



Alaska Coastal Management Program

Consistency Review Process & Effects of 2003-2004 Changes

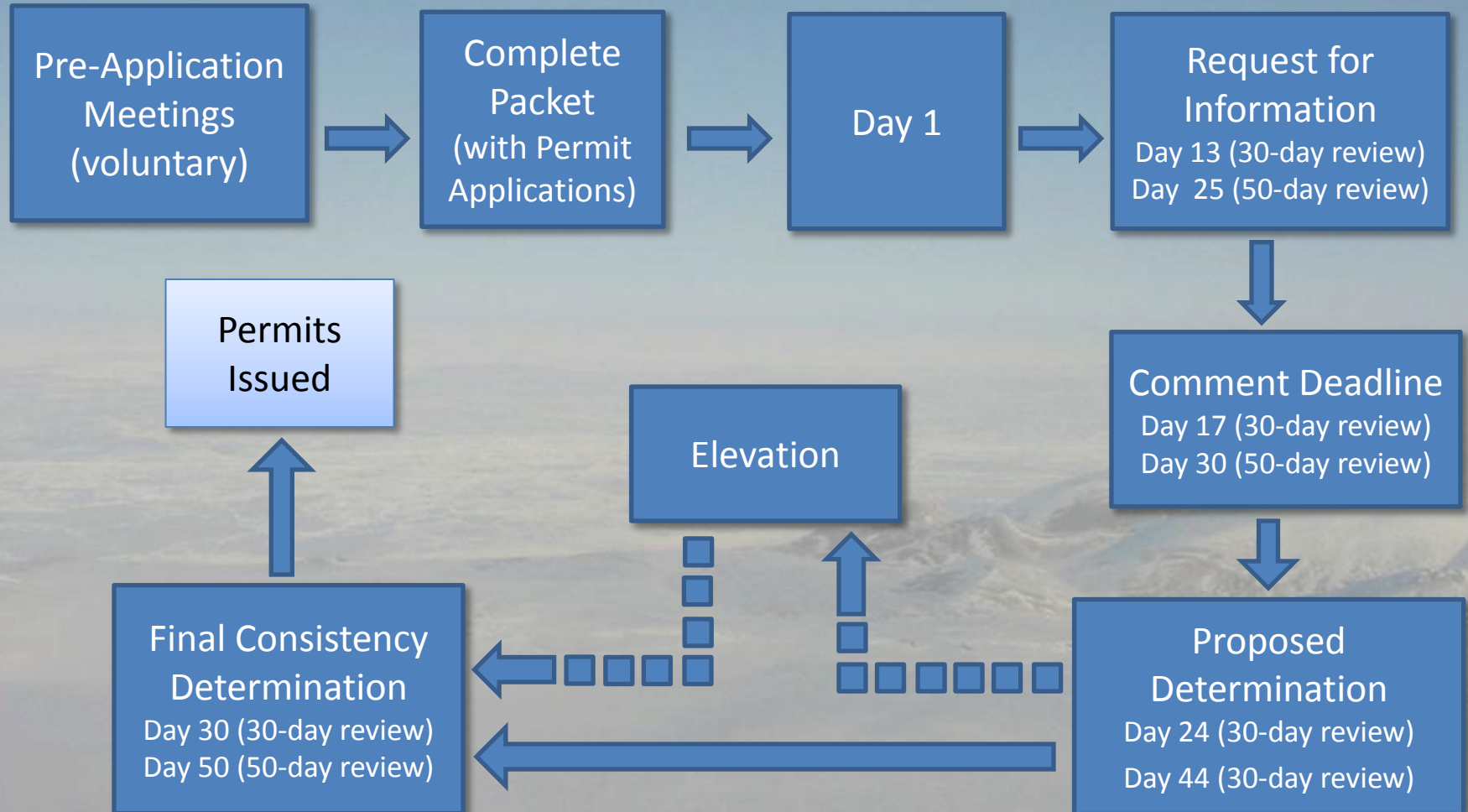
House Resources Committee

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Glenn Gray

ACMP Consistency Review Process*

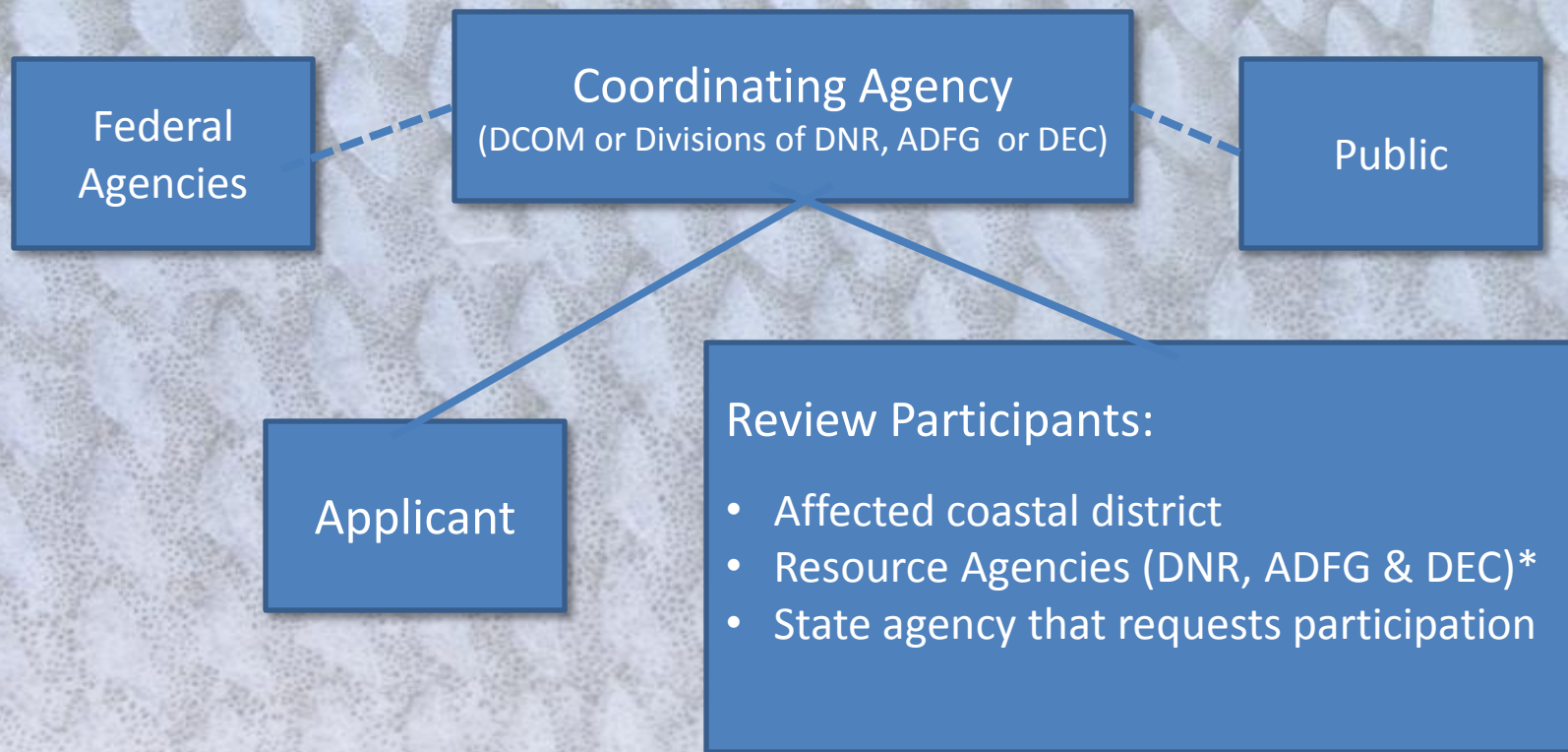
“One Size Fits All” – Same process for all reviews



*** Projects reviewed for “consistency” with statewide standards & district enforceable policies**

ACMP Consistency Review Process

Who is at the Table



***Note:** DEC seldom participates in consistency reviews

ACMP Consistency Review Process

Types of Reviews & Timelines

- **Only State Authorizations** (i.e., permits)
 - Timeline: Maximum 90-days including extensions (30- or 50-day reviews)
- **Federal Authorizations** (may include State Authorizations)
 - Federal timeline: No more than 6 months*
- **Federal Activities** (e.g., oil and gas lease sales, Corps dredging, General Permits)
 - Federal consistency determination: State reviews federal determination
 - Federal timeline: Up to 75 days - additional extensions if approved
- **Outer Continental Shelf Projects**
 - Plans: Exploration or Development Plans are reviewed (not permit applications)
 - Federal timeline: No more than 6 months*

***Note:** The Alaska statutory 90-day timeline for reviews overrides the federal timelines

ACMP Consistency Review Process

Enforceable Policies

- Projects are reviewed for consistency with:
 - Statewide standards (11 AAC 112)
 - Coastal district enforceable policies
- DNR's regulations require that policies “flow from:”

