

**SB**

**148**

<TARGET><BILL>SB 148</BILL><SUBJECT>SB  
148</SUBJECT><COMM>SRES28</COMM></TARGET>

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/31/14

FURTHER: RULES

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2/6/14

Resources Committee considered SENATE BILL NO. 148

SB 148-KACHEMAK BAY CRITICAL HABITAT AREA

"An Act excluding certain land from the Kachemak Bay Critical Habitat Area."

and recommends:

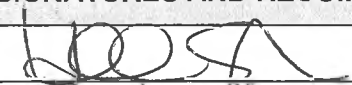
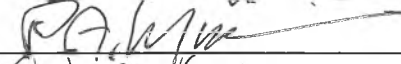
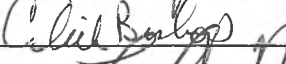
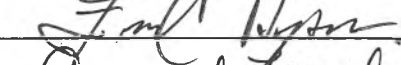
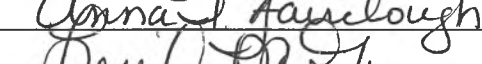
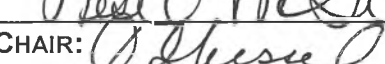

- be replaced with CS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  New Title
- adopt previous CS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  New Title
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	French			✓	
	Micciche	✓			
	Bishop	✓			
	DYSON	✓			
	FAIRCLOUGH	✓			
	McClure	✓			
CHAIR: 	Biessel	✓			

# ALASKA STATE LEGISLATURE

Sen. Cathy Giessel, Chair  
Sen. Fred Dyson, Vice Chair  
Sen. Lesil McGuire  
Sen. Anna Fairclough  
Sen. Click Bishop  
Sen. Peter Micciche  
Sen. Hollis French



State Capitol, Room 427  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871  
800-465-4843

## Senate Resources Committee

Butrovich Room 205  
Wednesday, February 5, 2014  
3:30-5:00 p.m.

## AGENDA

### ➤ Gasline Issues: Heads of Agreement Panel Discussion

- Bill McMahon, Jr., Alaska Gas Development, ExxonMobil Production Company
- Darren L. Meznarich, Manager Alaska Gas, ConocoPhillips Alaska
- Tony Palmer, Vice President, Major Projects Development, TransCanada
- David Van Tuyl, Regional Manager, BP Exploration (Alaska) Inc.
- Dan Fauske, President, Alaska Gasline Development Corp.

Testimony: By Invitation

### ➤ SB 148 "Kachemak Bay Critical Habitat Area"

Public Testimony

Teleconference

# ALASKA STATE LEGISLATURE

SESSION ADDRESS:  
Alaska State Capitol, Rm. 125  
Juneau, Alaska 99801-1182  
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Phone: (907) 283-7996

270 W. Pioneer Ave.  
Homer, AK 99603  
Phone: (907) 235-0690

## SENATOR PETER A. MICCICHE

### MEMORANDUM

#### DISTRICT

*Anchor Point*

*Clam Gulch*

*Cohoe*

*Diamond Ridge*

*Fox River*

*Fritz Creek*

*Funny River*

*Halibut Cove*

*Happy Valley*

*Homer*

*Kachemak City*

*Kachemak Selo*

*Kalifornsky*

*Kasilof*

*Kenai*

*Nikolaevsk*

*Ninilchik*

*Razdolna*

*Ridgeway*

*Seldovia*

*Soldotna*

*Voznesenka*

TO: Senator Cathy Giessel

Senate Resources Committee Chair

FR: Senator Peter Micciche *rel for PAM.*

DA: January 29, 2014

RE: Scheduling SB 148 in Senate Resources Committee

I respectfully request the scheduling of SB 148, which will be read across on Friday 1/31/2014. I will deliver the bill and all necessary backup information on Friday.

This bill amends AS 16.20.590 by exempting the Homer Port and Harbor from the Kachemak Bay Critical Habitat Area.

If you have any questions, please feel free to contact Larry Semmens at 465-4899.

