



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Fish and Game**

DIVISION OF HABITAT  
Headquarters Office

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October 12, 2012

Mr. Bob Shavelson  
Director of Advocacy  
Cook Inletkeeper  
3734 Ben Walters Lane  
Homer, AK 99603

Dear Mr. Shavelson:

Re: Mobile Offshore Drilling unit (MODU) Endeavour – Spirit of Independence

Thank you for your letters dated September 17 and September 21, 2012, regarding Buccaneer's moorage of the vessel Endeavour at the Homer Deep Water Dock. Within your letters you expressed concerns relating to possible introduction of invasive species, the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (Management Plan), and the Oil Drilling Rig Policy.

As you know by now, Buccaneer hired URS Alaska, LLC (URS) to complete a survey of the MODU for invasive species. Based on the report issued by URS (forwarded to you electronically), the Alaska Department of Fish and Game (ADF&G) feels the survey achieved the objectives it intended. It provided a reasonable survey and belied concerns about potential invasive species. The fact that the survey biologist observed no live nonindigenous animals or viable tissue suggests that the time the rig was out of the water, in transit to Alaska and/or in dry dock, proved adequate to desiccate any organisms that had attached to the Endeavour. Because URS did not detect live organisms, the ADF&G does not believe the observed remnant shells attached to the rig put Alaska waters at risk. The Management Plan does not include a policy on invasive species, and potential invasive species concerns are not cited as the basis supporting any of the policies in the plan.

Vessels, including oil tankers and jack-up rigs, are not prohibited entrance into the Kachemak Bay Critical Habitat Area (KBCHA). In fact, Kachemak Bay is a 'Harbor of Refuge' and many large vessels enter and anchor for a variety of reasons including safety from storms and access to upper Cook Inlet docking facilities. In addition, as in the case of the 'Escopeta Spartan' (August 2011), the U.S. Coast Guard directs vessels to Homer Harbor to finalize certain permitting requirements.

The ADF&G, Habitat Division implements the Management Plan for the KBCHA and requires, as appropriate, a Special Area Permit for certain proposed activities within the KBCHA. The ADF&G, Habitat Division does not require a Special Area Permit for vessels entering or using conventional anchoring methods in the KBCHA unless they are anchored for longer than two weeks. Similarly, the ADF&G does not require a Special Area Permit for vessels moored to the Deep Water Dock or within the Homer Harbor, regardless of their length of stay. However, for ground disturbing activities such as dredging, pile driving, and vessels anchored longer than two weeks, the ADF&G does require a Special Area Permit and reviews each of those proposed projects on a case-by-case basis.

As you are likely aware, the ADF&G, Division of Habitat reviewed the Buccaneer Alaska Operations, LLC proposed winter moorage project and issued a "no permit required" letter in April, 2011. That proposed project did not contemplate nor anticipate the need to lower the legs during its moorage. However, as described in the Situation Report submitted by Buccaneer Alaska Operations, LLC, they followed emergency procedures to stabilize the vessel by lowering the legs of the Endeavour during the high winds encountered in September. After reviewing the Situation Report, the ADF&G recognizes that temporarily lowering and pinning the legs of the vessel was appropriate and was the safest method for moorage during the wind events.

The vessel Endeavour is actively finalizing permitting requirements involving work to several systems and departure is scheduled prior to the end of October. The retraction of the Endeavour's legs and departure from the Deep Water Dock is not expected to adversely impact habitat values or fish and wildlife populations. At this time, the ADF&G is not planning to take enforcement action as a result of the Endeavour lowering its legs within the harbor, but we will reassess our options if necessary.

Sincerely,



Randy Bates  
Director

cc: Charles Swanton, Director, ADF&G, Division of Sport Fish  
Tammy Davis, Lead, ADF&G, Invasive Species Program  
Alvin Ott, Operations Manager, ADF&G, Habitat Division  
Ginny Litchfield, Area Manager, ADF&G, Habitat Division



VIA FIRST CLASS U.S. MAIL &  
EMAIL (cora.campbell@alaska.gov)

September 21, 2012

Cora Campbell, Commissioner  
Alaska Department of Fish & Game  
P.O. Box 115526  
Juneau, AK 99811-5526

**RE: BUCANEER JACK-UP RIG “ENDEAVOR”**

Dear Commissioner Campbell:

I regret you were unable to come to Homer on your recent trip to the Kenai Peninsula to discuss the myriad concerns surrounding the jack-up rig *Endeavor*, which is currently stored in the Kachemak Bay Critical Habitat Area.

