

## Louie Flora

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**From:** Timothy Clark  
**Sent:** Monday, March 07, 2011 11:20 AM  
**To:** Louie Flora  
**Cc:** Rep. Bryce Edgmon  
**Subject:** FW: ACMP

Hi Louie,

The message below is from the ACMP coastal coordinator for the Aleutians East Borough. I am forwarding it, with her permission, so that it can be added to the record in anticipation of today's hearing in House Resources on related legislation .

Tim

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**From:** Tina Anderson [<mailto:tanderson@aeboro.org>]  
**Sent:** Monday, March 07, 2011 10:17 AM  
**To:** Patricia Walker; Timothy Clark  
**Subject:** ACMP

Hi,  
I have been travelling a lot for a couple weeks and have not had an opportunity to do a resolution or support letter for the support of the extension of the ACMP.

The Aleutians East Borough supports the ACMP the way it use to be. The way it is now our participation has been almost diminished to nothing. The regulations have diminished our ability to establish local enforceable policies, the designated areas requirements limits us even further not allowing us to have policies for important habitat. When DEC air and water quality was cut out of the ACMP program, we no longer even heard about air and water permit applications and comments to DEC were just that, comments.

We are a very small municipality, but have a lot of coastal area that is important to AEB. We have always been in support of development provided it is done the right way and feel that we have been cut out of the process – we have 3 enforceable policies in our plan. Frankly, the way it is now, I personally feel why bother with the work involved and the match required for so little local input.

We support restoring the ability of coastal districts to be able to establish enforceable policies that aren't fully addressed by state and also support eliminating the designated areas requirement. We also support returning DEC reviews back into the program.

*Tina Anderson, Clerk/Planner*  
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# MUNICIPALITY OF ANCHORAGE



Community Development Department  
Planning Division

Phone: 907-343-7909  
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*Mayor Dan Sullivan*

February 23, 2011

The Honorable Donny Olson  
The Honorable Paul Seaton  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

RE: Changes to the Alaska Coastal Management Program (ACMP)

Dear Senator Olson and Representative Seaton:

Per your recent letter of February 11, 2001, I am responding to your request for Alaska's coastal districts to identify changes to the Alaska Coastal Management Program that would better support coastal districts.

As you have learned over the past two sessions, essentially all of Alaska's coastal districts have endured impacts to their ability to participate in the management of coastal resources. Essentially all local district plans were diminished and compromised by the legislative changes to and the Alaska Department of Natural Resources' (ADNR) implementation of Alaska's coastal statutes and regulations. As the Anchorage coastal district representative, I offer the following ideas that could benefit the State's program and re-engage meaningful coastal district participation.

## **Enforceable Policies**

Chief among the items necessary to correct the changes and reductions in the participation of coastal districts is the need to upgrade and expand enforceable policies. The 2004 legislative changes led to unnecessarily stringent regulations that severely limited a district's ability to include or apply enforceable policies. Anchorage's suite of enforceable policies went from dozens in our original 1979 plan to five in our new 2007 plan. Between the restrictive enforceable language in the State's new regulations and the ADNR's staff interpretations of these, our policies have proved inconsequential in the realm of management of local coastal resources. Without enforceable policies, the Anchorage district's role in permit reviews and project scoping is negligible. Enforceable policies allow districts to attach conditions to permits as a means of minimizing project impacts on local resources. The restrictions that policies must flow from statewide standards and designated areas and that these cannot address an item otherwise adequately addressed by another state or federal law or regulation were particularly damaging. The State makes these determinations of adequacy, which severely limited the inclusion of essentially all of Anchorage's proposed policies. We continue to argue, and there is historic evidence that supports this, that many state and federal regulations do not adequately address local matters (e.g., wetlands).

Senator Donny Olson  
Representative Paul Seaton  
February 23, 2011  
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The Anchorage district recommends that the legislature amend the statutes (AS 46.40.070 (a)(2)(C) & related) and relevant administrative code (*in 11 AAC 112 & 114.250 & 270*) in ways that enable districts to construct policies for matters of local concern for items or situations not specifically addressed in state or federal laws. This can be accomplished by eliminating or loosening the designation requirements or by the legislative direction that ADNR work with districts to come to new mutually agreeable guidelines for how this might be accomplished. Such changes will restore due deference to local districts on local matters.

### **Statewide Standards**

ADNR's changes to the ACMP (*11 AAC 112*) dramatically reduced the geographic coverage of the ACMP and decreased the types of impacts that could be considered during an ACMP review. These changes strongly impacted the district plan's ability to address or manage issues and areas of local concern. The Anchorage district strongly encourages changes to correct these restrictions. These restrictive definitions have no scientific foundation nor do they allow for appropriate consideration of impacts on projects at the edges of a coastal boundary.

Adjustments need to be made in the sections of the Habitats Standards that allow full consideration of impacts to any coastal use or resource. The State must change the definition of Coastal Waters in a way that does not restrict application of local policies and better represents realistic coastal boundaries as identified by districts. Coastal Waters cannot simply be limited to some (arbitrary) measurement of salinity. Salinity varies greatly between and within each district and often by the time of the year.

### **Other Changes**

A recent legislative audit of the ACMP found that the centralized decision-making process within ADNR has lessened consensus building. Legislation considered in 2010 would have established a Coastal Policy Board that would work with ADNR to approve coastal district plans and changes to regulations. The Anchorage district supported this proposal since the original Coastal Policy Council (CPC) was one of the ACMP's original strong points. Anchorage had several projects brought before the CPC. That process worked very well. Anchorage recommends that the statutes be amended to establish a Coastal Policy Board/Council that works with ADNR to approve coastal district plans and changes to the ACMP regulations and for related adjudicatory actions.

Thank you both for your request for comments on ways to adjust the State's coastal program to address existing shortcomings. In the interest of time, I covered a few of the most important items that require changes to better meet the interests of Alaska's coastal districts. Enforceable policies are the centerpiece of a district's ability to manage coastal resources. The changes I suggest would bring due deference for districts back to the levels as had been intended and written into the original statutes and regulations. This approach worked very well and was the strongpoint of the ACMP.

Sincerely,



Thede Tobish  
Senior Planner, Anchorage Coastal District Coordinator

# ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

## RESOLUTION NO. 2010-02

A RESOLUTION OF THE ALEUTIANS WEST COASTAL RESOURCE SERVICE AREA (AWCRSA) BOARD OF DIRECTORS RECOGNIZING THE SIGNIFICANCE OF COASTAL PLANNING AND SUPPORTING LEGISLATION THAT WILL CONTINUE THE ALASKA COASTAL MANAGEMENT PROGRAM (ACMP).

WHEREAS, the AWCRSA was established in 1987 by a vote of the people of the unorganized western Aleutian area and provides representation of local interest in state and federal permitting decisions; and

WHEREAS, the AWCRSA has a recognized coastal management plan with procedures and policies to guide development activities in the coastal zone boundary; and

WHEREAS, the people of the western Aleutians want to provide for a voice in state and federal permitting decisions within their area; and

WHEREAS, the AWCRSA Coastal Management Plan receives it's authority as part of the networked Alaska Coastal Management Program; and

WHEREAS, the ACMP will sunset on July 1, 2011 unless the Alaska State legislature extends the program; and

NOW, THEREFORE BE IT RESOLVED THAT the AWCRSA Board recognizes the significance of coastal planning and supports legislation that will continue the Alaska Coastal Management Program.

PASSED AND APPROVED BY THE AWCRSA Board of Directors on this 15th day of December, 2010.

IN WITNESS THERETO:

  
Frank Kelty, Board Chair

ATTEST:

 For H. G.  
Harold Gray, Secretary

# ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

August 14, 2008

Department of Natural Resources  
Division of Coastal and Ocean Management  
Mr. Randy Bates  
302 Gold Street, Suite 202  
P.O. Box 11030  
Juneau, AK 99811-1030

Re: Re-evaluation of ACMP (your letter July 1, 2008)

Dear Mr. Bates,

This letter is written to provide a formal response to comments requested in your above referenced letter. The letter discussed the "ongoing challenges" and "the need to address certain implementation problems" as the catalyst for the re-evaluation of the ACMP laws. Your letter specifically called out four particular needs for the reassessment:

- The DEC carveout
- Coastal district's authority and ability to write enforceable policies, revisit the requirement for designated areas to address certain coastal uses and resources
- Certain consistency review issues including the scope of the project subject to review, requirement of coastal project questionnaire, etc.
- Other clarifying and technical edits to the regulations

Your office has held several informative public teleconferences and hosted weekly district teleconferences for discussion purposes. Additionally, the AWCrsa program director has served as the ACMP Working Group Representative for the Southwest coastal districts and has participated in the June ACMP Workshop and three region specific teleconferences. We have come to understand that in addition to the needs identified above it is your desire to receive comments in any area that might improve the program and that comments should not be limited. As a political subdivision of the state and the state's representative in the unorganized area of the western Aleutian Islands, we appreciate the opportunity to participate in the re-crafting of the Alaska Coastal Management Program. Please consider the following comments.

