

FINAL Evaluation Findings

Alaska Coastal Management Program

October 2002 – August 2007

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Office of Ocean and Coastal Resource Management
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I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the Alaska Coastal Management Program (ACMP) by the Alaska Department of Natural Resources, the designated lead agency, for the period from October 2002 to August 2007.

This document describes the evaluation findings of the Director of OCRM with respect to the ACMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the Alaska DNR is implementing and enforcing its federally approved coastal program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2)(A) through (K) of the CZMA.

The evaluation team documented a number of ACMP accomplishments during this review period. In 2005 the State of Alaska adopted, and NOAA approved, new statutes and regulations which revised the ACMP. Program changes resulting from the legislation were substantial, and the amount of work that resulted from implementing these changes has been considerable. OCRM recognizes the effort and dedication of ACMP staff during the revision and implementation of the amended Coastal Program. Per the program changes, ACMP staff have worked with districts to get over half of the mandatory district plan amendments approved. The ACMP has also developed new outreach tools to provide program information to partners. In addition, it has enhanced the federal consistency process through revisions to the Coastal Project Questionnaire and is participating in the Unified Permit Project, which could provide an opportunity to look at the cumulative and secondary impacts of ACMP permitted projects.

The evaluation team also identified a number of areas where the implementation of the ACMP could be strengthened. All but one of the recommendations for the ACMP are in the form of Program Suggestions and describe actions that OCRM believes DNR should consider to enhance or improve the program, but that are not mandatory. Several aspects of the program revisions were found to be confusing and/or controversial during the program development process, which has affected the ACMP's relationships with various partners. Some of the recommendations thus address coordination and communication with program partners, including state and federal agencies, coastal districts, and the public. Opportunities identified to improve coordination and communication include reinstating regular meetings of the State Agency Working Group and focusing and enhancing outreach and technical assistance to reengage coastal districts. Other recommendations address the implementation of the new statutes and regulations, which has been both challenging and confusing to ACMP staff and partners. These include, for example: revisiting the special area designation process; evaluating the effectiveness of retaining the Department of Environmental Conservation Carve Out; identifying methods to evaluate and monitor the efficacy of the state habitat and subsistence use standards; and conducting a State-led evaluation of the revised ACMP. The Necessary Action requires the DNR to develop formal agreements that clarify how partners work jointly to implement the ACMP.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

NOAA began its review of the ACMP in June 2007. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Alaska, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of recommendations specified in the draft document.

Accomplishments and recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

Necessary Actions address programmatic requirements of the CZMA's implementing regulations and of the ACMP approved by NOAA. These must be carried out by the date(s) specified;

Program Suggestions denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the ACMP.

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2004 ACMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents for the revised ACMP approved in 2005; (3) federal financial assistance awards and work products; (4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in Alaska.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues prior to the site visit:

- Program accomplishments since the last evaluation;
- Changes to the core statutory and regulatory provisions of the ACMP;
- Long-term planning to guide the Coastal Program in identifying priorities, gaps, and the most effective role for the ACMP;
- Implementation of federal and state consistency authority;
- Effectiveness of interagency and intergovernmental coordination and cooperation at local, regional, state, and federal levels;
- Public participation and outreach efforts;
- Management of coastal hazards;
- The coastal nonpoint pollution control program;
- The manner in which the ACMP has addressed the recommendations contained in the §312 evaluation findings released in 2004. The ACMP's assessment of how it has responded to the recommendation in the 2004 evaluation findings is located in Appendix B.

C. SITE VISIT TO ALASKA

Notification of the scheduled evaluation was sent to the Alaska Department of Natural Resources, the ACMP, relevant environmental agencies, members of Alaska's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on August 8, 2007.

The site visit to Alaska was conducted from August 13-17, 2007. The evaluation team consisted of Kimberly Penn, Evaluation Team Leader, OCRM, National Policy and Evaluation Division; Helen Farr, Environmental Program Specialist, OCRM, Coastal Programs Division; Kathleen Leyden, Maine Coastal Program; and Jena Carter, Coastal States Organization.

During the site visit the evaluation team met with ACMP staff, DNR staff and other state officials, federal agency representatives, coastal district representatives, nongovernmental representatives, tribal representatives, and private citizens. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Monday, August 13, 2007, at 4:00 p.m. at the Office of Project Management and Permitting, located at 302 Gold Street, Suite 202, Juneau, Alaska. The public meeting gave members of the general public the opportunity to express their opinions about the overall operation and management of the ACMP. Appendix D lists persons who registered at the public meeting. NOAA's response to written comments submitted during this review is summarized in Appendix E.

The ACMP staff members were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA approved the Alaska Coastal Management Program (ACMP or Coastal Program) in 1979. The lead coastal agency is the Alaska Department of Natural Resources, and the ACMP is located within the Division of Coastal and Ocean Management. The primary mission of the ACMP is to provide stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity.

While the Coastal Program was originally established under the Alaska Coastal Management Act of 1977, between 2003 and 2005 Alaska adopted, and OCRM approved, enforceable policies for the Coastal Program that have substantially changed statewide coastal standards and the role of local districts in the Coastal Program. As of December 29, 2005, the revised ACMP incorporates the amended ACMP statutes at Alaska Statutes 46.39 and 46.40 and the amended regulations at 11 Alaska Administrative Code (ACC) 110, 112, and 114, including the statewide standards at 11 AAC 110.200 – 11 AAC 112.990.

The majority of the State's statutes and regulations that govern the ACMP are the responsibility of DNR, which also exercises the State's federal consistency authority. Those statutes and regulations addressing air, land, and water quality for the purposes of the ACMP, however, are the sole responsibility of the Alaska Department of Environmental Conservation (DEC). In addition, DEC's implementation of its legal authorities serves as the State's consistency review for those parts of a development project. This aspect of the Coastal Program is commonly referred to as the DEC Carve Out. Alaska's coastal districts can also participate in the amended Coastal Program through the development of coastal plans with enforceable policies that meet the revised state standards. The district plans help guide development and natural resource management within each district's coastal zone.

Alaska is bounded by two oceans and two seas. Glaciers have carved many large islands from the mainland and retreated to uncover a shoreline with abundant narrow fjords and craggy headlands. Volcanic activity has formed numerous islands. As a result of its varied coastline and its vast extent, the marine shoreline of Alaska measures 44,500 miles (note: the original ACMP document identified the coastal shoreline mileage as 33,904 miles, however, recent Alaska coastline GIS surveys indicates the higher number). The State has a three-tiered coastal zone based on the proximity to the land-sea interface.

The ice-stressed coastal ecosystems of Alaska are unique in the United States, although its diverse coastline includes every ecosystem found in the contiguous states except tropical. Alaska's fertile continental shelf totals 830,000 square miles, or 74 percent of the nation's total. Many species of migratory fish, birds, and marine mammals use the islands, estuaries and coastal streams and ponds for breeding, spawning, birthing and resting. Some of the world's richest commercial fish stocks are found along Alaska's continental shelf. The unique biophysical character of Alaska's coastal zone is of national and international scientific and economic value. Its potential oil and gas reserves are among the largest in the world. Nearly all of the minerals classified as strategic by the Federal government, ranging from antimony to zinc, are found in Alaska.

The diverse, and sometimes conflicting, uses of Alaska's coastal zone present numerous

opportunities to balance preservation, conservation, and development of the many coastal resources for future recreation, education, scientific study, conservation, fishing, subsistence use, and oil and gas, mineral, and timber extraction. The ACMP seeks to strike this balance.

IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

A. OPERATIONS AND MANAGEMENT

Overall, OCRM finds that the Alaska Department of Natural Resources (DNR) is implementing the Alaska Coastal Management Program as approved by NOAA in 2005.

1. Organization and Administration

Shortly after the last evaluation, the Alaska State Legislature passed House Bill (HB) 191, which substantially changed the Alaska Coastal Management Program (ACMP). The State set out to streamline the ACMP process by avoiding redundancies in federal, state, and local standards and policies. The State thus adopted new statutes and regulations which significantly revised the federally-approved ACMP.

During the 2004-2005 period, extensive discussions took place between DNR and OCRM regarding the revised ACMP. Program changes resulting from the legislation were substantial, and included: transferring responsibility for the Program to a different lead agency; modifying the State's consistency review process; adopting new statewide standards; and the mandatory revision of all coastal district plans, so that district policies were to be related to matters of local concern that neither repeated nor duplicated any existing federal or state requirements. On December 29, 2005, OCRM approved the incorporation of the program changes as an amendment to the ACMP, which included development of an Environmental Impact Statement (EIS). A detailed discussion of these changes and the impacts associated with them is available in the EIS. Ultimately, NOAA's preferred alternative was to approve Alaska's request to incorporate the new and revised statutes and regulations as a program amendment to the ACMP.

Several aspects of these revisions were found to be controversial during the program development process, including: (1) eliminating the Coastal Policy Council (CPC) and transferring its authority for the development of statewide standards of the ACMP and the approval of district management plans to DNR; (2) developing new statewide standards for the ACMP and new guidelines for district coastal management plans; (3) requiring all districts to develop and submit new district coastal management plans by a set date or face a "sunset" of their plans; and (4) changing protocol so that the requirements and implementing regulations for the Alaska Department of Environmental Conservation (DEC) became the sole enforceable policies for the ACMP for the purposes of air, land, and water quality, the implementation which now serve as DEC's consistency review for those parts of a development project. These topics were given special consideration during this evaluation.

One change resulting from the new legislation was the organizational location of the ACMP within state government. Originally located within the Governor's Office, the Program was moved per Executive Order 106 to DNR, Office of Project Management and Permitting (OPMP). Since the site visit, however, in October 2007, OPMP was reorganized and the Division of Coastal and Ocean Management (DCOM) was created. DCOM is now the lead agency for the ACMP and houses all DNR staff working full-time on coastal and ocean management issues. OPMP still exists as an office within DNR and is tied to the ACMP through the review of large projects

located in the coastal zone. For consistency purposes, this document will only reference DNR in general as the lead agency responsible for ACMP oversight.

Also since the site visit, DNR announced its intent to re-evaluate the ACMP. As stated in the letter to ACMP participants (dated February 22, 2008), DNR “is interested in re-evaluating the following statutory and regulatory provisions of the ACMP: revisit the DEC carveout...; revisit the coastal district’s (sic) authority and ability to write enforceable policies; revisit the requirements for designated areas to address certain coastal uses and resources; address the consistency review scope of the project...; [and] make other necessary clarifying and technical edits to the regulations.” Many of these issues, including specifics on the re-evaluation process, will be discussed in this document. OCRM supports and encourages DNR in this endeavor.

After Alaska enacted HB 191, DNR was required to draft new statutes and regulations for the ACMP in a very short amount of time. These new regulations substantially altered the administration and implementation of the ACMP. The amount of work that resulted from interpreting and implementing these changes has been considerable, and the accelerated time frame limited the time that ACMP staff had to consider the interpretation of the new regulations. Staff were required to interpret the new statutes and regulations at the same time as implementing the amended Program. Throughout the site visit, the evaluation team noted the considerable work and dedication that the staff provided to amend, interpret, and implement the substantial program changes.

After passage of HB191 which required program changes, there was also a large staff turnover, resulting in a smaller number of staff to interpret and implement the new standards, review and advise on district plan amendments, and coordinate a new consistency review process. In response to this challenge, the evaluation team noted that in many instances staff worked synergistically to increase Coastal Program capacity during the evaluation period. For example, the ACMP project review team shared workloads between offices (Anchorage and Juneau), which provided communication and collaboration opportunities that had not previously been used. This coordination helped to educate new staff as well as identify opportunities to improve the project review process, such as standardizing procedures and new ideas for project tracking.

Without this level of staff dedication and collaboration, the timely interpretation and implementation of the new ACMP statutes and regulations would have been difficult to accomplish. OCRM commends ACMP staff on the accomplishment of keeping the Program operational during the challenging last few years.

Accomplishment: OCRM recognizes the effort and dedication of ACMP staff during the revision and implementation of the revised Coastal Program, and commends their contribution to maintaining a federally-approved Program.

The evaluation team noted that the simultaneous execution of regulation development and implementation has lead to confusion among partners with regard to ACMP policy interpretation (discussed later in this document). Additionally, the high turnover in Coastal Program staff resulted in the majority of staff having less than three years with the Program. Many partners identified this rate of turnover as a substantial challenge for the Coastal Program. Currently, DNR

training opportunities for its staff are identified and provided on an ad hoc basis. Given the new Program statutes and regulations, new staff, and the new roles of many Program partners, the evaluation team noted an important need to identify a more strategic and formal process for staff professional development.

