped, characteristic of HY/SY [29] and if culmen length was  $<40$  mm [29]. AHY body mass was contrasted to 219 AHY specimens collected at seven GOA breeding colonies between May and September 1988–1999 by USGS (J. Piatt, unpubl.), as well as to carcasses ( $n = 116$ ) recovered during a previous die-off in the GOA [20]. In these murre, any bird with AHY body mass approaching or falling below 650 g would be considered in Phase III starvation [36] and in immediate danger of dying.

### Murre breeding ecology

Reproductive success ( $rs$  = chicks fledged/egg laid) of common murre was obtained from 21 monitoring sites in our study area (13 in Alaska, 1 in Oregon, and 6 in California), including data collected by Alaska Maritime National Wildlife Refuge (NWR), Togiak NWR, Becharof NWR, USGS Alaska Science Center, Alaska Department Fish and Game, Institute for Seabird Research and Conservation, Oregon State University, Humboldt State University, Point Blue Conservation Science, San Francisco Bay NWR Complex and Farallon Islands NWR. Data collection consisted of systematic recordings (photographic or hand-drawn) of the status (i.e., presence of egg or chick) of a subset of nest sites within long-term plots [37]. Time series of reproductive success varied in length from 10 to 45 years among colonies. Standardized anomalies of breeding success were calculated for the entire time series of each colony, but anomalies were plotted using: a) only data collected after 1984 (owing to scarcity of data at most colonies in earlier years), and, b) using a mean  $rs$  for the baseline period 1996–2014; the period for which regular annual monitoring was initiated at 6 new index colonies in Alaska by Alaska Maritime NWR, and which has a near-complete time series at all but 2 of 11 long-term sites used in this study (Yaquina Head, Castle Rock N). For analysis, we consider the time series divided into event: 2015–2017, and pre-event baseline: 1996–2014.

Under a wide range of prey densities, average common murre  $rs$  is usually high and variance is low (e.g., [38,39]). At 11 colonies dispersed throughout their range in the northeast Pacific ( $n = 246$  colony-years), mean  $rs$  ( $\pm$ SD) during 1972–2014 was  $0.55 \pm 0.20$  chicks fledged/egg laid. Thus, we defined a “reproductive failure” as  $rs$  that fell more than 2 SD below that mean (i.e.  $< 0.14$ ), rounded down here to  $rs \leq 0.10$  chicks fledged/egg laid. “Complete reproductive failure” is defined as  $rs = 0$ , when no chicks whatsoever are produced.

### Data analysis

To illustrate spatial magnitude of the event, carcass count data of murre on both systematic and opportunistic beaches sampled, and records of live and moribund murre rescued from point locations were compiled for the event period (May 1, 2015 to Apr 30, 2016). Raw data were binned into 75x75 km cells for mapping; a scale big enough to aggregate higher resolution (km) beach surveys or point samples and prevent excessive overlap of adjacent abundance circles, but small enough to track coast and island geography (individual beach survey sample sites are plotted in S2 Fig). Not all shoreline was searched for birds during the die-off period, particularly in Alaska. Thus, the map underestimates the extent of the die-off in Alaska and may overemphasize the die-off in regions with a high density of survey sites on the coasts of California, Oregon and Washington (hereafter “West Coast”).

Deposition of carcasses on beaches is a measure that incorporates both detection and persistence and is proxied by carcass encounter rate. To examine the seasonal variation of relative carcass abundance within and among large geographic regions, raw beach survey data from citizen science programs (above) were standardized to carcasses encountered per linear km of coastline by survey [14] and averaged within geo-region by month (May 2015 to April 2016; Table 1). Relative magnitude of carcass encounter rate was calculated as 2015/2016 encounter

rates divided by the baseline encounter rate, presented as a month-specific average across all baseline years (GOA: 2005–2014, Washington: 2001–2014, Oregon: 2001–2014, N. California: 2006–2014, N. Central California: 1994–2014, S. Central California: 1997–2014). Magnitude was also calculated using an equivalent baseline time period (2006–2014) for all geo-regions (S1 Text).

In order to determine whether carcass encounter rates in 2015/16 were significantly higher than previous years we calculated bootstrap 95% confidence intervals of mean encounter rate at the region and month-year scale. Each bootstrap estimate was calculated by drawing  $n$  samples (with replacement) of survey-specific encounter rate from the pool of available surveys for that month-year and region (Gulf of Alaska, Outer coast of Washington, Oregon, N California, C California and SC California—see Table 1), with  $n$  equal to the number of unique beaches surveyed in that month-year. A distribution of mean encounter rate was then generated by performing 1,000 bootstrap permutations, subsequently processed to obtain a 95% confidence interval specific to that month-year and region.

The average for each calendar month (i.e. the baseline) was then calculated by a second round of bootstrap resampling using the distributions generated in the previous step (S1 Text). Monthly encounter rates from May 2015 to April 2016 were then compared to the long-term baseline to identify whether they were significantly higher/lower than expected. We classified each month according to two significance criteria; (1) whether the encounter rate was significantly higher/lower than the long-term average (i.e. no overlap of corresponding 95% CI's), (2) whether the encounter rate was significantly higher than any prior year for that calendar month (i.e. 2015/16 data was higher and had none overlapping 95% CI's compared to all prior years) (S1 Text).

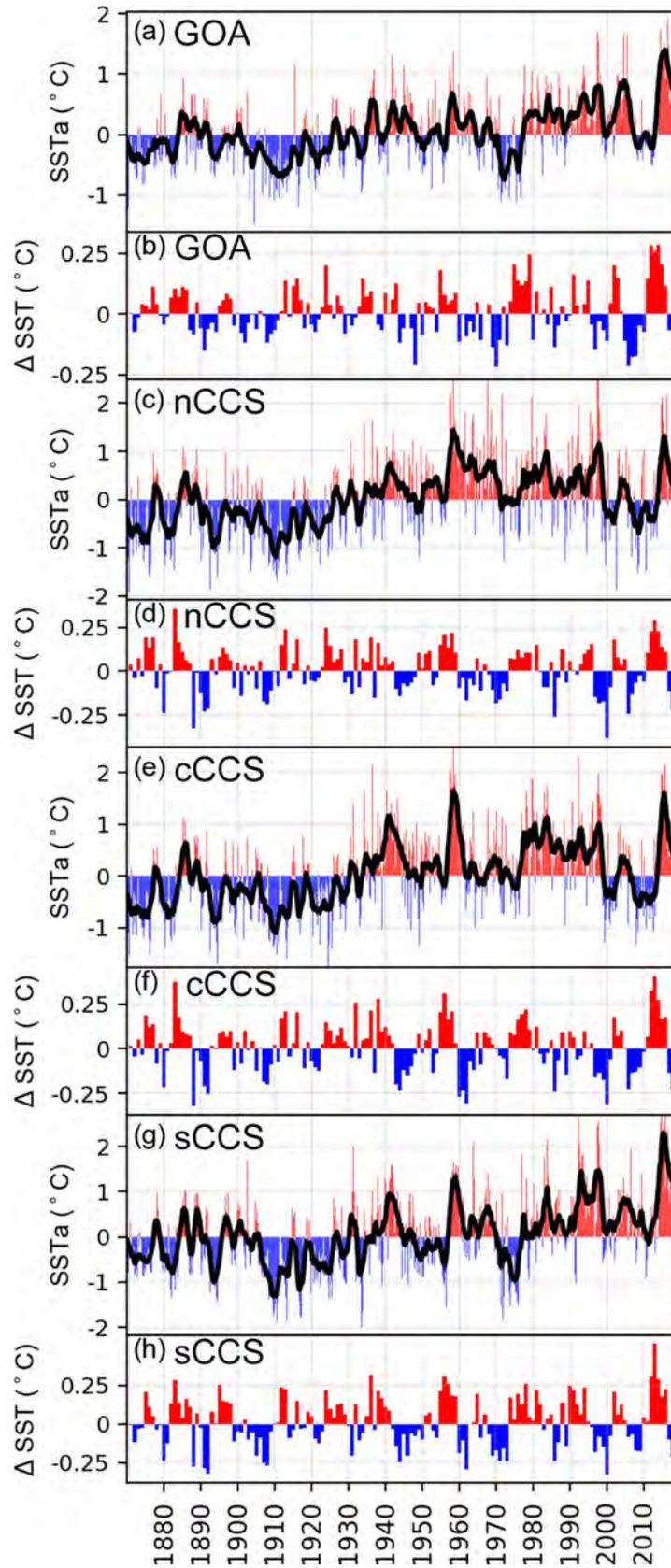
## Results

### Oceanography

The observed warming in the GOA from winter 2014 through winter 2016 was unprecedented in the period since instrumental record-keeping began (1870–2017; Fig 1A). The overall change in magnitude (Fig 1A), and rate of temperature change (Fig 1B), from the most recent cold anomaly (ca. 2007–2012) to the peak warm anomaly (2014–2016) exceeded any previous warming event in the GOA. While the magnitude of SSTa and rate of change in the northern CCS were notable, they were not unprecedented. In the central CCS, the magnitude of the SSTa was large but not unusual, whereas the high rate of warming was greater and more persistent than any time in the past. In the southern CCS (including most of California), the SSTa and rate of change were more extreme than even those in the GOA, and unprecedented in the ~150-year time series. Thus, while all areas were affected by the heatwave, and each developed strong temperature anomalies, it appears that both the heatwave magnitude and rate of warming were most extreme in the northern and southern reaches of its extent. It is noteworthy that while the “heatwave” did not reach the anomalous warm temperatures that defined it [1,10] until August of 2014, high rates of increase ( $>0.25 \Delta\text{SST}$ ) actually began much earlier, i.e., during 2012 in all areas.

### Die-off event description

During the event year (May 2015 to April 2016) ~62,000 murre carcasses were reported from a vast range of coastline spanning more than 6,000 km (Table 1, Fig 2). Of these, ~40,000 were obtained from standardized surveys or rehab center reports. Impacts of the heatwave on murre appeared to be most extreme in the northern GOA and the southern CCS. Although few thick-billed murre (*Uria lomvia*) were detected on beach surveys overall (<0.1% of those



**Fig 1.** Average monthly time series (Jan 1870 to Dec 2018) of sea surface temperature anomalies (SSTa) in the (a) Gulf of Alaska (GOA); and in (c) northern (nCCS); (e) central (cCCS); and (g) southern (sCCS) waters of the California Current System (CCS). Solid black lines are 24-month running averages. Also presented are 5-year running averages of annual SST differences, an index of SST change rate, for the (b) GOA, and (d) nCCS, (f) cCCS and (h) sCCS. Average long-term SST values for each region are: GOA 8.1° C, nCCS 12.5° C, cCCS 13.9° C, sCCS 16.2° C.

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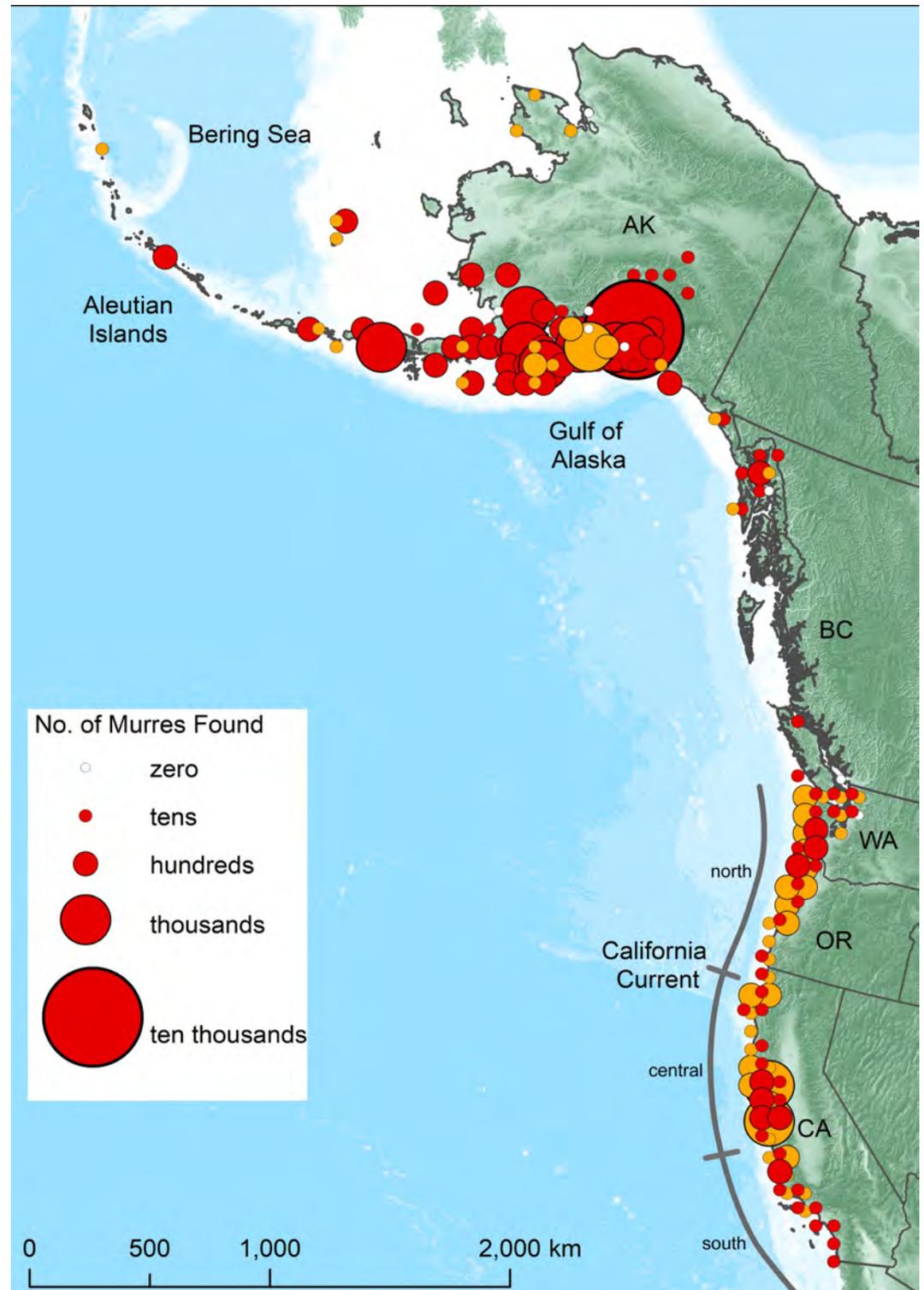
identified on COASST surveys in Alaska and West Coast), they did comprise a higher proportion of total murre (n = 47) observed on Bering (15%) and Chukchi Sea (86%) beach surveys. Otherwise, the vast majority of murre observed on beaches in the GOA and CCS were common murre.

Encounter rates from southcentral California to the GOA were significantly elevated relative to baseline (Fig 3), and this trend was extreme in the GOA, with magnitudes 10x to 1,000x normal for 9 continuous months (Fig 3A). In the GOA month-averaged encounter rates were the highest recorded (relative to monthly baselines: 2006–2014) from May 2015 through to March 2016 (except for June 2015), with the majority representing a statistically significant departure from baseline (Fig 3A). In addition, from September 2015 to January 2016 (except October 2015), month-averaged encounter rates were significantly higher than any previous year of data collection in the Gulf of Alaska (Fig 3A). Numbers counted in other parts of Alaska, including southeast Alaska, and the Bering and Chukchi Seas, were not remarkable (Table 1, encounter rates not shown) but these are vast, scarcely populated areas and COASST sampling was limited. In the GOA, the elevated mortality signal was unusually prolonged, beginning in May 2015 coincident with onset of breeding, and peaking at over 1,000x normal in December 2015 and January 2016, representing an average encounter rate of over 50 carcasses per km. By April 2016, encounter rates had dropped to 10x baseline.

In the CCS, murre carcass encounter rate is typically about 1–3 carcasses per km during late summer and early fall (July–October; Fig 3B–3F) largely due to juvenile mortality following the breeding season. This is markedly higher than the baseline in the GOA, which typically peaks at ~0.1 carcasses per km (Fig 3A). In Washington and Oregon, encounter rates were statistically higher than baseline from August to September of 2015. This represented the highest encounter rates ever recorded for those calendar months in Washington (Fig 3B), although encounter rates weren't significantly higher than all previous years (S1 Text). In northern California encounter rates were at or below average, and significantly lower in November of 2015 (Fig 3D). In North-Central California, encounter rates were significantly higher than baseline and were the highest on record for September to November (Fig 3E), and into December in South-central California (Fig 3F). However, confidence intervals for these months overlapped with one or more prior years of data collection (S1 Text). Overall, mortality rates were most elevated above average in the north and south extents of the heatwave.

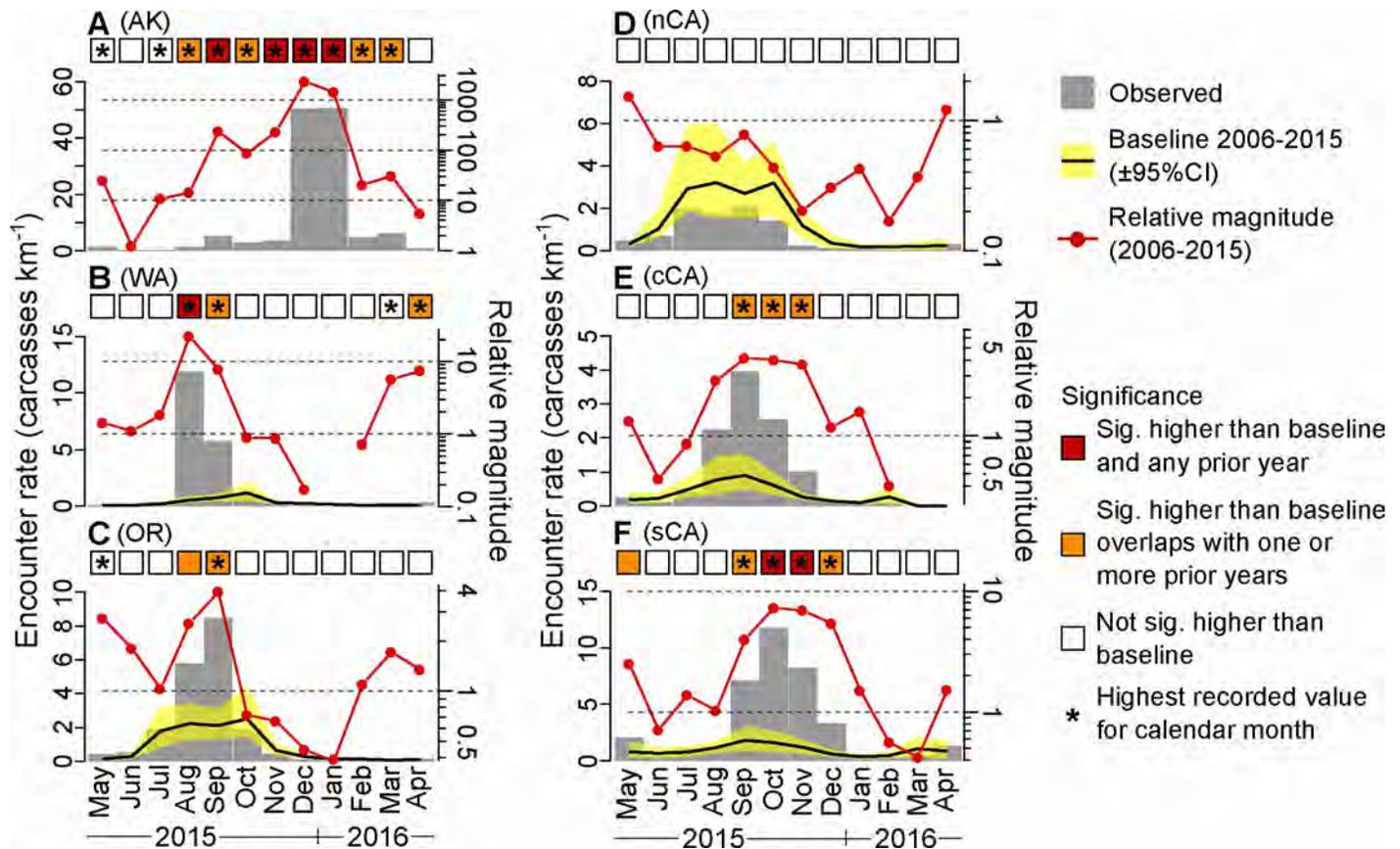
## Necropsies

Of the common murre carcasses collected in Alaska and necropsied at the National Wildlife Health Center, 79% were AHY (68% adult, S2 Table) and 68% were female. All AHY birds were emaciated (mean mass = 711.1g ± 95.0 SD) and severely underweight compared to live healthy birds collected at colonies during the breeding season (n = 219 AHY, mean mass = 1054.0 ± 94.3 SD; Fig 4). Emaciation was characterized by moderate-to-severe pectoral muscle atrophy and absence of subcutaneous, epicardial and visceral fat reserves. Emaciation was the most significant postmortem finding contributing to death in the majority of birds necropsied. A few (n = 4) individuals had mild-to-moderate nematode and/or cestode intestinal parasite infections (insignificant to death) and one had septicemic salmonellosis. There



**Fig 2.** Numbers of dead or moribund common murrelets observed on beaches that were surveyed systematically (gold circles; ~monthly) and with opportunistic beach surveys and rehab captures (red circles). Areas in which zero dead murrelets were encountered during surveys are indicated by white circles. All remaining coastlines (without any circles) were not surveyed. Note the California Current System is divided roughly into 3 sections: north (nCCS), central (cCCs) and south (sCCS).

<https://doi.org/10.1371/journal.pone.0226087.g002>



**Fig 3.** Monthly averaged encounter rates (carcasses per km, gray bars) for the (A) Gulf of Alaska, (B) Washington, (C) Oregon, (D) northern California, (E) central California, and, (F) southern California coastlines. Black lines are baseline encounter rates, yellow shadings are 95% confidence intervals, and red lines show relative magnitude of encounter rates in 2015/2016 compared to the 2006–2015 baseline. Colored squares indicate whether month-averaged encounter rate was significantly higher than baseline and whether they were significantly higher than any prior year of data collection for that calendar month. Asterisks indicate that the mean encounter rate in the corresponding month was the highest value ever recorded. Note that the GOA baseline is so low that it cannot be seen on the chart. Relative magnitude was calculated as the 2015/2016 encounter rates divided by the baseline mean value.

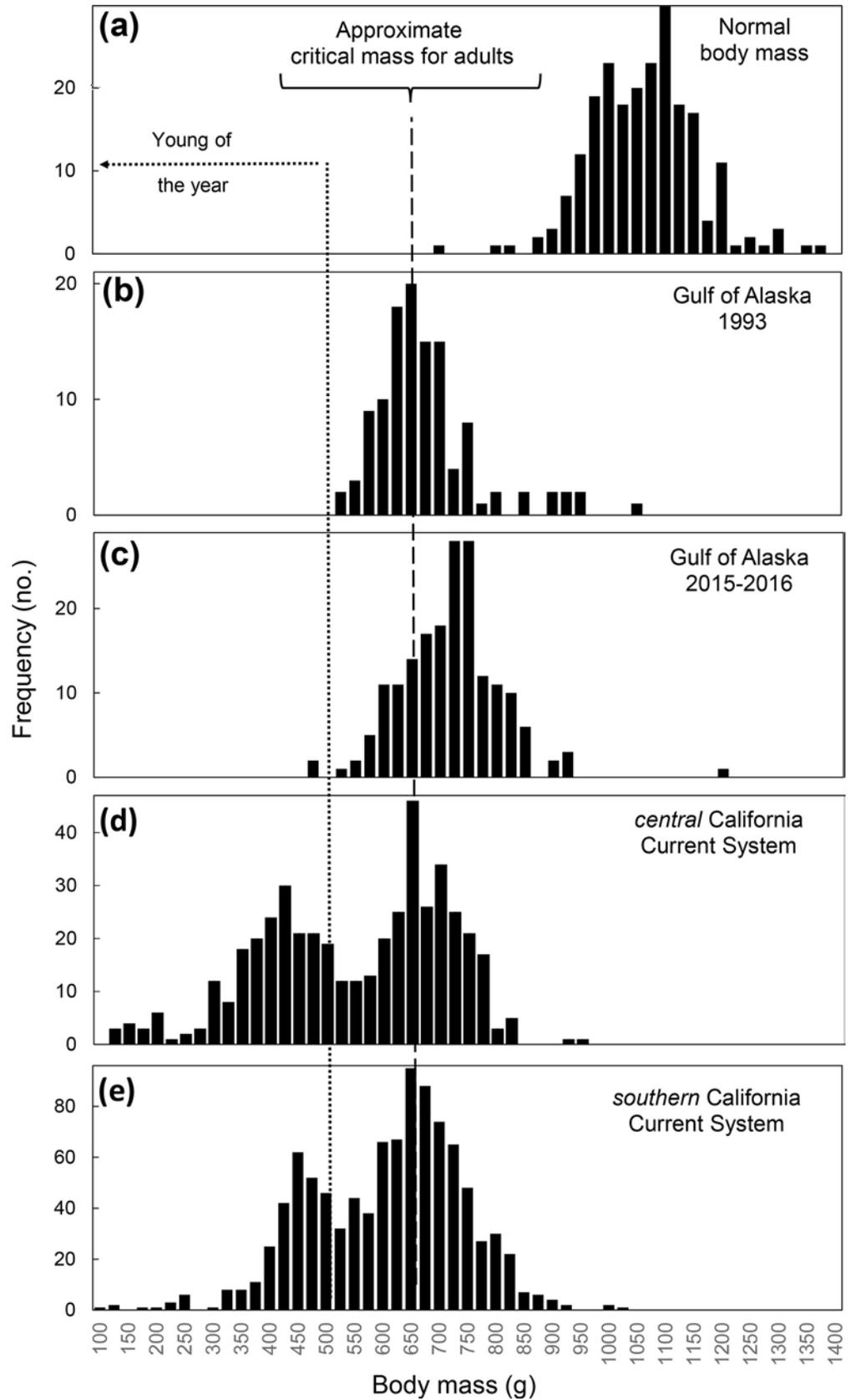
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was no other evidence of infectious disease. Trace levels of saxitoxin (1.4–3.9 ppb) were detected in 20% of samples (n = 8) tested. Domoic acid was not detected.

From subsamples necropsied at the ASC, we determined that 67% of birds were female, 89% were AHY birds (64% adult), and 11% were HY. Nearly all (97%) birds examined for pectoral condition were scored as emaciated and of those scored for subcutaneous fat most had zero (83%) or very little (17%). Only 7% of birds (n = 100) had food remains (trace amounts, mostly bone fragments) in the gizzard. Mass of all birds (n = 97) averaged 715.2 ± 79.9 SD. Overall, body mass of murre carcasses collected during the event year were comparable to that of murre carcasses measured (n = 116 AHY, mean mass = 666.0 ± 92.4 SD) during a similar die-off in Prince William Sound in March 1993 [20].

### Rehabilitation birds

Of 3,365 murrens examined at rehabilitation centers, 8% were dead on arrival or euthanized immediately; 47% were described primarily as emaciated; 5% were injured in some way (e.g. broken wing); and 5% were oiled. The remainder (35%) had non-specific information (e.g., beached, sick, weak). The frequency of these conditions varied from south to north, with 91–



**Fig 4.** Body mass of common murre collected: (a) at seven breeding colonies in the Gulf of Alaska (GOA), May–September 1988–1999; (b) after a large die-off of murre on the Kenai Peninsula, GOA, February–March 1993; (c) at scattered locations in the GOA and Bering Sea, May 2015–April 2016; (d) along the central coast of California (37°–42° N), May 2015–April 2016; and, (e) along the southern coast of California (32°–37° N), March 2015–April 2016. The vertical dashed line represents the approximate critical mass below which mortality is expected in starved common murre (phase III starvation). The vertical dotted line indicates the cutoff mass below which birds were likely young-of-the-year fledglings.

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99% of birds classified as “starving” in Oregon, Washington and Alaska, while “other” causes increased in frequency in southcentral California (13%) and northcentral California (25%). Birds received at rehab centers in California exhibited a bimodal pattern of mass distribution (Fig 4), reflecting a large proportion of HY (34% south and southcentral; 55% northcentral and north) birds. Average mass ( $\pm$ SD) of AHY birds was similar to those observed elsewhere (south and southcentral: 682.7 g  $\pm$ 78.0, n = 402; northcentral and north: 675.6 g  $\pm$ 72.0, n = 157; Fig 4).

### Murre reproductive failures

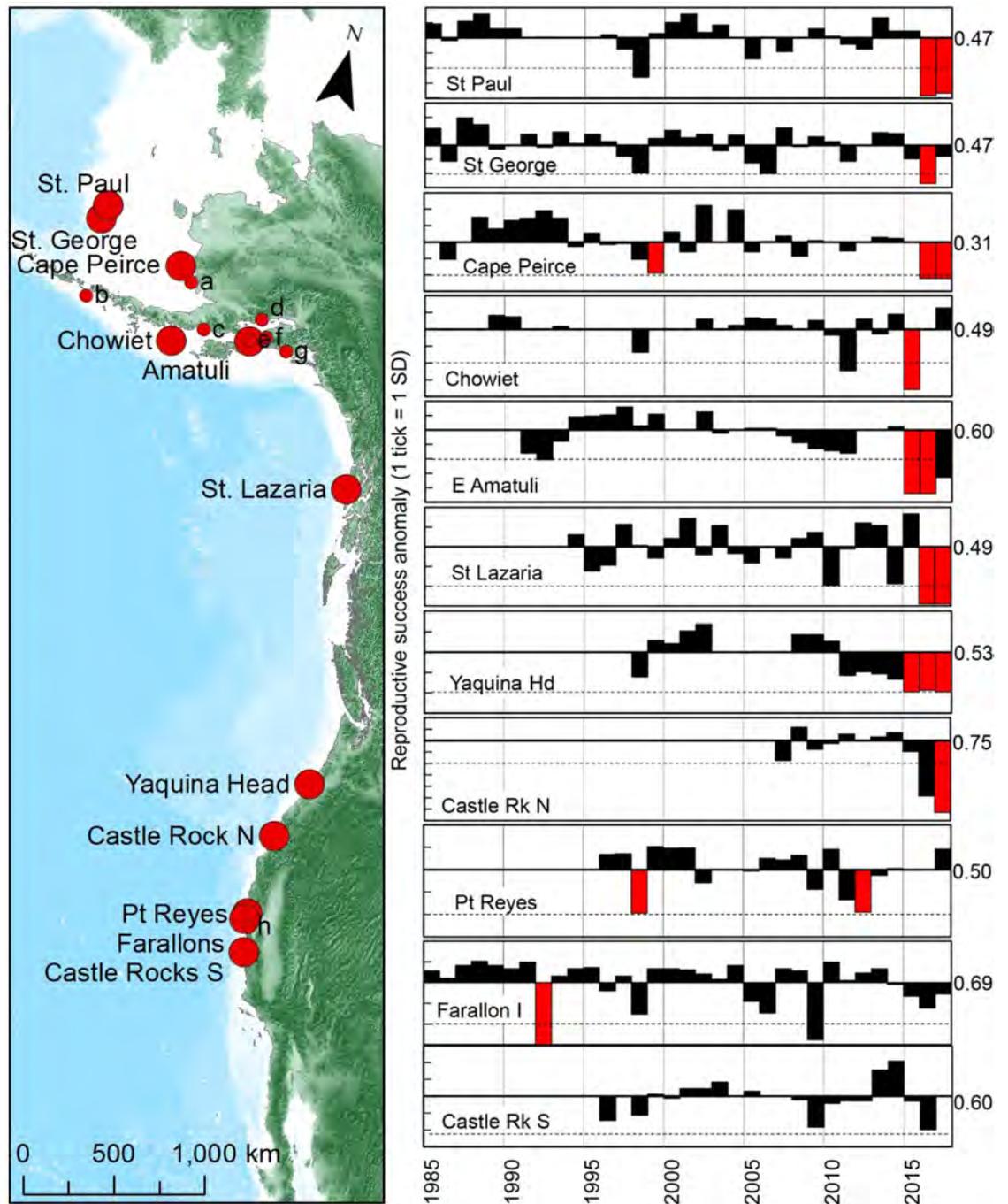
Just under one quarter of the Alaskan common murre population resides on colonies regularly monitored for attendance and reproductive success (*rs*) (Fig 5; [40]). Out of 138 colony-years (i.e. sum of colonies monitored times years of effort) at large relatively stable colonies from 1995 through 2014, only one complete (*rs* = 0 chicks/pair [ch/p]) and seven low (*rs*  $\leq$  0.10 ch/p), see Methods) reproduction failures have been observed (at Round Island, Cape Peirce). Aiktak, a small (~1200 birds) colony in the eastern Aleutians, is the only monitored colony with frequent reproductive failure (12/21 years), which may be why it has decreased rapidly in size in recent decades [40].

During the 2015 breeding season, two annually monitored colonies (Chowiet, Amatuli) failed completely, as did one occasionally monitored site: Gull Island (pre-2015 mean = 0.54 ch/p). In the GOA, these three sites comprise ~26% of the common murre population. Only two regularly monitored colonies reported an above average *rs* (Fig 5).

In 2016, reproductive failures expanded in the GOA and Bering Sea. Seven of eight annually monitored colonies in the GOA and Bering Sea, and five intermittently monitored colonies in the GOA (Barwell, Nord, Gull, and Duck islands; Oil Creek) failed completely (0 ch/p). Of regularly monitored colonies, only Chowiet in the Semidi Islands (GOA) produced fledglings (0.48 ch/p) but far fewer birds attempted to breed (39% of pre-2015 high count of 4283 murre on monitoring plots). Additional signs of reproductive difficulties during 2016 in the GOA included late egg-laying (if it occurred at all), irregular attendance and total abandonment at some colonies.

Reproductive difficulties continued in 2017, as four out of seven regularly monitored colonies failed completely (Cape Pierce, Round, Aiktak, St. Lazaria), and two others (St. Paul 0.02 ch/p, Amatuli 0.15 ch/p) experienced failure or unusually low success (below 2 SD of long-term mean (Fig 5)). In addition, two irregularly monitored colonies (Gull, Duck) failed completely. Only Chowiet performed above its long-term mean (2017: 0.66 ch/p), but again, only 43% of pre-2015 numbers were seen on nesting ledges so total production would be only 28% of pre-2015 numbers.

In summary, 13 common murre colonies in the GOA and Bering Sea experienced a complete failure (0 ch/p) in reproduction at least once during the event years (2015–2017). Multi-year failures were documented in 8 colonies. Out of 31 colony-years of *rs* observed during the event years, 25 (81%) were below their long-term average, 19 (61%) were complete failures (0 ch/p), and 6 more (mean = 0.16 ch/p) were well-below average.



**Fig 5.** Annual standardized deviations in reproductive success of common murres (on right) at continuously monitored colonies (on left, large red circles) distributed over ~6000 km in the NE Pacific Ocean. Red bars (on right) indicate every known year of reproductive failure (i.e., success 0.0 to <0.10 chicks/pair) from 1985 to 2014. Horizontal dashed lines indicate where reproductive success would fall two standard deviations below the long-term average (for pre-event average during 1996–2014, value at right of each plot). Smaller and/or irregularly monitored colonies (on left, small red circles) included (a) Round I., (b) Aiktak I., (c) Oil Creek, (d) Duck I., (e) Nord I., (f) Gull I., (g) Barwell Is., (h) Devil’s Slide Rock.

<https://doi.org/10.1371/journal.pone.0226087.g005>

There is evidence that common murres in the CCS also experienced depressed reproductive success, albeit to a lesser degree and somewhat lagged in comparison to Alaska. Reproductive

success in the CCS population is usually stable, as informed from three decades of monitoring (1985–2014) at 5 colonies representing ~64% of the CCS population (Fig 5). Reproductive success only fell below 1 SD of the mean in 14% (12/83) of colony-years, and below 2SD of the mean in 5% (4/83) of colony years (Fig 5). In contrast, *rs* fell 1 SD below the mean 50% of the time (7/14 colony-years) during 2015–2017. At Yaquina Head (OR), a colony already depressed by disturbance from bald eagles (*Haliaeetus leucocephalus*) and brown pelicans (*Pelecanus occidentalis*) [41], near (<0.02 ch/p in 2016) or complete failures (0 ch/p) were recorded in all three years. At Castle Rock North, the largest murre colony in northern CA, success plummeted from baseline average of 0.75 ch/p in 2007–2014 to 0.17 ch/p in 2016 (>2 SD below mean), followed by complete failure (0 ch/p) in 2017. At the Farallon Islands, the largest colony in central CA, *rs* was moderate (0.45–0.58 ch/p) in 2015–2017, and consistently below the baseline average (0.69 ch/p), while *rs* at nearby Pt. Reyes was at or above (0.49–0.73 ch/p) baseline average (0.50 ch/p). Finally, at two other small colonies south of the Farallons, *rs* in 2015–2017 was slightly above average (mean = 0.65 ch/p, n = 22 years) at Devil's Slide—a small colony that was re-established with social attraction—and well-below (~2 SD) the long-term average at Castle Rocks South in 2016 (Fig 5).

## Discussion

### Die-off magnitude and timing

The 2015–2016 common murre die-off in the northeast Pacific is unprecedented globally in magnitude, spatial extent and duration. It occurred during a heatwave that was also severe (Category III) in magnitude, spatial extent and duration (711 days, [10]). The relative impact was greatest in Alaska, where ~47,000 carcasses reflected encounter rates that were up to a thousand times higher than usual. Peak encounter rates topped 4,600 carcasses/km in Prince William Sound. Many (~14,500) birds were also found on West Coast beaches, but part of this total resulted from much larger beach survey and rehabilitation efforts (S1 and S2 Figs). About one-third of all birds counted on West Coast beach surveys (~11,800) can be accounted for by average background mortality in the region, and about three-quarters of the above-average (~5–10X) mortality was concentrated in the southern California Current System (CCS) (Fig 3). Although strong heatwave anomalies occurred throughout the ~6000 km spatial range over which murrens died, highest mortality rates occurred along an ~1,000 km arc of coastline in the northern Gulf of Alaska (GOA) and an ~500 km stretch of coastline in the southcentral and southern CCS, areas that overlapped spatially with the strongest SST anomalies and most rapid rates of warming (Fig 1).

To put numbers into perspective with other mass mortalities in Alaska, biologists counted 22,800 emaciated (average 704 g) murre carcasses along an ~700 km stretch of coast on the southeast Bering Sea following a severe storm during April 1970 [42]. Aerial surveys averaged 80 carcasses/km (maximum 5440 carcasses/km) and total mortality was estimated conservatively to exceed 100,000 birds. Following the *Exxon Valdez* oil spill in March 1989, ~30,000 seabirds (74% murrens) were recovered along a ~750 km stretch of coast in the northern GOA [43]. Based on a variety of *in situ* experiments to determine how many carcasses made it on shore and were likely to be counted (see below), models predicted that 300,000 to 645,000 birds actually died at sea [44,45]. In March 1993, about 3500 dead murrens were recorded on beaches in the northern GOA; all were severely emaciated (Fig 4). Deposition and persistence rates of murrens on beaches were calculated from repetitive surveys [26] which indicated that a total of 10,900 murrens were deposited cumulatively on the beaches surveyed. Assuming very conservatively that 90% of birds at sea came ashore, and that 10% of beaches in the die-off region had been surveyed, it was estimated that ~120,000 murrens died in this wreck [20].

Few birds were recovered on beaches in British Columbia or southern southeast Alaska (Fig 2), but this is a notable gap area in the distribution of murres during both summer and winter [46] (S3 Fig). In addition to a scarcity of murres, this area is sparsely populated and there was little search effort there (Fig 2). Along the U.S. West Coast, murres are widely abundant (S3 Fig) and one of the more common species recorded on beach surveys, especially juvenile murres after they depart colonies in late summer [22,25,47]. However, there are few historical reports of natural die-offs involving more than hundreds or low thousands of birds, or of adults in particular. The recovery of ~8100 carcasses above the baseline is unprecedented for a “natural” die-off on the West Coast but has been surpassed in magnitude by the mortality of tens of thousands of murres in oil spills [46].

A few exceptionally large die-offs have also occurred elsewhere in the world. During winter of 2013–2014, a total of 54,982 seabirds, mostly (54%) Atlantic puffins (*Fratercula arctica*) and common murres (29%), came ashore from Portugal north to the Shetland Islands, but mostly (80%) along the French coast [48]. This number “is likely to be a large underestimate of the final death toll.” Most mortality was attributed to starvation, perhaps precipitated by a powerful storm and difficulties foraging. There was no heatwave happening at the same time, but the die-off followed a nearly 30-year increase in SST in the North Atlantic from the 1980s through 2000s. This long-term increase in ocean temperature was implicated in the decline of several seabird populations during this period, as well as a reduction in abundance and quality of some forage fish species [39,49–52]. Elsewhere, following a major heatwave in the Tasman Sea [53] and after a severe winter storm off New Zealand in 2011, more than 53,840 dead prions (80% broad-billed prions *Pachyptila vittata*) were counted on long-term survey beaches during July and August [54,55]. Carcasses were found over the entire west coast of New Zealand and densities exceeded 1000 birds/km on several beaches. Total mortality was estimated conservatively at 250,000–500,000 individuals.

Counts of dead seabirds on beaches following mass mortality incidents represent a minimum measure of total mortality. They do not include carcasses that sink at sea, or those washed ashore that are removed by scavengers or buried in sand and debris. Furthermore, the frequency and thoroughness of beach surveys ultimately determines how many carcasses will be discovered and counted [14,44,56]. Experimental studies ( $n = 19$ ) conducted by releasing marked alcids (and/or decoys) at sea when systematic beach surveys were underway indicate that under a wide range of conditions at least 6.9x (95% CI 4.3x to 14.2x) more birds die at sea than are found on nearby beaches [57]. Recovery rates ranged between 0% and 61%, and much depends on the specifics of every experiment (e.g. wind direction, extent of search effort, etc.). Actual mass mortality events exhibit a range of expansion factors of similar magnitude (e.g., Tasman Sea 5x–10x [54]; Gulf of Biscay 5x–17x [57]; Gulf of Alaska in 1989 10x–22x [44,45]) or larger magnitudes (e.g., Gulf of Alaska in 1993 34x [20]; Gulf of Mexico 80x–950x [58]; Bering Sea 579x [59]). The largest multipliers were attached to studies of prolonged mortality (e.g. DeepWater Horizon oil spill, [58]) or those estimated by extrapolating from transects at sea (e.g. [59]).

In this study, owing to logistic constraints and geographic expanse, we measured few or none of the factors needed to model total mortality in the areas most affected. However, we can draw upon a comparable study of carcass counts [45] conducted after the 1989 *Exxon Valdez* oil spill (EVOS) in which rates of carcass sinking, deposition, persistence, and search effort, were all measured in the core area of the oil spill zone [43], which also happens to overlap considerably with the area of highest murre mortality during the 2015–2016 heatwave. If we apply expansion factors determined from that study to bracket the lower (10x) and upper (22x) estimated limits of total mortality in the heatwave, we estimate that between 470,000 to 1,030,000 birds died in the Gulf of Alaska during the heatwave. This total probably included birds

overwintering from Bering Sea colonies (see below), and it suggests that as much as one quarter of all murre breeding in the Gulf of Alaska and southeast Bering Sea (~4.5 million, U.S. Fish and Wildlife Service colony estimates and correction factor for birds at sea [46]) might have been killed.

On the West Coast, we don't have a comparable model to estimate total mortality. However, we know that beach survey coverage was more comprehensive on the West Coast, and so we used the conservative range of expansion factors from experimental studies (above, [57]) to estimate that 4x to 14x more birds than the ~14,500 murre counted were killed, i.e., between 58,000 and 203,000 birds. This would comprise about 4 to 14% of the CCS population (~1.5 million, estimated as above).

Taken together, the total impact of the heatwave on common murre populations throughout all areas was likely between 0.53 and 1.2 million birds, or approximately 10–20% of total populations (~6 million). The fact that most birds killed in the die-off were probably breeding adults compounds the seriousness of the mortality for the population [60], and it will take longer for recovery of the population than if the die-off had affected mostly juveniles [60,61].

### Reproductive failure at colonies

The extreme reproductive failures of common murre that occurred during summer 2015 and in the two years after the main die-off were also focused in Alaska and occurred less frequently in the California Current System (CCS). Considering the low number of birds encountered on beaches in the Bering Sea, breeding failures at colonies there were surprisingly similar in magnitude to those in the Gulf of Alaska (GOA). This reduction in juvenile production will significantly delay recovery of populations in all affected colonies [60]. Also, the number of birds attending colonies in the Bering Sea (data from USFWS [40] and USGS averaged in 3-year windows before and after the 2015–2016 die-off, weighted by colony size) declined more in the Bering Sea (>80%) than in the GOA (>50%). Whether these declines were due to reduced attendance because of deferred breeding [62], or a crash in colony populations due to a crash in food supply [61] is still not clear. Either way, reproductive failures and reduced attendance in the Bering Sea suggest that prey deficits were also experienced by murre in the southeastern corner of the Bering Sea.

The frequency of total reproductive failures ( $n = 22$ ), overall reduced breeding success and decline in numbers that occurred at multiple colonies in the northeast Pacific during 2015–2017 is a cause for astonishment and alarm. The common murre is probably the most widely studied seabird in the Northern Hemisphere and total reproductive failures at well-established colonies have been rare during some 70+ years of detailed observations (Fig 5) [17,39,40,46,63]. A smaller-scaled but similar die-off of murre in association with a collapse of forage stocks (capelin, sand lance, juvenile Atlantic cod *Gadus morhua*) occurred in the Barents Sea in 1986 [61]. Large common murre populations at many colonies in that region subsequently declined by 60–95% in a single winter [64]. Recovery of forage stocks and murre population growth started in the next year. However, two decades passed before murre populations recovered to pre-crash levels [61]. It remains to be seen when (or whether) murre populations in Alaska will recover from the heatwave in light of predicted global warming trends and the associated likelihood of more frequent heatwaves [5].

### Causal factors

Several acute biological responses to this unprecedented heatwave were observed throughout the northeast Pacific. Phytoplankton biomass in the northeast Pacific transition zone waters was lower in winter 2014 than in any year measured since 1997 [11]. The largest and most

wide-spread harmful algal bloom in recorded history—a bloom of *Pseudonitzschia*—extended from California to the Gulf of Alaska (GOA) in 2015 [12,13]. Fundamental shifts in coastal productivity indices [11] and micronekton assemblages [65] were also associated with this sustained warming event. Large predatory groundfish in Alaska, including trophically and commercially dominant species such as walleye pollock (*Gadus chalcogrammus*), Pacific cod (*Gadus macrocephalus*), arrowtooth flounder (*Atheresthes stomias*) and Pacific halibut (*Hippoglossus stenolepis*) all declined in body condition and some in abundance (e.g., cod, see below) during heatwave and post-heatwave years of 2015–2017 in the GOA and Bering Sea [66–69]. A large die-off of planktivorous Cassin’s auklets (*Ptychoramphus aleuticus*) occurred from central California to British Columbia (BC) in the winter of 2014–2015 [14] followed by a large die-off of rhinoceros auklets (*Cerorhinca monocerata*) in the same region during 2016 [70]. Hundreds-to-thousands of young-of-the-year California sea lions (*Zalophus californianus*) died in 2014 and 2015, and Guadalupe fur seals (*Arctocephalus townsendi*) died in large numbers and experienced reproductive failures during 2015 [15,71,72]. A record total of 79 humpback and fin whales stranded during 2015–2016 in Alaska and British Columbia waters, mostly for “unexplained” reasons, and mostly in the GOA [16]. This was accompanied by a >50% decline in summer populations of humpback whales, evidence of malnutrition (“skinny whales”), and near complete absence of calves in Glacier Bay between 2014–2017 [73].

A common thread to most of these events was that they involved either a loss in productivity or a mass mortality of higher trophic-level animals, both of which point to problems in food production or availability. All the vertebrate predators affected also share a common dietary dependence on a few key forage species (see below) and this points to a bottleneck in the forage base. These events all occurred within, and for some years after, the time-frame of the 2014–2016 heatwave, and over an enormous spatial range involving three large marine ecosystems (CCS, GOA and Bering Sea). This calls for an explanation that is plausible for all species and regions, and that involves water temperature as a driving force—either directly or indirectly. With respect to murre, we offer three non-exclusive hypotheses to explain the cause of these events: 1) temperature-mediated changes in the distribution and quality of the prey base available to murre; 2) harmful algal blooms associated with warm water anomalies; and, 3) temperature-enhanced competition from ectothermic predators.

**Bottom-up effects: Murre as marine predators.** Reduction in primary production, and ultimately zooplankton or forage fish biomass, has been implicated in past seabird die-offs and reproductive failures (e.g., [14,27,46,61,74–78], often in association with anomalous oceanographic conditions (too warm, too cold, loss of upwelling, etc.). In order to understand how murre are affected by climate-mediated bottom-up changes in their forage base, we need to first consider their foraging ecology and the types of prey they eat. Throughout their Pacific range, common murre feed on a wide variety of prey, but around any particular colony they select among just a few species that may be found nearby such as sand lance (*Ammodytes personatus*), capelin (*Mallotus catervarius*) and other smelt, Pacific herring (*Clupea pallasii*), Pacific sardine (*Sardinops sagax*), northern anchovy (*Engraulis mordax*) and euphausiids (e.g., large *Thysanoessa* species), as well as juvenile age classes of salmon, gadids, hexagrammids, rockfish and squid [79–83]. (Note, we lump euphausiids and squid with “forage fish” here because a few invertebrates are also consumed in abundance by “piscivorous” groundfish, seabirds and marine mammals, especially in winter). Common murre are extremely well adapted for foraging on continental shelves; they fly faster than any other northern seabird [84], are capable of traversing any shelf in the CCS or GOA within hours, and, they are deep divers, making the entire shelf habitat accessible [85]. This is probably why breeding failures and die-offs have been historically rare (see above).

On the other hand, as endotherms living in hostile, cold environments, murrens maintain high metabolic rates (2.14 kJ/g/d [86]) and assuming an average body mass of 1054 g in the GOA (Fig 4) and a base energy value for “high quality” prey (5.0 kJ/g wet, [87]), murrens need to eat 56% of their body mass every day to meet daily metabolic demands. Murrens in Alaska generally eat age-0 or age-1 forage fish that weigh approximately 5–10 g ([88–90], J.F. Piatt and M. Arimitsu, unpubl. data), so to maintain body mass, murrens would have to catch and eat about 60–120 high-lipid forage fish every day. If only smaller or leaner prey (e.g., juvenile pollock) were available, then the number needed could double [87,91]. By comparison, an ectothermic cod of similar size to a murre would only need to eat about 0.4–1.5% of its own body mass (BM) in food per day [92], i.e., as little as 1–3 high-quality forage fish a day.

This is the ultimate “Achilles heel” for murrens, and one that sets it far apart from competing ectothermic groundfish (eating typically 0.1–1% of BM/d) and endothermic marine mammals [93] including large cetaceans (1–2% BM/d) or small cetaceans and pinnipeds (5–15% BM/d). If murrens can’t fully meet this food demand every day, they lose body condition quickly and jeopardize survival. If they can’t find *any* food for 3–5 days, they will die of starvation [36]. The fact that common murrens are the most successful and abundant piscivorous seabirds breeding in the Northern Hemisphere speaks to their remarkable ability to meet this demand day-after-day. However, shifts in taxonomic composition of prey fields in response to changing environmental conditions have been shown to dramatically reduce murre foraging success, reproductive success and survival occasionally [61,83,94], demonstrating that even these superlative marine predators have limits [38,95]. Still, examples of such limitations in murrens are rare and the magnitude of the events reported on here are beyond extraordinary.

**Bottom-up effects: Shifts in the prey base.** Warming of subarctic shelf waters may lead to both vertical (deepening) [96,97] and northward migrations of these forage species, or entire communities, according to thermal gradients and tolerances [98–100], a phenomena widely observed during the 2014–2016 heatwave [14,101–103]. In the California Current System (CCS), shifts in zooplankton [101] and forage fish diversity [65,103] signaled a persistent northward expansion of southern species. Zooplankton shifts may have also resulted in a depleted food chain in terms of relative energy transfer [101], although larval forage fish species were actually more abundant in samples off central California and central Oregon [65,103]. In contrast, anchovies and sardines in the CCS both declined by 2–3 orders of magnitude from the mid-2000s to 2014 [104,105]. Although these declines preceded the heatwave, fish and plankton net sampling in Oregon and Washington indicate that catches of these forage fish, as well as of euphausiids were further depressed in 2015 and 2016 [9,12,70,71].

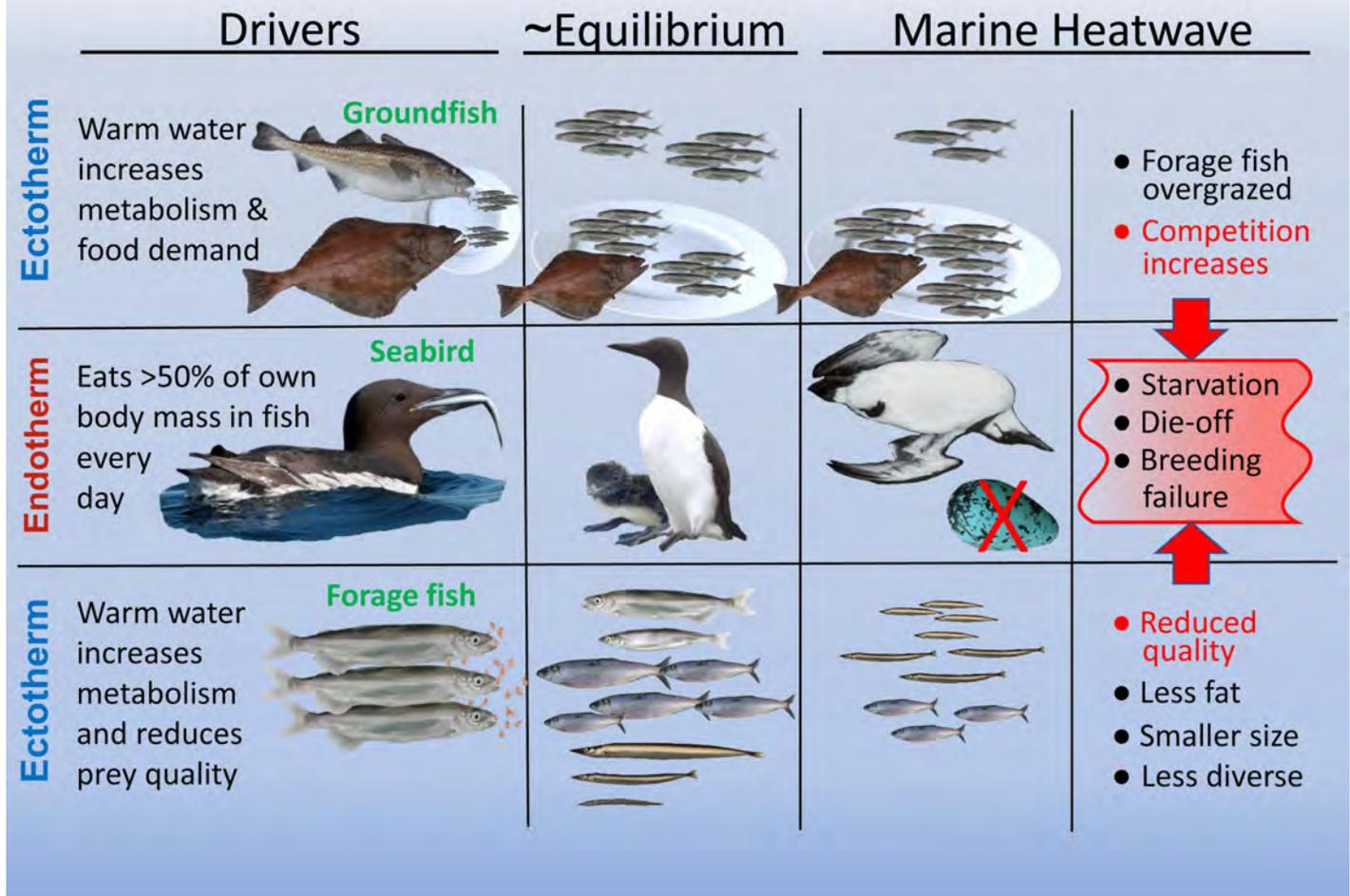
In the Gulf of Alaska (GOA), a similar introgression of smaller zooplankton was observed, along with a breakdown in established SST-phytoplankton-zooplankton dynamics after 2013 [102]. Shifts to earlier peak biomass of smaller copepods associated with warmer temperatures [102] were cited as potential factors in concomitant declines in forage fish quality in Prince William Sound in the winter of 2015–2016 [106,107]. Shifts in forage fish availability in the GOA were apparent in marine bird diet starting in 2014 [108], with a sharp decline in capelin and an increase in sablefish (*Anoplopoma fimbria*), combined with a slow rebound of sand lance. In GOA waters, sand lance began a long steady decline in the early 2000s, to a low in 2011, and remained low to 2015 [67,109]. Capelin stocks were depressed after the 1976 regime shift [110], rebounded dramatically in 2007 as the GOA entered a new cold phase [67,109], and collapsed again during the heatwave in 2014–2016 [67,100]. In 2015 and 2016, age-0 pollock larvae in the GOA were 2–3 orders of magnitude less abundant than average; indicating complete recruitment failures for pollock [67,68]. In sum, latitudinal shifts in zooplankton and forage fish prey, combined with overall depression of major prey taxa, apparently created marginal foraging conditions for murrens for several years.

In addition to shifts in latitudinal abundance of specific taxa, warm water conditions diminished body condition and somatic growth of ectothermic forage fish. Body condition of capelin and sand lance in the GOA and CCS was reduced during the heatwave, resulting in smaller, less energy-dense prey for murrens [107,111–113]. Whole-body energy content of age-1 sand lance declined by 44% in 2015 and 89% in 2016 in Alaska [114], and body condition of sand lance in the northern CCS declined markedly in 2014–2015 [113]. Presumably, consumed food was re-directed to fuel metabolism rather than somatic growth or fat storage [69,115]. Similarly, others [116] have shown marked reduction in growth of several CCS forage species during warming events, including the 2015–2016 heatwave. These included northern anchovy, Pacific herring, Pacific sardine, surf smelt (*Hypomesus pretiosus*), and whitebait smelt (*Allosmerus elongatus*), all common prey for murrens in the CCS. They also demonstrated a marked change in forage fish diets in 2015–2016, from energy-rich plankton species to energy-poor gelatinous species; a change they ascribe to a restructuring of nektonic communities that occurred in response to the heatwave [116]. Thus, the heatwave increased metabolic demand of forage fish while at the same time it reduced the quality of some prey eaten by forage fish, creating a bottleneck for mass/energy flow to higher trophic levels, including seabirds (Fig 6). As all fish and invertebrates are ectothermic, this effect could potentially have far-reaching impacts on food webs in the GOA and CCS [69,117].

**Bottom-up effects: Toxicogenic algae.** Increased ocean temperatures during and following the heatwave have been associated with harmful algal blooms (HABs) [13,118], which are known to cause marine bird mortality, primarily through plankton-derived toxicants entering the food chain and occasionally resulting in die-offs of thousands of birds [119]. Saxitoxin and domoic acid have been widely detected in top marine predators [31,120] but we know little about toxicity levels or effects of chronic exposure in most cases.

During the common murre mass mortality event, an extensive HAB of a toxigenic diatom (*Pseudo nitzschia* sp.) that commonly produces domoic acid was documented in coastal California from March through June 2015 [13] resulting in bioaccumulation of domoic acid in northern anchovies (*Engraulis mordax*), one of the main prey species of common murrens [121]. Investigators [120] detected low levels of domoic acid in tissues of beach cast common murrens during and after the 2015 bloom (July–November). Nonetheless, they concluded that starvation “was likely the ultimate cause of death” and that any harmful algal bloom effects were secondary. In Alaska, it remains unclear whether HABs played any role in the elevated mortality rates of common murrens during the 2015–2016 heatwave. Immediate testing for domoic acid in murrens was minimal ( $n = 9$  birds) and none was detected, but *Pseudo nitzschia* were 2–3X more abundant than average on the GOA shelf during 2014 and 2015 (S. Batten, pers. comm.). Saxitoxin, which can cause paralytic shellfish poisoning, has been linked to mortality of seabirds in Alaska [122] and concentrations of saxitoxin in some areas peaked during the summers of 2014–2016 [118]. Trace levels of saxitoxin (1.4–3.9 ppb) were detected in eight of 39 murre samples (stomach or cloacal content) obtained by the National Wildlife Health Center and tested immediately in 2015–2016 (see [Methods](#)). Later analyses of an additional 56 murrens at the USGS Alaska Science Center, including die-off and healthy specimens, as well as samples of forage fish and invertebrate prey collected in 2015–2017, revealed a low to moderate frequency (20%–54%) of saxitoxin occurrence among taxa groups; but all at low concentrations [123]. Domoic acid was found in a single bird, and in some prey taxa (4%–33%). Authors noted that all biotoxin values were below levels reported in other seabird die-offs where causal links were established between toxin concentration and bird mortality, and as such, do not support a hypothesis that algal bloom biotoxins were a primary cause of murre mortality in Alaska [123].

# The Ectothermic Vise



**Fig 6. Illustration of the “ectothermic vise” hypothesis to explain the dramatic decline of forage fish and starvation of murre across three large marine ecosystems during the 2014–2016 marine heatwave.** We propose that an unusually warm layer of water in the NE Pacific, persisting for more than 2 years, had a powerful cumulative effect on ectothermic groundfish (stimulating food intake rate) and ectothermic forage fish (reducing their quality) leading to a strong top-down and bottom up (vise-like) impact on murre survival and reproductive success.

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Furthermore, the likelihood that HAB toxins were a primary and acute causal factor in the die-off appears small given that the center of the murre mass mortality event was the GOA, and the extended duration of the die-off (9 months of 100x baseline) both preceded and extended well past peak HAB bloom windows [118]. Also, we should have seen behavioral changes in affected birds as well as a larger number of species affected if HABs were a primary source of mortality [120,124]. Nonetheless, we are still lacking in basic information (e.g., what is a lethal dose?) about HAB effects on marine birds, and it cannot be ruled out as a contributing factor to the die-off [123]. We need more information on the depuration rates of HAB toxins, acute toxic levels (e.g., LD<sub>50</sub>) and the effects of chronic toxin exposure in order to fully assess their potential contribution to the die-off [120,123].

**Top-down effects: Resource competition from ectotherms.** In addition to affecting spatial distribution of large predatory groundfish [125], increasing water temperature has the immediate and predictable effect of increasing metabolic rate, and usually food demand, of

these marine ectotherms when they are operating within preferred temperature regimes [92,126]. The influence of this ecological “master factor” [127] on groundfish must have been substantial during the extreme 2014–2016 heatwave, but this pathway of upper trophic impact has been largely overlooked as a factor in regulating populations of groundfish, or other marine predators that compete with groundfish for food [92,117,128,129].

Recent modeling [92] of the effect of temperature on metabolic rate and food consumption in the GOA of three dominant groundfish predators including walleye pollock (*Gadus chalcogrammus*), Pacific cod (*Gadus macrocephalus*) and arrowtooth flounder (*Atheresthes stomias*) showed that an increase of 2°C in the GOA from pre-heatwave (1981–2011) temperatures would have increased food consumption of these species by 70%, 34% and 65% respectively. If we weight each species consumption estimate by its population size (stock biomass [130]), then the increase in prey demand by all species combined would be 63% higher than it was before the temperature increase. Pacific halibut (*Hippoglossus stenolepis*) show a similar response to increasing temperature in the GOA and Bering Sea [69].

The micronekton most commonly eaten by these groundfish include several species also favored by murre and other avian piscivores, especially capelin, sand lance, juvenile pollock, herring and euphausiids (especially in winter) [131]. Given the size of these three groundfish stocks in 2015 (4.48 M mt, [130]) and calculated consumption rates [92], these groundfish would have consumed ~10 M mt/yr of prey in 2015 if temperatures remained average. By comparison, total annual forage consumption by the ~2.5 million common murre in the GOA (calculations following [46,132,133]) total only ~0.45 M mt/yr. Thus in 2015, without a temperature increase, predatory groundfish would have consumed approximately ~20 times more total prey biomass, and ~6 times more forage fish biomass than murre (since fish comprise about a quarter of these groundfish diets; [134]). The 2°C increase in water temperature would have pushed ectothermic groundfish prey consumption to ~15 M mt/yr, and thereby substantially increase forage fish grazing rates. Given that groundfish typically out-consume seabirds by 10:1 or even 100:1 ratios in northern shelf ecosystems [135,136], a 60% increase in consumption rates by groundfish should have some consequences for seabirds. No comparable modelling of temperature impact on metabolism of fish in the CCS has been undertaken, but the CCS shelf sustains at least 3.1 M mt of large predatory fishes (mostly hake *Merluccius productus*, rockfish, flatfish) [137,138], comparable to biomass density in the GOA and likely to also have provided significant increases in competition with murre during warming events.

If the GOA marine ecosystem was operating at “relative equilibrium” [139,140] prior to the heatwave, then we hypothesize that this massive increase in foraging rate would have eventually led to prey deficits [69,136] for the groundfish themselves (creating intra-specific competition) and for other competitors such as seabirds and marine mammals (creating inter-specific competition) [136,141]. In this scenario, murre would be more sensitive to reductions in key forage fish species than competing groundfish, which typically have much broader diets and less sensitivity to fluctuations in any one prey type [136,142]. Also, it would presumably require a passage of some time for elevated grazing to deplete prey stocks below critical levels needed by murre. In fact, it was almost a full year from start of the “official” heatwave (August 2014, [10]) and more than 3 years after the rate of warming turned positive in 2012 (Fig 1) before a few murre colonies experienced reproductive failure and elevated murre mortality appeared in the GOA and northern CCS (Figs 3 and 5). Murre mortalities increased and persisted through fall in the GOA and southern CCS, and then peaked in the GOA during December 2015 and January 2016, a full 18 months after initiation of the heatwave. Murre die-offs diminished to background levels by April–June of 2016, as water temperatures returned to normal [10]. In contrast, reproductive failures peaked at 13 colonies during the summer of 2016 (23–24 months from heatwave initiation), continued at 9 colonies in 2017, and declined to

only 4 colonies in 2018 (USGS, USFWS unpubl. data), although it is bracing to remember that a synchronized failure of even 4 murre colonies would have once been considered an extreme event. Overall, these findings suggest that prey stocks were replenished slowly during the 2 years after the heatwave ended in summer 2016, or that some sort of relative equilibrium among ectothermic and endothermic predators was being re-established following a large cull of bird, fish and mammal populations, or both.