### The DEC carveout.

The DEC carveout has confused the consistency review process especially where the scope of the project requires permits from more than one agency. The removal of the DEC has been interpreted as the removal of any matter relating to air, land, or water quality through the program implementing regulations. The ACMP is a networked program and it is difficult to extricate air, land and water quality issues from the review process and still have a meaningful review. The AWCRSA recognizes that some DEC permits require a long time to process so perhaps some single agency type permits should be excluded but we do not believe that this should apply to all matters relating to the areas regulated by the DEC. We had many policies that addressed air, land, and water quality standards that are no longer allowed. For example, some concerned storage and transportation of hazardous materials. The AWCRSA would like to work with the DCOM and the DEC to enable consideration of local concerns in the coastal review process. Specifically, the AWCRSA wants due deference and respect for local expertise in the consistency review process unlike the current practice of commenting as a "public member" in a DEC review. To restore the DEC's role in the consistency review process it will be necessary to amend AS 46.40.040(b)(1), AS 46.40.096(g)(i), and (k) and repeal or rework the implementing regulations relating to the carveout. Similarly, coastal districts should be allowed to develop local air and water quality policies that do not duplicate the state standard or DEC statutes or regulations. To do so it will be necessary to amend 11 AAC 114.270(f) to clarify that districts can establish policies that do not duplicate DEC statutes and regulations.

### Coastal district's authority and ability to write enforceable policies, revisit the requirement for designated areas to address certain coastal uses and resources.

There remains a legal question of whether a CRSA has the authority to designate areas for particular uses since they do not have Title 29 authority. The AWCRSA was reluctant to designate areas in the first place out of this concern but found it necessary to do so in order to have any policies that spoke to the matter. Also, the areas designated are important but there are many other significant resource areas within the CRSA as indicated on the Resource Inventory maps. The requirement to designate areas in order to have any policies related to that particular resource fails to consider these other significant areas within the CRSA. It is the viewpoint that the idea of designated areas limits the intent of wise policy making decisions and subsequently limit the effectiveness of any such policy derived with the inclusion of "designated areas". Please consider a subsistence designated area around Adak and the idea of federal permitting within or adjacent to a designated zone. The resource considered around Adak was frequently found outside the boundaries of the designated area and thus diminished the concept and purpose to designate an area for a specific use. Likewise, a resource that migrates into a federal permit zone also experiences diminished purpose when considering ideas of protection, use, and responsibility.

In the case of nationwide or general ABC List type permits it is necessary to identify the designated areas to inform the applicant of their location whereas in the past this was not required as only an applicable policy needed to be considered.

The AWCERSA sees two approaches for resolution of this issue with one being to remove designated areas all together and the other to retain designated areas to highlight areas of particular local interest or resource concerns while removing the requirement for designated areas to write policies.

There are two significant issues with respect to our ability to write meaningful policies. One is the structure of the current program (the statutes and regulations) and the other is the *interpretation* of the regulations.

Structure issues include definitions of terms such as "coastal water" which removed waters that do not have a measurable amount of salt water and the limitation of some standards to coastal waters. This in turn affects our ability to write policies and greatly narrows the coastal zone as the only policies that were allowed are those that "flow from" a specific matter addressed in a state standard.

Interpretation issues include topics such as "adequately addressed" (AS 46.40.070) where DNR has not allowed any policies where an agency has authority to regulate even if they have no specific regulations and "duplication" which has also been related to the authority rather than specific regulations.

Some past regulatory interpretations included the following quote: "The criterion for determining adequacy is whether the matter is already addressed by state or federal law ... even if there is no regulation on a given matter, that the resource agency has the authority to regulate that matter makes the matter one that is "regulated or authorized by state or federal law." The same analysis is true with respect to whether the matter is "adequately addressed."

The AWCERSA recommends strengthening the regulations in several areas to eliminate vagueness and to revisit definitions that have narrowed the scope of the program.

Certain consistency review issues including the scope of the project subject to review, requirement of coastal project questionnaire, etc.

The AWCERSA feels that it is not necessary for the applicant to provide a lengthy CPQ for projects subject to certain permits such as A and B-1 listed projects. However, the new CPQ format works well for AWCERSA as a reviewer as it has the applicant evaluate our policies and detail why the project is consistent with them similar to the federal review process. This has helped to streamline our

reviews and has virtually eliminated the need to request additional information and stop the review clock.

#### Sand and Gravel Standard.

The 2004 revision removed mining from the ACMP standard and, while there has not been a carveout of mining activities, the removal of uplands from the Habitat Standard and mining from the Sand and Gravel standard has combined to deny the ability of the AWCRSA to write policies relating to these activities. The AWCRSA feels that mining is an activity that should be included within the state standards and about which policies can be developed.

#### Subsistence Standard.

This standard is the only one that does not include mitigate in the “avoid, minimize, mitigate” sequence. This lack of a mitigation option can force the district to deny a project when it cannot be minimized and create a “go or no go” situation where it is not in the district’s or applicants best interest to do so. AWCRSA recommends that mitigation be included within this standard.

#### Habitat Standard.

Uplands were removed from the standard as part of the 2004 regulatory revisions. Uplands are still within the coastal zone and activities within upland areas can have a direct and significant impact within the coastal area. The AWCRSA had policies directed at some of these potential impacts such as the placement of materials that could erode and natural runoff patterns that are no longer allowed. The federal approval of the program found that all areas within the coastal zone, including uplands, have a direct and significant impact on coastal waters. The AWCRSA recommends the inclusion of uplands in the Habitat Standard.

#### Mitigation.

The sequencing process to avoid, minimize, or mitigate was changed to rely primarily on economic considerations through the use of the term “practicable” and any AWCRSA policies that spoke to mitigation were no longer allowed under the revised program. Subsequent projects which have had a mitigation component within the AWCRSA have seen either on site projects that had debatable value or off site projects that benefited from loss within the AWCRSA. The elimination of monetary compensation as a mitigation tool should be revisited (11 AAC 112.900 (e)(2) as this approach can have merit in some circumstances. The AWCRSA is in the process of completing a project “*Evaluation of Mitigation Opportunities in Unalaska*” in hopes of restoring a meaningful role in the mitigation development process.



### Policy Council.

The AWCRSA recommends a Policy Council that incorporates the positive aspects of the former Coastal Policy Council. The Council should have representation from the coastal districts, the resource agencies and the DCCED Division of Community and Regional Affairs. The mission should include the ability to approve district plans, program related funding, and program changes. The Council would serve as a public forum that can result in more involvement and a more equitable decision making process. It would provide an outreach component that is sorely lacking in the amended program.

### Transfer of ACMP out of DNR and Into Another Division.

Taking the ACMP out of the Governor's office and into DNR has caused the potential for a conflict of interest because it could find itself coordinating a review for the agency within which it works. The location also contributes to the estrangement of the state agency from the coastal districts since the DNR does not have a local government focus. While it does not seem likely or practical to suggest that the Division be returned from whence it came, moving the ACMP to DCCED, Division of Community and Regional Affairs makes sense. Such a move would resolve the permitting conflict since DCCED does not issue any permits. DCRA has a statutory mandate to provide planning assistance to coastal resource districts for coastal management plans, as described in AS 44.33.781, and manages the ACMP grants. The current grant process is more cumbersome than it needs to be with the involvement of two separate divisions.

In the NOAA/OCRM June 2008 ACMP Evaluation, OCRM listed a program suggestion as follows:

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.

A move to DCCED-DCRA would accomplish the above suggestion by bringing balance and a new team building approach to the program.

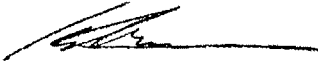
### An Expedited Approval Process and Additional Funding for Local Plan Changes and Program Administration.