The ACMP may be able to work with existing partnerships to help fulfill some training needs. For example, ACMP could seek to coordinate with Alaska Sea Grant, the Kachemak Bay National Estuarine Research Reserve (NERR), and NOAA's Coastal Services Center. OCRM encourages the DNR to assess and identify the professional development needs of staff and to provide the opportunities through which they may be addressed.

2. State Agency Working Group and Inter-agency Coordination

The ACMP's State Agency Working Group consists of representatives from the various participating state agencies and offices, including other DNR divisions, the Department of Commerce, Community and Economic Development, the Department of Environmental Conservation, the Department of Fish and Game, the Department of Law, and the Department of Transportation and Public Facilities. Roles of the Working Group, which has been in existence since the early years of the ACMP, include: resolving interagency disagreements; advising their respective Commissioners of ACMP viewpoints and policy; and assuring the coordinated and timely delivery of agency assistance to the districts.

According to the revised ACMP's Program Description, the Working Group will continue to exist, "though more informally than in the past, and will continue to help develop and implement the ACMP" (Program Description of the Alaska Coastal Management Program, Handbook of Statutes and Regulations, ACMP 2006). The Working Group is to be used by DNR to ensure uniform implementation and information sharing among state agency participants in the ACMP. The evaluation team heard from many of those involved that Working Group meetings are a great opportunity to keep the networked agencies abreast of current ACMP issues and needs (specifically with regard to budget, consistency, and project reviews), as well as an excellent forum for discussing and developing policy.

Recently, the ACMP Working Group has been meeting about semi-annually. The evaluation team heard consensus among agency partners that more regular meetings would be valuable and are necessary to keep open lines of communication. Given the coordination and outreach needs discussed throughout this document and the Working Group tasks as outlined in the ACMP Program Description, OCRM encourages DNR to better use the Working Group, and the interest and energy of agency partners, to increase information sharing among partners and strengthen implementation of the Program.

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| <p>Program Suggestion: DNR should consider reinstating more frequent meetings of the ACMP Working Group.</p> |
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ACMP day-to-day operations and the Program's interactions with networked agencies could also benefit from formal guidance on all partners' responsibilities in the Program. The evaluation team noted general confusion among partners with regard to the new guidelines of the ACMP and how

partner entities should interact within the Program. For example, some partners felt their role in project review is unclear, as is the ACMP's role. Furthermore, there appears to be much confusion regarding which entity is responsible for interpreting the state standards.

Greater coordination among ACMP state and district participants, as well as with federal agencies, could be accomplished through formal guidance documents, such as Departmental Orders or Memoranda of Understanding (MOUs). Both of these were identified by the ACMP during the site visit as potential means for establishing uniform procedures for coordinating implementation of the Program. At the time of the site visit, the ACMP was specifically considering the development of a Departmental Order (DO) that would formally establish how to operate and implement the Program. OCRM also suggested that DNR update MOUs with federal agencies to reference the new division and to capture the new regulations. Given DNR's decision to re-evaluate the Program, however, plans to develop these guidance documents have been postponed. Pending the outcome of the re-evaluation, DNR intends to clarify Program rules, procedures, and participant roles through a combination of means that could include: a revision of ACMP regulations, strategic education and training specific to individual user groups, and preparation of any clarifying state agency memoranda, departmental orders, or guidance documents.

Necessary Action: DNR must provide OCRM with a proposed plan of action for potential revisions to the ACMP, and for clarifying Program rules, procedures, and participant roles following the DNR-initiated re-evaluation process. This must include:

- 1) by September 30, 2008, a general summary of findings from the re-evaluation process and anticipated impacts to ACMP implementation (e.g. new legislation, regulation revisions, education, etc.);**
- 2) by April 30, 2009, an outline of and schedule for changes to the ACMP, including regulation revisions, partner education and outreach, and if applicable, a timeline for program change submission to OCRM.**

3. Coastal District Participation

Since the ACMP's approval in 1979, the State's coastal districts have been an important component of the program. A coastal district is either a municipality with all or part of its boundary within the coastal zone or a coastal resource service area (CRSA) in the unorganized borough. The distinction between these two types of districts involves their ability to conduct planning and apply land use controls. Municipalities are incorporated areas pursuant to Title 29, Alaska Statutes. These areas, which are either boroughs or cities, can exercise planning, platting, zoning, and land use regulation. Under the original ACMP, CRSAs were created in order to provide for the development of district plans for portions of the "unorganized borough," which includes much of rural areas, where no incorporated governments exist. These areas do not have the authority to develop traditional land use planning, platting and zoning controls. A coastal district participating in the ACMP has four main responsibilities: (1) develop a coastal management program for its area; (2) develop enforceable policies in its approved program for coastal development projects that the State uses in the consistency review process; (3) educate the members of its community about coastal management; and (4) implement its coastal management program at the local level. Municipal coastal districts can voluntarily choose to participate in the ACMP. Also governed by local ordinances, municipal coastal districts with planning powers may

conduct local consistency reviews for projects affecting their coastal zones.

Prior to the 2005 ACMP program changes, 33 coastal districts participated in the program to varying degrees, which meant they had district plans with their own enforceable policies that had to be considered in state permitting decisions. As part of the 2005 program changes, the State developed new guidance for local districts that want to participate in the ACMP. Previously, the districts were able to write district policies regarding a use or resource anywhere in their districts regardless of whether or how the subjected use or resource was addressed by another State or federal law. The 2005 ACMP regulations require that district enforceable policies: must relate to the uses and practices identified in the new ACMP regulations; may not address any matters regulated by DEC (i.e. air, land, and water); may not adopt, duplicate, repeat, restate, or incorporate by reference a State standard or other State or federal law; must be clear and concise as to the activities and persons affected by its requirements, and use precise, prescriptive and enforceable language.

Five of the 33 districts formally dropped out of the program when the new state standards and guidelines were implemented. At the time of the 312 evaluation, 14 of the remaining 28 districts had plans that were completed and adopted by the state (Aleutians West CRSA, City of Bethel, Bristol Bay Borough, City of Craig, Haines Borough, City of Hoonah, Matanuska-Susitna Borough, City of Nome, City of Pelican, City and Borough of Sitka, City of Skagway, City of Thorne Bay, City and Borough of Yakutat, and City of Valdez). Fourteen other districts' coastal management plans were in various stages of completion, including: Aleutians East Borough, the Municipality of Anchorage, Bering Straits CRSA, Bristol Bay CRSA, Cenaliulriit CRSA, City of Cordova, City and Borough of Juneau, Kenai Peninsula Borough, Ketchikan Gateway Borough, Kodiak Island Borough, Lake and Peninsula Borough, Northwest Arctic Borough, North Slope Borough, and City of Whittier. Five district plans have been/are in mediation due to disagreement between the district and the DNR on issues such as the designation of significant habitat areas and subsistence areas. The legislature's extended deadline for state approval of the district plans was September 1, 2007. At the time of these findings, three district plans are in mediation, one is in review with the ACMP, and the rest are either awaiting NOAA approval or local adoption.

Coastal Program staff have been working with the districts to develop plans that will be acceptable under the new state standards. Helping 28 districts with plan revisions and approval within the period granted by the State law has been a difficult task, due in part to staff vacancies and new standards and guidance that were being interpreted literally as they worked. The evaluation team considers the approval of these district plans to be an important accomplishment.

Accomplishment: The ACMP has worked diligently to get district plan amendments approved per the 2005 program changes. These plans are critical to coastal districts' participation and engagement in the Program.

The evaluation team heard a variety of opinions from coastal districts regarding the process to revise coastal district plans.

Some coastal districts accepted the program changes readily and were pleased with the technical assistance provided by the ACMP and the resulting approved plans. They commended the

dedication of ACMP staff and appreciated the guidance given.

Many of the districts interviewed by the team, however, expressed concern with the implementation of the revised ACMP, because they stated the new plan approval process was too stringent and limiting. The primary concerns expressed were the inability to craft meaningful local enforceable policies and the narrow interpretations and detailed requirements for designations through the new guidance. District representatives specifically mentioned insufficient technical assistance in plan development, having to submit numerous versions of their plans for approval, changing interpretations of the guidelines, and receiving what appeared to be inconsistent comments on land use designations and policies.

While districts could continue to use the state coastal policies in reviewing permits, most that provided comments for the evaluation found this less useful than applying their original district policies because they felt the new state standards were broad, vague, and limited in subject matter. They felt this contrasted to the new requirements for the district coastal plan policies, which are required to be “clear and concise...use precise, prescriptive and enforceable language.” An even greater concern expressed by districts was that the district policies could no longer cover air, land and water quality, since these subjects are solely addressed by DEC authorities. In general, the districts were discouraged that the scope of their policies had been reduced to only those policies derived from the new ACMP standards, and limited in many cases to designated areas.

Many districts also cited problems with the ability to receive DNR approval of special area designations, particularly important habitat areas and subsistence use. The most common reasons cited by DNR for denying area designations included insufficient data and mapping and that the state standards already sufficiently managed the resource regardless of district designation. Since enforceable policies related to important habitat and subsistence could only be written for designated areas, the ability to designate these areas is critical to coastal districts. According to the ACMP’s interpretation of the regulations, area designations required high standards for proof, mapping, and scientific information. The districts felt that the state did not provide the funding and technical assistance necessary in order to establish these designations and therefore should have been more lenient in its approval process. In addition, in most cases, even if areas were successfully designated, coastal districts were unable to adopt enforceable policies to cover them because of the constraint that district enforceable policies may not “adopt, duplicate, repeat, restate...a State standard or other State or federal law.”

As noted above, some districts (organized boroughs) also have Title 29 authority, which allows for local code or ordinances related to district land use planning. However, currently less than 50 of 170 incorporated communities exercise this planning process available for districts to have in addition to their ACMP coastal district plan.

An OCRM review of the revised plans that have been approved reveals that districts plans include a reduced number of local policies and that many of these policies apply to restricted, designated areas. For example, Juneau’s number of district enforceable policies was reduced from 93 to 5 (pending mediation of their wetland plan). Aleutians West went from 60 enforceable policies to 10. In some cases, original enforceable policies were arguably duplicative of existing state or federal laws or planning statements with limited enforceability. As mentioned previously, it is still

early in the implementation of the new ACMP and the amended district plans, so it is uncertain how the reduced number of enforceable policies will affect a district's ability to participate in the management of coastal uses and resources. However, OCRM believes that district involvement in the ACMP is valuable, and that it is important for DNR to encourage and facilitate their participation in project reviews.

DNR has stated it is working on a plan to restore relationships with districts, acknowledging that the process to implement the new ACMP has been difficult for everyone. DNR's position is that the limited amount of time provided for getting 28 district coastal management plans in place resulted in a less than robust public participation process, and that some of the standards and guidelines should be looked at for reinterpretation (as discussed previously with regard to the state-led ACMP evaluation). ACMP anticipates that providing better education and outreach to the districts (and federal and state agencies) will promote an increased understanding of ACMP requirements. If the State intends to undertake an education and outreach initiative, OCRM recommends conducting a survey of the districts and others who participate in the state permitting review process, seeking their opinions on ways to improve the district plan process.

Program Suggestion: OCRM encourages the ACMP to improve communication with coastal districts to rebuild relationships and support their participation in the Program. This will likely need to include a focused outreach strategy and coordination with a number of program partners.

OCRM also encourages DNR to seek accommodation of area designations and district policies where possible and to be open to renegotiating previously approved plans. OCRM recommends that DNR work to provide whatever technical resources it can identify (e.g., NOAA Coastal Services Center, Alaska Sea Grant, etc.) to assist districts in providing accurate maps and other technical/scientific/historic documentation for designating special areas.

Program Suggestion: OCRM encourages DNR to revisit the requirements for designated areas, particularly those relating to important habitat and subsistence use, and to provide technical assistance to districts that are interested in applying them.

4. Outreach and Communication

The ACMP has developed a variety of web-based tools to support efficient information transfer between Program partners. The ACMP website is the primary communication tool for use by the public and program partners. It was expanded and enhanced during this evaluation period to include items of interest such as coastal district information, planning tools, and consistency review information. Many partners commented on the value and navigability of the new website. ACMP has also converted to electronic archival document management, which allows the retrieval of 25 years of project documents via the internet. The ACMP was one of the first agencies in the State to do this. Currently, this information is primarily used by project review staff to facilitate records transfer between the Anchorage and Juneau offices, but the ACMP plans to augment the project review section of the website to make all public program review documents accessible to other program participants.

In order to provide partners and the public with comprehensive information on the amended ACMP, DNR has developed a Handbook of Statutes and Regulations for the Coastal Program. This handbook is a complete reference guide for ACMP participants, compiling relevant information and state and federal laws into one location. The Coastal Boundary Atlas of Alaska is another reference tool that was revised during this evaluation period. The Atlas provides information regarding the exact location of coastal zone and district boundaries and is highly requested by program partners. Hard copies of both are available at ACMP offices and DNR Public Information Centers that are located around the state. Electronic versions are available via the website or on CD-ROM by request. The electronic version of the Handbook is full-text searchable.