While murre were visibly dying *en masse* and failing to reproduce in 2015–2017, adult Pacific cod populations in the GOA were silently crashing underwater. Following three years in which commercial catches were well below quotas in the GOA (2015–24%, 2016–35%, 2017–45%), and a severe reduction in abundance of some older age cohorts occurred, the allowable catch quota for 2018 was reduced by 80% from the 2017 level [129]. The decline in the cod stock was attributed to reduced adult survival from starvation owing to a major reduction of forage in diets (especially capelin), coupled with a large increase in metabolic rates and food demands [129]. The same changes appeared in arrowtooth flounder, to a lesser degree [69,143]. In addition, the authors concluded that “other ectothermic fish species would be expected to have similarly elevated metabolic demands during the warm conditions, increasing the potential for broad scale prey limitations”, a conclusion that would seem to fit Pacific halibut in the Bering Sea and GOA as well [69]. Indeed, we might expect elevated consumption from some more of the other 30 commercial groundfish species [130], five species of salmon, and non-commercial fish species, alongside the usual competition from other common *endothermic* piscivores in the GOA, including at least thirty other species of seabirds, ten cetaceans, and five pinnipeds [144,145]. Finally, we find independent supporting evidence for potential basin-scale resource competition between large predatory fish and seabirds in the Bering Sea, where biennial high-low cycles in pink salmon (*Oncorhynchus gorbuscha*) abundance result in high rates of forage consumption in high salmon years, and create synchronized biennial cycles in seabird body condition and reproductive success (both low in high salmon years [141,146,147]).

**Summary- effects of an ectothermic vise.** During the most powerful marine heatwave on record [10], an extreme die-off and chronic breeding failure of common murre in the NE Pacific resulted from a widespread shortage of forage fish across three large marine ecosystems. Major impacts on murre included a large reduction (possibly 10–20%) in the breeding population and a severe reduction in productivity that will dampen recruitment for several years. Food shortages were also documented during the 2014–2016 heatwave in many other piscivorous marine predators including groundfish, seabirds and marine mammals. And finally, a variety of ichthyoplankton and pelagic fish studies provided direct evidence for major forage fish declines during 2015–2016 in many of the key species eaten by murre from California to the Bering Sea.

Our hypothesis to explain the wide-spread depletion of forage fish is based on three facts: 1) metabolic rate, food intake rate, somatic growth, fat storage, fecundity and survival in marine ectotherms are strongly modulated by water temperature, 2) these physiological and life history traits are adapted to function optimally over relatively small ranges of water temperature that are species-specific, and, 3) physiological efficiency declines markedly when ambient temperatures wander too far above or below the optimal temperature range. This is why fish seek out water with temperatures that optimize these parameters, e.g., by migrating vertically in and out of warm surface layers or migrating geographically to stay within waters that suit their tolerances and/or facilitate various activities (e.g., migration, foraging, predator avoidance, “hibernation”, etc.). Such effects were noted widely in zooplankton, ichthyoplankton, forage fish and groundfish during the heatwave. However, murre and many other marine predators are highly mobile and deep-diving, and it is unlikely that simple distributional changes in

forage fish can account for all the widely observed starvation, mortality and breeding failures in murre.

A more plausible hypothesis is that persistently warm water temperatures modulated ectotherm physiology everywhere at the same time, and forage fish were caught in an “ectothermic vise” (Fig 6). At lower trophic levels, warm waters changed zooplankton community composition, sometimes by the loss of key high-lipid species, sometimes by immigration of less nutritious warm-water species, or both. Consequently, the flow of energy to forage fish was disrupted, even as their own metabolic demand increased. This likely led to reduced somatic growth and fat storage [69,107]. In turn, this reduced survival in some forage fish (or age-classes) and lowered the nutritional quality of forage fish for seabirds (Fig 6). At higher trophic levels, the stimulation of metabolic rates in larger predatory fish led to a huge increase in their intake of forage fish [69,92]. This, in turn, led to a steady depletion of forage stocks for the 2-year duration of the heatwave, and an increase in competition for a dwindling supply of forage (Fig 6).

An ectothermic vise on forage fish ought not to be expected under every scenario of ocean warming, and much may depend on how well community thermal optima are aligned with temperature regimes before, during and after a heatwave occurs [92,117]. Still, it might be useful to model metabolically regulated trophic relationships within marine communities under future warming scenarios in order to assess the potential impact of future warming events on marine food webs. As noted by John Bruno et al. [117] “temperature-driven changes in metabolism play an important and informative role in controlling many of the patterns and processes that interest ecologists. A small but growing body of research suggests that the effect of temperature on marine populations and communities is at least as strong as other factors that receive far greater attention, e.g., competition, predation, and resource availability.”

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## Supporting information

**S1 Table. Wildlife rehabilitation organizations contacted in California, Oregon, Washington, British Columbia and Alaska.**

(DOCX)

**S2 Table. Common murre collection details and measures of mass, sex, and age class.**

(DOCX)

**S1 Fig. Distribution and numbers of live birds received at 37 rehabilitation centers.**

(TIF)

**S2 Fig. Locations of individual surveys conducted for beached birds during the period May 1, 2015 to April 30, 2016.**

(TIF)

**S3 Fig. Summer and winter distribution of Common Murres in the NE Pacific.**

(TIF)

**S1 Text. Methods for bootstrap calculation of significance in testing rates of carcass encounter on beach surveys in different months and years.**

(DOCX)

**S1 Dataset. Data collected on common murres taken in by bird rehabilitation centers in California, Oregon, Washington and Alaska.**

(XLSX)

**S2 Dataset. Beach survey data on common murres summarized monthly, including survey effort, counts, and 95% CIs of mean murre encounter rate.**

(XLSX)

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Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

ATTN: Rick Green

I am writing in support of the repeal on the administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215) on personal watercraft in Kachemak Bay Critical Habitat area. Finally, an administration that is not prejudiced and understands access.

Any conservation concerns are already addressed in regulations that apply to all boats which includes personal watercraft, airboats etc. Separate regulations do not need to be addressed regarding each individual type of watercraft.

Because no one can find valid current scientific studies regarding boats especially personal watercraft on the impact to fish, wildlife and other biological resources the members of Cook Inlet Keeper have just decided to label personal watercraft as thrill craft portraying the owners/operators as some kind of renegade.

This is simply an equal access issue where all Alaskans have the right to use their vessel in the state's waters, especially an area that encompasses more than 200,000 acres and includes the Alaska Marine Highway. The state simply doesn't have the right to ban anyone from traveling on the Alaska Marine Highway. Bob Shavelson of Cook Inlet Keeper makes it sound like he and other business and property owners in the Kenai peninsula area own the bay, they don't, it belongs to all the people and the Dunleavy administration understands that and that is why I believe the ban will be repealed.

Thank you, Rick Green, for stepping up to the plate and taking this first very important step to right a wrong done long ago by administrations who didn't believe in equal access.

Sincerely,

Chad Grewo



1-17-20

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

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Sincerely,



Melinda Beldé ~~Robbie~~  
1/20/20

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

ATTN: Rick Green

I am writing in support of the repeal on the administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215) on personal watercraft in Kachemak Bay Critical Habitat area. Finally, an administration that is not prejudiced and understands access.

Any conservation concerns are already addressed in regulations that apply to all boats which includes personal watercraft, airboats etc. Separate regulations do not need to be addressed regarding each individual type of watercraft.

Because no one can find valid current scientific studies regarding boats especially personal watercraft on the impact to fish, wildlife and other biological resources the members of Cook Inlet Keeper have just decided to label personal watercraft as thrill craft portraying the owners/operators as some kind of renegade.

This is simply an equal access issue where all Alaskans have the right to use their vessel in the state's waters, especially an area that encompasses more than 200,000 acres and includes the Alaska Marine Highway. The state simply doesn't have the right to ban anyone from traveling on the Alaska Marine Highway. Bob Shavelson of Cook Inlet Keeper makes it sound like he and other business and property owners in the Kenai peninsula area own the bay, they don't, it belongs to all the people and the Dunleavy administration understands that and that is why I believe the ban will be repealed.

Thank you, Rick Green, for stepping up to the plate and taking this first very important step to right a wrong done long ago by administrations who didn't believe in equal access.

Sincerely,

Margaret M. Hale

margaret hale 1/9/20

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megan wagne Viako

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Sincerely,

A handwritten signature in cursive script that reads "Steve Belde".

Steve Belde 1/20/20

# Impacts to Wildlife and Natural Resources from Personal Watercraft

## A Literature Review

By

Joe Meehan

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Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, Alaska 99518

February 2000

### **I. INTRODUCTION**

#### A. Purpose of this Report:

In response to public interest, the Alaska Department of Fish and Game (ADF&G) and Alaska Department of Natural Resources (ADNR) conducted public meetings and solicited public comments concerning the use of personal watercraft (PWC) in the Kachemak Bay and Fox River Flats critical habitat area (CHAs). In conjunction with seeking public input, the ADF&G conducted a review of literature relevant to the use of PWC and their potential impacts to natural resources including fish, wildlife, and air and water quality. While not the focus of this literature review, a brief summary of materials on PWC safety and operator injuries is also included.

#### B. Scope and Summary of Literature Review:

Sources of reviewed information include scientific and popular publications; federal, state and local agency management documents and staff reports; publications and reports from private organizations; and statement and testimony from biological and physical scientists and resource managers. While this literature search attempted to review a broad range of available materials, it is not intended to be exhaustive or all-inclusive. To document the extent of this review, a bibliography of reviewed material is attached, although not all sources are cited in the narrative of this report.

Few dedicated studies that investigated the impacts of PWC to fish, wildlife, and other biological resources, and to air and water quality exist. The majority of the available literature examines disturbances to these resources from human activities including, but not limited to: conventional motorboats, two- and four-stroke outboard boat engines, aircraft, land-based activities such as motor vehicles, and recreational activities such as bird watching and fishing. Boating-related activities have been found to impact natural resources by affecting: water turbulence and turbidity; bank erosion; cutting of vegetation by propellers; direct contact with river banks and riparian vegetation; direct collisions with wildlife; visual and auditory disturbances to wildlife; impacts to bird nests, eggs, and nestlings; and air and water pollution from motors and sewage. Pomerantz et al. (1988) classified these impacts to wildlife in six categories and includes 1) direct mortality, 2) indirect mortality, 3) lowered productivity, 4) reduced use of preferred

habitat, 5) aberrant behavior, and 6) stress. While this literature review primarily presents a summary of the impacts caused by all boating activities, rather than those isolated to PWC, it should prove useful in determining whether the use of PWC represents a unique impact to the natural resources of the Kachemak Bay and Fox River Flats CHAs.

## II. DIRECT IMPACTS TO WILDLIFE:

### A. General Impacts to Wildlife:

While numerous publications exist that describe the direct impacts of boats and other human activities on wildlife (including birds, marine mammals, crocodiles, fish and other aquatic life forms), only two dedicated studies have explored whether differences exist between the impacts created from the use of traditional outboard motorboats and those from PWC. In abundance are studies on the human impacts to breeding birds, particularly colonial nesting water birds. Impacts from various human disturbance on wildlife, including those from watercraft, have been described by researchers and include such affects as reducing productivity, affecting foraging behavior, abandonment of breeding territories, altering distribution, and increasing predation (e.g. Knight 1986, Anderson 1988, Bratton 1990, Mikola et al. 1994). As an example, studies on double-crested cormorants (*Phalacrocorax auritus*) in Maine and king shags (*Phalacrocorax albiventer*) in Argentina revealed that human disturbance in the nesting colony not only increases the vulnerability of eggs and chicks to predation by gulls, but also causes the adults to regurgitate fish (Kurby 1975). This regurgitation provides an alternate food item for the gulls, thereby decreasing predation on their eggs and chicks. The author surmised that repeated human disturbance could harm growing young by depriving them of food.

### B. Personal Watercraft Studies:

Two studies that specifically examined PWC recorded somewhat conflicting findings. Rodgers (1999) exposed 39 species of loafing or feeding waterbirds (Pelecaniformes, Ciconiiformes, Falconiformes and Charadriiformes) in Florida to the rapid approach of a PWC and an outboard-powered boat to determine their flushing distances to these two watercraft. While 11 species showed no significant difference in flush distance, five species (anhinga (*Anhinga anhinga*), little blue heron (*Egretta caerulea*), caspian tern (*Sterna caspia*), willet (*Catoptrophorus semipalmatus*), and osprey (*Pandion haliaetus*)) exhibited significantly larger flush distances to the approach of the outboard-powered boat. Only one species (great blue heron (*Ardea herodias*)) exhibited a significantly larger flush distance to the approach of a PWC. The author suggests that his preliminary data indicate that a single buffer zone distance should be applied to both types of watercraft. However, another study at a nesting colony of common terns (*Sterna hirundo*) along the coast of New Jersey found that significantly more birds were off their nests and circling the colony when a passing watercraft was a PWC, rather than a conventional motorboat (Burger 1998). This study also reported that a significantly larger number of birds were in flight over the colony the closer a watercraft passed to the colony and the faster the speed of the watercraft.

Biologists working in the Ten Thousand Islands region of Florida's Everglades are currently proposing to conduct a study comparing the impacts of PWC, outboard motorboats, canoes/kayaks, and airboats on foraging and loafing waterbirds, particularly shorebirds which were not represented well in these other studies (Hopkins and Doyle 1999). They propose to operate the craft in several configurations including single and multiple vessels using both direct and S-curve approaches.

### C. Buffer Zones and Differences in Types of Disturbance:

Many of the published studies on disturbances to wildlife attempt to quantify recommended setbacks which human activities should maintain from birds, particularly breeding colonies of waterbirds. As previously mentioned, few dedicated studies investigated the impacts from PWC but some general conclusions may be drawn from studies that did compare various disturbance types. These appear to be related to the predictability, linear movement, and speed of the disturbance.

Rodgers and Smith (1995) studied fifteen species of nesting colonial waterbirds (Pelecaniformes, Ciconiiformes and Charadriiformes) in Florida and exposed them to three types of human disturbances (walking, motorboat, and canoe). Their results generally show that these waterbirds exhibited a greater flush distance in reaction to a walking approach rather than a motorboat approach. Their data set for disturbances from canoes was too limited to draw many conclusions; however, anhingas flushed at a distance similar to that of a motorboat. Therefore, they recommend the same setback distances for preventing disturbance to nesting colonial birds for both types of vessels. While they observed both interspecific and intraspecific variations in flushing responses to the same human disturbance, the authors recommended a set-back distance of about 100 meters for wading colonial birds and 180 meters for mixed tern/skimmer colonies. Similarly, Erwin (1989) recommended buffers of up to 200 meters to prevent disturbance to wading birds and seabirds based on his research at coastal sites in Virginia and North Carolina.

In a separate study designed to establish recommended buffer zones from feeding and loafing birds, Rodgers and Smith (1997) exposed 16 species of non-nesting waterbirds (Pelecaniformes, Ciconiiformes and Charadriiformes) to four types of human disturbances (walking, all-terrain vehicle, motor vehicle, and motorboat). While most species did not exhibit a significant difference between the four disturbance types, some species did exhibit a significant difference between automobile and all-terrain vehicle approaches. While both interspecific and intraspecific variations were observed in flushing responses to the same human disturbance, the authors recommended a setback distance of about 100 meters to minimize disturbance to most species of waterbirds that they studied.

Researchers working in New York's Jamaica Bay National Wildlife Refuge determined that land-based human activity nearly always had a disturbance to waterbirds in the refuge but that faster moving activities (joggers) disturbed birds significantly more than slow moving bird watchers (Burger 1981). Fraser (1987) found that common eiders along the coast of South Africa usually ignored the approach of dinghies, small sailboats, and engine-powered boats; however, the rapid approach of a windsurfer caused widespread panic among the flock. Jahn and Hunt (1964) studied boating disturbances to waterbirds in Wisconsin and speculated that airboats pose

a serious threat to waterfowl productivity in Wisconsin due to their ability to invade shallow-water areas of most value to these birds. Other researchers in Scotland found that shore-based activities such as people fishing or walking and dogs, caused more disturbance to common eider ducklings than did water-based disturbances such as windsurfers and rowboats (Keller 1991).

#### D. Impacts to Fish:

Some studies have investigated the impacts of motorboats to fish species including the affects of jet-driven motorboats on salmon reproduction (Horton 1994). This study at American Creek on the Alaska Peninsula determined that the discharge from the jet unit resulted in a significant mortality of salmon eggs. Embryos were killed either in the gravel by the impact of the jet discharge (63% mortality) in water depths of 13-23 cm (5-9 inches) or as a result of being displaced from the gravel (up to 100% mortality). In a laboratory setting, Reynolds' results indicate that pressure waves from boats was not a contributing factor to embryo mortality. Anecdotal observations from Everglades National Park report that fishing success dropped to zero when PWC were used in the same waters and that recovery time was reported to be 1-2 hours; however, the author did not provide information on the suspected reason for the impact to fishing success (Snow 1989).

#### E. Observations and Opinions of Professionals:

##### 1. General Observations/Opinions:

In addition to the studies cited above, there is considerable anecdotal information on PWC, including the opinions and testimony of biologists, refuge managers, park rangers and other professionals. Some have indicated that PWC pose a greater potential threat to wildlife than do conventional motorboats. They cite the higher noise levels, faster speeds, erratic movements, the PWC's ability to enter shallower water, and their tendency to operate in groups as reasons why PWC impact wildlife to a greater degree than other boats. While these observations were detailed in several management and agency documents, they are difficult to show definitively without further research and are provided here to add to the understanding of the potential impacts to the resources of the Kachemak Bay and Fox River Flats CHAs.

Everglades National Park in Florida has been concerned about the potential impacts of PWC on park wildlife and resources for at least the past 12 years. The park's Natural Resource Management Specialist has categorized the potential environmental disruptions from PWC on park resources as noise, human intrusion, alteration of vegetation, and emissions of harmful substances (Snow 1989). However, he also states that these disruptions and their related impacts are shared by both PWC and conventional motorboats and suggests that a prohibition on PWC in the park should also be accompanied by a review of the impacts from conventional motorboats and the adaptation of appropriate restrictions. Snow identifies significant differences in the operation of PWC compared to conventional motorboats and includes the tendency of PWC to make repeated passes in a localized area, that they are highly maneuverable, can constantly change direction making them unpredictable, that they often travel in groups, and that they can travel faster when closer to shore. He concludes that these types of watercraft operations may

result in significantly more disturbance to wildlife and resources than the types of operations of conventional motorboats.

## 2. Noise Impacts:

Snow acknowledges that resource and recreation managers generally agree that the noise from a PWC is actually less than a conventional motorboat when operated on open water, but because PWC travel faster and are operated closer to shore, they are perceived as being noisier. However, since PWC are often operated in groups, and may make several passes in the same area, the cumulative impacts of their noise may be higher than conventional motorboats. Snow states that the literature supports the notion that most physiological systems can be influenced by noise and numerous behavioral studies have documented a “startle response” in wildlife. The noise associated with PWC may be more significant than that generated by conventional motorboats because of their repeated operation in a localized area. Adverse impacts from noise may include the interruption of activity; alarm and flight; avoidance and displacement; interference with movement and predator-prey relationships; and interference with courtship.

In a report prepared for Washington’s San Juan County Board of Supervisors, the authors quote a biologist with The Whale Museum on San Juan Island concerning a study conducted by the Woods Hole Oceanographic Institute (Aquatic Resour. Conserv. Group 1998). This study indicated that PWC were much quieter underwater than any of the motorboats tested. The report states that PWC generated a high frequency noise that did not travel far supporting the notion that PWC were more likely to startle marine mammals than an outboard vessel because PWC cannot be heard as far away as most other boats. The report also quotes a marine mammal research biologist with the National Oceanic and Atmospheric Administration as stating “jet skis are designed to be highly maneuverable and to accelerate quickly, which leads them to be operated with frequent course and speed changes. The unpredictability of these sounds is probably more adverse than any single feature of the sound, such as its frequency or absolute level”. The report states that further scientific investigations are necessary to make more definite conclusions about the effects of PWC noise on marine mammals; however, they state that in addition to the unpredictability of PWC and the fact that PWC often operate in groups, it makes it more difficult for marine mammals to find safe escape routes and breathing spots. Additionally, since PWC typically operate in a given location for prolonged periods, the duration of the exposure to the disturbance of a PWC is typically longer than that from outboard motorboats.

The San Juan report also quotes a biologist studying marbled murrelets (*Brachyramphus marmoratus*) in the San Juan Islands and relates anecdotal evidence supporting the idea that PWC comprise a unique disturbance. He observed three interactions between PWC and murrelets and in each case, the birds flew from the area where they had been feeding. He stated that this was unusual behavior as murrelets usually respond to motorboats by diving and respond with flight in only approximately 5% of the cases. This biologist theorizes that the loud noise of the PWC may cause more of a fear response; however, he cautioned that the paucity of his observations make this a tentative conclusion.

### 3. Human Intrusion Impacts:

The wildlife impacts from human intrusion and PWC traffic are similar to the impacts from noise (interruption of activity; alarm and flight; avoidance and displacement; interference with movement and predator-prey relationships; and interference with courtship) but may also include the permanent loss of habitat; decreased reproductive success; interference with movement; direct mortality; and alteration of behavior (Snow 1989). Some resource managers have observed that collisions between wildlife and PWC are more likely because of the operator's limited visibility and because the highly maneuverable PWC is more confusing to fleeing wildlife than a conventional motorboat. In a report prepared for Washington's San Juan County Board of Supervisors, the authors provided several examples of disturbances to marine mammals by approaching boats (Aquatic Resour. Conserv. Group 1989). The report also quoted a biologist with The Whale Museum who believes PWC pose a substantial threat to marine mammals due to the typical operation of PWC at high speeds, erratic paths, travel in groups, and their entry into areas not accessible to most other boats. These authors go on to say that marine mammals and other wildlife can respond in several ways to disturbance from watercraft including using alternate habitats if available, habituation, and sensitization. However, they cite several biologists who state that animals are less likely to habituate to a highly variable stimulus, such as a constantly changing noise or highly maneuverable object, than to a steady stimulus. One source felt that marine birds and mammals would never be able to habituate to, or adapt to this characteristic of PWC.

The authors of the San Juan report also provide anecdotal observations of a biologist from the Cypress Grove Preserve in California who stated that he has observed shorebirds and waterbirds that were more easily disturbed by changes in speed and direction (such as those from a PWC) than by movement at a steady moderate speed in a constant direction (such as those from a motorboat). He also added that an abrupt reduction in speed can flush a flock from a roost area as easily as quick acceleration.

### 4. Vegetation Impacts:

Boating impacts to vegetation have been summarized as the permanent loss of habitat and a change in community structure (Snow 1989). While Snow attributes little damage to seagrass beds and other bottom vegetation to PWC use, he states that they are capable of damaging emergent vegetation more than conventional motorboats given their ability to run faster in shallower nearshore waters. Like conventional motorboats, PWC can also increase turbidity and probably redistribute benthic invertebrates. However, PWC may prolong these impacts because of repeated use by multiple machines in a limited area.

## **III. AIR AND WATER QUALITY IMPACTS:**

### A. Background:

VanMouwerik and Hagemann (1999) provide a general summary of the pollutants discharged from two-stroke engines. These include BTEX (benzene, toluene, ethyl benzene and xylene) and

MTBE (methyl-tertiary-butyl-ether) which are discharged to receiving waters from unburned fuel; and PAHs (polycyclic aromatic hydrocarbons) which are discharged in small quantities from unburned fuel and in much larger amounts as part of the engine's exhaust. A conventional two-stroke engine expels as much as 30% of the incoming fuel mixture, unburned, via the exhaust. Newer two-stroke engines (including those used on some new model PWC) reduce, by up to four-fold, the amount of smog-forming pollution discharged through the exhaust. However, emissions from these newer models are still four times that of four-stroke engines of the same horsepower. Under new U.S. Environmental Protection Agency (USEPA) regulations, new typical marine engines (PWC, outboards, and jet-boats) are required to reduce exhaust hydrocarbon emissions over the next several years with full implementation by 2025 when a 75% reduction is mandatory. California's Air Resources Board regulations adopted similar regulations with earlier deadlines and emissions will become 75% cleaner by 2001 and 90% cleaner by 2008. It is expected that most manufactures in the U.S. market will offer a full range of these newer two-stroke engines on their PWC by approximately 2002.

#### B. Impacts to Resources:

Several researchers have examined the relationship between boating activity, the presence of contaminants, and the impacts that these contaminants have on aquatic resources. Examples include Oris et al. (1998) who found that peak boating activity in California's Lake Tahoe corresponded with higher levels of PAHs. Results from their work provided evidence that ambient levels of exhaust components (PAHs) from motorized watercraft caused photo-activated (i.e. ultraviolet radiation) toxicity to fathead minnows (*Pimephales promelas*) (a 46% decrease in larval growth) and zooplankton (*Ceriodaphnia dubia*) (mortality) as well as direct toxicity (mortality) to the zooplankton. Studies of the physiological impacts from two-cycle outboard motor exhausts on teleost fish in a controlled setting, mimicked the exhaust levels which might be found in field situations (Tjärnlund et al. 1995, 1996). These studies found toxicological effects that have been measured in the genetic material in the liver, kidney and blood; enzymatic disturbances in the liver; carbohydrate metabolism; and reproductive disturbances such as toxicity to early life stages of the fish. Another study found differences in physiological impacts from two-stroke engine emissions based on the fish's gender (Ericson 1997).

Others have concluded that residual polycyclic hydrocarbons (PHs) in water from outboard motors can be toxic to zooplankton (Giesy 1997). Giesy's testimony before the Tahoe Regional Planning Agency cites laboratory studies that reported two-stroke effluent from outboard motors was acutely toxic to zooplankton even when diluted by a factor of 32. The effluent caused 100% mortality of the zooplankton in 7 days when diluted by a factor of 128. Giesy surmises that the true toxicity of some components of two-stroke engine exhaust are as much as 50,000 times as toxic under field conditions in the presence of ultraviolet (UV) light from sunlight. He further stated that this could significantly alter the community structures of phytoplankton and zooplankton, the base of the aquatic foodchain, which in turn could have severe effects on fish populations. Additionally, eggs or fry of some fish species in the littoral zone, where exposure to greater concentrations of UV light as well as more PAH, could be directly affected.

On the other hand, studies by several researchers indicated that MTBEs (a gasoline oxygenate additive), while classified as a possible human carcinogen by the USEPA, apparently have little

known toxicity to aquatic organisms (Johnson 1998, Werner and Hinton 1998). Additionally, MTBEs do not appear to be a significant bioaccumulate in the food chain and it does not readily adsorb or bind to organic particles (Tahoe Res. Group 1997). These and most studies (e.g. Reuter 1998) which investigated the presence and impacts of MTBEs attribute the presence of this pollutant to two-stroke watercraft exhaust. The majority of these studies were conducted in freshwater lakes and no literature was available on studies conducted in marine environments.

A literature review by the USEPA, Engine and Motor Vehicle Branch of 11 papers dealing with the impacts of marine engine exhaust emissions on water quality led to their determination that “several of the authors find that concentrated levels of marine engine exhaust emissions do have an impact on marine ecosystems. However, at the concentrations at which they actually occur, most researchers conclude that these effects are small and, in most cases, do not adversely affect most marine plants and animals” (Revelt 1994). This review further stated “the overall water quality effects of marine engine exhaust gases does not appear to be significant in general”. The Tahoe Research Group (1997), a consortium of researchers from the University of California, Davis, investigating watercraft impacts to Lake Tahoe, summarized the available literature stating that “studies on the impacts of watercraft engine exhaust on aquatic life indicate that deleterious effects can occur both in terms of mortality and histopathological responses. However, good field research linking in-lake conditions to these impacts are generally lacking”. Presumably in a marine environment with significantly more flushing action than a freshwater lake, these impacts would be even more difficult to identify.

### C. PWC/Outboard Motorboat Comparisons:

The literature contains few studies that address the differences of impacts to air and water quality from PWC compared to traditional motorboats. While most studies investigated air and water quality impacts from two-stroke marine boat motors, Fiore et al. (1998) compared exhaust emissions from a PWC and two outboard motorboats in a field situation. Their study concluded that the emissions from the PWC discharged more MTBE, benzene, and xylenes than the two outboard motorboats used in the study and the PWC emissions were in excess of the drinking water standards established by the California Department of Health Services. However, the outboard motors in this study utilized newer technologies such as direct fuel injection and 4-stroke carbureted engines while the PWC was a traditional 2-stroke carbureted engine. Therefore, it would be inappropriate to use this study to make comparisons of emission levels based on watercraft type (i.e. PWC vs. conventional outboard). It would however, be appropriate to use this study to make emission comparisons based on engine type (i.e. fuel injection, 4-stroke, conventional 2-stroke).

VanMouwerik and Hagemann (1999) suggested that PWC use more fuel and discharge more pollution to the water than other watercraft with outboard two-stroke engines because they are designed and operated differently. PWC have a narrow hull that rides low or sinks in the water and in order to plane the hull, operators commonly open the throttle fully. Additionally, PWC tend to sink when performing common stunts at lower speeds and the throttle must be fully opened to complete the maneuver. A study in California found that although PWC account for only one-third of the watercraft used in the state, they emitted 80% of the hydrocarbons, 66% of the nitrogen oxides (NO<sub>x</sub>), 78% of the carbon monoxide, and 76% of the particulate matter

(Calif. Env. Prot. Agency 1998a). In a report prepared for Washington's San Juan County Board of Supervisors, the authors quote an official with California's Air Resources Board as stating that "PWC, because of their use characteristics, are more polluting on average than 2-stroke engines used in vessels with outboard engines" (Aquatic Resour. Conserv. Group 1998). The reasoning for this statement was that "exhaust emissions are directly dependent on horsepower and load factor. Load factor means the fraction of full power typically used by an engine of a specific equipment type. PWC have sizable horsepower ratings, averaging 82 in 1987, and a load factor twice as high as outboard vessels. Vessels with outboards on average use 32% of their horsepower whereas PWC use 76%".

#### **IV. SAFETY CONCERNS**

While the overall number of recreational boating fatalities in the United States has been decreasing in recent years, fatalities from PWC have increased 220% from 1993 when 26 fatalities occurred to 1997 when 83 fatalities occurred (Nat. Transp. Safety Board 1998). Unlike other types of recreational vessels, the leading cause of death in PWC accidents is not drowning but is rather from blunt trauma.

Approximately 2,500 accidents involving PWC were reported to the National Transportation Safety Board in 1997 and the most prevalent types of accident were from vessel collisions (46%), falls overboard (11%) and collision with an object (8%). Inattention, inexperience, and inappropriate speed for the operating conditions were the most frequently cited causes for these accidents. In 1997, the NTSB received reports of 6 PWC accidents in Alaska with one fatality. This accounts for 6.6% of boating accidents in the state and 4.7% of boating fatalities in the state.

The annual number of injuries resulting from PWC use in the United States has increased approximately 330% between 1990 when U.S. hospitals reported 2,860 injuries to PWC operators and 1995 when 12,288 injuries were reported (Branche et al. 1997). This represents an 8.5-fold increase in the number of treated injuries over that for other motorized watercraft. The most prevalent diagnoses were lacerations, contusions, and fractures.

#### **V. CONCLUSIONS**

While numerous studies have investigated the impacts of boating and other human activities on fish, wildlife, and other natural resource, only two studies have specifically investigated the disturbances of personal watercraft. These two studies came to somewhat different conclusions. A study in Florida indicated that personal watercraft were not more disturbing to feeding and loafing waterbirds than were conventional motorboats; while work in New Jersey indicated that personal watercraft were more disruptive to a common tern nesting colony than were conventional motorboats.

Considerable anecdotal information on the impacts of personal watercraft exists. While personal watercraft do not appear to be inherently more disruptive to wildlife or more polluting than other 2-stroke marine engines, many professional biologists and managers point to the characteristics of their use which may make them more disruptive and polluting than conventional watercraft.

They cite the higher noise levels, faster speeds, erratic movements, the PWC's ability to enter shallower water, and their tendency to operate in groups as reasons why PWC impact wildlife to a greater degree than conventional motorboats.

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**CITY OF HOMER  
HOMER, ALASKA**

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**RESOLUTION 19-091(A)**

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REQUESTING THE ALASKA DEPARTMENT OF FISH & GAME EXTEND THE COMMENT PERIOD FOR PROPOSED RULE CHANGE TO ~~THE KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN REVISION~~ **5AAC95.310 OF ALASKA ADMINISTRATIVE CODE DEALING WITH THE PROHIBITION OF PERSONAL WATERCRAFT USE IN THE FOX RIVER FLATS AND KACHEMAK BAY CRITICAL HABITAT AREAS** TO 90 DAYS; AND THAT THEY PROVIDE INFORMATION SUPPORTING THE CHANGE AND WHY IT'S NOT BEING CONSIDERED AS PART OF THE ONGOING REVISION PROCESS FOR THE KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN.

WHEREAS, The natural beauty and rich productivity of Kachemak Bay led the Alaska Legislature to designate Kachemak Bay one of the state's first Critical Habitat Areas in 1974; and

WHEREAS, The declared purpose of the Kachemak Bay Critical Habitat Area is "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose"; and

WHEREAS, Kachemak Bay provides important recreational and economic opportunities for local residents, and attracts tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Alaska Department of Fish & Game (ADFG) recently opened a thirty (30) day public notice period to change rules **regulation 5AAC95.310 of the Alaska Administrative Code dealing with the prohibition of personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat areas**, adopted to protect the Kachemak Bay Critical Habitat Area; and

WHEREAS, These rules have been in place since 2001, when a strong majority of local residents supported their enactment, and these rules are supported by ADFG staff; and

WHEREAS, ADFG staff have indicated the Governor's Office has already decided to adopt the rule change, despite the fact local residents have not had the opportunity to submit comments or voice their opinions; and

44 WHEREAS, ADFG adopted the current Kachemak Bay Critical Habitat Area Management  
45 Plan in 1993, and has been working with stakeholders, including City of Homer staff, to revise  
46 it over the past several years; and

47  
48 WHEREAS, City of Homer staff have attended at least twenty (20) meetings and spent  
49 significant time and resources over the past three years on the Kachemak Bay Critical Habitat  
50 Area Management Plan revision process; and

51  
52 WHEREAS, Rule changes affecting the Kachemak Bay Critical Habitat Area should be  
53 included in the management plan revision process; and

54  
55 WHEREAS, The State of Alaska has provided no explanation or rationale for the  
56 proposed rule change.

57  
58 NOW, THEREFORE, BE IT RESOLVED that the City of Homer does hereby request the  
59 Alaska Department of Fish & Game to:

- 60
- 61 • Provide scientific and technical information supporting its proposed rule change in a  
62 timely manner so the City of Homer and local residents can better-understand and  
63 comment on the issues presented;
  - 64 • Extend the comment period to ninety (90) days to allow local residents sufficient time  
65 to comment meaningfully on the proposed rule change; and
  - 66 • Provide an explanation why this rule change should not be considered as part of the  
67 ongoing revision process for the Kachemak Bay Critical Habitat Area Management Plan.
- 68

69 PASSED AND ADOPTED by the Homer City Council this 16<sup>th</sup> day of December, 2019.

70  
71 CITY OF HOMER

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75 KEN CASTNER, MAYOR

76 ATTEST:

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79 MELISSA JACOBSEN, MMC, CITY CLERK

80  
81 Fiscal note: N/A

CITY OF HOMER  
HOMER, ALASKA

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RESOLUTION 19-091(A)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REQUESTING THE ALASKA DEPARTMENT OF FISH & GAME EXTEND THE COMMENT PERIOD FOR PROPOSED RULE CHANGE TO ~~THE KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN REVISION~~ **5AAC95.310 OF ALASKA ADMINISTRATIVE CODE DEALING WITH THE PROHIBITION OF PERSONAL WATERCRAFT USE IN THE FOX RIVER FLATS AND KACHEMAK BAY CRITICAL HABITAT AREAS** TO 90 DAYS; AND THAT THEY PROVIDE INFORMATION SUPPORTING THE CHANGE AND WHY IT'S NOT BEING CONSIDERED AS PART OF THE ONGOING REVISION PROCESS FOR THE KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN.

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WHEREAS, These rules have been in place since 2001, when a strong majority of local residents supported their enactment, and these rules are supported by ADFG staff; and

WHEREAS, ADFG staff have indicated the Governor's Office has already decided to adopt the rule change, despite the fact local residents have not had the opportunity to submit comments or voice their opinions; and

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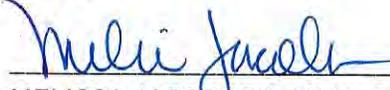
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- 64 • Extend the comment period to ninety (90) days to allow local residents sufficient time  
65 to comment meaningfully on the proposed rule change; and
- 66 • Provide an explanation why this rule change should not be considered as part of the  
67 ongoing revision process for the Kachemak Bay Critical Habitat Area Management Plan.  
68

69 PASSED AND ADOPTED by the Homer City Council this 16<sup>th</sup> day of December, 2019.  
70

71 CITY OF HOMER  
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73 \_\_\_\_\_  
74 KEN CASTNER, MAYOR  
75

76 ATTEST:  
77   
78 \_\_\_\_\_  
79 MELISSA JACOBSEN, MMC, CITY CLERK  
80

81 Fiscal note: N/A



12/14/19  
Add:  
Nick Green

Dear members of KBSPCAB  
RE: Personal Water Craft

There **can** be a compromise between user groups and non-user groups. Please, have an open mind in this reconsideration.

1. The Homer Harbor should be considered as safe haven for **all** vessels, including Personal Water Craft.
2. The Port of Homer, should allow, **all sea going vessels**, (including PWC) the right to seek refuge in a safe harbor, the right to fuel, seek food, shelter, or medical attention, or to just tour our city.
3. Launching, and harboring PWC could be added revenue for our harbor, and our city.
4. PWC will help bring tourism to Homer, and in turn that helps most all of us, with (the trickle down affect).

5. PWC are now virtually green machines, that run quietly, efficiently, and safely with more standard safety equipment than most skiffs.

6. PWC can be used for search and rescue, because they are faster and easier to launch, and can get into places where most boats cannot, *without doing any harm!*

7. The Homer Harbor <sup>Should</sup> ~~could~~ become a gateway to areas where PWC **are** allowed. IE: Cook Inlet, Pt. Graham, Kodiak, PWS, and beyond.

8. Regarding the parks, creeks, rivers, bays, coves, beaches, wildlife areas, all should be held in the highest respect, by all mariners.

Let's come up with a new plan that will work for all user groups.

Respectfully submitted,  
Brenda Hays

*Brenda Hays*

*This is from a speech given in Homer at Parks meeting 10/20/15. I still feel the same!*  
12/14/15



Rodríguez de Francia 869,  
Asunción, Paraguay  
+595 972 911424  
whsrn.org

Rick Green  
Alaska Department of Fish and Game  
333 Raspberry Rd  
Anchorage, AK 99518-1565

January 20, 2020

**Ref: Alaska Department of Fish and Game proposed repeal of 5 AAC 95.310**

Dear Mr. Green,

On behalf of the Executive Office of the Western Hemisphere Shorebird Reserve Network (WHSRN), I would like to submit the following comments regarding the Alaska Department of Fish and Game (ADF&G)'s proposed repeal of 5 AAC 95.310, which prohibits the use of personal watercraft (jet skis) in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHA). We would like to ask that you reconsider the proposed change in personal watercraft use in these Critical Habitat Areas.

WHSRN is a site-based shorebird conservation initiative launched in 1985 whose mission is to conserve shorebirds and their habitats through a network of key sites across the Americas. The network is comprised of hundreds of partners working at 106 sites in 17 countries to conserve and manage over 38.2 million acres of critical habitats for shorebirds. Kachemak Bay and Fox River Flats Critical Habitat Area are documented as an essential migratory stopover site for shorebirds using the Pacific Americas Flyway and are included in the Kachemak Bay WHSRN Site of International Importance ([https://whsrn.org/whsrn\\_sites/kachemak-bay](https://whsrn.org/whsrn_sites/kachemak-bay)).

The Kachemak Bay WHSRN site was designated for hosting over 100,000 shorebirds. It is especially important for Western Sandpiper, Dunlin, dowitchers, Red-necked Phalarope and Surfbird, providing feeding and resting areas in which they are free from human disturbance. Without undisturbed areas, these species may be unable to complete their migrations, or arrive on the breeding grounds malnourished and unable to successfully produce young, a devastating consequence for already declining populations.

In 1974, the Alaska Legislature recognized the importance of this area and created the Kachemak Bay Critical Habitat Area "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." In 2001, ADF&G underwent a public information gathering process and with the support from thousands of local and statewide citizens, it banned by regulation jet skis in the Critical Habitat Area. In 2017, ADF&G conducted a review of the scientific literature surround personal watercraft (jet skis) risks and impacts, and again supported the ban on personal watercraft in the Kachemak Bay Critical Habitat Area.

Jet skis are highly maneuverable, very fast, and are very different to skiffs and boats. Jet skis users tend to congregate in small areas and shallow waters, the same habitat that shorebirds rely on, creating

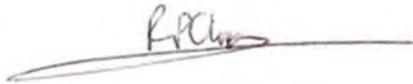


disturbance in the same place over an extended period of time. Opening these Critical Habitat Areas to the use of jet skis and other personal watercraft could create a major disturbance to shorebirds, flushing them from resting sites and feeding sites alike and causing them to spend critical energy resources in flight instead of feeding for the next leg of their journey.

Shorebirds as a group are showing the most dramatic declines of any group of birds. They are increasingly under threat from human disturbance, habitat loss and degradation, overharvesting, increasing predation, and climate change. Repealing the 5 AAC 95.310 could contribute to these challenges by increasing disturbance from jet skis. The impacts will be felt in the Kachemak Bay WHSRN Site, but they will also be felt across the Americas where many sites receive cultural and economic benefits from a diverse ecosystem that includes the same shorebirds that stopover in Alaska. Many countries, including the United States, have made significant investments in habitat restoration, management, and protection to ensure that they are providing the best habitat for these shared species.

Protecting the habitat at Kachemak Bay WHSRN site is critical for shorebirds both locally and throughout the hemisphere. On behalf of the WHSRN Executive Office, we encourage you to reconsider the repeal of 5 AAC 95.310 in order to safeguard this unique area for migratory shorebirds and other wildlife that depend on safe access to the resources that Kachemak Bay provides.

Sincerely,



Rob P. Clay, Ph.D  
Director, WHSRN Executive Office



## Green, Rick E (DFG)

---

**From:** Seaside Adventure <seasideadventure@earthlink.net>  
**Sent:** Tuesday, January 21, 2020 3:06 PM  
**To:** Green, Rick E (DFG); Vincent-Lang, Douglas S (DFG)  
**Cc:** Stevens, Ben A (GOV); Stutes, Louise B (LEG); Representative.Sarah.Vance@akleg.gov; Stevens, Gary L (LEG)  
**Subject:** Jet Ski ban

Dear Mr. Green and Commissioner Lang,

Our family home and business is in Little Tutka Bay which is on the south shores of Kachemak Bay. We provide Lodging and tours to local Alaskans and visitors from around world. Our families 5 youngest are fifth generation Alaska. We adopted Kachemak bay back in the 1950s and are proud to call it home. We, our guests , and our grandkids kayak, paddle board and row boats in our cove and back lagoon as do we. From Seldovia to Bear Cove almost every cove, lagoon, neck and cranny has property owners, lodges and kayak tour operators who also enjoy the bay as describe above. It's become a mecca for fishermen these gentle quiet sports.

Before the Jet Ski ban was put in place in 2001, I had a number of disturbing and even outright threatening encounters with jet skis (PWCs). Please note the following was included in public comments periods at that time.

- When charter fishing in Tutka Bay, a teenager on a jet ski came and run doughnuts around us for the longest time, and my fisherman guests said, to his wife "how far have we come, and how much money have we spent to get away from those things?" turning to me he said, "we would have gone somewhere else had we known!
- In another incident my kayak guests marveled at viewing hauled out seals, a grooming sea-otter and two eaglets in a nest all at the same time, when jet skis came out of nowhere at high speed, doing their thrill craft maneuvers, which immediately scared away the animals, ruining the moment for the visitors as well as disrupting the wildlife.
- Another time two jet skis came screaming around the point of the channel that separates our cove from the back lagoon at high speed, coming straight at me and my guests in our kayaks. The jet skis were barely able to veer off onto the beach and miss us. .... I could go on and on, but you get the picture.

I never experienced anything like that with any other types of boats in all my life (you will not find a 16' boat capable of running 60 to 70 mph near the shore with a supercharged 300 hp engine like a 1500lbs speeding bullet)...yes they are "supercharged" and advertised that way.

The only argument of the Jet Ski lobby is the right to access. Currently every person does have numerous means of access to Kachemak Bay but it is impossible to allow every mode of access for every place. There are restrictions on when you can fish, what gear you can use, where you can use drones, guns, Atv's, cars, etc. and there are good reasons for those restrictions. Kachemak Bay is the only marine water body closed to Jet Ski type thrill craft in all of Alaska, and there is a long list of scientifically proven reasons for that, which have been thoroughly researched for years, and documented by all scientists involved. The scientists have revisited the issue several times, and each time they unanimously concluded that the ban should stay in place, because none of the scientific reasons have changed.

There is a wide-spread mis-understanding that 'personal water craft' means water craft operated for personal use, which includes private boats and skiffs. The jet ski industry has cleverly crafted that term, when in fact it exclusively means jet ski type thrill craft. Many people do not know that fact.

**The jet ski ban is existential for my business, and almost every other Homer business!** All of Homer benefits from the brand as a destination with a focus on the ecology of the bay. The pristine, quiet natural allure of Kachemak Bay is Homer's greatest and primary asset. Travelers have a hunger for wild places that have become so hard to find anymore, and *Quiet* is now a most thought after commodity!

**Take a look at the Homer Visitor Guide! Every single page promotes Homer's wealth of the bay's wildlife, peacefulness and tranquility it offers to the many current user groups.**

Wide-reaching marketing research has established time and again that the main trends in tourism focus on destinations that promote and take pride in preserving untouched, pristine natural sites. Kachemak Bay has been recognized by state, national and international agencies and organizations as a rare area of unusual bio-diversity and pristine natural habitat, as proven by the designation as a Critical Habitat Area, National Estuarine Research Reserve, internationally designated critical migration site of the Western Hemisphere Shorebird Reserve Network, and State Park and Wilderness Area. There are not many places like this left on our planet, whereas countless destinations worldwide cater to those who crave motorized thrill experiences.

Some say we are loving our bay to death, and over time more and more people have been using the bay as a selling point for their businesses, and as a destination to get away from the noise and hustle of modern life. **However - even with the expanded number of users, so far all are able to co-exist, because they all tag into the quiet sports of fishing, kayaking, kite surfing, beach combing, hiking etc.** The service businesses of Homer are also tied into these uses, and cater to visitors who come to experience the special quiet magic of Kachemak Bay and its abundant wildlife, and the service industry also caters to the residents who operate those businesses, and those who live here because of Kachemak Bay's natural beauty.

Fisherman, Artists, B&Bs, hotels, restaurants, marine services, transportation businesses, boat tour operators, kayak tour guides, retailers, and others all make a living because of the bay, whether directly or indirectly. To keep intact the magnetic attraction that draws residents and visitors alike to Homer, we must be good stewards of this precious place millions of people envy us for. Just think for a minute about how many people on our entire planet can say that they live in such a vital, rich, intact, natural habitat, that is easy for us to take for granted? Kachemak Bay is not just a body of water to run around on for , but a living nature preserve providing us with opportunities to watch wildlife and harvest wild food. Ocean warming and acidification already poses threats, we can't afford to add more.

**We have talked to many business owners, none of which wanted the ban lifted.** They know that they can only get hurt in the long term by allowing these destructive, obnoxious thrillcraft that go 60 to 70 miles an hour on the bay, and no kayak, boat or marine mammal can avoid jet skis.

<https://www.foxnews.com/us/danger-on-the-high-skis-fatalities-bring-renewed-calls-for-personal-watercraft-safety> These machines are designed to operate in close proximity to the shore at extreme speed, much faster than any small boat that would maneuver those waters. Whales, sea otters, seals, seabirds have not evolved nor are capable to get out of the way of a speed craft like a Jet Ski, fragile inter-tidal zones with their vulnerable creatures and plants would be threatened, fish runs that travel close to the beaches would be disrupted. Jet ski type PWCs are at best a nuisance, but most likely a threat to birds, marine mammals, kelp beds, fish runs, set net sites and humans. Another complication is that there is no funding nor any plan to manage and enforce the multitude of restrictions, speed zones, that would , let alone regulate jet skis if the ban would be repealed.

I'll close with a quote from PWC advertisers [www.boattrader.com](http://www.boattrader.com): *"If you're looking to buy a personal watercraft (PWC) – chances are you're a bit of an adrenaline junky with a need for speed, drawn to the thrill of zooming over the water at high velocity. That, or your children have convinced you to purchase one because they've decided they can't live without it!"* Watch this clip, it speaks volumes: <https://www.youtube.com/watch?v=V6b48Ts6qRU>

**From an economic as well as scientific and ethical perspective, Kachemak Bay must remain protected from PWC thrill craft use! Jet ski users have 99% of Alaskan waters available to them. With unceasing stewardship we must all continue to preserve this one and only remaining sanctuary in Alaska that has been set aside, where people and animals can find quiet and peaceful refuge!**

Respectfully, Rick Harness

Rick and Dorla Harness

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Attached are my on time comments regarding the effort to repeal the existing ban on PWC usage in the Kachemak Bay and Fox River Flats CHAs.

I have copied and pasted my comments in the body of this email. They are also attached to this email as a word document. I believe they are easier to read in that format, and include citations and foot notes per Commissioner Lang's request for substantive comments based on the merits of this issue. Attached also are supportive documents related to ADF&G previous work on this issue. Based on my phone conversation with the Commissioner earlier this month it was my understanding he'd not reviewed those materials to date, and I have attached them here for his benefit in the analysis of materials. I have not attached the peer-reviewed articles I cited regarding soundscape ecology conservation and habitat protection. Though I am happy to forward those to the commissioner and any of the legislators I have included in this email who have been tracking the progress of this issue.

I'd also like to thank the commissioner and Mr. Green for taking the time to discuss this on the phone and over some email exchanges. While I believe we maintain "respectfully disagreement" I appreciated your respect in taking the time to speak with me. I look forward to continuing to work with ADF&G on this issue for the fair and equitable conservation of our resources and habitats for the long term benefit of all Alaskans and Kachemak Bay residents in an open transparent and inclusive process.

ATTACHED LETTER FOLLOWS, please see original email for additional attachments

Commissioner Doug Vincent Lang

Special Commissioner Rick Green

I oppose the Administration's effort repeal the Personal Watercraft (PWC) prohibition for Kachemak Bay and Fox River Flats CHAs (5 AAC 95.310 Personal watercraft use prohibited) as stand-alone regulation changes pursuant to the Administrative Procedures Act, independent of the ongoing Kachemak Bay/Fox River Flats Critical Habitat Area management plan revision involving local stakeholders.

My name is Josh Wisniewski, I live outside the city of Seldovia in what is referred to as Seldovia Village. I live at Barbara Point, just upland of Kachemak Bay Critical Habitat Area (CHA). I am a commercial skiff fisherman. I set net at Barabara Point and commercially longline for halibut in Kachemak Bay. As a rural coastal Alaska resident, I also participate in our federally managed halibut subsistence fishery in those waters where it is legally permitted to do so.

I also work as a cultural anthropologist, I completed all of undergraduate and graduate education through our University of Alaska system and completed my PhD at UAF in 2011. I carried out all of my education in Alaska in order to serve our State. Throughout my anthropological career I have worked with and for rural Alaska Native communities as well as Tribes in western Washington State on a wide range of subsistence and fisheries related

research projects. My work in Alaska included collaborative work with the Alaska Department of Fish and Game and Bering Sea Alaska coastal communities.

I am submitting these comments to the Department today expressing my strong disapproval of the Administration's efforts to remove a 20 year long, collaboratively developed habitat protection regulation, and to do so outside the established stakeholder participation processes we as Alaskans depend upon.

These processes are our area management plans, and Board of Fisheries. These processes are in place to facilitate and protect stakeholder participation. Operating outside our local CHA management plan process, *which was developed by ADF&G* to include stakeholder process to appease a special interest group undermines public trust in government and undercuts the integrity of ADF&G as a science and research resource management agency that operates based on scientific principles and in an open transparent and inclusive democratic process.

On the Commissioner Vincent Lang's ADF&G web page he outlines his priorities, one of which is

building trust with the citizens we serve. Alaskans have entrusted their resources to our care and *we must maintain constant dialogue* to ensure we are managing them in their best interests and well-being. 1  
[<https://www.adfg.alaska.gov/index.cfm?adfg=divisions.commissioner>]

In this issue the Commissioner is abandoning this priority. Forsaking our CHA management plan process and regional stakeholders' concerns is the exact opposite of

*"maintain(ing) constant dialogue to ensure we are managing them in their best interests and well-being"*

In the following comments I will outline the basis for my opposition for these proposed changes based on the following categories:

- Context for establishing the Kachemak Bay CHA/Management Plan and PWC Restrictions
- Lack of Due Process,
- Access versus management and Habitat Protection, and human safety
- Impacts to Fisheries
- Quality of Life and economic well being

I humbly request that you review all of my comments as well those of other Kachemak Bay residents and give due weight to the comments of those Alaskans whose lives and businesses will be the most impacted by this proposed regulation change. I have included multiple attachments to these comments based on my conversation with Commissioner Lang who indicated he'd not reviewed previous ADF&G research and recommendations to

keep the PWC ban in place based on scientific literature and the unique to the estuary ecology and issues particular to Kachemak Bay.

### **Context for the Kachemak Bay/Fox River Flat CHA and Management Plan Process**

Kachemak Bay and Fox River Flats were designated as CHAs in the 1970s. Pursuant to the authority granted to it in the Alaska Constitution, Art. VIII, § 7, 2 [ Alaska Constitution Art. VIII, § 7. Special Purpose Sites: “The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”] the Alaska Legislature designates certain areas around the state as critical habitat areas

“to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.” 3 [AS 16.20.500] ADF&G has an obligation to protect and manage CHA and "RESTRICT ALL OTHER USES NOT COMPATIBLE WITH THAT PRIMARY PURPOSE".

In the 1970s Kachemak Bay State Park and State Wilderness Park were also created to protect the Wilderness integrity for the region. Concurrently Kachemak Bay is also part of the International Reserve of the Western Hemisphere shorebirds and the Kachemak Bay is one of 29 estuaries that make up the National Estuarine Research Reserve. The Bay is the only high latitude fjord estuary type in the Reserve Network.

In 2016 the Kachemak Bay Western Hemisphere Shorebird Reserve Network was expanded to include all of the Kachemak Bay CHA based on the UNIQUE ecological role of Kachemak Bay as estuary and shore bird resting and nesting area. The Kachemak Bay CHA is managed through an inclusive CHA management plan process, because of its rare and unique qualities and the ecosystem services it provides which also supports our local economy.

. This Western Hemisphere Shorebird Reserve Network designation is similar to a World Heritage Site designation, it has no regulatory powers, but provides governments with conservation recognition that can have significant value with ecotourism. Allowing PWC use in the CHA, particularly near intertidal areas that are important for shorebird feeding and resting violates the intent of a WHSRN designation and the economic contribution that makes to the Kachemak Bay area

In establishing the PWC Ban in 2000 through the CHA management plan process ADF&G produced a scientific justification for doing so. I have attached that documentation here for the Commissioner to review. There has been no scientific justification to support repealing the ban outside of statements made by non-scientists criticizing Agency research, findings and recommendations;

In 2017 ADF&G found “there has been considerable **NEW RESEARCH** on the potential impacts of PWCs to protected areas,” citing and reviewing an additional **140** articles not utilized in the previous literature review. 4 [*Id.*] The topics of these 140 new articles

include: “effects of PWC and other recreational boating impacts on marine mammals, birds, fish, and other organisms; ecological and water quality impacts; PWC noise; user group conflicts and other management and legal implications.” 5 [*Id.*]

Based on its updated literature review, ADF&G staff concluded in 2017 that “most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today” and “there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted.” 6 [*Id.*]

In making its conclusion and recommendation to maintain the regulation, ADF&G noted that **“this recommendation was widely supported” by staff in four department divisions.** 7 [*Id.*] This included the Habitat Commercial Fisheries, Sport Fisheries and Wildlife Conservation Divisions.

In my telephone conversation on this topic with the Commissioner he indicated to me that he'd not yet reviewed this Memo which I have included in my comments. As a scientist and as the head of an agency whose constitutional mandate is to manage resources for the benefit of all Alaskans it is troubling that the Commissioner would deem it advisable to ignore ADF&G scientists research, findings and the management plan process the Agency developed.

In response to the City of Homer request for ADF&G to provide scientific justification for repealing the PWC ban Mr. Green wrote the City stating:

The science used throughout the process is inconclusive that personal watercraft have any affect more or less on fish and wildlife and their uses than other watercraft. Most of the comments received were "speculation" on potential issues arising from behaviors that can be conducted on other watercraft not currently not currently prohibited from this critical habitat area.

I have attached this letter to these comments. As I understand from my conversations with Mr. Green he is not a trained scientist or habitat biologist. Mr. Green's letter did NOT respond to the 140 peer revised articles cited by professional ADF&G career biologists identifying how PWC due impact wild life and habitat particularly in a shallow estuary habitat such as Kachemak Bay.

In fact, ADF&G biologists have stated the exact opposite of Mr. Green writing:

However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement. 8 [Id.]

Mr. Green above cited statement (which contradict ADF&G research findings) that PWC impacts are the same as other water craft is demonstrably false due in part to the design and purpose of PWC to operate in shallow water, rapidly accelerate and make high power turns. This is not what outboard skiffs are designed for nor how they are used here. Skiffs cannot operate in this manner in this setting They cannot operate t high speeds in shallow water or execute high speed turns. Just north of Kachemak Bay in the Kenai River even skiff use is highly regulated to protect habitat in the River.

No one may operate a boat on the Kenai River upstream of a DNR marker located at approximately river mile 4.2 (downstream of the Warren Ames Bridge) with outboard or combination of outboards having a total prop-shaft rating greater than 50 HP. Prop-shaft horsepower rating means the boat motor's original manufacturer rated and labeled horsepower. Adding a jet drive unit to a motor does not change the prop-shaft horsepower rating of the motor powerhead and driveshaft configuration. 9  
[<https://www.adfg.alaska.gov/static/license/prolicenses/pdfs/SCKenaiGuides.pdf>  
]

Regulating the operation and type of watercraft that can be used in that setting is not characterized as restricting access in the Kenai River.

Given that Special Assistant Green is self admittedly not qualified to conduct a scientific review of the literature, is a vocal proponent of the repealing this ban, and that to date the Commissioner has indicated he has not engaged with the research and recommendations by ADF&G scientists it would appear that ADF&G is completely ignoring management precedent and staff recommendations .

A scientific justification based on review of peer review literature was used to determine PWC usage was not compatible with CHA management responsibilities of ADF&G. The Agency has provided no scientific data that contradicts the 2017 ADF&G findings and recommendations. As both a scientist and as a commercial fisherman this is very troubling.

Under these circumstances it is highly irresponsible if not in blatant violation of the ADF&G's constitutional resource management obligations.

ADF&G noted in 2017 that were the agency to explore repealing the PWC ban significant research would be needed to determine how their use could be safely in a manner consistent with the CHA and that ensured the safety of wildlife and fish and non-motorized watercraft users. It was also identified that dedicated Wildlife Trooper presence would be needed and there are already existing challenges in protecting the Fox River Flat CHA from ATV impacts. None of these actions have been done and no budget or management plan created to support this proposed regulation change.

The administration operating in opposition recommendations manner is reckless, not in keeping with historic professionalism of the agency. As a fisherman my livelihood is based in part on ADF&G making management decisions based on best available science and maintaining a public process to participate in management through Area and CHA management plans and the Board of Fisheries processes. How am I to operate my business and trust ADF&G to manage our fisheries when the Agency arbitrarily reverse course on management in contradiction to habitat biologist recommendations for the sole benefit of a set of recreational users who currently have access to 99% of Alaskan state waters open for that specific usage.

I oppose the repeal of this ban based on the complete lack of data to demonstrate that after a 20-year prohibition on their use allowing PWC in Kachemak Bay is consistent with ADF&G's management responsibility to "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife" and "to restrict all other uses not compatible with that primary purpose"

**Lack of due process and consideration for existing CHA management plan and stakeholder process 10 [Based on Notes of participating stakeholder]**

A stakeholder meeting for the Kachemak Bay CHA management plan process was held in Homer on October 24, 2019. Representatives included ADF&G wildlife, habitat and commercial fisheries biologists, City of Homer, NOAA, Kachemak Bay Conservation Society, State Parks the National Estuarine Research Reserve System. Special Assistant Rick Green also attended via phone with representatives of the Personal Watercraft Club of Alaska.

In the context of discussing PWC usage ADF&G staff all agreed that as the department has a rule banning PWC in the CHA the management plan could not allow use of PWC. Within the context of that meeting ADF&G biologists and scientists from other stakeholder agencies identified critical issues noting PWC are significantly louder than boats because they skim over the top of the water. and as such produce a specific set of impacts on marine avian and terrestrial wildlife.

- PWC tend to be used for recreation and change direction at high speeds, which makes them particularly disturbing to fish and wildlife the CHA was designed to protect, especially while nesting/pupping and rearing young.

- PWC are known to have tendency to go into shallow areas that are especially sensitive habitat. The shallow areas where PWC tend to recreate are often breeding and rearing grounds for marine mammals, seabirds, and fishes.
- Migratory birds, waterfowl, seals and seal haul outs, otters and whales are of particular concern.

These were all issues identified by professional scientists engaged with this issue. There was agreement among the stakeholders that the above considerations were significant enough to continue to justify the ban.

Mr. Green argued that if PWC operator behavior was the primary concern of agency staff, it was behavior that should be regulated, not the PWC themselves. This was considered by the staff present. All who responded to Mr. Green there is no capacity to regulate PWC behavior in the CHA for a variety of reasons including the geographic scope of the CHA and the remoteness of some areas. There were comments that there is already a significant problem of habitat degradation from 4-wheeler use on the Fox River Flats that the department has been unable to regulate.

ADF&G staff identified there were already impacts to the Fox River CHA because ADF&G did not have the resources to regulate behavior in that area.

The proposed repeal of the PWC Ban provides no scientific justification to support it, and provides no framework for the management of PWC usage as proposed by Mr. Green. The proposed regulation change provides no budget for the management of PWC usage consistent with the agency's responsibility to manage CHA's for the protection of habitat.

Based on the manner in which it is being pursued is demonstrable that this proposed regulation change is being done outside of the established stakeholder management plan process, (which the Personal Watercraft Club of Alaska can participate in with other stakeholders) in order to disregard the concerns of the professional scientific community engaged in this process. As a long time Alaskan, a scientist and a fisherman, I find this shameful and all Alaskans have a right to expect a fair and equitable and transparent governance.

Indeed, this is the very reason why we have a local CHA management plan process that brings stakeholders together. To address issues and make determinations about what is appropriate and what is not. This is also why we have our Board of Fisheries processes in order for stakeholders to participate in management and to advance proposals that are discussed based on their merits.

As a fisherman I rely upon and count on this process in order to have a voice I do not always agree with the management decisions of ADF&G. Sometime I adamantly disagree. But though our Board of Fisheries and our CHA management Plan processes I have a voice and can participate in the process.

Making this regulation change outside of these established public processes limits stakeholder participation and stifles local voices. Not everyone that will be affected by rule or regulation change can drop life to engage in a political fight. This again is why it is important for the commissioner and the Administration to protect our institutions not seek to operate outside of them. Many of my neighbors have been active in the management of our fisheries and Kachemak Bay for decades. Many of us specifically live here purchased property here and make our businesses here because this one of the few places where we have a PWC ban. We count on it and rely upon it, for the protection of wildlife and habitat, for our fisheries and other eco-tour businesses, and our rural coastal Alaska quality of life. It is downright un-Alaskan to operate outside the management plan process that ADF&G created to foster collaborative stakeholder management.

During this comment period I have had to take significant time away from my off-season professional obligations to participate in this comment process. This loss of income among all stakeholders could have been alleviated simply by working within our existing CHA process, or the PWC Club of Alaska could have pursued this through the Lower Cook Inlet Board of Fisheries cycle that was recently held in Seward.

*Mixed Messaging by ADF&G:*

In context of conversations with both Commissioner Doug Vincent Lang and Special Assistant to the Commissioner Rick Green I have received different feed-back and inconsistent messaging about how ADF&G will evaluate public comments and their value in the review of this proposed regulation change.

Mr. Green suggested the specific nature of comments were insignificant, and that public comments would have a limited role in the decision-making process on this issue. He stated it was essentially a "toggle" yes or no.

Mr. Green also informed me that he had no vested interest as he was not personally a PWC user. Yet this stand-alone regulation change pursued outside the CHA management plan meeting where repealing this ban was not supported by ADF&G scientists was initiated after Mr. Green's call into the CHA management meeting with representatives of the Personal Watercraft Club of Alaska. This does not demonstrate scientific management or impartiality on the part of the Special Assistant to the Commissioner.

As a stakeholder, who will be directly impacted by this proposed regulation change outside our CHA management I cannot help but view these actions by Mr. Green as one of using an official government position to lobby on behalf of a special interest group.

Whereas Mr. Green indicated the substance of comments didn't matter. In my conversation with Commissioner Doug Vincent Lang he specifically indicated that he needed to be convinced by scientific evidence that there was a basis for keeping the ban in place and presented this as not a habitat protection issue but as a PWC access issue, based on recent Supreme Court ruling.

I find the inconsistent statement from ADF&G regarding what substantiates significant comments and how comments will be evaluated on this issue very troubling in particular as the comment period, originally limited to 30 days was initiated in the beginning of holiday season.

There has been no indication for how comments will be evaluated, or weighed. The agency has provided no information to contradict previous finding and staff recommendations from 2000 and 2017. As a stakeholder, a fisherman, a scientist I would like to see the administration provide this as well as a management plan to regulate PWC behavior and usage as was previously suggested by Mr. Green in order to determine if this course of action is advisable. The CHA management plan process is the appropriate venue for doing so.

As an area resident whose quality of life, business and economic wellbeing will be impacted by this proposed regulation change I find this lack transparent, equitable and frankly unprofessional governance highly frustrating. It is not consistent in any way with the level of professionalism and scientific integrity I am accustomed to in my dealings with the Agency over two decades, and that we as Alaskans expect from an agency and Commissioner whose responsibility is to manage resource for the well-being of Alaskans.