The AWCRSA expects that the ACMP Re-evaluation process will result in revised legislation and regulations which will allow us a more meaningful role in the networked ACMP. However, having just completed the arduous and expensive revision process resulting from the 2003 legislation and having just prior completed four years of revision work in the previous years, we request that any new legislation establish an expedited approval process and that additional funding be provided to districts to complete any necessary revisions. We understand that the CIAP grant has risen from the predicted \$1.5 million to \$17-

25 million which is a huge increase. The AWCRSA requests that a portion of these funds are made available to districts through grants to fund district plan revisions and general program administration as well as DCOM personnel costs to review those revisions.

The ACMP Re-evaluation is a huge task and we appreciate your commitment to a thorough re-evaluation that will result in positive changes for the program. We have no desire to return to our twenty year old program but we do desire a meaningful role in the management and development of the many resources of the Aleutians West. We appreciate the opportunity to comment and look forward to continued involvement through the re-evaluation process.

Sincerely,



Karol Kolehmainen  
Program Director

Cc: AWCRSA Board members

*Bering Straits Coastal Resource Service Area*  
*P.O. Box 28*  
*Unalakleet, Alaska 99684*

February 25, 2011

Honorable Donny Olson, Senator  
Alaska State Capitol, Room 508  
Juneau, AK 99801

Honorable Neal Foster, Representative  
Alaska State Capitol, Room 434  
Juneau, AK 99801

Honorable Reggie Joule, Representative  
Alaska State Capitol, Room 410  
Juneau, AK 99801

Dear Senator Olson, Representative Foster and Representative Joule:

The Bering Straits Coastal Resource Service Area (CSRA) is pleased to report that our Alaska Coastal Management Program (ACMP) funding has finally been restored. As the CRSA's legislative representatives, we wish to thank you for your support and your interest in addressing problems with the ACMP.

We are also writing this letter to provide clarification about recent statements made by the Alaska Department of Natural Resources (ADNR) and to document events related to our plan approval and funding. Earlier this week the candidate for the CRSA program director position withdrew her name from further consideration citing problems with the grant approval process and the "hostile environment" during completion of the CRSA's coastal management plan. I apologize for the length of this letter, but it is important to provide details about incorrect statements and changing requirements that have been inconsistently applied.

The first issue we would like to address is a statement in ADNR Commissioner Sullivan's February 4, 2011 response to the ACMP Legislative Audit. We believe the Commissioner received incorrect information regarding the following statement:

The DLA analysis on the consultant and coastal district autonomy is based upon an isolated circumstance with a single consultant representing a single coastal resource

service area that did not have an approved plan and was not receiving funding due to significant financial management issues and failures.

A May 13, 2010 email from the ADNR Division of Coastal and Ocean Management (DCOM) to our consultant clearly states that its policy on consultants applies to all contractors: “We do not distribute items we’re required to send to review participants to any district’s contractors. Districts are welcome to forward such items on to their contractors” (emphasis added). Three factors support our request to ADNR to add our consultant to the project distribution list: 1) ADNR denied repeated requests to fund a staff position, 2) the board chair and most board members do not have computer access, and 3) the information sought by our consultant was not available on DCOM’s electronic “FTP site” for the project.

In response to DCOM’s refusal to provide the requested information, our consultant pointed out that DCOM was regularly distributing materials to a consultant contracted with another CRSA. DCOM then changed its consultant policy to require that certain project review information could only be sent to a consultant if they were designated as the coastal district’s “single point of contact” which would include signatory authority for project-related matters. The Bering Straits CRSA, however, wished to retain signatory authority. We were simply asking for the consultant to receive electronic copies of all project-related documents. This single point of contact issue is raised in Part II of the legislative audit.

The CRSA is concerned about the reference to “significant financial management issues and failures.” We believe this may be a reference to an audit of the CRSA’s finances for FY04 – FY05 where our staff person failed to submit adequate backup for expenses, including copies of checks that were later provided. DCRA ensured there would be no future problems like this when it implemented new procedures in late 2006 requiring receipts before the CRSA received reimbursement for expenses. Nevertheless, DCOM referred the matter to the Department of Law. According to DCOM Director Bates in a December 4, 2009 letter to the CRSA, the Department of Law found “no obvious signs that any of the board members or the program director misused the ACMP funding” (emphasis added). Although Mr. Bates concluded his letter by saying he “considered this issue closed”, DCOM continues to raise this issue. We believe it is time to put this issue to rest and move on.

We are also concerned by an incorrect statement made by DCOM Director Randy Bates to the House Resources Committee on January 24, 2011. In response to a question, Director Bates said ACMP funds were provided to the Bering Straits CRSA to “to complete their plan according to the Commissioner’s finding.” DCOM has provided no ACMP funds for revision of our plan to comply with the Commissioner’s November 1, 2007 finding. The only plan revision funds we have received since 2006 were provided by the Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs (DCRA) for a three-

month period. We understand that DCCED used non-ACMP funding because DCOM refused to approve ACMP funds for this competitively-awarded contract. While we are very appreciative of DCRA's generous funding, we wish to acknowledge that it was necessary for our consultant to donate many extra hours to complete all of the contract's required tasks. In addition to revising our coastal management plan, the tasks included setting up a new office, conducting project consistency reviews, and revising our coastal management plan.

During the period where we received no ACMP funding for staff support, we depended on volunteer hours from our board and our consultant. Since 2006, our consultant has donated over 325 hours. During this period, we seldom heard from the DCOM staff person assigned to our CRSA. As an example of the lack of support from DCOM, we were surprised to learn in April 2010 that DCOM was sending project review materials to a former program director who had not been employed by the CRSA since 2004.

Additional clarification is needed to respond to comments made by DCOM Director Bates at the February 22, 2011 House Finance subcommittee meeting on ADNR's budget. In response to a question from Representative Guttenberg about use of consultants by coastal districts, Director Bates said there has been abuse and noncompliance. As an example, he said a coastal district had inappropriately used ACMP funds to pay IRS penalties. Considering ADNR's response to the Legislative Audit targeted only our CRSA, we would like to emphasize that we have not used ACMP funds to pay IRS penalties. Additionally, we are aware of no instances of abuse or noncompliance by our consultant.

At the subcommittee meeting, Director Bates also said it was not appropriate for districts to use consultants to do project consistency reviews. Since we have not had an ACMP-funded position since 2006, it is not clear who Director Bates believes should have been conducting the reviews.

Regarding the hiring process for our program director, we wish to provide some background about some of the problems we faced during the past year. Although there was funding for a program director in our FY10 ACMP grant, DCOM provided substantial obstacles that prohibited the hiring of this position. The CRSA began its hiring process in May 2010 by appointing a hiring committee. Although there were no DCOM procedures for CRSA hiring, DCOM created new rules and asserted itself in a process that was appropriately managed by the CRSA board, all of whom are elected officials. We were surprised to learn that another CRSA completed its hiring process for a program director during this same period in a matter of weeks.

At the February 23, 2011 House Finance Subcommittee meeting, Director Bates stated that it was not necessary for a coastal district to have an approved plan in order to receive ACMP funding. However, DCOM treated the Bering Straits CRSA differently than the other two

districts without approved plans by requiring submittal and approval of our coastal management plan before receiving FY11 funding.

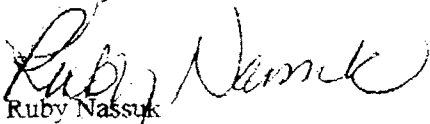
Regarding our plan, the CRSA submitted a substantially revised plan in June 2010 even though ADNR denied all of our subsistence use areas and subsistence policies. The plan isn't much use to us, because we can no longer address potential impacts to subsistence, the main concern of CRSA residents. We submitted the plan only because we were required to do so in order to receive funding. After our submittal, DCOM added new requirements for approval of the plan that were not included in the 2007 Commissioner's Decision. While we reached a compromise in January of this year, we note that DCOM required us to remove language that was approved for another coastal district's plan. Again, it is important to note that DCOM refused to provide any funds for revision of the plan to comply with the Commissioner's Decision.

Director Bates also spoke about mediation of coastal district plans during his testimony at the February 23, 2011 subcommittee meeting. While the Bering Straits CRSA was not mentioned in this discussion, ADNR denied our request for mediation because we did not have funds to pay for it, even though there are no requirements in the regulations for coastal districts to share mediation costs. In addition, ADNR denied the opportunity to use ACMP funds for mediation, an opportunity it offered to the other coastal districts that requested mediation.