Accomplishment: The ACMP has developed and enhanced Program outreach tools during this evaluation period.

In addition to the development of outreach tools for information dissemination, staff have actively contributed to regional and statewide conferences, such as the Alaska Forum on the Environment and the Alaska Coastal Conference. Coastal program staff working on coastal plan amendments have also conducted district visits (e.g., to Bristol Bay Borough, Ketchikan Gateway Borough, and Kodiak Island Borough) to provide technical assistance on plan development, implementation, and consistency. The ACMP's goal is to visit one district a month. The opportunity to interact with partners through meetings such as these is extremely valuable to ACMP staff, as one-on-one interaction with coastal districts is needed to reengage the districts in the Program. OCRM encourages DNR to continue to support these district visits.

Now that the ACMP has developed a suite of communication tools, there needs to be an increased emphasis on improving, and in some cases regaining, district participation in the Coastal Program. Given the time constraints imposed by the State legislature, there was limited time for public input during the statute and regulation drafting process, and thus outreach during this time of change was limited. The evaluation team heard from a number of partners who felt disengaged, frustrated or worse, no longer interested in participating in the ACMP process. That said, partners did participate in OCRM's evaluation, and the timing appears to be good to revisit some ACMP changes and to rebuild interest, engagement, trust, and support from partners. Currently the ACMP envisions initiating stakeholder education and outreach measures following completion of all district plan approvals and revisions to the ABC List. However, OCRM suggests this process be initiated sooner to ensure continued public participation in the ACMP.

In addition, ACMP staff and program partners brainstormed additional outreach needs during the evaluation week. For example, while it is important to have all of the Coastal Program's implementation information in one place, i.e., the Handbook, it was noted that many program partners would benefit from shorter, more simple and concise reference materials. These could be a series of short one-pagers on complex aspects of the Program, keeping in mind that the State's re-evaluation of the ACMP may lead to further changes. Other outreach and technical assistance needs and opportunities (e.g., coastal district training, inter-agency education) will be discussed throughout this document.

5. Grants Management

OCRM awards the State of Alaska federal grant funds for the implementation and enhancement of the ACMP. OCRM requires the ACMP to submit semi-annual performance reports that provide information about accomplishments related to each financial assistance award.

During the past three grant cycles, DNR had some issues with grant management. At least part of this is due to staff turnover, some of which resulted from changes to the program. DNR requested extensions of up to two years for many of its grants in order to expend the funds and until recently, used the approach of “pass forward” funding, which meant charging new years’ costs on previous years’ funding. For example, the State made oral requests to pay for FY05 travel or 2005 fees with still unexpended FY04 funding. NOAA does not allow the co-mingling of grant years’ funds. Therefore, OCRM has not approved these types of requests when they have come to our attention. As of the site visit, DNR had responded to OCRM’s concern with these practices and has ceased to submit such requests. However, the State’s practice resulted in a large de-obligation of previous years’ unused grant funds.

Program Suggestion: DNR should work more closely with OCRM to discuss grant issues and expenditure of funds at least 90 days prior to grant extension request or closure of a grant. In addition, OCRM encourages DNR to work to obtain, train, and retain grant specialists.

B. PUBLIC ACCESS

Nearly all of Alaska’s 44,500 miles of shorelines are undeveloped, owned by the State, and managed by DNR’s Division of Mining, Land and Water. Legal access to the shoreline is thus not a major issue on a statewide basis. However, infrastructure to allow the public to use the shoreline is very limited. While legal access is provided via Alaska Statute 38.05.127, DNR does not construct roads or trails. Typically, issues with accessibility have been identified in particularly “urban” areas and subsistence areas. The new statewide standard addressing coastal access (11 AAC 112.220) states that districts and state agencies shall ensure that projects maintain and, where appropriate, increase public access to, from, and along coastal water.

Public access was ranked as medium priority in Alaska’s 2001 Section 309 Assessment and Strategy, so no strategy to address the issue was described. However, given the rapid growth occurring in Alaska’s urban areas since then, public access has become a more important issue. Therefore, when DNR revised their Section 309 Assessment in 2006, public access was identified as a high priority. The ACMP identified a number of strategies to address the issue, which include: provide training on development and implementation of public access enforceable policies for coastal districts and state agencies; fund projects to create an inventory and identifying areas of current public access, potential public access and areas in high demand of public access; evaluate all state owned property bordering coastal and tidal waters; and examine impacts from use and overuse on existing sites. Because of the changing prioritization in 2006, the ACMP’s progress in addressing public access issues will be examined more closely in the next program evaluation.

C. COASTAL HABITAT

1. State Habitat Standards

The ACMP describes the value of certain habitats within its coastal area, which are listed in the state habitat standards (11 ACC 112.300) and include: offshore areas; estuaries; wetlands; tideflats; rocky island and sea cliffs; barrier islands and lagoons; exposed high-energy coasts; rivers, streams, and lakes and the active floodplains and riparian management areas of those features; and important habitat. The latter “important habitat” can be designated by coastal districts or state agencies in order to be managed for the special productivity of the habitat. In addition, as part of the amendments to the ACMP, the State is placing more emphasis on other existing State resource agencies’ authorities regarding habitat management, most notably the Office of Habitat Management and Permitting (OHMP).

The evaluation team heard concern among program partners (state and federal agencies, coastal districts) and the public that the new habitat standards have hindered protection of natural resources. Federal agencies expressed concern with the changes to the substance of the habitat standards and felt that the diminished role for the districts would result in reduced protection for resources. One agency advocated for an “on the ground effects” study of the impact of the changes brought by the program changes, including whether the goals of the changes were being achieved, i.e., improved permit timing and streamlining government processing, along with continued protection of the resources. OHMP noted that certain standards of the ACMP remain unclear, such as the designation of important habitat, and believes that additional written clarification would be very helpful. DNR noted the difficulty in balancing the need to be objective and predictable to project applicants but also respectful and meaningful at the local level.

In addition, the evaluation team noted what appear to be challenges faced by coastal districts to designate “important habitat areas,” which are required for districts to write and employ district-specific enforceable policies regarding their management. There are currently very few areas that have been designated in new district plans. This may mean that the bar is set too high to achieve designation and/or insufficient data exists. Many districts have chosen not to designate important habitat areas because of these difficulties. Some districts said they do not have the funding or expertise to obtain and assess the scientific information necessary for designating these areas. OCRM encourages DNR to revisit the designation process, and increase technical assistance to districts that will help them to obtain the scientific information necessary for area designations (when lack of information or detailed maps is the reason given for denying designation).

Since the new standards have only been applied for a short while, it was difficult to collect information regarding their effectiveness in avoiding and/or minimizing negative impacts to coastal resources. In order to demonstrate the effectiveness of the standards in protecting coastal habitat, OCRM encourages the ACMP to consider ways to monitor how the standards are implemented through permitted projects. For example, the Program might choose to monitor a sub-sample of projects per year (a set percent or number) through periodic follow-up during staff visits to coastal districts or in cooperation with DNR compliance/enforcement staff. Information collected through the Unified Permit project (to be discussed later in this document) could also be used to evaluate how the standards influence coastal resource management. DNR’s ability to

demonstrate the standards' impact/effectiveness is not only important for validating coastal management decisions, but also valuable for the upcoming re-evaluation of the ACMP to inform any changes to Program enforceable policies. In addition, this information could feed into the Coastal Zone Management Act Performance Measurement System coastal habitat indicator "number of acres of key coastal habitats lost or gained due to activities subject to core CZM regulatory (including mitigation) programs," which will all coastal programs will be required to report on by 2010. The ACMP has also identified cumulative and secondary impacts to coastal resources as a high priority in its 2006 Section 309 Assessment and Strategy and outlined a number of thoughtful strategies to address them. OCRM supports and encourages DNR in these efforts as well.

Program Suggestion: OCRM encourages DNR to identify and employ a method to monitor how the state habitat standards are being implemented through permit decisions in order to demonstrate the efficacy of the standards in protecting coastal resources.

2. Coastal and Estuarine Land Conservation Program

Congress established the Coastal and Estuarine Land Conservation Program (CELCP) in 2002 to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic values. The program provides state and local governments with matching funds to purchase significant coastal and estuarine lands, or conservation easements on such lands, from willing sellers. Lands or conservation easements acquired with CELCP funds are protected in perpetuity so that they may be enjoyed by future generations.

The CELCP guidelines outline the criteria and process for states to nominate land conservation projects to a national competitive process. The program is coordinated at the state level through each state's CELCP lead within the state's lead coastal management agency. According to the CELCP guidelines, a state must have an approved CELCP plan in order to compete for funding. During the evaluation period, the ACMP coordinated with the Kachemak Bay NERR to develop the statewide CELCP plan. Currently, the plan is awaiting review in DNR.

Program Suggestion: OCRM encourages the ACMP to submit its CELCP plan for review to DNR management and then to NOAA.

D. WATER QUALITY

1. Air, Land, and Water Standards

Components of the approved ACMP that address the protection of air, land, and water quality, are prescribed by DEC's legal authorities, and while incorporated into the Program, are administered by DEC exclusively. The "DEC Carve Out" aspect of the amended ACMP has caused, and is still causing, confusion and concern among program partners (state and federal agencies and coastal districts) and the public. As one state employee said, it has been interesting and challenging to find the bright line between DEC and DNR responsibilities in order to eliminate duplication of responsibilities.

The evaluation team heard mixed reports about how the coordination between DNR and DEC is working. It seems as though some DEC staff still work with the ACMP on consistency determinations to get a more comprehensive view of the project. However, if DEC is the only state agency involved in the permitting of a project, and no federal permit is required, DEC staff are not required to consult with the ACMP. The team heard from various partners that their participation in the process, even as a commenter, is limited even in cases where multiple agencies are included in the ACMP review. For example, one department values communication with DEC on projects, but no longer benefits from that since DEC generally grants permits before consistency reviews are completed.

Since air, land, and water protection is now the sole responsibility of DEC, districts are no longer able to write enforceable policies in their coastal plans relating to these regulations. Coastal districts noted that their involvement in permit reviews in these cases is now equivalent to that of a member of the public, who may provide comments, but no additional policy perspective. The evaluation team found that the DEC Carve Out continues to be one of the least understood aspects of the revised ACMP.

The effectiveness of this arrangement should be given serious consideration during the State-led program evaluation. In the interim, given the continued confusion about the DEC's role in the ACMP, OCRM encourages DNR to work with DEC to develop simple documents for participants that illustrate when and how the DEC permitting process coordinates with ACMP's consistency process. In addition, the ACMP should clarify how district participation is provided during DEC project reviews.

Program Suggestion: OCRM encourages DNR to evaluate the effectiveness of retaining the DEC Carve Out.

2. Coastal Nonpoint Pollution Control Program

The Coastal Nonpoint Pollution Control Program (CNPCP), created by §6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), is jointly administered by NOAA and the Environmental Protection Agency (EPA). Two of the CNPCP's key purposes are to strengthen the links between federal and state coastal zone management and water quality programs, and to enhance state and local efforts to manage land use activities that degrade coastal waters. NOAA and EPA must approve each state's coastal nonpoint program. Alaska's Coastal Nonpoint Program was conditionally approved in 1998.

Over the past several years, Alaska has provided two comprehensive submittals describing how it is addressing its remaining conditions (spring 2003 and fall 2005), as well as follow-up correspondence after the ACMP program changes. OCRM has issued two interim decision documents in response to the submittals (2003 and 2007). In summary, Alaska has fully met 19 out of the 22 initial conditions placed on the program. During this evaluation period, the State satisfied the forestry streamside management areas and monitoring conditions. DEC has the lead on the remaining conditions: new development, onsite sewage disposal system inspection, and roads, highways and bridges. In order to address the new development condition, DEC hired a

contractor to develop a stormwater Best Management Practices manual. Since the site visit, the State submitted, and NOAA and EPA provided comments on, an outline of the manual which is expected to be completed in summer 2008. The State has also made progress in meeting the onsite sewage disposal system inspection and roads, highways and bridges conditions, although additional work is still needed for full approval.

OCRM commends Alaska on its progress towards achieving full approval of its Coastal Nonpoint Program, having addressed several outstanding conditions during this evaluation period. OCRM encourages the State to continue to work with NOAA and EPA to address the remaining conditions to have a fully approved Coastal Nonpoint Program.