I oppose repealing the ban on PWC in the Kachemak Bay Fox River Flat CHA based on the lack of due process by operating outside of the ongoing CHA management plan and lack of engagement with stakeholders who will be directly impacted by

### **Access, management, habitat protections and human safety**

In context of my conversations with both the Commissioner and Mr. Green they articulated to me that they largely viewed this as an access issue not one of habitat protection. I believe this is a flawed and self-serving argument that is not consistent with how the agency manages other resources including access to and use of these resources.

Both Commissioner Doug Vincent Lang and Mr. Green have articulated that repealing the ban on PWC usage in Kachemak Bay and Fox River Flats is make it consistent with other areas and that the Bay is no different from marine waters of Resurrection Bay or Prince William Sound. I would like to address that here. I was surprised to hear the commissioner state that given his education, training role in ADF&G.

Resurrection Bay and Prince William Sound are deep glacially carved Fjord environments in contrast Kachemak Bay is a shallow estuary setting with over 11 glacial systems that flow into it. Kachemak Bay plays a critical role in the mixing and transmission of nutrients into the Gulf of Alaska. As an estuary it is a nursery setting for growing salmon birds and marine wildlife. As a shallow estuary it is a critical habitat for shorebirds and migratory waterfowl. As identified by ADF&G biologists and cited in this letter shore birds are particularly susceptible to the impacts of PWC operating in shallow water close to shore and executing high speed direction shifts.

However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential **to impact habitats, marine organisms, wildlife,** and other traditional user groups and those cannot be easily mitigated. . . The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. 11 [*Id.*]

The unique ecology of Kachemak Bay is why it is one of only 29 estuaries that make up the National Estuarine Research Reserve Network. Kachemak Bay is the only high latitude fjord estuary type in the Reserve Network. Kachemak Bay is also part of the International Reserve of the Western Hemisphere shorebirds, in 2016 the Kachemak Bay Western Hemisphere Shorebird Reserve Network was expanded to include the Kachemak Bay CHA. Given the demonstrated impact PWC DO have on shorebirds and over wintering sea birds that is unique to PWC usage, and given that Kachemak Bay is an identified and world-renowned shorebird areas repealing the current ban will impact the CHA in a manner inconsistent with purpose of protecting and managing a CHA.

Concurrently it will impact the Bay's designation as part of the Shorebird Reserve Network based on the impact repealing the ban would have on shorebird habitat and behavior. This was previously identified by ADF&G scientists as part of the justification for the ban on PWC in the CHA. Sea birds are in decline throughout Alaska due in part to climate change and declines in forage fish abundance. Recent bird surveys conducted this winter have likewise noted a precipitous decline in sea bird distribution and abundance in Kachemak Bay. The ecological services of the Kachemak Bay in support of shorebirds is an important area economic driver that would be impacted by repealing the PWC ban would impact this aspect of the area economy and the quality of life for many area birders who live in this area for opportunity to study and observe

Kachemak Bay is not like Prince William Sound or Resurrection Bay. it is uniquely different and sensitive habitat, which is why it was designated as a CHA. Additionally, as an estuary the near shore environment is critical rearing habitat for multiple fish and wild life species we as Alaskans depend on and which require a functioning ecosystem to produce.

Biological sensitivity of the nearshore and intertidal area can especially be seen in places like Jackalof Bay, or at Barabara Point where we have large kelp beds, shell fish that are harvested for subsistence foods. These settings are very different than the beaches of Prince William Sound and Resurrection Bay. which do not have this level of biological abundance or diversity and the same ecological function. That is why they are not as sensitive to disruption by recreational PWC usage. This is further evidenced through the archeological record and the high number of archeological sites found throughout the

Kachemak Bay in comparison to Prince William Sound and Resurrection Bay highlighting its unique biological productivity.

That is again is why Kachemak Bay has a unique status and protections that we ask the administration to recognize and protect for all Alaskans and in support of our local economy.

Throughout Alaska ADF&G regulates how users can access and use Alaska's fish, wildlife and habitat resources through a variety of management actions compatible with the existing PWC Ban here on the Bay.

In the context of sport fishing the Agency regulates what type of gear can be used, where people can fish, and how they can fish in those places. In some systems one fishes only with flies, in another bait, or snagging might be allowed while still in another based on the unique species composition of the setting it might be catch and release only. The agency manages through these mechanisms to protect the resources. The prohibition for fishing with eggs (for example) in a given system does not limit access because a fisherman can still fish in that drainage using the type of gear that is allowed under ADF&G regulations.

This is true in hunting as well. Indeed, some hunts are further restricted to black powder or bow only, we as hunters are not allowed to spot animals with planes either. Yet these management regulations don't prohibit hunting rather we have regulations because some types of hunting practices and opportunities in some settings are not appropriate for others.

In our commercial fisheries, the size of our gear is regulated, the size of our mesh, how much gear is on board. We have vessel size restrictions, and openings closures and fishing corridors and closed waters. As a commercial fisherman I don't view regulations put in place for purpose of conservation and habitat protection as blocking access. The long-term survival of my business is structured around conservation for sustainability. Banning PWC usage is a shallow estuary environment for purpose of habitat protection does not eliminate access. The Commissioner, Mr. Green or the Governor himself or any other person can still access all of the Kachemak Bay and Fox River Flats through other mechanisms that are permitted, using skiffs kayaks or other boats that demonstrably have a lesser impact based on their design and use limitations. This is no different than regulating fishing or hunting for purpose of suitable resource conservation and management

Further as 99% of Alaskan waters are open to PWC usage protecting one area that makes up less than 1% of Alaska's waters based on its unique biological and ecological characteristics, that can still be accessed through other mechanisms does not limit access it is the definition of managing resources for the benefit of all Alaskans, and managing one area for a specific type of usage does not block any one's access to visit and use those areas consistent with established regulations.

Throughout Alaska we have designated use areas that are put in place to protect the experience we as Alaskans or visitors to our state come here to experience. In addition to its sensitive estuarine character we must think of Kachemak Bay in this same context.

Kachemak Bay is world renowned for its sea kayaking. People come from all Alaska and the world to do that here on the Bay. Kachemak Bay State Park and State Wilderness Park overlap the CHA. There is a prohibition on the use of PWC in the State park in order to protect the wilderness integrity of the park, which includes protection of the natural soundscape.

An intact soundscape is a central aspect of maintaining critical habitat as an intact and functioning ecosystem. There is a large and growing body of peer reviewed scientific literature identifying the importance of maintaining an intact soundscape as part of habitat protection. I have included a series of citations of peer reviewed articles that illustrate the critical role of the soundscape. 12 [ 2011 Pijanowski, Brian, Luis J. Villanueva-Rivera *et al.* / *Soundscape Ecology: The Sound in the Landscape*. In *BioScience* 61:203-216. 2011 Pijanowski, Bryan, Almo Farina, Stuart H. Gage and Bernie Krause. *What is Soundscape Ecology: An introduction and overview of an emerging new science* in *Landscape Ecology* November 2011. Pavan, Gianni, 2017 *Fundamentals of Soundscape Conservation* in *Ecoacoustics: The Ecological Role of Sounds* Almo Farina and Stuart Gage eds. John Wiley and Sons. Hatch, Leila T, Wahle Charles *et al.* 2016 Can you hear me? Managing acoustic habitat in U.S. waters. *Endangered Species Research* Vol 30 171-186 ]

In National Parks throughout Alaska as well as the Lower 48 the National Park Service manages to maintain the integrity of the soundscape as part of the protection of habitat. Animals depend on hearing natural sounds in the environment for a range of activities, including:

- Communication
- Establishing territories
- Finding habitat
- Courting and mating
- Raising families
- Finding food and avoiding predators
- Protecting the young 13 [<https://www.nps.gov/subjects/sound/soundsmatter.htm>]

Therefore, managing a CHA and State Wilderness Park includes soundscape integrity for both wildlife and for the quality of the experience for human visitors. In other parts of Alaska other areas are managed for other types of usage.

The argument regarding the auditory impact of PWC is not just "they are loud and annoying to area residents" It is that because PWC are designed to rapidly accelerate, and execute high speed turns and can operate in shallow water that their use results in a demonstrable auditory impact on the area soundscape that is very different and not comparable to a skiff passing through an area from point A to B, or the low rumble of small fishing vessel hauling gear. This was part of the conclusion of ADF&G in 2017 when the Habitat, Sport Fish, Com

Fish and Wildlife Conservation all supported maintaining the PWC ban in Kachemak Bay and the Fox River Flat. 14 [*Id.*]

Repeal of the PWC ban is simply not compatible with how the Bay is used and the other land management designations that overlap the CHA that are in place here to preserve the totality of its environmental ecological and aesthetic qualities. ADF&G is already struggling to control human behavior in the Fox River Flat CHA. Loosening restrictions will further impact remote areas where budgetary and human resource limitations already impose challenges. Given the fiscal issues facing our state proposing a regulation change with demonstrable financial requirements to manage is irresponsible absent identifying how this will be done.

Arguably, our Ferry System, Village Public Safety and our University system are more deserving of our scant resources than a management and enforcement program to allow PWC usage in a sensitive habitat area ADFG has supported restricting for nearly 20 years.

People (myself included) have chosen to build our lives in places like Seldovia and Little Tutka Bay in part because of the serenity and quiet and the privilege to live on the edge of Kachemak Bay State Park. We work for it, and we work to protect the integrity of our home and businesses by participating in the CHA management plan process. Many of my neighbors have businesses they have built over decades to share our area through guided sea kayak tours, nature tours and bed and breakfasts and central to their business models is intact quality of our natural soundscape as part of our CHA. Preserving this does not limit others visitations or usage any more than a fly only regulation limits access to fish the Kenai River.

Here in Alaska we have many places that are models for the management of the Kachemak Bay CHA as a PWC free area that does not limit our opportunity as Alaskans to experience it.

For example, we have settings like Turnagain Pass where there are areas specifically open to snow machines and areas that are closed to snow machines that are open for skiing. In Chugach State Park there are areas where snow machines can be used and areas where they are restricted in order for non-motorized park users to have safe experiences

DNR has designated areas where ATV use is restricted in order to protect habitat and cultural resources. 15 [[http://dnr.alaska.gov/mlw/factsht/land\\_fs/gen\\_allow\\_use.pdf](http://dnr.alaska.gov/mlw/factsht/land_fs/gen_allow_use.pdf)]

The current ban on PWC use in Kachemak Bay is consistent with how the state regulates ATV's and snow machine usage in other areas. This is done not just to protect habitat but avoid user group conflicts and or injury stemming from collision between different users.

This was an important aspect on the prohibition on PWC usage in Kachemak Bay.

One of the reasons identified by ADF&G staff for maintaining the ban on their usage in the Kachemak Bay and Fox River Flat CHA was based on lack of a mechanism to manage PWC usage human safety concerns.

The nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated(emphasis added). 16 [Id.]

We would not open an area designated for skiing only to snow machine traffic without a management plan in order to ensure public safety, nor would we open a non-motorized foot trail to motocross racing outside of a tightly controlled and managed process.

The same should be true here, especially given the huge number of non-motorized watercraft users that are on Kachemak Bay and especially given the large number of people who come here for non-motorized wilderness activities. The number of non-motorized boaters here on the bay has grown exponentially since the original 2000 PWC ban, and in part because of it. People come here to operate non-motorized watercraft specifically because of our existing ban on PWC usage as part of our CHA management plan

Opening up the Bay to PWC usage without a management, enforcement, or education program is reckless and has a high likelihood to put persons lives in danger. This was highlighted in the 2017 ADF&G memo

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement. 17 [Id.]

ADF&G identified that multiple steps that would have to be taken if PWC usage were to be allowed on the Bay in order to ensure the safety. This included a budget for enforcement and management. Yet the agency has no budget for this regulation change, the agency has done no research to develop a management plan to protect nearshore and water bird habitat, and non-motorized watercraft users. The agency has taken none of these actions.

This is why we have a CHA management plan process to identify, and work though issues and determine what types of usage are compatible and enforceable. Seeking to repeal the PWC ban in this manner is simply reckless, and put lives in danger. For these reasons I oppose the repeal of the ban on PWC and encourage the Commissioner to continue to support staff working within the context of the CHA management plan.

## **Impacts to commercial and subsistence fisheries**

I am a Lower Cook Inlet commercial set net fisherman, and halibut fisherman I, myself and all of my set net fishing neighbors oppose the proposed repeal of the ban on PWC in Kachemak. We are all very concerned as to how this will disrupt our fishery. As fisherman we work through management of fisheries or of area through the BOF or CHA management plan process. Seeking to repeal this ban by operating outside these established processes impacts our ability to have a voice, and it impacts our economic well being and our quality of life.

The 2019 ex-vessel value for the Lower Cook Inlet set net and seine fleet was \$3.6 million dollars, which feeds into to the Kachemak Bay area economy. Repealing the ban on PWC in Kachemak Bay would disrupt fishing operations in Kachemak Bay and the livelihood of area commercial fisherman, who were not consulted or provided with meaningful opportunity to comment of the proposed regulation change.

As set net fishermen we have limited areas that are open to fishing. Within those limited areas there are limited areas where we can fish based on the regulations regarding the distances between nets. Areas like Kasitsna Bay, Barabara Point and Seldovia have a high concentration of nets. Kasitsna Bay also has a high concentration of resident sea otters, as well as skiff traffic to cabins and local lodges. Adding high-speed PWC to that area would likely result in injury to marine mammals and or damaged fishing gear.

When we have strong currents combined with wind waves it is very difficult to set our nets. Even those of us who know where everybody's nets are still occasionally run over them. It costs over a thousand dollars to manufacture a set net, and more still to set anchors to withstand the level of current in our fishing area. The loss of gear is not just the loss of a replaceable net it is the loss of fishing time. There is not time in the middle of the fishing season to stop fishing and re hang nets. Because our fishery is small we have limited to no enforcement presence to regulate PWC usage and conflict. Nor does the existing proposed regulation change address this issue or provide a budget to do so

Because the proposed regulation change does not include a management plan to regulate and enforce PWC use and because there is no education program to inform PWC users of about our fishing areas this proposed regulation change put our fishery and our fishermen at risk.

Concurrently during the time of year, we are fishing salmon are moving along their migratory patterns near the surface of the water in schools. We place our nets in places to target those schools in the areas open to fishing. PWC operators running at high speeds in our fishing areas will disrupt the migratory movement of fish we rely upon for our livelihood. High speed PWC operation in vicinity of our fishing gear will spook fish and drive them out of our nets which disrupts our ability to make a living. The majority of us set net fishermen here choose to fish here as part of our commitment to carrying out a traditional rural Alaska coastal way of life here. This proposed regulation change disrupts or way of life and our economic livelihoods

Repealing this ban should not be considered without a scientific justification, or in absence of a clear and enforceable management plan developed with stakeholders and a budget to enforce it and engagement with regional residents and stakeholder to address our concerns.

As a subsistence harvester I am also very concerned about the impacts of PWC operating in area where we harvest shell fish, hunt octopus and gather kelp. My family and other Seldovia area families carry out these activities on our local beaches. Increased traffic and or landing and launching on these beaches by PWC users has strong likelihood to contribute to the degradation of our intertidal zone which will disrupt our harvest activities. Ocean acidification is already impacting our area shell fish harvesting opportunities. Concurrently this habitat is also important for our area forage fish which have been in decline.

### **Quality of Life and economic well being**

Like many of my neighbors who live on the southside of Kachemak Bay I moved here for our unique coastal way of life. We have chosen to make our homes here on the edge of the Bay in order to live according to our value system, which includes the aesthetic quality of our setting, our isolation, in order to practice simplicity and self-reliance and to live in and part of a natural landscape off the road system, and yes for the quiet of our bays and coves. That is why we work within our CHA management plan structure and process in order to protect those values.

As part of living here many of us have small business on the Bay fishing, guiding, water taxi's lodges, Bed and Breakfasts and others. Our business all depend on maintaining the pristine wilderness aesthetic and the ecological integrity of our Bay and area. We work to protect that because it is central to the quality of our existence as humans, as a community and for the viability of our Kachemak Bay economy. Repealing this ban without engaging us residents, without studying the issues, without scientific justification and without a regulatory structure and management plan is wrong. It is short sighted but with potential long-lasting repercussions.

We all depend upon the CHA management plan process and we have worked with the agency in that process for nearly two decades. Therefore, I respectfully request the administration to rescind the proposed regulation change and continue to work collaboratively with stakeholders in the CHA management plan process, and to give due weight to us area residents who have been working as partners in the management and protection of Kachemak Bay for the benefit of all Alaskans.

The Homer Area AC requested ADF&G to at a minimum provide a full 90-day comment period

The Homer City Council passed two resolutions the first requesting a 90-day comment period and scientific justification to support repealing the ban, and a second resolution

opposing the repealing the ban based in part on the unfunded regulatory authority it will place on the City to regulate and manage PWC usage within city limits.

The Kachemak Bay State Park passed a resolution asking the administration rescind the proposed regulation change.

Cordova District Fisherman United opposes the proposed removal of the ban and the removing the protections of a Critical Habitat Area that will impact commercial fisheries

Over 40 local Kachemak Bay area businesses have signed onto a letter opposing this effort to repeal the ban on PWC usage.

Based on the totality of reasons cited in these comments I appeal to your better judgement and request the administration to rescind this proposed regulation change and to maintain the current ban on PWC usage in the Kachemak Bay and Fox River Flat CHAs, and to continue to work with Stakeholders in our CHA management plan.

In doing so PWC users do not lose access to the 99% of Alaska's marine waters they currently have access to for PWC usage. And all Alaskans retain access to visit and experience Kachemak Bay and Fox River Flats CHAs in the manner that are appropriate to this place. Keeping the ban in place does not eliminate access it preserves the unique opportunities to access this area in a unique way that define the local economy, and quality of life in this setting and preserve the ecological integrity of this sensitive critical habitat as was intended when it was defined as such in the 1970s.

Thank you,

Josh Wisniewski Ph.D.  
*FV Merganser*  
Merganser Anthropology  
PO Box 20  
Seldovia, Alaska  
99663



January 21, 2020

Mr. Rick Green  
333 Raspberry Road  
Anchorage, Alaska 99518

Dear Mr. Green,

On behalf of our individual and business members in Alaska, I'm writing to support lifting the current ban on Alaska personal watercraft owners from operating on the publicly owned waters of Kachemak Bay.

Far too often, hysteria rooted in bias and ideology, take the place of science-based public policy decision making. The world has vastly changed in the decades since access restrictions were instituted on Kachemak Bay. While it's debatable if science played a role in the decision-making process then, it certainly isn't today. Indeed, it is disappointing that the apparent main pillar of Alaska's Fish & Game's recommendation to continue the ban is based on a thirty-year old *opinion* from a long ago, questionable 'study.'

Modern personal watercraft meet or exceed the California Air Resource Board (CARB) standards. CARB is well known for having the strictest air and water quality standards in the world. Today's modern watercraft are one of the most environmentally friendly motorized vessels available on the market. They are also some of the quietest vessels operating. Their robust construction, advanced design, and first- ever safety features such as 'brakes' make them years ahead of conventional boats.

Fortunately, Alaska Fish & Game recognizes these advances, and plainly state that environmental concerns from 20 years ago are no longer valid.

Unfortunately, Alaska Fish & Game retreated to a worn out 'opinion' concerning operator behavior dating from the Clinton Administration. Surely, the world has changed since then. As you know, the harassment, disturbance, or displacement of wildlife and waterfowl, except for legal and permitted hunting and fishing, is a crime in Alaska. This applies to operators of personal watercraft. The American Watercraft Association strongly supports the enforcement of existing boating law.

Personal watercraft do not disturb nearshore tidal areas, overwintering birds, aquatic birds, marine mammals, or any other creature, more so than other motorized boats. In fact, evidence suggests the opposite. We understand that Alaska Fish & Game would wish to conduct site specific studies to make a determination, yet, they cite a "considerable investment" as a reason not to. This is poor policy and an indicator of a lack of scientific curiosity.

Alaska Fish & Game again cites as an issue, a 'considerable investment' of Alaska Wildlife Trooper staff time for education and enforcement" -- an astonishing position for any agency tasked with protecting wildlife to stand by. It begs the question of; when is it ever too much trouble to educate boaters and enforce Alaska's boating laws?

Given the superb world renown professionalism of Alaska Wildlife Troopers, we doubt any Trooper ever believes boater education and wildlife protection are just too hard. Further, Alaska personal watercraft operators are subject to all established boating law.

We understand the user conflict issue. All boaters desire their own sheet of water. However, the public waters of Kachemak Bay do not belong to a few, rather, they belong to all Alaskans.

We find it unfathomable that any size fishing vessel, pleasure craft, barge, 50,000 ton plus cruise ship, helicopter, and fixed wing aircraft are perfectly acceptable in Kachemak with small regard to their impact on water quality and wildlife, yet a 13 foot, environmentally friendly boat somehow spells the collapse of an ecosystem. It defies reason.

Alaska has a firm reputation of tolerance, live and let live attitude, and equality of access for all. Discrimination and bias against any Alaskan because of the boat they operate is unreasonable. Personal watercraft operators fill out the same form 841, pay the same proportional boating taxes, registration fees, and take the same boater education, as do other Alaskans.

We urge the state to stand up for equality, common sense, and fairness. Reject the bias of others. Kachemak Bay belongs to all Alaskans regardless of what vessel they operate.

Thank you in advance for your consideration.

Sincerely,



Chris Manthos

Director

American Watercraft Association

## Green, Rick E (DFG)

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**From:** Hal Shepherd <opbdhal@gmail.com>  
**Sent:** Tuesday, January 21, 2020 1:15 PM  
**To:** Green, Rick E (DFG)  
**Subject:** No Jet Skis in Kachemak Bay

Dear Mr. Green:

Our ecosystems in Alaska are collapsing. It all starts in the Arctic, specifically [the Bering Sea](#) where the ominous signs of the impacts of climate change on ecosystems were vividly illustrated in 2019, by reports of alarming die-offs of grey whales, seals, sea-birds, salmon and other fresh and marine water species due to high water temperatures, loss of sea ice and increases in harmful algal blooms. Because the Bering sea is sort of like the canary in the coal mine for [what we can expect in the rest of the Arctic](#) it seems that [even if we can turn global CO2 emissions around](#), the [ecosystem in the Arctic will eventually unravel](#).

These same signs of unraveling ecosystems are showing up throughout Alaska including the Kachemak Bay Fox River Watershed. In 2019, for example, [several thousand common murrelets starved to death](#) in the Bay when the forage fish they depend on became inaccessible and [thousands of outmigrating and returning salmon died](#) in Jackaloff Creek for the second time in 3 years because the stream dried up completely at the end of August. For the sixth year running, clam populations did not support harvesting on the North side of the bay, and sea otters continued to wash up on local beaches, dead from a bacterial infection thought to be exacerbated by warming ocean waters.

So, with the Kachemak Bay Fox River Watershed, showing signs of the same dramatic impacts to marine and freshwater species that have been occurring in the Arctic, it's fortunate that almost 50 years ago, the Alaska legislature had the foresight to establish the Kachemak Bay Fox River Critical Habitat Area (CHA) in order "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." With climate change beginning to take its toll on fish and wildlife, we need this unique area to serve as a sanctuary, or at least a place where climate related impacts of can be kept to a minimum.

Unfortunately, our current political leadership doesn't seem to feel the same need to preserve Alaska's unique fish and wildlife resources as those of decades before. Repeatedly stating that his goal is to make Alaska "open for business", for example, Governor Mike Dunleavy is moving forward with increasing the state's already substantial contribution to the climate crises by calling for more funding and staffing to [speed the development of mining and oil and gas drilling projects](#) in the state including in the coastal plain of the Arctic National Wildlife Refuge and is moving forward with efforts to weaken Alaska's once strict oil spill prevention laws.

Similarly, Dunleavy quashed research that has illuminated the unprecedented effects of increased carbon emissions on the state's fresh water and marine ecosystem by dismantling the Alaska the state's Climate Action for Alaska Leadership Team established by Governor Walker and by imposing substantial budget cuts on the University of Alaska. Now, Governor Dunleavy and Alaska Department of Fish and Game Commissioner Doug Vincent-Lang's are attempting to add increased harassment to the list of threats to fish and wildlife species in the form of the Dunleavy administration's recent proposal to repeal the ban on jet skis (or personal water craft) within the CHA.

Groups who support allowing jet-skis within the CHA point out that power boats have been operating within the CHA from the beginning and authorizing jet-ski's, therefore, is a simple matter of fairness. Jet ski's however, are a different breed from your run of the mill power boats because they are loud, fast and maneuverable machines used solely for recreational purposes and, therefore, are more likely to be used to inadvertently or purposefully harass wildlife.

Also, there are multiple other activities already taking place within or directly adjacent to the CHA, that potentially threatened fish and wildlife habitat because they can result in damage to salmon streams, low water flows, competition with invasive species or harassment of fish and wildlife including livestock grazing and illegal 4-wheeler use, fish hatcheries and nearby hydropower diversions. Instead of adding one more such activity to the list, therefore, we should be looking at means to mitigate the existing non-climate stressors before they hasten the demise of the fresh water and marine ecosystems already straining under the weight of rapidly increasing temperatures and drought.

But then again, maybe that is the Dunleavy administration's strategy to make the party-at-the-end-of-the-Road up complete. If it succeeds in authorizing the use of thrillcraft within the CHA, than many of the uses allowed therein would be the same as those taking place anywhere else. Would this eventually add fuel to the argument CHA designation obsolete? Similarly, if jet-skis are allowed in the CHA officials for Kachemak Bay State Park which overlaps the CHA boundaries in some locations, will likely be pressured by the administration to allow them within the State Park as well.

Another indication of the administration's strategy to convert federal lands to state jurisdiction, is Governor Dunleavy support of John Sturgeon the man who went all the way to the U.S. Supreme Court to challenge the National Park services prohibition on motorized vehicles on the Nation River that flows through the Yukon-Charley Rivers National Preserve. Dunleavy called Sturgeon a "hero" because Sturgeon's attorneys convinced the court to take the case after two attempts and then prevailed against the Ninth Circuit Court of appeals that said the federal government had the right to regulate the lands and waters within the Park boundaries.

Jet-skis should not be authorized in within the Kachemak Bay Critical Habitat area.

Hal Shepherd  
P.O. Box 15332  
Fritz Creek, AK 99603  
(907)491-1355

Commissioner Doug Vincent Lang

Special Commissioner Rick Green

I oppose the Administration's effort repeal the Personal Watercraft (PWC) prohibition for Kachemak Bay and Fox River Flats CHAs (5 AAC 95.310 Personal watercraft use prohibited) as stand-alone regulation changes pursuant to the Administrative Procedures Act, independent of the ongoing Kachemak Bay/Fox River Flats Critical Habitat Area management plan revision involving local stakeholders.

My name is Josh Wisniewski, I live outside the city of Seldovia in what is referred to as Seldovia Village. I live at Barbara Point, just upland of Kachemak Bay Critical Habitat Area (CHA). I am a commercial skiff fisherman. I set net at Barabara Point and commercially longline for halibut in Kachemak Bay. As a rural coastal Alaska resident, I also participate in our federally managed halibut subsistence fishery in those waters where it is legally permitted to do so.

I also work as a cultural anthropologist, I completed all of undergraduate and graduate education through our University of Alaska system and completed my PhD at UAF in 2011. I carried out all of my education in Alaska in order to serve our State. Throughout my anthropological career I have worked with and for rural Alaska Native communities as well as Tribes in western Washington State on a wide range of subsistence and fisheries related research projects. My work in Alaska included collaborative work with the Alaska Department of Fish and Game and Bering Sea Alaska coastal communities.

I am submitting these comments to the Department today expressing my strong disapproval of the Administration's efforts to remove a 20 year long, collaboratively developed habitat protection regulation, and to do so outside the established stakeholder participation processes we as Alaskans depend upon.

These processes are our area management plans, and Board of Fisheries. These processes are in place to facilitate and protect stakeholder participation. Operating outside our local CHA management plan process, *which was developed by ADF&G* to include stakeholder process to appease a special interest group undermines public trust in government and undercuts the integrity of ADF&G as a science and research resource management agency that operates based on scientific principles and in an open transparent and inclusive democratic process.

On the Commissioner Vincent Lang's ADF&G web page he outlines his priorities, one of which is

building trust with the citizens we serve. Alaskans have entrusted their resources to our care and *we must maintain constant dialogue* to ensure we are managing them in their best interests and well-being.<sup>1</sup>

In this issue the Commissioner is abandoning this priority. Forsaking our CHA management plan process and regional stakeholders' concerns is the exact opposite of

*"maintain(ing) constant dialogue to ensure we are managing them in their best interests and well-being"*

In the following comments I will outline the basis for my opposition for these proposed changes based on the following categories:

- Context for establishing the Kachemak Bay CHA/Management Plan and PWC Restrictions
- Lack of Due Process,
- Access versus management and Habitat Protection, and human safety
- Impacts to Fisheries
- Quality of Life and economic well being

I humbly request that you review all of my comments as well those of other Kachemak Bay residents and give due weight to the comments of those Alaskans whose lives and businesses will be the most impacted by this proposed regulation change. I have included multiple attachments to these comments based on my conversation with Commissioner Lang who indicated he'd not reviewed previous ADF&G research and recommendations to keep the PWC ban in place based on scientific literature and the unique to the estuary ecology and issues particular to Kachemak Bay.

### **Context for the Kachemak Bay/Fox River Flat CHA and Management Plan Process**

Kachemak Bay and Fox River Flats were designated as CHAs in the 1970s. Pursuant to the authority granted to it in the Alaska Constitution, Art. VIII, § 7,<sup>2</sup> the Alaska Legislature designates certain areas around the state as critical habitat areas

“to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.”<sup>3</sup> ADF&G has an obligation to protect and manage CHA and "RESTRICT ALL OTHER USES NOT COMPATIBLE WITH THAT PRIMARY PURPOSE".

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<sup>1</sup> <https://www.adfg.alaska.gov/index.cfm?adfg=divisions.commissioner>

<sup>2</sup> Alaska Constitution Art. VIII, § 7. Special Purpose Sites: “The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.”

<sup>3</sup> AS 16.20.500.

In the 1970s Kachemak Bay State Park and State Wilderness Park were also created to protect the Wilderness integrity for the region. Concurrently Kachemak Bay is also part of the International Reserve of the Western Hemisphere shorebirds and the Kachemak Bay is one of 29 estuaries that make up the National Estuarine Research Reserve. The Bay is the only high latitude fjord estuary type in the Reserve Network.

In 2016 the Kachemak Bay Western Hemisphere Shorebird Reserve Network was expanded to include all of the Kachemak Bay CHA based on the UNIQUE ecological role of Kachemak Bay as estuary and shore bird resting and nesting area. The Kachemak Bay CHA is managed through an inclusive CHA management plan process, because of its rare and unique qualities and the ecosystem services it provides which also supports our local economy.

. This Western Hemisphere Shorebird Reserve Network designation is similar to a World Heritage Site designation, it has no regulatory powers, but provides governments with conservation recognition that can have significant value with ecotourism. Allowing PWC use in the CHA, particularly near intertidal areas that are important for shorebird feeding and resting violates the intent of a WHSRN designation and the economic contribution that makes to the Kachemak Bay area

In establishing the PWC Ban in 2000 through the CHA management plan process ADF&G produced a scientific justification for doing so. I have attached that documentation here for the Commissioner to review. There has been no scientific justification to support repealing the ban outside of statements made by non-scientists criticizing Agency research, findings and recommendations;

In 2017 ADF&G found “there has been considerable **NEW RESEARCH** on the potential impacts of PWCs to protected areas,” citing and reviewing an additional **140** articles not utilized in the previous literature review.<sup>4</sup> The topics of these 140 new articles include: “effects of PWC and other recreational boating impacts on marine mammals, birds, fish, and other organisms; ecological and water quality impacts; PWC noise; user group conflicts and other management and legal implications.”<sup>5</sup>

Based on its updated literature review, ADF&G staff concluded in 2017 that “most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today” and “**there is no new information that would warrant rescinding the prohibition**, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted.”<sup>6</sup>

In making its conclusion and recommendation to maintain the regulation, ADF&G noted that “**this recommendation was widely supported**” by staff in four department

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

**divisions.**"<sup>7</sup> This included the Habitat Commercial Fisheries, Sport Fisheries and Wildlife Conservation Divisions.

In my telephone conversation on this topic with the Commissioner he indicated to me that he'd not yet reviewed this Memo which I have included in my comments. As a scientist and as the head of an agency whose constitutional mandate is to manage resources for the benefit of all Alaskans it is troubling that the Commissioner would deem it advisable to ignore ADF&G scientists research, findings and the management plan process the Agency developed.

In response to the City of Homer request for ADF&G to provide scientific justification for repealing the PWC ban Mr. Green wrote the City stating:

The science used throughout the process is inconclusive that personal watercraft have any affect more or less on fish and wildlife and their uses than other watercraft. Most of the comments received were "speculation" on potential issues arising from behaviors that can be conducted on other watercraft not currently not currently prohibited from this critical habitat area.

I have attached this letter to these comments. As I understand from my conversations with Mr. Green he is not a trained scientist or habitat biologist. Mr. Green's letter did NOT respond to the 140 peer revised articles cited by professional ADF&G career biologists identifying how PWC due impact wild life and habitat particularly in a shallow estuary habitat such as Kachemak Bay.

In fact, ADF&G biologists have stated the exact opposite of Mr. Green writing:

However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.<sup>8</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Mr. Green above cited statement (which contradict ADF&G research findings) that PWC impacts are the same as other water craft is demonstrably false due in part to the design and purpose of PWC to operate in shallow water, rapidly accelerate and make high power turns. This is not what outboard skiffs are designed for nor how they are used here. Skiffs cannot operate in this manner in this setting They cannot operate t high speeds in shallow water or execute high speed turns. Just north of Kachemak Bay in the Kenai River even skiff use is highly regulated to protect habitat in the River.

No one may operate a boat on the Kenai River upstream of a DNR marker located at approximately river mile 4.2 (downstream of the Warren Ames Bridge) with outboard or combination of outboards having a total prop-shaft rating greater than 50 HP. Prop-shaft horsepower rating means the boat motor's original manufacturer rated and labeled horsepower. Adding a jet drive unit to a motor does not change the prop-shaft horsepower rating of the motor powerhead and driveshaft configuration.<sup>9</sup>

Regulating the operation and type of watercraft that can be used in that setting is not characterized as restricting access in the Kenai River.

Given that Special Assistant Green is self admittedly not qualified to conduct a scientific review of the literature, is a vocal proponent of the repealing this ban, and that to date the Commissioner has indicated he has not engaged with the research and recommendations by ADF&G scientists it would appear that ADF&G is completely ignoring management precedent and staff recommendations .

A scientific justification based on review of peer review literature was used to determine PWC usage was not compatible with CHA management responsibilities of ADF&G. The Agency has provided no scientific data that contradicts the 2017 ADF&G findings and recommendations. As both a scientist and as a commercial fisherman this is very troubling.

Under these circumstances it is highly irresponsible if not in blatant violation of the ADF&G's constitutional resource management obligations.

ADF&G noted in 2017 that were the agency to explore repealing the PWC ban significant research would be needed to determine how their use could be safely in a manner consistent with the CHA and that ensured the safety of wildlife and fish and non-motorized watercraft users. It was also identified that dedicated Wildlife Trooper presence would be needed and there are already existing challenges in protecting the Fox River Flat CHA from ATV impacts. None of these actions have been done and no budget or management plan created to support this proposed regulation change.

The administration operating in opposition recommendations manner is reckless, not in keeping with historic professionalism of the agency. As a fisherman my livelihood is based in part on ADF&G making management decisions based on best available science and

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<sup>9</sup> <https://www.adfg.alaska.gov/static/license/prolicenses/pdfs/SCkenaiGuides.pdf>

maintaining a public process to participate in management through Area and CHA management plans and the Board of Fisheries processes. How am I to operate my business and trust ADF&G to manage our fisheries when the Agency arbitrarily reverse course on management in contradiction to habitat biologist recommendations for the sole benefit of a set of recreational users who currently have access to 99% of Alaskan state waters open for that specific usage.

I oppose the repeal of this ban based on the complete lack of data to demonstrate that after a 20-year prohibition on their use allowing PWC in Kachemak Bay is consistent with ADF&G's management responsibility to "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife" and "to restrict all other uses not compatible with that primary purpose"

### **Lack of due process and consideration for existing CHA management plan and stakeholder process<sup>10</sup>**

A stakeholder meeting for the Kachemak Bay CHA management plan process was held in Homer on October 24, 2019. Representatives included ADF&G wildlife, habitat and commercial fisheries biologists, City of Homer, NOAA, Kachemak Bay Conservation Society, State Parks the National Estuarine Research Reserve System. Special Assistant Rick Green also attended via phone with representatives of the Personal Watercraft Club of Alaska.

In the context of discussing PWC usage ADF&G staff all agreed that as the department has a rule banning PWC in the CHA the management plan could not allow use of PWC. Within the context of that meeting ADF&G biologists and scientists from other stakeholder agencies identified critical issues noting PWC are significantly louder than boats because they skim over the top of the water. and as such produce a specific set of impacts on marine avian and terrestrial wildlife.

- PWC tend to be used for recreation and change direction at high speeds, which makes them particularly disturbing to fish and wildlife the CHA was designed to protect, especially while nesting/pupping and rearing young.
- PWC are known to have tendency to go into shallow areas that are especially sensitive habitat. The shallow areas where PWC tend to recreate are often breeding and rearing grounds for marine mammals, seabirds, and fishes.
- Migratory birds, waterfowl, seals and seal haul outs, otters and whales are of particular concern.

These were all issues identified by professional scientists engaged with this issue. There was agreement among the stakeholders that the above considerations were significant enough to continue to justify the ban.

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<sup>10</sup> Based on Notes of participating stakeholder

Mr. Green argued that if PWC operator behavior was the primary concern of agency staff, it was behavior that should be regulated, not the PWC themselves. This was considered by the staff present. All who responded to Mr. Green there is no capacity to regulate PWC behavior in the CHA for a variety of reasons including the geographic scope of the CHA and the remoteness of some areas. There were comments that there is already a significant problem of habitat degradation from 4-wheeler use on the Fox River Flats that the department has been unable regulate.

ADF&G staff identified there were already impacts to the Fox River CHA because ADF&G did not have the resources to regulate behavior in that area.

The proposed repeal of the PWC Ban provides no scientific justification to support it, and provides no framework for the management of PWC usage as proposed by Mr. Green. The proposed regulation change provides no budget for the management of PWC usage consistent with the agency's responsibility to manage CHA's for the protection of habitat.

Based on the manner in which it is being pursued is demonstrable that this proposed regulation change is being done outside of the established stakeholder management plan process, (which the Personal Watercraft Club of Alaska can participate in with other stakeholders) in order to disregard the concerns of the professional scientific community engaged in this process. As a long time Alaskan, a scientist and a fisherman, I find this shameful and all Alaskans have a right to expect a fair and equitable and transparent governance.

Indeed, this is the very reason why we have a local CHA management plan process that brings stakeholders together. To address issues and make determinations about what is appropriate and what is not. This is also why we have our Board of Fisheries processes in order for stakeholders to participate in management and to advance proposals that are discussed based on their merits.

As a fisherman I rely upon and count on this process in order to have a voice I do not always agree with the management decisions of ADF&G. Sometime I adamantly disagree. But though our Board of Fisheries and our CHA management Plan processes I have a voice and can participate in the process.

Making this regulation change outside of these established public processes limits stakeholder participation and stifles local voices. Not everyone that will be affected by rule or regulation change can drop life to engage in a political fight. This again is why it is important for the commissioner and the Administration to protect our institutions not seek to operate outside of them. Many of my neighbors have been active in the management of our fisheries and Kachemak Bay for decades. Many of us specifically live here purchased property here and make our businesses here because this one of the few places where we have a PWC ban. We count on it and rely upon it, for the protection of wildlife and habitat, for our fisheries and other eco-tour businesses, and our rural coastal Alaska quality of life. It is downright un-Alaskan to operate outside the management plan process that ADF&G created to foster collaborative stakeholder management.

During this comment period I have had to take significant time away from my off-season professional obligations to participate in this comment process. This loss of income among all stakeholders could have been alleviated simply by working within our existing CHA process, or the PWC Club of Alaska could have pursued this through the Lower Cook Inlet Board of Fisheries cycle that was recently held in Seward.

*Mixed Messaging by ADF&G:*

In context of conversations with both Commissioner Doug Vincent Lang and Special Assistant to the Commissioner Rick Green I have received different feed-back and inconsistent messaging about how ADF&G will evaluate public comments and their value in the review of this proposed regulation change.

Mr. Green suggested the specific nature of comments were insignificant, and that public comments would have a limited role in the decision-making process on this issue. He stated it was essentially a "toggle" yes or no.

Mr. Green also informed me that he had no vested interest as he was not personally a PWC user. Yet this stand-alone regulation change pursued outside the CHA management plan meeting where repealing this ban was not supported by ADF&G scientists was initiated after Mr. Green's call into the CHA management meeting with representatives of the Personal Watercraft Club of Alaska. This does not demonstrate scientific management or impartiality on the part of the Special Assistant to the Commissioner

As a stakeholder, who will be directly impacted by this proposed regulation change outside our CHA management I cannot help but view these actions by Mr. Green as one of using an official government position to lobby on behalf of a special interest group.

Whereas Mr. Green indicated the substance of comments didn't matter. In my conversation with Commissioner Doug Vincent Lang he specifically indicated that he needed to be convinced by scientific evidence that there was a basis for keeping the ban in place and presented this as not a habitat protection issue but as a PWC access issue, based on recent Supreme Court ruling.

I find the inconsistent statement from ADF&G regarding what substantiates significant comments and how comments will be evaluated on this issue very troubling in particular as the comment period, originally limited to 30 days was initiated in the beginning of holiday season.

There has been no indication for how comments will be evaluated, or weighed. The agency has provided no information to contradict previous finding and staff recommendations from 2000 and 2017. As a stakeholder, a fisherman, a scientist I would like to see the administration provide this as well as a management plan to regulate PWC behavior and

usage as was previously suggested by Mr. Green in order to determine if this course of action is advisable. The CHA management plan process is the appropriate venue for doing so.

As an area resident whose quality of life, business and economic wellbeing will be impacted by this proposed regulation change I find this lack transparent, equitable and frankly unprofessional governance highly frustrating. It is not consistent in any way with the level of professionalism and scientific integrity I am accustomed to in my dealings with the Agency over two decades, and that we as Alaskans expect from an agency and Commissioner whose responsibility is to manage resource for the well-being of Alaskans.

I oppose repealing the ban on PWC in the Kachemak Bay Fox River Flat CHA based on the lack of due process by operating outside of the ongoing CHA management plan and lack of engagement with stakeholders who will be directly impacted by

### **Access, management, habitat protections and human safety**

In context of my conversations with both the Commissioner and Mr. Green they articulated to me that they largely viewed this as an access issue not one of habitat protection. I believe this is a flawed and self-serving argument that is not consistent with how the agency manages other resources including access to and use of these resources.

Both Commissioner Doug Vincent Lang and Mr. Green have articulated that repealing the ban on PWC usage in Kachemak Bay and Fox River Flats is make it consistent with other areas and that the Bay is no different from marine waters of Resurrection Bay or Prince William Sound. I would like to address that here. I was surprised to hear the commissioner state that given his education, training role in ADF&G.

Resurrection Bay and Prince William Sound are deep glacially carved Fjord environments in contrast Kachemak Bay is a shallow estuary setting with over 11 glacial systems that flow into it. Kachemak Bay plays a critical role in the mixing and transmission of nutrients into the Gulf of Alaska. As an estuary it is a nursery setting for growing salmon birds and marine wildlife. As a shallow estuary it is a critical habitat for shorebirds and migratory waterfowl. As identified by ADF&G biologists and cited in this letter shore birds are particularly susceptible to the impacts of PWC operating in shallow water close to shore and executing high speed direction shifts.

However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential **to impact habitats, marine organisms, wildlife**, and other traditional user groups and those cannot be easily mitigated. . .The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds and managing user conflicts and

compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed.<sup>11</sup>

The unique ecology of Kachemak Bay is why it is one of only 29 estuaries that make up the National Estuarine Research Reserve Network. Kachemak Bay is the only high latitude fjord estuary type in the Reserve Network. Kachemak Bay is also part of the International Reserve of the Western Hemisphere shorebirds, in 2016 the Kachemak Bay Western Hemisphere Shorebird Reserve Network was expanded to include the Kachemak Bay CHA. Given the demonstrated impact PWC DO have on shorebirds and over wintering sea birds that is unique to PWC usage, and given that Kachemak Bay is an identified and world-renowned shorebird areas repealing the current ban will impact the CHA in a manner inconsistent with purpose of protecting and managing a CHA.

Concurrently it will impact the Bay's designation as part of the Shorebird Reserve Network based on the impact repealing the ban would have on shorebird habitat and behavior. This was previously identified by ADF&G scientists as part of the justification for the ban on PWC in the CHA. Sea birds are in decline throughout Alaska due in part to climate change and declines in forage fish abundance. Recent bird surveys conducted this winter have likewise noted a precipitous decline in sea bird distribution and abundance in Kachemak Bay. The ecological services of the Kachemak Bay in support of shorebirds is an important area economic driver that would be impacted by repealing the PWC ban would impact this aspect of the area economy and the quality of life for many area birders who live in this area for opportunity to study and observe

Kachemak Bay is not like Prince William Sound or Resurrection Bay. it is uniquely different and sensitive habitat, which is why it was designated as a CHA. Additionally, as an estuary the near shore environment is critical rearing habitat for multiple fish and wild life species we as Alaskans depend on and which require a functioning ecosystem to produce.

Biological sensitivity of the nearshore and intertidal area can especially be seen in places like Jackalof Bay, or at Barabara Point where we have large kelp beds, shell fish that are harvested for subsistence foods. These settings are very different than the beaches of Prince William Sound and Resurrection Bay. which do not have this level of biological abundance or diversity and the same ecological function. That is why they are not as sensitive to disruption by recreational PWC usage. This is further evidenced through the archeological record and the high number of archeological sites found throughout the Kachemak Bay in comparison to Prince William Sound and Resurrection Bay highlighting its unique biological productivity.

That is again is why Kachemak Bay has a unique status and protections that we ask the administration to recognize and protect for all Alaskans and in support of our local economy.

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<sup>11</sup> *Id.*

Throughout Alaska ADF&G regulates how users can access and use Alaska's fish, wildlife and habitat resources through a variety of management actions compatible with the existing PWC Ban here on the Bay.

In the context of sport fishing the Agency regulates what type of gear can be used, where people can fish, and how they can fish in those places. In some systems one fishes only with flies, in another bait, or snagging might be allowed while still in another based on the unique species composition of the setting it might be catch and release only. The agency manages through these mechanisms to protect the resources. The prohibition for fishing with eggs (for example) in a given system does not limit access because a fisherman can still fish in that drainage using the type of gear that is allowed under ADF&G regulations.

This is true in hunting as well. Indeed, some hunts are further restricted to black powder or bow only, we as hunters are not allowed to spot animals with planes either. Yet these management regulations don't prohibit hunting rather we have regulations because some types of hunting practices and opportunities in some settings are not appropriate for others.

In our commercial fisheries, the size of our gear is regulated, the size of our mesh, how much gear is on board. We have vessel size restrictions, and openings closures and fishing corridors and closed waters. As a commercial fisherman I don't view regulations put in place for purpose of conservation and habitat protection as blocking access. The long-term survival of my business is structured around conservation for sustainability. Banning PWC usage in a shallow estuary environment for purpose of habitat protection does not eliminate access. The Commissioner, Mr. Green or the Governor himself or any other person can still access all of the Kachemak Bay and Fox River Flats through other mechanisms that are permitted, using skiffs kayaks or other boats that demonstrably have a lesser impact based on their design and use limitations. This is no different than regulating fishing or hunting for purpose of suitable resource conservation and management

Further as 99% of Alaskan waters are open to PWC usage protecting one area that makes up less than 1% of Alaska's waters based on its unique biological and ecological characteristics, that can still be accessed through other mechanisms does not limit access it is the definition of managing resources for the benefit of all Alaskans, and managing one area for a specific type of usage does not block any one's access to visit and use those areas consistent with established regulations.

Throughout Alaska we have designated use area that are put in place to protect the experience we as Alaskan's or visitors to our state come here to experience. In addition to its sensitive estuarian character We must think of Kachemak Bay in this same context.

Kachemak Bay is world renowned for its sea kayaking people come from all Alaska and the world to do that here on the Bay. Kachemak Bay State Park and State Wilderness Park overlap the CHA. There is a prohibition on the use of PWC in the State park in order to

protect the wilderness integrity of the park, which includes protection of the natural soundscape.

An intact soundscape is a central aspect of maintaining critical habitat as an intact and functioning ecosystem. There is a large and growing body of peer reviewed scientific literature identifying the importance of maintaining an intact soundscape as part of habitat protection. I have included a series citations of peer reviewed articles that illustrate the critical role of the soundscape.<sup>12</sup>

In National Parks throughout Alaska as well as the Lower 48 the National Park Service manages to maintain the integrity of the soundscape as part of the protection of habitat. Animals depend on hearing natural sounds in the environment for a range of activities, including:

- Communication
- Establishing territories
- Finding habitat
- Courting and mating
- Raising families
- Finding food and avoiding predators
- Protecting the young<sup>13</sup>

Therefore, managing a CHA and State Wilderness Park includes soundscape integrity for both wildlife and for the quality of the experience for human visitors. In other parts of Alaska other areas are managed for other types of usage.

The argument regarding the auditory impact of PWC is not just "they are loud and annoying to area residents" It is that because PWC are designed to rapidly accelerate, and execute high speed turns and can operate in shallow water that their use results in a demonstrable auditory impact on the area soundscape that is very different and not comparable to a skiff passing through an area from point A to B, or the low rumble of small fishing vessel hauling gear. This was part of the conclusion of ADF&G in 2017 when the Habitat, Sport Fish, Com Fish and Wildlife Conservation all supported maintaining the PWC ban in Kachemak Bay and the Fox River Flat.<sup>14</sup>

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<sup>12</sup> 2011 Pijanowski, Brian, Luis j. Villanueva-Rivera *et-al*

Soundscape Ecology: The Sound in the land scape. *In* BioScience 61:203-216

2011 Pijanowski, Bryan, Almo Frana, Stuart H. Gage and Bernie Krause.

What is Soundscape Ecology: An introduction and overview of an emerging new science *in* Landscape Ecology November 2011

Pavan, Gianni

2017 Fundamentals of Soundscape Conservation *In* Ecoacustics: The Ecological Role of Sounds Almo Farina and Stuart Gage eds. John Wiley and Sons

Hatch, Leila T, Wahle Charles *et al*

2016 Can you hear me? Managing acoustic habitat in U.S. waters. Endangered Species Research Vol 30 171-186

<sup>13</sup> <https://www.nps.gov/subjects/sound/soundsmatter.htm>

<sup>14</sup> *Id.*

Repeal of the PWC ban is simply not compatible with how the Bay is used and the other land management designations that overlap the CHA that are in place here to preserve the totality of its environmental ecological and aesthetic qualities. ADF&G is already struggling to control human behavior in the Fox River Flat CHA. Loosening restrictions will further impact remote areas where budgetary and human resource limitations already impose challenges. Given the fiscal issues facing our state proposing a regulation change with demonstrable financial requirements to manage is irresponsible absent identifying how this will be done.

Arguably, our Ferry System, Village Public Safety and our University system are more deserving of our scant resources than a management and enforcement program to allow PWC usage in a sensitive habitat area ADFG has supported restricting for nearly 20 years.

People (myself included) have chosen to build our lives in places like Seldovia and Little Tutka Bay in part because of the serenity and quiet and the privilege to live on the edge of Kachemak Bay State Park. We work for it, and we work to protect the integrity of our home and businesses by participating in the CHA management plan process. Many of my neighbors have businesses they have built over decades to share our area through guided sea kayak tours, nature tours and bed and breakfasts and central to their business models is intact quality of our natural soundscape as part of our CHA. Preserving this does not limit others visitations or usage any more than a fly only regulation limits access to fish the Kenai River.

Here in Alaska we have many places that are models for the management of the Kachemak Bay CHA as a PWC free area that does not limit our opportunity as Alaskans to experience it.

For example, we have settings like Turnagain Pass where there are areas specifically open to snow machines and areas that are closed to snow machines that are open for skiing. In Chugach State Park there are areas where snow machines can be used and areas where they are restricted in order for non-motorized park users to have safe experiences

DNR has designated areas where ATV use is restricted in order to protect habitat and cultural resources.<sup>15</sup>

The current ban on PWC use in Kachemak Bay is consistent with how the state regulates ATV's and snow machine usage in other areas. This is done not just to protect habitat but avoid user group conflicts and or injury stemming from collision between different users.

This was an important aspect on the prohibition on PWC usage in Kachemak Bay. One of the reasons identified by ADF&G staff for maintaining the ban on their usage in the Kachemak Bay and Fox River Flat CHA was based on lack of a mechanism to manage PWC usage human safety concerns.

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<sup>15</sup> [http://dnr.alaska.gov/mlw/factsht/land\\_fs/gen\\_allow\\_use.pdf](http://dnr.alaska.gov/mlw/factsht/land_fs/gen_allow_use.pdf)

The nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated(emphasis added).<sup>16</sup>

We would not open an area designated for skiing only to snow machine traffic without a management plan in order to ensure public safety, nor would we open a non-motorized foot trail to motocross racing outside of a tightly controlled and managed process.

The same should be true here, especially given the huge number of non-motorized watercraft users that are on Kachemak Bay and especially given the large number of people who come here for non-motorized wilderness activities. The number of non-motorized boaters here on the bay has grown exponentially since the original 2000 PWC ban, and in part because of it. People come here to operate non-motorized watercraft specifically because of our existing ban on PWC usage as part of our CHA management plan

Opening up the Bay to PWC usage without a management, enforcement, or education program is reckless and has a high likelihood to put persons lives in danger. This was highlighted in the 2017 ADF&G memo

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.<sup>17</sup>

ADF&G identified that multiple steps that would have to be taken if PWC usage were to be allowed on the Bay in order to ensure the safety. This included a budget for enforcement and management. Yet the agency has no budget for this regulation change, the agency has done no research to develop a management plan to protect nearshore and water bird habitat, and non-motorized watercraft users. The agency has taken none of these actions.

This is why we have a CHA management plan process to identify, and work though issues and determine what types of usage are compatible and enforceable. Seeking to repeal the PWC ban in this manner is simply reckless, and put lives in danger. For these reasons I oppose the repeal of the ban on PWC and encourage the Commissioner to continue to support staff working within the context of the CHA management plan.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

## **Impacts to commercial and subsistence fisheries**

I am a Lower Cook Inlet commercial set net fisherman, and halibut fisherman I, myself and all of my set net fishing neighbors oppose the proposed repeal of the ban on PWC in Kachemak. We are all very concerned as to how this will disrupt our fishery. As fisherman we work through management of fisheries or of area through the BOF or CHA management plan process. Seeking to repeal this ban by operating outside these established processes impacts our ability to have a voice, and it impacts our economic well being and our quality of life.

The 2019 ex-vessel value for the Lower Cook Inlet set net and seine fleet was \$3.6 million dollars, which feeds into to the Kachemak Bay area economy. Repealing the ban on PWC in Kachemak Bay would disrupt fishing operations in Kachemak Bay and the livelihood of area commercial fisherman, who were not consulted or provided with meaningful opportunity to comment of the proposed regulation change.

As set net fishermen we have limited areas that are open to fishing. Within those limited areas there are limited areas where we can fish based on the regulations regarding the distances between nets. Areas like Kasitsna Bay, Barabara Point and Seldovia have a high concentration of nets. Kasitsna Bay also has a high concentration of resident sea otters, as well as skiff traffic to cabins and local lodges. Adding high-speed PWC to that area would likely result in injury to marine mammals and or damaged fishing gear.

When we have strong currents combined with wind waves it is very difficult to set our nets. Even those of us who know where everybody's nets are still occasionally run over them. It costs over a thousand dollars to manufacture a set net, and more still to set anchors to withstand the level of current in our fishing area. The loss of gear is not just the loss of a replaceable net it is the loss of fishing time. There is not time in the middle of the fishing season to stop fishing and re hang nets. Because our fishery is small we have limited to no enforcement presence to regulate PWC usage and conflict. Nor does the existing proposed regulation change address this issue or provide a budget to do so

Because the proposed regulation change does not include a management plan to regulate and enforce PWC use and because there is no education program to inform PWC users of about our fishing areas this proposed regulation change put our fishery and our fishermen at risk.

Concurrently during the time of year, we are fishing salmon are moving along their migratory patterns near the surface of the water in schools. We place our nets in places to target those schools in the areas open to fishing. PWC operators running at high speeds in our fishing areas will disrupt the migratory movement of fish we rely upon for our livelihood. High speed PWC operation in vicinity of our fishing gear will spook fish and drive them out of our nets which disrupts our ability to make a living. The majority of us set net fishermen here choose to fish here as part of our commitment to carrying out a

traditional rural Alaska coastal way of life here. This proposed regulation change disrupts or way of life and our economic livelihoods

Repealing this ban should not be considered without a scientific justification, or in absence of a clear and enforceable management plan developed with stakeholders and a budget to enforce it and engagement with regional residents and stakeholder to address our concerns.

As a subsistence harvester I am also very concerned about the impacts of PWC operating in area where we harvest shell fish, hunt octopus and gather kelp. My family and other Seldovia area families carry out these activities on our local beaches. increased traffic and or landing and launching on these beaches by PWC users has strong likely hood to contribute to the degradation of our intertidal zone which will disrupt our harvest activities. Ocean acidification is already impacting our area shell fish harvesting opportunities. Concurrently this habitat is also important for our area forage fish which have been in decline.

### **Quality of Life and economic well being**

Like many of my neighbors who live on the southside of Kachemak Bay I moved here for our unique coastal way of life. We have chosen to make our homes here on the edge of the Bay in order to live according to our value system, which includes the aesthetic quality of our setting, our isolation, in order to practice simplicity and self-reliance and to live in and part of a natural landscape off the road system, and yes for the quiet of our bays and coves. That is why we work within our CHA management plan structure and process in order to protect those values.

As part of living here many of us have small business on the Bay fishing, guiding, water taxi's lodges, Bed and Breakfasts and others. Our business all depend on maintaining the pristine wilderness aesthetic and the ecological integrity of our Bay and area. We work to protect that because it is central to the quality of our existence as humans, as a community and for the viability of our Kachemak Bay economy. Repealing this ban without engaging us residents, without studying the issues, without scientific justification and without a regulatory structure and management plan is wrong. It is short sighted but with potential long-lasting repercussions.

We all depend upon the CHA management plan process and we have worked with the agency in that process for nearly two decades. Therefore, I respectfully request the administration to rescind the proposed regulation change and continue to work collaboratively with stakeholders in the CHA management plan process, and to give due weight to us area residents who have been working as partners in the management and protection of Kachemak Bay for the benefit of all Alaskans.

The Homer Area AC requested ADF&G to at a minimum provide a full 90-day comment period

The Homer City Council passed two resolutions the first requesting a 90-day comment period and scientific justification to support repealing the ban, and a second resolution opposing the repealing the ban based in part on the un funded regulatory authority it will place on the City to regulate and manage PWC usage within city limits.

The Kachemak Bay State Park passed a resolution asking the administration rescind the proposed regulation change.

Cordova District Fisherman United opposes the proposed removal of the ban and the removing the protections of a Critical Habitat Area that will impact commercial fisheries

Over 40 local Kachemak Bay are businesses have signed onto a letter opposing this effort to repeal the ban o PWC usage.

Based on the totality of reasons cited in these comments I appeal to your better judgement and request the administration to rescind this proposed regulation change and to maintain the current ban on PWC usage in the Kachemak Bay and Fox River Flat CHAs, and to continue to work with Stakeholders in our CHA management plan.

In doing so PWC users do not lose access to the 99% of Alaska's marine waters they currently have access to for PWC usage. And all Alaskans retain access to visit and experience Kachemak Bay and Fox River Flats CHAs in the manner that are appropriate to this place. Keeping the ban in place does not eliminate access it preserves the unique opportunities to access this area in a unique way that define the local economy, and quality of life in this setting and preserve the ecological integrity of this sensitive critical habitat as was intended when it was defined as such in the 1970s.

Thank you,

Josh Wisniewski Ph.D.  
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Merganser Anthropology  
PO Box 20  
Seldovia, Alaska  
99663

## Green, Rick E (DFG)

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**From:** Vicki Gerken <alaskavickiirwa49@gmail.com>  
**Sent:** Tuesday, January 21, 2020 11:31 AM  
**To:** Green, Rick E (DFG)  
**Subject:** PLEASE, Repeal the Ban of Personal Watercraft in Kachemak Bay

Mr. Green.

PLEASE, Repeal the Ban of Personal Watercraft in Kachemak Bay (1) 5 AAC 95.310 is proposed to be repealed. The purpose of this repeal is to remove the prohibition on personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

First of all, I have never read or listened to so many misinformed inexperienced published articles. Most of the comments appear to be based upon old data and examples such as crazy kids riding rental machines at Big Lake, which is why we don't ride there. The people in Homer would definitely not want to be compared to people at Big Lake (per a comment made on Cook Inlet Keepers FB page). So, this is most likely the reason for the ban; not in my backyard. And based on what we've heard, this ban appears to have happened because of one like individual.

No one would take their expensive watercraft out in the ocean and risk their life doing the maneuvers that are seen on Big Lake. I've read comments about concerns about Jet Skis travelling too fast, posing a threat to wildlife like otters in shallow waters, as in any boat, otters are pretty aware of their surroundings, and they won't even get close to a boat let alone a PWC. I've tried to get a pic of them, and it is impossible. And we would not take the risk of riding fast in shallow water at the risk of getting stranded or damaging our boat (PWC). Others commented that the noise from Jet Skis would disturb the environment on the south side of the bay where several lodges, kayak tour businesses and adventure businesses operate. Noise? Are boats restricted because of the noise they make? You can't hear our boats, even if they leave the water. Such as that pic posted on the Cook Inlet Keeper FB page of Frank on his PWC jumping the boats wake after he assisted that boat when it was stranded. You would not have heard his PWC, but you could definitely hear the boat.

And last, but definitely, not least. This is straight from Fish and Games webpage. In Alaska, the public has a constitutional right to access on and use of navigable and public waters regardless of who owns the underlying bed. This right is defined in Article VIII, Section 14, of the Alaska Constitution, which states: "Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state ...." .... (AS 38.05.965(18)).

Interesting that Friends of Kachemak Bay State Park December 11, 2019 posting reads as follows... "We wish everyone a very joyous holiday season, with gratitude for the many many efforts made this year and past years to help keep Kachemak Bay State Park accessible to and enjoyable by all." Apparently not to all, just to all of Homer. [https://www.facebook.com/FriendsOfKachemakBay/posts/2768837156505622?\\_xts\\_\\_\[0\]=68.ARCCgHlKq9wEviCla4Ch9dsZTZIFH7Gld4aziTnF7Rlscok9qERlvorkhJYPPRozqiTTIN\\_koKhCgYkpmVY-rgrdYmlmmNy4sQ4NTQKvB5-uQwim8feRORwVJxetUj905Gpna\\_Vmh\\_afGM8NC\\_BLUGKHHdoPMVdDxRFwFFH3qVlcaUIJV0XQa0gUKd1ZXZBMkykNqEuypeDHG5MqW6CROVTtbKlHZ-AYJi6L4ZCxzi\\_ks7VDIxsOpuUsgWUat4zy1ftpd552m6\\_rnBkkrdQD1qHqntc31GpcRg3Ck5GCSL4o3Eqymm7aoBkVCDS4cSUI0b6egF-lv--QO3EvvGDlIqX\\_3g&\\_\\_tn\\_\\_=-R](https://www.facebook.com/FriendsOfKachemakBay/posts/2768837156505622?_xts__[0]=68.ARCCgHlKq9wEviCla4Ch9dsZTZIFH7Gld4aziTnF7Rlscok9qERlvorkhJYPPRozqiTTIN_koKhCgYkpmVY-rgrdYmlmmNy4sQ4NTQKvB5-uQwim8feRORwVJxetUj905Gpna_Vmh_afGM8NC_BLUGKHHdoPMVdDxRFwFFH3qVlcaUIJV0XQa0gUKd1ZXZBMkykNqEuypeDHG5MqW6CROVTtbKlHZ-AYJi6L4ZCxzi_ks7VDIxsOpuUsgWUat4zy1ftpd552m6_rnBkkrdQD1qHqntc31GpcRg3Ck5GCSL4o3Eqymm7aoBkVCDS4cSUI0b6egF-lv--QO3EvvGDlIqX_3g&__tn__=-R)

I look forward to the opportunity to going fishing, and enjoy the scenery and wildlife on my boat (PWC) in Kachemak Bay and not have to do it by other means.

Thank you for the opportunity to comment.

Vicki Gerken  
3820 E 84<sup>th</sup> Avenue  
Anchorage, Alaska 99507  
907-349-7205

## Green, Rick E (DFG)

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**From:** Bill Watkins <watkinsnp@hotmail.com>  
**Sent:** Tuesday, January 21, 2020 11:03 AM  
**To:** Green, Rick E (DFG); Nina Faust; Nicole Schmitt; carol harding  
**Subject:** Proposed Repeal of Ban of PWC (jet skis) into Kachemak Bay & Fox River Critical Habitat Areas

January 21, 2020

Dear Rick Green,

I am writing to you in regards to the proposed repeal of the prohibition of personal watercraft (jet skis) within Kachemak Bay and Fox River Critical Habitat Areas.

As a long time Alaskan and someone who has both lived in Homer and enjoyed the area in the past, I am very much opposed to any repeal of this prohibition of PWC's or jet skis.

PWC's are a threat to critical wildlife habitat, wildlife themselves, marine organisms and to other user groups due to their maneuverability, high speeds and the ability to go into shallow waters. This has been confirmed repeatedly by Alaska Fish & Game who found no easy methods to mitigate the damage and disruption that they cause.

See the following Alaska Fish & Game Memorandum: <https://inletkeeper.org/wp-content/uploads/2019/12/Memo-DWC-and-Habitat-PWC-Recommendation-May-2017.pdf>

Quoting from the Memorandum under the heading - Recommendations:

“However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed. In addition to research necessary to identify potential buffer zones, any partial opening (such as for a transit corridor) of Kachemak Bay and Fox River Flats CHAs to personal watercraft would require considerable investment of department and Alaska Wildlife Trooper staff time for education and enforcement.

In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted. A draft of this memo was circulated to affected staff in all department divisions (DWC, HAB, CF, SF) and this recommendation was widely supported.” End Quote.

Additionally, PWC's are incredibly noxious and an obscene form of motorized recreation that has no place in critical wildlife and salmon habitat.