We wish to make one more point that may explain why we have been unfairly targeted by ADNR. During initial review of the draft coastal district plans in 2006, our consultant asked for clarification about conflicting guidance from ADNR about its requirements for plan revisions. In response, ADNR staff stated in an email that "... continued attempts to debate our office on the changes to the ACMP are putting certain coastal district plan amendments at risk." We believe DCOM has made good on this threat by providing substantial obstacles to our funding and plan approval.

We look forward to working with DCRA and DCOM to strengthen our coastal program. However, we are very concerned that DCOM has made little effort to establish a respectful relationship with our CRSA. We hope the Legislature will take action this year to fix some of the problems with ACMP, including consideration of which agency would be most appropriate to manage the program.

Sincerely,



Ruby Nassuk  
Chair, Board of Directors

cc: Representative Seaton, Co-Chair House Resources Committee  
Representative Feige, Co-Chair House Resources Committee  
Representative P. Wilson, Vice-Chair House Resources Committee  
Representative Dick, House Resources Committee  
Representative Herron, House Resources Committee  
Representative Munoz, House Resources Committee  
Representative Gardner, House Resources Committee  
Representative Kawasaki, House Resources Committee  
Representative Costello, Chair, House Finance Committee on ADNR  
Representative Johnson, House Finance Committee on ADNR  
Representative Pruitt, House Finance Committee on ADNR  
Representative Saddler, House Finance Committee on ADNR  
Representative Kerttula, House Finance Committee on ADNR  
Representative Guttenberg, House Finance Committee on ADNR  
Daniel Sullivan, Commissioner, ADNR  
Susan Bell, Commissioner, DCCED  
Randy Bates, Director, DCOM  
Paul Rookok, Sr., Vice Chair, Bering Straits CRSA Board, Savoonga  
Frances A. Degnan, Secretary/Treasurer, Bering Straits CRSA Board, Unalakleet  
Peter P. Martin, Sr., Bering Straits CRSA Board Member, Stebbins  
Wade Okhtokiyuk, Bering Straits CRSA Board Member, Gambell  
Enid J. Lincoln, Bering Straits CRSA Board Member, White Mountain  
Luther C. "Sook" Komonaseak, Bering Straits CRSA Board Member, Wales





***Bering Straits Coastal Resource Service Area***

***P.O. Box 28***

***Unalakleet, Alaska 99804***

March 1, 2010

The Honorable Neal Foster  
Alaska State Capitol, Room 434  
Juneau, AK 99801

The Honorable Bob Herron  
Alaska State Capitol, Room 411  
Juneau, AK 99801

Dear Representative Foster and Representative Herron:

The Bering Straits Coastal Resource Service Area (CRSA) recently received a copy of the February 24, 2011 letter from Division of Coastal and Ocean Management (DCOM) Director Randy Bates to you. We are concerned that while our CRSA was referenced throughout this letter, we were not given the courtesy of being included on the distribution list. We are even more concerned with the amount of misinformation included in the letter as well as misleading statements in other recent correspondence and testimony before the Legislature.

I asked our consultant to prepare the attached table to respond to comments in the February 24 letter. Since the issues referenced in the letter occurred before I was elected as Board Chair, I requested that the consultant work with appropriate board members to prepare the table.

We are especially disturbed about the mischaracterizations of how the CRSA operates. In absence of a program director, we have valued assistance provided by our consultant, but we have always retained the authority to make decisions and sign documents.

The CRSA looks forward to working with the Legislature this session to amend the Alaska Coastal Management Program to restore a meaningful role for coastal districts. Please let me know if you need any additional information or to documents related to the issues raised in the attached table.

Sincerely,

  
Ruby Nassuk

Chair, Board of Directors

cc: Representative Seaton, Co-Chair House Resources Committee  
Representative Feige, Co-Chair House Resources Committee  
Representative P. Wilson, Vice-Chair House Resources Committee  
Representative Dick, House Resources Committee  
Representative Munoz, House Resources Committee  
Representative Gardner, House Resources Committee  
Daniel Sullivan, Commissioner, ADNR  
Susan Bell, Commissioner, DCCED  
Randy Bates, Director, DCOM  
Paul Rookok, Sr., Vice Chair, Bering Straits CRSA Board, Savoonga  
Frances Degnan, Secretary/Treasurer, Bering Straits CRSA Board, Unalakleet  
Peter Martin, Sr., Bering Straits CRSA Board Member, Stebbins  
Wade Okhtokiyuk, Bering Straits CRSA Board Member, Gambell  
Enid J. Lincoln, Bering Straits CRSA Board Member, White Mountain  
Luther C. "Sook" Komonaseak, Bering Straits CRSA Board Member, Wales

**Additional Information Related to  
Division of Coastal and Ocean Management Director Randy Bates  
February 24, 2011 Letter to Representatives Foster and Herron**

<b>Comment</b>	<b>Additional Information</b>
DCOM amended the subsistence and other statewide standards to comply with the revised statutes.	DCOM Director Bates previously testified to the Legislature that the DNR regulations were more stringent than what the Legislature intended.
The "original regulatory requirement to designate subsistence use areas was retained."	<p>The provisions in the former 6 AAC 80.120(b) <i>allowed</i>, but <i>did not require</i>, districts to designate areas "in which subsistence uses and activities have priority over all nonsubsistence uses and activities."</p> <ul style="list-style-type: none"> <li>• DNR denied all subsistence use priority policies even though the 2005 federally-approved Program Description states: ". . . a district subsistence priority <i>in</i> a designated area important for subsistence use is appropriate and encouraged."<sup>1</sup></li> </ul> <p>The new requirements at 11 AAC 112.270 <i>require</i> DNR approval of designated areas before impacts to subsistence can be considered during a review and:</p> <ul style="list-style-type: none"> <li>• Before the statewide subsistence standard can apply, and</li> <li>• Before an enforceable policy can be approved.</li> </ul>
"Although the CRSAs demonstrated that subsistence use is an important use of coastal resources in some areas of the coastal zone, neither provided sufficient documentation this for the entirety of their coastal zone . . ."	<p>DNR never explained which areas in the plan were sufficient for the designation and which were not. Without that information, it was not possible for the districts to know what they had to do to meet DNRs <i>unwritten criteria</i> for approval of subsistence areas.<sup>2</sup></p> <p>DNR has not provided clear written guidance on exactly what types of subsistence uses would need to be designated. This unwritten guidance has changed a number of times throughout the plan revision process. For example, at the beginning of the process DNR said a district could designate its entire coastal zone as a <i>subsistence use area</i> if it provided justification. The requirement for designating specific types of subsistence use was imposed later in the process.</p> <p>A September 21, 2005 email from DCOM staff stated that the type of subsistence use designations would best be left up to the districts. The February 2006 draft plans for the CRSA designated two types of subsistence use areas: Offshore and onshore.</p>

<sup>1</sup> When asked why subsistence use priority policies were denied, DNR stated that the area designation itself establishes the subsistence use priority. However, Subsections 5.3.8.8 and 10.4.10 of the Program Description state that districts can establish a subsistence priority *in an enforceable policy*.

<sup>2</sup> The 2005 federally-approved Program Description includes general criteria for establishing subsistence use areas, but this document does not specify that different types of subsistence use areas must be designated.