E. COASTAL HAZARDS

Coastal hazards in Alaska result from high seismic activity (e.g., earthquake and tsunami), flooding, erosion (from coastal storms, sea level rise, thawing permafrost), and windstorms. Most coastal Alaskan communities are at high risk of damage from at least one, and in most cases several, types of natural hazards. The evaluation team saw first hand the effects of coastal erosion on a community in Bristol Bay Borough and discussed the challenges inherent in addressing them with local district representatives. Coastal erosion can be significant and rapid, with some communities experiencing loss rates of 10-20 feet annually. Some villages along the coasts are considering relocation due to severe erosion problems. The village of Newtok is actively being relocated. Coastal hazards remain a high priority area in Alaska's 2006 Section 309 Assessment and Strategy.

The new statewide standards for coastal hazards (11 AAC 112.210) establish the designation of natural hazards as a planning function and set the standard to which a proposed project must comply. The standard applies throughout the coastal area in those natural hazard areas designated by DNR or a coastal district. Districts may develop enforceable policies related to natural hazards and may apply those policies to activities occurring in or affecting an area designated in their district plan as a natural hazard area. This is the primary mechanism for the ACMP to address and mitigate threats from coastal hazards.

Mapping natural hazards is an essential component of this strategy, given that coastal districts need to clearly identify and designate those areas where enforceable policies apply. There are, however, many challenges to this kind of comprehensive mapping, including: the length of coastline in the State; the scarcity of baseline data to even begin to define boundaries; variability in type and severity of hazard within an area; etc. Overall, there is an important need to improve the State's hazard mapping capacity. Improving the quality, coverage and availability of mapping is one of the ACMP's strategies to addressing coastal hazards as described in their Section 309 Assessment. In addition, the Coastal Program identified the need to support coastal districts with their efforts to designate hazard areas and write enforceable policies to regulate development within those areas. OCRM encourages the ACMP to continue to work with state and federal agencies and coastal districts to address these information and mapping needs.

F. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

1. Subsistence Use Standards

Subsistence is an important use of coastal resources in Alaska. In the FEIS for the ACMP amendments, NOAA expressed concern regarding State and local use of the new ACMP statewide subsistence standards and the process to designate subsistence use areas that would be required of the districts. The evaluation team gathered information regarding the implementation of the standards and the ability of districts to designate areas and write enforceable policies specific to local subsistence issues. The evaluation team also met with Alaska Native tribal representatives during the site visit to Alaska to further discuss subsistence use issues. In addition, OCRM received many written comments regarding subsistence use, primarily from coastal districts, as a part of the evaluation. These letters expressed concern about the designation of subsistence areas and the potential inability to write enforceable policies for subsistence use. There was also concern over the inability to write mitigation policies regarding subsistence areas, as the subsistence standard's language is to "avoid or minimize impacts to subsistence uses of coastal resources" (11 AAC 112.260). DNR interprets this to mean that subsistence is so important to Alaska and its people, that avoidance or minimization are the only options, and if impacts cannot be avoided or minimized then the development will not be found consistent with the ACMP (Program Description of the Alaska Coastal Management Program, Handbook of Statutes and Regulations of the ACMP).

OCRM found that thus far there have been few opportunities to test the efficacy of the ACMP's subsistence standards. The evaluation team also found that there are coastal districts that have not been able to designate "subsistence use areas" as required in order for them to use the subsistence standards, and to write and employ district-specific enforceable policies to address their cultures and/or lifestyle. Therefore, most districts are unable to cite the statewide standards when commenting on permits. The evaluation team did hear about a permit case (the Shell Offshore Inc. Oil and Gas Exploration Project) where the standards have been used by the state and where the state defined the "subsistence use area" in question. In this case, however, the coastal district whose subsistence resources were in question contends that the areas designated were insufficient for the protection of the resource.

OCRM strongly encourages the State to work with coastal districts on designating subsistence resource areas. OCRM acknowledges there is the "safety net" of the State's ability to designate areas, but the opportunity for districts to do so is, in many areas, essential to the districts' engagement/participation in the ACMP. In addition, a coastal district may have relevant "traditional" knowledge regarding subsistence use in the area. However, since the new subsistence standards have only been applied for a short while, it was difficult to collect information regarding their use in protecting subsistence resources. In order to demonstrate the effectiveness of the standards, the OCRM encourages the ACMP to identify ways to monitor how they are implemented through permitted projects. This could be done in coordination with a similar effort for the habitat standards.

Program Suggestion: OCRM encourages DNR to revisit the designation process for subsistence use areas and to provide additional support and technical assistance to districts interested in designating such areas.

2. Coastal Impact Assistance Program

The fiscal year 2001 appropriations act for the Departments of Commerce, Justice, and State created the Coastal Impact Assistance Program (CIAP) by amending the Outer Continental Shelf Lands Act. CIAP recognizes that impacts from Outer Continental Shelf (OCS) oil and gas activities fall disproportionately on the coastal states and localities nearest to where the activities occur, and where the associated facilities are located. The original CIAP legislation appropriated funding to the Secretary of Commerce who disbursed it to eligible states, of which Alaska was one, and eligible coastal political subdivisions within those states, and required the states to submit Coastal Impact Assistance Plans detailing how the funds will be expended.

Alaska received approximately \$12 million in 2001 CIAP funding, of which \$3.1 million went towards the CIAP Competitive Grant Program for eligible coastal districts. The Alaska Department of Commerce, Community and Economic Development (DCCED) administered the Grant Program through a reimbursable services agreement with DNR (who received the federal funding from NOAA). This Grant Program awarded 56 grants for projects in topical areas including: habitat restoration; education and community outreach; coastal access improvements; management tools; infrastructure and public works; and erosion control and shoreline stabilization. Fifty-five of the original 56 awards were successfully completed by 2006, and the DCCED produced a comprehensive end-of-year report describing the projects and their impacts. CIAP has been a valuable source of funding for coastal districts.

The Energy Policy Act of 2005 Section 384 established a new Coastal Impact Assistance Program to be implemented by the United States Department of Interior, Minerals Management Service. The new CIAP will provide up to \$250 million to oil and/or gas producing states and coastal political subdivisions for each of the fiscal years 2007 through 2010, with funds allocated based upon formulas prescribed by the Act. States have to submit new coastal impact assistance plans, which the Secretary of the Interior must approve before funds can be disbursed. Under CIAP 2005, only eight political subdivisions in the State will be eligible for assistance. Alaska's new CIAP plan is currently available for public review.

Accomplishment: DNR's successful involvement in the 2001 Coastal Impact Assistance Program has provided valuable resources to coastal communities and has addressed impacts from oil and gas facilities through 55 projects.

G. GOVERNMENT COORDINATION AND DECISION-MAKING

1. Local Government Capacity

The ACMP partners with the DCCED to provide technical assistance to the coastal districts. NOAA funds are passed through to DCCED, which administers the grants to coastal districts for

planning and technical assistance. Districts match NOAA funds according to their means: 50% for municipalities, 20% for Coastal Resource Service Areas.

The evaluation team found that that DCCED staff are knowledgeable and responsive to coastal district needs and that DNR's partnership with DCCED is an important part of the ACMP. DNR also has dedicated coastal program staff who work closely with the districts. They understand district needs, particularly as they relate to the plan amendment process. That said, the evaluation team also noted that there is the potential, and need, for greater communication and coordination between DNR and DCCED staff. For instance, the evaluation team discussed with the ACMP a number of technical assistance needs of the districts that DCCED could potentially assist with, including designated area workshops and additional training on how to comment successfully on project reviews. One opportunity to increase dialogue between the two departments is when discussing pass-through grant budgets. There currently seems to be little guidance or requirements from the ACMP for funds passed through to the DCCED. The ACMP could use this regular dialogue to strategize on coastal district outreach and technical assistance needs.

Program Suggestion: OCRM encourages staff at DNR and DCCED to consider how to coordinate more strategically to provide education and technical assistance, as discussed elsewhere in this document, to coastal districts.

2. Federal Consistency

The CZMA's federal consistency provision (§307) is a primary incentive for states to participate in the national coastal zone management program. It is also a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The federal consistency provision requires that federal agency activities that have reasonably foreseeable effects on any resource in the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program and that non-federal applicants for federal licenses or permits and that state agency and local government applications for federal funding be fully consistent. Federal consistency reviews are the responsibility of the lead state agency that implements or coordinates the state's federally-approved coastal management program. In Alaska, DNR exercises the state's authority to review most federal activities in the coastal zone to ensure that they are consistent with the ACMP's enforceable policies.

The ACMP enhanced its consistency process by instituting a requirement of non-federal applicants to complete initial consistency determinations using a revised Coastal Project Questionnaire (CPQ) and by making it available online for electronic completion. The CPQ is a diagnostic tool to help applicants determine which permits are required for projects in the coastal zone that are subject to a consistency review. The ACMP is also developing an interactive online version as a pilot for the Unified Permit project module (discussed below) that will be used with online permit applications. This new version will also contain a GIS (Mapper) aspect where applicants can draw projects on a topographical map. Drawings can then be analyzed against existing spatial data in the DNR database and the results of the analysis used to pre-populate questions and help identify required permits for the projects. The evaluation team did hear from some program partners that the current

CPQ is too long and in need of update. The ACMP acknowledges this and plans to revise it as the interactive online version is developed.

Accomplishment: The online availability of the Coastal Project Questionnaire has enhanced its use for both applicants and project review staff.

While there have been improvements made to the ACMP's consistency program during this review period, the evaluation team also noted remaining challenges. Most evident to the evaluation team is a lack of communication with program partners, including state and federal agencies, coastal districts, and the public. There is also limited district participation, due in part to the new requirements that all comments must cite a district enforceable policy and/or state standard. The evaluation team noted that there is confusion on the part of the districts regarding their ability to use state standards and who has due deference in reviews. Some coastal districts also question the value of their involvement in the process.

The evaluation team received substantial feedback from the ACMP's state and federal agency partners regarding the implementation of the amended consistency process. Some partners noted improvements in efficiency, while others voiced concern with the new standards and reduced role for districts. For example, two federal agencies felt the changes have improved the ACMP by removing myriads of district coastal policies that were unenforceable over federal land. (For clarification regarding application of federal consistency to federal lands and the ACMP, please see Appendix F.) Another appreciated the ACMP's website updates, which help partners track changes to the district and state policies. Industry noted that execution of the permitting process is now smoother and more predictable.

The evaluation team also, however, heard confusion among federal and state agencies regarding the new consistency process. Much of the confusion was attributed to the newness of much of the ACMP staff, and to what appeared to be less of a coordinating role for the ACMP. Some federal agencies noted unpredictability in responses to questions regarding federal consistency requirements and the "DEC Carve Out" provisions, and uncertainty about how different agencies' timelines mesh with the ACMP's consistency review timelines. State agencies were also concerned with primacy over interpretation of policies at the state or district level when reviewing permits.

The ACMP has historically placed emphasis upon coordination between state, local, national and private interests in the management of coastal resources. The Program's consistency process in particular involves communication among the project review team, the applicant, the coastal districts, state and federal agencies, and the public. While DNR has conducted a number of trainings for various partners on consistency over the last few years, both ACMP staff and the evaluation team anticipate that more comprehensive trainings (e.g., on the standards, the process, the participants, etc.) would be of great value. In addition, OCRM encourages the ACMP to develop clear and concise guidance documents and make them available on the website where participants can readily reference them. The evaluation team also heard conflicting responses about the notice requirements for different types of projects and different permitting agencies. As the coordinating agency for consistency reviews, DNR should clarify notice requirements and confirm that they are being met. OCRM recommends that DNR consider using NOAA resources

to help with these trainings.

Program Suggestion: OCRM encourages the ACMP to place federal consistency information on its web site to more clearly define its role as the coordinating entity for consistency reviews so that partners know what to expect. In so doing, the ACMP should not duplicate NOAA's general information on federal consistency contained on OCRM's web site and in NOAA regulations, but should describe the specific application of federal consistency to ACMP processes.

The ACMP has been working within DNR to make all project review information available online for the public, coastal districts, and federal agencies. This is being accomplished in partnership with DNR's Division of Mining, Land and Water (MLW) and Land Records Information Section (LRIS) through the Unified Permit (UP) project. The goal of the UP project is to update and add functionality to the existing information system that MLR uses, and to input ACMP's program review files and Coastal District plans into the system. The technical work is being done by LRIS and outside contractors using a Land Administration System (LAS) Case Type. The LAS Case Type keeps track of electronic documentation so that everything in a given geographic area can be seen graphically. The result will be that all ACMP project review information will reside in the same environment as that for MLR reviews of state permits, in order to facilitate coordination within DNR. Ultimately, it is anticipated that the online CPQ will be linked to the system so that fields can be pre-populated using stored data, and applicants would have the ability to draw project information on accurate GIS-based maps. The ACMP is also working on the electronic document management system that will support the UP project. This aspect of the project will allow for full text search capabilities of project review case files by review participants via the internet.