According to an editorial published in the Homer News on December 24th of 2019 -

See: <https://www.homernews.com/opinion/point-of-view-kachemak-bay-is-a-special-place-lets-keep-it-that-way/>,

99% of Alaskan waters are already open to this scourge of motorized recreation.

Quoting from this editorial: “Finally, the most amazing part of Ms. Poth’s argument is her call for a “compromise” on Jet Ski use in Kachemak Bay. Yet Ms. Poth conveniently ignores the fact that over 99% of Alaska’s waters are already open to Jet Skis and similar thrillcraft. While she asserts that her small group of PWC enthusiasts simply want access to Kachemak Bay, we all know there’s already plenty of access to Kachemak Bay and the State Park using traditional vessels.”

Lastly, I fully support the ban on PWC’s (jet skis) within Kachemak Bay and Fox River Critical Habitat Areas and am opposed to any repeal of this ban.

Furthermore, I fully support returning balance to this issue (balance is defined as a 50/50 proposition), in continuing the ban within Kachemak Bay and Fox River Critical Habitat Areas but also reducing PWC (jet ski) access further into Alaskan waters by another 49% to create an equal 50/50 balance between PWC (jet ski) access and banning their access into Alaskan waters.

Sincerely,

Bill Watkins  
Anchorage & Denali Park, Alaska

Watksnp@hotmail.com

**PLEASE THINK ABOUT IT AND TAKE APPROPRIATE ACTION**

Think about what impact noise and/or man-made disturbances have when you try to:

Listen to such birds as loons, plovers, bald eagles, Sandhill cranes, and others

Listen to a breaching whale

Listen to a barking seal

Listen to the splash of a fish

Listen to someone crying for help

Listen to an erupting volcano

Listen to a fog horn

Listen for a possible intruder

Listen to your child

Listen to noise when trying to sleep

Listen to the voice of the past

Listen to a worship sermon

Listen to the Northern Lights

Listen to your favorite radio program

Listen to a concert

Listen to a message from a house of worship

THINK ABOUT IT PLEASE AND TAKE THE APPROPRIATE ACTION IF NOISE JET  
SKIES ARE ALLOWED IN THE KATCEMAK BAY CRITICAL HABITAT AREA.

My family and I have treasured the lack of noise around our Old Sterling cabin for almost 50  
years. It has provided us with inner peace and a deep respect for nature.

**TO:** Doug Vincent-Lang: Commissioner, Alaska Department Fish and Game doug.vincent-lang@alaska.gov

Rick Green: Alaska Department of Fish and Game rick.green@alaska.gov

Senator Gary Stevens senator.gary.stevens@akleg.gov

Representative Sarah Vance Rep.Sarah.Vance@akleg.gov

Representative Louise Stutes (south side of the Bay) Representative.Louise.Stutes@akleg.gov

Gov. Dunleavy's office <https://aws.state.ak.us/CrmForms/Home/Feedback>

**FROM:** Lynda Raymond

41640 Gladys Ct

Homer, AK 99603

**DATE:** 1-20-20

**RE:** My opposition to lifting the jet ski ban in Kachemak Bay

99% of Alaskan waters are open to jet ski use, Kachemak Bay does not have to be open also. As a fifty-year resident of Alaska and 20-year resident of the Homer area, I am speaking out as strongly and comprehensively as I can against 5AAC 95.301. My reasons to oppose lifting the ban on jet skis include: this is a critical habitat area; it would cause economic devastation to many sectors of our community and area; this is an issue of means, not access; and this is a totally flawed process.

### **CRITICAL HABITAT AREA**

Kachemak Bay is a critical area for hundreds of thousands of migrating shorebirds, waterfowl, and other birds. Our bay is critical as a stop-over area for them to feed and rest before continuing on their journey, and this occurs twice a year over periods of months. The noise and pollution caused by jet skis is significant, but they are also a major danger to wildlife because jet skis maneuver so fast. Wildlife can not get out of the way fast enough so they are hurt or killed. Fish are disturbed by loud noises and react by leaving the area, thus they cannot feed or reproduce normally.

### **ECONOMIC DEVISTATION**

Fish that are disturbed do not flourish nor are they available for fishermen. There are estimated 40,000 anglers in Kachemak Bay each year. If the fish are not available then our City and its businesses lose the charters, gas, food, lodging, and so on. There will no longer be good fishing in Kachemak Bay. The maricultural industry also loses due to the disturbed environment.

The "Quiet Businesses" lose also. Kachemak Bay will no longer be peaceful and quiet so businesses that provide kayaking, peaceful lodges, wilderness yurt experiences, hikes, quiet camping, enjoyment of our water trail, and other recreation will disappear. A huge loss economically to our City and its businesses.

In addition, property owners on both sides of Kachemak Bay will see their property values go down. A huge loss of revenue to the City and Borough, but more importantly a huge loss to many of our friends and neighbors here.

### **THE ISSUE IS MEANS NOT ACCESS**

Everyone already has access to Kachemak Bay! Everyone needs access to public roads in cities. Everyone HAS access to these public roads. Yes, but: You may not drive your 4-wheeler down that city road, nor your snow machine. Using jet skis in Kachemak Bay is not an issue of access, it is an issue of the means of access. Snow machines and 4-wheelers are not appropriate to be driven on city roads, but everyone has access to the city roads all the time using cars, bikes or walking, etc. Similarly, **everyone has access to Kachemak Bay now using kayaks, boats, ferries, etc.**

### **FLAWED PROCESS**

This process is ignoring the very real science involved: the evidence is overwhelming that jet skis should not be allowed in Kachemak Bay.

There is a Management Plan for Kachemak Bay. This is being usurped with the jet ski push. This issue should have been brought up in due time when the Management Plan is reviewed and updated. It was just lobbed in there, rushed through, with inadequate public input.

Apparently, there will not be rules for restricting use in some areas, or during some time periods—like when the shorebirds are here or whales, etc. In all other parts of the US there are rules when appropriate for breeding season restrictions, migration routes and times. This process is flawed because it does not allow for any enforcement funding or a close look at what restrictions might be needed.

There is no reason to lift this ban except to benefit the jet ski companies. This would come to the detriment of wildlife, with the destruction of Kachemak Bay as a quiet area for multifaceted recreation, and with huge economic losses to existing businesses and property owners. Done too fast with an extremely short comment period, and no one even knows what is going to be done with the comments we are sending in. We are to send them directly to Rich Green instead of the usual process. The correct procedure--when citizens write comments on bills or changes in policy at the City, Borough or State level--means their comments are received by the agency and made public, available for anyone to read. Comments should potentially be a part of what the final decision is, but in our case here we don't know if anyone will ever even see them. Will they just be filed in some dark basement filing cabinet or in the proverbial circular file? Seriously, what is being done with all our comments? There is no transparency at all.

In conclusion, there are many sound, scientific, economic, iron-clad reasons not to lift the ban on jet skis in Kachemak Bay. This should not be done. Jet skis can already be driven in 99% of Alaskan waters.

## Green, Rick E (DFG)

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**From:** George Gehlert <gehlertgeorge@gmail.com>  
**Sent:** Tuesday, January 21, 2020 3:48 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Fwd: Intent to lift the ban on Jetskis and other personal watercraft in the Kachemak Bay and Fox River Flats Critical Habitat Areas

I agree with Bret Haering. There should be a compromise that would protect both the peace of property owners, the clambers and the recreational pursuits of visitors and residents alike. I am a frequent visitor to Halibut Cove and Homer.

Sent from my iPhone

Begin forwarded message:

**From:** Bret Haering <haering@gci.net>  
**Date:** January 20, 2020 at 11:16:59 PM EST  
**To:** George Gehlert <gehlertgeorge@gmail.com>  
**Cc:** haering Bret <haering@gci.net>  
**Subject:** Fwd: Intent to lift the ban on Jetskis and other personal watercraft in the Kachemak Bay and Fox River Flats Critical Habitat Areas

George,

I just sent this following Email to Rick Green at Alaska Fish and Game. There has been an 18 year ban on the use of Jet skis and similar watercraft in Kachemak Bay (Homer, Halibut Cove, Etc.). This is why you never see them storming around off of our beach in Halibut cove and creating chaos. Operators of Jet skis are like dirt-bike operators in that it is all about doing tricks and jumps. Seldom are they used for point-to-point transportation. The engines are constantly changing RPM and are going to really mess with my new hearing-aids (if I ever get them). The Governor's office intends to fully lift this long-standing ban, and my Email to them outlines what I consider to be a fair compromise.

If you want to send an Email to Rick Green voicing your opinion as a repeat visitor to Halibut Cove, it would be nice. Naturally I have waited until the last minute as Comments via Email like mine have to be in Rick Green's Inbox by 5 Pm tomorrow (Jan 21st).

Thanks,  
Bret

Begin forwarded message:

**From:** Bret Haering <[bfhaering@netscape.net](mailto:bfhaering@netscape.net)>  
**Subject:** Intent to lift the ban on Jetskis and other personal watercraft in the Kachemak Bay and Fox River Flats Critical Habitat Areas  
**Date:** January 20, 2020 at 7:02:03 PM AKST  
**To:** [rick.green@alaska.gov](mailto:rick.green@alaska.gov)  
**Cc:** Bret F Haering <[haering@gci.net](mailto:haering@gci.net)>

Rick,

As a Kachemak Bay Property owner, I want to thank you and the Governor for the opportunity to Comment:

In the interest of fair play, I think that part of the Critical Habitat Area should be made available to operators of Jetskis/personal watercraft with certain allowances and restrictions:

For the sake of added safety, an area open to the use of these crafts should be near shore, and reasonably close to Homer Harbor with a narrow and direct access corridor between the two locations. The area of allowed use should not be within 2 miles of any Private Property, Established beach camping site, Popular use beaches, Set-net sites, or oyster/mussel aquaculture farming sites.

Thanks,  
Bret Haering  
Halibut Cove

## Green, Rick E (DFG)

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**From:** David Erikson <derikson@alaska.net>  
**Sent:** Monday, January 20, 2020 10:01 PM  
**To:** Green, Rick E (DFG)  
**Cc:** Vincent-Lang, Douglas S (DFG)  
**Subject:** Kachemak Jet Ski Ban

Mr. Green,

My name is Dave Erikson and I'm a retired Environmental Scientist and long-term resident of Homer and the Kachemak Bay Area. The purpose of this letter is to comment on ADF&G's proposed repeal of 5 AAC 95.310 that prohibits the use of personal watercraft (PWC) in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHAs). **I am strongly in support of the current ban** of PWC in these two important areas to wildlife.

The Alaska Legislature created the Fox River Flats Critical Habitat Area in 1972 and the Kachemak Bay Critical Habitat Area in 1974,

"to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose."

Access to Kachemak Bay and adjacent waters is both recreational and commercial. Recreational uses include a range of watercraft from kayaks, paddleboards, kite surfing boards, hovercraft, sailboats, motorize skiffs and a large assortment of recreational fishing and pleasure boats. All of these mode of access have not be found to be incompatible with the Critical Habitat Management plans for either Kachemak Bay and Fox River CHA.

My primary concern is the potential harassment of wildlife by the watercraft. Kachemak Bay is home to a great may seabirds and waterfowl, both summer and winter. If these high-speed and fast-turning PWC are allowed and used as designed and promoted, they will harass and potentially injure wildlife in the Kachemak Bay and Fox River CMAs.

Some of my major concerns include:

- **Waterfowl**

During spring fall migration, the Fox River Flats is one of the three major waterfowl staging areas for waterfowl in Lower Cook Inlet. Disturbance of these staging areas by high-speed PWC which can access the shallow waters of flats can result in harassment of these birds and interruption of critical feeding during these crucial times.

In summer, the open water of the bay, especially along the northern shoreline provides habitat for several species of molting sea ducks, which have a reduced ability to avoid high-speed PWCs due to the loss of flight feather during this time of year. Stress on

these birds from having to try and avoid these high-speed PWCs increases their energy expenditure and interferes with feeding. There is also a potential for physical injury if birds can't get out of their way in time.

- **Seabirds**

Common murrelets nest in a couple locations in the bay and during the late spring and early summer, these birds come into the bay and form large pre-breeding aggregations near their colonies. These aggregations are important to the breeding process and can be easily disturbed by fast-moving and quick-turning PWC. Typical recreational vessels are considerably slower and provide time for the birds to get out of the way without physical harm. Continual harassment can potentially impact breeding success of this species.

Kachemak Bay is one of few concentration areas for the Kittlitz's murrelet, a small diving seabird which nests in areas of heavy glaciations. These birds have a limited distribution and numbers from recent surveys indicate a declining population. They would be easily disturbed or run over by very fast-moving PWCs. This would be especially important around feeding areas on the south side of Kachemak Bay, off Glacier Spit, in Kachemak Bay State Park.

There are many areas in these CHAs that are very important to seabirds which are not individually listed here, but support our high diversity of avifauna.

- **Marine Mammal**

The northern sea otter is very abundant with the Kachemak bay. Recent surveys of sea otter in the bay estimate the population at approximately 6,000 animals. These slow-swimming sea otters are vulnerable to high-speed and fast-turning PWC in that when otters are approached, they escape by diving. If they are approached too quickly and can't get out of the way or dive quick enough, physical injury can result. Harassment of individuals or groups of otters can also result in increased energy expenditure and reduce survival.

**In conclusion**, these high-speed, fast-turning PWC have a very high potential to create an unacceptable level of disturbance for many species of wildlife and are incompatible with the purpose for which these CHAs were designated.

There are many of other watercraft that people can use to easily access the waters of Kachemak Bay and Fox River Critical Habitat Areas that do not create these issues for wildlife.

Thanks you.

Dave Erikson  
P.O. Box 15204  
Fritz Creek, AK 99603

Thomas Pease  
309 East Manor Avenue  
Anchorage, AK 99501  
[thomaspease@alaskan.net](mailto:thomaspease@alaskan.net)

January 20, 2020

Dear Mr. Green and ADFandG:

Thank you for the opportunity to comment on the administrative proposal to open Kachemak Bay to jet skis/personal watercraft. I am opposed to this proposal for the reasons outlined below.

These personal watercraft already have a marine venue in Prince William Sound, as well as on many of the largest lakes in Southcentral Alaska. Considering jet ski proponents claim that the jet ski user group is small, we hardly need to open up more water to them.

Continuing the ban in Kachemak Bay maintains a consistent approach to regulating motorized recreational vehicles applied to land-based ATVs, primarily four-wheelers and snowmachines. Currently, some public lands are open for motorized ATV use, while others are closed. Kachemak Bay is one of the marine areas that should remain closed to jet skis for public safety, ecological and aesthetic reasons. The nature of waverunners/jet skis makes them the equivalent of water borne snow machines, and they should be regulated in the same way. They are used primarily for speed, for jumping waves and for quick maneuvering. Again, maintaining a prohibition on jet skis in Kachemak Bay would be consistent with how ATV use is regulated on land.

Equally compelling is the potential disruption personal watercraft can have on fish and wildlife. Because these watercraft can navigate shallow water at high speed, they pose a risk to nesting birds. Particularly sensitive to intrusion is the oyster catcher, which nests out in the open on rocky shores, as well as mergansers, loons, and harlequinns, which raise their broods in nearshore marine environments. In somewhat deeper water, murrelets, which suffered a catastrophic die-off several years ago and still have not recovered, could be harmed further by jet skis' high speed and erratic movements.

Jet skis place salmon at risk as well. Numerous estuaries, sloughs and streams in Kachemak Bay serve as migratory routes and spawning grounds for salmon, all of which risk disruption by jet skis operating in shallow water where salmon are most concentrated.

Finally, jet skis in Kachemak Bay create a human safety issue. Because of their high speeds and erratic lines of travel, jet skis pose a risk to other user groups, including kayakers, floatplane pilots, charter boat captains, commercial fishermen and shipping traffic. Many of these risks will exist regardless of where the State allows jet skis to operate. But better to concentrate the small number of jet ski users in waters currently open than to expand those risks by opening up additional waters.

Thank you for considering my input.

Sincerely,

Thomas Pease

January 18, 2020

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

ATTN: Rick Green

Via email: [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

To whom it may concern:

I write to object to the Department of Fish and Game proposal to repeal regulation 5 AAC 95.310, which would remove the prohibition on the use of personal watercraft ("PWC") in the Kachemak Bay and Fox River Flats and Critical Habitat Areas ("KBFRFCHA"). I object on both process and substantive grounds.

I have lived, worked, and recreated in Alaska for over 45 years, and have visited Homer and Kachemak Bay many times. It is a place of stunning landscapes and seascapes, rich in terrestrial and marine life. My wife and I have particularly enjoyed the trip on the Danny J to Halibut Cove, closely passing Gull Island on the way.

My first thought when I heard of the proposed removal of the PWC ban was riders plowing through rafts of common murre near Gull Island and riders "surfing" or jumping the wake of the Danny J. That image is repugnant to me and is just a small part of the damage that unfettered PWC use would bring to the KBFRFCHA.

PWC are noisy, very maneuverable, can go in shallow water, and travel at high speeds. Their purpose is to play, not travel from one point to another. PWC users tend to gather in a small area, running in can-of-worms patterns and generally making a significant disturbance to marine and bird life in their various life stages, and can disrupt the ability of marine creatures to find food, mates or avoid predators. PWC use also detracts from the quality of the experience of other persons who recreate traditionally or are fishing in the area.

PWC are a menace to the natural world and to other visitors who enjoy and appreciate the natural world, and also to sport, commercial, and subsistence fishermen.

According to AS 16.20.500, the purpose of state Critical Habitat Areas (including KBFRFCHA) is *to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.*

Kachemak Bay and Fox River Flats were designated critical habitat areas for a reason, i.e., the biology of the natural habitat in those areas is extraordinary and critically important or, said another way, "especially crucial." The proposed repeal of 5 AAC 95.310 would open the entire

KBFRFCHA to unrestricted PWC use, an action that would clearly be inconsistent with the underlying purpose of KBFRFCHA. Repeal of the regulation would not conform to statute (AS 16.20.500 and likely others) and would therefore be illegal.

ADF&G's proposal is the outright repeal of 5 AAC 95.310 without putting anything in its place. An email from Tammy M Massey (DFG) on November 19, 2019 addressed to several DFG employees states the following: *"The governor's office has decided to repeal the PWC prohibition for Kachemak Bay and Fox River Flats CHAs (5 AAC 95.310 Personal watercraft use prohibited). This change will be conducted as a stand-alone regulation change pursuant to the Administrative Procedures Act, and will be done independently of the ongoing plan revision. The future draft of the KBFRFCHA management plan revision will not have a Personal Water Craft Policy...."*

ADF&G and the Governor have, by all accounts, attempting a steamroll job, first by making the decision to remove the PWC prohibition prior to initiation of any public process, and then by bypassing established management policy and planning procedures for KBFRFCHA and instead holding a separate (i.e., stand-alone) and abbreviated public process. Given the premature decision to repeal 5 AAC 95.310, this public process has the earmarks of a sham.

This repeal effort is all the more egregious because no attempt has been made to justify or rationalize lifting the ban on PWC use, and such contemplated action is not supported at all, much less by any reasoned logic or science. It is nothing more than a naked ideological/political decision.

The existing PWC prohibition, on the other hand, is supported by rigorous study over many years both within and in addition to the regular management planning process. The PWC prohibition is also grounded in sound science and in robust and meaningful public engagement.

The legitimacy, appropriateness and public support for the ban is also validated by a ADF&G Memorandum dated May 9, 2017, to David Rogers and Bruce Dale from Tammy Massie and Joe Meehan, entitled "Personal Watercraft Regulations, Kachemak Bay Critical Habitat Area," which states: *"... the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated."*

The memo goes on to state: *"there is no new information that would warrant rescinding the prohibition..."*.

The repeal has no legitimate basis. It is arbitrary and possibly capricious.

In closing, I have heard it argued, most recently in an op-ed in the Anchorage Daily News (January 14, 2020, *All Alaskans should have access to Kachemak Bay*, Chris Manthos of Virginia) complains from afar that the PWC prohibition prevents free access to public waters. That is a

clearly spurious argument. Don't be silly.... Mr. Manthos and anybody else, including PWC owners, have free access to Kachemak Bay and the Fox River Flats. They just can't bring their jetskis. You don't play a baseball game on a golf course. If you want to use the golf course you bring your clubs and leave your bat and glove at home.

In order to maintain the extraordinary natural resource values of Kachemak Bay and Fox River Flats and fulfill the statutory purpose of these critical habitat areas, there have to be rules. The prohibition of PWC use in KBFRFCHA is a legitimate and necessary regulation.

I ask that ADF&G abandon this ill-conceived and ill-advised attempt to overturn a perfectly sensible and necessary and rigorously established regulation, which is grounded in sound science and a meaningfully engaged public process. Please leave the ban in place.

Sincerely,

John Strassenburgh  
PO Box 766  
Talkeetna, AK 99676

## Green, Rick E (DFG)

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**From:** Kneeland Taylor <kneelandtaylor@ak.net>  
**Sent:** Monday, January 20, 2020 6:37 PM  
**To:** Green, Rick E (DFG)  
**Cc:** kneelandtaylor@ak.net  
**Subject:** JET SKIS IN KACHEMAK BAY

To: Rick Green  
Alaska Department of Fish and Game  
by email at: [rick.green@alaska.gov](mailto:rick.green@alaska.gov)

I strongly oppose jet skis in Kachemak Bay. They have the capacity to destroy the beauty of Kachemak Bay as well as causing the wildlife to vacate the Bay and move elsewhere. If jet skis are allowed, future generations of Alaskans and our visitors will look back at the current time as being a lost era of beauty and quiet, sacrificed for no good reason.

I cite Blackstone Bay as a good example of the loss that jet skis cause. This summer (2019) I took perhaps my 20<sup>th</sup> trip into Blackstone Bay (in 40 years) to kayak and enjoy the wildlife and beauty. I saw not a single otter, and only one seal, and one sea lion. No whales; and almost no waterfowl. That's in two days. This contrasts with dozens of otters, seals, and sea lions; and large numbers of waterfowl I have seen in past years.

I stopped counting when the 45<sup>th</sup> jet ski went by at 9:30 p.m., moving at high speed and making a racket. Several of the jet skis were doing big circles, around and around. Of course the otters, seals, sea lions and waterfowl have left Blackstone Bay. The jet skis are a threat, and they avoid Blackstone because of them .

Several years ago I attended a wedding on an island near the eastern tip of Long Island, N.Y. While sitting on a porch near the waterfront I noticed how beautiful and quiet it was, and asked "where are the jet skis?" The answer was that there was some sort of prohibition on allowing jet skis within 2 miles of shore. I asked "why" and the answer was that it would ruin the solitude and beauty.

I am an Alaskan and have lived most of my life here. I will retire here. I like it wild and beautiful, and filled with wildlife. I don't want it spoiled. Multiple use doesn't mean every use every place. The jet skis can go elsewhere. There is Big Lake, and other places where the wildlife has already been driven out and where the locals want the opportunity to race around on machines. Please keep them out of Kachemak Bay.

Very truly yours, Kneeland Taylor

425 G Street, Suite 610  
Anchorage, AK 99501  
907-276-6219

## Green, Rick E (DFG)

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**From:** Margi B <margib543@gmail.com>  
**Sent:** Monday, January 20, 2020 8:33 PM  
**To:** Green, Rick E (DFG); Representative.Sarah.Vance@akleg.gov; Gruening, Matthew S (LEG); rep.louise.stutes@akleg.gov  
**Subject:** Keep the personal water craft ban in Kachemak Bay

Dear Mr. Green and Alaska Legislators,

Please continue to protect our fish, wildlife and natural habitat from the impact of personal water-craft in Kachemak Bay. The task of our laws and our government is to protect natural resources from undue harm by the public. Laws protecting Kachemak Bay from the impact of motorized personal water craft (PWC) have been successful and well-received since implemented quite some time ago. There is no need to change the law now. In fact, it is very important that you do not change the PWC ban in Kachemak Bay.

Kachemak Bay is an immensely valuable asset to our state and to our way of life. Kachemak Bay is an area where residents and visitors are easily able to view seabirds, shorebirds, otters, seals, sea lions and harbor porpoise. In Kachemak Bay, we can drift along through a group of otters without the otters diving and dispersing. In Kachemak Bay, humans can observe harbor porpoise, orca, and humpback whales in calm bays and fjords and witness the grandeur of our planet and the wealth of our healthy habitats. Visitors come from around the globe to do just this. Fortunately for both the wildlife and humans like us, Kachemak Bay has been protected from undue motorized disturbances with the PWC ban. We have cursory understanding of the effect of disturbance on wildlife stress levels, but we do understand that disturbed wildlife is more skittish wildlife, less common wildlife, and less successful wildlife. It is our duty, as the primary disturbers of natural habitat, to protect some areas from our disturbance, and Kachemak Bay is one of them. There is no need to change the PWC laws in Kachemak Bay. There are plenty of other areas open to PWC around Alaska. There are few areas protected from PWC disturbance. Let's continue to offer that protection for Kachemak Bay. Let's continue to allow Kachemak Bay to be a haven for wildlife and a place that attracts wildlife observers from around the world.

There is evidence that PWCs are disruptive to marine wildlife of which I am sure you have access. I will add to that evidence my own observations. I am a regular viewer of wildlife. As I sit on Glacier Spit beach, jutting out into Kachemak Bay, a wide variety of seabirds and shorebirds are both close to shore and far out on the bay. The otters and other marine mammals fish regularly along the beach as we camp. There is nothing better than sitting on the beach with my morning coffee watching the wildlife catch their breakfasts. Otters and seabirds seem comfortable with the sometimes common boat traffic of the area. They seem to not be disturbed with the water taxis dropping off the day-hikers or the fishing boats trolling along. However, if a boat starts erratic movements, things change - the wildlife takes off. They dive or take flight. They run along the water, eager to get out the way, in every direction centered around the erratic vessel. Healthy wildlife activities change to escaping. It's pandemonium and it takes a long time to get back to the birds bobbing along looking for food, the otters eating their catches and the shorebirds moving up and down with the waves. Unfortunately, the ability of PWCs to move erratically on the water is the attraction for many PWC users to this type of vessel. And, unfortunately, these erratic movements are the most disturbing to wildlife. If you do not believe my observations, please fund a study to determine the impact of erratic movements and actions of wildlife disturbance. It is very important that we be very aware of the problems before choosing to change well established laws that would open up Kachemak Bay to regular PWC use.

I heard that some wanted to remove the PWC ban to allow access to all. Kachemak Bay is already accessible to all. Anyone can visit Kachemak Bay. Homer offers wonderful access in its public beaches and camping right on Kachemak Bay on Homer Spit. Anyone that can afford a boat trip can get wonderful wildlife viewing at quite reasonable prices, or hire a water taxi to be taken wherever you like in Kachemak Bay. Renting of kayaks and paddleboards is easy and common on Homer Spit and anyone with their own human powered vessel is welcome anywhere in Kachemak Bay. Kachemak Bay has equal access. All Alaskans do not own PWCs. We do not need to

alter our laws to open up areas to PWCs. That is not a reasonable interpretation of access for all. In fact, opening up Kachemak Bay to PWCs would make Kachemak Bay less accessible to people with human powered vessels such as kayaks and paddleboards since the presence of jetskis and PWCs often makes kayaking and paddleboarding uncomfortable and even dangerous. The presence of PWCs or Jetskis in areas like Halibut Cove Lagoon or Chinapoot Bay, or at campsites like Seastar Cabin or Rusty's Lagoon, would completely change the quality of the wilderness experience many come to Kachemak Bay to savor. There is no need to take away such easily accessible wildlife opportunities to satisfy a want of a few owners of PWCs.

I want to end this letter. I wonder if anyone will even read it. It would be great to hear from you to know if my comments have any impact. You must be frustrated to have to read another letter addressing the topic. I too am frustrated by having to write this letter. I do not understand why this issue is coming up now and why we all have to put so much time into this. The law has been reviewed by the ADF&G and found to be reasonable, meaningful, and important. With all due respect, why can a small group of vocal jetskiers be able to make us all have to defend a law that is lawful, supported by science, and supported by the community. This is not a reasonable use of government time and efforts or of my time and efforts. Please put this issue to rest by dropping leaving the Kachemak Bay PWC ban in place. There is plenty of space for jetskis in Alaska. There are some places that need our protection. Please make sure that our state protects some of our resources for many years to come. Kachemak Bay is worthy of protection from personal water craft use.

Thank you,

Margi Blanding

40585 Dorothy Drive

Homer, Alaska 99603

## Green, Rick E (DFG)

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**From:** Erik Pullman <epullman@kbaytech.com>  
**Sent:** Monday, January 20, 2020 7:34 PM  
**To:** Green, Rick E (DFG); Sarah.Vance@akleg.gov; Gruening, Matthew S (LEG); rep.louise.stutes@akleg.gov  
**Subject:** PWC in Kachemak Bay Critical Habitat Area

I am writing to support retaining the ban of PWC in the Kachemak Bay critical habitat area. Briefly, my objection to overturning this ban is based on three issues:

1. The typical pattern of use of PWC (high speed, repeated passes within a small area) is highly disruptive to wildlife like marine mammals and seabirds
2. Millions of dollars of tourism business in Homer is based on local operators being able to provide fishing, wildlife viewing and wilderness experiences to visitors that cannot be had anywhere else. Typical use patterns of PWC will be in direct conflict with this economic engine.
3. The research reserve was established based on solid science and a recognition of the unique biological value of this area. Recent environmental changes have resulted in large mortality events in common murrelets and sea otters. Adding yet another environmental pressure to this area will only degrade the very resources that many of our residents depend on.

Research on the interactions of vessels - and particularly personal watercraft - on marine mammals is only beginning to provide useful information (see [https://urldefense.com/v3/\\_\\_https://doi.org/10.1002/jwmg.21462\\_\\_;!!J2\\_8gdp6gZQ!7rixLgdfJn8HVPYEFXMM1jQgBnuj2yp3o\\_co5S3MJeohHXHlda60QIEP4h8Ymblw0fw\\$](https://urldefense.com/v3/__https://doi.org/10.1002/jwmg.21462__;!!J2_8gdp6gZQ!7rixLgdfJn8HVPYEFXMM1jQgBnuj2yp3o_co5S3MJeohHXHlda60QIEP4h8Ymblw0fw$) for on such study). What is clear is that boat traffic disrupts animal behavior and PWC use patterns can be the most disruptive form of boat traffic.

The primary issue with personal watercraft is the mode of usage.

Riders will typically transit a small area multiple times or for an extended period of time and that will disrupt wildlife use in that area. Many people come to Homer to watch wildlife from our beaches, troll for salmon off the end of the spit, and enjoy kayaking in protected waters in the bay. All of these tourism streams are going to be threatened by even a small number of personal watercraft plying the waters around the bay.

Fishing charters and wildlife tourism (i.e. The Seabird Festival) depend on maintaining the "wild" character of Kachemak Bay. There are many places to take a fishing charter - many of them less expensive and easier to travel to. However, there is an unquantifiable character to Kachemak Bay allows our tour operators to provide a high quality (and high value) experience to visitors. It is hard to envision how a PWC operator visiting for the weekend and spending a Saturday jumping wakes off the end of the Spit is going to contribute to our local economy. It is easy to imagine how that person could ruin a lot of people's day - from guest at Land's End, to the skipper's of the dozen boats trolling for salmon just offshore of Coal Point.

Prior to the recent Streptococcal endocarditis infections, the leading cause of mortality in sea otters has been boat strikes. Personal watercraft move faster and in a more unpredictable fashion than other boats on the bay, and may represent an additional risk or source of mortality for this species. In addition, the Common Murrelets have experienced a number of large mortality events in the past 5 years due to warm water off the northern Pacific coast. Add to this, their nesting success within rookeries in Kachemak Bay has been dismal during the last decade. This is a species that is already under critical pressures in our local area, and PWC traffic is not going to help its survival.

With thousands of miles of coastline in Alaska already open for PWC use, it seems hard to understand why we would risk the long-term preservation of this area that is a biologically and economically productive resource for our State.

Thank you for your consideration and service, Erik Pullman  
4135 Hohe St  
Homer, AK 99603

## Green, Rick E (DFG)

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**From:** M Smith <mwsadc@gmail.com>  
**Sent:** Monday, January 20, 2020 4:35 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments OPPOSING repeal of 5 AAC 95.310

Sir,

I have twice opposed the use of Personal Watercraft (PWC/jetskis); in 2001, and in 2011 in written comments, as I do now. My family resides in Homer, and own property and a cabin on the south side of the bay, near Bear Cove, for 25 years.

**Essentially, use of PWC's is incompatible with the values the Critical Habitat Area in Kachemak Bay was established to protect.**

The May 2017 memo from ADFG staff to ADFG leadership, encapsulated the core of the issue, when it stated, “... *the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.*”

PWC's are distinctly different from the type of watercraft now in the CHA presently. They have rapid acceleration, tight turning radius, and are able to accelerate through shallow water and near shorelines. These factors would result in increased disturbance to shorebirds, waterfowl, and marine mammals. The CHA hosts large congregations of birds and mammals. It also hosts a number of commercial and recreational boat users. None of these existing uses is capable of the maneuvers made possible by an irresponsible PWC user.

Some have compared use of a 16-foot skiff to a PWC. This is absurd. I have used a PWC on Nancy Lake, and much enjoyed that experience. I also used a 16-foot skiff on the lake, and now use that same skiff in Kasitsna Bay. While a PWC can behave like the skiff, I know the skiff doesn't have the capabilities of the PWC – fast acceleration, rapid turns, etc.

Much of the Homer economy revolves around tourism. Many visitors come specifically to see marine mammals, which are very sensitive to artificial, amplified sound.

### **There is Existing Access**

Improving access is a stated rationale for allowing PWCs in a CHA, is simply incorrect.

There is ample existing access. There are numerous launch sites and access points to the waters of the CHA. Removing the ban would merely allow an additional mode of access – and a mode which is clearly incompatible with the values protected by a CHA designation. Indeed, introducing this new form of transportation could create significant conflicts with existing valid uses. Potential conflicts could include interfere with tourism (bird and whale watching), recreational fishing (trolling and jigging), commercial fishing (set nets and seines), and kayakers (noise, wake, disruption). PWC users could unlawfully access Kachemak Bay State Park lands and waters, and disrupt users of the park.

### **The Decision Making Process**

Homer radio station KBBI has reported on how the decision to overturn the ban would be made:

*And although Green says that numbers are not the deciding factor, he ended the conversation by encouraging an up or down vote.*

*"And if you're going to make comments and we certainly encourage everyone to, you just need to tell us whether you're in favor of it or opposed to it. And if you want to tell us why that's fine, but it's pretty much a toggle yes or no, I think," Green said.*

The Alaska Department of Fish and Game must make a science-based decision in determining if PWC use is compatible with the purposes of the Kachemak Bay CHA. This is too important a decision to be made by 'votes' registered through the public comment process.

Thank you for your consideration of my comments.

Matt Smith

59595 East End Road

Homer, AK 99603

## Green, Rick E (DFG)

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**From:** Kyle Rudzinski <[krudzinski22@gmail.com](mailto:krudzinski22@gmail.com)>  
**Sent:** Monday, January 20, 2020 5:31 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Fwd: Keep Jet Skis Out of Kachemak Bay!

Dear Rick,

I had the wrong email address for you initially, so I wanted to forward along my note to you below reaffirming my support to MAINTAIN THE JET SKI BAN. I also received a quick response from Senator Stevens who seems to agree (see below).

Thanks for your consideration.

Kyle

----- Forwarded message -----

**From:** Sen. Gary Stevens <[Sen.Gary.Stevens@akleg.gov](mailto:Sen.Gary.Stevens@akleg.gov)>  
**Date:** Mon, Jan 20, 2020 at 1:36 PM  
**Subject:** RE: Keep Jet Skis Out of Kachemak Bay!  
**To:** Kyle Rudzinski <[krudzinski22@gmail.com](mailto:krudzinski22@gmail.com)>

Thanks Kyle. I certainly see no reason to change the rules. I am concerned that Green already has his mind made up. I hope the Commissioner will do the right thing.

Gary

**From:** Kyle Rudzinski <[krudzinski22@gmail.com](mailto:krudzinski22@gmail.com)>  
**Sent:** Monday, January 20, 2020 11:55 AM  
**To:** [rick.green@alaska.org](mailto:rick.green@alaska.org)  
**Cc:** Rep. Louise Stutes <[Rep.Louise.Stutes@akleg.gov](mailto:Rep.Louise.Stutes@akleg.gov)>; Rep. Sarah Vance <[Rep.Sarah.Vance@akleg.gov](mailto:Rep.Sarah.Vance@akleg.gov)>; Sen. Gary Stevens <[Sen.Gary.Stevens@akleg.gov](mailto:Sen.Gary.Stevens@akleg.gov)>  
**Subject:** Keep Jet Skis Out of Kachemak Bay!

Dear Rick,

I spent two weeks volunteering in Little Tutka Bay next to Kachemak Bay State Park. My wife spent 3 weeks volunteering.

It was the pristine wilderness, peace, and quiet along with the abundant sea life that brought us to Alaska. It's those same qualities which will bring us to return to Alaska in the future.

We currently understand that there's consideration to lift a Jet Ski ban that's been in place for years in the area.

**WE FULLY SUPPORT THE JET SKI BAN.** It's a rare occasion when we ask officials to simply do nothing, but in this case, the best course of action is no action.

To protect the area from not only additional pollution, noise, and all around disturbances to both people and rare, protected wildlife, we would like to voice our support to keep jet skis out of Kachemak Bay.

Thank you for your consideration and we hope you do the right thing.

Warmly,

Kyle Rudzinski

To: Rick Green, Special Assistant to the Commissioner of Fish and Game

I am opposed to repealing the ban on personal watercraft (PWC) in Kachemak Bay and Fox River Flats critical habitat areas for all of the reasons discussed below.

I am an Alaskan and a retired wildlife biologist with over two decades of experience in refuge planning and management. In fact I helped draft the management plan and enforceable policies for the Kachemak Bay and Fox River Flats critical habitat areas in 1992-93. I was not involved in the planning efforts that led to the 2001 decision to ban personal watercraft in the two critical habitat areas. However, I fully supported that effort.

I own a four-wheeler and I have used a four-wheeler to haul large game animals out of the field for over 25 years. I am not opposed to the use of jet skis in general. However, they should not be operated in areas where their environmental impacts are likely to be significant or when their use interferes with other, more traditional human uses of the bay. Jet skis are "thrill craft," and, as important as recreation is to our well being, a recreational user group should not adversely impact resources or equipment necessary for others' livelihood or survival.

These principles are, obviously, even more important in an area designated by the Alaska Legislature as a critical habitat area. Alaska Statute 16.20.500 defines the purpose of the Kachemak Bay and Fox River Flats critical habitat areas as follows: "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose."

The two critical habitat areas were not established by "greenies," nor by bureaucrats, but by the Alaska Legislature. The Legislature creates critical habitat areas because the public demands it. The Legislature delegated management authority to the Alaska Department of Fish and Game. Fish and Game biologists, in coordination with a large, interagency planning team comprised of representatives from state, federal and local agencies – including local governments such as Homer, Seldovia, and the Kenai Peninsula Borough – developed the enforceable policies of the management plans.

Jet skis were not on the radar in 1993. They were not mentioned in the resource inventory, nor were any policies written for PWCs. PWC use grew nationwide and by the late 1990s some PWCs were operating in Kachemak Bay, with a few more PWCs leaving Homer's harbor every summer, according to the Anchorage Daily News (3 July 1999). The behavior of those few jet skiers, and concerns over their growing popularity in other states, resulted in a local coalition that asked the governor to ban PWCs in Kachemak Bay Critical Habitat Area in 1999.

Fish and Game began gathering information and held its first public meeting on the issue in 1999. The Alaska Division of Parks and Outdoor Recreation temporarily banned PWCs from Kachemak Bay State Park in 2000, pending the final decision of Fish and Game on whether PWC use was compatible with the statutory purpose for establishing the critical habitat area (ADN, 27 July 2000). Kachemak Bay State Park is located along the south shore of the bay and comprised only about 15% of the critical habitat area (ADN, 5 April 2001).

In response to the controversy over jet skis in Kachemak Bay, the Personal Watercraft Club of Alaska was formed in 2000. Between 1999 and 2001 the state held three public meetings, two formal public hearings, and received comments from 1,850 individuals and organizations. In the end the state garnered “overwhelming support” for its decision, with 70% of public testimony in support of a total ban on jet ski use within the critical habitat area (ADN, 5 April 2001). The Kachemak Bay Critical Habitat Area regulations were updated in 2001 to include a ban on PWCs.

PWCs were essentially unknown in 1972 and 1974 when the two critical habitat areas were created and in 1992 and 1993, at least in Alaska, when the management plan was written. PWCs were still a relatively new phenomenon in Alaska in 2001 when the ban went into effect. Very little research had been conducted on their environmental and other impacts. Those who expressed concerns over the impacts of PWCs on critical habitat resources and other users relied primarily on a much more extensive body of research on the effects of motorized vessels on fish, wildlife and people. Even 20 years ago, the unique characteristics of jet skis and their users were believed likely to exacerbate the impacts of other motorized vessels. Thus, a good reason for precaution.

Since 2000 a number of studies have been conducted that demonstrate the adverse impacts of PWCs on wildlife and other aquatic resources. Initially, many of the studies focused on pollutants because the 2-stroke engines and jet units used by PWCs were among the worst at discharging oil, fuel and other pollutants. With the development of the 4-stroke engine these concerns have largely faded, except in a cumulative sense. However, the other unique characteristics of PWCs (e.g., shallow draft, high speed, maneuverability, higher pitched noise) and PWC operators (e.g., propensity to operate at high speeds, in an unpredictable manner, near the shore and the resulting variations in loudness and pitch and “whomping” sounds as the hull hits the water) are still of great concern because they have been shown to adversely affect wildlife.

The attached citations (Appendix A) are just a sample of the myriad ways in which jet skis affect waterfowl, shorebirds, seabirds, seals, sea lions, dolphins and other marine wildlife. Although I am not aware of any research that has measured impacts of jet skis on whales or sea otters I am reasonably certain that PWCs will have greater impacts than other vessels already operating in Kachemak Bay.

It is worth noting that I have uncovered no scientific studies that document less impacts from PWCs than other watercraft.

Speaking not as a biologist, but as a resident of Alaska who has fished, clammed, camped and beachcombed in Kachemak Bay on many occasions, I believe a relatively small number of jet skiers would have a disproportionate impact on others using the bay. Kachemak Bay is used by hundreds of thousands of people who fish, watch birds, kayak, and enjoy the relatively quiet beaches and scenery.

According to the Anchorage Daily News (30 December 2019), the Personal Watercraft Club of Alaska has asked the governor to undo the jet ski ban because jet skiers deserve equal access. Equal access is a poor excuse. Everyone already has equal access to Kachemak Bay. But certain equipment and activities are restricted or banned for good reasons. If I owned a snagging hook, that doesn't mean I should be able to fish with it anywhere I want. I own three chainsaws. They are very useful tools. But, as

Mike Doogan pointed out in one of his columns during the last jet ski controversy, if I walked into the Anchorage Performing Arts Center and tried to fire up my chainsaw during a concert, I'd be asked to leave (ADN, 21 December 1999).

The jet ski ban should remain in effect.

Rick Sinnott  
Certified Wildlife Biologist (The Wildlife Society)  
Chugiak, Alaska  
20 January 2020

#### **Appendix A: A sampling of scientific articles and reports on the effects of PWCs on wildlife.**

Asplund, T.R. 2000. The effects of motorized watercraft on aquatic ecosystems. Wisconsin Department of Natural Resources, Bureau of Integrated Science Services and University of Wisconsin-Madison, Water Chemistry Program. PUBL-SS948-00. 21 pp. [http://www.trpa.org/wp-content/uploads/2010-WI-Dept-of-Natural-Resources\\_UW-Boats-effects-on-ecosystems.pdf](http://www.trpa.org/wp-content/uploads/2010-WI-Dept-of-Natural-Resources_UW-Boats-effects-on-ecosystems.pdf)

PWCs have many of the same impacts on the environment and other user groups as other boats; however, their different propulsion systems and use characteristics exacerbate some impacts. Although noise levels measured in decibels are not too different from outboards, PWCs tend to have more variable sound levels and a higher pitch. Frequent changes in pitch tend to make noise more noticeable and disturbing. PWCs may also be more disturbing to wildlife due to their ability to access areas typically avoided or restricted to other types of watercraft.

Beachler, M.M., and D.F. Hill. 2003. Stirring up trouble? Resuspension of bottom sediments by recreational watercraft. *Journal of Lake and Reservoir Management* 19:15-25. <https://www.tandfonline.com/doi/abs/10.1080/07438140309353985>

Resuspension of bottom sediments is strongly influenced by boat size and water depth. High boat speeds have no greater impact on bottom sediments than boats traveling at idle speeds. The greatest impact is seen when both propeller and jet-equipped boats travel at "near-plane" speeds.

Beal, D.M. 2011. Factors contributing to conflicts and user satisfaction at Lake Gaston: Examining conflict between personal watercraft users and anglers. M.S. thesis. East Carolina University, Greenville, North Carolina. <https://pdfs.semanticscholar.org/4a28/9f035d0594b33fa56555f696c5cae04a3798.pdf?ga=2.86154842.311983657.1579400500-732149984.1579400500>

Anglers, particularly anglers in boats, are much more disturbed by people operating PWCs than vice versa. Anglers with no experience with PWCs were less tolerant. On the other hand, PWC operators who had fishing experience were no less tolerant of anglers.

Burger, J. 2003. Personal watercraft and boats: Coastal conflicts with common terns. *Lake and Reservoir Management* 19:26-34.

<https://www.tandfonline.com/doi/abs/10.1080/07438140309353986>

Terns were much more easily and often disturbed by PWCs than by other motorboats, and the disturbance reduced reproduction. Public meetings and an educational campaign reduced the behavior that caused the disturbance; however, when that effort was suspended, the PWCs began to cause disturbances again. A combination of education, public meetings, increased signage, enforcement, and designated zones for PWCs resulted in the greatest increase in tern reproductive success.

Burger, J., J. Sanchez, M. McMahon, J. Leonard, C.G. Lord, R. Ramos, and M. Gochfeld. 1999. Resources and estuarine health: Perceptions of elected officials and recreational fishers. *Journal of Toxicology and Environmental Health A* 58:245-260.

<https://www.ncbi.nlm.nih.gov/pubmed/10591491>

Elected officials were more concerned about environmental issues than local anglers. The researchers believed this may have been due to officials hearing from the more vocal and concerned members of the public. Both officials and anglers, however, rated PWCs as the most severe problem in the New Jersey bay, followed by chemical pollution, junk, overfishing, street runoff, and boat oil. Small boats, sailboats, wind surfers and foraging birds were not considered environmental problems by either elected officials or anglers.

Erbe, C. 2013. Underwater noise of small personal watercraft (jet skis). *Journal of the Acoustical Society of America* 133(4).

[https://espace.curtin.edu.au/bitstream/handle/20.500.11937/32549/199394\\_108275\\_erb\\_e\\_underwater\\_noise\\_jet\\_skis\\_2013.pdf?sequence=2](https://espace.curtin.edu.au/bitstream/handle/20.500.11937/32549/199394_108275_erb_e_underwater_noise_jet_skis_2013.pdf?sequence=2)

Even though PWCs are quieter underwater than other motorboats, the sound pressure level might not be a good indicator of the bioacoustic impact on marine animals. PWCs have unique operational characteristics (e.g., continually leaving and re-entering the water, persistent changes in speed which affects noise level and pitch, repetitive smacking of the hull against the water, and tendency to circle in one spot for long periods) that make their noise more annoying to people and animals than that of other motorized vessels.

Estes, B. 2001. Federal lands: Agencies need to assess the impact of personal watercraft and snowmobile use. Pp. 176-180 in Harmon, D., ed. *Crossing Boundaries in Park Management: Proceedings of the 11<sup>th</sup> Conference on Research and Resource Management in Parks and on Public Lands*. <http://www.georgewright.org/29estes.pdf>

As of about 2000, each of the four major federal land management agencies (National Park Service, Forest Service, Bureau of Land Management, Fish and Wildlife Service) had continued to allow PWCs in many of their units with little or no information on the effects, if any, these vehicles were having on resources and other user groups. The author recommended conducting studies and, if necessary, restrictions.

Gorzelany, J.F. 2004. Evaluation of boater compliance with manatee speed zones along the Gulf Coast of Florida. *Coastal Management* 32:215-226.  
[http://seaturtle.org/library/GorzelanyJF\\_2004\\_CoastManage.pdf](http://seaturtle.org/library/GorzelanyJF_2004_CoastManage.pdf)

In a Florida study of boater compliance with regulations intended to protect manatees from collisions, a total of 26,000 vessels were observed and evaluated. Overall boater compliance was about 60%; however, compliance varied considerably with vessel type and size. Operators of PWCs were the least likely to comply with boating regulations, and the most likely to be blatantly noncompliant. Jet ski operators were blatantly noncompliant nearly twice as often as operators of other small motorboats and fishing vessels.

Gorzelany, J.F. 2009. Recreational Boating Activity In Miami-Dade County. Mote Technical Report No. 1357. Mote Marine Laboratory, Miami, Florida.  
<https://www.miamidade.gov/environment/library/memos/mote-boating-study.pdf>

Among a variety of vessel types, PWCs had the lowest levels of compliance and highest levels of blatant non-compliance. High levels of non-compliance among PWC operators have been noted in numerous boating studies (refer to Morris, 1994, Gorzelany, 1996, 1998, 2000, 2003, 2006, Tyson, 1999, and Shapiro, 2001 in the article).

Kochinski, S. 2008. Possible impact of personal watercraft (PWC) on harbor porpoises (*Phocoena phocoena*) and harbor seals (*Phoca vitulina*). 15<sup>th</sup> ASCOBANS Advisory Committee Meeting, UN Campus, Bonn, Germany, 31 March-3 April 2008. 12 pp.  
[https://www.ascobans.org/sites/default/files/document/AC15\\_45\\_JetskipaperGSM\\_1.pdf](https://www.ascobans.org/sites/default/files/document/AC15_45_JetskipaperGSM_1.pdf)

Compared to other types of boats, PWCs dramatically influence the behavior of bottlenose dolphins. Dolphins changed dive patterns (with animals spending more time underwater), decreased interanimal distance, and increased swimming speed and changes of direction away from the craft. All of these avoidance behaviors are energetically expensive. Frequently dolphins even abandoned the study area as a reaction to increased power boat traffic. The erratic movements of PWCs, which are unpredictable for the animals, intensified observed escape reactions. Dolphin escape behavior is especially pronounced in shallow water because the animals cannot escape downwards but only horizontally. The "shallow water effect," wherein underwater sound is reflected and more difficult to pinpoint, increased overall risk of collision.

Komanoff, C., and H. Shaw. 2000. Drowning in noise: Noise costs of jet skis in America. A report for the Noise Pollution Clearinghouse, Montpelier, Vermont.  
<https://www.nonoise.org/library/drowning/drowning.htm>

People don't like noise and will pay to avoid it. PWCs impose noise on other recreational users and property owners. The authors discuss the notable differences in noise created by jet skis and the costs to beachgoers and property owners. The only practicable solution to mitigating the costs of PWCs on other users is banning them from some locations. In addition, at the time of publication, PWCs were involved in over half of serious watercraft collisions in the U.S. while only comprising about 10% of registered watercraft; i.e., jet skis were involved in collisions at a dozen times the rate of other vessels.

Lathrop, R.G., J. Bognar, E. Buenaventura, M. Ciappi, E. Green, and T.J. Belton. 2017. Establishment of marine protected areas to reduce watercraft impacts in Barnegat Bay, New Jersey. *Journal of Coast Research*, Special Issue No. 78, pp. 277-286. <https://www.jcronline.org/doi/pdf/10.2112/SI78-019.1>

Like propeller-driven boats, jet skis can damage ocean bottoms in shallow areas, and the effects can be seen years later.

Mattson, M.C., J.A. Thomas, and D. St. Aubin. 2005. Effects of boat activity on the behavior of bottlenose dolphins (*Tursiops truncatus*) in waters surrounding Hilton Head Island, South Carolina. *Aquatic Mammals* 31:33-140. <http://orcaelief.org/docs/Neg%20effect%20boats%20T.t.%20in%20SC.pdf>

PWCs had the most dramatic effect on dolphin groups, with 56% of groups changing their behavior and 11% changing both their behavior and direction. These boat-related impacts on dolphins are energetically expensive and considered “harassment” under the federal Marine Mammal Protection Act.

McConchie, J., and I.E.J. Toleman. 2003. Boat wakes as a cause of riverbank erosion: A case study from the Waikato River, New Zealand. *Journal of Hydrology: New Zealand* 42:163-179. [https://www.researchgate.net/publication/289690697\\_Boat\\_wakes\\_as\\_a\\_cause\\_of\\_river\\_bank\\_erosion\\_A\\_case\\_study\\_from\\_the\\_Waikato\\_River\\_New\\_Zealand](https://www.researchgate.net/publication/289690697_Boat_wakes_as_a_cause_of_river_bank_erosion_A_case_study_from_the_Waikato_River_New_Zealand)

The minimum wakes of boats were considerably larger (2-80 times) than wind-generated waves in the river. During the experiment, jet skis produced smaller, lower energy waves and sediment concentrations than other jet boats and propeller-driven boats when driven sedately in a straight line; however, this is not a common practice for PWC operators.

Miller, L.J., M. Solangi, and S.A. Kuczaj. 2008. Immediate response of Atlantic bottlenose dolphins to high-speed personal watercraft in the Mississippi Sound. *Marine Mammals* 88:1139-1143. <https://www.cambridge.org/core/journals/journal-of-the-marine-biological-association-of-the-united-kingdom/article/immediate-response-of-atlantic-bottlenose-dolphins-to-highspeed-personal-watercraft-in-the-mississippi-sound/B001F8A22A8255B560EF0E901003B918>

The passing of a PWC significantly increased dolphin dive duration, dolphin group cohesion and dolphin breathing synchrony. Additionally, in 47% of the encounters a dolphin group’s behavior changed within one minute of the presence of a high-speed PWC. Most notable changes were an increase in dolphin movement behavior and a decrease in feeding behavior following the boat’s presence. An increase in the frequency of high-speed PWCs in an area could produce long-term detrimental effects.

Nowacek, S.M., R.S. Wells, and A.R. Solow. 2001. Short-term effects of boat traffic on bottlenose dolphins, *Tursiops truncatus*, in Sarasota Bay, Florida. *Marine Mammal Science* 17:673-688. [https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/dolphinmart/pdfs/ds\\_nowacek.pdf](https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/dolphinmart/pdfs/ds_nowacek.pdf)

Dolphins stayed underwater longer, decreased distance to other dolphins, changed heading and increased swimming speed significantly more in response to an approaching vessel. Energetically expensive avoidance behavior was even more pronounced in shallow water. Erratic approaches by boats, like those often observed by PWCs, caused far more avoidance behavior than either slow or fast approaches.

Rodgers, J.A., Jr., and S.T. Schwikert. 2002. Buffer-zone distances to protect foraging and loafing waterbirds from disturbance by person watercraft and outboard-powered boats. *Conservation Biology* 16:216-224. <http://obpa-nc.org/DOI-AdminRecord/0053052-0053060.pdf>

Twenty-three species of waterbirds in Florida were exposed to the rapid approach of a PWC and an outboard-powered boat. Both vessels were aimed directly at the birds and approached at the same speeds (approximately 22-25 mph). Most of the species aren't found in Alaska, however, the findings are instructive. Unfortunately, due to high levels of variation between individuals within species and low sample sizes, seven species could not be compared statistically. Eleven species showed no significant difference in flushing distance in response to the PWC or outboard (of these only the double-crested cormorant is found in Alaska). Four species, including one found in Alaska (osprey), flushed farther from the outboard than the PWC. Only one of the species (great blue heron, found in Alaska) flushed at a greater distance from the PWC. Therefore, of the species tested that occur in Alaska, one was more disturbed by the PWC, one more by the outboard, and one was equally disturbed by both types of vessel. However, this research also highlights the cumulative effects of PWC disturbance added to the effects of outboards. The speeds tested were relatively fast for most powerboats but slow for jet skis. The researchers noted that PWCs are more likely than outboards to be operated at fast speeds in shallow and nearshore waters, and that faster speeds resulted in greater flushing distances for some species and individuals.

Szanişzlo, W.R. 1999. California sea lion (*Zalophus californianus*) and Steller sea lion (*Eumetopias jubatus*) interactions with vessels in Pacific Rim National Park Reserve: Implications for marine mammal viewing management. M.S. thesis. University of Victoria, British Columbia, Canada. 105 pp.  
[https://pdfs.semanticscholar.org/d151/f5f49a08e541f58cd7f11389b7318c07c136.pdf?\\_ga=2.123327689.311983657.1579400500-732149984.1579400500](https://pdfs.semanticscholar.org/d151/f5f49a08e541f58cd7f11389b7318c07c136.pdf?_ga=2.123327689.311983657.1579400500-732149984.1579400500)

PWCs were compared to other vessels. During all PWC approaches, sea lions exhibited extreme disturbance responses, including being flushed and stampeding from haulouts. Sudden changes in sound volume or pitch also triggered disturbance responses. Harbor seals became alert and were disturbed at greater distances than sea lions.

Thurstan, R.H., J.P. Hawkins, L. Neves, and C.M. Roberts. 2012. Are marine reserves and non- consumptive activities compatible? A global analysis of marine reserve regulations. *Marine Policy* 36:1096-1104.  
<http://marinepalaeoecology.org/wp-content/uploads/2011/09/Thurstan-Marine-Policy.pdf>

Jet skiing had the highest potential for impact compared with 15 other recreational and scientific activities (i.e., motor boating, water skiing, scuba diving, snorkeling, catch and release fishing, wildlife observation, kayaking, sailing, kite surfing, wind

surfing, swimming, mooring, anchoring, or scientific research) in 91 marine reserves in 36 countries. Each activity included an analysis of high (generally where the activity was unrestricted or where good practices were generally disregarded) and low impact conditions. High impact jet skiing topped the list; however, even low-impact jet skiing poses a greater risk to marine reserves than several high-impact activities (i.e., sailing, mooring, kite surfing, wind surfing, kayaking, surfing and swimming).

Wang, C.P., and C.P. Dawson. 2001. A comparison of recreation conflict factors for different water-based recreation activities. Pp. 121-130 *in* Kyle, G., ed. Proceedings of the 2000 Northeastern Recreation Research Symposium. General Technical Report NE-276. U.S. Department of Agriculture, Forest Service, Northeastern Research Station, Newtown Square, Pennsylvania.

[https://www.nrs.fs.fed.us/pubs/gtr/gtr\\_ne276/gtr\\_ne276\\_121.pdf](https://www.nrs.fs.fed.us/pubs/gtr/gtr_ne276/gtr_ne276_121.pdf)

Using questionnaires, researchers compared responses of landowners, motorboat owners and PWC owners in five categories: nature enjoyment; relaxation, rest and get away; social interaction; excitement and exercise; and skill and equipment. Some respondents belonged to all three groups. However, comparing respondents who identified with only a single group, landowners valued nature enjoyment considerably more than motorboat and jet ski owners, with jet ski owners the least appreciative. Jet ski owners also ranked lowest in the relaxation and rest and get away categories. All three groups ranked their preference for social interaction about the same. Jet skiers ranked excitement and exercise highest, with landowners second and motor boaters expressing the least appreciation in that category. Jet skiers and motor boaters appreciated their skill and equipment much more highly than landowners. Responses to multiple other questions revealed conflicts between the user groups, in which landowners (who may or may not have owned motorboats or jet skis) were interfered with by both PWC and motorboat operators, motor boaters were affected by PWC operators but not landowners, and PWC operators were not affected by either motor boaters or landowners.

## Green, Rick E (DFG)

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**From:** Bill <curveman@mtaonline.net>  
**Sent:** Monday, January 20, 2020 2:24 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay jetski activities

Dear Mr. Green,

Personal watercraft (jetski's) as defined by statute are not boats and are intended to be driven in a highly aggressive manner. They are not even boat-like in their platform to safely operate in high winds and seas where swells can often reach 5'-8' or greater with short sets, especially by riders with average skills. Kachemak Bay is regularly a dangerous and unpredictable water body from wind and wave action. Hypothermia from immersion in 55-60 degree water (or far colder usually), in the standard wet suit will begin within minutes of a dunking in Kachemak Bay. And, in heavy seas and wind you put at risk anyone/ vessel attempting to rescue a troubled jetskier, which is an Alaska state requirement regarding the law of the sea. These highly likely conditions alone from human safety standpoint, should be enough to disallow this use request.

Kachemak Bay already has enough human induced problems from ranging from unsafe and over-utilized clamming areas, harbor and municipal pollution, seasonal industrial shipping and other commercial uses, as well as many others. The Bay was set aside as the Kachemak Bay and Fox River Flats Critical Habitat Area. By Alaska Administrative Code, the purpose of the Kachemak Bay & Fox River Flats Critical Habitat Areas is to "protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." Alaska Statutes 16.20.500.

There is a record of consideration and study of the use of personal watercrafts (including jetski's) over the years and the question has been soundly defeated by public input in local communities many times. As a tourist destination, if you've ever been to the spit in Homer you'd know, visitors DO NOT want the noisy interference and possibly dangerous activities associated with jetski's. They have come to take in the ambience of the Alaska's diverse cultures, incredible vistas, and fish and wildlife of this famous destination. Please, do not infringe on the principle livelihoods of the local merchants, citizens of Homer either. Private or commercial skiers and entrepreneurs should not be able to bring such an incompatible use to a critical habitat area.

<https://parkplanning.nps.gov/document.cfm?parkID=384&projectID=40970&documentID=96560>

- ADF&G staff have repeatedly over the years, specifically recommended against this allowance on Kachemak Bay. What science are you using to defend your statement that "we don't see personal watercraft as being any more damaging to fish and wildlife perpetuation than a 16-foot (boat)". (quote – Rick Green; Homer News, by Megan Pacer
- Friday, December 6, 2019). You are not practicing the required sound habitat management considerations by excluding public input and attempting change of law through administrative repeal mechanisms. If you insist on considering a repeal of the ban, then provide the science to support your proposal.

Please do not repeal the ban on Jetski's within the Kachemak Bay and Fox River Flats Critical Habitat Area.

Sincerely,

William W Wood  
Wasilla, AK 99654



## Green, Rick E (DFG)

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**From:** Gareth Chesley <gareth.chesley@gmail.com>  
**Sent:** Monday, January 20, 2020 2:43 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Jetski Public Comment

I am writing to express my opposition to removing the Kachemak Bay jetski/personal watercraft ban. I am a full time Homer resident and I own and operate a commercial water taxi service on Kachemak Bay. My support of the ban on personal watercraft is driven by several points:

A) As noted by the Cook Inlet Keeper "The science clearly shows Jetskis and PWC's are NOT compatible with the purpose of the Kachemak Bay & Fox River Flats Critical Habitat to protect fish and wildlife, including a recent [2019 National Park Service EIS](#), a [detailed 2017 literature review by ADF&G](#), and in the [opinion of ADF&G's own staff experts](#). "

B) As a commercial tour operator I believe that personal watercraft will have a negative impact on wildlife in the bay. We value the pristine Kachemak Bay environment and work very hard not to harass wildlife because it is important to the future of Homer's tourism business.

Kachemak Bay is unique in a state where personal water craft can be legally operated in almost any area. In the face of the environmental and fiscal impacts of repealing the ban, the minimal upsides do not seem to be worth the cost.

Thank you for your consideration.

Gareth Chesley

Rick Green, ADF&G,  
333 Raspberry Rd.  
Anchorage, AK 99518  
January 20, 2020

Re: Proposed lift of ban of **jetskis** in **Kachemak Bay**.

Dear Mr. Green,

We write to you today with grave concerns about the proposed lift of the ban on jet skis from the Kachemak Bay Critical Habitat Area. It appears to us that Governor Dunleavy is once again using his office to inappropriately bypass the science that has been proven by multiple agencies over several years, the latest just a mere 2 years ago, that jet skis would not be a good idea for this area. We therefore submit the following objections to lifting this ban;

First, the design and use of jetskis typically is that of a thrill seeker. Their maneuverability and high speeds make them very different from skiffs and boats. Boats go from point A to point B, where jetskis tend to stay in small, shallow areas, jumping wakes and circling. I know this first hand as we reside on Sports Lake, and we see the jetski enthusiast throughout the summer. Not only do they harass our local nesting ducks and loons, the units are often very loud and always unpleasant to listen to. The noise alone may disrupt nesting birds.

The ADFG staff has conducted an exhaustive review of the scientific literature that surround jetskis risks and impacts, and it concluded again in 2017 the ban on personal watercraft in Kachemak Bay Critical Habitat Area is appropriate and fully supported by science.

Mr. Dunleavy is ignoring the fact the state has spent considerable time over the past 3 years revising the management plan, and he is ignoring the opinions of his expert staff who believe the ban should remain in place. The Governor is listening to a small group of special interests who has access to his office, and not to the thousands of Alaskans who have spoken out to retain the natural values of Kachemak Bay. Additionally, Governor Dunleavy is now ignoring our democratic process, and favor of those special interests.

We respectfully request you leave the jetski ban in place for the Kachemak Bay Critical Habitat Area.

Sincerely,

Rebecca Hutchinson  
William Hutchinson  
36970 Hakala Rd  
Soldotna, AK  
99669

Cc: Governor Dunleavy Office

## Green, Rick E (DFG)

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**From:** Molly & Dave Brann <homerbrann@gmail.com>  
**Sent:** Monday, January 20, 2020 2:20 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Re: Personal Watercraft ban

I have copied it to the body of my email.

Thanks,  
Dave Brann

Dave Brann  
P.O. Box 1901  
Homer, Alaska 99603

January 18, 2020

Dear Sir,

As a 40 year resident of Homer I am very concerned about the proposal to allow jet skis in Kachemak Bay. Reading through the Critical Habitat Management Plan and reviewing the well thought goals and criteria for managing the Critical Habitat Area, I don't understand how the proposal could even be made. With all the agencies and groups that weighed in on the establishment of the Critical Habitat Area, I would hope they have all been consulted and asked for their opinions.

The main argument in favor of making changes to the Critical Habitat Plan and allowing use of PWC as I understand it is that a group of users, the Personal Watercraft folks, are not allowed to access to Kachemak Bay. It should be remembered, noted and pointed out that not all vehicles are allowed in all places. It should also be noted that a motorcycle is not the same as a bicycle and restrictions apply to their access, a race car is not the same as a passenger vehicle and restrictions apply to their access, that a wheelchair doesn't provide the same access as a pair of hiking boots, that a drone taking photographs are not allowed everywhere. There are many examples of water bodies where non-motorized craft are the only ones allowed.

