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VIA EMAIL ONLY

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Alaska Department of Fish & Game
Habitat Division
P.O. Box 115526
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Re: Scoping Comments on Kachemak Bay & Fox River Flats Critical Habitat Areas Plan

Dear Director Rogers:

I. Introduction

As you know, Cook Inletkeeper has been intimately engaged in various Alaska habitat issues since its formation over 22 years ago. I'm writing now to offer some scoping comments on the revision process for the Kachemak Bay & Fox River Flats Critical Habitat Areas Plan.

With its headquarters in Homer, Inletkeeper has a close and familiar relationship with Kachemak Bay, its people and history, and its management. Just this past summer, we held a panel discussion to celebrate the 40th anniversary of the buyback of the oil and gas leases which had been let in Kachemak Bay in the early 1970's. That fight played a central role in the creation of the Kachemak Bay & Fox River Flats Critical Habitat Areas.

Unfortunately, since then, a growing population and a veritable explosion in various uses has changed the complexion of the region. For example, in the 1980's we witnessed the crash of once-prolific shrimp and crab fisheries, along with the jobs and economies they supported. More recently, we have experienced similarly alarming changes, including massive die-offs of common murre, sea otters, little neck clams, butter clams and razor clams. Now, a massive spruce aphid infestation is taking over where the spruce beetle left off 20 years ago, marking radical changes to our forests and our watershed. While some of these changes can certainly be attributed to our rapidly changing climate, rising water temperatures and increased ocean acidification, others can be ascribed to elevated harvest pressures, competition for prey species and short-sighted resource management.

II. Comments

In reviewing the Kachemak Bay & Fox River Flats Critical Habitat Areas Plan, it's important for ADFG to consider past efforts to rollback basic habitat protections in Alaska's Special Areas under the previous Administration. Those proposed changes sparked a strong and united backlash from a broad spectrum of Alaskans, and revealed just how important our Special Areas are to residents and tourists alike.

Now, despite other Special Area plans requiring updates and revisions, ADFG has chosen the Kachemak Bay & Fox River Flats Critical Habitat Areas as the first plan to revise under this Administration. While Inletkeeper does not know the precise process by which ADFG chose to revise the Kachemak Bay & Fox River Flats Critical Habitat Areas Plan first, we have strong concerns that certain hold-over staff from the previous Administration may have influenced this process in an effort to dilute the enforceability of the plan and to eliminate clear and predictable policies that restrict uses incompatible with the purposes of the CHA's. We truly hope this is not the case.

Because this planning process – and the final plan it produces – will serve as important precedent across Alaska for Special Area plan revisions in the future, we strongly urge the Walker Administration to pursue a legacy that includes strong, clearly-defined policies that protect critical habitat against inconsistent and/or politically-influenced permitting and management decisions. Importantly, this approach provides a level playing field that increases predictability for businesses and the general public, and promotes consistency and even-handed management for local, state and federal governments.

A. The Goals of the Plan Must Comport with Statutory Goals

As a threshold matter, the purpose of these 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." AS 16.20.500. ADFG must adhere to this clear and unambiguous language to comply with the legislative intent behind it. For example, the plan cannot include the type of language contained in the current plan, which seeks merely to "[m]inimize the degradation and loss of habitat...."¹ Instead, the plan must "protect and preserve" habitat, and "restrict all other uses not compatible with that primary purpose."

B. Policies

As for specific elements to consider within the plan revision, Inletkeeper supports the inclusion of all the topics under the current plan, with an eye toward the statutory mandate referenced above. Additionally, ADFG should consider the following issues:²

¹ Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (1993), p. 5.

² ADFG need not address jetskis or personal watercraft in the plan revision process because these vehicles are already banned under a separate regulation (5 AAC 95.310) which went through 3 public meetings and two formal hearings in 2001. The jetski ban received enormous public support in 2001, when over 70% of the

1. Off-Road Vehicles: The plan should contain strong provisions that prohibit ORV use in wetlands, tidelands and uplands because such uses invariably conflict with habitat protection statutory mandates.
2. Fish & Wildlife Enhancement/Aquatic Farming: While the current plan has sufficient language to manage hatcheries in line with statutory requirements, ADFG has not implemented the plan in accordance with the current plan's policies. Fish straying, genetic dilution, prey competition, benthic and water column disruptions and other factors must all be considered for fish enhancement within one of the state's relatively few Critical Habitat Areas.
3. Water Quality: Kachemak Bay is an estuary, and as a result, only the state's water quality standards for fresh and estuarine waters should be applied; marine water quality standards are inapplicable.
4. Mooring Buoys: The current plan fails to address large vessel moorage, specifically, the benthic habitat destruction that occurs when large vessels, including but not limited to tankers and barges, drag anchor and wire during high winds and large tides. These issues should be addressed and permanent mooring buoys should be required to meet statutory habitat mandates.
5. Docks: Despite the language in the current plan, ADFG's permitting arm has failed to prevent substantial Styrofoam pollution throughout the Bay due to recent dock replacement projects. As a result, closed-cell foam, Styrofoam and similar materials should be banned in the CHA's; existing facilities could be grand-fathered in.
6. Shoreline Alteration: The current standard appears unambiguous. Nonetheless, ADFG's permitting arm has seen fit to ignore this standard at various times. Because the integrity of the CHA's rests firmly on intact shoreline habitat, the revised plan should double-down on this prohibition and make it clear individual permitting staff do not have the authority to circumvent the plan's clear intent to protect shoreline habitat.
7. Drill Rig Storage: ADFG staff ignored this standard and allowed Buccaneer to store a drill rig in the CHA several years ago; ultimately, the law was changed to carve out the Homer dock area from the CHA. Now that the Homer dock is available, the revised plan should make clear that no area in the CHA is suitable for storing a drill rig, regardless whether its legs are up or down.
8. Commercial, sport, personal use and subsistence fishing: The impacts of these activities should be considered in the revised plan.
9. Nonpoint Source Pollution: The impacts of polluted runoff should be considered in the revised plan.
10. Sewage: Vessel- and shore-based sewage pollution should be considered in the revised plan; vessel-based sewage discharges should be prohibited, and shore-based discharges should be held to tertiary standards.
11. Sonar: sonar usage should be considered and restricted in the revised plan.

1850 Alaskans who spoke out supported the ban; a similar level of public support arose again in 2011 when State Parks considered – and rejected – changes to the ban.

III. Conclusion

Due to the challenges inherent in revising management plans, Inletkeeper strongly recommends ADFG produce a side-by-side comparison showing the current and proposed plan language.

Inletkeeper also recommends ADFG coordinate closely with NOAA as the implications of the Ninth Circuit's recent decision on the application of the Magnuson-Stevens Act in Cook Inlet become more clear.

Finally, during a time of rapid change, it's vital the revised plan build resiliency into Kachemak Bay by embracing a precautionary management approach. This means avoiding the death-by-thousand cuts permitting decisions we have seen in the past, and enacting fair and consistent enforcement language that leaves little or no ambiguity for permitting staff. It means erring on the side of protection, especially when data are limited, as required by statute. And it means taking a hard look at warming water temperatures (fresh and otherwise), ocean acidification, glacier melt/retreat and related consequences of a rapidly changing ecosystem.

Thank you for considering these comments, and I hope you agree this plan represents an important precedent worthy of the Walker Administration's highest attention. Please feel free to contact me if you have questions or would like to arrange a meeting at 907.299.3277 or bob@inletkeeper.org

Yours for Cook Inlet,



Bob Shavelson
Inletkeeper

cc: (VIA EMAIL ONLY)
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