Comment	Additional Information
"Neither [CRSA] linked the subsistence use to the location where the subsistence use activity occurred."	<p>ADFG has indicated it does not have this kind of information for the Bering Straits CRSA. DNR said the subsistence use maps in the 1984 plan cannot be used because they do not meet DNR's requirements. Most subsistence studies are based a community's use or resources without linking the use to a precise area.</p> <p>DNR imposed the requirement to link a specific type of subsistence use to a specific area <i>after</i> its funding for plan revisions ended. Meeting DNR's stringent mapping requirements would be very expensive, and the data required for this task is not available for the Bering Straits CRSA.</p>
"The proposed designated areas, prepared by the same consultant, were overly broad [and] unsupported . . ."	Both the Bering Straits and CRSA plans included a detailed description of subsistence use by community. Due to the complex patterns of subsistence use, the subsistence uses were not linked to specific areas.
The Cenaliulriit CRSA did not use information from a prior subsistence study it conducted for the plan revision.	After DNR denied the subsistence use areas proposed in the February 2006 draft plan, the Cenaliulriit program director began working with a GIS contractor to refine the maps from its prior subsistence study. As a result of the changing rules for designated areas, the frustrating process getting approval for these maps from DNR and the <i>unfunded</i> costs of the maps, the program director gave up on this effort soon after resigned.
"DCOM created an interim opportunity for districts without approved plans to ask for and substantiate an area designation during the course of an individual consistency review for a project."	<p>Nothing in the regulations indicates the ability to designate areas for a review was an interim measure. It may be necessary to designate an area during a review for any district that obtains site-specific information about subsistence uses.</p> <p>DNR denied Bering Straits CRSA's request for a subsistence use designation during a review in June 2010. The CRSA described the use using information from the maps in its 1984 plan. DNR said it needed the backup information for the maps which is not available.<sup>3</sup></p>
"[a] district is unable [to] write an enforceable policy dealing with marine mammals."	During the mediation of other coastal district plans, those districts contacted officials from NMFS and FWS, and the federal officials indicated a district could fill in the gaps by establishing policies on marine mammals.
"Even if the designated areas had been approved, all of the proposed subsistence use enforceable policies would have been disapproved because they addressed a matter already adequately addressed by state or federal law, they restated and/or redefined state or federal law."	<p>Other than the statewide subsistence standard itself, there are no laws that address specific impacts to subsistence uses. The statewide standard is inadequate because it only requires that activities "avoid or minimize" impacts to subsistence.</p> <p>In denying proposed subsistence policies, DNR said:</p> <ul style="list-style-type: none"> <li>• The statewide subsistence standard already adequately addresses impacts to subsistence uses, and</li> <li>• Policies can only "allow or disallow" specific activities without any qualifications.</li> </ul> <p>Districts do not want to establish a blanket prohibition on development; they just want to establish policies with measures to protect subsistence while allowing the activities.</p>

<sup>3</sup> The CRSA created the maps after visiting each village to have subsistence users explain where they conducted subsistence activities. DNR claimed that these maps were not good enough because "underlying information used to draw the lines on the map was not included." This information was not included in the 1984 plan.

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"At this point, districts that chose not to submit an approvable plan amendment are not eligible for future plan amendment funding until the previously-funded project is finished."	This policy will make it difficult for districts to complete their plans because of the unfunded requirements to produce detailed maps which are generally based on information over 20 years old. As mentioned earlier, DNR's requirement to designate specific types of subsistence use areas was implemented after districts submitted their draft plans and after finalization of the federally-approved Program Description.
"The most troubling of all four audits was the audit for the BS CRSA, which was done in 2006. This audit showed that the BS CRSA was unable to account for any of the money the BS CRSA received in SFY03-SFY05, which amounted to over \$250,000.00"	<p>The program director at the time did not submit any of the required backup to the auditor. Apparently, the receipts were misplaced during a move of the office from Unalakleet to Koyuk. The CRSA later provided the Dept. of Law copies of all checks written as well as backup for some expenses, including all of the invoices from its consultant.</p> <p>According the Director Bates in a December 4, 2009 letter to the CRSA, the Dept. of Law found "no obvious signs that any of the board members or the program director misused the ACMP funding." Although Director Bates concluded the December 4, 2009 letter by saying he "considered the issue closed," he continues to raise it.</p>
The Department of Law concluded that criminal prosecution was not warranted but that civil action may be warranted.	The CRSA was never provided with the findings of the Dept. of Law other than the explanation in Director Bates' December 4, 2009 letter.
"DCOM offered to assist the BS CRSA in recruiting and hiring a program director."	The CRSA board, all elected by Alaska voters, chose to do their own recruiting and hiring. DCOM placed substantial obstacles during the hiring process. The CRSA hiring committee provided detailed information about the process that was demanded by DNR with the request that this information be kept confidential. DNR violated this request by sending a widely distributed letter revealing the top 3 candidates <i>before</i> this information was provided to the board by the hiring committee.
"The plan that was submitted on June 30, 2010 . . . was not compliant with DNR Commissioner's final decision."	The Bering Straits CRSA believes this plan was compliant with the final decision. DNR added new requirements that were not included in the Commissioner's Final Decision that required removal of entire sections of the plan that dealt with impacts from oil and gas activities. DNR later agreed to allow most of these sections. It did require removal of some language even when it was pointed out that this same language was approved for inclusion in the Cenaliulriit plan.
One of the tasks required for the plan approval was deleting unapproved sections of the plan.	Again, the Commissioners Decision <i>did not require removal of entire sections of the plan</i> . It simply required removal of references to the North Slope Borough that were not related to the CRSA.
The issue of subcontracts has been an issue in only one of the 28 districts and is explained in the Legislative Audit.	The Legislative Audit does not address subcontracts. Instead, the references to consultants relate to a district's designated point of contact. DNR has not explained what specific issues it had with the subcontract it mentioned in this letter.
"In SFY09 and SFY10, districts were able to use Section 306 operating funds for hiring a contractor to assist with the district's required tasks."	This practice was allowed in previous years. For example, Sitka employed a contractor for many years to manage its coastal management program.

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"Through this experience, DCOM found that the contracts to consultants were not effective for a number of reasons."	DCOM has not explained why these contracts were not effective.
"DCOM allows districts to contract with consultants for many consistency review functions, but does not allow a consultant to be a district's official point of contact during a consistency review."	<p>None of the <i>three districts</i> that requested DNR include its contractor in the project review distribution list wanted the consultant to be a single point of contact. They simply wanted the consultant to receive electronic distribution of project information.</p> <p>This statement is incorrect – <i>DCOM required the Bering Straits CRSA to make its consultant the single point of contact</i> in order for the consultant to receive certain project emails. In a May 13, 2010 email, DCOM stated: "<i>We do not distribute items we're required to send to review participants to any district's contractors.</i>" When the consultant pointed out that this information was being distributed to another CRSA's consultant, <i>DCOM changed its policy</i> to require districts designate its consultant as the single point of contact in order to receive certain project information.<sup>4</sup> In response, the Bering Straits designated its consultant as the single point of contact, but retained its signatory authority.</p>
The use of consultants "is most powerful, and most true to the ACMP objective of local representation, when any outside expertise is expressed <i>through the filter</i> of the local coastal district."	The Bering Straits CRSA always retained a "filter" because it retained signatory authority and never asked to give this authority to its consultant.
"Whether or not a contractor may be the point of contact during a consistency review has been an issue in one district . . ."	As explained above, DCOM's policy was to withhold information from district consultants. The Bering Straits CRSA only wanted its consultant to receive project information.
"During the same few weeks that the CRSA temporarily employed a consultant last summer, the board vice-chair telephoned and sent faxes to DCOM's staff regarding ongoing consistency reviews. She was available and enjoyed the means to communicate with DCOM staff (I understand that she was also in frequent contact with her consultant, upon whose expertise she could rely). So it was quite possible – and, DCOM maintains the best approach – for the local district official residing in the community to be DCOM's consistency review point of contact."	<p>Again, the Bering Straits CRSA never wanted the consultant to be the single point of contact; it was DCOM's requirement in order for the consultant to receive project materials.</p> <p>The board member was not funded to do this work, and she depended upon a local organization for sending and receiving faxes. In addition to her many donated volunteer hours, she used her own funds for postage and phone calls.</p> <p>Mr. Bates' acknowledges that the CRSA relied on the consultant's expertise, yet DCOM refused to approve ACMP funds for the short-term contract with the consultant. During the period between late 2006 and April 2010, DCOM refused to provide any funding to the CRSA. During this time, its consultant donated over 325 hours.</p>

<sup>4</sup> For the project in question, DCOM refused to provide the consultant important project-related information that was not available on the DCOM's FTP website for the project.