Thank you for your consideration of this request.

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## SENATOR PETER A. MICCICHE

### Sponsor Statement

#### DISTRICTS

*Anchor Point*

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*Diamond Ridge*

*Fox River*

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*Kenai*

*Nikolaevsk*

*Ninilchik*

*Razdolna*

*Ridgeway*

*Seldovia*

*Soldotna*

*Voznesenka*

**SB 148 "An Act excluding certain land from the Kachemak Bay Critical Habitat Area."**

**SB 148 amends AS 16.20.590 by exempting the Homer Port and Harbor from the Kachemak Bay Critical Habitat Area (KBCHA).**

There is discrepancy between the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan and AS 16.20.590 establishing the KBCHA. The Management Plan states on page 1, "The plan does not apply to federal or municipal lands within the critical habitat areas." However, statute does not spell out such an exemption, which has created legal ambiguity about both the enforceability of the municipal lands exemption provision in the Plan and Alaska Department of Fish and Game's (ADF&G) ability to permit certain legitimate activities at the port, most notably oil and gas drill rigs docking for the purpose of maintenance and repair.

The Management Plan further states that a vessel that drops anchor or moors at a dock for more than 14 days must obtain a permit from ADF&G. This is impractical and inefficient for a large municipal port and harbor facility. The City of Homer has experienced costly and time-consuming permitting hurdles for construction projects in the port and harbor, even when those projects comprised replacing and repairing existing infrastructure.

The KBCHA protects Kachemak Bay and the resources which provide the foundation of Homer's local economy, lifestyle and quality of life. This legislation will improve environmental protection in Kachemak Bay and the Lower Cook Inlet, giving oil and gas drilling rigs a safe place to dock for maintenance, repair and emergency services. The location, quality tradesmen and accessibility by road and air make the Homer Port and Harbor a necessary part of the support system for responsible oil and gas exploration in Cook Inlet. SB 148 is required to allow that support to take place in an efficient manner.