With these few examples, I feel it is obvious that there are places where Personal Water Craft should not be allowed and Kachemak Bay Critical Habitat, Kachemak Bay is one of them. It is reported that Cook Inlet and Prince William Sound, both ample in size and beauty, are open to Personal Water Craft. Those places provide plenty of areas to fish, sightsee, jump wakes and have a really good time.

I strongly oppose allowing the use of Jet Skis, Personal Water Craft in any portion of Kachemak Bay defined by the line between Anchor Point and Point Pogibshi.

Sincerely,  
Dave Brann

On Jan 20, 2020, at 11:08 AM, Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)> wrote:

Mr. Brann,

Thank you for weighing in on this public comment period.

Your attachment isn't opening. Is there another way you can submit it? (word document, PDF, cut and paste directly into email?)

Thank you,

Rick

-----Original Message-----

From: Molly & Dave Brann <[homerbrann@gmail.com](mailto:homerbrann@gmail.com)>  
Sent: Saturday, January 18, 2020 4:49 PM

To: Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)>

Cc: [Representative.Sarah.Vance@akleg.gov](mailto:Representative.Sarah.Vance@akleg.gov); Stutes, Louise B (LEG)

<[representative.louise.stutes@akleg.gov](mailto:representative.louise.stutes@akleg.gov)>; Stevens, Gary L (LEG) <[senator.gary.stevens@akleg.gov](mailto:senator.gary.stevens@akleg.gov)>

Subject: Personal Watercraft ban

Thanks for your serious consideration of this issue.

Dave Brann

## Green, Rick E (DFG)

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**From:** Scott Mcewen <scottmcewen907@gmail.com>  
**Sent:** Monday, January 20, 2020 8:22 AM  
**To:** Green, Rick E (DFG); Vincent-Lang, Douglas S (DFG); Vance, Sarah (LEG); Stevens, Gary L (LEG); Stutes, Louise B (LEG)  
**Subject:** Comment on repealing the current ban of Jetskis operating within the Kachemak Bay Critical Habitat Area

I am against the proposed regulatory change allowing Jetskis to operate in the Kachemak Bay Critical Habitat Area. My supporting comments are as follows:

**Impacts to Wildlife-** I am a boat owner residing in Homer who operates approximately 80 days per year. I typically cruise at 18 knots (approximately 20 mph). It is a given that on each trip, I will have to turn quickly or lower my speed to prevent wildlife collisions. Most of the wildlife I am avoiding are seabirds with the most common being Common Murres, Pigeon Guillemots, Sooty Shearwaters and numerous species of gulls. The other common species I continually watch out for are sea otters. I regularly encounter them in small groups or rafts of 25 or greater. Operating at 20 mph allows me to quickly slow down or turn to avoid colliding with them. I often see females with pups and know that newborn pups are so buoyant that they cannot dive. I believe that a JetSki cruising at 35-45 mph or a higher speed significantly increases the risk of wildlife collisions.

**Safety issues-** I have safety issues with Jetskis operating at higher speeds. My primary concerns are collisions with kayaks and other small watercraft. Common weather conditions that affect visibility while operating my boat include blinding sunlight on the water, rain and fog, and rougher seas. All of these conditions would be present for Jetskis and their higher operating speeds in those conditions would increase the risk of collisions. I also often encounter large amounts of debris in the bay particularly following extreme tides. It is very difficult for me to avoid the debris while operating at normal speeds. I often collide with small amounts of debris and regularly observe larger pieces of wood and logs. If I was to hit a log, there is no doubt that I would damage my boat. I believe a Jetskis colliding with a log would be a much more severe incident to the operator.

**Commercial fishing operations-** The blinding sunny conditions on the bay often present during a commercial fish opening increases the risks of boats running over the drift nets of commercial fishing boats. These nets are very difficult to see while operating a boat in those conditions. The higher operating speeds of Jetskis increases the risk of running over the nets causing damage not only to the net but also the operator of the Jetskis.

Thank you for the opportunity to comment.

Scott McEwen  
Homer, Alaska

## Green, Rick E (DFG)

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**From:** Carol Meares <carolmeares@icloud.com>  
**Sent:** Sunday, January 19, 2020 9:35 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments opposing repeal of 5 AAC 95.310

Dear Mr. Green,

I am a resident of Homer and Peterson Bay. I strongly oppose the repeal of 5 AAC 95.310. The use, noise and habits of these vehicles is highly incompatible with the birds and wildlife in the Critical Habitat Area of Kachemak Bay. The wildlife and organisms in this Critical Habitat area are already experiencing stressors. The use of personal watercraft (PWC) will further stress the habitat and its inhabitants to an unknown level fully impacting the present nature of Kachemak Bay in a harmful way. The following letter lays out how I feel about the proposal. You are on the verge of destroying the peaceful nature of Kachemak Bay and Kachemak Bay State Park to the many people who enjoy the trails and ridges across the Bay. The PWC is incompatible with the only State of Alaska Wilderness Area. Imagine hiking Grace Ridge and hearing the noise of PWC while climbing to the top. Not acceptable. Imagine kayaking and birding and having PWC come zooming in across your path with wakes and noise. Unacceptable. Imagine paddle boarders having to deal with PWC and the speed of acceleration, turns and wakes. These are just a few of the types of conflicts that these PWC will inflict. These vehicles are not compatible with the types of activities that presently occur in KB with the speeds, wakes, noise and quick turns as well as the potential damage to sensitive shorelines. I have seen these conflicts and impacts of these PWCs when I lived in the Florida Keys. This proposal is unacceptable. Considering the nature of the Kachemak Bay CHA, I emphasize the designation of Critical Habitat. This area needs to be treated as such. I expect to be informed in a timely manner of all actions, meetings, deadlines for commentary and information concerning this proposal to Ccmeares@gmail.com

Thank you for the opportunity to speak to this proposal here.

Sincerely,  
Carol Meares  
3459 Main St. Unit 2  
Homer AK  
99603

The following letter from Karen Wuestenfeld also expresses my concerns not listed above.

I strongly oppose repeal of 5 AAC 95.310, which prohibits use of Personal Watercraft (PWC) within the Kachemak Bay Critical Habitat Area (CHA).

I am a Homer resident, and a long-time owner of shoreline property in Kasitsna Bay. I am very familiar with Kachemak Bay and its uses and sensitivities. My objections are outlined below:

**Use of PWCs is incompatible with the values the Critical Habitat Area was established to protect.**

PWC's are distinctly different from the type of watercraft now using the CHA. They have rapid acceleration, tight turning radius, and are able to accelerate through shallow water and near shorelines. Their use would introduce a new sound signature to the marine environment. These factors would result in increased disturbance to shorebirds, waterfowl, and marine mammals. Kasitsna Bay hosts large congregations of birds and mammals. It also hosts a number of

commercial and recreational boat users. None of these existing uses is capable of the maneuvers made possible by an irresponsible PWC user.

Mr. Green likened using a 16-foot skiff to a PWC. This is absurd. I have used a PWC on Nancy Lake, and much enjoyed that experience. I also used a 16-foot skiff on the lake, and now use that same skiff in Kasitsna Bay. While a PWC can behave like the skiff, I know the skiff doesn't have the capabilities of the PWC – fast acceleration, rapid turns, etc.

### **There is Existing Access**

Improving access is a stated rationale for allowing PWCs in a CHA, but it is a flawed rationale.

There is ample existing access. There are numerous launch sites and access points to the waters of the CHA. Removing the ban would merely allow an additional mode of access – and a mode which is clearly incompatible with the values protected by a CHA designation. Indeed, introducing this new form of transportation could create significant conflicts with existing valid uses. Potential conflicts could include interfere with recreational fishing (trolling and jigging), commercial fishing (set nets and seines), and kayakers (noise, wake, disruption). PWC users could unlawfully access Kachemak Bay State Park lands and waters, and disrupt users of the park.

### **The Decision Making Process**

During a December 9, 2019 interview on Homer radio station KBBI, I heard Mr. Green make self-contradictory statements regarding how the decision to overturn the ban would be made. From the KBBI website:

*And although Green says that numbers are not the deciding factor, he ended the conversation by encouraging an up or down vote.*

*"And if you're going to make comments and we certainly encourage everyone to, you just need to tell us whether you're in favor of it or opposed to it. And if you want to tell us why that's fine, but it's pretty much a toggle yes or no, I think," Green said.*

The Alaska Department of Fish and Game must make a science-based decision in determining if PWC use is compatible with the purposes of the Kachemak Bay CHA. This is too important a decision to be made by 'votes' registered through the public comment process.

Thank you for your consideration of my comments.

Karen Wuestenfeld

[P.O. Box 2150](mailto:Karen.Wuestenfeld@alaska.gov)  
[Homer, AK 99603](mailto:Karen.Wuestenfeld@alaska.gov)

Ron Somerville  
8126 Keegan St., Unit A  
Juneau, Ak 99801  
907-780-4812

December 30, 2019

Commissioner Doug Vincent-Lang  
ADF&G

Dear Doug:

I am submitting these comments relative to the issue of personal watercraft use in Kachemak Bay.

We have millions and millions of acres of lands and waters set aside prohibiting or limiting use by Alaskans. We are also seeing more and more actions being taken to limit access by Alaskans throughout the state (i.e. the Amber road project). It seems to me that our goal statewide should be to apply the least restrictive regulations possible within the bounds of good conservation principals. I just cannot buy this, "go somewhere else to exercise your rights to access public lands, resources and waters."

It seems to me that there is a win/win situation here in Kachemak Bay. It is the principal of applying time and area zoning fairly and prudently. By initially allowing some access by personal watercraft to the bay on a few days per week or blocks of days throughout the summer and establishing a few rules or good behavior suggestions for the personal watercraft users, some concrete impact assessments can be made.

Kachemak Bay is fairly large and can easily be segmented into parcels for use or protection. Use of GPS devices make area segmentation much easier today than it was 20 years ago. Some access provisions can be applied in even or alternate years if necessary as well.

This situation is fairly similar to the proposed closure of the Chugach State Park to hunting right after the park was created. After extensive discussions we were able to establish some time and area zoning principals by pushing most hunting to the day after labor day but allowing most hunting and trapping to continue in the park. Those agreements are still in affect to this day. Thus, saving significant accessible hunting and trapping available to the major metropolitan area of the state.

Unless you are applying the insane principals of the National Park Service, it is truly negligent to continue the closure of large areas of accessible land and waters throughout the state to satisfy a segment of the public that never uses the lands or waters or wants it only for their personal enjoyment at the expense of everyone else.

I definitely support the opening of Katchemak Bay to access by personal watercraft under some stipulations for use provided by the state. I also encourage the dialogue with the potential watercraft users to establish time and area principals satisfactory to them as an initial trial effort.

If I can be of any assistance in providing alternative time and area zoning options for the Department, please give me a call.

I am sending this in an e-mail without an actual signature.

Thanks you for considering these comments.

Sincerely,

Ron Somerville

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Monday, January 20, 2020 7:02 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Fwd: Continue the BAN on Jet-skis and PWC in Kachemak Bay!

For the files

Doug Vincent-Lang  
Commissioner, Alaska Dept. Fish and Game  
(907) 744-8881

Begin forwarded message:

**From:** Kate Finn <hundredthmonk21@gmail.com>  
**Date:** January 19, 2020 at 8:33:50 PM AKST  
**To:** "Vincent-Lang, Douglas S (DFG)" <doug.vincent-lang@alaska.gov>  
**Subject:** **Continue the BAN on Jet-skis and PWC in Kachemak Bay!**

Dear Commissioner Vincent-Lang,

Please let me enumerate my concerns about dropping the ban on Jet-skis and PWC in Kachemak Bay:

**1-The law is clear:** the purpose of the Kachemak Bay & Fox River Flats Critical Habitat Areas is to “protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.” Alaska Statutes 16.20.500 ).

**2-The process for making a rule change was NOT followed.** This rule change should have been considered as part of the ongoing revision process for the Management Plans of Kachemak Bay and Fox River Flats Critical Habitat Areas.

**3-It seems that 99% of Alaskan waters are available to Jetskis and PWC.** Please let’s preserve Kachemak Bay, the one and only remaining sanctuary in Alaska where the waters have been set aside, where people and animals can find a quiet and peaceful refuge!!

Marketing research has clearly established that *QUIET* is the most sought after quality for people, and Kachemak Bay is recognized by international, national and state agencies/organizations as a rare area of unusual bio-diversity and pristine natural habitat. That is because it is a Critical Habitat Area, a National Estuarine Research Reserve, and a National Park and Wilderness area.

Kachemak Bay is also an internationally designated a critical migration site on the Western Hemisphere Shorebird Reserve Network. Because of our fabulous annual springtime Shorebird Festival, tourists are being drawn here for nearly a month before our regular summer season of fishing begins—a huge boost to the local businesses, and the awareness of the importance of birds!

**4-There are great adventure sports for people to participate in on and around Kachemak Bay, there is no need add this high speed dangerous sport risking both people and the wildlife of the water, earth and the air!!**

5-This high speed, high risk sport could open up a major "can of worms" for the City of Homer regarding regulation, enforcement and Liability issues. As a citizen, i resent these extra financial burdens likely imposed by the use of PWC on/in the Bay.

**From an economic as well as scientific and ethical perspective, Kachemak Bay must remain protected from PWC thrill craft use! Jet ski users have 99% of Alaskan waters available to them.**

**PLEASE PRESERVE KACHEMAK BAY'S CRITICAL HABITAT  
by keeping Jet-skis and PWC out !!!**

**Thank You,  
Kate Finn  
POBox 3364  
Homer AK 99603  
907-235-5329**

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Monday, January 20, 2020 7:00 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Fwd: Uphold personal watercraft ban

For the files

Doug Vincent-Lang  
Commissioner, Alaska Dept. Fish and Game  
(907) 744-8881

Begin forwarded message:

**From:** Nicole Szarzi <njszarzi@gmail.com>  
**Date:** January 19, 2020 at 11:09:43 PM AKST  
**To:** "Vincent-Lang, Douglas S (DFG)" <doug.vincent-lang@alaska.gov>  
**Subject:** Uphold personal watercraft ban

I can't believe I'm having to write this letter to you. I oppose opening Kachemak Bay to personal watercraft. I was on the committee of agency representatives that participated in the review of regulations for the Kachemak Bay/ Fox River Flats Critical Habitat Areas Management Plan in 2001. I'm sickened by the ignorance about the Kachemak Bay and Fox River Flats Critical Habitat Areas that the proposed repeal of the personal watercraft closure demonstrates. Your own biologists in charge of CHA's oppose the repeal!

Now more than ever, with climate change, habitat loss and pollution stressing hundreds of species of fish, birds and mammals that stop over or are summer residents of Kachemak Bay, adding an additional stressor, personal watercraft, is unjustified and counter to the purposes of the Critical Habitat Areas.

Kachemak Bay is the stopover of numerous bird species that migrate to nest in the Arctic where climate warming is uncoupling migratory timing from food and nesting locations. Those species are found along the shoreline of Mud Bay in the spring. Personal watercraft, can travel quickly, close to shore, disturbing feeding shorebirds causing the shorebirds to expend precious energy needed for their life activities.

Mud Bay is also the home of summer resident shorebirds who are feeding and mating here before returning thousands of miles south to winter. Personal watercraft playing in the protected waters along the Spit will be an ongoing disturbance and energy draw on our summer resident shorebirds.

The Common Murre die-off in 2015 from lack of food accessibility due warming ocean temperatures has reduced murre numbers all along the West Coast including Kachemak Bay. We have a few rookeries in Kachemak Bay where nesting birds can be observed. These rookeries are also accessible from the Homer Spit in most weather and would be another target of personal watercraft users for play.

Sea otters are thought to be nearing carrying capacity in Kachemak Bay meaning they are reaching the limits of their food resources. They have high energy needs and are having to expend more energy searching for food. Even more than in the past, they can't afford to waste energy in avoiding watercraft. Rafts of more than 500 otters can be seen just offshore from the Spit where personal watercraft would most likely cavort.

Record numbers of dead otters are being found in Kachemak Bay with Strep Syndrome, a bacterial infection. Sick otters are more vulnerable to stressors such as harassment by watercraft.

Unusually frequent sightings of large numbers of humpback whales throughout the summer have been reported anecdotally in Kachemak Bay since 2014. New evidence that whales in Kachemak Bay are undernourished means they are more vulnerable to harassment.

If a personal watercraft should make it up to the head of Kachemak Bay to the Fox River Flats, then they are in a location where thousands of seals feed and haulout. They are also in the waters where juvenile fish are rearing. A personal watercraft tearing up the Fox River and its tributaries has the potential to wash juvenile fish, including salmon out of the shallow waters and strand them.

The argument is made that if boats are allowed on Kachemak Bay why not personal watercraft? I have worked and recreated on Kachemak Bay for almost 40 years. I have observed that boats on Kachemak Bay are destination and work-oriented; boaters don't play on the Bay. They are going fishing, carrying passengers or freight, going to work or sightseeing. They travel in predictable trajectories that make it easier for birds and animals to avoid them. Personal watercraft can change direction quickly and at high speed and that is what people do on them.

Kachemak Bay is a willful body of water, with winds that come on quickly and roughen the water before you can prepare. The conditions on the Bay are more likely hazardous than calm and smaller vessels such as personal watercraft would frequently be confined to the very places where vulnerable wildlife abounds, near the Homer Spit.

The Kachemak Bay and Fox River Flats Critical Habitat areas are what their names state: critical habitats. The issue is not about fairness of the kinds of uses that can go on, it's about protecting important wildlife habitat. Allowing personal watercraft would erode those protections. Don't allow personal watercraft in these CHA's.

Sincerely,  
Nicky Szarzi

## Green, Rick E (DFG)

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**From:** Marilyn Sigman <marilyn.sigman@gmail.com>  
**Sent:** Sunday, January 19, 2020 7:20 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet skis in Kachemak Bay

Thank you for this opportunity to comment on what appears to be a decision that has already been made by the Governor. This is a serious challenge to the State of Alaska's constitutional provisions related to natural resource management and the responsibilities of the legislature and ADF&G with respect to designation and management of special areas that include use restrictions for beneficial uses and public purposes.

1. This is not an issue of equal access to a public water body or to a state park. "Equal access" and concerns about discrimination against individuals is a matter of federal civil rights under any program receiving federal financial assistance. Although ADF&G does receive for fish and wildlife management, the State of Alaska's right to manage its fish and wildlife and public lands and waters under the public trust doctrine is overriding. While the State Constitution provides for the utilization, development, and conservation of natural resources belonging to the State, including land and waters, for the maximum benefit of its people; it also requires that fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses. Free access to the navigable or public waters of the State can be regulated and limited when such access for other beneficial uses or public purposes. The designation of the Kachemak Bay Critical Habitat Area by the legislature and its subsequent management plan developed by ADF&G and adopted into regulation recognizes that some uses are not compatible with the public purpose for which the CHA was designated. The sustained yield principle also recognizes beneficial uses and is specific to fish and wildlife harvests, not to recreational or commercial uses of state lands or waters. A prohibition on impairing access to state park lands doesn't apply to jet skis, which are neither "traditional recreational uses" or specifically allowed by legislative action.

Repealing the ban and opening the door to unregulated uses of jet skis in Kachemak Bay has to be weighed as compatible or incompatible with the reasons and thus, preferred uses, for which a State CHA and a State Park was established in Kachemak Bay. This review, including extensive literature reviews on the impact of jet skis on fish and wildlife by ADF&G, has already occurred in a public process with the result that the use was banned as incompatible. To overturn it now would be a political decision that ignores sound, science-based management envisioned in the state Constitution.

2. In addition, the harassment of fish and wildlife in the CHA will be more stressful than could have been envisioned when the CHA was established. From an ecosystem management perspective during this time of global change in climate patterns, ADF&G should address the challenge of meeting its responsibility to manage harvests and uses of CHAs for sustained yield. Warming waters are adding additional stress to the salmon and shellfish food webs through an increase in the frequency of toxic algal blooms. Salmon runs in Kachemak Bay are fluctuating in unpredictable ways despite significant investments in enhancement that have resulted in huge annual returns and thus, high mortality, before egg takes can occur and hypoxic conditions in shallow enclosed areas within Kachemak Bay. A recent review of the effect of the warming ocean waters' "heat wave" that occurred in 2015-2016 concluded that the persistent high water temperatures caused the massive die-off of seabirds throughout the Pacific Ocean with the highest number of mortalities happening in the area where recovery from the *Exxon Valdez* oil spill is still taking place. Sea otter mortalities are high in Kachemak Bay, with the #1 cause related to stress and the #2 cause related to boat strikes.

3. Unregulated ski use will displace compatible uses of the CHA and the shoreline and trails in Kachemak Bay State Park. (Jetski noise will be heard for some distance into the Park) I'm a kayaker and hiker who appreciates quiet recreation as do many visitors to Homer. Local tourist businesses transport people to the state park and provide guided wildlife tours on the Bay, which is an important part of the economic base that will be displaced if jet ski noise and

congestion occurs on a daily basis throughout the Bay during the summer. This will also reduce permit fees to the State from commercial uses of the Park.

When I suggested on social media that some people, like myself, require quiet time in nature for their sanity, I was told to “get my liberal but (sic?) back to California” and to leave Homer to the people who are being deprived of their right to jet ski in the Bay. This is, unfortunately, the quality of debate on this issue which I sincerely hope is not a foregone conclusion.

For the record, I have lived in Alaska for 45 years, twelve of them in Homer, and I was a Habitat Biologist involved with state special area management for ten years.

Sincerely,

Marilyn Sigman

Mailing Address: PO Box 1757, Homer, AK 99603

Physical/Voter residence: 4611 Kachemak Way, Homer, AK 99603

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"Here is your country. Cherish these natural wonders, cherish the natural resources, cherish the history and romance as a sacred heritage, for your children and your children's children. Do not let selfish men or greedy interests skin your country of its beauty, its riches or its romance." - Teddy Roosevelt

## Green, Rick E (DFG)

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**From:** Nicole Szarzi <njszarzi@gmail.com>  
**Sent:** Sunday, January 19, 2020 11:11 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Keep ban on personal watercraft in place

I oppose opening Kachemak Bay to personal watercraft. I was on the committee of agency representatives that participated in the review of regulations for the Kachemak Bay/ Fox River Flats Critical Habitat Areas Management Plan in 2001. I'm sickened by the ignorance about the Kachemak Bay and Fox River Flats Critical Habitat Areas that the proposed repeal of the personal watercraft closure demonstrates. Your own biologists in charge of CHA's oppose the repeal!

Now more than ever, with climate change, habitat loss and pollution stressing hundreds of species of fish, birds and mammals that stop over or are summer residents of Kachemak Bay, adding an additional stressor, personal watercraft, is unjustified and counter to the purposes of the Critical Habitat Areas.

Kachemak Bay is the stopover of numerous bird species that migrate to nest in the Arctic where climate warming is uncoupling migratory timing from food and nesting locations. Those species are found along the shoreline of Mud Bay in the spring. Personal watercraft, can travel quickly, close to shore, disturbing feeding shorebirds causing the shorebirds to expend precious energy needed for their life activities.

Mud Bay is also the home of summer resident shorebirds who are feeding and mating here before returning thousands of miles south to winter. Personal watercraft playing in the protected waters along the Spit will be an ongoing disturbance and energy draw on our summer resident shorebirds.

The Common Murre die-off in 2015 from lack of food accessibility due warming ocean temperatures has reduced murre numbers all along the West Coast including Kachemak Bay. We have a few rookeries in Kachemak Bay where nesting birds can be observed. These rookeries are also accessible from the Homer Spit in most weather and would be another target of personal watercraft users for play.

Sea otters are thought to be nearing carrying capacity in Kachemak Bay meaning they are reaching the limits of their food resources. They have high energy needs and are having to expend more energy searching for food. Even more than in the past, they can't afford to waste energy in avoiding watercraft. Rafts of more than 500 otters can be seen just offshore from the Spit where personal watercraft would most likely cavort.

Record numbers of dead otters are being found in Kachemak Bay with Strep Syndrome, a bacterial infection. Sick otters are more vulnerable to stressors such as harassment by watercraft.

Unusually frequent sightings of large numbers of humpback whales throughout the summer have been reported anecdotally in Kachemak Bay since 2014. New evidence that whales in Kachemak Bay are undernourished means they are more vulnerable to harassment.

If a personal watercraft should make it up to the head of Kachemak Bay to the Fox River Flats, then they are in a location where thousands of seals feed and haulout. They are also in the waters where juvenile fish are rearing. A personal watercraft tearing up the Fox River and it's tributaries has the potential to wash juvenile fish, including salmon out of the shallow waters and strand them.

The argument is made that if boats are allowed on Kachemak Bay why not personal watercraft? I have worked and recreated on Kachemak Bay for almost 40 years. I have observed that boats on Kachemak Bay are destination and work-oriented; boaters don't play on the Bay. They are going fishing, carrying passengers or freight, going to work or sightseeing. They travel in predictable trajectories that make it easier for birds and animals to avoid them. Personal watercraft can change direction quickly and at high speed and that is what people do on them.

Kachemak Bay is a willful body of water, with winds that come on quickly and roughen the water before you can prepare. The conditions on the Bay are more likely hazardous than calm and smaller vessels such as personal watercraft would frequently be confined to the very places where vulnerable wildlife abounds, near the Homer Spit.

The Kachemak Bay and Fox River Flats Critical Habitat areas are what their names state: critical habitats. The issue is not about fairness of the kinds of uses that can go on, it's about protecting important wildlife habitat. Allowing personal watercraft would erode those protections. Don't allow personal watercraft in these CHA's.

## Green, Rick E (DFG)

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**From:** Mike Rearden <mrearden@gci.net>  
**Sent:** Monday, January 20, 2020 8:18 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Lifting of ban on PWC in Kachemak Bay

Michael B. Rearden  
1284 Lake Shore Drive  
Homer, Alaska 99603  
January 20, 2020

Dear Mr. Green,

I'm a lifelong Alaskan that grew up in Homer, Alaska. I'm also a retired wildlife professional, having spent my entire career managing wildlife refuges in rural Alaska. I'm certain that you have received many letters rehashing all of the biological information that initially led to the establishment of the ban on personal water craft (PWC) in Kachemak Bay, so I won't waste your time doing the same.

The Alaska Department of Fish and Game is known around the globe for responsible management of Alaska's fish and wildlife resources. They earned this reputation by basing their decisions on sound biological data, and on the professional viewpoints of Department biologists. That is how it should be -- our resources are unique and valuable.

It appears to many that the Department is now about to make a political decision to allow PWC in Kachemak Bay, and essentially ignore data and the recommendations of your own professional biologists to keep the ban in place. That would be a huge mistake, and one that I would find very disturbing.

I understand the pressures you are under to allow this use. I'm also fully aware of how you need to respond to public pressure. After all, we all share these resources and all Alaskans have the right to question and petition your agency for change. However, if you disregard biological data, the recommendations of your own professional staff, and many knowledgeable citizens, and make a decision to remove the ban, that would be a dramatic turn from the normal professionalism demonstrated by the Department.

I encourage you to address this issue carefully by assessing all available data, and addressing any data gaps with more research and field work before you make a decision. This process will take some time. With good data, you can make a decision on this issue, either for or against, that will withstand future reviews and public pressure. If a decision is made solely based on political and public pressure it will be essentially kicking the can down the road, and will remain contentious for many years.

Please, make a sound decision based on the best available data and if necessary, gather more data to insure you make a decision that is reasonable and conservative.

Sincerely,

Michael B. Rearden

## Green, Rick E (DFG)

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**From:** Shoshana Sadow <shoshanasadow@hotmail.com>  
**Sent:** Friday, January 17, 2020 6:26 PM  
**To:** Green, Rick E (DFG)  
**Subject:** OPPOSITION OF JET SKIS in KACHEMAK BAY

Dear Rick Green,  
I am in strong opposition to the proposal to allow jet skis in Kachemak Bay.  
This goes contrary to the natural resources of Kachemak Bay.

Kachemak Bay is a NATIONAL ESTUARINE RESEARCH RESERVE.  
Need I say more???

<https://accs.uaa.alaska.edu/kbnerr/>

The law is clear: the purpose of the Kachemak Bay & Fox River Flats Critical Habitat Areas is to "protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." Alaska Statutes 16.20.500

### Please note:

- The science clearly shows Jetskis and PWC's are NOT compatible with the purpose of the Kachemak Bay & Fox River Flats Critical Habitat to protect fish and wildlife, including a recent [2019 National Park Service EIS](#), a [detailed 2017 literature review by ADF&G](#), and in the [opinion of ADF&G's own staff experts](#).
- Over 99% of Alaskan waters are open to Jetski use. The unique natural values of Kachemak Bay attract tens of thousand of tourists and Alaskans each year, and help drive our local economy. It makes no sense to threaten our resources and our economy so a few people can play on Jetskis.

**STOP THE MADNESS!! STOP JET SKIS IN KACHEMAK BAY!!**

Shoshana Sadow M.Ac., L.Ac., Dipl.Ac.  
Acupuncture Sports Medicine & Orthopedics  
[www.ShoshanaSadow.com](http://www.ShoshanaSadow.com)  
Anchorage & Homer, Alaska + Tucson, Arizona  
907.399.5655

## Green, Rick E (DFG)

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**From:** Alison Cooke <acookeak@gmail.com>  
**Sent:** Monday, January 20, 2020 11:26 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Please keep Jetskis and personal watercraft (PWC) out of Kachemak Bay

Mr. Rick Green,

### **Please keep Jetskis and personal watercraft (PWC) out of Kachemak Bay.**

I am an Alaska resident of 34 years, I live in Homer and I am a long-time owner of shoreline property across from Chugachik Island. I have circumnavigated by kayak Kachemak Bay on numerous occasions from the Bradley River and Fox River Flats to Seldovia and have explored by kayak the shoreline, numerous inner bays, and lagoons. I am very familiar with Kachemak Bay and Fox River Flats Critical Habitat Area.

The science clearly shows that Jetskis and PWC are NOT compatible with the purpose of the Kachemak Bay and Fox River Flats Critical Habitat Areas. They pose a threat to birds, marine mammals, and humans. Jetskis and PWC are not like skiffs and other boats. They have overpowered engines that allow rapid acceleration, tight turns and spins, and can run in super-shallow water posing an increased disturbance to shorebirds, waterfowl, marine mammals, and humans.

There is no need to allow Jetskis and PWCs in the Kachemak Bay Critical Habitat Area to improve access. There is ample access. We do not need an additional mode of access that is not compatible with protection of fish and wildlife and a conflict with existing valid uses such as recreational and commercial fishing, water taxis, and kayakers.

Over 99% of Alaskan waters are open to Jetskis and PWC. The unique natural values of Kachemak Bay attract tourist and Alaskans and help drive the local economy. It makes no sense to threaten these resources and our economy for a small special interest group.

Previous public processes and scientific studies support the ban on PWC in Kachemak Bay. I participated in the rigorous public process the State of Alaska went through in 2001 favoring a ban on PWC in Kachemak Bay. Governor Dunleavy appears to be ignoring our democratic process and favoring special interests. Alaskans have spoken out in 2001 and again in 2011 and 2016 to maintain the ban and to retain the natural values of Kachemak Bay. Nothing has changed that would suggest repealing the ban. Staff biologists and managers at the Alaska Division of Fish and Game support the Jetski and PWC ban in Kachemak Bay. They have reviewed all the scientific literature and they conclude the ban is appropriate and justified.

### **I strongly oppose repeal of 5 AAC 95.310 which prohibits use of PWC within the Kachemak Bay and Fox River Flats Critical Habitat Area**

Thank you for considering my comments.

Alison Cooke

## Green, Rick E (DFG)

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**From:** Marcus Geist <muclers@yahoo.com>  
**Sent:** Monday, January 20, 2020 11:37 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Prohibit PWCs in Kachemak Bay

Dear Mr. Green,

I am writing to ask you and your colleagues at the Department of Fish & Game to **maintain the personal watercraft (PWC) prohibition** in the Kachemak Bay Critical Habitat Area. The Critical Habitat Area is a Legislatively Designated Area important to a wide variety of plants, animals, and Alaskans. This area is important to our state and our many visitors as it offers a marine wilderness that is relatively accessible to a vast majority of our population and tourists.

Over the past 20 years, my family and numerous sets of relatives and visitors have all enjoyed multi day trips across Kachemak Bay. The concentrated noise and disturbance posed by PWCs would disrupt wildlife and people seeking to camp, hike, and kayak in area. Outside tourists will not want an Alaskan experience filled with the buzz of PWCs. The area will lose its allure and folks will decide to vacation elsewhere.

Unlike traditional powerboats, PWCs are rarely traveling from point to point and typically contained in concentrated areas. They are often zipping around in erratic fashion which might be entertaining for the operators, but it can be dangerous for other boaters trying to discern their path.

We as a state and a society already impose some limits or prohibitions on incompatible uses throughout our public spaces. While playgrounds and ballfields are primarily recreational, we do not allow motorized ATVs to operate on them. While the Glenn Highway is designed for transportation, we do not promote skateboards and hoverboards to use its traffic lanes.

Please strongly consider whether the permission to operate these craft will benefit a very small group for recreational purposes, while damaging the long term economic and cultural values of a much larger group of Alaskans.

Respectfully,

Marcus Geist

## Anchorage

Bjørn Olson  
PO Box 237  
Homer, AK 99603

Mr. Rick Green,

My name is Bjørn Olson. I am a lifelong Alaskan, wilderness adventurer, filmmaker, and board member of Kachemak Bay Conservation Society. I have lived on the shores of and have called Kachemak Bay my home since 2008. I plan to spend the rest of my life here because it checks off most of my boxes.

It's fascinating to me that Kachemak Bay actually has robust offshore natural gas deposits. It's even more fascinating to me that our society decided in the 1970's that the pristine beauty of this bay was more important than the quick injection of some offshore gas drilling jobs. Our Critical Habitat designation guarantees that future generations will also get to enjoy the natural splendor of Kachemak Bay. Brilliant!

From my yard, I look out across Kachemak Bay and stare at Grewingk Glacier, Sadie Peak, Broken Knife, Alpine Ridge, and other spectacular geologic protrusions. Currently, frazzle ice and ice pans extend far offshore. Daily, the tide influences this ice and provides me with one of the natural world's most spectacular dramas. Television can't hold a candle to these scenes – scenes that people travel half way around the world to behold.

Myself, and my fellow Kachemak Bay residents, are charmed beyond imagining to live surrounded by a mostly intact ecosystem. My goal is to help in whatever small way I can to ensure this ecosystem survives modernity. In Alaska, we have a 21<sup>st</sup> Century economy but a 19<sup>th</sup> Century environment. Maintaining this uneasy alliance will be tricky. We must make big decisions cautiously.

It is in this spirit that I am writing you. I am writing to tell you that I am emphatically opposed to liberalizing Personal Watercrafts (Jet Skis) in the Kachemak Bay and Fox River Flats Critical Habitat areas.

The overarching goal of our Critical Habitat areas is to “enhance wildlife” and “to minimize the degradation and loss of habitat values.” Personal Watercrafts (PWC) and the spirit of their intended use are a well-engineered insult to these goals.

Personal Watercrafts are one of the most dangerous sea-going vessels that have ever been designed. Stock PWCs zip along at 60 mph and, with a little re-tooling, they can be made to go much faster. The American Medical Association reported: "The rate of emergency department-treated injuries related to (personal watercraft) is about 8.5 times higher than the rate of those from motorboats."

"What makes personal watercraft so ultra-dangerous is the fact that it will not steer when you suddenly have a surprise and let off the throttle." Unlike traditional boats,

jet skis are rudderless. And when the throttle is off, a speeding jet ski is like a car on ice. It can't stop, and the driver has no control.

The threat that this noisy, high-speed watercraft poses to our marine mammals and other traditional user-groups is absolutely not worth the risk. Kachemak Bay is a tricky and technical body of water to navigate. Unearned power and a false confidence, born from nothing more than twisting a throttle, is a recipe for disaster and collisions.

Other people will write to you with carefully cited studies, statistics, facts and figures about the danger, noise pollution, casualty rates and the like of PWCs. I, however, want to keep my letter personal and human. We have an incredible bay that supports so many people in so many different ways. PWCs, for their small size, take up a lot of space and they fill the air with an ear-splitting noise. My neighbors, who, beyond humans, also include harbor seals, eagles, sea otters, orcas, murrees, and many other species, all deserve better.

Please do not liberalize Jet Skis in the Kachemak Bay and Fox River Flats Critical Habitat Areas.

-Bjørn Olson

Jill Rife  
PO Box 15184  
Fritz Creek, AK 99603  
jrife@acsalaska.net

Rick Green  
Rick.green@alaska.gov

January 19, 2020

Dear Mr. Rick Green,

This letter is written to urge the State of Alaska to retain the ban on personal watercraft (PWC) in Kachemak Bay and Fox River Flats Critical Habitat Areas under 5AAC95.310. Kachemak Bay and Fox River Flats Critical Habitat Areas must be protected; its existing natural ecosystem should not be further infringed upon.

Existing use of boats and other watercraft should not be used as an argument in favor of allowing further disruption in Kachemak Bay, but should instead be viewed as a reminder of the current disruption they cause, and that further encroachment on this Critical Habitat be prevented. There are many areas outside of this Critical Habitat in which PWC can operate. There is precedent for prohibition and/or limitations of PWC in protected areas across the country such as in the Lake Mead National Recreation area in which sensitive inflow areas were put at risk by PWC use, in Monterey Bay and surrounding areas, Imperial National Wildlife Refuge, and the Gulf of the Farallones National Marine Sanctuary, among others.

It is in a NOAA-authored document for Monterey Bay that is cited negative impacts related to PWC with regard to birds, marine mammals, and the supporting ecosystem. Below, I have cited relevant passages from this document that I believe warrant reading (National Ocean Services, 2019, December 9):

In several assessments of MPWC [motorized personal watercraft] impacts upon protected water areas around the United States between 1994 and 2004, the National Park Service found that MPWC can operate closer to shore at high speeds and make quicker turns than other types of motorized vessels. MPWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels. Wildlife impacts from MPWC disturbance can include interruption of normal activity and alarm or flight; avoidance and displacement, loss of habitat use, decreased reproductive success, interference with movement, direct mortality, interference with courtship, alteration of behavior, change in community structure and nest abandonment (U.S. Dept. of Interior, 1998). As a result of these findings and public testimony nationwide, the National Park Service concluded that MPWC use is inappropriate in most areas of the National Park System (including the Golden Gate National Recreational Area adjacent to Monterey Bay National Marine Sanctuary) and implemented regulations broadly prohibiting their use in 2000.

Research indicates that impacts associated with MPWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions to wildlife and an accumulation of impacts in a shorter period of time (Snow, 1989). MPWC are generally of smaller size, with a shallower draft (4 to 9 inches) than most other kinds of motorized watercraft. The smaller size and shallower draft of MPWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of motorized watercraft (U.S. Dept. of Interior, 1998). These characteristics greatly increase the potential for MPWC to disturb fragile nearshore habitats and organisms.

Research in Florida found that MPWC cause wildlife to flush at greater distances and trigger more negative behavioral responses than automobiles, all-terrain vehicles, pedestrians, and motorboats. This was partially attributed by the scientists to a common operational profile of MPWC in which they accelerate and decelerate repeatedly and unpredictably and travel at high speed directly toward shore. By comparison, conventional motor boats generally slow down as they approach shore (Rodgers and Smith, 1997). A study of harbor seal reactions to vessel disturbance in San Francisco Bay between 1998 and 2001 concluded that watercraft exhibiting sudden speed and directional changes were much more likely to flush seals than vessels passing at a steady speed and constant course (Green and Grigg, 2001). Scientific research also indicates that even at slower speeds, MPWC pose a significantly stronger source of disturbance to birds than conventional motorboats. Levels of disturbance are further increased when MPWC are operated at high speeds or outside of established boating channels (Burger, 1998). Research in the Imperial National Wildlife Refuge directly attributed declining nesting success of grebes, coots, and moorhens to the noise and physical intrusion of MPWC (Snow, 1989).

Numerous shoreline roost sites exist within the sanctuary and research has shown that human disturbance at bird roost sites can force birds to completely abandon an area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly, 1997).

Seabirds such as common murre and sooty shearwaters often form large aggregations on the surface waters of the sanctuary. Feeding aggregations of sooty shearwaters can often number in the thousands and cover significant offshore areas. These feeding flocks are ephemeral in nature and their movement



is dictated by the availability of their prey. These seabirds are especially susceptible during these critical periods and disturbance could have negative impacts on them. Repeated disturbance of seabirds by MPWC in quiet estuarine areas of the Gulf of the Farallones National Marine Sanctuary led to a complete prohibition of MPWC operations in that sanctuary. MPWC operations would pose the same risk to birds in Elkhorn Slough, a critical estuary within MBNMS. Researchers note that MPWC may be disruptive to marine mammals because MPWC change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC do not produce low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996). Acoustics research conducted in Sarasota Bay, Florida (Miksis-Olds, 2006) showed a marked difference in manatee responses to MPWC sound signatures compared to sound signatures from other types of vessels. All manatees in the study group exhibited acute panic responses to MPWC, except for one animal, which was deaf. Possible disturbance effects of MPWC on marine mammals in MBNMS could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and evasion behavior by whales (Gentry, 1996; Richardson et al., 1995). MPWC operation poses particular risk to sensitive estuarine and stillwater areas within the sanctuary, such as Elkhorn Slough. Research in Florida shallow water areas indicates that MPWC can increase turbidity and may redistribute benthic invertebrates, and that such impacts may be prolonged as a result of repeated use by multiple machines in a limited area. That research has also shown that MPWC can increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). Past research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by MPWC.

Studies and reports on motorized personal watercraft impacts are listed at <https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/science.html>.

I was taken aback when the Dunleavy administration's ADF&G staff notified its planning team that the governor's office decided to repeal the PWC prohibition for Kachemak Bay Critical Habitat Area. It certainly made it sound like a done deal, and that this public comment period is a formality, yet a mute effort. I was also dismayed by Mr. Green's early statement that public comments wouldn't affect the decision (SoundWebSolutions, 2017, May 18). Despite this, it is my hope that research into negative impacts of PWC will be heeded and that the existing ban on PWC be upheld.

I believe that climate change necessitates more protection of the habitat and natural inhabitants of Kachemak Bay and Fox River Flats Critical Habitat Areas, not less. Like the Homer City Council, Kachemak Bay Conservation Society, and Kachemak Bay Birders, I support a continued ban on personal watercraft in Kachemak Bay and Fox River Flats Critical Habitat Areas.

Sincerely,

Jill Rife  
Resident, Fritz Creek, AK

CC: Sarah Vance, representative.Sarah.Vance@akleg.gov  
Matt Gruening, matt.gruening@akleg.gov  
Louise Stutes, rep.louise.stutes@akleg.gov

References:

National Ocean Service. (2019, December 9). Resource management issues: Motorized personal watercraft FAQ. Retrieved from: [https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc\\_faq12](https://montereybay.noaa.gov/resourcepro/resmanissues/mpwc/faq.html#mpwc_faq12)

SoundWebSolutions. (2017, May 18). Shape the future of Kachemak Bay. Retrieved from: <https://inletkeeper.org/2017/05/18/shape-the-future-of-kachemak-bay/>)

## **Green, Rick E (DFG)**

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**From:** Karen Wuestenfeld <karenwuestenfeld@gmail.com>  
**Sent:** Sunday, January 19, 2020 2:06 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments opposing repeal of 5 AAC 95.310

I strongly oppose repeal of 5 AAC 95.310, which prohibits use of Personal Watercraft (PWC) within the Kachemak Bay Critical Habitat Area (CHA).

I am a Homer resident, and a long-time owner of shoreline property in Kasitsna Bay. I am very familiar with Kachemak Bay and its uses and sensitivities. My objections are outlined below:

### **Use of PWCs is incompatible with the values the Critical Habitat Area was established to protect.**

PWC's are distinctly different from the type of watercraft now using the CHA. They have rapid acceleration, tight turning radius, and are able to accelerate through shallow water and near shorelines. Their use would introduce a new sound signature to the marine environment. These factors would result in increased disturbance to shorebirds, waterfowl, and marine mammals. Kasitsna Bay hosts large congregations of birds and mammals. It also hosts a number of commercial and recreational boat users. None of these existing uses is capable of the maneuvers made possible by an irresponsible PWC user.

Mr. Green likened using a 16-foot skiff to a PWC. This is absurd. I have used a PWC on Nancy Lake, and much enjoyed that experience. I also used a 16-foot skiff on the lake, and now use that same skiff in Kasitsna Bay. While a PWC can behave like the skiff, I know the skiff doesn't have the capabilities of the PWC – fast acceleration, rapid turns, etc.

### **There is Existing Access**

Improving access is a stated rationale for allowing PWCs in a CHA, but it is a flawed rationale.

There is ample existing access. There are numerous launch sites and access points to the waters of the CHA. Removing the ban would merely allow an additional mode of access – and a mode which is clearly incompatible with the values protected by a CHA designation. Indeed, introducing this new form of transportation could create significant conflicts with existing valid uses. Potential conflicts could include interfere with recreational fishing (trolling and jigging), commercial fishing (set nets and seines), and kayakers (noise, wake, disruption). PWC users could unlawfully access Kachemak Bay State Park lands and waters, and disrupt users of the park.

### **The Decision Making Process**

During a December 9, 2019 interview on Homer radio station KBBI, I heard Mr. Green make self-contradictory statements regarding how the decision to overturn the ban would be made. From the KBBI website:

*And although Green says that numbers are not the deciding factor, he ended the conversation by encouraging an up or down vote.*

*"And if you're going to make comments and we certainly encourage everyone to, you just need to tell us whether you're in favor of it or opposed to it. And if you want to tell us why that's fine, but it's pretty much a toggle yes or no, I think," Green said.*

The Alaska Department of Fish and Game must make a science-based decision in determining if PWC use is compatible with the purposes of the Kachemak Bay CHA. This is too important a decision to be made by 'votes' registered through the public comment process.

Thank you for your consideration of my comments.

Karen Wuestenfeld

P.O. Box 2150  
Homer, AK 99603

## Green, Rick E (DFG)

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**From:** Ann Rappoport <agrappoport@gmail.com>  
**Sent:** Saturday, January 18, 2020 4:33 PM  
**To:** Green, Rick E (DFG)  
**Cc:** Alaska Governor Michael J Dunleavy (GOV sponsored); Vincent-Lang, Douglas S (DFG)  
**Subject:** Do not allow personal watercraft (jet skis) in Kachemak Bay! our fish and other wildlife are too important to thousands more Alaskans and visitors than the few dozen jetskiers!

Dear Mr. Green -

I am writing to object to your proposal to allow personal watercraft (PWC) use in Kachemak Bay! This proposal would reverse a wise ban on such use that has existed for nearly 20 years. Since then, many peer-reviewed, scientific studies have confirmed the need for this ban, given the damage to the benthic environment, marine mammals, fish and birds caused by PWC use (e.g., noise disturbance, interruption of feeding, water velocities that can harm and move creatures and habitat components, etc.) .

As a leader at the Alaska Department of Fish and Game (ADFG), you are charged with responsibly managing the state's fish and wildlife resources, particularly if those resources are in designated special categories. The State Legislature designated Kachemak Bay as "critical habitat" in 1974 to protect the fish and wildlife resources of Kachemak Bay and restrict all human uses incompatible with that goal. By now you should understand that Kachemak Bay is a large estuary that supports millions of waterfowl, shorebirds, seabirds and marine mammals and abundant populations of fish, shellfish and other marine life. Moreover, it is a tremendously positive economic engine in our state that so desperately needs diverse economic contributions: over 40,000 anglers fished Kachemak Bay in 2018 according to ADFG, residents and visitors. Their ability to catch fish and the quality of their experience will be greatly diminished if PWC users are allowed in the Bay. All boats are capable of disturbing wildlife, but jet skis are a particular problem because they tend to be operated erratically at higher speeds, generate different and cumulatively more disturbing noises, and perform loop-de-loops in shallower, near-shore waters and protected bays where wildlife are concentrated.

There are other state waters where PWC users are allowed. Kachemak Bay should not be one of them! You work for a science-based organization. Let the science be the basis for your decisions, as well as the vast majority of public opinion on this issue. No PWC in Kachemak Bay!

Note - I am copying the Governor and Commissioner with these comments, as I am also greatly disturbed that there does not appear to be an open, public process wherein ADFG will thoughtfully weigh public opinion and scientific findings before finalizing this decision. Please let me know your decision and the well-justified, scientific rational on which it should be based.

Sincerely,

Ann Rappoport  
17053 Aries Court  
Anchorage, AK 99516

P. O. Box 957  
Homer, Alaska 99603  
January 19, 2020

Mr. Rick Green  
Special Assistant to the Commissioner  
Department of Fish and Game

Dear Mr. Green,

We are writing to oppose lifting the ban on personal watercraft, (specifically jet skis),  
In Kachemak Bay and Fox River Flats Critical Habitat Areas.

As Homer residents who have lived on the shore of Kachemak Bay since 1997 we have a vested interest in protecting this very special place. You were quoted as the Special Assistant to the Alaska Fish and Game Commissioner in the Anchor Daily News on December 12, 2019 as saying, "We don't see personal water craft as being any more damaging to fish and wildlife perpetuation than a 16 foot (boat)." As a power boat owner/operator of boats ranging from 8 feet to 30 feet since 1960, I challenge the accuracy of such a statement, especially as it pertains to the Critical Habitat Areas of Kachemak Bay and Fox River Flats.

For example, the operating characteristics of jet skis such as erratic noise caused by rapid acceleration and deceleration and the jumping of their own wakes and/or the wakes of other vessels such as fishing boats, tugs or ferries result in both airborne and waterborne nuisance noise that travels loudly over water. Such noise is not in accordance with Alaska Statute 16.20.500 "...to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife and to restrict all other uses not compatible with that primary purpose."

The basis for establishing the jet ski ban was based on 1,000's of hours of collective scientific research by various organizations.

- 1995- The World Bank identified Kachemak Bay as a significant, important marine area worthy of Inclusion in their proposed system of Marine Protected Areas.
- 1999- Kachemak Bay Natural Estuarine Research Reserve was established, one of only 28 Research Reserves nation-wide.
- 2016- The Western Hemisphere Shorebird Reserve Network declared Kachemak Bay was of "International Importance" because of it's location on the Pacific Americas Flyway.

Equal access is not a logical argument to reverse a jet ski ban that has been in place for 19 years. Logic and sound science provide a preponderance of evidence to make the ban on jet skis in Kachemak Bay stand.

Respectfully Submitted,  
Mike and Cathy McCarthy

## Green, Rick E (DFG)

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**From:** Sadie Cove, Alaska - The Iversons <mail@sadiecove.com>  
**Sent:** Sunday, January 19, 2020 10:51 AM  
**To:** Green, Rick E (DFG)  
**Cc:** Keeper@inletkeeper.org  
**Subject:** Jet Skis in Kachemak Bay - final copy - please read and post

Dear Mr. Green and all others involved in the Kachemak Bay jet ski use controversy, We are Keith and Randi Iverson - owner/operators of Alaska's Sadie Cove Wilderness Lodge located 9 miles across Kachemak Bay from Homer in Sadie Cove. We vehemently oppose the current proposal to permit jet skis in Kachemak Bay as this is a critical habitat area meant to preserve and protect wildlife as well as to preserve the peace of mind of those of us who live, fish, hike, and tour on or near the water.

99% of Alaska's waters are open to jet ski use. There is no need, or logical reason, to permit their use in Kachemak Bay as well. These machines are meant for fast, fun travel, wake jumping, driving in unpredictable manners, driving into shallow waters, tidal flats, and lagoons, etc., etc. Many people understand that the use of jet skis is an enjoyable sport however, to permit their use in such a critical habitat area as Kachemak Bay would be counter-productive to what a critical habitat area accomplishes in terms of wildlife preservation and other important issues such as tourism and more.

Being a critical habitat area, Homer and Kachemak Bay attract visitors from all over the world who come here for the beauty, wildlife, and peace that we have to offer. To ruin our area as so many other once pastoral places worldwide have been ruined for tourism would be such a financial burden to the businesses in Kachemak Bay and Homer as to force many of us to close up shop altogether. Many folks come to visit Kachemak Bay and Homer BECAUSE it is STILL the PEACEFUL PLACE that it has been for so long. Many travelers have had their vacations ruined in other locations because of the noise and unpredictability of jet skis. This is well documented on many Internet travel sites. Considering the very long daylight hours of our summer season, if this proposal were to be enacted, those of us who live on water's edge would be hard pressed to get any sleep at all if jet skiers were zooming past and around our homes in the wee hours of the morning.

This proposal was presented some 20 years or so ago and the decision was to forbid the use of jet skis in Kachemak Bay. What, if anything, has changed since then?

Again, both Keith and Randi Iverson of Sadie Cove Wilderness Lodge in Kachemak Bay vehemently oppose the current proposal to permit jet skis in our critical habitat. Our area is unique and we would prefer that it remain that way. To make Kachemak Bay into a maritime "Disneyland" where one can "joy ride" during the long daylight hours of our summers and the dangerously cold temperatures of the winter would be, to us, an unethical and ruinous act fired by greed and a sense of entitlement by those who would approve of, and attempt to enact, this proposal. We feel that those who would approve of this proposal would have little to no concern for the issues we have presented in this notice and ask respectfully, that this proposal be put aside to make time for more positive regulations to be put to the table.

Please keep us up to date on any meetings, decisions, or other actions regarding this proposal. We can be reached at [mail@sadiecove.com](mailto:mail@sadiecove.com) or by phone at 907-235-2350.

Respectfully,  
Keith and Randi Iverson

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Peace and Happiness,

Randi Iverson  
PO Box 2265  
Homer, Alaska 99603  
907-235-2350

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Peace and Happiness,  
Randi Iverson  
PO Box 2265  
Homer, Alaska 99603  
907-235-2350

## **Green, Rick E (DFG)**

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**From:** Anne Wieland <agpacsu@yahoo.com>  
**Sent:** Sunday, January 19, 2020 12:46 PM  
**To:** Green, Rick E (DFG)  
**Cc:** Vincent-Lang, Douglas S (DFG); Stevens, Gary L (LEG); Vance, Sarah (LEG)  
**Subject:** Kachemak Bay Ban on PWCs and Jet Skis

Anne Wieland  
P.O. Box 1395  
Homer, AK

99603

Rick Green  
Alaska Department of Fish and Game  
333 Raspberry Rd,  
Anchorage, AK 99518

Dear Mr. Green,

Since the 1980s, manufacturers have been regularly increasing the horsepower of their Personal Water Craft and Jet Skis year by year to meet the desires of the potential customers and also to build faster ones than their competitors. The manufacturers know that what potential customers want are the most super powerful fastest PWCs and are inclined to be thrill seekers with a desire for speed. The fastest speed recorded for a PWC was 92 miles per hour, although the average top speed of most PWC's is between 65-70 MPH, faster than a mile a minute. When the PWCs hit a certain speed level the watercraft become more difficult to operate and can't slow down quickly if there's hazard ahead in the way as there are no brakes. Also there is no rudder. So when the driver slows down or stops giving the machine thrust all together their ability to steer is diminished or lost completely.

Because of their extreme power and speed, PWCs can potentially get out of control. The accidents that inevitably happen can potentially involve other boats, obstructions such as floating debris including parts of trees, seine nets, running lines, wharfs and docks, kayaks, rocks, wildlife and flocks of birds. Kachemak Bay is too small and crowded with other much slower watercraft from paddle boards, kayaks, small boats, boats trolling for salmon, day excursion tours, commercial fishing and crabbing vessels to huge open ocean Tour Ships to allow for vehicles safely going 50mph and faster in and among them.

Kachemak Bay continues to be a tourist destination. Year after year more thousands come for the beauty, wildlife viewing, fishing, camping, hiking in the Park and more. A large part of Homer's economy is based on tourism. Because of their nature, PWCs should utilize the other 99+% of Alaskan waters that do not ban them. The public is welcome in Kachemak Bay in any other kind of boat. Previous studies about the characteristics of PWCs from their loudness and high speed have been the some of the reasons for banning them. The Alaska Legislature created the Kachemak Bay Critical Habitat Area (CHA) in 1974 "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." The special nature of Kachemak Bay and the characteristics of PWCs and their known history as thrill vehicles have been solid reasons that their use in the Kachemak Bay and Fox River Flats Critical Habitat Areas are completely incompatible. Now that PWCs and Jet Skis have become

much more powerful and capable of much higher speeds, their incompatibilities have multiplied. Under no circumstances should they be allowed at all in Kachemak Bay. The Ban first placed in 2001 and then reviewed and again placed in 2011 and 2016 should not be lifted under any circumstance as there is absolutely no reason that it should be. Alaska Statutes 16.20.500 must be maintained.

Sincerely Yours,  
Anne Wieland

cc  
Commissioner Doug Vincent-Lang  
Senator Gary Stephens  
Rep. Sarah Vance  
Rep. Louise Stutes

January 18, 2020

Regarding personal motorized watercraft (PMW) in Kachemak Bay and Critical Habitat Area:

SAFETY:

In the nineties, my husband and I had a 24 foot boat in the Homer harbor. We paid annual borough taxes, Homer Boat Harbor slip fees and trailer license fees. The Coast Guard also checked our boat for the required safety equipment so we could be compliant to obtain the necessary license. We were so glad that we had the necessary gear. There were more than a few times we were caught out by 60 foot Rock or Yukon Island where Mother Nature got the better of us. We found ourselves in 8 foot swells in a matter of minutes. If it weren't for our preparedness and common sense, things could have quickly turned for the worse.

With all of the dialogue I've seen in the newspaper, not one person has pointed out that the bay can be very dangerous. As equipment and preparedness is an issue and required of all motorized watercraft, I am assuming that the Coast Guard is involved. I am wondering if the PMW will be required to be equipped with a compass, VHF communication, and back up tools for engine emergencies. I think it would be prudent for the Coast Guard to require a license of each PMW to address preparedness, basic safety and rules of navigation in open waters. Maybe we should consider having the issued license number prominently displayed for each PMW (per the three inches required for other PMW). That way, if anyone witnesses breached or discretions of common rules of navigation, the witness has half a chance of identifying the craft and turning them in.

Is the operator in a survival suit? What happens when the operator flips over and there is no way to save him/her? I would hate to be out at Land's End enjoying a nice dinner and see someone out ½ mile that can't navigate the turn around the end of the spit due to 8 foot swells and the tide changing. Can the operator of the PMW be able to save themselves? Maybe we should consider a back-up boat for safety reasons.

I am assuming these PMW will be required, as any other PMW (per harbor rules), to launch and dock in the Homer harbor. There will be no launching or landing on beaches on the spit.

I don't begrudge these folks of the enjoyment of puttering around the bay. The issue is these operators won't putter. With a speedometer reading of say 30 or 40 miles per hour, they will want to have the throttle wide open. Why else would you want to own a PMW?

How do we monitor where these PMW go? Do we require no wake zones? Shall we set up corridors? Do we give the west side of the spit to the paddle boarders, kayakers and wind surfers? Do we give the Mud Bay side to the PMW? What about Bear Cove, Halibut Cove, Gull Island, Peterson Bay, Sadie Cove, Tutka Bay, McDonalds Spit and Seldovia? What are the rules of navigation in inland waters? Who will monitor these scenarios? Who will be paying for this?

## CRITICAL HABITAT:

Since arriving to Anchorage in 1966 and residing in Homer since 1986, I have seen many habitat changes. Homer is no longer the “halibut fishing capital of the world.” We have fished out the king, Dungeness and tanner crab, along with the prawns and shrimp. It seems the human footprint has made a difference in the past 50 years. Those of us who live here have seen it. We’ve seen the waste and destruction. We know we can do better as custodians.

If ‘personal watercraft are no greater a threat to any “critical habitat area”- fish, bird, marine mammal, bear, state park or fuzzy kitten- than any other boat’ (per Chris Manthos, Anchorage Daily News, page 5, Jan. 14, 2020), then let’s charge these owner/operators of PMW a hefty daily fee (\$500) for the sole purpose of that money going towards a study of the above assertion. Islands and Oceans employ biologists who would be more than happy to put a young graduate student to work on that study. I’m pretty confident in 2 years of said study; the evidence will show the animals win. It’s unfortunate that the animals can’t weigh in on this, but hey, let’s have a study to prove it. And, let’s hope no operator of said PMW gets injured or lose their life in the process.

## Green, Rick E (DFG)

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**From:** Don Pitcher <pitcher@xyz.net>  
**Sent:** Sunday, January 19, 2020 1:06 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Protect Kachemak Bay from

Hello,

I am a 20-year resident of Homer and am strongly opposed to allowing jet skis and other personal watercraft in Kachemak Bay. This is one of the only places in Alaska where they are not allowed, and I want to keep it that way. They can be used almost everywhere else in the state, including Prince William Sound, Cook Inlet, waters around Kodiak, nearly all of Southeast Alaska, many lakes, and a multitude of other places. Kachemak Bay is part of the 1% of the state off limits to jet skis. Please keep it that way.

I have seen the detrimental impact of jet skis in many other places in Alaska. When I was last in Ketchikan kids were roaring back and forth on them right in front of downtown, disturbing everyone in the area. I absolutely do not want Homer to experience the situation in Big Lake, where jet skis run amok at all hours in the summer. That may be what the people of Wasilla want, but it is not what we want in Homer.

When I last visited Whittier I saw big groups of jet skis heading into remote bays on guided tours. It looked like a loud bunch of bees roaring in front of the glacier. I know this is exactly what will happen in Homer as well, and have already heard of at least one person who plans to purchase a fleet of jet skis to "tour" the state park and other areas. That would completely ruin the character and nature of this unique natural area.

Kachemak Bay has been spared from the impacts of jet skis because the state wisely chose to protect these waters almost two decades ago. There is absolutely no reason that ban should be lifted today. The bay was designated as a Critical Habitat Area in 1974 and the ban has long been supported by Alaska Department of Fish & Game biologists and others with an understanding of the area's value. We already have serious problems with declining populations of seabirds. The bay's wildlife do not need another detrimental impact. This proposed action is opposed by the people of Homer, and on January 13, 2020 the City Council last week affirmed this in a 5-1 vote.

I strongly urge the State of Alaska to retain the restriction prohibiting personal watercraft in the Kachemak Bay and Fox River Flats Critical Habitat areas.

Thanks,

Don Pitcher

[don@donpitcher.com](mailto:don@donpitcher.com)

(907) 756-3142

## Green, Rick E (DFG)

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**From:** Poppy Benson <poppyb.ak@gmail.com>  
**Sent:** Sunday, January 19, 2020 11:19 AM  
**To:** Green, Rick E (DFG)  
**Cc:** Representative.Sarah.Vance@akleg.gov; rep.louise.stutes@akleg.gov; Gruening, Matthew S (LEG)  
**Subject:** PWC (Jet skis) don't belong in Kachemak Bay

Dear Mr. Green,

I am opposed to overthrowing this ban and have four concerns: 1) Process, 2) Wildlife 3) Impacts on the Bay lifestyle and businesses and 4) Access.

**Process:** I have lived in Homer for over 30 years and was here when the original ban you seek to overturn went into effect. There were public meetings and wide ranging discussion with ADFG and many stakeholders at that time. I am very appalled at the process you are taking to overthrow this well thought out and thoroughly vetted regulation. Not a single public meeting! Not a single consideration of whether this is good for the whole Bay - every single cove and wildlife concentration area. **No discussion with stakeholders. No new data** on how these PWCs impact wildlife. I am also rather shocked that this is being done as a stand alone issue when the management plan for the bay is being revised. The impression you gave on KBBI is this is pretty much a done deal and you are just going through the motions before changing the regulation. That is shameful and insulting to all Alaskans but especially those of us who live here and use and know the Bay the best.

**Wildlife Impacts:** That Kachemak Bay needs more protection from threatening uses should be clear because of its designations as a Critical Habitat Area, a National Estuarine Research Reserve and an area of International Significance in the Western Hemisphere Shorebird Reserve Network. These designations came to be because of the wealth of wildlife resources in the Bay. I appreciate that jet skis are quieter than they used to be but they are also faster and more powerful. They are marketed for speed and thrills and that is what their owners principally use them for. Their high speed maneuvers, jumps and turns are particularly threatening and damaging to seabirds, sea ducks and marine mammals. Also, they will most commonly be used close to the spit where birds frequently concentrate. At the very least, Mud Bay, Beluga Slough, Fox River Flats, all the bays on the south shore - Tutka, Sadie, China Poot, Peterson and Halibut Cove and Gull Island and 60 foot rock and the otter concentration near Yukon Island and surrounding islands and islets must be protected from this kind of high speed use.

**Bay Lifestyle and Businesses:** I founded the Kachemak Bay Shorebird Festival 28 years ago and have been in a unique position to watch Homer evolve as a birding and ecotourism destination. I never expected how much that Festival would put Homer on the map. We have since become a "go to" birding destination and local businesses have risen to the opportunity with guides, water taxis, eco-lodges, B & Bs and others catering to visitors whose primary interest is nature viewing and quiet. A good thing as our halibut and salmon stocks seem constantly threatened and fishing opportunities declining. These kinds of visitors do not come here for "thrill rides". They come here to experience wild Alaska. Buzzing jet skis are not what they are here for. PWC would be particularly disturbing in the quiet narrow bays on the south side where kayak guides, paddle board guides, and eco lodges concentrate. Also, many of us who live here do not appreciate this type of use of our bay. High speed, unpredictable actions by PWC can be very threatening to fishermen, kayakers, paddle boarders and small skiffs. We don't want them.

**Access:** You seem to be trying to justify this on the basis of access for everyone but the reality is this is NOT about access for everyone. There is ample access to our Bay by a wide variety of means for everyone. No one is denied access. This is about access for a particular type of craft that poses particular problems. We also need to consider how this new use could affect and limit existing uses, existing access. Should PWC use develop as a "thing" in the Bay with

rentals and events would the access opportunities of existing users - fishermen, kayakers and paddleboarders change or be limited? Would existing users feel they could not access the Bay or at least the Bay close to the spit at busy times or anytime due to safety concerns? Would cabin owners on the south side feel the same way should their bay become popular with PWC users? I personally know Homer residents who sold their cabin at Big Lake because "it became such a motorized zoo." Their access to Big Lake was gone. Don't make us another Big Lake.

I am opposed to changing the ban on jet skis in our Bay.

Poppy Benson  
157 Island View Ct.  
Homer, AK 99603  
(907) 235-8495 home  
(907) 299-0092 cell

## Green, Rick E (DFG)

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**From:** Ian Blake <tele-skier@hotmail.com>  
**Sent:** Sunday, January 19, 2020 1:04 PM  
**To:** Green, Rick E (DFG)  
**Cc:** Begich, Thomas S (LEG); Tarr, Geran L (LEG)  
**Subject:** RE: Kachemak Bay PWC proposal

Mr. Green,

Congratulations on your handling of the comment period with respect to the proposal to allow personal water craft (PWC) to use Kachemak Bay. Even in the most dysfunctional governments, it is rare to see a supposed public servant display such overt hostility to public process, braggadocios disregard for his agency's own scientists, and complete abandonment of any semblance of objectivity.