We join many local residents and businesses in our concern ADFG is failing to enforce relevant laws and policies related to the *Endeavor*, and is instead letting a foreign corporation dictate what can and cannot unfold in the public waters of Kachemak Bay.

The Kachemak Bay Critical Habitat Area (CHA) clearly prohibits the storage of drill rigs in the CHA:

“To avoid damage to fish and wildlife habitats, disturbance to fish and wildlife populations, and displacement of public use of Kachemak Bay Critical Habitat Area, drilling rig storage will not be allowed in the Kachemak Bay Critical Habitat Area.”<sup>1</sup>

This mandate came about after the disastrous episode involving the drilling rig *George Ferris* in Kachemak Bay in 1976, and resource managers and user groups alike recognized the inherent risks posed by drilling rig storage in Kachemak Bay.

The Alaska Department of Fish & Game rightly recognized the prohibition on drilling rig storage in 2006.<sup>2</sup> Yet in 2011, ADFG attempted to unilaterally amend the Kachemak Bay CHA by claiming “This policy [prohibiting rig storage in the CHA] historically referred to rig storage with legs down (in substrate) which had a direct impact on fish and wildlife habitat.”<sup>3</sup>

However, ADFG never pointed to any example of such a “historical” interpretation of the no-rig-storage provision, and ADFG has produced no evidence prior to August 2011 it ever embraced such an

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<sup>1</sup> Kachemak Bay & Fox River Flats Critical Habitat Areas Management, p. 11 (Dec. 1993).

<sup>2</sup> “Please be advised that the storage of the drill rig within the Kachemak Bay Critical Habitat Area in lower Cook Inlet is contrary to the KBCHA Management Plan.” Memorandum from Stewart Seaberg, ADFG Habitat Biologist, to Ben Greene, DNR Oil, Gas & Energy Projects Manager (May 22, 2006) (enclosed).

<sup>3</sup> Letter from Ginny Litchfield, ADFG Kenai Peninsula Area Manager, to Bob Shavelson, Cook Inletkeeper 9Aug. 9, 2011) (enclosed).

interpretation. Instead, the evidence points to ADFG trying to amend the Kachemak Bay CHA in violation of state law, including but not limited to the Alaska Administrative Procedures Act.

If ADFG has any evidence of the so-called “historical” interpretation of the no-rig-storage provision prior to August 2011, please provide it; otherwise, please explain why ADFG violated the Kachemak Bay CHA by allowing the *Endeavor* drill rig to enter the CHA.

Regardless, on September 16, *Endeavor* operators did in fact lower the rig’s legs into the substrate of the CHA during a wind storm.<sup>4</sup> While Buccaneer and its media relations firm out of New York claim an “emergency” existed, the entire episode – including the parting of lines to the rig, the damage to the Homer deep water dock, and the heightened risks to fish, wildlife and people from an over turned rig – these events were entirely foreseeable. That’s because jack-up drilling rigs are inherently dangerous and notoriously unstable.<sup>5</sup>

The Alaska Legislature created CHA’s “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). Storage of jack-up drilling rigs in the Kachemak Bay CHA is inherently unsafe, threatens the very purposes of the CHA, and is prohibited by law.

The issue of compliance with state critical habitat area management plans takes on added importance in light of ADFG’s recent decision to violate the Redoubt Bay CHA plan to allow Hilcorp to mine boulders and fill a salmon stream so it can resume storing oil at the base of an active volcano at the Drift River Terminal.

Thank you for your attention to this important issue. I look forward to your response, and to your availability to come to Homer to discuss this issue in a public setting in the near future. Please respond to: Cook Inletkeeper, P.O. Box 3269, Homer, AK 99603 or bob@inletkeeper.org.

Sincerely,



Bob Shavelson  
Director of Advocacy

Enc. a/s

cc: (email only)

Randy Bates, ADFG Habitat  
Paul Seaton, Alaska Legislature  
Mike Navarre, Kenai Borough Mayor  
Walt Wrede, City of Homer  
Bryan Hawkins, Homer Harbormaster  
Vicki Clark, Trustees for Alaska

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<sup>4</sup> See Michael Armstrong, *Storm Forces jack-Up Rigs to Put Legs Down*, Homer News (September 19, 2012).

<sup>5</sup> See, e.g., Craig MacKenzie, *50 dead as oil rig capsizes and sinks in 20ft waves while being towed through storm*, Daily Mail Online (Dec. 19, 2011) (available at: <http://www.dailymail.co.uk/news/article-2075803/50-dead-oil-rig-capsizes-sinks-20ft-waves-towed-storm.html>).