The UP project organizes and centralizes ACMP project review information by leveraging the capacity of an existing system and of DNR experience. The benefits to the ACMP include having a visual geographical context for ACMP project review files, which include designated areas. With all of this information available on the State's GIS database, the Unified Permit system could also be an effective tool to facilitate ACMP's tracking of cumulative impacts. The use of the UP project to provide information to support cumulative and secondary impacts identification was discussed in the ACMP's 2006 Section 309 Assessment and Strategy. The information available via the UP project could assist ACMP partners in developing a strategy for considering (avoiding, minimizing and/or mitigating) such impacts in project review. OCRM supports and encourages DNR in these efforts.

Accomplishment: The ACMP has proactively worked to include coastal project review information in the Unified Permit system. This system will provide a valuable resource for ACMP staff and program partners. OCRM encourages the ACMP to consider this an opportunity to begin to look at the cumulative and secondary impacts of ACMP permitted projects.

3. ABC List Revision

Under the ACMP, the consistency review process applies to activities that are subject to a state resource agency or federal agency permit, lease, authorization, approval or certification that is

located within the State's coastal area (including the outer continental shelf), and to federal agency activities that would affect any land or water uses or natural resources of the state's coastal zone. The "ABC List" identifies those state resource agencies that authorize projects or activities that are subject to the ACMP, and provides a streamlined approach to consistency reviews for certain routine projects in the coastal zone. The "A" list activities have been determined to have a "de minimis" impact on coastal uses or resources and are categorically consistent with the ACMP. The "B" list activities have impacts on coastal uses or resources and are generally consistent with the ACMP by the application of standard alternative measures. The "C" list is an inclusive list of state resource agency authorizations that authorize activities that may have a reasonable foreseeable direct or indirect effect on coastal uses or resources. If an activity in the coastal zone requires a state resource agency authorization listed on the C list, the activity is subject to an individual consistency review unless it is otherwise excluded by certain state provisions.

The last comprehensive revision and update of the ABC List was in 1995. For the past several grant years, OCRM has been providing Section 306 and 309 funds to the ACMP to update its ABC List. This revision will overhaul the entirety of the ABC List, expanding the list to "be as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review under this section" (46.40.096[m]), and to make the ABC List more user friendly and electronically available.

The ABC List revision was raised by many of the state agencies and private interest groups during the evaluation. The majority of state agencies and industry groups are anxious to see the changes adopted and feel that the list should be broader with less complicated forms for the "A" and "B" activities. Some state and federal agencies, however, voiced concern that the changes to the ABC List need to take into consideration cumulative impacts, since increasing the number of "de minimus" projects without consideration of the number of said projects in an area could significantly impact coastal resources. OCRM agrees that cumulative impacts should be carefully considered along with the likely magnitude of project impacts and encourages DNR to take into account these concerns as it completes the revision. DNR's timeline for completing the changes to the ABC List is currently in 2008, following completion of adoption of the district plans.

Program Suggestion: OCRM strongly encourages DNR to complete the ABC List revision, in a manner that includes consideration of cumulative impacts.

4. Partnerships

Many partners noted the coordination role of ACMP as valuable, but with the changes during this evaluation period, maintaining partnerships has been challenging. Given the new responsibilities of the ACMP, the opportunities for enhancing the program that have been discussed, and the reality of funding limitations, the ACMP should work to strengthen existing and develop new partnerships to meet Coastal Program goals. This will be important for public outreach and technical assistance for coastal districts. A strategic approach to such collaborative work would allow DNR to leverage NOAA funds to engage partners, and would help to maximize the impact of efforts.

For example, OCRM encourages the ACMP and the DCCED to further develop their relationships with the Kachemak Bay NERR. One of the primary goals of the NERR System is to help address priority coastal management issues through scientific research, education and stewardship activities conducted by reserves. The evaluation team noted that partnerships with Alaska Sea Grant, the NOAA Coastal Services Center and the University of Alaska could be strengthened. Again, these partnerships can help fulfill the needs of ACMP in training, education, and rebuilding relationships with local districts. For example, Alaska Sea Grant could fund research that helps local districts with area designations. OCRM encourages DNR to further develop strategic partnerships to help accomplish ACMP goals.

5. State-led Re-Evaluation of the ACMP

During the site visit, the State discussed plans to conduct its own comprehensive re-evaluation of the amended ACMP's implementation in the near future. Since the site visit, the State has formally announced its intent to re-evaluate the ACMP program changes in a letter to ACMP participants dated February 22, 2008. The proposed schedule for the re-evaluation commences in July, and OCRM believes it is quite ambitious. DNR anticipates that it will finalize the proposed statutory revisions in December of 2008 for inclusion in a bill to be introduced in the state legislature in January 2009. OCRM believes that this formal self-evaluation will be a useful opportunity for the program to identify areas for enhancement, and supports the ACMP in this endeavor. OCRM is, however, concerned about the narrow timeframe between the evaluation and proposing legislation.

The ACMP plans to establish an evaluation framework with input from program partners in order to conduct a comprehensive and open review. The ACMP should consider formally engaging its Working Group in this process. Since NOAA funds will be used for this re-evaluation, OCRM should be included early in the planning to help define scope and substance. Issues that OCRM will likely be interested to see addressed include (but are not limited to): coastal district and public participation in the program; the DEC Carve Out; the ability to designate important habitat and subsistence use areas; and what the impacts to these resources are under the new habitat and subsistence standards.

OCRM encourages DNR to conduct an open, public process to re-evaluate the changes to the ACMP and recommend improvements. When informed of DNR's intent during the site visit, many program partners welcomed the opportunity to participate in the evaluation.

Program Suggestion: OCRM supports and encourages DNR in their efforts to re-evaluate the implementation of the amended ACMP. This State-led re-evaluation should engage program participants including state and federal agencies, coastal districts, industry, and the public. OCRM suggests that DNR reconsider whether the proposed time frame for the State's evaluation should be increased to accommodate the issues to be covered and input by ACMP partners.

V. CONCLUSION

For the reasons stated herein, I find that the State of Alaska is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved ACMP.

The ACMP has made notable progress in the following areas: initial implementation of the amended Program, district plan approval, and outreach tool development.

These evaluation findings also contain thirteen recommendations: one Necessary Action that is mandatory and twelve Program Suggestions. The state must address the Necessary Action by the date indicated. The Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Section VI.

This is a programmatic evaluation of the ACMP which may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

/signed/ David M. Kennedy
David M. Kennedy
Director, Office of Ocean and Coastal
Resource Management

6-12-08
Date

VI. APPENDICES

APPENDIX A: SUMMARY OF ACCOMPLISHMENTS AND RECOMMENDATIONS

Accomplishments

| Issue Area | Accomplishment |
|-----------------------------------|---|
| Organization and Administration | OCRM recognizes the effort and dedication of ACMP staff during the revision and implementation of the revised Coastal Program, and commends their contribution to maintaining a federally-approved Program. |
| Coastal District Participation | The ACMP has worked diligently to get district plan amendments approved per the 2005 program changes. These plans are critical to coastal districts' participation and engagement in the Program. |
| Outreach and Communication | The ACMP has developed and enhanced Program outreach tools during this evaluation period. |
| Coastal Impact Assistance Program | DNR's successful involvement in the 2001 Coastal Impact Assistance Program has provided valuable resources to coastal communities and has addressed impacts from oil and gas facilities through 55 projects. |
| Federal Consistency | The online availability of the Coastal Project Questionnaire has enhanced its use for both applicants and project review staff. |
| Unified Permit System | The ACMP has proactively worked to include coastal project review information in the Unified Permit system. This system will provide a valuable resource for ACMP staff and program partners. OCRM encourages the ACMP to consider this an opportunity to begin to look at the cumulative and secondary impacts of ACMP permitted projects. |

Recommendations

Recommendations are in the form of Necessary Actions (NA) or Program Suggestions (PS).

| Issue Area | Recommendation |
|--------------------------------|--|
| State Agency Working Group | PS: DNR should consider reinstating more frequent meetings of the ACMP Working Group. |
| Inter-agency Coordination | NA: DNR must provide OCRM with a proposed plan of action for potential revisions to the ACMP, and for clarifying Program rules, procedures, and participant roles following the DNR-initiated re-evaluation process. This must include: <ul style="list-style-type: none"> 1) by September 30, 2008, a general summary of findings from the re-evaluation process and anticipated impacts to ACMP implementation (e.g. new legislation, regulation revisions, education, etc.); 2) by April 30, 2009, an outline of and schedule for changes to the ACMP, including regulation revisions, partner education and outreach, and if applicable, a timeline for program change submission to OCRM. |
| Coastal District Participation | PS: OCRM encourages the ACMP to improve communication with coastal districts to rebuild relationships and support their participation in the Program. This will likely need to include a focused outreach strategy and coordination with a number of program partners. |

| | |
|-------------------------------------|--|
| Coastal District Participation | PS: OCRM encourages DNR to revisit the requirements for special area designations, particularly those relating to important habitat and subsistence use, and to provide technical assistance to districts that are interested in applying them. |
| Grants Management | PS: DNR should work more closely with OCRM to discuss grant issues and expenditure of funds at least 90 days prior to grant extension request or closure of a grant. In addition, OCRM encourages DNR to work to obtain, train, and retain grant specialists. |
| State Habitat Standards | PS: OCRM encourages DNR to identify and employ a method to monitor how the state habitat standards are being implemented through permit decisions in order to demonstrate the efficacy of the standards in protecting coastal resources. |
| CECLP | PS: OCRM encourages the ACMP to submit its CELCP plan for review to DNR management and then to NOAA. |
| Air, Water, and Land Standards | PS: OCRM encourages DNR to evaluate the effectiveness of retaining the DEC Carve Out. |
| Subsistence Use Standards | PS: OCRM encourages DNR to revisit the designation process for subsistence use areas and to provide additional support and technical assistance to districts interested in designating such areas. |
| Local Government Capacity | PS: OCRM encourages staff at DNR and DCCED to consider how to coordinate more strategically to provide education and technical assistance, as discussed elsewhere in this document, to coastal districts. |
| Federal Consistency | PS: OCRM encourages the ACMP to place federal consistency information on its web site to more clearly define its role as the coordinating entity for consistency reviews so that partners know what to expect. In so doing, the ACMP should not duplicate NOAA's general information on federal consistency contained on OCRM's web site and in NOAA regulations, but should describe the specific application of federal consistency to ACMP processes. |
| ABC List Revision | PS: OCRM strongly encourages DNR to complete the ABC List revision, in a manner that includes consideration of cumulative impacts. |
| State-led Re-Evaluation of the ACMP | PS: OCRM supports and encourages DNR in their efforts to re-evaluate the implementation of the amended ACMP. This State-led re-evaluation should engage program participants including state and federal agencies, coastal districts, industry, and the public. OCRM suggests that DNR reconsider whether the proposed time frame for the State's evaluation should be increased to accommodate the issues to be covered and input by ACMP partners. |

APPENDIX B. ACMP'S RESPONSE TO 2004 EVALUATION FINDINGS

Program Suggestion: The changes to the implementation of the ACMP resulting from House Bill 191 need to be addressed in the next evaluation of the ACMP to assure compliance with the CZMA and its implementing regulations. In the interim, there needs to be ongoing discussion between OCRM and the State regarding substantive and procedural changes to the ACMP. Public input into this process is encouraged at appropriate times in the development of the new ACMP.

ACMP Response: The upcoming re-evaluation will include a review of the changes to the implementation of the ACMP resulting from HB 191.

During the time when the new regulations were being written, there were ongoing discussions between OCRM and the State. Teleconferences were held with representatives from both OCRM and the ACMP to discuss the draft regulations. The ACMP wrote a complete Program Description of the entire program including the changes to the program. This Program Description went through an Environmental Impact Statement assessment and was eventually approved by OCRM.

Public input was also encouraged during the 30 day public review period for the new regulations. There was also a public review period during the Environmental Impact Statement process. In addition, the ACMP met informally with coastal district and other user groups to discuss the new regulations and their impact on district plans and the consistency review process.