**KACHEMAK BAY  
AND  
FOX RIVER FLATS  
CRITICAL HABITAT AREAS  
MANAGEMENT PLAN**

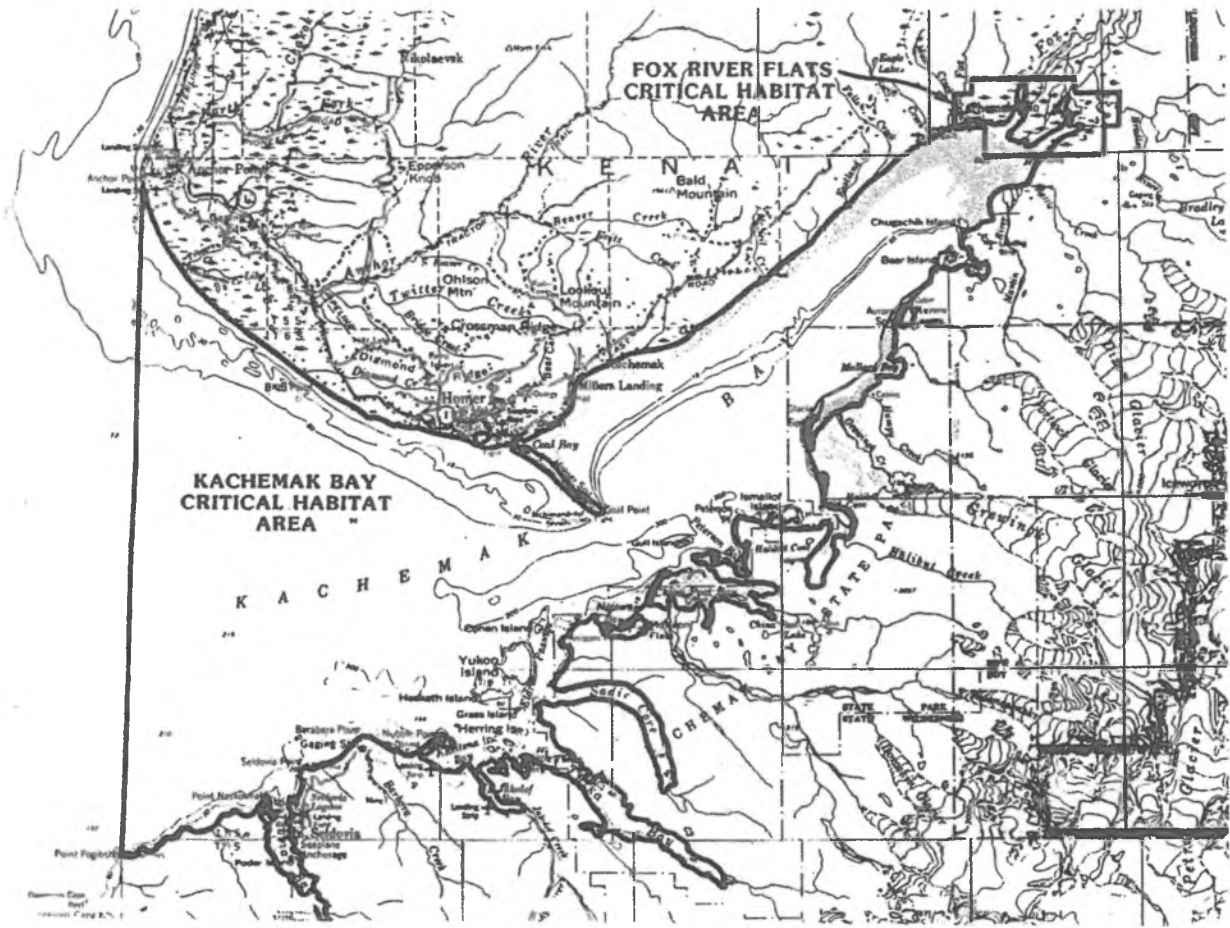
**DECEMBER 1993**

**Prepared by the Divisions of  
Habitat and Restoration  
and  
Wildlife Conservation**

**Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, AK 99518-1599**

**Carl L. Rosier, Commissioner**





## INTRODUCTION

The tide and submerged lands of Kachemak Bay were established as a critical habitat area by the Alaska Legislature in 1974 and the Fox River Flats was established by the Alaska Legislature as a critical habitat area in 1972 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 purpose of the Kachemak Bay and Fox River Flats Critical Habitat Areas Management plan is to provide consistent long-range guidance to the Alaska Department of Fish and Game and other agencies involved in managing the critical habitat areas.

The plan presents management goals for the critical habitat areas and resources and identifies policies to be used in determining whether proposed activities within the critical habitat areas are compatible with the protection of fish and wildlife, their habitats and public use of the critical habitat areas. The plan will be reviewed every five years and, if appropriate, updated as funding permits. Public participation will be solicited during the update process. The plan affects state and private lands within the critical habitat areas. The plan does not apply to federal or municipal lands within the critical habitat areas. The plan does not address hunting or fishing regulations which are the authority of the Boards of Fish and Game.

This document is the result of a public planning process led by the Alaska Department of Fish and Game. The plan has been developed by the planning team representing state, federal and municipal agencies including: The Alaska Departments of Fish and Game, Natural Resources, Environmental Conservation, Transportation and Public Facilities, Alaska Energy Authority, and Division of Parks and Outdoor Recreation; the United States Fish and Wildlife Service, Coast Guard, National Marine Fisheries Service and Environmental Protection Agency; the City of Homer, the City of Seldovia, and the Kenai Peninsula Borough.

At the beginning of the public planning process, public meetings were held in Homer, Seldovia, and Anchorage to explain the planning process and solicit citizens' opinions regarding the issues, interests and concerns pertinent to critical habitat area management. The meeting results and written comments received were used by the planning team to identify a list of issues to be addressed in the plan. At the same time, resource information on critical habitats and their fish and wildlife populations, other natural resources, existing land use, and land ownership was being collected and synthesized. This information, presented in both map and narrative form, comprises the plan's resource inventory.