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF HABITAT

SEAN PARNELL, GOVERNOR

514 Funny River Road  
SOLDOTNA, AK 99669  
PHONE: (907) 714-2475  
FAX: (907) 260-5992

August 9, 2011

Bob Shavelson  
Cook Inletkeeper  
P.O. Box 3269  
3734 Ben Walters Lane  
Homer, AK 99603

Dear Mr. Shavelson:

RE: Vessel Moorage  
Kachemak Bay Critical Habitat Area – Homer Harbor

The Alaska Department of Fish and Game, Division of Habitat (ADF&G) has received word from Alaska Department of Natural Resources, Division of Oil and Gas that the Escopeta Spartan is presently in Kachemak Bay 59-38N 151-20W awaiting documentation to complete the journey to its final destination in Upper Cook Inlet. I have not received a Fish and Game Special Area permit application for moorage of this vessel which would be required if the moorage were to last longer than two weeks in this location. Patricia Bettis (Oil and Gas) is contacting Escopeta to obtain further details.

The KBCHA was established by the Alaska legislature in 1974 through the enactment of AS 16.20.590 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 Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (Management Plan) was adopted by the ADF&G in 1993. The management plan provides that KBCHA be managed to maintain and enhance public use of fish, wildlife and critical habitat area lands and water.

ADF&G evaluates all applications for activities in the Kachemak Bay Critical Habitat Area on a case-by-case basis. Currently, long term anchorage (over 14 days) in the KBCHA requires a Special Area Permit. Historically, ADF&G has not required a Special Area Permit for long term

moorage within the vicinity of the Homer and Seldovia boat harbors. If an application is received, Division of Habitat will evaluate the request and make determinations to best protect the valuable fish and wildlife resources in Kachemak Bay. The policy regarding Oil Drilling Rig Storage in the management plan states *'To avoid damage to fish and wildlife habitats, disturbance to fish and wildlife populations, and displacement of public use of Kachemak Bay Critical Habitat Area, drilling rig storage will not be allowed in the Kachemak Bay Critical Habitat Area'*. This policy historically referred to rig storage with legs down (in substrate) which had a direct effect on fish and wildlife habitat.

The Division of Habitat is investigating the presence of the Escopeta Spartan in Kachemak Bay and appreciates you bringing this to our attention.

Sincerely,



Ginny Litchfield  
Kenai Peninsula Area Manager  
(907) 714-2477

cc: KRC File

ADF&G-Homer

Patricia Bettis -Division of Oil and Gas

ADF&G-Anchorage



# MEMORANDUM

Department of Natural Resources  
Office of Habitat Management and Permitting

STATE OF ALASKA



**TO:** Ben Greene  
Oil, Gas and Energy Projects Manager  
Office of Project Mgmt and Permitting

**DATE:** May 22, 2006

**TELEPHONE:** 269-6987

**FAX:** 269-5673

**FROM:** Stewart Seaberg *SS*  
Habitat Biologist  
Office of Habitat Mgmt and Permitting

**SUBJECT:** Request for Additional  
Information – Escopeta Well  
SID AK 2006-0201OG

The Office of Habitat Management and Permitting (OHMP) has reviewed the proposal from the Escopeta Oil and Gas Corporation to drill four exploratory wells in Upper Cook Inlet. The proposed wells will be drilled offshore on the eastern side of Upper Cook Inlet.

In order to fully evaluate this proposal with the standards of the Alaska Coastal Management Program, the OHMP requests that applicant provide the following information in accordance with 11 AAC 110.240:

1. Please provide additional information on measures that will be taken to avoid adverse impacts to commercial, sport and subsistence fisheries conducted in Cook Inlet in accordance with the Habitat Standard 11 AAC 112.300, Depending on the exact dates of the transit and arrival of the drill rig to the Cook Inlet area there may be conflicts with fishing activities, particularly commercial fishing activities, in Cook Inlet.

In addition, this proposal says that the drill rig may be stored during the winter months at an approved anchorage in Lower Cook Inlet. Please be advised that the storage of the drill rig within the Kachemak Bay Critical Habitat Area in Lower Cook Inlet is contrary to the KBCHA Management Plan.

**cc:** M. Fink, ADF&G  
V. Blajeski, ADF&G  
L. McKinley, OHMP  
A. Ott, OHMP  
G. Williams, KPBR  
R. Warthan, Escopeta Oil and Gas Corp.