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Division of Coastal and Ocean Management Director Randy Bates  
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"The most troubling of all four audits was the audit for the BS CRSA, which was done in 2006. This audit showed that the BS CRSA was unable to account for any of the money the BS CRSA received in SFY03-SFY05, which amounted to over \$250,000.00"	<p>The program director at the time did not submit any of the required backup to the auditor. Apparently, the receipts were misplaced during a move of the office from Unalakleet to Koyuk. The CRSA later provided the Dept. of Law copies of all checks written as well as backup for some expenses, including all of the invoices from its consultant.</p> <p>According the Director Bates in a December 4, 2009 letter to the CRSA, the Dept. of Law found "no obvious signs that any of the board members or the program director misused the ACMP funding." Although Director Bates concluded the December 4, 2009 letter by saying he "considered the issue closed," he continues to raise it.</p>
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One of the tasks required for the plan approval was deleting unapproved sections of the plan.	Again, the Commissioners Decision <i>did not require removal of entire sections of the plan</i> . It simply required removal of references to the North Slope Borough that were not related to the CRSA.
The issue of subcontracts has been an issue in only one of the 28 districts and is explained in the Legislative Audit.	The Legislative Audit does not address subcontracts. Instead, the references to consultants relate to a district's designated point of contact. DNR has not explained what specific issues it had with the subcontract it mentioned in this letter.
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"DCOM allows districts to contract with consultants for many consistency review functions, but does not allow a consultant to be a district's official point of contact during a consistency review."	<p>None of the <i>three districts</i> that requested DNR include its contractor in the project review distribution list wanted the consultant to be a single point of contact. They simply wanted the consultant to receive electronic distribution of project information.</p> <p>This statement is incorrect – <i>DCOM required the Bering Straits CRSA to make its consultant the single point of contact</i> in order for the consultant to receive certain project emails. In a May 13, 2010 email, DCOM stated: "<i>We do not distribute items we're required to send to review participants to any district's contractors.</i>" When the consultant pointed out that this information was being distributed to another CRSA's consultant, <i>DCOM changed its policy</i> to require districts designate its consultant as the single point of contact in order to receive certain project information.<sup>4</sup> In response, the Bering Straits designated its consultant as the single point of contact, but retained its signatory authority.</p>
The use of consultants "is most powerful, and most true to the ACMP objective of local representation, when any outside expertise is expressed <i>through the filter</i> of the local coastal district."	The Bering Straits CRSA always retained a "filter" because it retained signatory authority and never asked to give this authority to its consultant.
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<sup>4</sup> For the project in question, DCOM refused to provide the consultant important project-related information that was not available on the DCOM's FTP website for the project.

## Louie Flora

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**From:** Dan Shea [dshea@cityofbethel.net]  
**Sent:** Monday, March 07, 2011 4:23 PM  
**To:** Louie Flora; Linda Hay  
**Subject:** AMCP Bills

Dear Flora & Hay,

My name is Daniel Shea, Planning Director and Alaska Coastal Management Coordinator here in Bethel, Alaska. I have ten (10) years of experience in land use & policy development. I have been asked to send you info on AMCP and how it is working here in Bethel region. In evaluating Pat Davidson Legislation Audit parts 1 & 2, Ms. Davidson team did a great analysis in finding AMCP was left out in the process and the changes to AMCP regulations/policies by DEC did have a negative outcome for their ability as reviewer of their local regions for permits.

After having 15 teleconferences with DNR over the passed year I found it some issues;

1. DNR does not include minutes of the teleconferences conversation which can include 20-30 State, federal and local department heads. The other issue is that many of the AMCP Coordinators claim they never got their responses from their comments.
2. That the State DNR is under staff to evaluate projects for accumulative impact assessment (AIA) and to make proper changes to State of Alaska policies.
3. DNR sub-ordinate department leaders don't have the experience/education/training in developing models of AIA that shows how projects affected air, wetlands, wildlife, spawning.
4. I think some blame is also needs to be on AMCP in that their Coastal Management Coordinators don't have the proper training on follow-up questions to their regional project's and developing facts of finding. I have listened to Coastal Coordinators in teleconferences where they waited for months for DNR sub-ordinate departments to send back a response to their questions. In my three years here in Bethel all my questions have always been answered including follow-up phone calls for responses and we have never had a issue (Complaints) like what many are saying they are having throughout Alaska.

Louie Flora & Linda Hay, both of you will need to talk to Senator Olson's & Rep Seaton's about bring in a private firm to evaluate DNR and other state agencies staff on why they are having problems in developing Accumulative Impact Assessment and appropriate policies for the state. I see this being more political than anything else since I have seen this in Kansas, Iowa, Nebraska and Indiana with the Department of Natural Resources (Stepping Stone to Political Office). Please remember, the pressure on the Governor and project owners feeling that to many state agencies are involved in the consistency review process they might feel it is taking too long to get projects developed.

I feel that all consistency reviewers (State, Federal, AMCP Coordinators, Villages) should be done at the same time and in a timely fashion so that project owners understand what they need to change or why their project will not be accepted. it all broils down to \$\$\$\$.

AMCP is the voice of the local regional people of Alaska and we as coordinators must have findings of facts that show how these projects will affect the environment around us and that includes state and federal agencies. I hope this summary I have written helps you in your questioning of State Department Heads on this issue with AMCP. I understand that Senator Hoffman & Rep. Herron is also in support of continuing AMCP for Western Alaska and these two men have worked very hard on this issue.

Sincerely,

Daniel J. Shea, MRCP  
Planning Director  
300 Chief Eddie Hoffman Hwy P.O. Box 1388  
Bethel, Alaska 99559  
Phone: 907-543-5306  
Cell: Bethel 907-545-0411  
Fax: 907-543-4186

Confidentiality notice:

This e-mail message, including any attachments, may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution, or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify Planning Director Daniel Shea at 907-543-5306 and delete this e-mail message from your computer.

## Louie Flora

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**From:** marvsmith [marvsmith@bristolbayboroughak.us]  
**Sent:** Thursday, March 03, 2011 9:29 AM  
**To:** Louie Flora; David Scott  
**Cc:** 'Kathie Wasserman'  
**Subject:** ACMP Resolution and Fact Sheet from Bristol Bay Borough  
**Attachments:** Resolution Supporting Changes to the ACMP from the Bristol Bay Borough dated 02-07-2011.pdf; ACMP\_Fact\_Sheets (2).pdf

Hello Louie & David,

I am sending this resolution and attached Fact sheet on the changes that need to be made to the Alaska Coastal Management Program (ACMP).

Attached is a resolution I wrote last month the Bristol Bay Borough Assembly passed in support of ACMP changes that are needed. I have some very long experience with this program going back to 2000 and was the ACMP coordinator for the L&P Borough for almost 9 years. To put it very simple in layman terms the legislation passed by the Murkowski administration gutted the ACMP program and the Legislature needs to fix it by putting the power back at local level not at the state level with DNR!

I have also attached a fact sheet that I agree with and helped write some of these facts several years ago. These are the changes we need. However, we could negotiate on some of these changes if DNR is willing to do the same.

The way the program was working prior to the Murkowski legislation was very effective and we need to go back to something similar to that.

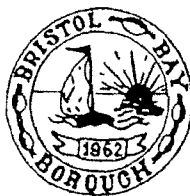
Please pass this on to Senator Olson and Rep Seaton!

Sincerely,

Marvin R. Smith  
Manager Bristol Bay Borough  
PO Box 189  
Naknek, Alaska 99633  
Phone: 907-246-4224 Ext: 307  
Cell Phone: 907-469-0550  
FAX: 907-246-6633  
email: [marvsmith@bristolbayboroughak.us](mailto:marvsmith@bristolbayboroughak.us)

P.O. Box 189  
NAKNEK, ALASKA 99633

www.theborough.com



TELEPHONE  
(907) 246-4224  
FAX  
(907) 246-6633

## *Bristol Bay Borough*

### RESOLUTION NO. 2011-04

#### **A RESOLUTION OF THE BRISTOL BAY BOROUGH SUPPORTING CHANGES TO THE ALASKA COASTAL MANAGEMENT PROGRAM.**

**WHEREAS**, the Bristol Bay Borough has participated in the Alaska Coastal Management Program (ACMP) for over 20 years as a coastal resource district; and

**WHEREAS**, since its inception in 1977 the ACMP has been an important program to promote responsible coastal development; and

**WHEREAS**, changes to ACMP statutes in 2003 and changes to the regulations in 2004 made significant changes to the program, including elimination of the Coastal Policy Council; and

**WHEREAS**, the 2008 evaluation of the ACMP by the federal Office of Coastal, Ocean and Resource Management recommended the Alaska Department of Natural Resources reconsider changes to the program, including the requirement for designated areas and the removal of air and water quality from ACMP reviews; and

**WHEREAS**, the November 2008 draft statutes and regulations prepared by the Alaska Department of Natural Resources would have removed the designated area requirements and brought the Alaska Department of Environmental Conservation back into ACMP reviews; and

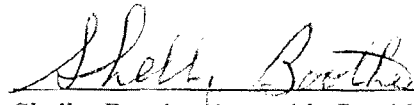
**WHEREAS**, the December 8, 2010 legislative audit found that changes to the ACMP limited the ability for coastal districts to establish enforceable policies; restricted the ability to address impacts to upland habitats, and limited the ability to meet legislative objectives for the program; and

**WHEREAS**, the legislative audit recommended the Alaska Department of Natural Resources review the designated area requirements and develop proposals to reintegrate the Alaska Department of Environmental Conservation into the ACMP; and


**WHEREAS**, the ACMP will sunset on July 1, 2011 unless the Alaska State Legislature extends the program.

**THEREFORE BE IT RESOLVED** that the Bristol Bay Borough hereby supports legislation that will extend the ACMP, establish a coastal policy board, bring back air and water quality issues into the ACMP consistency review process, eliminate requirements for designated areas, and allow meaningful coastal district policies.