Management goals and policies for the critical habitat areas were developed by the planning team to address the identified issues. All policies were developed with consideration of their ability to meet the plan's management goals. In addition, other applicable laws and the Public Trust Doctrine were considered.

The draft plan was distributed for public review, and comments received during the public review process were used to develop the final plan. The goals and policies were then adopted by the Commissioner of Fish and Game.

**MINING** - Mineral or coal leasing will not be allowed in the critical habitat areas. Close the critical habitat areas to new locatable mineral entry and close tide and submerged lands within the critical habitat areas to issuance of offshore prospecting permits. Incidental gathering of loose coal for personal use on Kachemak Bay beaches will continue to be allowed.

**MATERIAL EXTRACTION** - Material extraction on public lands will not be allowed within the critical habitat areas unless for purposes of maintenance, enhancement, or restoration of critical habitat area habitat. All material extraction activities within the critical habitat areas, including activities on private lands, must be consistent with critical habitat area statutes and the goals and policies of this management plan.

**OIL AND GAS** - To avoid damage to fish and wildlife habitats, disturbance to fish and wildlife populations, and displacement of public use, surface entry for oil and gas exploration or development will not be allowed on Kachemak Bay or Fox River Flats critical habitat areas, except that geophysical surveys may be permitted if there is no surface impact and appropriate stipulations, including seasonal restrictions, preclude impact to fish and wildlife habitat, fish and wildlife populations, and public use of the critical habitat areas.

**OIL DRILLING RIG STORAGE** - 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.

**HAZARDOUS MATERIALS** - Hazardous materials may not be stored or deposited in the critical habitat areas.

**OTHER USES** - To protect fish and wildlife populations and their habitats in the critical habitat areas, the department may allow by permit only those activities compatible with the purposes for which the critical habitat areas were established, terms and standards of 5 AAC 95, and the goals and policies of the plan. Any activity that is not compatible with the purposes for which the critical habitat areas were established, terms and standards of 5 AAC 95, and the goals and policies of this plan will not be allowed.



37           WHEREAS, The Critical Habitat Management Plan states that any vessel that drops an  
38 anchor or moors at a dock for more than 14 days, must obtain a permit from the Alaska  
39 Department of Fish and Game; a requirement that is inefficient and clearly impractical for a  
40 large municipal port and harbor facility; and

41

42           WHEREAS, Because the port and harbor is within the Critical Habitat Area boundaries,  
43 the City has experienced costly and time consuming permitting hurdles for construction  
44 projects, even when those projects comprised replacing and repairing existing infrastructure;  
45 and

46

47           WHEREAS, There is a compelling public interest in bringing the statute into alignment  
48 with the Critical Habitat Area Management Plan and the intent of its drafters because it will  
49 eliminate legal uncertainty, clarify the permitting process, stimulate the local economy, and  
50 enhance marine safety and environmental protection; and

51

52           WHEREAS, The proposed boundary change would serve to improve environmental  
53 protection in Kachemak Bay and the Lower Cook Inlet because oil and gas drilling rigs in  
54 particular would have a safe and secure place to dock for maintenance, repair, and  
55 emergencies services; and

56

57           WHEREAS, Homer has the only year-around ice free, deep water port on Cook Inlet,  
58 has been designated as a Port of Refuge by the U.S. Coast Guard, and has the resources and  
59 assets required to improve marine safety, enhance environmental protection, and respond to  
60 emergencies at sea; and

61

62           WHEREAS, The City of Homer has a deep appreciation for the Kachemak Bay Critical  
63 Habitat Area designation and the adopted Management Plan because it protects the  
64 resources which provide the very foundation of the local economy, lifestyle, and quality of  
65 life; and

66

67           WHEREAS, The Amendments to the Critical Habitat Area boundary proposed by the  
68 City are very limited and intended solely to remove the port and harbor and municipal lands  
69 immediately adjacent from the Critical Habitat Area; and

70

71           WHEREAS, If the Homer Port and Harbor is removed from the Critical Habitat Area,  
72 activities there remain subject to all applicable state and federal statutes and regulations  
73 governing ports and activities in marine waters; and

74 WHEREAS, The City stipulates that it does not propose or support any other  
75 amendments to the Kachemak Bay Critical Habitat Area or Plan as part of this request.