Statewide ACMP Standards (11 AAC 112)	Designated Areas (11 AAC 114.250)
Natural Hazards	Natural Hazard Areas
Coastal Access	Recreation Areas
Coastal Development	Tourism Areas
Energy Facilities	Major Energy Facility Areas
Transportation Routes & Facilities	Commercial Fishing & Seafood Processing Areas
Subsistence	Subsistence
Sand & Gravel Extraction	Important Habitat
Utility Routes & Facilities	History & Prehistory

ACMP: Enforceable Policies

- **Statutory Requirements:**
 - Can't restate or duplicate federal or state law
 - Can't unreasonably restrict a use of state concern
 - Must be clear and concise
 - Must be prescriptive
 - **Local Concern:** Must address a coastal resource or use that is:
 - Sensitive to development
 - Of unique concern to the coastal district
 - Not adequately addressed by state or federal law.

ACMP: DNR's More Stringent Requirements

- **Not Adequately Addressed:** DNR currently says policies cannot address a matter under an agency's authority – even if the agency has no regulations that address the matter
 - This requirement conflicts with:
 - 2005 ACMP Program Description approved by NOAA*
 - 2004 Attorney General memorandum*
- **Flow From:** Policies may only “flow from” certain statewide standards & designated areas

Note: These documents clarify that districts may establish policies for matters not addressed in a regulation.

ACMP: DNR's More Stringent Requirements

- **Designated Areas:**

- **Important Habitat Areas**

- Only small areas in 3 districts approved, all in Southeast Alaska
 - Only 16 policies approved (14 in Juneau)

- **Subsistence Areas**

- Areas denied for 52% of total coastal district acreage
 - Only 3 subsistence policies approved statewide

- **Reduced States' Rights**

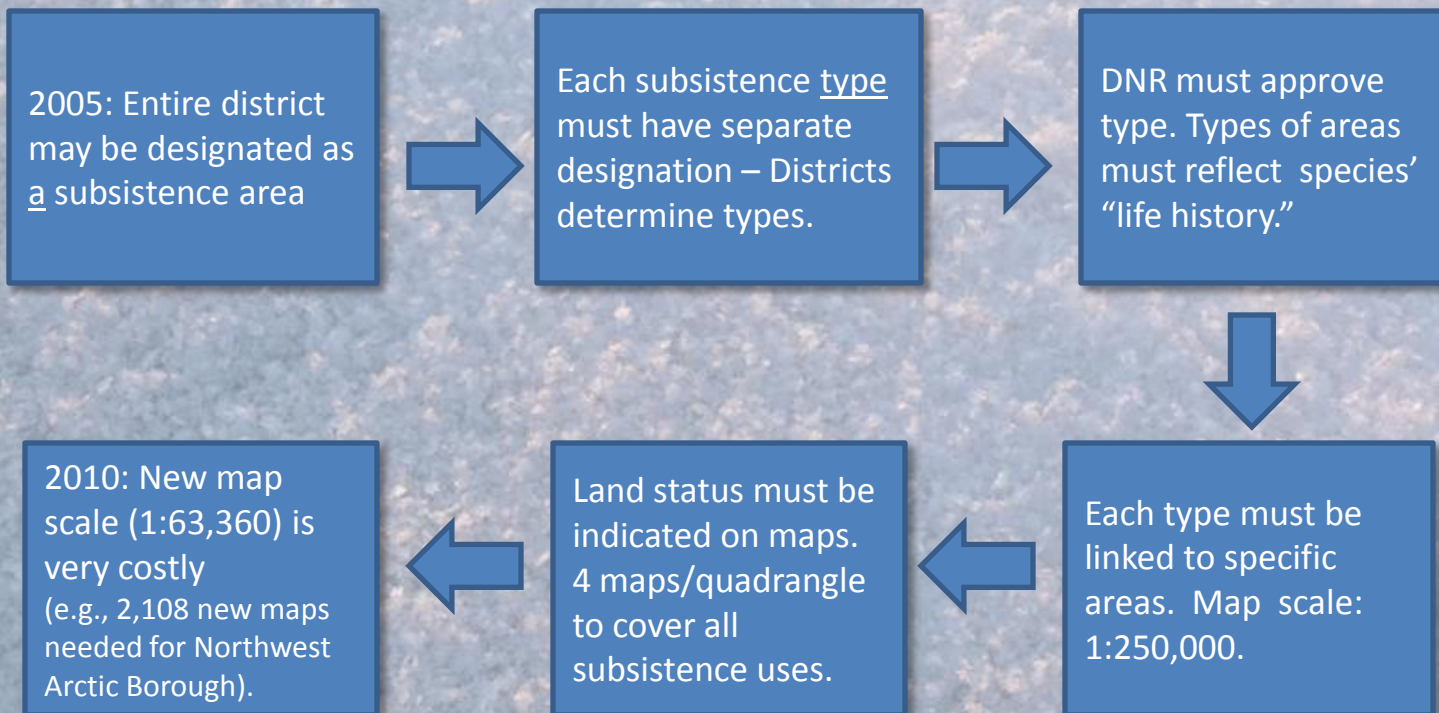
- Designated areas eliminate ability to review impacts to coastal uses and resources while they are on federal land or in the OCS