**ADOPTED AND APPROVED BY THE ASSEMBLY OF THE BRISTOL BAY BOROUGH,**  
ALASKA this 7<sup>th</sup> day of February, 2011.

  
Shelby Boothe, Assembly President

**ATTEST:**

  
Tami Johnson, Borough Clerk

# **Alaska Coastal Management Program 2011**

## ***Fact Sheets: Overview***

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**#1: Enforceable Policies:** Coastal districts support legislation that would clarify their ability to address local concerns by filling gaps in state and federal laws.

- Changes to the ACMP regulations in 2004 implemented more stringent requirements than what was authorized by the Legislature. The regulations limit policies to selected topics.
- The Legislative Audit found that restrictions to policies have resulted in reduced district participation in project reviews which reduces the ability of the ACMP to resolve problems.

**#2: Designated Areas:** Elimination of the designated area requirements in the ACMP regulations would reduce project delays and remove unnecessary costs for coastal districts.

- Districts must receive approval for designated areas before impacts to certain coastal resources and uses can be considered during ACMP project reviews.
- DNR's 2008 draft regulations would have eliminated the designated area requirements, as recommended by the federal coastal management agency and the legislative audit.

**#3: DEC Carveout:** Elimination of the "DEC Carveout" would bring DEC back to the table during ACMP reviews while avoiding project delays that occurred in the past.

- The DEC Carveout has been problematic because air and water quality is related to almost every coastal use and resource. Regulation changes could eliminate previous project approval delays.
- DNR's 2008 draft statutes would have eliminated the DEC Carveout as recommended by the federal coastal management agency and the legislative audit.

**#4: Concentration of Power:** Revisions to the ACMP statutes would restore checks and balances to the program. The 2003 legislation gave DNR sole decision-making power.

- Legislation considered last year would have established a Coastal Policy Board that would work with DNR to approve coastal district plans and changes to regulations.
- The legislative audit found that centralized decision making has lessened consensus building.

**#5: Statewide Standards:** Changes to the statewide standards are needed to ensure the ACMP legislative objectives in AS 36.40.020 are met.

- Changes to the ACMP regulations in 2004 limited consideration of impacts to only selected coastal resources and uses and limited application of standards to a small part of the coastal zone.

**#6: State's Rights:** Changes to the ACMP legislation are needed to take advantage of provisions available in the federal Coastal Zone Management Act, such as consideration of impacts to coastal resources and uses located on federal lands and waters.

**#7: Subsistence:** Changes to the ACMP regulations are needed to allow districts to address impacts to subsistence uses and resources.



# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #1: Enforceable Policies***

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**Problem:** Restrictions to enforceable policies limit the ability for coastal districts to consider impacts to coastal uses and resources and limit the ability for the ACMP to meet the program objectives in AS 46.40.020. Districts are unable to address gaps in state and federal law.

**Limitations:** The 2004 regulation changes limit what matters a district policy may address. DNR's interpretation of the statutes and regulations make it impossible for districts to have meaningful policies for most subjects.

- DNR's regulations require that policies "flow from" certain statewide standards and designated areas.
- DNR limits policies to the specific matters covered by a statewide standard, but at the same time, it denies policies that address a matter in the standard claiming the standard adequately addresses the issue.

**The Requirement:** DNR's changes to the ACMP regulations in 2004 limit policies to subsistence areas, important habitat areas, natural hazard areas, energy areas, recreation and tourism areas, seafood processing areas, coastal access, siting of coastal facilities, transportation and utility routes, and sand and gravel extraction (11 AAC 114.270).

**Legislative Intent:** In 2003, DNR repeatedly testified to the Legislature that districts would retain the ability to establish meaningful policies under the new law. In response to a request by a legislator, DNR provided sample policies that would be approvable under the new law. After the legislation was enacted, DNR retracted those sample policies.

**Guidance:** The federally-approved program description provides guidance on the ACMP, including criteria for approving coastal district policies. DNR is not implementing these criteria.

- The guidance allows policies that address matters not specifically included in a state or federal law.
- DNR has ignored this guidance by denying policies that address matters under an agency's authority, even though the agency does not have a statute or regulation about the specific matter covered by the policy.<sup>1</sup>

**Potential Solution:** Amend the statutes to clarify that districts may establish policies for matters of local concern not specifically addressed in state or federal law. Retain the requirement that policies may not arbitrarily or unreasonably restrict a use of state concern.

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<sup>1</sup> A July 12, 2004 Attorney General memorandum made it clear that districts could establish policies for DNR area plans, a matter under DNR authority, if the plan was not adopted into regulation.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #2: Designated Areas***

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**Problem:** The designated area requirements are difficult and costly for districts to meet, and they limit the ability to address impacts to coastal uses and resources. The 2010 ACMP Legislative Audit found the designated area requirement limits the ability of districts to establish enforceable policies for subsistence and important habitats.

**Areas Denied:** DNR denied many designated areas proposed by coastal districts.

- Almost all proposed important habitat areas were denied.<sup>2</sup>
- On an area basis, most proposed subsistence use areas were denied.<sup>3</sup>

**The Requirement:** Designated areas are required in order to address issues of local concern for: Subsistence, important habitat, natural hazard areas, recreation, history and prehistory areas, commercial fishing and seafood processing areas, and major energy facilities.

**How Areas are Designated:** DNR may approve designated areas for inclusion in a district's coastal management plan or for temporary areas that apply to a single ACMP review.

**Agency Recommendations:** There is widespread recognition that the designated area requirements are too cumbersome and do not add any significant value to the ACMP.

- DNR proposed to eliminate the designated area requirements in the draft regulations it developed during the 2008 ACMP re-evaluation.
- The 2008 federal evaluation of the ACMP recommended DNR revisit the requirements for designated areas.
- Part 1 of the 2010 ACMP Legislative Audit recommended DNR review requirements for designating areas and establishing local concern to determine how districts can write enforceable policies without duplicating state or federal law.

**Potential Solution:** Since DNR has made no progress implementing changes, including changes it proposed during the 2008 re-evaluation, it would be appropriate for the Legislature to address this issue.

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<sup>2</sup> As a result of the 2004 regulation changes, impacts to upland habitats cannot be considered unless the habitats are located in a designated important habitat area.

<sup>3</sup> The legislative audit states that 80% of the subsistence use areas were approved for all districts outside of Northwest Alaska. The audit does not specify how this percentage was calculated, but it likely is not based on acreage. The coastal area in the Cenaliulriit CRSA alone makes up 33% of the coastal area outside of Northwest Alaska, and DNR denied all of the Cenaliulriit subsistence areas.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #3: DEC Carveout***

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**Problem:** DNR's implementation of the DEC Carveout eliminated the ability to consider any impact to air and water quality during a coordinated ACMP, it resulted in other problems:

- Gaps in DEC regulations and statutes cannot be addressed during ACMP reviews.
- Almost all coastal resources and uses are tied to air and water quality in some way.
- There is no public process for air and water quality matters when DEC does not have a permit (e.g., OCS activities).
- DEC rarely comes to the table during ACMP project reviews which reduces the effectiveness of Alaska's networked coastal program.

**Industry Concerns:** Before 2003, industry expressed DEC-related concerns about the ACMP.

- Some district policies repeated DEC laws. This issue is no longer a problem because district policies cannot restate or duplicate state or federal law.
- The requirement for complete applications for some DEC air permits delayed the start of ACMP reviews for oil and gas projects. This issue could be easily fixed in the regulations by defining what information is needed to initiate an ACMP review.