76

77 NOW, THEREFORE, BE IT RESOLVED that the Homer City Council hereby requests that  
78 the Alaska Legislature amend Alaska Statute 16.20.590 establishing the Kachemak Bay  
79 Critical Habitat Area by changing the critical habitat area boundaries to exclude the City of  
80 Homer Port and Harbor and municipal lands immediately adjacent to port facilities  
81 necessary for port operations, and make the statute consistent with the stated intent of the  
82 Critical Habitat Area Management Plan.

83

84 PASSED AND ADOPTED by the City Council of Homer, Alaska, this 13<sup>th</sup> day of January,  
85 2014.

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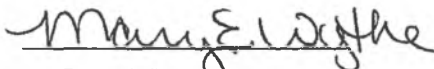
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CITY OF HOMER

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MARY E. WYTHE, MAYOR

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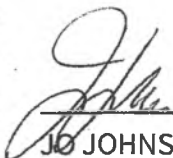
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93 ATTEST:

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JO JOHNSON, MMC, CITY CLERK

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99 Fiscal Note: N/A

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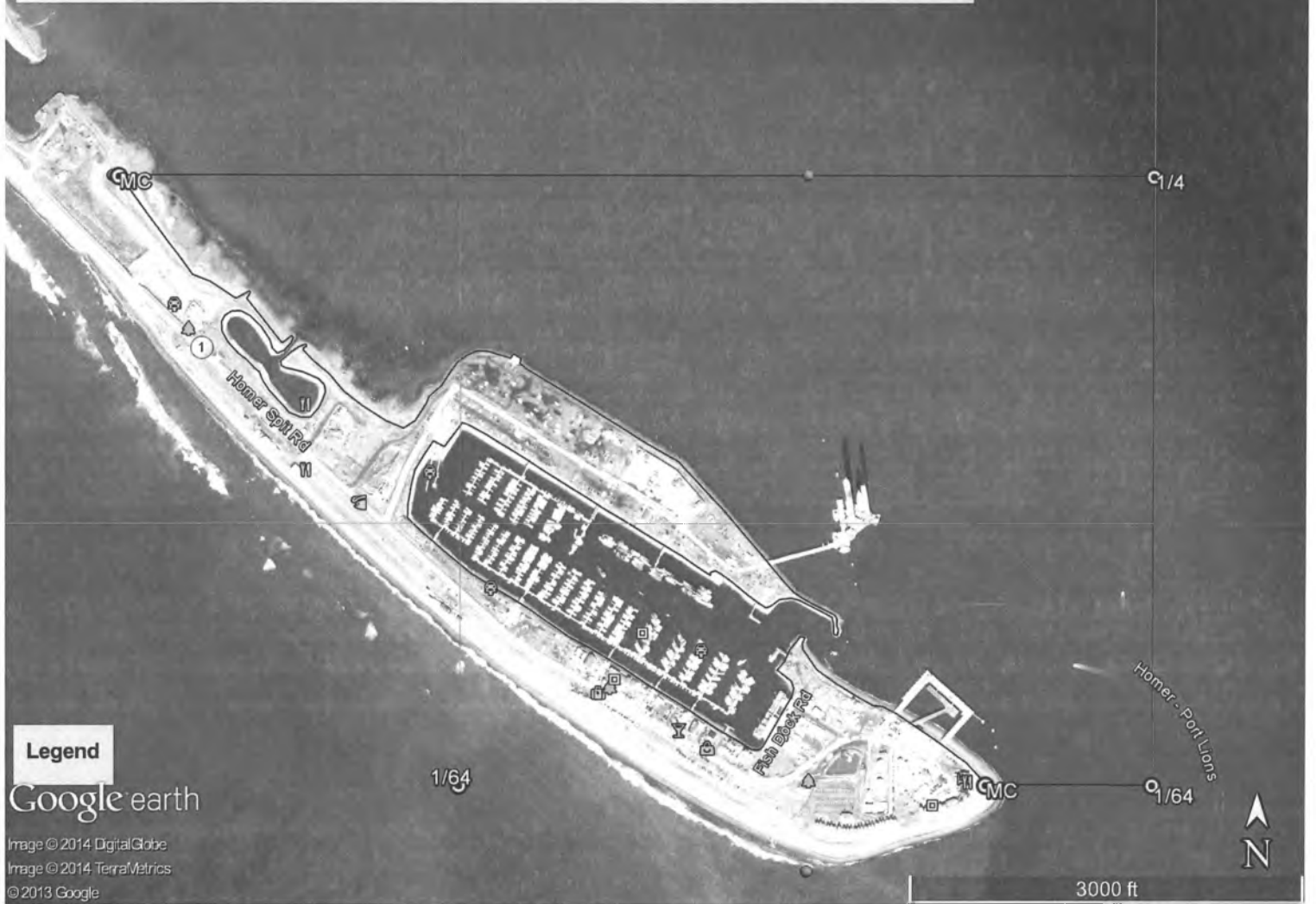
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# Proposed Exclusion to The Kachemak Bay Critical Habitat Area

