



February 10, 2022

VIA EMAIL ONLY

(Representative.Josiah.Patkotak@akleg.gov)

Representative Josiah Patkotak, Chair
Alaska House Resources Committee
State Capitol Building Room 124
Juneau, Alaska 99801

RE: OPPOSITION TO HOUSE BILL 52

Dear Chairman Patkotak:

Cook Inletkeeper is a community-based nonprofit organization formed by concerned Alaskans in 1995 to protect the Cook Inlet watershed and the life it sustains. Please accept these comments on behalf of Inletkeeper's more than 8500 members and supporters in opposition to House Bill 52.

Cook Inletkeeper's headquarters are in Homer, the gateway to Kachemak Bay State Park. The Park and the thousands of Alaskans and tourists who visit annually are a vital economic engine for the the City of Homer and the small businesses which support activities within the Park. Particularly in the last two years as COVID-19 has increased our need for open spaces and safe outdoor recreational areas, the value of the State Park has grown.

Inletkeeper is opposed to the removal of any lands from Kachemak Bay State Park. On February 7, 2022, a new version of HB 52 was adopted as the draft version. With only several days for the public to digest the contents of these changes, Inletkeeper is responding here to both the original bill and the new draft version D. Inletkeeper is disappointed by the legislature only giving the public 4 days to evaluate a new version of the bill with substantial changes prior to the opportunity for public testimony.

Prior to addressing Inletkeeper's specific concerns about the bill, Inletkeeper also recognizes that tribes are sovereign nations and should be consulted on issues that may impact their citizens and their unceded traditional lands. It is entirely unclear if the legislature has discussed the impact of this bill with the three tribes closest to the land: Seldovia Village Tribe, the Native Village of Nanwalek, and the Native Village of Port Graham. To the extent that the legislature has not consulted with these tribes, Inletkeeper recommends that the state provide the opportunity for tribal consultation.

1) Eliminating 123 acres of incredible state park land for commercial use and without a meaningful public comment period is not good governance.

House Bill 52, if passed, would remove more than 123 acres of Kachemak Bay State Park, specifically Tutka Bay Lagoon and its uplands. The original agreement for the operation of the hatchery (the Interagency Land Management Assignment "ILMA") allowed for 6.84 acres of land for use as a fisheries

incubation facility.¹ Although the ILMA was modified in 1991, there is no apparent expansion of state lands for the fisheries incubation facility.²

But HB 52 would allow 123.45 acres to move out of the park for these fishery operations. This land would become general state land and management of it would be dictated by the Division of Mining, Land, and Water in the Department of Natural Resources (DNR). That includes all applications for building or modifications to the property on all 123 acres (instead of the original 6.84).

Although we expect such an agreement would have a clause for land restoration when such use ends, that is not a guarantee, nor has there been any discussion on ensuring that the state is not left holding the bag should the operator go bankrupt and not have funds to do any restoration.

We have heard the argument that this bill is simply curing a land disposal issue. If so, our question is why has the land for “disposal” increased from 6.84 of previous commercial use to 123.45 for the same commercial use? Are there guarantees to the public that our land will be safeguarded and that this draft legislation won’t allow development to expand on all 123 acres or to other purposes from the hatchery, while the hatchery is still operating? These questions must be answered at this stage because later may very well be too late to safeguard our public lands.

Prior to HB 52 being introduced, the Alaska Department of Natural Resources released an updated Kachemak Bay State Park Management Plan in 2020 after years of public process and input. Tutka Bay was the second most reported area where people recreated with hiking, boating, fishing, wildlife/bird viewing, kayaking and camping listed as the top public uses. That management plan specifically states:

The legislature created KBSP as a scenic park, where the state would manage these park lands to preserve their natural features and ensure minimal development. There are two distinct concerns about the hatchery: it is inconsistent with the legislative management direction for the park as a “scenic park”; and it could constitute a disposal of legislatively designated lands as detailed in Chapter 4. The state, therefore, intends to explore phasing out hatchery operations, including not renewing the CIAA operating agreement in 2031. Following a cessation of the hatchery’s operations, DPOR would work with ADF&G to convert the TBLH area to park purposes by restoring portions of the site and retaining certain structures that can be used as a group camp facility.³

House Bill 52 would throw out years of planning and public input and give away public resources to a private interest which currently owes the state millions in debt. In the end, Alaskans lose a valued scenic and public recreational location and the state undermines its commitment to give voice to Alaskans through the public planning process.

Inletkeeper opposes this removal which ignores years of public input and fails to explain this exponential increase in public land for commercial use.

¹ See Alaska Dept of Natural Resources, Interagency Land Management Assignment, ADL# 100098.

² See Memo from Al Meiners Southcentral Regional Manager to Veronica Gilbert, Southcentral Region Manager, Dept of Natural Resources, *Tutka Hatchery ILMA Amendment Exhibit “B”* (ADL 200098) (Jul 23, 1991).