**Policies Denied:** DNR has not approved any air or water quality policies even though it assured the Legislature in 2003 that district policies would be able to address gaps in DEC's laws.

**Agency Recommendations:** There is widespread recognition that the DEC carve-out is not working well.

- DNR proposed to eliminate the carve-out in its draft statute changes developed as part of the 2008 ACMP re-evaluation.
- The 2008 federal evaluation of the ACMP recommended DNR evaluate the effectiveness of retaining the DEC carve-out.
- Part 1 of the 2010 ACMP legislative audit recommended DNR:
  - Develop proposals to reintegrate the DEC permitting into the ACMP, and
  - Continue dialog with coastal districts and industry regarding the ability of coastal districts to write district enforceable policies for air and water quality.

**Way Forward:** Since DNR has made no progress addressing this issue, and it requires a statutory change, it would be appropriate for the Legislature to address it in statute.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #4: Concentration of Power***

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**Problem:** Changes to the statutes and regulations in 2003 and 2004 made DNR the sole decision maker for ACMP issues. Elimination of the checks and balances of the ACMP has lessened consensus building that was characteristic of the pre-2003 program.

**How the Changes Concentrated Power:** Changes to the ACMP statutes and regulations make DNR the sole decision-maker for all ACMP issues.

- **Program Location:** Part 2 of the legislative audit found that some participants believe moving the ACMP to DNR from the Governor's Office may have led to strained relations among review participants.
- **Coastal Policy Council (CPC):** Elimination of the CPC gave DNR the sole power to approve coastal district plans and make changes to ACMP regulations.
- **Elevations:** DNR makes the decision on appeals of its proposed consistency determinations which were previously made jointly by the three resource agencies.
- **Consensus Building:** Part 2 of the legislative audit found that centralizing decision making in DNR has lessened consensus building among review participants and some participants believe the ACMP lacks impartiality and sufficient local representation.
- **Reduced Participation:** Part 2 of the legislative audit found that districts commented on 45% fewer reviews in 2010 than they did in 1994. Reduced participation diminishes the ability of the ACMP to identify and resolve conflicts.
- **Transparency:** Part 2 of the legislative audit found that the ACMP lacks transparency in certain respects, such as not responding to comments, insufficient information sharing with coastal districts, not providing information to coastal district consultants, and not recording meetings.

**Potential Solutions:** Checks and balances can be restored to the ACMP.

- Move the program back to the Office of the Governor or a non-resource agency such as the Department of Commerce, Community and Economic Development.
- Amend the statutes to establish a streamlined Coastal Policy Board that works with DNR to approve coastal district plans and changes to the ACMP regulations. Concerns about "veto power" of districts could be allayed by having a majority of the members on the Board represent state agencies.
- Amend the statutes to require a consensus of the state resource agencies for elevations.

# Alaska Coastal Management Program 2011

## ***Fact Sheet #5: Statewide Standards***

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**Problem:** Changes to the ACMP statewide standards, combined with new restrictions to district enforceable policies, make it impossible for the ACMP to meet all of the legislative objectives for the program in AS 46.40.020.

- Since district enforceable policies must be tied to the statewide standards and designated areas, gaps in state and federal law can no longer be addressed through the ACMP.

**Changes:** DNR's changes to the statewide standards in the ACMP regulations reduced the geographic scope of the ACMP and decreased the types of impacts that could be considered during an ACMP review.

- **Habitats Standard:** An overhaul to this standard drastically reduced the ability to consider impacts to habitats in the coastal zone.
  - **Uplands:** Upland habitats in the coastal zone can no longer be addressed unless DNR approves an important habitat area.
    - DNR has approved only a few small areas for important habitat statewide.
    - Upland habitats make up a considerable part of the coastal zone.
  - **Wetlands:** The definition of wetlands was changed to include only areas that drain directly to saltwater. Since the U.S. Army Corps of Engineers only regulates waters of the U.S., many wetlands in the coastal zone can no longer be addressed during ACMP reviews.
  - **Offshore Areas:** Only impacts to competing uses can now be considered in offshore areas (not impacts to the habitats themselves).
  - **Other Habitats:** Impacts to other habitats have been significantly limited (e.g., to consider only water flow).
- **Subsistence Standard:** The new standard only requires that a project avoid or minimize impacts to subsistence.
- **Coastal Waters:** The definition of coastal waters was changed to apply only to waters with a measurable amount of salt water.
- **Mining Standard:** Revisions to this standard removed hard rock mining activities and limited consideration of impacts to gravel mining in salt water, barrier islands, and spits.
- **Hazards:** This standard was weakened to give deference to applicants when there are no relevant codes or standards.

**Potential Solutions:** Revise the standards in the ACMP regulations to allow consideration of impacts to any coastal use or resource.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #6: State's Rights***

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**Problem:** Changes to the ACMP statutes and regulations placed new limits on opportunities provided under the federal Coastal Zone Management Act (CZMA).

**Limitations:** The following changes to the ACMP limit opportunities provided by the CZMA.

- **Designated Areas:** The DNR requirements for designated areas had an unintended consequence: Impacts to coastal resources and uses are limited to approved designated areas which cannot include federal areas. The CZMA allows states to review impacts to coastal uses and resources while they are on federal lands or waters.
- **Review Timelines:** The CZMA allows states up to 75 days to review federal activities and up to 6 months to review federally-permitted activities.
  - While most reviews can be completed in 30 or 50 days, large or complicated projects may need more time, especially when an EIS is required.
- **Inland Projects:** The CZMA allows states to review project inland of the coastal zone if there are impacts to coastal resources or uses.
  - Before 2003, inland projects could be reviewed under the ACMP, and this provision was never abused.

**Audit Findings:** Part 1 of the ACMP legislative audit found that the ACMP changes did not diminish state's rights under the CZMA, but it found that the changes did affect the purview of the consistency review. The audit did not consider the full impacts to state's rights of designated areas, review timelines or the inability to review impacts to coastal uses and resources from projects inland of the coastal zone.

**Potential Solutions:** The following changes would restore most of the state's rights affected by the ACMP changes:

- Eliminate designated area requirements from the ACMP regulations so impacts to coastal uses and resources on federal lands and waters can be considered.
- Amend the statutes to allow projects with an EIS or a federal permit to exceed the 90-day timeline for reviews.
- Amend the statutes to allow reviews of projects inland of the coastal zone when there are significant impacts to coastal uses or resources.

# **Alaska Coastal Management Program 2011**

## ***Fact Sheet #7: Subsistence Issues***

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**Problem:** Before impacts to subsistence can be considered during an ACMP project consistency review, DNR must first approve designated subsistence use areas.

- For many coastal districts, the information required by DNR is not available.<sup>4</sup>

**Areas Denied:** DNR denied all subsistence use areas proposed for the four largest coastal districts: North Slope Borough, Northwest Arctic, Borough Bering Straits CRSA, and Cenaliulriit CRSA.

- These four districts represent 52% of the state's coastal zone.
- Subsistence is extremely important to the people of these coastal districts.

**Policies Denied:** DNR approved only two subsistence policies. According to DNR, subsistence policies can only "allow or disallow" specific uses without any qualification.<sup>5</sup>

**The Requirement:** DNR's 2004 changes to the ACMP regulations require subsistence use designations:

- In order for the statewide subsistence standard to apply, and
- Before subsistence enforceable policies can be approved.

**How Areas are Designated:** DNR may approve: 1) permanent subsistence use areas as part of a coastal district plan, or 2) temporary areas during an ACMP project review.

**Districts Treated Differently:** For the four largest districts, DNR required that each type of subsistence be designated as a separate area. In order to designate all important subsistence areas, expensive maps were necessary. Other districts have been treated differently.

- Aleutians West CRSA and Lake and Peninsula Borough were not required to designate different types of subsistence use areas.
- Bristol Bay CRSA was not required to indicate where the different types of subsistence use occurred in the subsistence use areas it designated through description.
- Haines received approval for several small subsistence areas without being required to follow the same mapping requirements imposed on the northern districts.

**Potential Solution:** Eliminate designated area requirements and allow districts to establish policies to fill gaps in state and federal law.

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<sup>4</sup> DNR added additional mapping and other requirements beyond what is specified in the ACMP regulations.

<sup>5</sup> DNR claims that the "avoid or minimize" requirement in the statewide subsistence standard adequately addresses all matters related to subsistence, other than "allowing or disallowing" specific uses in a designated subsistence area.