1/22/14 MJH @ DNR



To: Senate Resources

2/5/14

**SB 148/HB 285: In response to Homer City Resolution 14-005: Asking that the AK Statute 16.20.590 be amended to remove the Homer Port and Harbor and adjacent municipal lands from the KBay CHA.**

The Kachemak Bay Conservation Society (KBCS) thanks the Senate Resources Committee for the opportunity to comment on SB 148/SB 285. We respectfully submit the following comments:

1. KBCS understands the reason for the City of Homer making this request to remove the port, harbor and municipal lands immediately adjacent, that are necessary for port operations, from within the Kachemak Bay Critical Habitat Area boundaries. In fact, it appears this could have originally been a simple oversight to include these city areas within the CHA. We support this action on its face, i however have some concerns about the details of how SB 148/HB 285 has been worded.
2. We have concerns about the size of the area requested to be removed from the CHA. Therefore, we request that the wording of the bill specifically exclude any and all oil, gas and mineral exploration and development activities from within the confines of the newly removed lands.
3. We ask that this area be specifically designated within the bill to only allow harbor industry -specific operations such as vessel moorage, storage, and freight transfer.
4. We believe this to be the first action to remove designated lands from within a critical habitat area in the state. We are concerned this will set a precedent for this type of un-designating lands action, especially in regards to resource development interests within the bounds of a CHA. At the present time, the Parnell Administration is openly working to undermine the existing management process of all state CHAs, Game Refuges and Wildlife Sanctuaries through the application of Administrative Order 266. This is unfortunately timing of the city's request for land removal from within the KB CHA when state residents are very alarmed by this broad sweeping action under AO 266. Therefore, this action looks suspect and could make the KB CHA vulnerable to further incursions.
5. Although we support the current City of Homer administration, our concerns are for the long-term protection of the local area encompassed by the KBay CHA. To this end, we request that these specific sections of the City of Homer Resolution 14-005 be incorporated into the wording of SB 148/HB 285, as follows:

Lines 62-65: Whereas, The City of Homer has a deep appreciation for the Critical Habitat Designation and the adopted Management Plan because it protects the resources which provide the very foundation of the local economy, lifestyle and quality of life; and

Line 74: Whereas, the City stipulates it does not propose or support any other amendments to the Kachemak Bay Critical Habitat Area or Plan as part of this request.

Thank you very much for your consideration of our concerns and comments.

Cynthia Burkimer  
 Cynthia Burkimer, Secretary  
 Kachemak Bay Conservation Society