APPENDIX C. PERSONS AND INSTITUTIONS CONTACTED

Alaska Coastal Management Program

| Name | Position |
|-------------------|---|
| Randy Bates | currently Director, DCOM (formerly Deputy Director, OPMP) |
| Kim Kruse | currently Deputy Director of DCOM (formerly Natural Resource Manager, OPMP) |
| Gina Shirey-Potts | Natural Resource Manager |
| Ben Greene | Natural Resource Manager |
| Tom Atkinson | Natural Resource Manager |
| Christine Ballard | Project Review Assistant |
| Jim Renkert | Project Review Coordinator |
| Alexis Finn | Project Review Coordinator |
| Melinda O'Donnell | Project Review Coordinator |
| Nina Brudie | Project Review Coordinator |
| Sylvia Kreel | Resource Specialist |
| Sarai Timothy | Publications Specialist |
| David Gann | Resource Specialist |
| Michele Powdrill | Resource Specialist |
| Erin Allee | Project Review Specialist |
| Mandy Schramm | Publications Specialist |
| Sadie Wright | Project Review Specialist |

Alaska Department of Natural Resources

| Name | Office |
|---------------------|---|
| Marty Rutherford | Deputy Commissioner |
| Ed Fogels | Office of Project Management and Permitting |
| Kerry Howard | Office of Habitat Management and Permitting |
| Susan Chihuly | Office of Habitat Management and Permitting |
| Virginia Litchfield | Office of Habitat Management and Permitting |
| Lee McKinley | Office of Habitat Management and Permitting |
| Pam Russell | Division of Parks and Outdoor Recreation |
| Mike Sidle | Division of Parks and Outdoor Recreation |
| Barbara Wild | Division of Parks and Outdoor Recreation |
| Roselynn Smith | Division of Mining, Land and Water |
| Richard Thompson | Division of Mining, Land and Water |
| Kevin Banks | Division of Oil and Gas |
| Bruce Anders | Division of Oil and Gas |
| Rod Combellick | Division of Geological and Geophysical Services |

State Agencies

| Name | Department |
|---------------|--|
| Sally Cox | Department of Commerce, Community and Economic Development |
| Mark Fink | Department of Fish and Game |
| Peter McKay | Department of Commerce, Community and Economic Development |
| Gary Mendivil | Department of Environmental Conservation |
| Fran Roche | Department of Environmental Conservation |
| Ellen Simpson | Department of Fish and Game |
| Ed Weiss | Department of Fish and Game |

Coastal Districts

| Name | District |
|-------------------|---|
| Richard Abboud | City of Bethel |
| Teri Camery | City and Borough of Juneau |
| John Czarnezki | Kenai Peninsula Borough |
| Andrew DeValpine | Bristol Bay CRSA |
| Gordon Brower | North Slope Borough |
| Jane Gabler | Kenai Peninsula Borough |
| Karol Kolehmainen | Aleutians West CRSA |
| Yvonne Kopy | Bristol Bay Borough |
| John Mohorcich | Kenai Peninsula Borough |
| Marv Smith | Lake and Peninsula Borough |
| Gary Williams | Kenai Peninsula Borough |
| Tom Lohman | North Slope Borough |
| Tony Vaska | City of Bethel |
| Glenn Gray | Consultant representing North Slope Borough |
| Brian Templin | City of Craig |
| Leslie Real | Ketchikan Gateway Borough |
| Jim Goossens | City of Cordova |
| Jim Dory | City of Nome |
| Tina Anderson | Aleutians East Borough |
| Marj Harris | City of Skagway |
| Kim Franklin | Northwest Arctic Borough |
| Marlene Campbell | City and Borough of Sitka |
| Susan Lee | Matanuska-Susitna Borough |
| Duane Dvorak | Kodiak Island Borough |

Kachemak Bay National Estuarine Research Reserve

| Name | Position |
|------------------|------------------------|
| Terry Thompson | Education Coordinator |
| Daniel Doolittle | Research Coordinator |
| Amy Alderfer | Acting Program Manager |

Federal Agencies

| Name | Agency |
|------------------|--|
| Lynnda Kahn | US Fish and Wildlife Service |
| Richard Enriquez | US Fish and Wildlife Service |
| Susan Walker | NOAA National Marine Fisheries Service |
| Jeanne Hanson | NOAA National Marine Fisheries Service |
| Maureen McCrea | Army Corps of Engineers |
| Forrest McDaniel | Army Corps of Engineers |
| Phil North | Environmental Protection Agency |
| Heather Dean | Environmental Protection Agency |
| Cindi Godsey | Environmental Protection Agency |
| Jim Lima | Minerals Management Service |
| Glen Yankus | National Park Service |

Non-Governmental and Tribal Organizations

| Name | Organization |
|-------------------|------------------------------|
| Janet Yaeger | Kenai Watershed Forum |
| Bob Shavelson | Cook InletKeeper |
| Trish Rolfe | Sierra Club |
| Pat Lavin | National Wildlife Federation |
| Michele Metz | Sealaska |
| Jennifer Gibbons | Prince William Soundkeeper |
| Karla Dutton | Defenders of Wildlife |
| Steve Sumida | Alaska Intertribal Council |
| David Gillila Sr. | City of Bethel |
| Mike Williams | City of Bethel |

Industry Participants

| Name | Organization |
|-------------------|--------------------------------|
| Sami Glascott | Alaska Oil and Gas Association |
| Kara Moriarty | Alaska Oil and Gas Association |
| Owen Graham | Alaska Forest Association |
| Steve Borell | Alaska Miners' Association |
| Jason Brune | Resource Development Council |
| Tom Mortenson | Mortenson and Associates |
| Jennifer Lundberg | PND Engineering |
| Karen Wuestenfeld | BP |
| Katherine Hughes | BP |
| Kristen Paul | BP |
| Mark Major | Conoco Phillips Alaska Inc |

APPENDIX D: PERSONS ATTENDING THE PUBLIC MEETING

One public meeting was held on Monday, August 13, 2007, at 4:00 p.m. at the Office of Project Management and Permitting, at 302 Gold Street, Suite 202, Juneau, Alaska. A list of attendees follows:

| Name | Affiliation |
|-------------------|---------------------------------------|
| Erin Allee | Alaska DNR |
| Randy Bates | Alaska DNR |
| Gordon Brower | North Slope Borough |
| Rob Cadmus | Southeast Alaska Conservation Council |
| Ed Fogels | Alaska DNR |
| David Gann | Alaska DNR |
| Sylvia Kreel | Alaska DNR |
| Chris Krenz | Oceana |
| Kim Kruse | Alaska DNR |
| K Koski | The Nature Conservancy |
| Buck Lindekugel | Southeast Alaska Conservation Council |
| Mark Major | Conoco Phillips Alaska Inc. |
| Michele Metz | Sealaska Corporation |
| Michele Powdrill | Alaska DNR |
| Lindsay Wolter | Alaska Department of Law |
| Kathie Wasserman | Alaska Municipal League |
| Gina Shirey-Potts | Alaska DNR |
| Sadie Wright | Alaska DNR |

APPENDIX E: NOAA’S RESPONSE TO WRITTEN COMMENTS

OCRM received 14 sets of written comments regarding the Alaska Coastal Management Program. Comments are summarized below and followed by OCRM’s response.

Rick Abboud City of Bethel

Comments: As Coastal Coordinator for the City of Bethel, Mr. Abboud expressed both his appreciation of ACMP assistance, as well as concern on behalf of the City regarding the changes to the ACMP during this review period.

Mr. Abboud described his positive experiences with regard to the learning opportunities afforded by the State (conferences and training sessions) and specifically mentioned the benefit of interacting with other coordinators at these events. He noted that meeting reporting requirements has not been a problem and that receiving notices about proposed activities in his area has “generally” been a positive experience.

Mr. Abboud also stated that his experience with the coastal plan amendment process has been less positive, citing specifically his concerns regarding local control. He believes the program changes have led to his position becoming “insignificant” in fulfilling the wishes of the local population as they relate to the coastal program. Mr. Abboud said the “diminished” district enforceable policies have meant that he has “become more of a traffic director, routing people to various agencies, as opposed to applying local judgment on local conditions.”

Mr. Abboud discussed the importance of subsistence use to the culture of his district, and stated some of the challenges he faced in designating areas and formulating policies for the City’s coastal management plan. He stated that he found the process to designate subsistence areas and formulate acceptable policies regarding the protection of subsistence activities so “unduly onerous” that he gave up trying to amend his district policies and instead will rely on the local planning authority afforded to the City by the Title 29. Mr. Abboud expressed his support for the coastal districts that do not have this authority to rely upon, but that have only have that authority afforded by their district coastal management plans.

OCRM’s Response: The sections entitled **Coastal District Participation** and **Subsistence Use Standards** in this document discuss in detail the issues of the coastal district plan amendment and approval process, and subsistence use, respectively. OCRM discussed many of the points made by Mr. Abboud (and echoed by other districts) with DNR and the ACMP and have identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts’ participation in the Coastal Program, and encouraging DNR to revisit the subsistence use area designation process.

See also the section entitled **State-led Evaluation of the ACMP** on the State’s intent to evaluate the implementation of the revised ACMP.

Johnny Aiken
North Slope Borough
Barrow, Alaska

Comments: As the Director of the North Slope Borough, Mr. Aiken expressed concern regarding the implementation of the revised ACMP. Overall, he believes the amendments to the Coastal Program have greatly reduced its effectiveness and that there is now little incentive for coastal districts to participate in the process. Mr. Aiken stated that while the Borough recognizes the intent of the legislative changes, they believe that DNR's regulations, and the interpretation of them, have made aspects of the program "ineffective." Further, he believes the implementation of the Program has been contrary to the program description approved by NOAA.

Mr. Aiken described in detail the challenges that the Borough faced during the coastal management plan amendment process, specifically citing: the difficulty in designating special areas; different interpretations of the requirements and regulations over time; and the significant cost to revise the plan and develop maps for subsistence area designations. He also described specific issues where the Borough believes that DNR has either changed its interpretation of the regulations or ignored the criteria as described in the ACMP as Amended program document. These included: subsistence areas designations; the "not adequately addressed" concept; the "flow from" concept; and "disallow" policies. Mr. Aiken stated the Borough has had difficulty obtaining clarification from DNR about their interpretation of these regulations.

Mr. Aiken also commented on the Borough's experience with consistency reviews, specifically for the multi-year oil and gas exploration program proposed by Shell Offshore, Inc. He cited examples from this review that illustrate what he believes is "broken" about the ACMP, including: the length of time it took DNR to evaluate and deny the Borough's designations for subsistence use and natural hazard areas; the lack of site-specific information required by DNR from the applicant; and the failure of DNR to address issues that the Borough raised during the review. Mr. Aiken mentioned the Borough's surprise at learning that all of the enforceable policies cited in their review comments were null and void because they were not part of a district plan amended per the revised ACMP.

OCRM's Response: The section entitled **Coastal District Participation** in this document discusses in detail the issues of the coastal district plan amendment and approval process and the designation of special areas. OCRM discussed some of the points made by Mr. Aiken (and echoed by other districts) with DNR and the ACMP, and has identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts' participation in the Program, and encouraging DNR to revisit the special area designation process. The sections entitled **State Habitat Standards** and **Subsistence Use Standards** discuss these state standards, their efficacy and the designation of special areas. OCRM made recommendations encouraging DNR to evaluate/monitor the efficacy of the standards and to revisit the special area designation process.

The section entitled **Federal Consistency** in this document discusses the consistency review process and the issues Mr. Aiken described regarding interpretation of the regulations. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants.

See also the section entitled **State-led Evaluation of the ACMP** on the State’s intent to evaluate the implementation of the revised ACMP.

Jim Ayers
Oceana
Juneau, Alaska

Comments: Mr. Ayers expressed his concern that the amendments to the ACMP took away meaningful opportunities for the public and local governments to participate in coastal management decision-making in Alaska. He believes this change has led to an imbalance between natural resource development and protection. Mr. Ayers also discussed Alaskans’ reliance on coastal and ocean resources for subsistence lifestyles. He advocated that there should be necessary actions related to requiring the ACMP to “give the public and local communities meaningful participation into the decisions affecting our local economies, culture, recreation and way of life.”

OCRM’s Response: The section entitled **Coastal District Participation** in this document discusses in detail issues of the coastal district plan amendment process as well as the role of coastal districts in the ACMP. While OCRM has encouraged DNR and the ACMP to reengage coastal districts in the Coastal Program because they can play a valuable role in coastal management at the local level, it should be noted that the Coastal Zone Management Act allows but does not require implementation of the Coastal Program by local governments (Section 306(d)(11)).

That said, the state should have established an effective mechanism for continuing consultation and coordination between the management agency (DNR) and local governments, and should provide for public participation in permitting processes and consistency determinations (Section 306(d)(14)). These aspects of the program are discussed in sections entitled **Coastal District Participation** and **Federal Consistency**.

Teri Camery
City and Borough of Juneau
Juneau, Alaska

Comments: As a planner for the City and Borough of Juneau, Ms. Camery expressed concern about the implementation of the ACMP since the program changes. She described how she believes it has been challenging to retain “meaningful” local enforceable policies within the new ACMP plan amendment process, and how Juneau now has little to contribute to consistency reviews relative to their past involvement.

Ms. Camery described some of the challenges that Juneau faced during the coastal management plan amendment process, specifically citing the reduction of their plan’s enforceable policies from 93 to 5. Juneau was not satisfied with their plan as it was approved by the ACMP, and thus chose to enter into mediation with the State. She also discussed what she believes to be the

“diminishment” of the statewide standards, describing the amended standards as so “broad, vague, and limited in subject matter” that they are not useful to Juneau in project reviews. Ms. Camery also stated that she feels the Department of Environmental Conservation (DEC) Carve Out has weakened the value of the ACMP’s reviews and compromised habitat protection.

