

MEMORANDUM

State of Alaska Department of Law

TO: April Simpson, Regulation and Initiative Specialist
Office of the Lieutenant Governor

DATE: March 27, 2024

FILE NO.: JU2013200714

TEL. NO.: 465-3600

FROM: Rebecca C. Polizzotto
Chief Assistant Attorney General and Regulations Attorney
Legislation, Regulations, and Legislative Research Section

SUBJECT: Correction to the Alaska Administrative Code (AAC):
5 AAC 95.310

In accordance with my authority under AS 44.62.125(b), please forward to the publisher the correction to the Alaska Administrative Code (AAC) described below.

The regulation to be revised is 5 AAC 95.310. The revision to that section is as follows:

--Replace "Repealed." with the original language of 5 AAC 95.310 before the section's repeal in 2021:

5 AAC 95.310. Personal watercraft use prohibited.

(a) A person may not operate a personal watercraft within the following legislatively designated areas:

- (1) Fox River Flats Critical Habitat Area established in AS 16.05.580;
- (2) Kachemak Bay Critical Habitat Area established in AS 16.05.590.

(b) In this section, "personal watercraft" means a vessel that is

- (1) less than 16 feet in length;
- (2) propelled by a water-jet pump or other machinery as its primary source of motor propulsion; and
- (3) designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than a person sitting or standing inside it. (Eff. 5/3/2001, Register 156)

--In the history note for 5 AAC 95.310, omit "; repealed 1/9/2021, Register 237".

--Restore the original authority citation for 5 AAC 95.310:

Authority: AS 16.05.020 AS 16.20.580 AS 16.20.590

AS 16.20.500

--After 5 AAC 95.310, please insert an editor's note to read as follows:

Editor's note: In *Cook Inletkeeper v. Vincent-Lang*, 3AN-21-05627CI (Alaska Super., May 4, 2021), the Alaska Superior Court overturned the state's repeal of 5 AAC 95.310, which in effect had allowed the use of personal watercraft within the Kachemak Bay Critical Habitat Area. The court granted the state's motion to stay a new public notice process under AS 44.62 (Administrative Procedure Act), pending the state's appeal of the decision to the Alaska Supreme Court. Accordingly, the regulations attorney, acting under AS 44.62.125(b)(6), restored the original language of 5 AAC 95.310, to acknowledge that the language stays in place, without public notice under AS 44.62 pending the outcome of the state's appeal.

Thank you for your assistance, and please contact me if you have additional questions.

RCP:SCW

cc w/enc:

Doug Vincent-Lang, Commissioner, Department of Fish & Game
Anne Nelson, Chief Assistant Attorney General, Department of Law
Laura Wolff, Senior Assistant Attorney General Department of Law
Vanessa Lamantia, Senior Assistant Attorney General, Department of Law
Noah Star, Assistant Attorney General, Department of Law