Of course, allowing PWCs to access Kachemak Bay is a terrible idea. Alaska Fish and Game's own publications recognize the damage that PWCs will do to the critical habitat area in Kachemak Bay, most recently in their CHA management plan published in 2017. Note your actions come without any new information that would refute the findings of Alaska Fish and Game that "there is no new information that would warrant rescinding the prohibition [on PWC use in Kachemak Bay], and in fact the newer information highlights most of the concerns identified when the prohibition was adopted."

Far beyond the degradation to user experience in Kachemak Bay, there will be far-reaching and lasting damage to birds, sea mammals, and habitat in a supposed conservation area. The allowance of PWC in Kachemak Bay will have direct harm to wildlife, and such concerns are well documented in scientific literature. From my own experience, I have seen the reduction in wildlife sightings in Whittier's Passage Canal as PWC use (including commercial ventures) has increased in the last 20 years. Where one could once reliably see all manner of otters, whales, and other sealife just outside of Whittier, you must now travel beyond Blackstone Bay (where there are twice daily jetski tours in the summer) to have the same awe-inspiring experiences.

Indeed, far from providing "equal access," the proposal to open Kachemak Bay to PWCs reduces the ability of all users to reliably have an accessible wildlife experience. Whereas you can now get a great wilderness experience even from the shores of Homer Spit, the degradation and harm caused directly by PWC operators will ensure that these experiences will only be available to those with the time and money to travel further offshore. The desires of a very small minority to needlessly treat a critical habitat area as a playground will negatively impact residents and tourists alike.

I know from your public statements that this comment is merely a formality and will not change your actions in this matter. It is a sad day when government officials openly subvert public processes to do favors for a governor's friend. However, I do know that such corruption of public resources ultimately reflects most poorly on you, not the people of the great state of Alaska.

Please do not allow jet skis and personal watercraft to access the critical habitat areas of Kachemak Bay.

Thank you,  
Ian Blake  
2151 Alder Dr.

Anchorage, AK 99508  
907.529.4360

## Green, Rick E (DFG)

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**From:** Steve Albert <hockyman@gci.net>  
**Sent:** Sunday, January 19, 2020 1:25 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Watercraft in Kachemak Bay

Mr. Green --

I am a retired fisheries biologist with the ADF&G in Anchorage (1981-2008). I eventually chose to retire in Homer for many reasons one of which was Kachemak Bay. I spent a lot of time during my career working to protect fish, wildlife, and marine mammal resource values there. Because you do not have a biological background, you may not fully understand why it is important to maintain fish and wildlife resource values. These watercraft pose grave threats to birds, marine mammals, and even humans. How can anybody in their right mind believe that this action would be harmless to fish and wildlife resources in the Bay?

Science shows that jetskis and personal watercraft are clearly NOT compatible with the purpose of the Kachemak Bay & Fox River Flats Critical Habitat Area management plans to protect fish and wildlife resource values. That includes the recent 2019 National Park Service EIS, as well as the detailed 2017 literature review completed by ADF&G, and has been the long term opinion of ADF&G staff biologists going back decades. I have worked around the Bay over many years to protect fish streams associated with proposed logging projects and address fish passage problems.

More than 99 percent of Alaskan waters are already open to jetski usage. Obviously you cannot recognize the unique natural resource values within Kachemak Bay. These recreational and natural resource values attract cruise ships with thousands of tourists and attract many Alaskans for recreational sport fishing that has a significant impact on the local economy. So you want to adversely impact these important biological and economic values so that a relatively small number of people can race around on jetskis disturbing fish, birds, and marine mammals. I can assure you nobody wants to see some idiot crashing around the Bay. Why not have them do such activities in Cook Inlet instead of Kachemak Bay, based on less impact to natural resource values?

Thank you for taking the time to review my response.

Steve Albert

## Green, Rick E (DFG)

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**From:** Karen Medak <karenhmedak@gmail.com>  
**Sent:** Saturday, January 18, 2020 11:24 AM  
**To:** Green, Rick E (DFG)  
**Subject:** ban on jetskis in Kachemack Bay

Dear Mr. Green ;

I am a Family Member of a Property Owner at Halibut Cove.

While growing Up, we spent Our Summers at the Summer Cabin, It has been the Place of Beauty and Awe and tranquility from the hustle and bustle of the City of Anchorage. I am so thankful my Parents gave us the Childhood, others could only dream of or the means to have the childhood we had.

I want to Quote my Father who wrote a Poem called SHOREBIRDS By Cliff Fuglestad  
He wrote the Poem that Really sums up Life at Halibut Cove.  
"Halibut Cove is a quiet eddy in the backwater of Life"

My Father wrote this Poem and other Poems to Us, the Family.

Although My Father is no longer with us, the memories and photo's of this special Place in my life called Halibut Cove, have brought back. A simpler time.

We learned how to start and run Outboard motors when we were very young and set and pulled personal Shrimp and Crab Pots, Pulling pots by hand from the depth's of Halibut Cove gave us the Physical strength and Exercise to pull those pot's and see the bounties of our labor. After that being able to cook those bounties on Our Beach, and throwing the Shells on the beach and eating with the most gorgeous view watching Fishing Boats go by and Set Netter's bring in their catch, even seeing the Old Timer's and their Fishing Boats, and Sailing boat's actually sailing without their motor's. Even seeing the Very Large Oil Tankers come into Kachemack Bay Near Homer to Hide in safe Harbor from the Weather of the Gulf of Alaska and other reasons. the blowing of the Minke Whales, Killer Whales (Orcas) and seeing them and on foggy very foggy days in the Skiff or Pram the familiar sound of them blowing and getting air through their air vents. Taking Our Big Inboard Outboard motor boat and traveling all over the bay even to go visit the famous Gull Rock with thousands of Bird species, Sometimes we would travel onboard the Kachemack Ferry the Danny J. Owned and Operated By the Family of Clem and Diana Tillion, whom have known us as kids and helped my Family bring the actual Building materials for the Summer Cabin at Halibut Cove. Way back in the Day Mr. Cooper another Family Friend and helped us with his Cat Bull Dozer made the trail and brought the building Material's that would become Our Cabin to this Day Present.

Mr. Cooper was Captain of the Mary Dele a Pilot Boat at the time would pick up or drop of Pilot's for the Oil Tankers that arrived in Kachemack Bay. My sister and I while Very young had the chance to go with Mr. Cooper on the Mary Dele to take a pilot to an Oil Tanker and Wow those tankers are Very, Very huge indeed especially next to them even in a pilot boat along side them, you can't see the Tanker's Bridge, all you see is the Massive Wall between the two Vessels, The Shorebirds and Waterfowl

Like the common Murre and other's, yes even the sight's and sounds of the Very Funny and noisy Seagull. Along with this the Tide's ebb and flow, Rise and Fall every day and night.

This is what I and our family did while growing up during the Summers at Halibut Cove.

Why would you Change all that? It would Change the WHOLE ECO SYSTEM, For both Humans and Preserved Wild Life of Kachemack Bay, Alaska

Jet Ski's would and will change the Present and Future of Kachemak Bay, they will and can pose a threat to themselves running at high speeds through Very Choppy Wakes from small to large vessels coming out of the Harbor of Homer which is Very, Very dangerous at times with The Weather, and Other Vessels like Sailboats, Skiff's, etc.

Jet Ski's can and will be a danger to Other's as well, Anybody who Like Myself, Even during the Summer, if a Jet Ski gets hit from another boat or the Jet Ski hits another boat, Kachemak Bay is not even close to being warm for a person to swim in let alone from an accident involving a Jet Ski, with people. I know how Cold the Bay is

I use to swim in it at Halibut Cove, I did that when Water was actually heated from the SunShine, even than it took an Hour Plus In front of a Wall heater or the Fireplace.

A Shock probably to Some, but Born and raised in Anchorage, Alaska and Halibut Cove during the Summer got use to the Water, and helped incase something could go wrong and had to be in the water. I think for someone who comes down to Homer on the weekends for Family Fun or what ever the case may be, and isn't around water that much in the first place, are posing a Great Risk to every one that includes the Coast Guard if they had to be called to rescue a Jet Ski operator and the Jet SKI ITSELF, which poses a threat to other Fishing Vessels, Sail Boats, Etc..... A for the Local Permanent Resident's of Homer and Surrounding Area's, and Their way of Life to preserve it ALWAYS.

So, for the Question of taking the Ban OFF for Jet Ski's to be able to Run Litterly Amok in Kachemack Bay, and Lives at Stake, Crab Pot's with Buoy's or Shrimp Pot's, or Oil Tanker Buoy's with Chain attached, Sailboats actually sailing, Skiff's, Weather and

The Inexperience of a Weekender in Kachemack Bay.

It's Trouble anywhere you Look and think that Nothing Will HAPPEN To YOU or ANYONE ELSE while using a Jet Ski on the Bay. There are Other Ways to Enjoy Kachemack Bay, There is a Whole Harbor in Homer Filled with Water Taxi's, the Ferry the Danny J a most I insist you take the Ride to Gull Island, and ride to other Area's and see the Beauty and Awe, that is unique Only to Homer, Alaska Whether you are a Weekender or a Resident (Permanent), or A Visitor to Alaska. It's the Slower Pace that will stay with you a lot longer than Racing Around on a Weekend on a Jet Ski and Just to have Fun, and RACE at VERY HIGH SPEEDS.

Just THINK About Everyone Elses Life, Who you encounter in Homer, Alaska and The Wild Life that is ONLY UNIQUE, and Maybe ONLY GET TO SEE ONCE IN YOUR LIFETIME.

LET IT STAY BANNED, PLEASE,

**\* We Need Kachemak Bay to Stay Banned from all Jet Ski's Period.**

Thank You Mr. Green for Putting Your Letter Out, So Giving Us a Chance to also Voice on Paper, Email. Sorry!!!! This is a Lengthy Response If Only they could SEE What I grew up with, and Actually FEEL the Very Heart and Soul that I Remember at a Very , Very Special Place Growing Up. It Sure Brought back Fond Memories for Me.

Feel Free to contact me through this Email.

Sincerely,

Karen

Sent from [Mail](#) for Windows 10

## Green, Rick E (DFG)

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**From:** noreply State AK  
**Sent:** Saturday, January 18, 2020 5:58 AM  
**To:** Green, Rick E (DFG)  
**Subject:** New Comment on Notice of Proposed Changes on the Use of Personal Watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas

A new comment has been submitted on the public notice [Notice of Proposed Changes on the Use of Personal Watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas](#).

### Submitted:

1/18/2020 5:57:35 AM

Emma Bauer  
[ejb427@gmail.com](mailto:ejb427@gmail.com)

Chesapeake, OH, US  
Anonymous User

### Comment:

While PWCs can be an enjoyable experience for thrill-seekers and first-timers alike, they can be detrimental to the wildlife in the area. I have spent several summers working, volunteering, and exploring coastal Alaska, and nothing compares to the beauty and serenity that is present in Kachemak Bay.

Had I not experienced the area firsthand, I would probably not think anything of the ban. However, over the past several years, I have spent a lot of my time working around national parks and performing conservation work from the Gulf Coast of Texas to the bay areas of Alaska. No two places are the same, but all hold their own sense of beauty and diversity. Something I noticed around Kachemak Bay, though, is that it holds a special kind of peace. I spent a couple summers assisting in sea kayaking tours and saw more wildlife than I could have ever hoped to have seen. My boss attributed it to the stillness of the area; the slow and silent pace of kayaks (and even larger boats or skiffs that are meant to transport people) is not nearly as threatening to wildlife as jet skis and other personal watercraft. Not only is the speed and sound threatening to sea life, the sound also wards away rare sea birds that people travel from near and far to see. Also, PWCs have the added potential effect of transporting more invasive species to the coasts of Alaska. While you may do everything in your power to prevent it, there is no guarantee that this will eliminate such a drastic potential threat.

I am certainly not an expert; I only know what locals tell me and what my own research has shown me. However, based on the sources I do have knowledge of, repealing the PWC ban not only harms wildlife through noise, pollution, and disruption of habitat, it also has the ability to negatively impact local culture and small business. People come to these areas to experience Alaskan beauty; there is truly nothing like it. However, if PWCs turn wildlife away and disrupt natural habitat, what is there left to draw people in? Additionally, this can negatively affect local kayak companies whose large source of income is from those who venture out to experience the exact things that PWCs have the potential to ruin.

We live in a dangerous time. Wildfires storm across Australia and rain--not snow--shows Antarctica. Climate change is real, and although this may only be a small influence in the grand scheme of things, that is also the same way of thinking that has led us to this point of time. Please, do not repeal the PWC ban. Do what you can to preserve the coasts of Alaska. Do what you can to spare local culture and business. Do what you can to set an example.

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You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

## Green, Rick E (DFG)

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**From:** Emma Bauer <ejb427@gmail.com>  
**Sent:** Saturday, January 18, 2020 5:58 AM  
**To:** Green, Rick E (DFG)  
**Subject:** PWC Ban

Mr. Green,

While PWCs can be an enjoyable experience for thrill-seekers and first-timers alike, they can be detrimental to the wildlife in the area. I have spent several summers working, volunteering, and exploring coastal Alaska, and nothing compares to the beauty and serenity that is present in Kachemak Bay.

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I am certainly not an expert; I only know what locals tell me and what my own research has shown me. However, based on the sources I do have knowledge of, repealing the PWC ban not only harms wildlife through noise, pollution, and disruption of habitat, it also has the ability to negatively impact local culture and small business. People come to these areas to experience Alaskan beauty; there is truly nothing like it. However, if PWCs turn wildlife away and disrupt natural habitat, what is there left to draw people in? Additionally, this can negatively affect local kayak companies whose large source of income is from those who venture out to experience the exact things that PWCs have the potential to ruin.

We live in a dangerous time. Wildfires storm across Australia and rain--not snow--showers Antarctica. Climate change is real, and although this may only be a small influence in the grand scheme of things, that is also the same way of thinking that has led us to this point of time. Please, do not repeal the PWC ban. Do what you can to preserve the coasts of Alaska. Do what you can to spare local culture and business. Do what you can to set an example.

Best,

Emma Bauer

## Green, Rick E (DFG)

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**From:** Rebecca Cozad <rebfisher@gmail.com>  
**Sent:** Saturday, January 18, 2020 12:26 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Public Comment PWC Kachemak Bay

Dear Mr. Green,

I am writing to register my opposition to opening Kachemak Bay to Jetskis and Personal Watercraft. I specifically oppose this activity because it makes a mockery of the laws of Alaska and reflects a huge and endemic disregard for the processes the Alaskan people have worked hard to participate in, and the many hours and associated expenses involved in creating the rules, laws and processes that establish our way of life here.

When the public demands, (or is invited to determine) the best uses of Alaskan resources, it is a lengthy process involving reviews of our constitution, existing rules and laws, current science applied to impacts, various studies, or human resources applied to extracting the information from various studies already conducted, the administrative oversight of public notice, untold numbers of conversations and debates in the communities, invested citizens, and ultimately the legislative body to debate and enact rules despite the political gamesmanship of politics in Alaska with its partisan divide and trading of issue votes. There is considerable expense to the state involved in all of this and huge investments of time to all involved. The absolute arrogance of a government that then snubs that entire engaged process to simply administratively alter what has already been determined, is the crux of what has turned our populace against government, and away from the established norms of rule and law. It is a massive show of Government ruling the people instead of answering and serving the public. It is antithetical to conservative values, and offends anyone who believes good government serves the people.

Alaska Statute 16.20.500 states, **The purpose of the Kachemak Bay & Fox River Flats Critical Habitat Areas is to “protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.”**

Again and again, Alaskans have seen our hard work and self-determination through public process overturned by self-serving politicians. A governor who has spoken out against government waste appears poised to simply add to that waste repeatedly, but undoing the investments already made, proving the expense of time and money that goes into these laws is a joke and of no consequence.

There have been extensive arguments made against the use of PWC in the designated critical habitat area. The science has shown it is detrimental to the preservation of habitat, the public has overwhelmingly made clear they favor the restrictions due to both concern for the habitat and concern for the public’s ability to enjoy that habitat, the commercial aspects of drawing tourism to such a special place, and the huge nuisance of noise and unpredictable behaviors that impacts everyone else in the vicinity in a negative fashion, while allowing the thrill of driving PWC for a small number of users. You can be assured I have reviewed the ADF&G’s own staff recommendations that this prohibition remain in place, and reviewed the summary of public comments since the inception of this prohibition. Clearly the public is opposed, and government serving the public should absolutely respect that process. Rejecting the public’s established priorities in favor of a small voting constituency reeks of pandering to special interests and against the public interest. The prohibition should remain.

Regards,

Rebecca Cozad

PO Box 848  
Talkeetna, AK 99676

## Green, Rick E (DFG)

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**From:** w keys <flybynightclub@gci.net>  
**Sent:** Monday, January 13, 2020 9:55 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet Skis in Kachemak Bay

TO: Rick Green  
Alaska Dept. of Fish & Game

In the heated debate over Jet Skis in Kachemak Bay, there seems to be one piece of information that has been overlooked, and I'd be honored to set the record straight.

Anyone who has ever snorkeled in an area where Jet Skis are allowed knows that the sounds the watercraft emit are loud, disturbing, annoying, and can be heard up to a mile away. While in the water, one is constantly forced to surface in order to verify just how close these watercraft are approaching, and virtually all animals have better hearing than humans.

What effect does intrusive noise have on wildlife? If there are birds at your backyard feeder, and if your back door makes noise when you open it, the birds instantly flee. Every hunter and every photographer knows that the first rule of stalking prey is to Be Quiet. Any sound will cause your target to instantly flee.

The overlooked piece of information is that *Fish Can Hear*. If you ask Professor Google, he will tell you that *Fish Can Hear*. If you study the peer-reviewed scientific literature, it will tell you that *Fish Can Hear*. My own thirty-plus years of studying marine creatures on coral reefs has yielded many hundreds of examples that *Fish Can Hear*.

When any fish including Salmon hear a loud or disturbing sound, they will instantly flee. Fish spend most of their time feeding, but the survival instinct will always overpower the feeding instinct. When fish are fleeing for their lives, they are *not* feeding.

This leads to an inescapable conclusion: Less feeding time during the day will result in less salmon being caught by fishermen. It may be slightly less fish being caught, and it may be significantly less fish being caught. That can only be

determined by future scientific studies, but fishermen *will* catch less fish if Jet Skis are introduced into the environment.

The Dept. of Fish and Game's own Sport Fish Survey shows that over 40,000 anglers fished Kachemak Bay during 2018. The number of Jet Skiers will be far, far less.

Does it make sense to diminish the satisfaction of over 40,000 anglers in order to enhance the enjoyment of a few dozen Jet Skiers? Does it make sense to diminish the experience of tens of thousands of wildlife watchers and tourists in order to enhance the amusement of a few dozen Jet Skiers?

So far, I haven't found anyone who thinks this proposal makes sense.....but I have to admit that I haven't yet asked The Governor.

## Green, Rick E (DFG)

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**From:** Deanna Chesser <rddcr@acsalaska.net>  
**Sent:** Saturday, January 11, 2020 1:34 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Jetski Ban - Kachemak Bay

Hello there,

Thank you for taking time to read this email. My husband and myself are avid users of the Kachemak Bay. We are so excited at the possibility of opening up the Bay to jet skis! Because in doing that, we can access smaller areas that are difficult to get to, for one thing.

The City of Homer is probably going to pass a resolution to continue the ban, but honestly, their premises are full of dog poop. I highly doubt that hordes of folks are going to take off on their jet skis, and ruin the Bay for commercial fishermen. The noise factor they bring up is also ridiculous, because it isn't like they are louder than the boats that currently use the Bay. And they would be less expensive to run. Instead of spending a LOT of \$ to fuel our big boat to run across the Bay for berries, fishing, or just sight seeing, we could just take a jet ski, and call it good.

I am really tired of liberal Homer.

The City of Homer also thinks that jet skis will be run by unruly, immature, idiots. That is not the case. My husband and I are in our late 50s, and we LOVE to jet ski! I also feel it would open up a new opportunity for a tourism business here, as well as be the summer equivalent to snow machines, for those who currently sell them in our area. So, they would have a much larger consumer base.

Anyway. I think all of their arguments are meritless. Other areas across Alaska allow the use of jet skis, and no one is claiming that they are ruining the ocean with them. Furthermore, the argument that because jet skis can go faster, they are more apt to kill marine life ... is also without merit. Jet skis have much greater maneuverability, and being lower to the water, are able to see things easier and quicker than in a sport fishing boat with a cabin. And, they also take up less space in the water. As for the marine life ... the sea otter population needs reduced anyway.

Oh, and then the City of Homer thinks that the noise of jet skis will cause harm to the marine life as well. Like the fishing boats don't? Honestly, I doubt that they do ... but whatever. I'm so over the liberals making all these bans to keep us from enjoying OUR ocean, OUR Bay, OUR State. They think it is all theirs, and they know better than anyone. They don't.

There is room for all users, as well as the marine life ... and it is ridiculous for a small group of liberals to run everything.

Thank you,

Deanna L. Chesser  
Russell Chesser  
PO Box 515  
Anchor Point, AK 99556

## Green, Rick E (DFG)

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**From:** sarah ballard <ballardsr@hotmail.com>  
**Sent:** Friday, January 10, 2020 8:50 PM  
**To:** Green, Rick E (DFG)  
**Cc:** Vincent-Lang, Douglas S (DFG); Stevens, Ben A (GOV); Stutes, Louise B (LEG); Representative.Sarah.Vance@akleg.gov; Stevens, Gary L (LEG)  
**Subject:** PWC ban in Kachemak Bay

Dear Mr. Green,

As a lifelong Alaskan and outdoor enthusiast, I have worked and played in Alaska's extensive coastal waters in all sorts of vessels from crab boats to personal watercraft and I especially appreciate the beauty and peacefulness of Kachemak Bay. I am strongly opposed to the opening of the Kachemak Bay Critical Habitat Area to the use of jet skis for the following reasons:

- Kachemak Bay is the only marine habitat in Alaska that is closed to PWCs, and therefore the only sanctuary protected from intrusive thrill craft. All other Alaskan marine waters are open to PWCs (jet ski type speed machines that are designed to go 60 to 70 miles an hour and are not like boats)
- Kachemak Bay is a critical habitat and a giant nursery. The only place in Alaskan coastal waters where breeding seabirds, marine mammals such as whales, otters and seals, as well as kelp beds are protected from being harassed and threatened by PWCs, and people seeking a quiet experience in nature can get away from jet ski activity
- There is no plan nor funding to enforce, monitor or regulate Jet ski activity! These machines are there for the primary purpose of thrill riding, and there is an abundance of proof that PWCs are primarily used in that manner.
- There is no scientific evidence justifying to reverse the ban, after all the extensive research over several years that had been done leading up to the ban in the first place, and the vast majority of stakeholders, area residents and visitors have been in support of the ban. The scientists are all still on the same page as when the ban was put in place, but the administration is pushing for repeal for political reasons. The PWCs have only become more powerful, and though the 4 strokes might be a little less noisy, they are still very loud. Where boats almost exclusively go from point A to point B, PWCs are designed and primarily used to run for the sake of speed riding in shallow waters, where wildlife seeks refuge, and non-motorized water sports take place. The biggest danger of PWCs excessive speed is still as much of a threat to birds, sea mammals and recovering kelp beds as ever.

I urge you to maintain the ban on PWC in Kachemak Bay CHA.

Thank you for your support and consideration.

Sincerely,

Sarah Ballard

Sent from my iPad

## Commentary:

Repealing jet ski ban is one more example of inexcusable gubernatorial overreach

©2020 by Bill Sherwonit

There's a good reason, an unassailable reason really, that jet skis have been banned in the Kachemak Bay and Fox River Flats Critical Habitat Areas near Homer for nearly two decades. The first clue why this is so should be the words "critical habitat areas." These are places that deserve special protections. And all the available evidence indicates jet ski recreation is an inappropriate activity in such coastal areas.

You don't have to take my word for it. The agency that manages those critical habitat areas (CHAs)—the Alaska Department of Fish and Game (F&G)—has twice decided that jet skis should be prohibited there, first in 2001 when the ban was enacted and again in 2017, during a revision of the CHAs' management plans.

The reason the department chose to ban jet skis (also known as personal watercraft, or PWC) is simple. To quote from a F&G memo written in May 2017, "the nature of PWC, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional users groups and those [impacts] cannot be easily mitigated. . . .

"In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would

warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted.”

It’s also worth noting that Alaskans have supported the ban by substantial margins both during the original comment period and again in 2016-17. The point being, I suppose, that this ban was not enacted or maintained in the face of great opposition.

Case closed. Or so you’d think.

But not with Mike Dunleavy governing our state.

There are many reasons our governor is so unpopular. One is his callous disregard for public process and the rule of law, as Bob Shavelson of Cook Inletkeeper documented in a recent ADN commentary headlined “Gov. Dunleavy is failing Alaska.”

In this instance, Dunleavy met with a jet skis advocate. And lo and behold, our governor then took it upon himself to order the ban lifted, without any public process or consultation with the state biologists and managers who determined the ban was merited.

In an internal F&G memo dated Nov. 19, 2019, habitat biologist Tammy Massie gave a “heads up” to the CHA planning team that “The governor’s office has decided to repeal the PWC prohibition for Kachemak Bay and Fox River Flats CHAs . . . done independently of the ongoing plan revision.”

Though the department later announced a public-comment period, Massie’s memo makes clear that the ban’s repeal was essentially a done deal.

Gina Poths, the jet ski advocate (and member of the Personal Watercraft Club of Alaska) who met with Dunleavy couldn’t be happier. After many years of writing

hundreds letters seeking such a repeal, she finally found a rogue governor who doesn't care about public process or what's best for the critical habitat areas, along with the fish and wildlife and other life forms they protect. He'd rather give a narrow special interest group the right to do unnecessary damage.

While Poths and other jet ski advocates argue that this is about "equal access," I would point out that the state places recreational restrictions on many of its lands and waters to prevent harm. To name just a few examples, consider snowmachining, trapping, hunting, and even mountain biking restrictions in parts of Chugach State Park and other state park units; or prohibitions of numerous human activities in McNeil River State Game Sanctuary, to ensure the long-term protection of its bears.

It's simple common sense that some places cannot be opened to all manner of recreational (or other) activities. The experts—in this instance, F&G biologists and managers—say jet skis are unacceptable in these two critical habitat areas because of the damage they can do. And the public has largely understood, and agreed with, the department's rationale.

That Dunleavy and some of his political underlings (for instance F&G special assistant Rick Green, aka radio shock jock Rick Rydell) would unilaterally repeal the exhaustive efforts of state personnel charged with managing these areas, and go against public sentiment as well, is just one more example of how out of touch—and out of control—our governor remains,, despite his recent attempts to seem a more reasonable and open-minded "leader."

It's also one more example of why those pushing to recall him can't let up. Dunleavy is bad for Alaska and he's the wrong guy to lead us Alaskans.

The public comment period was originally scheduled to end January 6, but under duress the administration moved the deadline to January 21, still a ridiculously short timeframe, especially considering it began during the holidays. Besides contacting Green (rick.green@alaska.gov), the point man in this repeal effort, I'd recommend that Alaskans upset by this latest example of gubernatorial overreach contact our governor and tell Dunleavy his action is not only wrong, but is unacceptably bad behavior.

*Anchorage nature writer Bill Sherwonit is the author of more than a dozen books about Alaska, including "Living with Wildness: An Alaskan Odyssey" and "Animal Stories: Encounters with Alaska's Wildlife." He also writes a "City Wilds" column for the Anchorage Press.*

## Green, Rick E (DFG)

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**From:** Henry T Munson <henryt12653oegr@icloud.com>  
**Sent:** Thursday, January 9, 2020 3:43 PM  
**To:** Green, Rick E (DFG)  
**Cc:** ascinfo907@gmail.com  
**Subject:** Re: Private watercraft restriction Kachemak Bay

> On Jan 9, 2020, at 3:35 PM, Henry T Munson <henryt12653oegr@icloud.com> wrote:  
>  
> Rick Green  
>  
> Just to put this Kachemak Bay private craft restriction business in perspective.....  
>  
> I lived at Anchor Point for many years and fished in the Bay for Crab, shrimp, octopus, halibut and miscellaneous fin fish. The local fishermen were hostile toward me because I was an "OUTSIDER". The City Council of Homer was hostile toward me because I was an "OUTSIDER".  
>  
> At a North Pacific Fisheries Management Council meeting in Homer in the mid '80s I proposed enforcing the Magnuson Act and a change in Halibut Quota assignment from giving US Fishermen the LEFTOVERS from the foreign dragger "INCIDENTAL CATCH" to a program of SUSTAINABLE YIELD for Americans and giving the foreign draggers the "LEFTOVERS" from the US fishermen for their "Incidental Catch" limit.  
>  
> TWO THINGS HAPPENED: Three local fishermen jumped up and pointed at me and told the Council, "We want you to make a law banning these (pointing at me) 'OUTSIDERS' from fishing in our bay !" At first the Management Council thought they were joking, but they insisted, stating that they were "serious".  
>  
> PAUL POTSKY, Attorney for the North Pacific Fisheries Management council responded, "We can't do that. Kachemak Bay is a Public Domain. It belongs to everybody, and anybody can fish here."  
>  
> The SECOND thing, after Potsky quashed the, "IT'S OUR BAY". pipe dream , was that one of the "OUR BAY" group asked Potsky, "What's 'incidental catch' ? Council members explained the term to the group present. It caused quite a stir. (I'm sure they thought the Magnuson Act was some kind of Circus Performer group.)  
>  
> The HOMER City Council attempted to charge me double for my boat moorage because, as they said, I was an "OUTSIDER". After a short LEGAL discussion, they changed their minds. At the same time the residents of Bartlett Street in Homer demanded that sewer improvements for Bartlett Street be paid for by "OUTSIDERS" (TOURISTS) (Arguments presented at City Council Meeting)  
>  
> The above should indicate the Kachemak Bay resident's attitude toward "OUTSIDERS". I could cite further examples at risk of redundancy. A "grain of salt" is advisable.  
>  
>  
> The Recreational private craft ban VIOLATES the Alaska Constitution as well as the United States Constitution.  
>  
> Alaska constitution Article VIII, Section:  
>





## Green, Rick E (DFG)

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**From:** Gretchen T Bersch <gtb@alaska.net>  
**Sent:** Thursday, January 9, 2020 3:33 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Repealing Personal Use Watercraft Prohibition Kachemak Bay and Fox River

From: **Gretchen T. Bersch (gtb@alaska.net)**

I first began to drive my own skiff in Kachemak Bay when I was 15, sixty years ago, when my family homesteaded on Yukon Island.

I still spend time on the island and still, at 75 own and operate my skiff in Kachemak Bay.

### **Do not permit Personal Use Watercraft in Kachemak Bay!**

The prohibition is there for good reason, has been reviewed a number of times, and still stands.

### **Why is it a bad idea to allow Personal Watercraft in Kachemak Bay?**

1. Kachemak Bay is a critical habitat. Allowing PUW operation could badly affect the birds and marine animals.
2. One main draw to Kachemak Bay is the enjoyment of the hiking, fishing, birding, kayaking, camping, sightseeing, and enjoyment of the natural setting. PUWs buzzing back and forth, causing wakes just for fun, would disturb these activities, to the detriment of tens of thousands of visitors and residents alike.
3. Boats ordinarily go from one point to another. Personal watercraft would not be primarily used for transportation and would create a possible hazard for boats and especially kayaks.
4. Allowing noisy and unregulated PUW craft could have direct detrimental economic consequences. Already, PUWs can be used in over 95% of Alaska's waters. Tourism and fishing are huge economic generators in the bay. Allowing craft that could compromise these activities makes no sense.
5. Sixty years of boating on Kachemak Bay has taught me that the weather can quickly go from placid, lake-like conditions to stormy, strong wind, huge waves and currents. Surely the PUW users would include those who have no idea of the dangers of Kachemak Bay waters. Who will save them?
5. Who will monitor PUW activities? Where are the funds to do this? Who will make sure operators are following boating rules of the road?

Why in the world would the regulations prohibiting personal watercraft be repealed to appease a few people who want the critical habitat of Kachemak Bay to be opened?

For two decades, people have testified against allowing personal watercraft in Kachemak Bay.

Why must we be badgered yet again to maintain this prohibition?

### **Do not allow Personal Use Watercraft in Kachemak Bay!**

Sincerely, Gretchen T. (Abbott) Bersch  
(907) 278-1300; Yukon Island phone: 235-5592.

1/6/2020

Department of Fish and Game  
Attn: Rick Green  
333 Raspberry Rd  
Anchorage, AK 99518-1565

Mr. Green,

The ban on personal watercraft (PWC) use and area restrictions within Kachemak Bay need to be removed *immediately* !

The ban and restriction were implemented behind closed doors and forced into being at the push of a very small, but politically connected, group of individuals using methods and techniques that would board line on unethical. They used unsubstantiated claims and non-scientific information to hoodwink the powers at be to implement the ban.

What we have in place is basically blatant discrimination against the users of PWCs by a small group of selfish individuals

To reiterate some Alaska Outdoor Access Alliance words, "Today's PWCs are no danger to the environment or other users that choose to enjoy water travel within Kachemak Bay. Today's PWC meet strict environmental emission standards well above other vessels currently allowed within the bay and restricting the use of PWC is simply user discrimination. If there are sensitive areas within the Bay, then those areas should be restricted to all users and not simply to PWC. Alaska should always protect the rights of the individuals that choose to utilize public lands and waters; how they choose to access those lands and waters is a personal choice. Without factual and well substantiated evidence that a particular vessel or other motorized vehicle causes permanent environmental damage, the use of such vessels or vehicles should always be regarded as a personal choice; to ban them for any other reason is simply user discrimination from those that simply don't like them, understand them, or don't want to see them."

So, unless you want to be part of this discriminatory practice, I would make every effort to get this ban lifted and restrictions removed; thus, providing equal opportunity to ALL Alaskans to enjoy our fabulous outdoors. Alaska leadership must ensure equal and unlimited access to our public resources.

Again, I urge the immediate lifting of the ban on PWC users within Kachemak Bay and restrictions of any users from any environmentally sensitive areas.

I thank you for this opportunity to respond.

Randy "Bj" Bjorgan  
3038 Donington Drive  
Anchorage AK 99504-3847  
(907) 952-4353

1/4/2020

Rick Green  
Alaska Department of Fish and Game  
333 Raspberry Rd., Anchorage AK 99518-1565

COMMENTS ON NOTICE AND SUPPLEMENTAL NOTICE OF PROPOSED CHANGES ON  
PERSONAL WATERCRAFT (PWC) USE IN THE FOX RIVER FLATS AND KACHEMAK BAY  
CRITICAL HABITAT AREAS IN THE REGULATIONS OF ADFG

1. This Public Process is Incorrect.

A “stand-alone” regulatory change process is not appropriate. The management plan process is the place to deal with these proposed changes. And the management plan revision of the 2 critical habitat areas is going on now. Deal with the repeal of the PWC ban there. This is common sense.

2. I am opposed to the proposed changes.

I do NOT support the repeal of 5AAC 95.310. Allowing PWC in these two critical habitat areas does not fulfill AS 16.20. The mandate of 16.20 is for ADFG to protect and preserve the habitat areas especially crucial to the perpetuation of fish and wildlife. It mandates restrictions of all other uses not compatible with that primary purpose. The current restriction fulfills the statutory mandate.

3. No new information has come to light to warrant the repeal.

The recent ADFG literature review of 147 scientific studies proves this. The negative impacts of PWC are still valid concerns to warrant the ban. Data conclusions from the studies lays out the concerns of PWC on water quality, noise, birds, wildlife, marine mammals, fish, ecological/environmental and user conflicts.

4. Potential costs to private persons of complying with the proposed change in the notice will happen. This is contrary to what is stated in the public notice.

The negative impacts to what has become traditional use of the area and adjacent area will cost the public in the long run. Negative impacts to critical habitat areas will have to be reversed by rehabilitation of the area. This costs money both private and public.

The rollback of the current protection of the current uses of the critical habitat areas is due to political pressure. Most of the state allows PWC on its waters. So there is no dearth of places where that use can happen.

Becky Long

## Green, Rick E (DFG)

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**From:** G Klebba <gennklebba@gmail.com>  
**Sent:** Saturday, January 4, 2020 9:21 PM  
**To:** Green, Rick E (DFG)  
**Subject:** ADFG Proposal to lift ban on personal watercraft in Kachemak Bay

Mr. Green:

I AM ADAMANTLY OPPOSED TO LIFTING THE BAN ON PERSONAL WATERCRAFT IN KACHEMAK BAY !

Those people who want this ban lifted say they need equal access, and that it is not fair that oil tankers get to go into Kachemak Bay. They say their personal watercraft (PWC) would NOT affect the wildlife. I disagree.

I used to live on a lake in North Kenai. When I first moved there, it was very quiet. We had ducks and loons on the lake. After 10 years or so, people on PWC changed the lake. The howling noise of the machines screaming around the lake scared off any wild fowl, and it certainly impacted those of us who lived around the lake.

Here's the main difference between the people on PWC and all the rest of the people on various types of boats: the people on PWC are NOT paying any attention to the wildlife, the birds, the marine life, or anything else except going fast, usually in circles. People in regular boats are actually going somewhere, or doing something; for example they are headed to a fishing area, or they are fishing. They generally go in fairly straight lines, and most of them are actually fairly slow, compared to PWC. You KNOW that the birds and animals, especially animals like the otters, keep a close watch on how a boat is moving. As long as a boat is going in a straight line, the otters are OK. But as soon as a boat slows down, or turns, the otters change their behavior. They stop what they are doing, and maybe they dive. Can you IMAGINE how much they would be affected by PWC that did absolutely nothing except run around circles at high speeds? It's the same with the large flocks of seabirds in the bay.

The Fox River Flats and the Kachemak Bay Critical Habitat Area are critical for the wildlife, birds, and marine life. Humans on fast, loud PWC can go somewhere else.

Regarding those comments about oil tankers, barges, ferries, and other large boats, those types of craft are carefully controlled as they move in and out of Kachemak Bay, they move at slow speeds, and they don't go to the upper part of the bay.

I have lived on the Kenai Peninsula, in the Kenai-Soldotna area, for over 35 years. I remember when PWC would absolutely scream up and down the Kenai River. That was stopped, and PWC need to be kept OUT of the Fox River Flats and the Kachemak Bay Critical Habitat Area too.

Sincerely,

Genevieve Klebba

[gennklebba@GMAIL.COM](mailto:gennklebba@GMAIL.COM)

Soldotna, AK 99669

## Green, Rick E (DFG)

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**From:** Anna Dugan <anna.burke@gmail.com>  
**Sent:** Friday, January 3, 2020 11:10 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments on Notice of Proposed Changes on the Use of Personal Watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas

Dear Mr. Green,

We have a cabin on Peterson Bay in Kachemak Bay. I strongly disagree with repealing the ban on personal watercraft in Kachemak Bay. Personal watercraft (jetskis) have no place in Kachemak Bay.

Peterson Bay is calm and deep. There is a kayak rental company across the bay, and it is almost always quiet enough to eavesdrop on the chatter of the tourists, unaware how well sound travels across calm water as they inadvertently make the same circuit around the bay that the last tourists paddled. We have a phone list of everyone who has a place in Peterson Bay; we are neighbors in every sense of the word. We have an agreement to keep a no-wake zone past the three oyster farms in the bay. Some of our neighbors have floating bikes that they paddle like paddleboats quietly around the bay. At low tide we can walk out to an island where there's amazing tidepooling, and we can hear the tiny sounds of critters temporarily out of their preferred underwater habitat.

Introducing jetskis to Kachemak bay would have deleterious economic, social, and property value effects. Beginner kayakers would be rocked and splashed by jetskis, and their quiet (rental) adventure would be interrupted by the whine of two stoke engines. The oyster farms could be disturbed by PWC users unaware of the farming happening beneath the blue and white grid of buoys. Properties in the area are valued and purchased under the assumption that no PWC will be in use; if this changes, property values are likely to drop because the peace and quiet is valued by all who use the area. As stated in the 2017 ADFG memo, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated.

In 2001, the State of Alaska went through a rigorous public process, and the overwhelming majority of comments favored a ban on personal watercraft in Kachemak Bay. The State revisited the issue in 2011 and 2016, and again, Alaskans spoke-out to maintain the ban. ADFG staff has conducted an exhaustive review of the scientific literature surround jetski risks and impacts, and it concluded again in 2017 the ban on personal watercraft in the Kachemak Bay Critical Habitat Area is appropriate and fully-supported by science. They conclude the ban is appropriate and justified.

Thank you for taking the time to read and record my comments.

Sincerely,  
Anna Dugan

Paul Reichardt  
2086 Toboggan Lane  
Fairbanks, AK 99709

I am opposed to the proposed elimination of the prohibition of personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat Areas. My opposition is based on the following points:

1. What is the evidence that the ways in which jetskiis are used is compatible with the objectives of a Critical Habitat Area?

Going back to the 70's when exploration for oil and gas was proposed for Kachemak Bay, the people of Alaska have again and again reiterated their interest in protecting this critical habitat. On its surface, the idea that the State can maintain this habitat designated as "especially crucial to the perpetuation of fish and wildlife" while allowing jetskii enthusiasts to tear around in it seems ludicrous. I suspect that ADFG scientists have looked at this question. Why are their assessments and conclusions not part of the notification that this review process is underway?

2. Why has there not been a better publicized process (one that includes the provision of relevant information and arguments related to the proposal) designed to garner public comment?

A cynical person might consider the low-key release of official notification of this proposal on December 2 with a comment deadline of January 6 (as initially announced) as a crafty attempt to have it get lost in the activities of the holiday season. Beyond that, the design of this attempt to gather public comments seems much less robust than the previous ones conducted over the last couple decades, processes that demonstrated overwhelming public support for CHA designation—and appropriate protection—for this area.

3. If it is, indeed, important to the Dunleavy administration that jetskiis and related personal use watercraft be allowed to operate in Kachemak Bay, why is this proposal not simply rolled into the ongoing process for revising the Fox River Flats and Kachemak Bay CHA management plans?

The establishment and maintenance of CHA's are of immense value to the State and its residents. The goals of any CHA are attainable only in the context of a good management plan that is used to direct decisions about activities within its boundaries. Piecemeal tinkering with a plan is never a great idea, but it is a particularly bad one when an ongoing review of the entire plan is already in progress.

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Saturday, January 4, 2020 9:23 AM  
**To:** Green, Rick E (DFG)  
**Subject:** FW: Jet Ski Ban

For the files

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**From:** Bruce Babbitt <busybabbitt@yahoo.com>  
**Sent:** Saturday, January 4, 2020 5:47 AM  
**To:** Vincent-Lang, Douglas S (DFG) <doug.vincent-lang@alaska.gov>  
**Subject:** Jet Ski Ban

Hi. I heard that someone is trying to get the jet ski ban in Kachemak Bay overturned, and I thought I would submit my input for consideration. I am a retired Coast Guardsman. During my career with the Coast Guard, I have seen many cases of irresponsible behavior with boats of many types, mostly in the name of boredom; the worst of these is the jet ski. This type of watercraft is designed purely for entertainment purposes, though it has been adapted for use by lifeguards in certain areas where there are a lot of swimmers, etc.. I've seen jet skis used in other places to harass fishermen and marine mammals....The one instance that really sticks in my mind happened in Anton Larsen Bay on Kodiak Island in 1996. There is a small dock and a launch ramp there, and I had spent the night on a charter boat moored to the dock; when I awoke, I put the coffee on and stepped on deck.... There were pinks, silvers, and chum salmon jumping all over the bay, some birds, and even a beaver slapping its' tail at me. I heard a vehicle approaching the launch ramp as I went into the cabin for my coffee; as I came back on deck, someone started up an unmuffled jet ski. The noise reverberated off the sides of the bay, the birds took flight; the rider then harassed the beaver, and left the bay all at high speed, " Waking" the boats anchored an at the dock. All the Salmon quit jumping, ( and did not resume for two days ) the beaver disappeared. A total disruption of the wildlife in the bay, accomplished in five minutes by one jerk with a jet ski. I moved to the Homer area in 2000, and when the jet ski ban went into effect, I remember thinking " Finally someone has the brains to realize the damage these things can do to a critical habitat area.". It doesn't take Fellini to realize what damage a few bored people can do to the fish and wildlife of an area like Kachemak Bay, and in turn, the people that come here to fish and see the birds, otters, whales, and other wildlife. As others have mentioned, roughly 99% of Alaska's waters are unrestricted for jet ski use. There are other places for them to go and have their fun; let them go there, and LEAVE KACHEMAK BAY BE. The wildlife resources and economic impact from those resources are too valuable to risk for a few bored individuals. Thank You for your consideration. Bruce T. Babbitt, ASM1, USCG Retired,

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Sunday, January 5, 2020 10:42 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Fwd: Personal watercraft in Kachemak Bay

For the files

Doug Vincent-Lang  
Commissioner, Alaska Dept. Fish and Game  
(907) 744-8881

Begin forwarded message:

**From:** Clyde Boyer and Vivian Finlay <vivandclyde@gmail.com>  
**Date:** January 5, 2020 at 9:54:44 AM AKST  
**To:** "Vincent-Lang, Douglas S (DFG)" <doug.vincent-lang@alaska.gov>  
**Subject:** **Personal watercraft in Kachemak Bay**

Dear Mr. Vincent-Lang,

We oppose any attempt to reverse the ban on personal watercraft in Kachemak Bay.

The Bay is a critical wildlife habitat. People from around the USA and the world attend the Annual Bird Festival here. Tourists flock here to observe and enjoy the wildlife, from birds, to sea otters, to seals and sea lions, to whales and porpoises, and to go fishing, and so on. Everyone enjoys the scenic beauty of the area and the peace and quiet that the beaches provide for walking and observing.

There are many ways to access the Bay without personal watercraft. We don't own a boat, so we rent water taxis, or kayaks, etc. A boat with a motor does not "play" in the water - people take them to a destination to fish, or to hike and camp. Personal watercraft are for "playing" and "having fun". They can be used almost anywhere else in Alaska. They should NOT be used in Kachemak Bay. The wildlife is greatly at risk with those watercraft - the purpose of which is to create speed and waves and in so doing they create much noise and probable destruction.

We moved from a lake near Wasilla to Homer 10 years ago. The lake became a "noise factory" from the use of many personal watercraft. The loons would have chicks who never survived. (We were the volunteer State Loon Watchers, so we recorded the survival of the chicks for the State).

We are aware that lakes and Kachemak Bay are different entities. However, we know that both suffer when personal watercraft are permitted access.

Please keep the restrictions on using personal watercraft in Kachemak Bay.

Thank you,

Vivian Finlay and Clyde Boyer (husband and wife).

--

455 Elderberry Drive,  
Homer, AK. 99603 USA  
(907) 435-3903



Commissioner Doug Vincent-Lang  
Alaska Department of Fish and Game  
333 Raspberry Rd, Anchorage, AK

The purpose of this letter is for Kachemak Bay Birders, a birding organization based in Homer, Alaska, to respond to ADF&G's proposed repeal of 5 AAC 95.310 which prohibits the use of personal watercraft (aka jet skis) in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHA).

The regulation currently in place was arrived at by ADF&G in 2001 after it completed a long and thorough public process that affirmed a ban on jet skis in the Kachemak Bay and Fox River Flats CHA was consistent with the purpose for the CHA's established by Alaska Legislature in 1974. Also, a ban was in accord with the vast majority of the participating public. This decision and public process was revisited in 2011 by the Kachemak Bay State Parks Citizen Advisory Board, which unanimously recommended no change in current rules banning personal watercraft in Kachemak Bay.

It is important to note that each previous public process essentially followed current ADF&G's guiding principles that are posted on its website. (A fifth principle isn't relevant to this issue.)

#### Guiding Principles:

Seeking excellence in carrying out its responsibilities under state and federal law, the department will:

1. Provide for the greatest long-term opportunities for people to use and enjoy Alaska's fish, wildlife, and habitat resources.
2. Improve public accessibility to, and encourage active involvement by the public in, the department's decision-making processes.
3. Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
4. Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.

Kachemak Bay Birders not only opposes any change to 5 AAC 95.310, but seriously questions whether ADF&G is following its own Guiding Principles in releasing this notice. Specifically, this notice was issued;

1. With no previous involvement by the public.

2. Provides not only a limited time for comment, but a comment period during the holidays when public response is typically less.
3. No public hearing.
4. Absolutely no information on the rationale for the proposal let alone one that meets ADF&G's "highest standard of scientific integrity."

The closest thing we have for the proposal rationale is a December 10<sup>th</sup> interview by Homer's radio station KBBI of Rick Green who is listed as ADF&G's contact person. He said, "If I was to put it in a nutshell, we put this proposal forward to increase access for Alaskans to the property that we all own equally. That's our motive is to increase access."

Kachemak Bay Birders takes issue with the motive expressed by Rick Green; 5 AAC 95.310 does not deny access to anyone who wishes to visit either Kachemak Bay or Fox River Flats CHA's. What is being denied is not access, but mode of access. Furthermore, Alaska's Constitution clearly makes the case that such limitations are acceptable when serving a broader public purpose, which was clearly established via previous public meetings on 5 AAC 95.310.

Access is by no means a new issue for the State of Alaska. In fact, the issue of access to navigable waters was addressed when our Constitution was written. An Alaska Legislative Affairs Agency report by Gordon Harrison entitled *Alaska's Constitution a Citizen's Guide* ([http://w3.legis.state.ak.us/docs/pdf/citizens\\_guide.pdf](http://w3.legis.state.ak.us/docs/pdf/citizens_guide.pdf)) provides not only a review, but some legal framework for deciding issues like access to navigable waters.

Section 14. Access to Navigable Waters Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

This section adopts the public trust doctrine regarding navigable rivers and other public waterways, whereby citizens of the state have the right to travel on and otherwise use these bodies of water. The government may not deny this use except by a general law that protects a public interest.

Kachemak Bay Birders also takes issue with Rick Green's comment that "there aren't any immediate plans to include restrictions on size, type of engine, restricted areas or any requirements for safety flags." ADF&G staff have recognized in their current efforts to update the Kachemak Bay and Fox River Flats management plans that Kachemak Bay has a number of areas critical to local wildlife that need protection from disturbance. Based on our observations of Kachemak Bay, we know that the shallow waters off the west side of the Homer Spit from the beach to a couple of miles out is an important feeding ground for waterfowl. Waterfowl tend to avoid boats that traverse the area, but the speed and changing direction of jet skis creates a far more tenuous situation and perhaps new regulation. Also, it certainly would be appropriate to restrict jet skis from entering Mud Bay as well as Louie's Lagoon and Beluga Slough. In fact, the City of Homer has ordinances that prohibit the use of motorized vehicle for parts of these areas, recognizing that these areas provide important feeding and resting areas for birds,

(particularly shorebird during migration). Another important area for birds includes the waters around Gull Island. Literally thousands of birds will be on these waters during breeding season. While these birds have acclimated to slow moving boats that have a predictable course, that is not likely to be with case if jet skis are allowed in these waters. Regulations such as speed limits may be needed if this repeal becomes effective. Another important area for birds is the waters off Glacier Spit which murrelets use for feeding.

Rick Greens statement fails to recognize the importance of Kachemak Bay wildlife, which has earned national recognition, or the purpose of the CHA's and the protection it affords to this valuable resource. ADF&G would be remiss in its mission if it were to repeal the ban and not first enact regulations that compensate and/or mitigate the impacts that jet skis are likely impose on Kachemak Bay. ADF&G would have it backwards if it repealed the ban, then considered what regulations are needed.

Finally, and very importantly, the notice states that "The proposed regulation change is not expected to require an increased appropriation." For those who live here and pay local taxes, it is obvious that expenditures will be needed for enforcement and to provide suitable facilities for jet ski launch. How does the State intend to pay for the obligation it intends to create? Will this be an unfunded mandate from the state to local government? We hope not.

Sincerely,

Cindy Sisson  
Kachemak Bay Birders

cc  
Governor Mike Dunleavy  
Rick Green  
Senator Gary Stevens  
Representative Sarah Vance

## Green, Rick E (DFG)

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**From:** David Mesiar <dcmesiar@icloud.com>  
**Sent:** Saturday, January 4, 2020 12:05 PM  
**To:** Green, Rick E (DFG)  
**Subject:** PWC ban change in Kachemak Bay Critical Habitat Area

I would like to record my opposition to lifting the ban on personal watercraft use in the Critical Habitat Area of Kachemak Bay. The rationale behind establishment of this restriction continues to be valid, and changing to allow these craft puts habitat, wildlife, other boaters, and PWC operators themselves at risk.

Personal watercraft continue to exist as more of a toy, or recreational vehicle for their owners rather than a practical method of transportation between points. Operators generally can be found running in circles at high speed creating wakes for jumping. Even those traveling straight line tend to travel at high speed (up to 65 mph), which creates a hazard for seabirds, marine mammals, marine organisms, marine habitats, and regular watercraft both powered and unpowered.

Despite changes in technology (four stroke engines) that PWC operators claim as one basis for their proposed acceptance in the Critical Habitat Area, the fact is that the impact per passenger of the PWC exceeds that of traditional powered watercraft capable of carrying several passengers at once.

I am concerned that allowing a small but vocal minority of PWC proponents access to the one place in the State that has determined them to be too disruptive will cause needless wildlife and human injury or death. I am also disturbed that this proposal to re-open closed areas comes not from the public process by which management plan revisions are supposed to be determined, but by Governor's office interference on behalf of vocal groups who do not represent the views of the majority of Fish and Game biologists (who originally and repeatedly found the ban justified) residents, property owners, and regular respectful users of this fragile and beautiful area.

Thank you,

David Mesiar

Sent from my iPad

Alaska Department of Fish & Game  
333 Raspberry Road  
Anchorage, AK

Dear Rick Green,

First and foremost, I want to thank you for taking this on and following through until the end! I of course am writing in support of the repeal on the administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215) on personal watercraft in Kachemak Bay Critical Habitat area. Finally, an administration that is not prejudiced and understands access.

I have been waiting to submit my comments to see what the newspapers and other websites were going to say and print. I am not surprised they are still labeling a personal watercraft as a thrillcraft. Those against the repeal and for the continued ban know there are no studies to back up the reasons for the ban that occurred in 2001, yet now they are asking ADF&G to suspend work until ADF&G can provide a science-based explanation for the repeal and schedule a more thorough public comment process. To this I respond with 2 things: 1-Give them/ the anti-access supporters the 200-page Analysis that I provided to ADF&G and DNR and past Governor's in 2012. There's more information in that than any research DNR did in 1999-2001 when they put the ban in place. 2-There is no need for a more science-based explanation, this is simply an equal access issue to allow all user groups access to Alaska's state public lands and waters because a personal watercraft is a boat. Kachemak Bay does not belong to just the residents of Homer.

It's appalling that AK Department of Natural Resources who write the management plans can just arbitrarily add a ban on personal watercraft from all the management plans. This must be stopped and I feel this first step of repealing the administrative codes regarding personal watercraft all together will be an effective way of telling DNR they cannot just add a ban on specific vessels just because they think they can.

If the folks who represent Cook Inlet Keeper, Friends of Kachemak Bay and Alaska Department of Natural Resources really felt this was a clean water and environmental issue than they should be working on banning 2-stroke boat motors and only allow those with 4-stroke engines as everyone knows a 4-stroke is much cleaner and quieter than the old 2-stroke motors.

I also want to point out that I have been asking that ADF&G understands the difference in the jurisdictions between what DNR manages (the State Parks only) and their part in writing the State's Critical Habitat Areas Management plans and what ADF&G manages. It's always been told to me and others that ADF&G will do whatever DNR recommends. I am so happy that this administration realizes they do not need to do whatever DNR does and that one cannot ban a specific type of boat from launching at a public boat launch that has access to the AK Marine highway as well as other remote places like Seldovia and beyond like Kodiak. The Alaska Department of Fish and Game has a duty to

allow access to these waters for all boaters and user groups where there is not a specific horse power restriction.

In my opinion I think it's imperative that when the public comment period ends and all the comments are tallied that the comments are grouped by submitters place of residence. I would wager that those that oppose the repeal are 98% (if not more) from the Kenai Peninsula and Homer areas. You will see a trend in their comments about how they own businesses and feel a personal watercraft is nothing more than a thrillcraft out to buzz and harass their big money clients. Their only concern is their bank account and they have no valid reasons to back up their statements other than personal opinion.

I also hope that Commissioner Lang and other decision makers in the department understand that most people don't bother to submit comments unless it's something that would affect them personally. I would wager again that if this was a state wide snow machine issue the comments would pour in by the thousands. There is a very small percentage of personal watercraft ocean boaters therefore relying just on public comment is already a defeat. People don't understand this is an access issue and it's the little guy that is losing because no one really cares because it's not something that they like to do. I am asking the Department of Fish and Game to understand this fact if the outcome is the majority of the comments received are to keep the ban. I am asking that this administration look out for the minority and make the public aware that we have the right to protect equal access to our state's public lands and waters and that big money can not keep bullying their way by picking on the minority.

I applaud you and Commissioner Lang for taking this major leap into fixing something that was done without just cause in 2001 (however started in 1999 when one person made a phone call to a personal friend, then Governor Tony Knowles). People have forgotten how this all started in the first place 20 years ago and now question why it's being brought up again.

You are doing the right thing; a personal watercraft is a boat and should be allowed in the waters of Kachemak Bay just like all other boats.

Thank you,

A handwritten signature in black ink that reads "Gina Poths". The signature is written in a cursive, flowing style.

Gina Poths  
Anchorage, AK 99516  
907-440-6597

## Green, Rick E (DFG)

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**From:** Dorla Harness <dorlaharness@gmail.com>  
**Sent:** Friday, January 3, 2020 6:49 PM  
**To:** doug.vincent/lang@alaska.gov; Green, Rick E (DFG)  
**Cc:** Stevens, Ben A (GOV); Gruening, Matthew S (LEG); Representative.Sarah.Vance@akleg.gov; Stevens, Gary L (LEG)  
**Subject:** Jet Ski ban

Dear Commissioner Lang and Mr. Green,

I understand that everyone should have access to Alaska's waters. That does not mean all modes of access are appropriate for all places. There are restrictions (for good reasons) on where you can fly a drone, take an ATV, snow machine, motor boat, or any motorized vehicle, and there are restrictions on where you can catch a fish, or use a gun. PWCs are not compatible to the wildlife needs and existing user groups of the Kachemak Bay Critical Habitat area. As property owners of Little Tutka Bay, we are witnessing already how the bay's habitats are significantly stressed by ocean acidification, and warming. Even one PWC running around the shallows at its intended high speed, endangers and disturbs animals and humans alike, not to mention groups of them. PWCs/Jet Ski type speed machines are not like boats. They are designed to go 60mph and more, where a 16-foot skiff (you compared them to) goes maybe 18 to 25 mph max.

Kachemak Bay is the only marine habitat in Alaska that is closed to PWCs, and therefore the only sanctuary protected from these intrusive thrill craft. All other Alaskan marine waters are open to PWCs. We heard from numerous owners of PWCs that, though they love their machines, Kachemak Bay is not the place to allow them.

Kachemak Bay is a designated critical habitat and a giant nursery. The only place in Alaskan coastal waters where breeding seabirds, marine mammals such as whales, otters and seals, schools of fish as well as kelp beds are protected from being harassed and threatened by PWCs, and people can seek a quiet experience in nature, and get away from jet ski activity. PWC users have all of Alaska – it is a reasonable request to keep this one especially bio-rich area set aside for wildlife and quiet sports!

There is no plan nor funding to enforce, monitor or regulate Jet ski activity! These machines are there for the primary purpose of thrill riding, and there is an abundance of proof that PWCs are primarily used in that manner, and very few have been known to refrain from running at high speed.

There has to be scientific evidence to reverse the ban, after all the extensive research over several years that had been done leading up to the ban in the first place, and the vast majority of stakeholders, area residents and visitors have been in support of the ban. I do not understand where the reasoning for this appeal effort comes from as there are no new findings that would justify the ban's repeal. The PWCs have only become more powerful, and though the 4 strokes might be a little less noisy, they are still very loud. Where boats almost exclusively go from point A to point B, PWCs are designed and primarily used to run for the sake of speed riding in shallow waters, where wildlife seeks refuge, and non-motorized water sports take place. The biggest danger of PWCs excessive speed is still as much of a threat to birds, sea mammals and recovering kelp beds as ever. They also have a much higher potential to harm humans than boats do.

The ADF&G focus and mission has always been - Quote: “To protect, maintain, and improve the fish, game, and aquatic plant resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle”.

Every aspect of this mission statement stands against the planned repeal of the Jet Ski/PWC use in the Critical Habitat of Kachemak Bay. It is especially disturbing to learn about your position that you place little weight on the importance of public input, while holding the responsibility for that process.

Also going against the repeal are the ADF&G Guiding Principles:

- Improve public accessibility to, and encourage active involvement by the public in the department’s decision-making processes.
- Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
- Maintain the highest standards of scientific integrity and provide the most accurate and current information possible

And Goal: Increase public knowledge and confidence that wild populations of fish and wildlife are responsibly managed.

In essence: I am opposed to lifting the ban on PWC/Jet-ski like thrill craft for Kachemak Bay and Fox River flats!

- Kachemak Bay is a designated Critical Habitat with protection on state and federal levels
- The PWC ban was put in place after years of research and data collection proved the incompatibility of jet skis with traditional users and habitat concerns
- The circumstances that led to the ban originally have not changed.
- Most marine mammals and sea-birds habitat is in shallow areas near the coastline, and these protected species have no chance to get out of the way of a 65 mph craft.
- PWCs are allowed in 99% of Alaskan waters. Kachemak Bay is the only coastal water area in Alaska that caters to the thousands of Alaskans and visitors who seek a quiet nature experience in a jet-ski free zone
- Many local businesses have built their brand around the quiet nature setting of Kachemak Bay, including sport fishing, lodges, ecotours, kayaking etc.
- No oversight or regulation or enforcement of potential regulation is planned or budgeted for
- Repeal of the ban goes against the guiding principles of the Alaska Department of Fish and Game!

Respectfully submitted,

Dorla Harness

## Green, Rick E (DFG)

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**From:** Lcretia <lcbalance@gmail.com>  
**Sent:** Sunday, January 5, 2020 1:42 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Jetskiis and Kachemak Bay

Dear Mr. Green,

I have a couple of science based degrees, assorted science oriented certifications, licenses and permits, etc. -- I mention this only to convey the concept that I'm not ignorant, particularly about geology and the nature of water.

The ecology of Kachemak Bay is related to many variables, all of which have a more profound impact upon the bay than jet skis ever could. Any honest scientifically inclined mind would admit so.

I say this because, well, ... idiots and idiocy. They are everywhere...it is inescapable. On land, on water, in the air, in space--it is a known phenomena. Humanity is blessed to exist despite it.

That said, to punish a few because of a few -- well, that is also idiocy. I realize it is a popular behavior, but it is irrational and lazy, both mentally and physically. (I'm not completely convinced that such behavior isn't genetic, given it's prevalence -- just another theory I'm working on.) Trying to free someone's mind from such a pattern or rutted reaction paradigm, is difficult at best and, often, a complete fail. Still, occasionally, a willing mind will admit to rote behavior and alter itself such that life becomes better for the many overall.

Freedom is the imperative to a living mind and a thriving living situation. In this case, only a few will have the energy, money, time or ability to use a jet ski on Kachemak Bay. There will occasionally be a disruption of idiocy, like in all things, but like in all things, idiocy provides a living for some people be they law enforcement, medical, morticians, lawyers, or salesmen, etc..

Kachemak Bay is a a dynamic point of change which is unstoppable, quasi-unaffected and definitely able to handle jet skis.

Just sayin'...

Sincerely,

Lcretia Ballance

## Green, Rick E (DFG)

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**From:** Cindy Mom <cynthialouisemom@gmail.com>  
**Sent:** Friday, January 3, 2020 10:26 PM  
**To:** Vincent-Lang, Douglas S (DFG); Green, Rick E (DFG); Stutes, Louise B (LEG)  
**Subject:** Keep the ban on PWC (jet skis) in Kachemak Bay

TO: Commissioner Doug Vincent-Lang, Alaska Department of Fish and Game

[doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov)

cc: Rick Green, Alaska Department of Fish and Game

[rick.green@alaska.gov](mailto:rick.green@alaska.gov)

cc: Representative Louise Stutes

[Representative.Louise.Stutes@akleg.gov](mailto:Representative.Louise.Stutes@akleg.gov)

January 3, 2020

The purpose of this letter is to respond to ADF&G's proposed regulation changes to 5 AAC 95.310 with regards to the prohibition of the use of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHA).

As a resident of Seldovia, Alaska, and the owner of an ecotourism business (Seldovia Nature Tours, LLC), I would like to state that I oppose any change to 5 AAC 95.310.

Keep the ban on Personal Watercraft (PWC), a.k.a. jet skis, in Kachemak Bay.

Alaskans went through a laborious public process to put the PWC ban in place in 2001 – and then reaffirmed it again in 2011 and 2016. A small group of users are advocating for this change, and in addition it seems to be a political move done without proper process or public review.

My paying clients enjoy the quiet observation of wildlife and the natural character of Kachemak Bay. It is truly one of the very last places in the entire United States that still retains this character. Jet skis, by their very design, are meant to zip around and go fast, and get into areas normally accessible only to kayaks, pack rafts, paddle boards, or other small non-motorized, shallow draft boats. All of these vessels have the ability to disturb wildlife, but only jet skis can *also* destroy the quiet, and pollute the air, and affect water quality.

Advocates for lifting the ban will say that they only want "equal access." The ban does not limit anyone's access. It only limits the *mode* of access that's allowed. Access is still available for everyone.

I have had many personal experiences with jet skis in other parts of the country, where their use isn't limited or regulated in any way. I've used one myself, and that was fun for a while. But for the most part, all my encounters with jet skis have been negative. They're uniquely annoying in the way they make noise: revving, whining, bouncing on the waves, with a large rooster-tail spray wake. No-wake zones tend to be ignored by users. And I've seen lots of conflict on the water among user groups. I've personally been targeted by jet ski users who aimed to "stake their claim" on places where friends and I were swimming or paddling. They seem to intentionally try to be disruptive as possible, just to prove a point, just to make sure everyone knows they're there.