³ Dept of Natural Resources, *Kachemak Bay State Park and Kachemak Bay State Wilderness Park Management Plan, Intent to Adopt*, Nov. 2020, at 152 (available here: http://dnr.alaska.gov/parks/plans/kbay/final/kbay_ita_complete.pdf).



2) The suggested “compromise” in version D fails to cure the fundamental issue at stake here: protecting Kachemak Bay State Park - our invaluable public lands.

On Monday, February 7, the committee adopted a new draft document that includes conditional effects, essentially a reverter clause, where the land reverts back to Kachemak Bay State Park land should the hatchery not operate for three years. Although on the surface this seems like a good compromise, there is still unacceptable risk to our state park land and that is because of all the unknowns in this agreement. For instance:

- 1) What is the process for approving developments on the property as general use lands?
- 2) Why is this amendment being released with only 4 days for the public to prepare for public comment?
- 3) Why is the land being increased from roughly 6 acres to 123 acres for the same purpose?
 - a) Where are the original surveys and maps for the 6 acres originally designated for this use?⁴
- 4) What bonds or other guarantees are being made for the land being protected so that it is in suitable shape to return as state park land?
- 5) Are there expectations to expand the facility under this new agreement?
- 6) Why was three years selected? Why not one year of no operation? This seems completely arbitrary.
- 7) Where is the guarantee that the public would retain access to this land and that it would not be closed if it were to become general use state land?
- 8) Where is the guarantee that the department⁵ would not sell the land as part of its “management” decisions?

The other major issue we have is that the current language requires that someone at the commissioner’s office paying attention, recognizes that the hatchery has no longer been operational for 3 years and then takes action to allow the conditional clause to be in effect. This requires that our overburdened civil servants have the knowledge that this could be possible and the capacity to follow through on it. Nor is there any guarantee that regardless of this conditional clause that the state could not agree to sell portions of this land for other uses while operating a hatchery in a smaller section. This would be prime real estate and incredible public lands that could be lost to private interests.

⁴ Inletkeeper has contacted a number of state employees but no one has been able to provide us a copy of any survey regarding the land designated within the ILMA from 1978. Although that was clearly assigned to the Department of Fish and Game on August 27, 1981, the only surveys we have located are from 2012 regarding the Tutka Hatchery Bunkhouse Expansion Process and the survey done for HB 52 in 2021. It is deeply troubling that we have not been able to unearth these files as they should be readily available as presumably they were used to develop and draft the proposed bill.

⁵ The current draft of the bill simply indicates that the land “shall be managed by the department” and “department” is defined in AS § 41.99.900(2) as the Department of Natural Resources.

Although the so-called compromise offers the illusion of protecting this land so that it would revert to state park lands when this commercial use ends, it does not provide real protections to this land so that it is in comparable shape if and when it is returned to the park.

3) The fiscal note attached to the bill is inadequate as it does not even adequately describe the bill, much less make any attempt at identifying the costs of this bill to the state.

The current fiscal note claims that there is no cost to the state from this proposed bill. The current fiscal note claims that this is so because: "This bill adds a new subsection that states the Tutka Bay Lagoon Hatchery is a compatible use within the boundaries of Kachemak Bay State Park. The Division of Parks and Outdoor Recreation does not anticipate any fiscal impact and therefore submits a zero fiscal note." But this is not what this bill is currently proposed to do. It does not change the compatibility use of this land but instead simply removes this land from the park so that it no longer needs to be compatible for the state to comply with the law.

This makes a mockery of the process of requiring fiscal notes. This fiscal note may have, at one point, reflected the language of the bill. But in its current form, this fiscal note fails to reflect costs of this proposal. What is the loss of interest in this property? What is the actual cost of allowing a commercial process to continue without payment on our public lands? What is the cost of remediation should the commercial industry not be able to pay for the costs of remediation? These questions are simply avoided by ignoring the purpose of the fiscal note.

We have repeatedly heard that this cost is zero because this is purely a land "disposal bill" but that is only used when on this side. We have also heard repeatedly about the cost that the state will incur if the bill is not passed. It's only reasonable that the public is aware, not only of potential or possible costs that may be incurred if this bill does not pass, but ultimately whether there are costs if it is passed.

The legislative branch should provide a new fiscal note that actually reflects the current intent and purpose of the bill in order to actually comply with this requirement. If this requirement is simply political theater, it should simply be done away with.

In conclusion, Inletkeeper is a strong believer in Ronald Reagan's saying "trust but verify." And we are hearing a lot of "trust us" language coming from our government. "Trust us" the language doesn't read clearly but protects our state land. "Trust us" there are no plans to do anything else with this land. "Trust us" this land will not be further developed. And while we want to trust our government, we have learned from experience that sunshine is the best way for us to verify that the government is protecting the public interest. Instead, here, the public is being asked to blindly trust their government while it seeks to overturn an extensive public comment process on the Kachemak Bay State Park Management Plan.

Accordingly, we strongly oppose HB 52, and we urge you to reject it.

Thank you and please do not hesitate to contact me with questions at liz@inletkeeper.org or 907.235.3459.

Yours for Cook Inlet,
Liz Mering
Inletkeeper
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