Ms. Camery explained how Juneau’s original 93 policy plan remains in their local code, so their local permitting process has continued, separate and uncoordinated with the State’s review. [The City and Borough of Juneau has Title 29 authority.] She further described how she believes the new “uncoordinated process” at the State level and separate review at the local level creates more delays and confusion. In order to improve the process, Ms. Camery recommended that DEC should be included as a primary reviewer in the State process and that local policies should be included to ensure a coordinated review and single process for the developer.

OCRM’s Response: The section entitled **Coastal District Participation** in this document discusses in detail the issues of the coastal district plan amendment and approval process, and the designation of special areas. OCRM discussed many of the points made by Ms. Camery (and echoed by other districts) with DNR and the ACMP, and have identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts’ participation in the Coastal Program and encouraging DNR to revisit the special area designation process.

The sections entitled **Federal Consistency** and **Air, Land and Water Standards** in this document discuss the consistency review process and the issues Ms. Camery described regarding DEC role in the ACMP. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants. OCRM also encouraged DNR to revisit the efficacy of the DEC Carve Out and, in the interim, to develop simple documents for participants clarifying the DNR/DEC relationship and permitting processes.

See also the section entitled **State-led Evaluation of the ACMP** on the State’s intent to evaluate the implementation of the revised ACMP.

Marlene A. Campbell
City and Borough of Sitka
Sitka, Alaska

Comments: As Coastal Management Coordinator for the City and Borough of Sitka, Ms. Campbell expressed concern about the implementation of the ACMP since the program changes. Overall, she described what she believes to be the loss of “meaningful” local involvement and control, and Sitka’s inability to comment on land and water uses that could have profound impacts to the coastal district and its citizens.

In particular, Ms. Campbell described challenges that Sitka faced during the coastal management plan amendment process, specifically citing: the requirements to link enforceable policies with designated areas; the lack of information available for the successful designation of an area; the significant cost for plan revision; and changing plan requirements. She also specifically mentioned

Sitka's inability to review or comment as a district on issues relating to air, land and water quality (due to the Department of Environmental Conservation (DEC) Carve Out) which removes any "meaningful" local participation. Though Sitka was not satisfied with its final plan, "with the loss of over half Sitka's enforceable policies, and greatly diminished scope of the remaining ones", Ms. Campbell stated that Sitka did not choose to enter into mediation with DNR because it did not think it would be productive. She also suggested possible solutions to the problems, including removing the DEC Carve Out, providing an independent body to provide oversight and mediation, ACMP staff training, and re-invigorating the ACMP's local level participation.

Ms. Campbell also described Sitka's lessened ability to participate in permitting and consistency reviews. She stated the new permitting process has eliminated much of the coordination that Sitka valued previously, citing a new disconnect between DNR and the coastal districts. Ms. Campbell discussed the conditions that she believes have led to "most coastal districts [being] left with nothing that can be utilized effectively in a review." Some additional permitting issues Ms. Campbell described were the removal of "advisory" information in consistency determinations, and the Coastal Project Questionnaire.

Ms. Campbell discussed what Sitka believes to be the issues with the exclusion of Federal lands from the coastal zone, the amended coastal zone boundary, and the Office of Habitat Management Permitting's (OHMP's) role in the ACMP and placement in DNR. She also stated the importance of maintaining coastal communities' access to subsistence areas and resources.

OCRM's Response: The section entitled **Coastal District Participation** in this document discusses in detail the issues of the coastal district plan amendment and approval process, including the designation of habitat and subsistence use areas in general. The section entitled **Local Government Capacity** discusses the role of the ACMP to provide outreach and technical assistance to coastal districts. OCRM discussed many of the points made by Ms. Campbell (and echoed by other districts) with DNR and the ACMP, and have identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts' participation in the Program, and how to best address the coastal district assistance needs.

The sections entitled **Federal Consistency** and **Air, Land and Water Standards** in this document discuss the consistency review process and the issues Ms. Campbell described regarding air, land, and water quality enforceable policies in the ACMP. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants. OCRM also encouraged DNR to revisit the efficacy of the DEC Carve Out and, in the interim, to develop simple documents for participants clarifying the DNR/DEC relationship and permitting processes.

The sections entitled **State Habitat Standards** and **Subsistence Use Standards** discuss these state standards, their efficacy and the designation of special areas. OCRM made recommendations encouraging DNR to evaluate/monitor the efficacy of the standards and to revisit the special area designation process.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate

the implementation of the revised ACMP.

It should be noted that OCRM approved the OHMP's role in the ACMP, as well as the revised coastal zone boundary, as part of the amended ACMP in 2005. The Coastal Zone Management Act Section 304(1) excludes federal lands from the coastal zone. For clarification regarding application of federal consistency to federal lands and the ACMP, please see **Appendix F: Exclusion of Federal Lands from the Coastal Zone under the CZMA.**

Randy Coleman
Forest Service
US Department of Agriculture
Juneau, AK

Comments: As the Forest Service's CZMA/ACMP Coordinator, Mr. Coleman complimented the State on the implementation of the revised ACMP. Overall, he believes that as far as the Forest Service is concerned, the ACMP works "far better" now than at any time since its original approval. Mr. Coleman stated that the Forest Service's relationship with the state is now extremely cooperative, which has not always been the case. He believes this is due to the amendments made to the program and to the dedication of the ACMP staff.

Mr. Coleman believes many of the issues that coastal districts have with the amended program are due to their inability to develop approvable enforceable policies. He states that in many cases the original enforceable policies should have never been approved (by the ACMP and NOAA) in the first place because they were designed to regulate activities on Federal land, which led to an "illusion of local control" by coastal districts.

Mr. Coleman feels that DNR/ACMP is understaffed, and said that he was amazed that the Coastal Program was able to "function at all" during the development and implementation of the new ACMP. Mr. Coleman also identified what he believes are opportunities for ACMP improvement, citing specifically the update of its MOU with the Forest Service.

OCRM's Response: OCRM concurs with Mr. Coleman that an accomplishment of this review period has been the ACMP's staff's effort during the revision and implementation of the amended Program (see the section entitled **Organization and Administration**). The section entitled **State Agency Working Group and Inter-agency Coordination** discusses the Coastal Program's interaction with partners and role in project review. OCRM encouraged DNR to clarify for and with partners how they work together to implement the ACMP, which should include updating MOUs with Federal partners. See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

Marilyn Crockett
Alaska Oil and Gas Association

Comments: As the Executive Director of the Alaska Oil and Gas Association (AOGA), Ms. Crockett complimented the State and DNR for what she believes is the appropriate interpretation and implementation of the amended ACMP, especially in regards to local enforceable policies.

Ms. Crockett expressed concern, however, about the delays and timing of the permitting process. While she believes that the process is now “smoother and more predictable,” she stated that the time it takes to receive the permits has been significantly slowed for certain projects. Ms. Crockett noted schedules are critical to the success of oil and gas projects, and that a prolonged permitting process impedes the industry’s ability to conduct activities in the Alaskan environment. Ms. Crockett (AOGA) believes that the permit processing timing issue is do to lack of personnel resources at DNR, and advocated that staff be increased to ensure “the new ACMP can be run at its maximum efficiency and effectiveness.”

Ms. Crockett also advocated the completing of the ABC list revision, with the addition of routine activities which AOGA feels will alleviate the need for a number of consistency determinations. In addition, AOGA believes the requirement that public comments reference an enforceable policy is appropriate, and benefits DNR as they evaluate comments. AOGA also supports the current role of the Department of Environmental Conservation in the ACMP.

OCRM’s Response: The sections entitled **Federal Consistency** and **the ABC List Revision** in this document discuss some of the issues that Ms. Crockett raised regarding the consistency review process and the revision of the State’s ABC List. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants and encouraged DNR to compete the ABC List revision while considering the potential for cumulative impacts.

See also the section entitled **State-led Evaluation of the ACMP** on the State’s intent to evaluate the implementation of the revised ACMP.

Andrew deValpine
Bristol Bay Coastal Resource Service Area

Comments: As Director of the Bristol Bay Coastal Resource Service Area (CRSA), Mr. deValpine expressed concern about the implementation of the ACMP during this review period. In general, he discussed what he believes is an inability of coastal districts to have “meaningful” involvement in the revised ACMP. Mr. deValpine stated that the actual process for plan amendment is not the issue, but rather the application of DNR regulations is problematic. Thus, he believes it is difficult to develop a plan that is acceptable by the State but also “meaningful” at the local level.

Mr. deValpine specifically cited the State’s view that most issues are “adequately addressed by state or federal law” to deny any locally meaningful policies. He identified language in the ACMP

amended program document that illustrates how he believes this concept is supposed to work, which includes "...the district considers whether the statute or regulation is so broad or general that it is not sufficiently adequate to address the use, activity or impact the coastal district wants to manage. In this case, a coastal district could argue the matter is not adequately addressed and write an enforceable policy that is more specific."

Mr. deValpine also noted the major issues facing coastal Alaska, and specifically the Bristol Bay CRSA. These include: large-scale mine development (the number one issue for the CRSA); offshore oil development and its effects to coastal resources; aquaculture; climate change and community education; and trans-oceanic shipping.

OCRM's Response: The section entitled **Coastal District Participation** in this document discusses in more detail the issues of the coastal district plan amendment and approval process. OCRM discussed many of the points made by Mr. deValpine (and echoed by other districts) with DNR and the ACMP and has identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts' participation in the Program, and encouraging DNR to revisit the special area designation process.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

John Goll
Minerals Management Service
US Department of the Interior
Anchorage, Alaska

Comments: Mr. Goll described in detail the interactions that MMS has had with the ACMP during this review period. Overall, he believes the revisions to the ACMP have not significantly changed the relationship between MMS and DNR staff. Mr. Goll states that cordial and cooperative working arrangements have continued during the implementation period, which he believes has made for a "mostly seamless" transition to the revised Coastal Program.

Mr. Goll also commended the ACMP on the development of their website, which he said "proved instrumental" in rendering MMS consistency determinations due to the wealth of information available. He stated that MMS personnel attend the conferences sponsored by DNR and that they find the information presented at the meetings to be very helpful. Mr. Goll noted that the most significant accomplishment during this review period has been the substantial progress made to date in the ACMP's implementation, and that the most significant challenge that remains is the completion of the Program's full implementation, citing specifically the approval of the remaining coastal district plans.

Mr. Goll concluded by saying that MMS will look forward to sharing its perspective and working with the State during the ACMP self-evaluation process.

OCRM's Response: The section entitled **Outreach and Communication** in this document

discusses some of the outreach accomplishments that Mr. Goll described, including the ACMP website and statewide conferences. OCRM concurs with MMS and commends the Coastal Program on the development and implementation of such important resources for program partners. OCRM also agrees with Mr. Goll that an accomplishment of this review period has been the ACMP's staff's effort during the revision and implementation of the amended Program (see the section entitled **Organization and Administration**). See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

**Glenn Gray
Consultant**

Comments: Mr. Gray submitted comments on behalf of himself, as a participant in the Coastal Program in various capacities over the last 15 years. Overall, he expressed concern regarding the implementation of the ACMP during this review period. Mr. Gray described what he believes to be issues that include: a lack of transparency; unclear and changing guidance; inadequate funding for plan revisions; lack of adherence to laws and guidance; and active discouragement of productive dialogue between coastal districts and the state. Mr. Gray also cites a number of examples that he believes supports these points, some of which are listed below.

Regarding ACMP interaction with the Districts, Mr. Gray believes DNR has not adequately addressed justifications provided by districts for policies and designated areas. Regarding "changing guidance," he thinks DNR created complex documents that provide interpretation that is inconsistent with current law and that the rules for approving district policies are overly complex and cannot be interpreted consistently by staff. Mr. Gray believes that changing rules have required districts to revise their plans extensively without adequate funding when Section 309 or other funds to help districts complete their plans could have been made available. Regarding "laws and guidance," he feels DNR overlooks ACMP statutory requirements for review of OCS activities, and recommends denial of district policies in instances where state laws are lacking. Regarding communication with districts, Mr. Gray said that the ACMP did not allow for an equal exchange of perspectives during the plan revision process, and districts were intimidated by a "take it or leave it" point of view.

OCRM's Response: The section entitled **Coastal District Participation** in this document discusses in detail the issues of the coastal district plan amendment and approval process, including the designation of special areas. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts' participation in the Program and encouraging DNR to revisit the special area designation process.

The section entitled **Federal Consistency** in this document discusses the consistency review process and some of the issues Mr. Gray described regarding interpretation of the regulations. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate

the implementation of the revised ACMP.