The presence of jet skis on Kachemak Bay, and in the waters around Seldovia in particular, will be detrimental to my business, which depends upon wildlife viewing and on quiet, undisturbed natural areas. My clients often remark that the

very best part of their experience on Kachemak Bay is the quiet. Sometimes they say that *the quiet they find here is the very best part of their entire Alaska trip.*

Finally, Kachemak Bay is a designated Critical Habitat Area. It's well documented and studied and we know that it is a vital feeding area and nursery for migratory and breeding birds, marine mammals, and fish.

Here I quote from the Department of Fish and Game's memorandum from May 9, 2017:

"The nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated. The current available information indicates that significant, specialized research into impacts of PWC on marine organisms in nearshore tidal areas, disturbance to overwintering waterbirds, disturbance to marine mammals, and managing user conflicts and compliance would have to be completed before the regulatory ban on PWC in Kachemak Bay and Fox River Flats CHAs should be relaxed."

Has such "significant, specialized research" occurred? Why is the Department of Fish and Game so abruptly reversing its position on this issue 180°? Why has there been no regular process or public review of this change?

It's all highly irregular. Something stinks. I restate my position here: I oppose any change to 5 AAC 95.310. Keep the ban on the use of Personal Watercraft (PWC), a.k.a. jet skis, in Kachemak Bay.

Thank you for your consideration, sincerely,

Cindy Mom  
Owner, Seldovia Nature Tours, LLC

## Green, Rick E (DFG)

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**From:** peter afonin <peterafonin@gmail.com>  
**Sent:** Sunday, January 5, 2020 5:48 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Lift the jetski ban

Hello my name is Petr Afonin and I'm for the jetskis in kachemak bay. So I've waited for awhile to write a comment to gather information on why and what's the reason the people that dont want jetskis in kachemak bay. There are 5 reasons that particularly got my attention and some of these 5 reason are based off of old facts from 10+years ago.

#1 they are noisy, old fact!

New fact is they are all 4 stroke these day and are very quite with a D Sea Bel exhaust system that combines a series of resonators and vibration absorbing components to make PWC on of the quietest on the water.

#2 they pollute the water have high emissions, old fact!

New fact is they are all low emissions 4 stroke multiport fuel injection wich has better control of exhaust emissions and reduces fuel consumption

#3 no brakes, old fact

New fact is they have brakes these days the ibr system AKA intelligent brake reverse, they even have off throttle assisted steering to easily dock your jetski or trailer it.

#4 no line of sight

This is absurd, I say this because I own a mini jet boat and I sit way lower as you would on a jetski and I still have perfect vision of what's in front of me, your also paying even more attention to what's going on in front of you than on a skiff,

#5 prop damaging wildlife or eroding beaches,

This not true jetskis have a closed impeller and have a grate to prevent from sucking big objects like let's say otters is what the main concern is, and as to eroding beaches which beach there all closed to motorized vehicles mostly, and why would anyone want to go launch on a beach when we have a perfectly fine boat launch.

So as you can see there is no proof backing any of reasons to ban jetskis, as for traffic do people really think theres going to be hundred of them running in and out of the harbor with the cold water? There might be 5 at most at a time in the water.

Yes they go 60 mph but that is the top speed squeezing the throttle, you wont be going that fast as you can blow you engine up and it will be expensive to repair.

As for reckless jet skiers yes there will be 1 or 2 but one apple on a tree dosent make all the apples on the tree bad, and that's why there is laws and rules and if you dont follow them you will be punished. Also if a PWC is so different than a skiff than why dose it require to get registered and titled in the DMV as a water craft paying the same registration fees as a skiff. Imagine how much cleaner the bay would be when a person dosent have to run his big boat across the bay by himself just to check on his cabin when he can go efficiently on a jetski wich is way better on emissions and wont burn all that fuel making the bay that much cleaner. Thank you and have a great day.

## Green, Rick E (DFG)

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**From:** Bill B <bechtolresearch@hughes.net>  
**Sent:** Sunday, January 5, 2020 1:50 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Oppose deleting regulation 5 AAC 95.310

I OPPOSE rescinding regulation 5 AAC 95.310. The existing restriction was adopted by local residents and was considered for revision several times since initially adopted, but the public consensus has remained to ban personal watercraft (i.e., jet skis), and it is not clear why this revision is even under consideration other than a personal link to the governor.

This is really about what local residents feel, which has consistently been in opposition to personal watercrafts in this area. There has been consistent and historic opposition to watercrafts in this area (i.e., past votes). In the past, ADF&G has consistently opposed changing the status of this area based on biological considerations (including a 2017 memo), but it appears ADF&G administration under the current governor changed direction based on politics instead of biology (sad that politics trumps biology). The argument of the Sturgeon decision is immaterial as it had to do with state waters running through federal lands whereas Kachemak Bay is all state waters. Arguments about elitists and oil tankers running willy-nilly into the bay also are off base; tanker operations are already tightly regulated. The number of jet skis that might be expected if the ban is repealed would be higher than suggested. There is also the recognized aspect that jet skis are allowed in many road-accessible areas of the state outside of Kachemak Bay, but no identified reason that every area of the state, regardless of an area's characteristics, needs to be open to jet skis. Access is another consideration as there are limited boat ramps in Homer, which means running the jet ski through the harbor, or launching from a shallow sloping beach outside of the harbor. Then there is the safety consideration, as people know from being on the bay; presumably a jet ski would not go out in bad weather. But boats have gotten into trouble so why not someone chancing bad weather on their annual jet ski trip?

I, summary, I OPPOSE rescinding regulation 5 AAC 95.310, but welcome the aspect of discussing options.

Please repeal **5AAC 95.310 and 11 AAC 20.867.**

The rest of the admin codes highlighted in red need to be cleaned up and delete all the inserted language that refers to Personal Watercraft.

**5 AAC 95.310. Personal watercraft use prohibited** (a) A person may not operate a personal watercraft within the following legislatively designated areas: (1) Fox River Flats Critical Habitat Area established in AS 16.05.580; (2) Kachemak Bay Critical Habitat Area established in AS 16.05.590. (b) In this section, "personal watercraft" means a vessel that is (1) less than 16 feet in length; (2) propelled by a water-jet pump or other machinery as its primary source of motor propulsion; and (3) designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than by a person sitting or standing inside it.

**11 AAC 20.867. Personal watercraft** (a) A person may operate a personal watercraft within the Kenai River Special Management Area only on Kenai Lake on the portion of the lake that is north of a line running from the Primrose Campground boat launch to a prominent marker on the east shore of Kenai Lake, and east of a line running from the Chugach Electric Association powerhouse to a marker on the south side of Porcupine Island, and thence north to the United States Forest Service campground on the north side of Porcupine Island. (b) Within the area on Kenai Lake described in (a) of this section in which a personal watercraft may be operated, a person may not operate a personal watercraft (1) within 300 feet of shore (A) greater than five miles per hour; or (B) in a manner that creates a wake; or (2) between the hours of 10:00 p.m. and 10:00 a.m.

**5 AAC 95.552. Izembek State Game Refuge** (3) Personal watercraft, air-cushion vehicles, or airboats: the use of a personal watercraft, air-cushion vehicle, or airboat is prohibited within Izembek Lagoon, except that the commissioner may issue an individual special area permit, on a case-by-case basis, for the use of a personal watercraft, air-cushion vehicle, or airboat for management or research purposes if the applicant shows that the

use of the applicable vehicle is (A) a demonstrable need for which there is no feasible alternative; (B) consistent with the goals and policies of the management plan described in 5 AAC 95.550; and (C) consistent with the purpose for which the refuge was established.

(b) In this section, "personal watercraft" has the meaning given in 5 AAC 95.310(b).

**11 AAC 20.115. Motorized boats** other than a personal watercraft, (b) A person may not launch or operate a personal watercraft in Kachemak Bay State Park.

**11 AAC 20.215. Motorized boats** other than a personal watercraft, (b) A person may not launch or operate a personal watercraft in Kachemak Bay State Wilderness Park.

**11 AAC 20.380. Power boats** (c) The use of a personal watercraft is allowed only on Lake Aleknagik.

**11 AAC 20.415. Motorized boats** (d) Jet skis and hovercraft are prohibited, except on the Susitna River.

**11 AAC 20.550. Motorized boats** (b) A person may not use a personal watercraft on Red Shirt Lake.

**11 AAC 20.710. Motorized boats** except for airboats, hovercraft, and personal watercraft.

**11 AAC 20.760. Motorized boats** (a) Except as provided in (b) and (c) of this section, the use of motorized boats is allowed in Alaska Marine Parks. (b) The upper bay of Shoup Bay State Marine Park is closed to the use of airboats, hovercraft, hydroplanes, and jet skis.

**11 AAC 20.805. Motorized boats** except for airboats, hovercraft, and personal watercraft.

**11 AAC 20.865. Non-motorized areas** (c) On the waters of the Kenai River Special Management Area, a person may not launch or operate (1) an airboat, hovercraft, or hydroplane; or (2) a personal watercraft, except as provided in 11 AAC 20.867.

**11 AAC 20.922. Use of power boats at Rocky Lake State Recreation Site** with the following exceptions: (1) jet skis, (2) jet boats with inboard motors, (3) airboats.

**11 AAC 20.926. Use of motorized boats at Bonnie Lake State Recreation Site** except for jet skis. ,

**11 AAC 20.990. Definitions** (25) "personal watercraft" means a vessel that is (A) less than 16 feet in length; (B) propelled by a water-jet pump or other machinery as its primary source of motor propulsion; and (C) designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than by a person sitting or standing inside it;

Thank You Very Much.

Gene Gerken  
Anchorage, AK

## Green, Rick E (DFG)

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**From:** Richard W. Hughes <rwhughes@rothsteinlaw.com>  
**Sent:** Monday, January 6, 2020 3:07 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Proposed Rule Change re: Personal Watercraft Use in Kachemak Bay and Fox River Flats Critical Habitat Areas

**Importance:** High

Dear Mr. Green—Although I live in Santa Fe, New Mexico, I have been at least an occasional visitor to, and great admirer of, Alaska’s special places. I lived in Anchorage when I was very young, and as a consultant to the Legal Services Corporation a number of years ago I had the benefit of traveling to places like Nome, Kotzebue, Dillingham, Fairbanks and a few other places, and I have backpacked in the Denali Wilderness, the Wrangell-Mt. St. Elias Wilderness and on the Kenai Peninsula. I also have had the benefit of visiting a friend who lived in Homer, and had a boat, and he took me all around Kachemak Bay, to fish, collect mussels and sightsee. Though there is obviously a lot of Alaska that I have not seen, I don’t think any place that I have visited compares with Kachemak Bay. The extraordinary landscape, the incredible wildlife, and the sense of solitude, are really incomparable.

It thus came as a very rude surprise to learn that the state now proposes to open this beautiful, serene landscape to personal watercraft—jet skis and the like. I cannot think of a more senseless, mean-spirited, stupid proposal, or one more destructive of the very values intended to be protected by the designation of Kachemak Bay as a “critical habitat area.” Personal watercraft are meant for people who like to travel fast over water and make a lot of noise. They have nothing whatever to do with enjoying lush scenery, wildlife, solitude and the other indescribable qualities of the Bay, and indeed, they are not only utterly inconsistent with the enjoyment of those amenities, they prevent anyone else within earshot (which, on the water, can include a lot of people) from doing so. So such a rule change is directly at odds with the very values that the designation of the Bay as a critical habitat area was meant to protect. Of special importance, these devices (the personal watercraft) are extremely harmful to the wildlife—birds, fish and others--whose presence makes that area so magical. Alaska has hundreds, maybe thousands of bays, fjords and other protected waters, so that someone who insists on zooming around mindlessly and loudly on jet skis has lots of opportunities to do so. There is absolutely no need, and no good reason that I can imagine in my wildest dreams, for opening Kachemak Bay to such indignity and insult. This may not be the way the State views itself, but in my view the State is the steward of treasures such as Kachemak Bay for the nation. This is reflected in your management plan for the area, which assures that the Department will minimize any activities that would constitute disturbance of wildlife, and will work to enhance the quality of wildlife habitat. The proposed rule change runs directly counter to those principles, and to your role as steward of this priceless landscape and seascape.

I need not go on. I can only say that I am simply appalled that your Department would even consider such a thoroughly misguided and wrongheaded rule change as this one, and I hope very much that the powers that be, including your Governor, if he is in fact the demon behind this proposal, will come to their senses and reject this proposal outright. There is simply no room here for compromise. If the glories of Kachemak Bay are to be preserved, as they ought to be, and as your agency has previously pledged that they would be, personal watercraft have no place there.

I appreciate your attention to my views. Should you have any questions, please do not hesitate to contact me. ---Richard W. Hughes

505-988-8004

## Green, Rick E (DFG)

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**From:** Kathy Dubé <kdube@watershedgeodynamics.com>  
**Sent:** Monday, December 30, 2019 12:09 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments on Notice of Proposed Changes on the Use of Personal Watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas

Dear Mr. Green,

I oppose changing/repealing 5 ACC 95.310 of the Alaska Administrative Code which currently prohibits the use of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas.

The Kachemak Bay Critical Habitat Area provides important habitat for marine animals as well as migrating salmon; the Fox River Flats provides extremely important and unique estuarine habitat that supports many life stages of salmon and aquatic life. The use of personal watercraft in either of these areas would provide a disruptive and adverse impact on estuarine and marine plants, animals, and fish that goes beyond impacts from current boat use. Personal watercraft are able to navigate into shallower water, travel at a high rate of speed, and execute sharp turns at high speed. The speed and maneuverability of personal watercraft can be disruptive to marine mammals, and use in shallow estuarine areas will increase turbidity and disruption of sensitive benthic aquatic plants and animals based on evidence of both my personal experience and ADFG scientists.

I have experienced personal watercraft firsthand in Lake Washington, a large lake near Seattle and can attest to the disruptive nature of the craft. I am sure that some personal watercraft operators would drive in a manner that does not cause the disruptions I have experienced, but it only takes a few drivers to drive at high speed and in an erratic manner to be disruptive. My experience was in a kayak; I was teaching a new kayaker in the lake and the personal watercraft drivers thought it was "fun" to do circles around us. The wakes and noise were quite distressing to me (an experienced kayaker) and very distressing to the inexperienced kayaker. I can imagine similar experiences that marine life could experience in Kachemak Bay if personal watercraft are allowed.

ADFG biologists wrote in 2017 (Memorandum from Tammy Massie and Joe Meehan to Dave Rogers and Bruce Dale, 5/9/2017):

"Based on the updated literature review, most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats (Critical Habitat Areas) in 2001 continue to be valid today," they wrote.

"Improvements in technology have addressed the pollution from 2-stroke engines that were one of the primary environmental concerns with PWC during the original 2000 literature review. However, the nature of PWC traffic, especially the capability to execute rapid changes in speed and direction in nearshore shallow waters, continues to have a high potential to impact habitats, marine organisms, wildlife, and other traditional user groups and those cannot be easily mitigated."

Please do not repeal the ban on personal watercraft.

Thank you for your time,  
Kathy

Kathy Vanderwal Dubé, R.G.  
Fluvial and Hillslope Geomorphologist  
Watershed GeoDynamics  
52542 Canna Court  
Homer, AK 99603

Office 907-226-2010

Mobile 425-241-1045

[kdube@watershedgeodynamics.com](mailto:kdube@watershedgeodynamics.com)

## Green, Rick E (DFG)

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**From:** Nina Faust <aknina51@gmail.com>  
**Sent:** Saturday, December 28, 2019 9:32 AM  
**To:** Vincent-Lang, Douglas S (DFG); Green, Rick E (DFG)  
**Cc:** Alaska Governor Michael J Dunleavy (GOV sponsored); Stevens, Gary L (LEG); Representative.Sarah.Vance@akleg.gov  
**Subject:** Re: ADF&G proposed PWC (jet ski) ban repeal in the Kachemak Bay Critical Habitat Area

P.O. Box 2994  
Homer AK 99603

December 28, 2019

Commissioner Doug Vincent-Lang  
Rick Green  
doug.vincent-lang@alaska.gov  
rick.green@alaska.gov  
Alaska Department of Fish and Game  
Anchorage, AK 99518-1565

Re: ADF&G proposed PWC (jet ski) ban repeal in the Kachemak Bay Critical Habitat Area

Dear Commissioner Vincent-Lang and Rick Green:

I strongly urge retention of the existing Personal Watercraft ban in Kachemak Bay.

Since 2001, Kachemak Bay and Fox River Flats Critical Habitat areas (CHA) have had a ban on the use of Personal Watercraft (PWC) AKA jet ski. Kachemak Bay has a world-renowned reputation for its quiet beauty and rich marine resources. Kachemak Bay is part of a tiny 1% of coastal Alaska that is currently PWC free due in part to strong community support to keep it that way. I have talked to many visitors over the years about their experiences in our area. I always ask folks what they think about the fact that the Bay is "jet ski free." All responded that it is wonderful and that it is part of the reason they come here. I have even heard the comment, "I come here so I can remember what my local beach used to be like before jet skis took it over."

Homer has truly built an economy based on the splendor of the Bay's scenery and its rich marine life. That we do not have any of these thrill craft racing around in the Bay makes a tremendous difference to the quality of the experience that we as residents and visitors alike share. No matter how much better the 4-stroke engine is, the fact still remains these craft are marketed as thrill machines that can go 65 plus miles per hour. Many who ride them love going full throttle in circles jumping wakes, and it is that type of use the majority of us see as incompatible with the designation of the Bay as a CHA and highly disruptive to our quality of life here.

During the original efforts to enact the ban in 2001, many concerns about noise were raised by coastal property owners because of the way PWC are operated, often in circles near shore. High speed PWC jumping wakes can make a lot of annoying noise that unlike noise from boats transporting passengers, may stay in one area for a long period of time. This type of noise is extremely annoying to people as well as very disturbing to wildlife. Many of us live here because our local soundscape is relatively intact and not overrun by noisy human behaviors.

So many of us live here for the quiet that we currently have, and it is so essential to our quality of life here and how we experience Kachemak Bay, the potential loss of quiet along our beaches in the Homer area would be devastating to our

community. I know that in many other places where personal watercraft have free reign, there are contentious problems between those on the beaching wanting to enjoy their quiet recreation and the PWC riders circling, wave jumping, and operating at high rates of speed. Conflict also arises when these craft access popular beaches where people are recreating. Kachemak Bay's nearshore soundscape is remarkably quiet. Most boats are way out on the Bay so their low-pitched motors transiting to a distant location does not bother beach users. PWC have the potential to destroy the nearshore quiet enjoyed by beach users and coastal residents. Kachemak Bay has a wide reputation as "a Bay of quiet beauty." We do not want to lose this valuable natural resource.

PWC have very shallow drafts, so they are able to go into much shallower areas than outboard skiffs, and these shallow areas tend to be highly sensitive habitat for many marine birds and mammals. High speed craft in shallow areas can produce wakes that destroy habitat. This is well documented in the scientific literature ADF&G staff scientists examined in support of the ban on PWC. Because of their high speeds, and the nature of how people use them, there is a higher potential for injury to marine mammals like seals, otters, dolphins, and whales here in the Bay, as well as harassment of marine mammals. Even when crossing the Bay in a small skiff in choppy offshore seas traveling at much lower speeds, it is difficult sometimes to see marine mammals and avoid them. At 65 mph more injuries, most likely deadly, will happen to marine life.

To state that there are no problems with personal watercraft given the problems so many areas in the Lower 48 struggle with is to turn a blind eye to the reality of how these high-speed, highly maneuverable, shallow-drafted watercraft are frequently used. It also disregards the difference between that usage and that of a boat transporting people to view wildlife, to fish, or just drop people off on a beach. We have businesses, such as water taxis and lodges, around the Bay that depend on the rich marine resources, the scenery, the wildlife viewing and photography opportunities, and the quiet recreation of hiking and kayaking to make a living. Many vital feeding, nesting, and resting areas for seabirds, waterfowl, sea otters, seals, and much more are at risk of disturbance if PWC have free access in the CHA.

It is because of the rich bird life and marine resources that Kachemak Bay has so many special designations recognizing its importance and the need to protect this area. In 1995, the World Bank identified Kachemak Bay as a significant, important marine area worthy of inclusion in their proposed system of Marine Protected Areas. In 1999, Kachemak Bay National Estuarine Research Reserve (KBNERR) was established, one of 28 in the nation. This happened because of the widespread support of the community in learning more about our Bay. In 2016, Kachemak Bay became part of the Western Hemisphere Shorebird Reserve Network, unanimously approved by the governing council. This expansion of 231,000 acres, adding the Bay to the original WHSRN designation of 1995, comes with a designation of "International Importance." While these designations do not come with any regulatory authority, it certainly demonstrates the significance of this ecosystem and why it is vital to protect it the fullest extent possible. The PWC ban certainly is an important part of this protection.

Proponents of removing the ban are trying to cast this as simply an access issue. The PWC ban does not restrict people from accessing the Bay. It does restrict the type of craft used for access in order to protect critical habitat which benefits all Alaskans' enjoyment and use of Kachemak Bay. Just as many areas have closed areas for non-motorized uses or for certain types of vehicles, a ban on certain craft that have the potential to create as many problems as PWC do is not at all an unreasonable restriction. In fact, it is incredibly reasonable, especially as 99% of Alaska's waters are open to PWC.

A ban on PWC does not deny anyone access as there are many other ways to go out on the water. It also protects the safety of other users like sea kayakers, mariculture farmers, and commercial fishermen. The May 9, 2017 Memorandum from the ADF&G Division of Wildlife Conservation to the Director of the Division of Habitat concluded, "In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted."

I would further add that another major reason the ban was originally enacted was that enforcement of closed areas or travel corridors would not only be difficult to enforce, it would be very expensive. Given today's budgetary crisis, it is

disingenuous on the part of the Governor to attach no fiscal note to removing the ban. If the ban were overturned, very likely there would be no money to enforce violations caused by PWC operators. In fact, given the narrowness of the Homer harbor entrance and the turbulent waters off the end of the Spit and the high speeds at which many PWC travel, I would be very concerned for the safety of all marine operators rounding the Spit and other narrow channels like the entrance to Halibut Cove Lagoon, if the PWC ban were lifted. Completely lifting the ban without consideration for the need to have areas closed to protect wildlife, speed restrictions for safety, and a restricted zone nearshore would be irresponsible.

Furthermore, the process being used to overturn the ban is very poor public policy. This issue should be discussed within the Critical Habitat Management Plan process that involves all the stakeholders and area residents. With nearly all of Alaska's huge coastline open to personal watercraft, critical habitat areas that are specially set aside for habitat and wildlife should remain protected from the use of this type of watercraft which are notorious throughout the Lower 48 and in other countries for the inappropriate and damaging ways they are used.

The short 30-day comment period during the holidays is not conducive to public participation. The less-than-generous additional 15-day extension is disingenuous. Many folks will have barely even returned from the holidays Outside or recovered from the exhausting holiday season before the comment period ends. There is no emergency on this issue! While the CHA management plan process is the appropriate venue for exploring regulatory changes in the CHA, at the very least a 90-day comment period would allow a fuller and more reasonable opportunity for regional stakeholder participation.

It has been 18 years since this ban was enacted. As a result, the Bay has grown in its reputation as a great place to visit, in part because of the integrity of its Wilderness values and because it does not allow PWC. Providing this experience to visitors is central to our economy. Two special interest groups have been working for years with the PWC industry to overturn this ban despite the fact that they have nearly 99% of all coastal waters to take their PWC. In fairness, there should be some coastal areas that do not allow PWC. The critical habitat areas and our quality of life are at stake, as is the quality of the experience for everyone who visits here. Don't let the Bay become like all the other areas in the Lower 48 that are overrun with these thrill craft. I support retaining this ban on PWC in Kachemak Bay and Fox River Flats Critical Habitat areas, and I trust and hope you give due weight to the comments by area residents who will be most impacted if the PWC ban is repealed.

Sincerely,

Nina Faust

CC: Gov. Dunleavy, [governor@alaska.gov](mailto:governor@alaska.gov)

Senator Gary Stevens, [Senator.Gary.Stevens@akleg.gov](mailto:Senator.Gary.Stevens@akleg.gov)

Representative Sarah Vance, [Representative.Sarah.Vance@akleg.gov](mailto:Representative.Sarah.Vance@akleg.gov)

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Saturday, December 28, 2019 3:08 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Fw: Jet skis on Kachemak Bay

for the files

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**From:** gavpeg@msn.com <gavpeg@msn.com>  
**Sent:** Saturday, December 28, 2019 11:11 AM  
**To:** Vincent-Lang, Douglas S (DFG) <doug.vincent-lang@alaska.gov>  
**Subject:** Jet skis on Kachemak Bay

TO: Commissioner Doug Vincent-Lang, Alaska Department of Fish and Game  
[doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov)  
cc: Rick Green, Alaska Department of Fish and Game  
[rick.green@alaska.gov](mailto:rick.green@alaska.gov)

*December 28, 2019*

The purpose of this letter is for the Kachemak Bay Birders, an organization based in Homer, Alaska, to respond to ADF&G's proposed regulation changes to 5 AAC 95.310 with regards to the prohibition of the use of personal watercraft in the Fox River Flats and Kachemak Bay Critical Habitat Areas (CHA).

As you know, the regulation currently in place was arrived at by ADF&G in 2001 after it completed a long and thorough public process that affirmed a ban on personal watercraft (AKA jet-skis) in the Kachemak Bay and Fox River Flats CHA was consistent with the purpose for the CHA's established by Alaska Legislature in 1974. Also, a ban was in accord with the vast majority of the public who participated in this process. This decision and public process was revisited in 2011 by the Kachemak Bay State Park's Citizen Advisory Board which unanimously recommended no change in current rules banning personal watercraft in Kachemak Bay.

It is important to note that each public process essentially followed the ADF&G's guiding principles as currently posted on its website. (A fifth principle isn't relevant to this issue.)

### Guiding Principles:

Seeking excellence in carrying out its responsibilities under state and federal law, the department will:

1. Provide for the greatest long-term opportunities for people to use and enjoy Alaska's fish, wildlife, and habitat resources.
2. Improve public accessibility to, and encourage active involvement by the public in, the department's decision-making processes.
3. Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
4. Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.

Kachemak Bay Birders not only opposes any change to 5 AAC 95.310, but seriously questions whether ADF&G is following its own Guiding Principles in releasing this notice. Specifically, this notice was issued;

1. With no previous involvement by the public.
2. Provides not only a limited time for comment, but a comment period during the holidays when public response is typically less.
3. No public hearing.
4. Absolutely no information on the rationale for the proposal let alone one that meets ADF&G's "highest standard of scientific integrity."

The closest thing we have for this proposal's rationale is a December 10th interview by KBBI of Rick Green who is listed as ADF&G's contact person. He said, "If I was to put it in a nutshell, we put this proposal forward to increase access for Alaskans to the property that we all own equally. That's our motive is to increase access."

Kachemak Bay Birders takes issue with the motive expressed by Rick Green; 5 AAC 95.310 does not deny access to anyone who wishes to visit either Kachemak Bay or Fox River Flats CHA's. What is being denied is not access, but mode of access. Furthermore, Alaska's Constitution clearly makes the case that such limitations are acceptable when serving a broader public purpose, which in this case was established by previous public meetings.

Access is by no means a new issue for the State of Alaska. In fact, the issue of access to navigable waters was addressed when our Constitution was written. An Alaska Legislative Affairs Agency report by Gordon Harrison entitled Alaska's Constitution a Citizen's Guide ([http://w3.legis.state.ak.us/docs/pdf/citizens\\_guide.pdf](http://w3.legis.state.ak.us/docs/pdf/citizens_guide.pdf)) provides not only a review, but some legal framework for deciding issues like access to navigable waters.

Section 14. Access to Navigable Waters Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

This section adopts the public trust doctrine regarding navigable rivers and other public waterways, whereby citizens of the state have the right to travel on and otherwise use these bodies of water. The government may not deny this use except by a general law that protects a public interest.

Kachemak Bay Birders also takes issue with Rick Green's comment that "there aren't any immediate plans to include restrictions on size, type of engine, restricted areas or any requirements for safety flags." ADF&G staff have recognized in their current efforts to update the Kachemak Bay and Fox River Flats management plans that Kachemak Bay has a number of areas critical to local wildlife where disturbance would be detrimental to their populations. Based on our observations of Kachemak Bay birds, we know that the shallow waters off the west side of the Homer Spit provides important feeding grounds for waterfowl from the beach to a couple of miles out. Also, from a wildlife-management perspective, it certainly would be appropriate to restrict any jet-skis from entering Mud Bay as well as Louie's Lagoon and Beluga Slough. These are important feeding and resting areas for birds, (particularly shorebird during migration) where boats don't travel because of the shallow water but could be accessible to jet-skis, thereby creating a situation where restrictions might be needed. Another important area for birds includes the waters around Gull Island. Literally thousands of breeding birds will be on the waters here. While birds have acclimated to slow moving boats that have a predictable course, that is likely not to be with case if jet-skis are allowed to be in the area. This certainly is an appropriate place for restricting watercraft speed and/or access. Another important area for birds is the waters off Glacier Spit which murrelets use for feeding. All in all, Rick Green's statement fails to recognize the wildlife that have made Kachemak Bay notable or the purpose of the CHA's.

We could add much more to this list of sensitive places, but since brevity seems to be the intent with this proposal, we request that AD&G decision-makers pay close attention to previous statements and studies before deciding that there is no need to restrict jet-skis.

In closing, the notice states that "The proposed regulation change is not expected to require an increased appropriation." For those who live here, it is obvious that expenditures would be needed for enforcement and providing facilities that jet-ski users could use to launch their watercraft. How does the State intend to pay for this? Will this be an unfunded mandate form the state to local government?

Sincerely,

Margaret Gavillot- Homer

Kachemak Bay Birders

## Green, Rick E (DFG)

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**From:** Janet Fink <janetfink17@gmail.com>  
**Sent:** Thursday, January 2, 2020 8:45 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet Skis Kachemak Bay

Mr. Rick Green

I wrote to you on December 9<sup>th</sup> about my concerns after hearing your interview on KBBI. You assured me at the time that you were interested in people's views and reasons as we state our opinions on Jet Skis in Kachemak Bay. I am hoping you meant it.

I am writing in total opposition to lifting the jet ski ban at this time. My first concern is for preserving the integrity of Kachemak Bay and of the Fox River Flats Critical Habitat areas. There is no way that the introduction of jet skis would be without some influence on these areas. It seems critical that the affects must be considered before such a change occurs.

Jet skis are very different than skiffs in their purpose and method of use. Skiffs are primarily used for transportation to get from one location to another. Jet skis are primarily used to "play". They can excel to high speeds and can make sharp turns. This method of use is extremely hard on animals in the region in all zones of the tidal habitats.

There are many businesses in the region that are based on the "wilderness" experience from lodges to kayak and boat excursions. The experiences that they offer will be compromised by the noise and presence of Jet Skis.

What happened to the public process? Where are the public hearings? Where are the considerations of scientific reviews of the affect of jet skis on the area? Why is this happening on a condensed time frame over the holidays? Why, despite the unanimous request by the Homer City Council was the comment period only extended a few days?

I haven't even spoken to the safety of jet skis in the open ocean of Kachemak Bay. Who is going to be rescuing them when the machines break down or if the drivers go into the water?

It seems to me that trying to satisfy a special interest group, (Personal Watercraft Club of Alaska) has trumped the history of this area, the process for changing regulations, and the interests of the majority of people. The majority of waters in Alaska are open to Jet Skis. Please keep the rules as they stand and keep them out of Kacheamak Bay.

For all these reasons I object to lifting the Jet Ski ban in Kachemak Bay.

Sincerely,

Janet Fink

Homer, Alaska

## **Green, Rick E (DFG)**

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**From:** Lisa Benavitch <lbenavitch@gmail.com>  
**Sent:** Thursday, January 2, 2020 8:01 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Jet Ski Prohibition (Public Comments)

Dear Rick Green:

I recently learned of your initiative to remove the ban on personal watercraft in Kachemak Bay. As a visitor to this pristine reserve, I implore you to reconsider. I've listed just a few reasons below. Please read my comments on this and think of the long term consequences of allowing motorized watercraft in this untouched wilderness.

Lisa Green

### **Kachemak Bay: A Jet Ski Free Zone**

#### **Jet Skis (Personal Watercraft) are Dangerous:**

Personal watercraft present the most gruesome safety record in boating. While they comprise less than 10 percent of all U.S. vessels, they're involved in 55 percent of all collisions. The American Medical Association reported: "The rate of emergency department-treated injuries related to (personal watercraft) is about 8.5 times higher than the rate of those from motorboats."

"What makes personal watercraft so ultra-dangerous is the fact that it will not steer when you suddenly have a surprise and let off the throttle." Unlike traditional boats, jet skis are rudderless. And when the throttle is off, a speeding jet ski is like a car on ice. It can't stop, and the driver has no control.

[Read more on: SF Gate Hazards on the Water, The Case for Banning Jet Skis](#)

#### **Jet Skis (Personal Watercraft) are Loud:**

Jet ski noise is different from that of motorboats. The heart of the difference, and the crux of the jet ski noise problem, is that jet skis continually leave the water. This magnifies their noise impact in two ways.

First, minus the muffling effect of the water, the jet ski engine's exhaust is much louder, typically by 15 dBA. As a result, an airborne jet ski has the same noise impact on a listener at the water's edge as an in-water jet ski 8 times closer, or the same as 32 identical in-water jet skis at the same distance.

Second, each time the jet ski re-enters the water, it smacks the surface with an explosive "whomp" — sometimes with a series of them.

[Read more on: No Noise.org](#)

#### **Jet Skis and Marine Mammals:**

A typical Jet Ski has an average top speed of 65 miles per hour. There is no possible way that any meaningful marine mammal protection enforcement could patrol the entire Kachemak Bay and protect our marine mammals from this new, high-speed user group.

## Green, Rick E (DFG)

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**From:** W Rice <wrice@acsalaska.net>  
**Sent:** Tuesday, December 31, 2019 10:20 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay personal watercraft ban

Mr. Rick Rydell Green,

I am one of thousands of Anchorage residents who consider Kachemak Bay to be the finest recreation area in Southcentral. I have owned property on the south side of the Bay for several decades and spend a significant portion of my time there. I was stunned this morning to learn for the first time that Dunleavy has proposed to open Kachemak Bay to the disturbance of jet skis, in direct contradiction to the massive public support for the ban and the scientific advice of his own biologists. Although there may have been some notice of the proposed lifting of the ban in Homer and the immediate area, the Daily News article is the first those of us who live outside that area have heard of it.

Given that the public comment period supposedly closes on Jan 6 (fifteen days before what the Daily News said was the official closing of the period), it is obviously an attempt by the administration to prevent public participation in the regulatory process. The public comment period must be extended to allow those of us who have a direct and personal interest in preserving the ban to participate in the process. Let me say, as a retired attorney, subverting the public process requirements by failing to extend the comment period will certainly result a successful lawsuit brought by those of us who support the existing ban. The disingenuous procedure is in keeping with Dunleavy's continued attempt to subvert public participation in environmental decision-making. This is a matter of intense interest to the thousands of people who enjoy the peace and wilderness experience of the Bay, and lifting a ban which has generated that support will certainly be become an issue in the upcoming recall, particularly if the lack of notice prevents them from expressing their opinion.

Of more importance than the procedural deficiencies are the substantive problems with the use of jet skis in the Bay. I am sure that you are aware of ADF&G's position on lifting the ban in 2017, but let me include it here.

"In summary, based on our review of information available since the PWC prohibition was adopted in 2001, we feel there is no new information that would warrant rescinding the prohibition, and in fact the newer information highlights most of the concerns identified when the prohibition was adopted. A draft of this memo was circulated to affected staff in all department divisions (DWC, HAB, CF, SF) and this recommendation was widely supported."

A Freedom of Information request for all of the documents leading up to that summary should prove very interesting, but this administration clearly has no interest in the science behind environmental regulations. Given the strong public support for the ban in the past, it is also not surprising that you picked the Christmas holiday season as the public comment period and limited notice of the ban to the geographic area impacted, rather than the group of people impacted.

As a disk jockey, I don't expect you to have any knowledge or expertise in the wildlife biology of the region. Let me say that the otters, seabirds, and whales of Kachemak react far differently to the erratic behavior, quick turns, and excessive noise of jetskis than they do to the predictable disturbance of traditional boats. Jet skis frequently use the shallow water near the shoreline that traditional boats avoid, but that is particularly important for wildlife. On a personal level, I see multiple boats go past my cabin every day, and have travelled on them many times. The wildlife of the Bay have adapted to that traffic. Last summer I watched an illegal jet ski come up the cove. The noise was markedly louder than a traditional boat, and the rider made erratic turns (he appeared to be intentionally harassing seabirds or otters). There are strong and valid reasons that the Department's biologists support the ban.

Now that word of the proposed lifting of the ban is finally getting out, you can expect a large volume of comments supporting the continued protection of the Bay. Please add this letter to those opposing the change in regulation. Please

consider this a formal request to extend the comment period to not sooner than the Jan 21, 2020 date reported by the Daily News.

Wilson Rice

Chris Degernes  
PO Box 683  
Cooper Landing, AK 99572

December 29, 2019

Mr. Rick Green  
Alaska Dept of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

Re: Notice of Proposed Changes to 5 AAC 95.310

Dear Mr. Green:

**I am opposed to the Department's proposal to rescind the ban on Personal Watercraft (PWC) within the Kachemak Bay and Fox River Flats Critical Habitat Areas, which has been in place since 2001.**

From the Introduction within the Kachemak Bay and Fox River Flats Critical Habitat Area Management Plan: *The Kachemak Bay Critical Habitat Area was set aside to protect and preserve habitat areas that are especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.* These tidelands and waters are not ordinary State waters, so it is not inconsistent that uses that might be acceptable in a bay such as Resurrection Bay are not acceptable in this Critical Habitat Area. The very nature of PWC and the ability of the PWC rider to quickly accelerate and change directions make them particularly impacting on wildlife such as Sea Otters and marine birds that are common within Kachemak Bay.

In addition, the Department of Natural Resources' Division of Parks and Outdoor Recreation has a similar restriction on the use of PWC within the waters of Kachemak Bay State Park (KBSP). (11 AAC 20.115 (a) and (b)). Lifting the ban on PWC within the Kachemak Bay CHA will leave large sections of Kachemak Bay susceptible to impacts from PWC use, while making it very difficult for PWC users to know where the "water boundaries" for KBSP are located. When the regulations were changed in 2001, ADFG and ADNR worked together to craft consistent regulations that would ensure that Kachemak Bay would be free from the specific impacts created by PWC, in a way that was easily communicated to the public and reasonably enforceable.

The original ban on PWC for Kachemak Bay was well founded and reasonable when enacted in 2001, and should not be reversed now just because a few users want to operate their PWC on the

bay. When the Alaska Legislature established the Kachemak Bay CHA in 1972 and Kachemak Bay State Park in 1970, it recognized the unique nature of this special area, and demanded that these areas be specifically managed to prevent harm to their resources. **Do not rescind the ban on PWC within Kachemak Bay CHA – make no changes to 5 AAC 95.310.**

Sincerely,

*s /Chris Degernes/*

Chris Degernes  
Jaeger06@hotmail.com

## **Green, Rick E (DFG)**

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**From:** Michael Chihuly <chihuly@ptialaska.net>  
**Sent:** Tuesday, December 31, 2019 10:53 AM  
**To:** Green, Rick E (DFG)  
**Subject:** personal watercraft Kachemak Bay

Please do not lift the ban on personal watercraft (jet skis) in Kachemak Bay.

My wife and I are lifetime Alaskans and we live in Ninilchik.

The ban has served us well and should remain in place.

I have fished halibut, dug clams, and hunted waterfowl in Kachemak Bay all my life. I know this area well.

Please don't ruin it by allowing jet skis! They are obnoxious, damage habitat, and harass wildlife.

You cannot control the assholes that ride these things. They have no regard for the environment nor the people and wildlife that live there.

We need to protect the sensitive habitat in this area in perpetuity for our children and their children.

Thank you

Mike & Shirley

Mike & Shirley Chihuly  
PO Box 39294  
Ninilchik, Ak. 99639  
[chihuly@ptialaska.net](mailto:chihuly@ptialaska.net)



Head of Kachemak Bay waterfowl hunting

## Green, Rick E (DFG)

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**From:** Angela Wisniewski <awisniewski10@gmail.com>  
**Sent:** Wednesday, January 1, 2020 12:47 PM  
**To:** Vincent-Lang, Douglas S (DFG); Green, Rick E (DFG); Hanke, Rachel M (DFG)  
**Cc:** Stutes, Louise B (LEG); Representative.Sarah.Vance@akleg.gov; Kreiss-Tomkins, Jonathan S (LEG); Stevens, Gary L (LEG)  
**Attachments:** CAB Resolution 2019-02.docx Final.pdf; PWC-Lit-Review\_2000\_ADFG.pdf; resolution\_19-091a.pdf; Memo-DWC-and-Habitat-PWC-Recommendation-May-2017.pdf

Commissioner Vincent-Lang,

My Name is Angela Wisniewski, I am a Kachemak Bay area resident, and I am an Alaska Native of Tlingit and Tsimshian ancestry, my family has roots in Alaska that dates back thousands of years. I am writing today to voice my concern and frustration over ADF&G and the administration seeking to repeal the ban on Personal Watercraft (PWC) in the Kachemak Bay and Fox River Flat Critical Habitat areas.

I adamantly oppose this regulation change and am incredibly frustrated and personally offended by the Administration's effort to do so at the request of a special interest group, without consulting us area residents who have supported this ban for nearly 20 years and doing so outside of the CHA management plan process that area residents have participated in for nearly 20 years

Frankly, I am beyond frustrated because this administration and commissioner Doug Vincent Lang specially promised to restore public trust in government. The manner in which you are seeking to repeal this ban that will directly impact my quality of life and my family's economic well-being is insulting to All Alaskan who should be able to trust and expect a fair and transparent process. That is why we have a CHA management plan here in order for there to be a fair and transparent public process for the management of the Bay consistent with ADF&G's requirement to protect critical habitat. It appears to me that that ADF&G leadership and the administration have forgotten what fairness in government looks like to appease the desire of the Personal Watercraft Club of Alaska to have a new playground.

I will outline the basis for my opposition to lifting PWC Ban here.

Kachemak Bay and Fox River Flats were designated as CHAs in the 1970s. Pursuant to the authority granted to it in the Alaska Constitution, Art. VIII, § 7, the Alaska Legislature designates certain areas around the state as critical habitat areas "to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose." ADF&G has an obligation to protect and manage CHA and "RESTRICT ALL OTHER USES NOT COMPATIBLE WITH THAT PRIMARY PURPOSE". In establishing the PWC Ban in 2000 through the INCLUSIVE CHA management plan process ADF&G produced a scientific justification for doing so. Perhaps the commissioner is not familiar with that document so I am attaching it to these comments.

In 2017 ADF&G found "there has been considerable NEW RESEARCH on the potential impacts of PWCs to protected areas," citing and reviewing an additional 140 articles not utilized in the previous literature review. The topics of these 140 new articles include: "effects of PWC and other recreational boating impacts on marine mammals, birds, fish, and other organisms; ecological and water quality impacts; PWC noise; user group conflicts and other management and legal implications."

Based on its updated literature review, ADF&G staff concluded in 2017 that "most of the concerns that led to the adoption of the PWC prohibition in Kachemak Bay and Fox River Flats CHAs in 2001 continue to be valid today" and "there is no new information that would warrant rescinding the prohibition, and in fact, the newer information highlights most of the concerns identified when the prohibition was adopted."

In making its conclusion and recommendation to maintain the regulation, ADF&G noted that “this recommendation was widely supported” by staff in four department divisions. This included the Habitat Commercial Fisheries, Sport Fisheries, and Wildlife Conservation Divisions.

It is unconscionable that in 2019-2020 the Department would ignore the support of 4 divisions and widespread regional support in order to give a small user group access to a CHA area when doing so has been demonstrated BY ADF&G to be incompatible with duty to protect CHAs. Furthermore, doing so outside the management plan process which is the opportunity for public participation completely violates the public trust. What we see is the agency ignoring and undermining the integrity of staff scientists and doing so to appease special interests at the expense of area residents. This is utterly shameful.

ADF&G's lead contact on this issue, Special Assistant to the Commissioner Rick Green has publicly identified his support for this issue and his lifelong membership in one of the groups seeking to repeal the PWC ban.

He went on to say that public comments and the substance of the comments are of little value in this process. He stated this in a KBBi public radio interview and directly to my husband as well in a phone call. How can any Alaskan trust ADF&G or this administration to protect our resources if this is how the Agency operates? To me personally, as an Alaska Native woman this strikes at the heart of the long history of the government less than noble behavior to Native People. Concurrently limiting a comment period to 30 days during the holiday season can only be seen as an underhanded attempt to eliminate the opportunity for residents to participate in this process.

My family commercially set nets for salmon on Kachemak Bay and longlines for halibut. My husband and I also subsistence fish for halibut on Kachemak Bay. My husband first fished in this area in 1994 and our family has owned property in Seldovia village, on the edge of Kachemak Bay State Park since 2005. We live here specifically because of the ban on PWC in the Kachemak Bay CHA, because of the ban on their use in the State Park and to participate in commercial and subsistence fisheries. This ban will disrupt our fishing activities and the quality of life we enjoy here and have invested in. It places us as a fisherman at risk and places our fishing nets at risk and will disrupt salmon migratory patterns. There are many families that fish in our area and repealing this ban puts their livelihoods at risk and creates the potential for conflict and injury

ADF&G has an obligation to protect and manage CHA and "RESTRICT ALL OTHER USES NOT COMPATIBLE WITH THAT PRIMARY PURPOSE". Not only has agency not provided a scientific justification to identify how repealing the PWC ban is compatible with habitat protection despite the literature review conducted by the Agency which says otherwise, but it has also provided no management plan with this regulation change to identify how PWC use won't conflict with other user groups. Avoiding conflict with other user groups as part of the justification for the PWC ban beginning in 2000.

This justification is more valid for those reasons today as the attached 2017 ADF&G memo on this subject details. People come to Kachemak Bay for the peace and serenity it provides. We have so many non-motorized watercraft users here, that come here and support local businesses here because PWC ARE NOT HERE. How will the Agency ensure public safety for non-motorized watercraft operators? What about the business here that have built their brands over decades based in part on the protections we have in Kachemak Bay? Many of them have participated in the CHA management plan and count on it as the process by which they can advance their concerns. I suppose those families and their businesses don't matter to the administration? If Alaska is "open for business" as the Dunleavy administration states how does throwing existing commercial fishing, eco-tour and wilderness lodge under the bus to appease a small interest group fit that. It doesn't!

In addition to being a CHA, Kachemak Bay State Park is a designated wilderness park and in 1999 the Bay was designated a National Estuary Research Reserve. one of only 26 nationwide and the only Fjord type estuary in the National Estuary Reserve system.

In 2016 the Kachemak Bay Western Hemisphere Shorebird Reserve Network (WHSRN) was expanded to include the Kachemak Bay CHA. This designation is like a World Heritage Site, it provides governments with conservation recognition that can have significant value with ecotourism. Allowing jet ski use in the CHA, particularly near intertidal areas that are important for shorebird feeding and resting violates the intent of a

WHSRN designation. That is also a major economic driver of this area. People come here because of our habitat protections and the abundance of wildlife they can observe here. They pay to come here for that.

Part of habitat protection and maintaining the wilderness integrity of the State Park is the preservation of the natural soundscape. AS the world gets louder protections for quiet natural places where animals and birds and communicate and unimpacted wild areas can be experienced are more and more rare. The Agency should be helping to preserve this integrity not erode it.

Additionally, there is a ban on the usage of PWC in Kachemak Bay State Park. ADF&G has not only not provided a justification for lifting the PWC ban, it has not demonstrated that PWC usage is compatible with this CHA, it has limited public participation and violated the public trust operating outside the CHA management plan process. The Agency has provided no management plan to ensure that PWC use in the CHA will not impact the wilderness integrity of the State Park. How will ADF&G ensure PWC users do not enter the State Park. If we are experiencing additional cuts to our state budget in 2020 how will the state fund managing PWC usage, and protecting other users and the current ban on their use in the Park? Have these issues been addressed? This is why we have a CHA management plan.

Lastly, PWC is not the same as skiffs or canoes as Mr. Green has stated. They are made for a totally different type of usage. They are not made for transportation, fishing or non-motorized recreation. They are made to go fast and to execute high speed turns and jump off wakes and boat waves. That usage is in no way comparable with non-motorized watercraft and other fishing and boating activities on the Bay. In fact, it creates a high-risk environment. This, again is why we have a management plan, and part of what we've had a nearly 20-year ban on their use here. Repealing the PWC ban on the Bay is the equivalent to opening a motocross track in the National Cathedral.

Like the Governor, the Commissioner and Mr. Green already know 99% of Alaska's waters are already open to PWC usage. We area residents have actively worked with the Agency for nearly 20 years to protect our Bay for the types of usage that make Kachemak Bay unique in Alaska and in the world.

I truly believe Mr. Commissioner, that you and Mr. Green are capable of seeing that repealing this ban is the wrong course of action and how dramatically it will disrupt the lives of those of us who live here and make our living on the bay and the importance of the bay as a natural environment. We count on the CHA management plan process to participate in the stewardship and sustainable management of our habitat and natural resources. Please respect our management plan process and the value that we as residents place on Kachemak Bay, and respect our businesses, our values and our dedication to protecting our home.

Please see the attachments in support of my comments.

Regards,  
Angela D. Wisniewski  
(360) 536-2517

## Green, Rick E (DFG)

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**From:** Phil Barber <phil.m.barber@gmail.com>  
**Sent:** Tuesday, December 17, 2019 5:47 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comments on jet skis in Kachemak Bay

Dear Alaska Department of Fish and Game,

I am writing to comment on the proposed plan to open Kachemak Bay to jet skis. I have several issues with this proposal.

The use of our natural resources should always be reassessed to make sure their meeting the needs of today and the future. That said, this process seems rushed and uninformed. Why is this proposal being pushed forward now? Why hasn't it been discussed in the local community, where the greatest effects (both potentially positive and negative) will be felt? Why isn't this proposal being worked on as part of the Kachemak Bay State Park guidance plans, which were withdrawn before being enacted earlier this year? Surely the presence of jet skis will affect the use and management of the park and research reserve.

Second, from a personal standpoint, there are already a variety of ways to enjoy Kachemak Bay. Motorized and human-power, public and private, there's no lack in options to getting on the water. Does the use of jet skis provide a new way to explore the bay? Can you get to back bays on a jet ski that you can't on a paddle board or kayak? Can you access trails across the bay more quickly on a jet ski than a water taxi? If not, then why not leave aside Kachemak Bay as a jet ski free zone? Ninety-nine percent of Alaskan waters are already accessible to jet skis, which seems like more than enough to keep someone busy for a lifetime.

Thirdly, the use of jet skis is predominantly for small areas. These vehicles are designed for fast speed over short bursts with tight turns. Is Kachemak Bay, a place already host to commercial and guided fishing vessels, personal boats, water taxis, ferries, kayak, stand-up paddlers, the ideal place for this type of travel and activity? I personally do not believe that it is.

Finally, if passed into law, who would monitor the use of jet skis in Kachemak Bay? I imagine a big issue being jet skis wandering, either accidentally or purposefully, into the waters of Kachemak Bay State Park. My understanding is that this proposal would open research reserve waters but not park waters to jet skis. Who would be in charge of informing jet skiers about this boundary? And who would enforce it? Cuts to parks state-wide already make it difficult for laws to be enforced. Kachemak Bay State Park has one full-time ranger. How can this proposal be passed without determining how it will be enforced?

I believe that opening Kachemak Bay to jet skis will be a detriment to the natural setting of the bay and the huge variety of users who already enjoy its waters. I have never heard of anyone complaining that they can't access Kachemak Bay. There are already a multitude of ways to get on the water. I think that there are proper places for jet skis and that Kachemak Bay isn't one of them. I worry that if this proposal passes, it will open the door to further changes that will clog the waters of this research reserve and fishing heaven.

Sincerely,

Phil Barber

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Tuesday, December 17, 2019 2:37 PM  
**To:** Green, Rick E (DFG)  
**Subject:** FW: Request for Time Extension

For the files

**From:** Bob Shavelson <bob@inletkeeper.org>  
**Sent:** Tuesday, December 17, 2019 2:35 PM  
**To:** Vincent-Lang, Douglas S (DFG) <doug.vincent-lang@alaska.gov>  
**Subject:** Re: Request for Time Extension

Doug -

I just looked at ADFG's guiding principles on your website, and think it's safe to say ADFG is ignoring them with the jetski rule making.

Bob

### Guiding Principles:

Seeking excellence in carrying out its responsibilities under state and federal law, the department will:

1. Provide for the greatest long-term opportunities for people to use and enjoy Alaska's fish, wildlife, and habitat resources.
2. Improve public accessibility to, and encourage active involvement by the public in, the department's decision-making processes.
3. Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
4. Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.

Cook Inletkeeper  
3734 Ben Walters Lane  
Homer, AK 99603  
cell: 907.299.3277  
fax 907.235.4069  
[bob@inletkeeper.org](mailto:bob@inletkeeper.org)  
[www.inletkeeper.org](http://www.inletkeeper.org)

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On Tue, Dec 17, 2019 at 9:41 AM Bob Shavelson <[bob@inletkeeper.org](mailto:bob@inletkeeper.org)> wrote:

Thanks Doug.

The Homer City Council last night passed a resolution asking for more time, and based on how much time and effort the City and other stakeholders have put into the management plan review process, they have a pretty strong argument.

We just do not see the rush here - and do not think it's fair to have an abbreviated, stand alone rulemaking process over the holidays with no substantive info provided to the public.

So, I'd ask you to reconsider your 15 days and aim for something that will recognize the totality of the circumstances here.

Bob

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Homer, AK 99603  
cell: 907.299.3277  
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On Tue, Dec 17, 2019 at 9:36 AM Vincent-Lang, Douglas S (DFG) <[doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov)> wrote:

*Bob,*

*I have read your letter requesting an extension of the public comment period on the proposed PWC rule for Kachemak Bay Critical Habitat Area and find your request reasonable. I will extend the public comment period for 15 days. Please expect that announcement to be made before the end of the current time period.*

*Thank you,*

*Doug Vincent-Lang*

*Commissioner*

*Alaska Department of Fish and Game*

**From:** Bob Shavelson <[bob@inletkeeper.org](mailto:bob@inletkeeper.org)>  
**Sent:** Thursday, December 12, 2019 11:06 AM  
**To:** Vincent-Lang, Douglas S (DFG) <[doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov)>

**Cc:** Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)>

**Subject:** Request for Time Extension

Hi Doug -

Attached please find a request to extend the public comment period on the proposed PWC rule for Kachemak Bay.

The Kachemak Bay State Park Citizens Advisory Board heard the jetski issue last night, and there's clearly strong interest in this issue.

Thanks -

Bob

Cook Inletkeeper  
3734 Ben Walters Lane  
Homer, AK 99603

cell: 907.299.3277

fax 907.235.4069

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## Green, Rick E (DFG)

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**From:** Lee Post <boneman@xyz.net>  
**Sent:** Friday, December 27, 2019 2:55 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet ski boats in Kachemak Bay

Hi Rick,

I can't believe this is coming up again . I hope you can do your part in stopping the proposed use of jet ski boats in Kachemak Bay . I'm a long time kayaker in this area, (over 30 years) I love kayaking to the other side and camping on a quiet beach and relaxing and watching the wildlife . I often bring visitors who have never been to this area before. Being able to see the seals and sea otters and river otters and sea birds, right from the beach or kayak is often a thrill they never expected . We have over 3000 sea otters in the bay . They are often in concentrated groups swimming by . There are still places directly across the bay from the Homer Spit where groups of 20-50 harbor seals may haul out. The numbers of non-breeding loons , shorebirds, sea ducks , puffins , murrees, and many other species of marine wildlife is amazing, considering how close it is to hordes of people all summer on the end of the Homer Spit . I shudder to think of what a handful of jet ski type boats would do to impact that wildlife.

I'm not anti jet-ski . I've been known to zoom around on such craft myself when I'm at vacation spots in warmer places. They are an absolute blast to play on. But you surely must recognize that comparing them to a skiff or a normal motorboat is like comparing a float plane to a bunch of drones in a particular area, or maybe a farm tractor to high performance 4 wheelers.

Motorboats come and go at a pretty constant predictable speed. Jet ski boats go from 0 to over 50 right now and turn very quickly and are incredible fun to use for jumping your own waves and to just go crazy with. They tip over and stop and you get back on and within 10 seconds you can be going 50 miles an hour in the opposite direction .

A couple adrenaline infused teenagers could about clear the length of the spit of marine birds during shorebird weekend in a pass or two . At 60 miles an hour ( many of these craft will do that easily) it would be about a 4 minute blast of power to clear the length of the spit of all visible waterfowl.

There are lots of places that these personal watercraft can be and should be allowed. The critical habitat area of Kachemak Bay is not one of them .

Thanks  
Lee Post -

4048 El Sarino Court,  
Homer Alaska

## Green, Rick E (DFG)

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**From:** Ann Dixon <dixonannr@gmail.com>  
**Sent:** Friday, December 20, 2019 11:45 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet Skis on Kachemak Bay

Dear Mr. Green,

I live in Homer and am completely opposed to allowing jet skis onto Kachemak Bay, for a number of reasons.

- Kachemak Bay is one of the few places in the state that \*doesn't\* allow jet skis. Jet skiers have most of the rest of the state to enjoy their sport.
- Because they can move so fast and get into shallow areas, jet skis represent a danger to the birds, sea otters, sea lions, whales, and other marine life in the bay.
- Tides, winds, and currents pose significant navigational hazards in Kachemak Bay. Who is going to pay to rescue the inevitable stranded, downed, or injured jet skier?
- While there are certainly some responsible jet skiers, many are unaware of the harm they can do to the environment, or simply don't care. I've seen countless examples of that during my years living in the Mat-Su Valley.
- Kachemak Bay is already heavily used by motor boaters, sail boaters, kayakers, wind surfers, water taxis, commercial ships, and ferries (did I miss anyone?). By and large they coexist peacefully and safely. Adding zippy little jet skis into the mix, however, is a bad idea from a safety standpoint and will tip the balance negatively from an experiential standpoint.
- Many local businesses have built their reputations on the ability to have a relatively serene and quiet experience. Jet skis on K Bay would negatively impact the livelihoods of those small businesses that have invested years of hard work and money.
- Jet skis will negate the years of volunteer work local people have put into creating the Kachemak Bay Water Trail, largely used by kayakers seeking a quiet experience on the water.
- People living around Kachemak Bay have repeatedly rejected attempts to allow jet skis on the Bay. Stop trying to override the will of the local people!
- As for this being an issue of "access for all," plenty of access already exists. Anyone who can afford a jet ski, and a trailer and truck to pull it, can afford a water taxi.

Believe it or not, many people want to recreate in quiet so they can view wildlife, take photos, or simply enjoy the kind of peace and quiet that is becoming rare. "Quiet" has become a commodity of value that people want and need. People deserve a place to recreate, and wildlife deserve a place to live, that isn't spoiled by the sound, speed, and intrusion of jet skis.

For everybody's sake, leave at least one place in the state free from jet skis.

Sincerely,

Ann Dixon

## Green, Rick E (DFG)

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**From:** Brita Mjos <britarm@hotmail.com>  
**Sent:** Monday, December 23, 2019 3:44 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Critical Habitat Area Comments

- Mr. Green,

- • I write in support of a jetski-free Kachemak Bay. Residents and visitors of Kachemak Bay have spoken out clearly in the past in support of a ban on jetskis. As the ocean ecosystems experience increased pressure from fishing, recreating, and climate change, introducing more motorized vessels will further disturb the Bay. My family has a cabin on Kachemak Bay; we value the ban on jetskis and are concerned about the noise and the disruptive behavior that inherently accompanies jetskis.

Jetskis by design can access tight streams, estuaries, and shallow waters, and can travel as fast as 60 mph. These same places harbor birds, salmon, and marine mammals. Given the Critical Habitat Area designation of Kachemak Bay, jetskis would be inappropriate. Please uphold the purpose of the Kachemak Bay Critical Habitat Area, which is “to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.”

- 
- Boats and skiffs typically travel from point A to point B. Jetskis, on the other hand, are designed as "thrillcraft", frequently taken on joy rides. Not only does this behavior often harass wildlife, but it also harasses people.
- 
- A lengthy State of Alaska public process in 2001 concluded that Kachemak Bay should not allow jetskis or personal watercraft. Governor Dunleavy's actions now ignore our democratic process, and favor special interests who have access to the Governor's office most Alaskans do not. The State revisited the issue in 2011 and 2016, and again, Alaskans spoke out to maintain the ban. Please uphold the preference of the people! There are some uses that simply don't belong together. We cannot shoot guns in City limits, or drive snow machines or ATV's. We cannot use fireworks in the Kenai Peninsula Borough. That's because some activities are simply too unsafe or a nuisance to other users. Over 99% of Alaskan waters are open to PWC's, and Kachemak Bay Critical Habitat Area is one area that should be left alone.
- Staff biologists and managers at the ADFG support the jetski ban in Kachemak Bay. They have reviewed all the scientific literature on the matter and they conclude the ban is appropriate and justified.
- The State is currently undergoing revisions to the Kachemak Bay CHA management plan, and any changes to jetski policy or rules should occur within the context of the management plan revisions.
- Thank you for considering my comments.

Sincerely,  
Brita Mjos

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## Green, Rick E (DFG)

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**From:** AQRC President <president@alaskaquietrights.org>  
**Sent:** Monday, December 23, 2019 7:43 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Critical Habitat Area Jet ski proposal

December 23, 2019

From: Alaska Quiet Rights Coalition  
P.O. Box 202592  
Anchorage, AK 99676

Ref: ADF&G proposal to repeal jet ski ban in the Kachemak Bay Critical Habitat Area

Dear Mr. Green,

Founded in 1996, the Alaska Quiet Rights Coalition's (AQRC) mission is to maintain and restore natural sounds and natural quiet in Alaska through advocacy and education for the benefit of people and wildlife. More particularly, we're dedicated to protecting the rights of Alaskans to quiet places for the benefit of public land users, home and cabin owners, communities, businesses, visitors, future generations, and wildlife. We believe that natural sounds and natural quiet should receive the same consideration given to other ecological values, such as clean air and water, fish, wildlife, soils, vegetation, scenic beauty, and wilderness. Although there are many places in Alaska that look the same as they did 200 or more years ago, very few sound as they did just 20 or 30 years ago.

In addition to protecting ecological values like the ones listed above, one of AQRC's specific goals is a fair and equitable overall balance on the public lands between those managed for motorized recreation, and those managed for quiet, truly traditional forms of recreation like hiking, snowshoeing, cross country skiing, canoeing, and kayaking.

AQRC strongly opposes the repeal of the jet ski ban in the Kachemak Bay Critical Habitat Area. Jet skis are a thrillcraft whose very loud and inconsistent noise can disturb wildlife. They also can and do operate in shallow nearshore areas and wetlands that are crucial for fish and wildlife in a variety of life stages and for a variety of purposes. Allowing jet skis in the Critical Habitat Area poses obvious and serious threats to fish and wildlife. If this issue was to be judged based on the resources, instead of being an attempt to make special recreational interests happy at the expense of the resource, the ban repeal proposal would never have been made. ADF&G would instead have accepted the recommendation of its biologists and managers to retain the ban. This is a very disappointing and short-sighted proposal from an agency whose mission is to protect fish and wildlife and their habitats. A substantial majority of Alaskan waters are open to jet skis. With many alternative riding areas, a Critical Habitat Area is the last place jet skis should be allowed.

In addition, jet skis very significantly degrade the experience for other visitors to the Bay. Jet skis are extremely loud and their frequent changes of pitch are maddeningly annoying. Their detrimental effect on the natural soundscape--natural quiet and the opportunity to hear and enjoy natural sounds--and on the visitor experience is glaringly obvious.

This ban has been effective for 18 years, and revisited twice. An overwhelming majority of comments have always supported the ban. There are no good reasons, only bad ones, for revisiting the issue again.

This is also not the way to go about making such an important decision. The Kachemak Bay Critical Habitat Area management plan is undergoing revision; this comprehensive look at the area and all of its values is the place where a decision like this should be made.

Finally, we request a 90-day extension of the comment period. This is a very important issue, the proposed repeal is radical and controversial, and the brief comment period falls over the very busy holiday season when people want to be able to spend as much time as possible with family and friends. The length and scheduling of the comment period will be perceived, understandably, as an attempt to limit public participation. Additionally, while many people besides the residents of Homer will be adversely affected should this repeal go into effect, Homer residents will certainly be the most affected and should be given the courtesy of a public hearing there.

Sincerely,

Brian Okonek, President

Alaska Quiet Rights  
Coalition

cc: Doug Vincent-Lang, Commissioner ([doug.vincent-lang@alaska.gov](mailto:doug.vincent-lang@alaska.gov))

## Green, Rick E (DFG)

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**From:** Dennis Lees <dennislees@cox.net>  
**Sent:** Sunday, December 22, 2019 5:36 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Maintain the current ban on jet skis in Kachemak Bay

Dear Mr. Green,

As an old-time resident of Homer (1975-1980), I move there to participate in biological surveys related to oil-and-gas development in Cook Inlet and the Northeast Gulf of Alaska. As part of those efforts, we conducted frequent 4-season dive and intertidal surveys in Kachemak Bay and on the east and west side of Cook Inlet, as well as on the outer Kenai Peninsula and in Prince William Sound. Thus, I am very familiar with and treasure the rich and diverse marine wildlife in the region and the unbelievable peace that generally characterizes these areas and their marine habitats. I was also a major participant in the biological surveys studying the Exxon Valdez oil spill so I know how crazy and disturbed these habitats can become as a consequence of human activities and technology, and how these can disturb the wildlife.

Now I live in southern California and spend a substantial amount of time boating and kayaking in and around the marine environment. There, we have to deal with the disturbance to humans and wildlife of very common and unpleasant jet skis and their mostly unpleasant drivers. I have found that one common characteristic of jet-ski operators is that nearly all are totally inconsiderate of the people, habitats, and wildlife around them. They are out there completely for the adrenaline rushes that come with ripping around and risky behavior. I suspect that part of that rush in Kachemak Bay and the Fox River Flats would come from hazing or running down the many wildlife species that live in that designated Critical Habitat Area. Achieving that status was a major achievement recently completed when I arrived in Homer in 1975. It was achieved due to great efforts by the Habitat Division of ADF&G. It is painful to me to imagine these thrill machines and their thoughtless thrill-seeking drivers ripping around Gull Islands, for example, spooking the large populations of adult murrets, puffins, cormorants, etc., and terrorizing their young which are just learning how to fly and swim. Or hazing the sea otters, harbor seals, sea lions, minke whales and orcas that frequent Kachemak Bay.

