



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 (KBRFCHA). 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.”¹

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-

¹ <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."² 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."³

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

² 65 Fed. Reg. 15,078.

³ AS 16.20.500 (emphasis added).

again in 2017, when staff conducted a scientific literature review⁴ 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.⁵

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.

⁴ 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>).

⁵ 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.⁶

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,

⁶ 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.”⁷

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,

⁷ 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)

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.⁸

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...”).⁹

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.”¹⁰

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.¹¹ And not surprisingly, this phony “access” issue is the very same red

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

⁹ 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/>)

¹⁰ 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>)

¹¹ 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.¹²

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."¹³

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."¹⁴ 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

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

¹² 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/>)

¹³ See, KBII, *Supra*, Note 2 (emphasis added).

¹⁴ 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.¹⁵

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.¹⁶

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

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

¹⁶ <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.¹⁷ 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).¹⁸ 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

¹⁷ 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>)

¹⁸ 5 AAC 39.222.

quality, and water quantity;¹⁹

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.

¹⁹ 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". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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)