Frank Kelty
Aleutians West Coastal Resource Service Area
Palmer, Alaska

Comments: As Chairman of the Aleutians West Coastal Resource Service Area (CRSA), Mr. Kelty raised concerns on behalf the CRSA about the implementation of the ACMP during this review period. Overall, he described what he believes to be the loss of “meaningful” local involvement, and the challenge of finding a way to continue to be a “viable part” of the amended Coastal Program.

Mr. Kelty described challenges the CRSA faced during the coastal management plan amendment process, specifically citing “different regulatory interpretation” throughout the revision process and the requirements to link enforceable policies with designated areas. He also noted the reduction of the CRSA’s plan’s enforceable policies from 60 to 10 upon final approval. Mr. Kelty believes the guidance put out by DNR has “effectively eliminated” the CRSA’s ability to craft enforceable policies that would have enabled them to “meaningfully” participate in state consistency reviews. He also mentioned the inability of the CRSA to craft enforceable policies relating to subsistence use and habitat, though they have been able to designate some special areas, and questioned the utility of the statewide standards in the local review process. In addition, Mr. Kelty stated that it is “difficult if not impossible” to participate as a coastal district in project reviews relating to air, land, and water quality (due to the Department of Environmental Conservation (DEC) Carve Out).

Mr. Kelty believes the most significant change in the ACMP is a “diminishment of the local voice” in the coastal management process. He stated that the CRSA desires a “mutually beneficial working partnership” with state and federal agencies and “meaningful” participation in the consistency review process.

OCRM’s Response: The section entitled **Coastal District Participation** in this document discusses in detail the issues of the coastal district plan amendment and approval process, including the designation of special areas. OCRM discussed many of the points made by Mr. Kelty (and echoed by other districts) with DNR and the ACMP and has identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts’ participation in the Program and encouraging DNR to revisit the special area designation process.

The sections entitled **State Habitat Standards** and **Subsistence Use Standards** discuss these state standards, their efficacy and the designation of special areas. OCRM made recommendations encouraging DNR to evaluate/monitor the efficacy of the standards and to revisit the special area designation process.

The section entitled **Air, Land and Water Standards** in this document discusses the issues Mr. Kelty described regarding air, land, and water quality enforceable policies in the ACMP. OCRM encouraged DNR to revisit the efficacy of the DEC Carve Out and, in the interim, to develop

simple documents for participants that clarify the DNR/DEC relationship and permitting processes.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

Jon Kurland
NOAA's National Marine Fisheries Service
US Department of Commerce
Juneau, Alaska

Comments: As the Assistant Regional Administrator for Habitat Conservation, Mr. Kurland expressed his concern about the implementation of the ACMP during this review period. He felt that one of the major challenges resulting from the amendments to the ACMP is reduced coordination between the Coastal Program and federal and state regulatory and reviewing agencies. Mr. Kurland stated that program changes have altered the ACMP's role in project review, reducing the level of coordination and cooperation provided by the program, but noted that the level seems to vary between offices and staff. He cited that some NMFS staff report high project pre-planning, coordination and participation in ACMP review meetings, while others report inadequate coordination which "hampers the effective, timely participation of federal agencies in project planning and review."

Mr. Kurland also believes changes to the habitat standard have reduced the scope of resources that receive "effective" protection, and that changes in mitigation requirements have resulted in the standards for restoration and replacement of habitat being weakened. He also noted that NMFS is aware of individual projects where NMFS has sought and received minimization of impacts to habitats and compensatory mitigation, even though State resource agencies and the ACMP have not sought mitigation. Mr. Kurland believes that greater coordination between state and federal agencies involved in the reviews would reduce such inconsistencies.

Mr. Kurland advocated that the ACMP and OCRM conduct a thorough assessment of the effects of the recent changes on the Coastal Program's effectiveness at meeting the goals and requirements of coastal protection under the CZMA. He also believes an analysis of the implementation of resource protection policies before and after the revision of the ACMP should be conducted in order to determine if the revised Program has improved timing and predictability of the state's consistency process while still providing "adequate" protection of resources.

OCRM's Response: The section entitled **Federal Consistency** in this document discusses the consistency review process and the issues Mr. Kurland described regarding the ACMP's role in the process. OCRM made a recommendation to the ACMP regarding how to improve the project review and consistency process through additional guidance for participants.

The section entitled **State Agency Working Group and Inter-agency Coordination** discusses the Coastal Program's interaction with partners and role in project review. OCRM encouraged DNR to clarify for and with partners how they all work together to implement the ACMP.

The Environmental Impact Statement (EIS) developed by NOAA in 2005 evaluated and discussed whether or not the proposed changes to the ACMP would continue to meet the stated goals and requirements of the CZMA. According to the EIS, NOAA's preferred alternative was to approve Alaska's request to incorporate the new and revised statutes and regulations as a program amendment to the ACMP. That said, the sections entitled **State Habitat Standards** and **Subsistence Use Standards** discuss these state standards and their effectiveness in practice at protecting Alaska's natural resources. OCRM believes it is still early to make a determination on the effectiveness of the standards in avoiding and/or minimizing negative impacts to coastal resources. These findings make recommendations encouraging DNR to evaluate/monitor the effectiveness of both standards to better assess how the actual implementation of the amended ACMP on the ground is achieving resource protection.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

Paul Rookok, Sr.
Bering Straits Coastal Resource Service Area
Savoonga, Alaska

Comments: As Chair of the Bering Straits Coastal Resource Service Area (CRSA), Mr. Rookok raised concerns about the implementation of the ACMP during this review period. He stated that although the State Legislature affirmed its intent to keep CRSAs as active participants in the ACMP [in HB 191], it appears that DNR has been attempting, through its implementation of the Coastal Program, to eliminate their effectiveness. Mr. Rookok cited numerous examples which he believes illustrate this point, specifically for the Bering Straits CRSA. He described the circumstances that resulted in the termination of DNR funding to the CRSA after an audit of the CSRA, and that the State has subsequently assigned program director duties to a state employee located in Nome (which is not actually within the Bering Straits CRSA). He also provided his reasoning as why this current situation does not adequately represent his coastal district.

Mr. Rookok described the Bering Straits' experience with the coastal district management plan amendment process, which has been discouraging to him and the CRSA's Board of Directors. He specifically mentioned the CRSA's unsuccessful attempts to designate subsistence use areas and obtain technical assistance from the State to attain the information/mapping required for designation.

OCRM's Response: The sections entitled **Coastal District Participation** and **Subsistence Use Standards** in this document discuss in detail the issues of the coastal district plan amendment and approval process and the designation of subsistence use areas, respectively. OCRM discussed many of the points made by Mr. Rookok (and echoed by other districts) with DNR and the ACMP and has identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts' participation in the Coastal Program and encouraging DNR to revisit the subsistence use area designation process.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate

the implementation of the revised ACMP.

OCRM has no comment with regard to the DNR audit of the Bering Straits CRSA.

Marvin R. Smith
Lake and Peninsula Borough

Comments: As Community Development Coordinator of the Lake and Peninsula Borough, Mr. Smith expressed concern regarding the implementation of the ACMP during this review period. In general he wanted to express the frustration he believes is felt at the local level because of a lack of coordination and the resulting confusion since the ACMP revision. In particular, Mr. Smith described challenges the Borough faced during the coastal management plan amendment process, specifically citing a lack of adequate funding for plan revision, perceived changing targets/requirements, and time constraints. He suggested possible solutions to the problems, including reimbursing districts for the local funds spent to amend plans, reinstating local control, allowing districts to apply for Section 309 grants to complete plan amendments and special area designations, and giving “adequate” consideration to local knowledge.

Mr. Smith also described issues the Borough has with regard to its participation in consistency reviews. He cited examples that he believes illustrate the Borough’s confusion about the revised consistency review process in general, and its difficulties in commenting on reviews. Mr. Smith specifically stated that it is now “difficult if not impossible” to participate as a coastal district relating to air, land and water quality issues, since the Borough has no policies relating to air, land or water quality (due to the Department of Environmental Conservation (DEC) Carve Out). This means its status as a reviewer is equal to that of a member of the public. In addition, he stated that ten-day comment periods do not allow for “adequate” public process.

Mr. Smith also discussed the importance of subsistence use in his Borough and throughout rural Alaska, and illustrated why the Borough believes that the support of this lifestyle is one of the most significant issues facing coastal Alaska.

OCRM’s Response: The sections entitled **Coastal District Participation** and **Subsistence Use Standards** in this document discuss in detail the issues of the coastal district plan amendment and approval process, and subsistence use, respectively. OCRM discussed many of the points made by Mr. Smith (and echoed by other districts) with DNR and the ACMP and has identified some ways to address them. This document includes recommendations to DNR and the ACMP regarding how to facilitate coastal districts’ participation in the Coastal Program and encouraging DNR to revisit the subsistence use area designation process.

The sections entitled **Federal Consistency** and **Air, Land and Water Standards** in this document discuss the consistency review process and the issues Mr. Smith described regarding air, land, and water quality enforceable policies in the ACMP. OCRM made a recommendation to the ACMP regarding how to improve the consistency process through additional guidance for participants. OCRM also encouraged DNR to revisit the efficacy of the DEC Carve Out and, in the interim, to develop simple documents for participants clarifying the DNR/DEC relationship and permitting

processes.

See also the section entitled **State-led Evaluation of the ACMP** on the State's intent to evaluate the implementation of the revised ACMP.

APPENDIX F: EXCLUSION OF FEDERAL LANDS FROM THE COASTAL ZONE UNDER THE CZMA

The exclusion of federal lands from a state's coastal zone and the application of the Coastal Zone Management Act (CZMA) federal consistency provision to federally excluded lands and to federal waters have not changed over time. The Office of Ocean and Coastal Resource Management (OCRM) clarified the application of federal consistency to federal lands and waters in great detail in Enclosure III of its January 28, 2005, letter to the Alaska Coastal Management Program (ACMP).

OCRM understands that prior to the 2005 ACMP amendment the ACMP allowed coastal Districts to establish a "designated area" for District policies on federal land. This practice was not consistent with the CZMA and National Oceanic and Atmospheric Administration (NOAA) regulations. Unfortunately, as discussed during OCRM's review of the 2005 ACMP amendment, OCRM was either not aware this was occurring at that time or OCRM inadvertently overlooked the CZMA and regulatory requirements.

As described during OCRM's amendment review, the CZMA's definition of enforceable policies requires that state and district policies and designations must be created to apply only to areas within the state's jurisdiction and to the uses or resources of the state's coastal zone. These state and local policies can then apply on federal lands through the state's CZMA federal consistency review authority when an activity on the federal lands will affect any uses or resources of the states coastal zone. Thus, a state or district has never had the authority to establish designations on federal lands, and OCRM's approval of the 2005 ACMP amendment corrected this oversight. The only designations on federal lands or waters authorized by the CZMA are the "Geographic Location Descriptions" (GLDs) established by the State CZMA agency for purposes of federal consistency review under 15 C.F.R. part 930, as described in Enclosure III of OCRM's January 28, 2005, letter to the ACMP, and summarized below.

Under the CZMA, "[e]xcluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." 16 U.S.C. § 1453(1). Further, under NOAA's program approval regulations at 15 C.F.R. § 923.33 states must exclude from their coastal zones "lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents. . . ." This section also states that the "exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands" have reasonably foreseeable effects on coastal uses or resources, pursuant to NOAA's federal consistency regulation at 15 C.F.R. part 930.

For Federal agency activities (16 U.S.C. § 1456(c)(1) and 15 C.F.R. part 930, subpart C) the exclusion of federal lands from the coastal zone means that the CZMA does not authorize states to regulate federal agency activities through the CZMA. However, federal agencies must provide states with CZMA review for their activities that have reasonably foreseeable coastal effects on uses or resources of a state's coastal zone, regardless of the location of the activity. Therefore, the GLD concept is not really relevant to Federal agency activities. This also means that Federal agencies must be consistent to the maximum extent practicable with ACMP enforceable policies

that apply to Federal agency activities that have coastal effects. In this sense, a state's CZMA enforceable policies apply outside the coastal zone to the Federal agency activity.

For federal license or permit activities (16 U.S.C. § 1456(c)(3)(A) and 15 C.F.R. part 930, subpart D) the exclusion of federal lands from the coastal zone means that federal license or permit activities are only subject to ACMP federal consistency review pursuant to the listed, unlisted and GLD requirements of 15 C.F.R. § 930.53. States may amend their CZMA programs to list federal license or permit activities and to describe GLDs outside the coastal zone and on federal lands and waters where a state would review certain federal license or permit activities. States do not have to describe GLDs for federal lands located within the boundaries of a state's coastal zone ("federally excluded lands"), because such federal lands are automatically a GLD, pursuant to 15 C.F.R. § 930.53(a)(1).