Why on Earth would anyone want to unleash these useless pieces of technology with their offensive noise and terrible emissions and their reckless, dangerous, thoughtless drivers into such a beautiful serene place like Kachemak Bay. It's worse than turning snow machines loose on our National Parks. At least the habitat is mostly protected from damage in the parks by snow cover and wildlife has mostly gone south in the winter. In contrast, jet skis would be running at the most sensitive and active time of the year for most of the resources in Kachemak Bay and the Fox River Flats. If these thrill-seekers want to rush around and take risks in the marine environment, turn them loose in Turnagain Arm or anywhere in upper Cook Inlet, which have substantially fewer marine species to injure and should be more challenging to their skills (i.e., risky). In those habitats, they would be truly be taking risks.

Please be considerate and fair to the Kachemak Bay Critical Habitat Area and the many productive and valuable resources in this area. Do what you need to do to deny access to jet skis in Kachemak Bay.

Respectfully,

Dennis C. Lees

Littoral Ecological & Environmental Services  
1075 Urania Ave.  
Leucadia, CA 92024

Business: (760) 635-7998  
Cell: (760) 707-7324  
[www.LittoralEcological.com](http://www.LittoralEcological.com)

We haven't inherited the earth, we have just borrowed it from our children!!

## Green, Rick E (DFG)

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**From:** marcia kuszmaul <mkuszmaul@hotmail.com>  
**Sent:** Thursday, December 26, 2019 4:11 PM  
**To:** Green, Rick E (DFG)  
**Subject:** OPPOSITION TO THE REPEAL ON 05AAC.95.310, 11AAC20.115 AND 11AAC20.215

Mr. Green -- I am a small business owner who operates a licensed bed and breakfast lodge on the shores of Kachemak Bay. I also am president of the Homer Bed and Breakfast Association, representing more than 70 local licensed accommodations and tourist-related enterprises. I am not a scientist and do not have facts and figures at my fingertips that document the impact of personal watercraft (aka jet skis) on the waters where they operate. I am, however, a resident and a local business owner who knows that Kachemak Bay is unique in the state and merits every protection we can afford.

My husband and I host more than 450 people each year from as many as 33 different countries, nearly every state and throughout Alaska who journey to the Kachemak Bay area to enjoy and appreciate Nature. That's what they call it -- Nature. They are thrilled to have found an accessible place on the planet that is not overrun by the common vestiges of civilization and is not overly commercialized -- with easy access to authentically remote areas that are quiet, uncrowded and peaceful. Our guests come here to hike, kayak, fish, see bears, beachcomb, birdwatch, whalewatch -- they want to be outdoors, at peace, and soak in the natural world that they cannot find in their own lives. Not one, ever, has asked about the opportunity to jet ski.

This is the basis for my opposition to repealing the statutes that prohibit jet skis from operating in Kachemak Bay. I have lived around jet skis several places -- Seattle-area waters, Chesapeake Bay environs and more -- and know what that is like. Kachemak Bay is a unique habitat in Alaska, teeming with marine life -- marine mammals, waterfowl, sea birds, fish. Unfortunately it is less teeming than it was 35 years ago when I first arrived in Homer. None the less, the people of Homer have been deliberate and diligent in attempting to keep our environment as pristine as possible amidst a continual barrage of pressures. This is an area worth protecting from unnecessary disruption and disturbance. Our guests do not want to be buzzed by PWCs as they paddle among sea otters in Peterson Bay or Bear Cove. They do not want jet skis to foul the waters, which inevitably they do. (I have learned that just because we can do something -- like run a jet ski wherever and whenever we want -- doesn't mean we should.)

Repeatedly, our guests tell us that the Kachemak Bay area is the best part of their Alaska trip and count us lucky to live here -- and are counting on us to preserve it! Kachemak Bay is a Critical Habitat Area. Doesn't this mean anything anymore?

Please, please help us conserve this area from needless encroachment and help extend its life just a little bit farther into the future for all Alaskans and our friends.

Sincerely,

Marcia Kuszmaul

Owner  
Juneberry Lodge  
Homer, Alaska  
[www.juneberrylodge.com](http://www.juneberrylodge.com)

President

Homer Bed & Breakfast Association  
[www.homerbedbreakfast.com](http://www.homerbedbreakfast.com)

## Green, Rick E (DFG)

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**From:** Leanna Stern <leannajo1126@gmail.com>  
**Sent:** Wednesday, December 18, 2019 11:05 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Re: Ban on Jet Skis in Kachemak Bay

Thank you for your reply Rick,

The more I'm getting involved in this, the more shady it looks to be quite honest.

Why are you the comment contact? Aren't comments supposed to be accessible to the public and made through the portal on the website? How do you plan to share comments with the public if they are not processed 'in the system'?

Where oh where is the literature to back up the plan to repeal the ban on PWC? We know where the literature and science are that enabled and justified the ban, but if there is none to repeal it, how can ADF&G move forward with any sort of legal process?

Consider this my comment: I am opposed to the proposed reversal of the ban on PWC in Kachemak Bay. As a person who enjoys PWC in the appropriate setting, I am also a kayak guide in Kachemak Bay and have been in the tourist industry in Alaska for over 20 years. I can personally tell you there is ZERO economic demand for this proposal, and in fact the opposite is true. Tourists and Alaskan alike flock to Homer to immerse themselves in the peace, tranquility and wildlife/wilderness of Kacemak Bay. The PWC users in Alaska who want this ban lifted, have 99% of Alaskas waters available to them. It is in the best interest of the state to keep this area as pristine as we possibly can.

Thank you,  
Leanna Stern

On Dec 10, 2019, at 1:55 PM, Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)> wrote:

Ms. Stern,

The process just worked out to initiate the public comment period at this time due to the workload and the deliberations. I apologize if the optics were not better.

The email to which you refer was written by a staffer that didn't know where this request wawas originated and sent out a correction right afterwards. The decision to propose and the authority is with the Commissioner of the Alaska Department of Fish and Game.

This comment period matters and it is consistent with the law and procedures of the State.

Please participate in the public comment period.

Thank you

Rick Green  
Alaska Department of Fish and Game

**From:** Leanna Stern <[leanna@royalwolf.com](mailto:leanna@royalwolf.com)>  
**Sent:** Tuesday, December 10, 2019 1:05 PM  
**To:** Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)>  
**Subject:** Ban on Jet Skis in Kachemak Bay

To Rick Green and our policy makers;

First of all, why oh why was it decided that 30 days of public comment was a good idea over the holidays?? Likely on purpose in hopes of a null response... at least that's how it looks when you put the this announcement, the email declaring the governor has already decided, and the timing together.

Secondly, because we have seen/read an email that the governors office has 'already decided' on this issue, the public as well as policy makers are set up for failure.

We have fought this fight, jet skis do not belong in Kachemak Bay, period. There is an inherent issue with multiple subjects: wildlife, safety, and the main reason tourist flock to the area, for the peace and quiet provided by a place that does NOT ALLOW jet skis. This was passed with extensive research and public comment in 2001. Revisited in 2011 and 2016. Nothing has changed except that the wildlife is MORE threatened than ever before.

The public comment needs to be extended.

The abuse of power by Dunleavy should be investigated or his recall should be enforced.

When special interests hold power over the people of the state, there is seriously something wrong with our system. And if AK F&G plays by those rules, shame on you all for playing into dirty politics.

Sincerely,  
Leanna Stern  
Homer Resident/Kayak Guide in Kachemak Bay

Leanna Stern  
Lodge Manager  
[leanna@royalwolf.com](mailto:leanna@royalwolf.com)  
<https://www.royalwolf.com>  
<https://www.bigkulodge.com>  
Cell: (907)209-6652  
Office: (866)428-1842

## Green, Rick E (DFG)

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**From:** Jeff Fair <fairwinds@briloon.org>  
**Sent:** Friday, December 20, 2019 5:57 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Re: Public Notice 5 AAC 95.310

You are removing a restriction of motorized use of a Critical Habitat, and on the email you are using, the response link DOES NOT WORK.

Why remove the restriction? Must we allow traffic everywhere?

And how convenient for the link not to work, so I cannot reply.

Jeff

Jeff Fair  
Author of *In Wild Trust*  
PO Box 2947  
Palmer, AK 99645

cabin 907-745-1522  
cell 585-967-4250  
[www.yukonjeff.com](http://www.yukonjeff.com)

On Dec 19, 2019, at 2:59 PM, Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)> wrote:

Dear interested parties,

Attached please find the Public Notice, Supplemental Public Notice and Public Notice Additional Information related to proposed changes to 5 AAC 95.310.

Thank you,

Rick Green  
Special Assistant to the Commissioner  
Alaska Department of Fish and Game  
907-267-2228  
<Public Notice 5AAC 95.310.pdf><Supplimental Public Notice 5 AAC 95.310.pdf><5 AAC 95.310 Public Notice Addtional Information signed.pdf>

## Green, Rick E (DFG)

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**From:** Rhema Smith <akarea83@gmail.com>  
**Sent:** Thursday, December 19, 2019 11:53 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Re: Public Notice 5 AAC 95.310

Hello,

My name is Rhema Smith. I am a Third generation Alaskan from fritz creek Alaska outside Homer. My grandfather Yule Kilcher, former writer with many to the Alaskan constitution during statehood and prior senator to the state of Alaska.

My mother Fay Kilcher , 3rd daughter of Yule still resides on the Kilcher homestead , and our family has a cabin at Eastland creek just 4 miles from swift creek and the russian village and the fox river flats.

I grew up riding horses to the head of the bay to bring my uncle Otto and my aunt Mossy's cattle's to the head of the bay. In the 1990's in the last days of subsistence salmon at fox creek we would dip net a winters food. We take arcs with extreme care and knowledge of risk to the areas beyond the fox river. It can be a treacherous land and a beautiful one. Vast and wide.

I know from personal experience when saving other people's property with the Kilcher's and the Jones, Troy jones family and the martishevs that the head of the bay and the protected area beyond the fox river flats is NO PLACE for people to go with boats. If the state decides to go through with these changes, a prestine habitat will be put forth to ruin with abandoned vessels etc. There is already a graveyard of machines, cars . Trucks captured by the tide and left to leak oil everywhere up there. I don't want to sound biased but because of ignorance many of the villagers have left waste in the refuge. If this area is accessible to water craft the only people who will maybe save them is in my family and other homesteaders of the area. The cost and risk is too high. There is many concerns to the habitat and risks in navigating the tidal areas . The three rivers crossing is a navigational challenge and with no money in the state to regulate people going there it's a bad idea.

stupid decisions..... there with be environmental Costs. There will be many abandoned crafts, motors, equipment. I think under no circumstances should it be allowed.

As a Alaskan tax payer, voter, property owner and third generationalaskan to the fox river area. I do not support the 5 AAC 95.310 measure to allow water craft in the fox river flats area and critical habitat zone. Please don't let a bunch of yahoos with money and no idea what there getting into joyride into the head of the bay. Someday there might not be anyone to help them out of their mess and all that will be left is a graveyard of abandoned equipment .

Thankyou for time , Rhema Smith  
Po box 15224 fritz creek AK 99603

On Thu, Dec 19, 2019 at 4:00 PM Green, Rick E (DFG) <[rick.green@alaska.gov](mailto:rick.green@alaska.gov)> wrote:

Dear interested parties,

Attached please find the Public Notice, Supplemental Public Notice and Public Notice Additional Information related to proposed changes to 5 AAC 95.310.

Thank you,

Rick Green

Special Assistant to the Commissioner

Alaska Department of Fish and Game

907-267-2228

Alaska Dept. of Fish & Game  
333 Raspberry Rd  
Anchorage, AK 99518-1565

Dear Mr. Rick Green

Thank you for taking the time to understand the topic of personal watercraft use in the area of Kachemak Bay as an access issue and not what some people are trying to say as a thrillcraft careless behavior issue.

I keep hearing all the propaganda labeling the boats as thrillcraft and not appropriate for Kachemak Bay. It's amazing what people buy into these days without bothering to do any research. I know several people who are between the ages of 40-65 They travel all over Alaska using their personal watercraft boats. To keep them out of one part of the ocean is simply insane. Our waters and lands belong to all Alaskans.

Thank you again for taking this topic as a stand-alone access issue and to repeal the current administrative codes that should never have been put in place the first time. I support the repeal of 05AAC95.310, 11AAC20.115 and 11AAC20.215 on personal watercraft in Kachemak Bay Critical Habitat area.

Sincerely,

Vernona Killingsworth  
821 Dogwood Street  
Anchorage, AK 99501

## Green, Rick E (DFG)

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**From:** Mary Post <merryrain51@gmail.com>  
**Sent:** Friday, December 27, 2019 4:17 PM  
**To:** Vincent-Lang, Douglas S (DFG); Green, Rick E (DFG)  
**Subject:** WHAT?!!!!

Seriously?!!! You would seriously consider lifting the jet ski ban currently in place for Kachemak Bay?

And what's this I hear about a small Jet Ski group that is working to get this ban lifted, and claim that jet skis are nothing more than skiffs and boats? That is plain nonsense! I have yet to see any of the skiffs and boats in the bay be able to turn on a dime, jump over waves, and go flying from 0 to 60 in less than 2 seconds. And the noise! noise! noise! of those awful machines!

Do you have any idea what we have in Kachemak Bay? It is a Critical Habitat Area filled with whales, porpoises, sea otters, puffins and other sea birds! All that including the bird sanctuary called Gull Island. This is where a good population of puffins, gulls, kittiwakes, and others nest. Can you imagine what the noise from a bunch of those jet skis going around and around that small island is going to do? Destroy it.

Kachemak Bay is the halibut fishing capital of the world! Having jet skis out there will destroy that too. It will chase away the tourist revenue from Homer (and surrounding towns) because no one will be able to camp out on the spit peacefully, where most of them stay, because of the noise. Heaven only knows what all that messing around on those skis will do for the fishing. I just don't see how jet skis and fishing mix. Why would you mess with Homer and surrounding towns lively hoods, by lifting the jet ski ban, just to make a small group happy by letting them empty Kachemak Bay of its occupants, and the surrounding towns tourist income, with their unwanted noisy machines?

And what about those of us who live close enough to Kachemak Bay who would have to listen to all the constant noise those jet skis are going to cause? I happen to be one of those residents. I happen to like to have the windows of our house open during the summer. There is already too much noise in this community. Don't make it any worse. That's exactly what you'd be doing by allowing the constant noise of those jet skis out in Kachemak Bay all summer. If that ban is lifted it is going to greatly disturb our peace.

Please be sensible and don't lift the Jet Ski ban.

Mary Post  
4048 El Sarino Ct  
Homer, AK 99603  
907-235-6247  
[merryrain51@gmail.co](mailto:merryrain51@gmail.co),



## **Green, Rick E (DFG)**

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**From:** Ron Turner <69returner@gmail.com>  
**Sent:** Monday, December 16, 2019 5:43 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Comment on proposal to repeal ban of jet skis in Kachemak Bay

As a resident of Seldovia and a former scuba instructor and navy diver in Hawaii and California I can say very first hand that the premise used by the advocates of personal water craft ,ie.: that they are no different other boats ; is blatantly false.

First at hand, is the attitude of the type of people who so often are operating these jet skis. An attitude more akin to teenage boys on testosterone overdoses. I am old enough to have watched as our society made the transition to four wheelers and snowmobiles and the type of people who are attracted to hot rodding around on them. There is a strange correlation between their will to go wherever they darn well please and damage to ecologically sensitive areas (muskeg, tundra, wetlands, etc.) and private property.

Secondly. . . can you possibly imagine turning this caliber of operators loose with their watercraft amidst a pod of whales or the schools of salmon waiting and trying to get up our local watersheds to spawn.

Thirdly, there is the matter of pollution of our nearly pristine bay. Anyone who operates internal combustion engines must know that especially two-stroke engines are heavier polluters of the environment due to the very high amounts of unburnt oil that is thrown out the exhaust pipe, and in this case ,straight into the water. This doesn't account for the gas and oil spilled in the process of filling the machines.

Then , there is the noise pollution . . . Oh, my God ! The operators of these types of machines, water , land , or snow simply can't seem to get it in their head that they don't need to have the latest , greatest, and most obnoxiously loud exhaust system known to humankind. And they want to make sure everyone hears it. (Hearken again to teenage boys).

Of course, there is ,then, the issue of trash pollution. Well , really ,will we be able to assign any blame to the operators of personal watercraft for an uptick of trash on our beaches? No , because they will be able to throw it in our bay and let the 'tide take it away'. Any trip out East End road to the snowmobile parking places or Turnagain Pass to the snowmobile side of the road (v/s the skiing side of the road) will convince anyone that these type of people simply don't give a rat's fanny about the environment or other people.

You can retort that I am throwing out stereotypes and generalities across whole spectrums of 'personal vehicle' users and that may be true; but my observations of human behaviors ,while anecdotal, and lacking a ten thousand dollar scientific study, are not invalid because other people that I have mentioned this to have noticed it too.

I should like to add that I have had scuba students underwater with the proper dive float and a flag and jet skiers operating like wild banshees on the surface. Getting to the surface to flag the jet skiers off was a near lethal experience.

I have also been on beaches in Hawaii with my children, beaches designated for swimmers only and no jet skis allowed; but the jet skiers would come in anyway and then race off as in a show of defiance (did I mention teenage boys? But these were grown men). Anecdotal you may say again, but you better be praying that you can gather up your kids and get them to shore before the next go-around.

Finally, I would like to apologize to any sensible ,reasonable, and responsible operators of any jet ski, 4wheeler, or snowmobile if you feel slighted in being class of operators that give your craft bad reputations. I am quite sure that there must be ,at least ,one good operator for every bad one. And I would bet the ratio is even higher than that. It would be

wonderful, in a hypothetical world, if the good operators could police or restrain the wild operators by example or coercion or whatever. But a visit to the ski trails behind Mc Neil Canyon School when the the snowmobiles are out is a perfect example of how that doesn't always work well.

If you can't visit the Colorado River or Lake Mead or any other lake in America where jet skis are allowed send for a postcard or get on the computer and look at the aerial weekend shots of that mess and ask yourself if that is what you want for Kachemak Bay.

Very Sincerely, Ron Turner  
Seldovia ,

Sent from my iPad

## Green, Rick E (DFG)

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**From:** Vincent-Lang, Douglas S (DFG)  
**Sent:** Tuesday, December 17, 2019 8:23 AM  
**To:** Green, Rick E (DFG)  
**Subject:** FW: Proposed changes on the use of personal watercraft

fyi

-----Original Message-----

From: Lisa <lckrebs@gmail.com>  
Sent: Monday, December 16, 2019 9:26 PM  
To: Vincent-Lang, Douglas S (DFG) <doug.vincent-lang@alaska.gov>  
Subject: Proposed changes on the use of personal watercraft

Dear Mr. Vincent-Lang,

I am writing to you of the proposed changes to regulation in 5 AAC 95.310 of the Alaska Administrative code, on the use of personal watercraft in Fox River Flats and Kachemak Bay Critical Habitat Area.

My main concern involves process. I first heard of the proposed change on our local news on the radio with an interview with Rick Green. Mr. Green shared no new facts or information that warranted a needed change to the existing regulation. He also sounded disinterested on the public commenting on the topic. He then stated that a "yes" or "no" comment would suffice, then saying it would not be taken as a popular vote count. It sounds like Mr. Green has already made up his mind.

This notice to propose a change of regulation was made in early December. The public comment period is only one month long. This also corresponds with the winter holidays and vacation time, many people will be unaware or unable to comment on this important topic. It is too short.

This issue has been thoroughly researched, discussed and commented on in 2016, 2001, 1999, and even earlier. There is a long history on this issue, and the science and conclusions resulted in a consensus that personal watercraft in these areas would have negative impacts on habitat as well as on other user groups. Mr. Green mentions none of this.

The process to change this regulation is radically different than the normal format I have seen put forth by the Alaska Department of Fish and Game. With commercial fishing, specific fisheries and regions are on a known calendar schedule, so the public is aware when changes are brought forth. Proposals are required to include looking at who and what will benefit, and who and what will suffer. It is then followed by a lengthy comment period, followed by presentations, comments and discussions in front of the Board of Fish, before a vote by the board. It is a great example of Alaskans have a voice in their resource management.

I have been to the Alaska Department of Fish and Game website, and have read your mission statements.:

"Alaska's fish and game resources belong to Alaskans."

"Increase public knowledge and confidence that wild populations of fish and wildlife are responsibly managed."

"Building trust with the citizens we serve."

I feel the way this proposal is being presented contradicts these mission statements. I have admired the process with changing commercial fishing regulations involving the Board of Fish. I'm dismayed as this does not promote trust and confidence in a department that is so important for our state.

I urge the Alaska Department of Fish and Game to do nothing. Leave the regulation in place as is. Please present future changes to regulations that involve public land and water in a proper manner, with facts and a fair comment period for the public.

Thank you,  
Lisa Krebs  
PO Box 1971  
Homer, AK 99603



## **Green, Rick E (DFG)**

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**From:** Sandy Rollins <sandyrollins@acsalaska.net>  
**Sent:** Tuesday, December 17, 2019 8:28 AM  
**To:** Green, Rick E (DFG)  
**Cc:** alaskaredhead@hotmail.com  
**Subject:** Jet Skis in Kachemak Bay

For years we have kept this at bay. Please consider the reasons listed, besides the fact that they are obnoxious and do not allow these machines in the Bay.

### **Jet Skis (Personal Watercraft) are Dangerous:**

Personal watercraft present the most gruesome safety record in boating. While they comprise less than 10 percent of all U.S. vessels, they're involved in 55 percent of all collisions. The American Medical Association reported: "The rate of emergency department-treated injuries related to (personal watercraft) is about 8.5 times higher than the rate of those from motorboats."

"What makes personal watercraft so ultra-dangerous is the fact that it will not steer when you suddenly have a surprise and let off the throttle." Unlike traditional boats, jet skis are rudderless. And when the throttle is off, a speeding jet ski is like a car on ice. It can't stop, and the driver has no control.

### **Jet Skis (Personal Watercraft) are Loud:**

Jet ski noise is different from that of motorboats. The heart of the difference, and the crux of the jet ski noise problem, is that jet skis continually leave the water. This magnifies their noise impact in two ways.

First, minus the muffling effect of the water, the jet ski engine's exhaust is much louder, typically by 15 dBA. As a result, an airborne jet ski has the same noise impact on a listener at the water's edge as an in-water jet ski 8 times closer, or the same as 32 identical in-water jet skis at the same distance.

Second, each time the jet ski re-enters the water, it smacks the surface with an explosive "whomp" — sometimes with a series of them.

### **Jet Skis and Marine Mammals:**

A typical Jet Ski has an average top speed of 65 miles per hour. There is no possible way that any meaningful marine mammal protection enforcement could patrol the entire Kachemak Bay and protect our marine mammals from this new, high-speed user group.

Best Regards

Sandy Rollins  
P O Box 1091  
Homer, AK 99603  
907-235-7304

## Green, Rick E (DFG)

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**From:** John Davis <jcdavis@gci.net>  
**Sent:** Monday, December 16, 2019 3:08 PM  
**To:** Green, Rick E (DFG)  
**Cc:** 'Bird Bob'; bobbird@radiokenai.com  
**Subject:** Kachemak Bay (PWC) Repeal

Dept /Fish and Game..... I am writing to urge the repeal of the ban on personal watercraft (PWC) on Kachemak Bay. There is no justification for this action taken politically (with no research and thought) by Tony Knowles. Common use of all waters are reserved to the people of Alaska in our Constitution. I support whole heartedly REPEAL of this ridiculous ban. John C Davis....48590 KSRM Court...Kenai. AK... 99611 907-394-3150

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**From:** Alaska Outdoor Council [mailto:alaskaoutdoorcouncil@gmail.com]  
**Sent:** Monday, December 16, 2019 2:12 PM  
**To:** John C. Davis  
**Subject:** AOC Email Alert-Kachemak Bay

Dear John C. Davis,

We need as many people as possible to comment on this:

Repeal the ban on personal watercraft (PWC) in Kachemak Bay.

It's simple - Send an email to Alaska Department of Fish and Game (ADF&G) at [rick.green@alaska.gov](mailto:rick.green@alaska.gov) prior to the January 6, 2020 deadline adding your support to repeal the ban on PWC.

When local Alaska residents in the Homer area convinced then Governor Tony Knowles to close the entire Kachemak Bay waters to the use of "boats you seat on as opposed to in" there was no evidence to suggest PWC were anymore detrimental to the coastal public waters than numerous other allowed activities. It was a political decision based on sketchy scientific data at best.

Alaska's State Constitution makes it clear, Article 8, Section 3. Common Use;

**".... waters are reserved to the people for common use"**

Regulated use of PWC in Kachemak Bay allows the public to recreate on fairly safe nearshore waters that are accessible to many Alaskans who live in Alaska for the opportunities provided to them on public lands and waters. There is no justification for local residents to not share the public lands/waters near their place of residence with fellow Alaskans.

Emails of support to repeal the PWC ban sent to [rick.green@alaska.gov](mailto:rick.green@alaska.gov) are important to assure ADF&G that lifting the ban is the preference among beneficial uses. You can help protect everyone's right to access publicly owned lands and waters throughout Alaska by emailing your support today.

Gina Poths, Executive Director, PWCA

Thank you for your support

Bill Iverson,  
President  
310 K Street, Suite 200  
Anchorage, Alaska 99501  
Phone: (907) 264-6645 Fax: (907) 264-6602

Email: [president@alaskaoutdoorcouncil.com](mailto:president@alaskaoutdoorcouncil.com)

Web site: [www.alaskaoutdoorcouncil.org](http://www.alaskaoutdoorcouncil.org)

***If anyone wants to opt out of our email mail list please reply and put OPT OUT in the Subject.***

Alaska Outdoor Council

*"Protecting your Hunting, Fishing, Trapping and Access Rights"*

310 K Street, Suite 200

Anchorage, Alaska 99501

Phone: 907-264-6645

Fax: 888-932-3353

Email: [president@alaskaoutdoorcouncil.com](mailto:president@alaskaoutdoorcouncil.com)

Website: [www.alaskaoutdoorcouncil.org](http://www.alaskaoutdoorcouncil.org)

**Please like us on Facebook:** <https://www.facebook.com/www.alaskaoutdoorcouncil.org>

## **Green, Rick E (DFG)**

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**From:** Carla Stanley <4rdog24@gmail.com>  
**Sent:** Sunday, December 15, 2019 5:34 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay critical Habitat area and jet skis.

Dear MR. GREEN

Thank you for the opportunity to give you my perspective on allowing jet skis in Kachemak Bay.

I have been in Alaska since August of 1970. I taught Science, Art, Physiology /First Aid and Marine Science at Kenai Jr. High School and Soldotna High and spent my last years at Skyview High retiring in 1997.

At that point I moved to Homer. We have had a small cabin in Jakolof Bay since bvb 1993. That is where my heart is and where my ashes will be when I cross the rainbow bridge. What I have cherished about Kachemak Bay are many.

Our bay is home to fishers ... both commercial and recreational. It is a place where surfers, wind surfers, kayakers, paddleboards, hikers, artists, poets, swimmers, tide pooling students, and many other "quiet sports" enthusiasts have been comfortable challenging their fears and capabilities as well as finding peace and tranquility.

Boaters are there too. Most have destinations at the fishing grounds near Seldovia, the bluffs northwest of Homer, their cabins across Kachemak in many of the fjords, or the trailheads in Kachemak Bay State Park. Many are water taxis who have learned to respect and appreciate the distances around seabirds, otters, and whales

I cannot wrap my brain around the possibility of JET SKIS racing around among these other recreationists. This is a CRITICAL HABITAT... for migratory birds, many of which are on Audubon's list of birds of concern, due to their rapidly declining numbers.

It is also where salmon spawn in the fresh and glacial water streams that flow in to Kachemak.

Imagine a jet ski running into a stream full of salmon..

In Jakolof, the intertidal richness is exceptional. Many species of crabs, clams, mussels, sea stars, fish species, barnacles, shrimp thrive here with an abundance of kelp that protect the juveniles until they can survive in the big ocean. It also is full of oyster farms..with the best tasting oysters in the world...no jet skis wanted or needed there...

Kachemak Bay is also home to the Kachemak Bay Shorebird Festival which is in its 27th year. We have stopped C130s from doing touch-and-goes during our Festivals. How could anyone enforce jet skis from going into our Bay when we have 1500 -2000 visitors there buying food, staying in our hotels and B&Bs

Visiting our galleries, breweries, gift shops and restaurants in order to see the shore birds who have travelled thousands of miles for this critical stop over before heading several hundreds of more miles to their nesting grounds.

Jet Skis do NOT belong in a critical habitat. Not now not ever!!!

## Green, Rick E (DFG)

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**From:** captain B <reelpossibility@gmail.com>  
**Sent:** Saturday, December 14, 2019 11:08 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Personal Water Craft in Kachemak Bay Just say YES!!  
**Attachments:** Letter to Editor pg 1.pdf; pg 2.pdf; pg 3.pdf; pg 4.pdf; Speech pg 1.pdf; Speech pg 2.pdf

Greetings from Homer,

I am an ex-commercial fisherman and 30 year mariner with USCG 1600 ton Master license. I have spent half my life at sea. I have seen a lot of things, and some of those incidents are mentioned below in a speech I gave and letter to Editor of Homer News back in 2011, when once again PWC was brought up, after a long pause.

In my research I found that the average age of jet ski owners were between 32 and 56. The cost of PWC's prevent most young kids from purchasing. By the time they do have enough money for them, they are more educated and less likely to be thrill seekers.

Thank you for taking my points into consideration. This has been a long and hard fought battle. There will not be a million jet skis taking off from Homer, my guess is it will be a few locals, who already appreciate the beauty of our Bay!

Thanks to all who are finally giving these folks a second chance. I just turned 70 and if this goes thru I will be ordering my new Sea-Doo Fisherman's ski!

With kindest regards,

Brenda Hays

## Green, Rick E (DFG)

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**From:** charles anderson <canderson@goldenfuelsystems.com>  
**Sent:** Friday, December 13, 2019 9:07 PM  
**To:** Green, Rick E (DFG)  
**Subject:** PWC/ Jetski ban repeal.

Rick Green,

My name is Charles Anderson, I was Born in Homer, My mother was Born in Seldovia. I run a watertaxi here in Homer. I support the repeal of the ban on PWC. It should have never happened in the first place.

Thanks for your consideration on the matter. Bellow I will attach an article I wrote spelling out in detail my thought process.

Charles Anderson

[www.goldenfuelsystems.com](http://www.goldenfuelsystems.com)

Years ago a small, vocal minority was successful in banning Jet Skis (PWC ,Personal Water Craft) here in Kachemak Bay. At the time there was only 1 or 2 Jetskis in Homer, so there were not a lot of users to protest.

The battle cry was that we had to "save the bay!" reasons given were that they were "dirty" (reference to the 2 stroke engine), would harm wildlife, noisy, etc. PWC posed a threat to the bay, and needed to be banned, despite the fact that there was no problem with hoards of PWC terrorizing the bay and destroying the environment.

Not only were there virtually no PWC in the bay, but none of these reasons pass the smell test, and a little bit of logic and thinking will "dispel" the myths put forth as fact, and reasons we should ban them.

1. They are dirty and bad for the environment.

Fact. Years ago many PWC were 2 stroke, as were almost all outboards. (a lot of 2 stroke Detroit diesels too!) Singling out the PWC, and saying nothing about the outboards was disingenuous at best. The reality is that now almost all PWC are 4 stroke, with very clean emissions.

2. Harm wildlife.

Fact, Given the fact that PWC has the Impeller internal, there is no risk of hitting a marine mammal with your propeller and cutting it. As to the harassment of wildlife, it is already illegal to do so, and the ability to do so is already at the hands of the potential criminal with a skiff and an outboard. There is nothing inherent about a PWC that will all of a sudden make it so that wildlife is harassed. On the contrary, the extreme maneuverability will allow you to dodge the occasional otter that pops up unexpectedly. People are not going to try to hit otters for the same reason you don't try to run over dogs with your bike, or try to hit moose with your snowmachine.

3.Noise.

Fact. Comparing the Decibels of a PWC to the same size engine in an outboard, the PWC will be quieter. Not to mention bigger boats with Diesels. Again if those apposed were applying their logic consistently across the board, PWC would be at the bottom of the list.

If concern for the environment were the true motivation , then a case could be made for the PWC. Lets say someone has a cabin across the bay. They could take a "full size" boat, burn much more fuel, possibly be unable to dodge a sea otter that pops up, and their prop might chop a little sea weed when they do their beach approach. OR.....They can use the absolute minimum amount of fuel needed to get 1 person across, dodge the otter, and glide into the beach with a draft a mere fraction of a boat with an outdrive.

Which brings up the point that There is also much less disruption in shallow water. I run a water taxi and have been through a few sets of props putting people on and off the beach. I cringe to think of the critters I chopped up when I hit my props. Not going to happen with a jet drive. And as far as people going into shallow areas and disturbing critical habitat, probably not going to happen. Or if it does, the owner will only do it once, after the suck up some seaweed or grass in their impeller, or score the wear ring and has to replace the guts of his jet because he sucked up sand or gravel.

To those apposed to PWC, you lose credibility when you do not apply your objections evenly across the board to all motorized water transportation. If you want only sailboats and kayaks on the water, have the guts to take a stand and say it. Assigning objections to only PWC, that are more applicable to other forms of water transportation is disingenuous and intellectually lazy.

To my final point. I, as a single private citizen do not have the right to go to my neighbors house and forbid him to ride a motorcycle, snowmachine, Mountain bike, kayak etc. as long as he is not endangering me or others, is not breaking the law by chasing moose on his bike, etc, I do not have the right to interfere with whatever he deems his pursuit of transportation or recreation. If i do not hold that right as an individual, I can not delegate that right to the government. And it makes it no more moral if I get 20, 30, 300 etc. of my friends to agree with me. A democracy is 4 wolves and 3 sheep voting on whats for dinner, A republic guarantees the rights of the individual. Governments sole purpose is to protect against force and fraud. Any extracurricular laws and regulations are immoral. If you dont like PWC, or any motorized transportation, and want to use your powers of persuasion to convince your friends and neighbors your thoughts on the matter are correct, More power to you! Unfortunately there are people who love to use the force of government to impose their world view on others. One does not need to oppress millions of people to be a despot.

Charles Anderson  
[www.goldenfuelsystems.com](http://www.goldenfuelsystems.com)

## Green, Rick E (DFG)

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**From:** Bette Seaman <betteseaman@gci.net>  
**Sent:** Friday, December 13, 2019 4:25 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Re: Repeal of personal watercraft vehicles in Kachemak Bay Critical Habitat Area

I would think such studies should be done before allowing jet skis in a critical habitat area. Seal pups for instance, move out of the way slowly.

The lack of fiscal notes is a tad irresponsible I think. Enforcement and rescues will cost something to members of the public or some agencies.

Thank you for answering these questions.

> On Dec 13, 2019, at 11:05 AM, Green, Rick E (DFG) <rick.green@alaska.gov> wrote:

>

> Ms Seaman,

>

> Thank you for writing.

>

> #1- There is a zero fiscal note attached to this repeal.

> #2- I know of no studies to assess vehicles abilities to move very quickly in near shore areas affects on marine mammals pro or con.

>

> Hope this helps

>

> Thank you,

>

> Rick Green

> Alaska Department of Fish and Game

>

> -----Original Message-----

> From: Bette Seaman <betteseaman@gci.net>

> Sent: Friday, December 13, 2019 10:08 AM

> To: Green, Rick E (DFG) <rick.green@alaska.gov>

> Subject: Repeal of personal watercraft vehicles in Kachemak Bay Critical Habitat Area

>

> Dear Mr. Green,

> I have 2 questions on this proposed repeal:

> 1. Is there a fiscal note attached for increased enforcement and harbor modifications that might be needed for any significant increase in traffic, particularly during holidays?

> 2. Has Fish and Game conducted studies that indicate that vehicles that have the ability to move very quickly in near shore areas will not be harmful to marine life? In particular newborn seals on Fox River Flats?

> Thank you.

> Bette Seaman

> Homer Alaska

>

>

## Green, Rick E (DFG)

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**From:** h82luz@gmail.com  
**Sent:** Tuesday, December 10, 2019 10:13 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Dunleavy Administration Doing Awesome! K-Bay

"We've seen an internal email from the department of fish and game that says the governor's offices already decided to allow jet skis in Kachemak Bay. So Mike Dunleavy, is just ignoring the voice of the people and they don't have a public hearing. It's just going to be an open and shut process where they're going to take comments and then they're going to do what they want," said Shavelson.

<https://www.kbbi.org/post/adfg-seeks-allow-jet-skis-kachemak-bay>

So now Bob Shavelson weaseled some internal email from some unknown source..? REALLY? This guy is a lying sack of sh!t!

Open and shut process with no public input? Well NOOO sh!t Bob, welcome to the Tony Knowles 1996 rewind party.. That's exactly how watercraft were banned to begin with.

It's time for equal access! The sky is NOT falling and aliens are NOT attacking K-Bay.

Dunleavy Administration is doing an awesome job!

Thank you very much, have a nice day!

Larry

## Green, Rick E (DFG)

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**From:** Thom Byers <oasisofsnow@yahoo.com>  
**Sent:** Thursday, December 12, 2019 5:46 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet ski ban in homer is unjust

This was always an illegal ban as jet skis are no different than other marine vessels in that they navigate and comply with and even are used by the coast guard. The motors are similar, and in a lot of cases the jet skis put out far less emissions than a typical boat. The very studies that this outrageous ban is based on are outdated then and are still outdated. To spend a bunch of money furthering a mute point is a waste of resources our state doesn't have. Everyone knows that ol Clem Tillion just wanted this ban for his personal needs to run illegal tours in the area.

So lets do the right thing for a change, for the right reasons. Lift this ban and stop wasting state resources to chase a billion tail. Do you realise how valuable a jet ski is for emergency rescues? Do you realise just how many times a jet has rescued a boat from danger? Not to mention the lives a jet ski saves every year. I used to love Homer. But i don't just own jet skis, i own a boat. and anyone who owns both never goes to homer. Not only has this ban divided Alaskans from homer, its divided Alaskans from Alaskans.

Is that what you want to continue?

I could go on all day about how great a jet ski is, and my boat. And how the 2 vessels are considered marine transportation and each have to be registered and under the same regulations of safety. But whats the point if all you will do is fall back on an outdated study that no longer applies to the reason for the current or future ban. Ironically within that ridiculous study, was the emissions of a jet ski compared to a boat. Really? Have you seen the emissions from diesels in the fishing boats?

Lets let Alaska be great and accessible again.

Thomas Byers

## **Green, Rick E (DFG)**

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**From:** Jack Wiles <wilesmichaud@msn.com>  
**Sent:** Thursday, December 12, 2019 8:01 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Jet Ski Ban

Since you only seem interested in an 'up or down' vote:

### **I am opposed to 'Thrill Craft' – Jet Skis - being allowed within the State Critical Habitat Area of Kachemak Bay – Homer, AK.**

The proposed regulation is being done without a public hearing, with only a fast-track, 30 day public notice – sort of a comment period although you have stated you will approve the proposed regulation, fails to take into consideration the expert advice of AK F&G biologists and the wealth of research information available, and incorrectly assumes no fiscal impact to the state, the federal government, or the City of Homer.

The proposed regulation fails to recognize how 'Thrill Craft' – Jet Skis are operated and the need for safety in cold salt water, dangerous wind and wave conditions of Kachemak Bay, with no or very limited rescue service, no enforcement, and no analysis of impact to other users and the effect on the quality of the existing user experience.

The proposed regulation does not identify the 'Critical Habitat' needs (e.g. Gull Island, Yukon Island, etc.) and no analysis of disturbance to sea otter rafts, whale pods, marine birds, and how those and other marine species will be protected. There is no consideration of applying such management tools as; travel lanes, time and space zoning, time and season of use, protection of shallow water habitat, avoiding conflict with State Park regulations, and facilitating the education or competency of jet ski users.

The proposed regulation does not recognize that 99% of state waters are open to jet skis and the prohibition in Kachemak Bay does not limit the use of jet skis in other waters.

Greater 'due diligence' is needed in understanding the issue before advancing the proposed regulation and greater public input is needed and required.

Please extend the public comment period, hold public hearings, and listen to those of us Alaskans, not just a special interest group, who value the beauty and uniqueness of Kachemak Bay.

Sincerely,

John Wiles  
PO Box 639  
Homer AK 99603

## **Green, Rick E (DFG)**

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**From:** Carol G. Harding <carolgharding1@gmail.com>  
**Sent:** Tuesday, December 10, 2019 1:32 PM  
**To:** Green, Rick E (DFG)  
**Subject:** NO NO NO to jet skis (personal watercraft) in Kachemak Bay

### **This is why:**

#### **1. Noise Pollution**

- Noise pollution causes harm to ears of both humans and wildlife
- The roaring sound of a jet ski, both above and below water, can greatly contribute to the destruction of marine life.
- Noise from Jet skis is extremely annoying to those who enjoy quiet sports, such as hikers, kayaker, sailers etc.

#### **2. Environmental Pollution**

- Two stroke engines oftentimes fail to combust 20 to 25 percent of its fuel sources so raw fuel is secreted on the waters.

#### **3. Harassment of people and wildlife**

PWC have more serious negative impacts on birds, including interruption of normal feeding activity and repeated displacement from nesting areas, than conventional motorboats, cars, all-terrain vehicles and pedestrians. For instance, one study found that waterfowl respond "significantly more" to PWCs compared to motorboats.

#### **4. Collapse of Aquatic Life**

When the water becomes too much contaminated with raw fuel, aquatic organisms like plankton absorb the chemicals. Causes them to become phototoxicity. of the marine life that are greatly affected by photo toxicity:

- Mussels
- Sea urchins
- Copepods
- Specific varieties of fish species

(58398 Bruce Ave.)  
Homer, Alaska 99603  
907-252-6008

## Green, Rick E (DFG)

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**From:** ED REESE <odenhal@sbcglobal.net>  
**Sent:** Friday, December 13, 2019 1:46 PM  
**To:** Green, Rick E (DFG)  
**Subject:** PWC use in Kachemak Bay 5AAC 95.310

Mr. Green:

My family lives in Soldotna and we regularly tow our boat to Homer to halibut fish, dipnet at China Poot, and access Kachemak State Park. I didn't even realize there was a ban on Personal Water Craft (PWC) in Kachemak Bay until I learned of the public notice to repeal of 5AAC 95.310. Growing up in Minnesota I spent many hours on the water fishing and hunting, and I am very familiar with PWC and their use.

Summer boat traffic outside the Homer harbor entry and around Land's End is congested with large volumes of commercial and sportfishing vessels coming and going. Almost none of these boats are remaining in the immediate Spit area, and are simply trying to get somewhere else in the most expedient manner. In spite of the majority of boats being operated safely, I have witnessed near collisions and listened to people being condemned on the marine radio for unsafe, usually high speed behavior, while going through this bottleneck.

I am unaware of any other boat launches on the Homer Spit, and believe that if the ban on PWC in the Kachemak Bay CHA is repealed, the majority of PWC use would originate out of and be concentrated around the City of Homer harbor and Lands End. I say this because PWC are typically not used as a means of transportation to "get somewhere", but are more of a high speed "amusement ride". This would be particularly true if a rental operation was established for tourists on the Spit. Unfortunately, the area just inside the tip of the Spit would be an attractive "playground" for people on PWC due to the standing waves created by multiple boat wakes and the tidal current. This area also has a ready made "audience" of visitors on the beach and at the nearby resort which would be attractive to PWC users showing off their skills.

Allowing PWC use in this area would decrease boating safety. First, it would increase the volume of boats in an already busy area, and not only that but low profile vessels that are difficult to see in swells or when they are heading directly toward or away from you. In addition, unlike most vessels in the vicinity of the harbor entry who would be operating at a consistent speed and heading along an expected path, PWC operators are likely to just be "milling around" as they aren't really going anywhere. PWC have have quick acceleration rates, high maneuverability and top speeds, which make them fun to drive. Unfortunately these capabilities also make it extremely difficult to accurately predict the intentions of their operators. Although I have seen a sound system installed in a PWC, I have yet to see a marine radio mounted in one, or an operator wearing a portable radio, which means that contacting them to advise of your presence or to inquire as to their intentions is not an option.

I believe repealing 5AAC 95.310 is a mistake, and am in agreement with ADFG's May 2017 memorandum saying that there is no new information that would support overturning this regulation. Alaskan residents who want to use their PWC have plenty of other places they can use them other than Kachemak Bay, and I can't imagine there are any tourists asking about PWC rentals while visiting Homer. We've taken every visiting friend and family member from outside to the Spit, and they all want to see are the sea otters in the harbor, not jet-skis.

Let's keep it that way.

Sincerely,

Ed Reese

45020 Ptarmigan PI  
Soldotna, AK 99669

## Green, Rick E (DFG)

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**From:** Larry Mentzel <h82luz@gmail.com>  
**Sent:** Wednesday, December 11, 2019 10:43 AM  
**To:** marmstrong@homernews.com  
**Subject:** PWCA - K-Bay

Michael

These questions are really boring! People are going to fall asleep reading this crap..

Ask the interesting questions to the people in Homer such as; who is profiting from the ban that was put in place? The loudest supporters of the ban obviously have the most money to lose in their tour business. Otherwise they simply would not care. When the loud one speaks up ask how much money they are paying the State for use of State property in those business ventures. This ban was about business plain and simple.

Answers to the boring questions below in RED.

Thank you very much, have a nice day!

Larry  
PWCA Advocate

On Dec 11, 2019, at 4:11 AM, Gina Poths <akpwcrdr@yahoo.com> wrote:

[Sent from Yahoo Mail for iPhone](#)

Begin forwarded message:

On Tuesday, December 10, 2019, 11:58 AM, Michael Armstrong <marmstrong@homernews.com> wrote:

To whom it may concern:

We're doing an article on the governor's proposal to life the PWC ban in the Kachemak Bay and Fox River Flats critical habitat areas. I'd like to speak with someone with your club on this issue. Also, if there is anyone in the Homer area who can speak on this, I'd welcome their comments.

**There may be a few PWC owners left in Homer but they were bullied by local business owners who have a vested interest in keeping the ban in place. So its unlikely they will speak up if even they still own a PWC. Say NO to bullies!**

Here are some questions I have:

- Since 2001, what has changed in PWC technology and use that would make them more environmentally compatible with the critical habitat areas? For example, are engines now 4-cycle and less polluting? **Everything has changed technology wise. Phones no longer have rotary dials and dangling wires, look around! Yes they are all 4-cycle engines now and meet strict emission Standards.**

- Is the intent of lifting the ban to allow use of PWCs primarily for transportation, much as skiffs and other powerboats are used? **The intent is to allow equal access to State owned property. How people use their boats is their business.**

- Does your organization support regulation to minimize impacts to other users and wildlife?

**We support AK boating regulation that does not single out an individual user group for personal business reasons.** For example, would you support restrictions on wake jumping or use as thrill craft in near shore areas or shallow bays and inlets? **What is "Thrill Craft"? All boats offer a thrill otherwise you would not waste money on it. Wreck-less operation of any boat has laws and regulation already in place. So no new Regulations are needed.** Who would enforce and pay for that enforcement? **The same people who enforce and pay for boat law enforcement!**

- Does your organization also support lifting the ban in the Kachemak Bay State Park and Kachemak Bay State Wilderness Park? **If boats are allowed PWCs are allowed. Very simple!**

- Do you support a more extensive public process to consider lifting the ban, such as revisions to the critical habitat plans? **Was an extensive public process including an Environmental Impact Study used when the ban was put in place? NO! so NO!**

Thank you for your help. We go to press on Wednesday so if you respond by tomorrow morning we can incorporate your viewpoints into our article. **Good Luck!**

Best,

**Michael Armstrong**

Editor and Reporter

Direct: [907-235-7767](tel:907-235-7767)

Internal:

Fax:

3482 Landings St, Homer, AK 99603



## Green, Rick E (DFG)

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**From:** Jack Wiles <wilesmichaud@msn.com>  
**Sent:** Thursday, December 12, 2019 8:01 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Kachemak Bay Jet Ski Ban

Since you only seem interested in an 'up or down' vote:

### **I am opposed to 'Thrill Craft' – Jet Skis - being allowed within the State Critical Habitat Area of Kachemak Bay – Homer, AK.**

The proposed regulation is being done without a public hearing, with only a fast-track, 30 day public notice – sort of a comment period although you have stated you will approve the proposed regulation, fails to take into consideration the expert advice of AK F&G biologists and the wealth of research information available, and incorrectly assumes no fiscal impact to the state, the federal government, or the City of Homer.

The proposed regulation fails to recognize how 'Thrill Craft' – Jet Skis are operated and the need for safety in cold salt water, dangerous wind and wave conditions of Kachemak Bay, with no or very limited rescue service, no enforcement, and no analysis of impact to other users and the effect on the quality of the existing user experience.

The proposed regulation does not identify the 'Critical Habitat' needs (e.g. Gull Island, Yukon Island, etc.) and no analysis of disturbance to sea otter rafts, whale pods, marine birds, and how those and other marine species will be protected. There is no consideration of applying such management tools as; travel lanes, time and space zoning, time and season of use, protection of shallow water habitat, avoiding conflict with State Park regulations, and facilitating the education or competency of jet ski users.

The proposed regulation does not recognize that 99% of state waters are open to jet skis and the prohibition in Kachemak Bay does not limit the use of jet skis in other waters.

Greater 'due diligence' is needed in understanding the issue before advancing the proposed regulation and greater public input is needed and required.

Please extend the public comment period, hold public hearings, and listen to those of us Alaskans, not just a special interest group, who value the beauty and uniqueness of Kachemak Bay.

Sincerely,

John Wiles  
PO Box 639  
Homer AK 99603

## Green, Rick E (DFG)

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**From:** MaryBeth Printz <printz.mb@gmail.com>  
**Sent:** Saturday, December 7, 2019 11:28 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Jet Skis in Kachemak Bay

Dear Mr. Green:

I am writing to express my opinion about not allowing jet skis in Kachemak Bay. Ever.

When I first came to Alaska in 1985 and visited Homer, I felt that looking at the vista surrounding the Bay was what Heaven must look like. The quiet majesty of the mountains, the gentle movement of the tides against the shore, spotting eagles sailing on a breeze, or watching whales move among the currents: all of these things heal the soul and bring peace to the spirit. Every visit to the Bay since then has instilled these feelings.

I learned to sea kayak in Homer, starting out in the tidal basin and graduated to a crossing from the edge of the Spit to the opposite shore. After that, I did many kayak trips via water taxi to explore the various bays. I saw otters, sea creatures, and many shore birds. The one thing that was always present: the sounds of nature.

When I had stage 3 lymphatic cancer, the one place I wanted to visit was Bishop's Beach. A friend drove me to Homer and brought beach chairs. I sat in the chair at the edge of the ocean and breathed in the salty air, got lost in the panoramic view of the Bay, but most of all, the sound of waves lapping the shore--this quiet peace--was so healing. That day the orcas were active and it was a gift to be able to watch them.

Jet skis would disrupt all of this.

How would jet skis affect migratory birds, whales, and other sea life? What about fishing? Wouldn't the noisy skis scare away the fish? This would be tragic for those who fish for a living, or who run fishing charters.

An example: Big Lake has been ruined by the allowance of jet skis. They run all day and night during the summer. There is absolutely no peace. I believe that tourists would not like to hear the constant drone of jet skis while they are visiting Homer and the Bay area.

Tourism is one of Alaska's greatest industries. Is it worth ruining one of the most beautiful places on Earth by allowing jet skis? I think not!

Thank you for considering my opinion.

Sincerely,

MaryBeth Printz  
Anchorage, AK

## Green, Rick E (DFG)

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**From:** Kevin Walker <homerkev@gmail.com>  
**Sent:** Friday, December 6, 2019 9:12 PM  
**To:** Green, Rick E (DFG)  
**Subject:** Keep the PWC ban in Kachemak Bay Critical Habitat Area

I have reviewed the on line documentation regarding the removal of the ban on PWC in the Critical Habitat Area in Kachemak Bay and Fox River Flats. I did not see any reasoning on why this ban should be lifted. Jet ski use has been proposed a couple times in recent years, but strongly opposed by the local residents. The Critical Habitat Area was formed to protect wildlife. What has changed to even consider removing this protection? Removing this protection from PWC's would go against existing Ak F&G regulations.

I built a home on Bear Lake near Seward. About the time I moved in, a nearby gas station started selling jet skis and they launched at the public access next to my new home. Altho Bear Lake is about a mile long, the PWC / Jet Ski operators would drive in circles near the launch site and drove us crazy with the noise and lack of consideration for our peace and quiet. I found a new job and moved to Nome.

People often rent PWC's where they are allowed. They get away from the dock and often have little experience operating these high speed vessels. I have relatives that took the rental PWC back after to many frightening experiences with waves,

close calls with other PWC's, and getting thrown off the vessel. In many cases alcohol or other drugs are involved.

The Kachemak Bay State Park has only had one ranger the past two summers, and will have only one next summer. Chief Ranger Okuly rarely gets out patrolling the waters as he has dozens of miles of trail and related trailheads and signs, several campsites, hikers, hunters, backpackers, pack rafters, volunteer supervision and training, and other duties so he will not be available to monitor the PWC use.

All the shorebirds, marine mammals, fish, crustaceans, and other wildlife would be affected with the near shore noise, waves, and disturbances caused by PWC. Proponents of PWC say they are just like any other boat, but I rarely see any PWC venture more than a few hundred yards off shore. Fortunately I can easily avoid PWC as I now live near Homer, so I admit my exposure is limited. They don't go to a destination, or go fishing, or to their cabin, they just drive around disturbing the peace and quiet, wildlife, and the natural setting.

No one buys a PWC to zoom around in Kachemak Bay. Let these vessels stay near their home, where they are legal and accepted.

Kevin Walker  
59975 Golden Plover Ave  
Kachemak City, AK 99603-1542



## Green, Rick E (DFG)

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**From:** Krissy Post <kayempea@gmail.com>  
**Sent:** Monday, December 9, 2019 2:53 PM  
**To:** Green, Rick E (DFG)  
**Subject:** NO to personal watercraft repeal

Dear Mr. Green,

I am a long time resident of Homer who **opposes overturning the ban of personalized watercraft in Kachemak Bay.**

Boats are fine. They are predictable and regulated. They usually follow water laws and they tend to move at set speeds from point A to point B. They serve a useful purpose. Animals and birds have learned how to avoid and to coexist in a very busy bay with hundreds of boats traveling through daily, in part because of their predictable nature and relatively low speeds. People come from all over the world to view the wildlife in its "critical habitat area." I doubt any of those tourists have ever said... *" You know what would be great to see while on our whale watching tour? A Jetski!!"*

While jet ski's are wonderful fun - they are only fun for the person riding them. They are however an obnoxious nuisance to everyone and everything around them because they are loud, fast, unpredictable, and often chartered by young/adrenaline seekers with little to no regard for their environs or neighbors. They are also legal to ride nearly everywhere else in the state - where they are loud and obnoxious and they ruin the experience for everyone and everything else. One of the things people love about Kachemak Bay is that they don't have to deal with these things. They can instead take their predictable boats out and go fishing without having to listen to loud, mosquito-like buzzing. They can go kayaking and watch the wildlife without having to worry about being run over by some teenager on a 65 mph machine. The otters don't want them either.

Yes, I'm a giant NIMBY. But seriously, please? Not in this backyard. We just don't need them here - that's what Seward is for.

Thank you for your consideration,

Krissy Post  
Homer, Alaska.

## Green, Rick E (DFG)

---

**From:** Frank Bailey <frank@jaggedsky.co>  
**Sent:** Sunday, December 8, 2019 7:38 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Open Access to Alaska's Waters

Rick,

Just want to throw my name in the hat as a big supporter of PWC in all navigable waters in Alaska. The Alaska PWC Club Gina and Gene have led for years promotes safety and just being an overall responsible member of the outdoor sporting community.

I've had my kids on Jet Skis since they were very young and spent a lot of time teaching them a safety regimen that begins every trip on the water:

P – Preparation for your trip, check oil, equipment, registrations, fuel, etc

S – Safety encompasses all aspects of enjoying fun in what we do but doing it safely and being aware of those around who are less experienced on the water.

R – Respect is simple, respect those using our amazing state whether its in a kayak, SUP, raft, fishing on the beach, water skiing whatever. I taught them to always wave at folks on the water so they see you as well as acknowledging them.

F – Have fun. This is a privilege, enjoy it and teach others to do that safely.

They give their little PSRF talk and one year we even handed out t-shirts at Big Lake with our PSRF logo.

Rick, others would like to shut PWC's out of Kachemak Bay based on some obscure definition of what constitutes a personal watercraft vs a boat. That's simply not right. We pride ourselves in being good neighbors on the waterways and education. Many of us have decades on the water from a Naval corpsman to Master Captains to IBEW electricians to both commercial and sport fishermen. We can be a great resource to the Search and Rescue community in Kachemak as many of us have taken the AST S&R certification training.

Federally, is it lawful to restrict one type of water vessel from using an international waterway such as that leaving the port of Homer? I'm not attorney, but I believe it is not.

We aren't heavily funded like the opposition trying to regulate us out of using common Alaskan waters for our families and recreation.

Help us show we are responsible users of all navigable waters in Alaska.

Thank you Rick,

**Frank Bailey**

Jagged Sky Benefits Group Inc.  
Northwest District Manager, Colonial Life  
[www.coloniallife.com](http://www.coloniallife.com)

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## Green, Rick E (DFG)

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**From:** Mack Bergstedt <007bergstedt@gmail.com>  
**Sent:** Tuesday, December 10, 2019 8:22 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Open Kachemak Bay to Personal Watercraft

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

ATTN: Rick Green

As a lifelong Alaskan resident born and raised in Anchorage, Alaska I am writing in support of the repeal of the administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215) regarding use of personal watercraft in Kachemak Bay Critical Habitat area.

The use of personal watercraft on public waterways should not be prohibited. Personal watercraft are registered with the State of Alaska and include annual fees similar to all other “boats” that utilize our oceans, lakes and rivers. This is really an equal access issue where all Alaskans have the right to use their vessel in the state’s waters, especially an area that encompasses more than 200,000 acres and includes the Alaska Marine Highway. No one entity should be able to ban other residents from legally accessing our public waterways.

The current ban on personal watercraft use is biased based upon old data and use of early model 2-stroke jet skis produced in the 80’s and 90’s that burn a mixture of gas and oil for lubrication. Early jet skis had smaller engines and were typically modified with aftermarket exhaust pipes to increase power resulting in excessive noise. Fast forward to 2019 and you will find that almost all of the current production personal watercraft utilize 4-stroke technology and operate quietly with clean burning engines that **do not pollute** the environment. Many of the boats used out of the Homer area still utilize 2-stroke engines that are noisy and utilize a mixture of gas and oil that pollutes the water more than any modern design personal watercraft.

I sincerely appreciate the State of Alaska and particularly the Dunleavy Administration for the consideration of this issue that has banned personal watercraft from Kachemak Bay for the past 20 years. It is time to eliminate the PWC Ban and allow all Alaskans equal access to our waterways.

Sincerely,

*Mack & Sharon Bergstedt*

Mack & Sharon Bergstedt  
4930 E 115th Avenue  
Anchorage, Alaska 99516



## Green, Rick E (DFG)

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**From:** Marianne Schlegelmilch <schlegelmilchmarianne@gmail.com>  
**Sent:** Tuesday, December 10, 2019 9:57 AM  
**To:** Green, Rick E (DFG)  
**Cc:** schlegelmilch Bill  
**Subject:** Personal watercraft Kachemak Bay

Dear Mr. Green,

Regarding the issue of allowing personal watercraft on Kachemak Bay, the following comments reflect the views of both my husband, Bill and myself:

We are not your typical Homerites in that we are neither liberal nor conservative politically. Although we love and respect nature, I would not say we fall under the banner of environmentalists. With that being said, we respect the rights of individuals to live their lives freely, however, on this issue of allowing personal watercraft onto Kachemak Bay we stand opposed.

Kachemak Bay is an estuary. It is also busy and carries lots of traffic from big ships to the ferry to personal boats. Still, everything works and for the most part, people respect the environment, even as they access it.

If personal watercraft are allowed on Kachemak Bay it will disturb the balance and solitude that reflects this community. It will increase danger to those who function on the water already as well as to the many whales and other sea life that frequent the bay. In addition, we fear it will attract greed and commercialism, adding noise and safety concerns to those who inhabit this area—and who are willing to suffer many inconveniences and inflated costs to do so!

How long will it be before somebody sets up a jet ski rental business and allows tourists to maraud around the bay? Has anyone considered the noise that would echo up the Homer bluffs from this? If you lived here you would understand that. I have personally seen people in dinghy's buzzing the ferry and military vessels—endangering their lives and the lives of those onboard the larger vessels.

The Alaska public has long shown disregard for solitude in Alaska. Deep Creek State park is one example where we have witnessed hoards of people coming down (from the Valley mostly) to run huge 4 wheelers up and down a half mile stretch of beach to the dismay of many campers who are there seeking the beauty of the inlet.

There is also the issue of tides, winds and frequent sea storms that affect this area.

As citizens, we wonder why this issue has become a priority for you? Is that all you have to worry about in your role? Is disrupting the equilibrium of a community your reason for being?

Already Homer is overrun with tourists, many who come here for the very solitude you plan to disrupt. Have you considered the impact your plan would have on this community?

By now you must surely appreciate that the two residents of our home here in Homer, residents who do not belong to any groups or special interests, find your plan to introduce jet skis into Kachemak Bay selfish, poorly thought out, sensationalistic and just stupid. I would even go so far as to call it bullying and abuse of power—at least that's how it comes across.

Please find something more productive to do in your role and withdraw this ridiculous idea from consideration, unless angering an entire community is the wheel that makes your world go 'round.

Marianne and Bill Schlegelmilch

Homer

## Green, Rick E (DFG)

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**From:** Roger MacCampbell <kbayranger@gmail.com>  
**Sent:** Monday, December 9, 2019 11:27 AM  
**To:** Green, Rick E (DFG)  
**Cc:** Gease, Ricky John (DNR); Wedeking, Matthew D (DNR); Blackwell, Jack D (DNR); Robert Archibald; Nancy Hillstrand  
**Subject:** PWC ban

I am the retired Chief Ranger for the southern district of the Kenai Area of Alaska State Parks, which included Kachemak Bay State Park. 1984-2015.

Obviously very involved from day one with the PWC (jet ski) controversy in Kachemak Bay and the State Park. I attended every public meeting wheter orchestrated by ADFG or DNR/DPOR.

While not a legal expert, it seems that if we live a Republic and manage our affairs through a Democratic process, the Governors actions and yours by default if not, should be against all we hold sacred in this State and country.

While most laws and statutes are the purvey and authority of the State Legislature, I was always taught that the legislature granted the authority to State agencies to enact regulations to manage the authorities that these agencies were granted.

E.G. Critical Habitat Areas were created by an act of the Legislature and then granted the ADFG the authority to enact regulations (civil penalties and criminal misdemeanors) to manage such lands and/or waters. The same was given to DNR and DPOR.

Being responsible public agencies and good stewards and utilizing a PUBLIC process, these agencies held public hearings prior to enacting such regulations. This is a democratic process to enact the rule of law. It is fair and equitable and is not dictorial or prejudiced.

That said, the lifting of the ban on PWC is Kachemak Bay, without having a plan and draft regulations to control and manage their use is irresponsible.

Personally, I don't care if a PWC owner launches in Homer Harbor or on off a nearby beach and rides out into Cook Inlet or goes to Seldovia or Kodiak or where legal, (so long as Seldovia wants them, etc etc..)

I do care how they behave and what they do along the way.

I do not want them near me while sport fishing in Kachemak Ba y, anchored up while halibut fishing or trolling for salmon. I do not want them wave jumping, wake jumping or 'spinning in circles' near me or within ear shot or sight of me, while fishing as above or camping or hiking along a beach (Especially in the Park!) I do not want to observe or hear about them disturbing or causing physical damage to wildlife.

Hold public hearings and do surveys. Should through a democratic process the PWC ban is then repealed, at the least enact regulations to manage the behavior of their use as well as keep some areas closed. In addition, make the penalties (fines, bailable) so severe they wont do it again. Finally, enact new regulations that mirror or copy federal regulations in regards to marine mammals and migratory waterfowl so that our Park Rangers and State Troopers can enforce, without being deputized as federal officers.

In my 35 plus years of operating watercraft on Kachemak Bay I have only observed a couple of boaters behaving in dangerous or stupid ways. I mean driving too fast for conditions, doing 'figure eights' or trying to behave as we think a PWC does. Plenty of boaters who don't know the rules of the road, operate in fog or darkness without lights etc. There are plenty of idiots out there, but it is rare to see someone behave in a skiff as we suspect a PWC will be used. I have

however in my travels where PWC are used (Mexico, California, Hawaii, etc) observed them used as they are advertised; wake jumping, wave jumping, spinning in donuts, operating too close to small and large boaters, DUI (BUI), and so on.

Thank you for your time, I hope you read this lengthy email.

Sincerely,

Roger L. McCampbell (MacCampbell)  
Retired  
Homer, Anchor Point Alaska

## **Green, Rick E (DFG)**

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**From:** Rachel Mentzel <watercrossgirl@gmail.com>  
**Sent:** Friday, December 6, 2019 8:52 AM  
**To:** Green, Rick E (DFG)  
**Subject:** Repeal administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215)

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1565

ATTN: Rick Green

I am writing in support of the repeal on the administrative codes (05AAC95.310, 11AAC20.115 and 11AAC20.215) on personal watercraft in Kachemak Bay Critical Habitat area. Finally, an administration that is not prejudiced and understands access.

Any conservation concerns are already addressed in regulations that apply to all boats which includes personal watercraft, airboats etc. Separate regulations do not need to be addressed regarding each individual type of watercraft.

Because no one can find valid current scientific studies regarding boats especially personal watercraft on the impact to fish, wildlife and other biological resources the members of Cook Inlet Keeper have just decided to label personal watercraft as thrill craft portraying the owners/operators as some kind of renegade.

This is simply an equal access issue where all Alaskans have the right to use their vessel in the state's waters, especially an area that encompasses more than 200,000 acres and includes the Alaska Marine Highway. The state simply doesn't have the right to ban anyone from traveling on the Alaska Marine Highway. No one business or property owners in the Kenai peninsula area own the bay, it belongs to all the people and the Dunleavy administration understands that and that is why I believe the ban needs to be repealed.

Thank you, Rick Green, for stepping up to the plate and taking this very important first step to right a wrong done long ago by administrations who didn't believe in equal access.

Sincerely,

Rachel Mentzel  
11530 Jennifer Ann Circle  
Anchorage, AK 99515