- **Designated Area Requirement:**

- Recommended for elimination in:
 - 2008 federal ACMP evaluation
 - 2011 Legislative Audit
 - 2008 DNR draft regulations

ACMP: Designated Areas

Subsistence Areas: Example of changing Rules

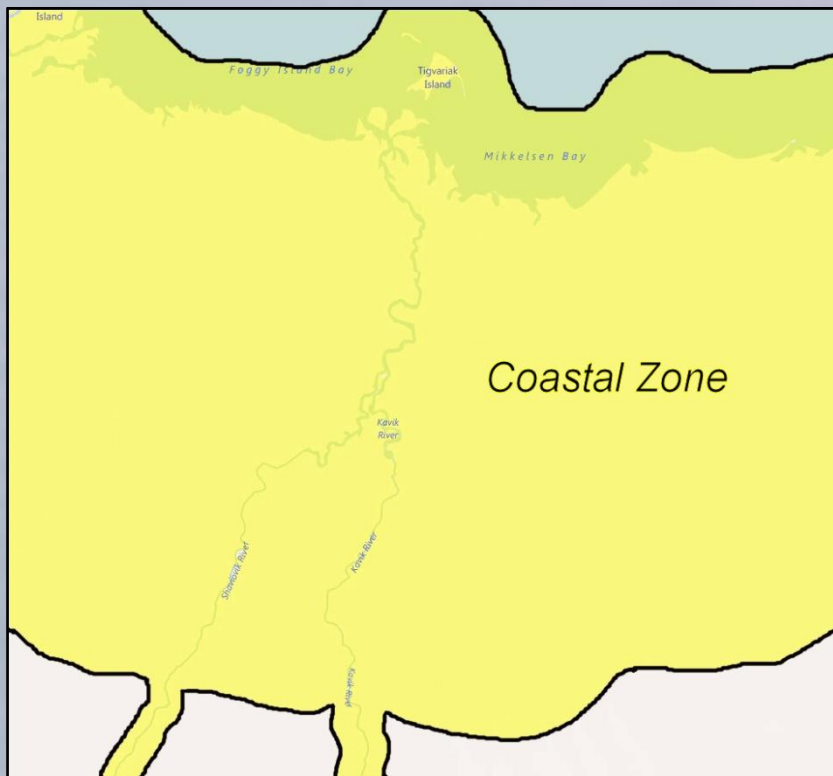


ACMP: Statewide Standards

- **Significantly weakened** (in regulation)
 - Reduced scope of what is covered
 - e.g., for offshore areas – consideration of impacts limited to competing uses (not habitats themselves)
 - e.g., mining standards changed to sand & gravel
 - Reduced geographic coverage
 - Some standards reduced to a small part of coastal zone
 - 2008 federal evaluation of ACMP
 - Recommended DNR look at effectiveness of new standards

ACMP: Statewide Standards

Example: Coverage of habitats standard



Before 2004



Current Coverage

ACMP: DEC Carve-Out

- DEC is not at the table
- No air/water quality issues covered during ACMP review
 - No air or water quality policies allowed (even though the Administration told the Legislature in 2003 that districts would be allowed to fill gaps).
- Scope of reviews are not clear
- No provisions for public comment on DEC's OCS findings
- Timelines not coordinated:
 - ACMP review (90-day maximum)
 - DEC permit review (can start after ACMP process is done)
- Carve-out recommended for elimination in:
 - 2011 Audit, 2008 federal evaluation & 2008 DNR draft statutes

ACMP: Summary of Effects

- **Meaningful Policies:** Inability to establish meaningful district enforceable policies
- **DEC Carve-Out:** DEC is not at the table, districts cannot fill gaps in DEC laws, and no provisions for public comment for OCS reviews
- **Centralized Decision-Making:** No checks and balances for plan approval, regulations & elevations
- **Consensus:** Lack of opportunities for consensus building

ACMP: Possible Statutory Changes

- **Enforceable policies**
 - Clarify criteria
 - Allow performance-based policies
 - Retain provision for uses of state concern
- **Checks and Balances: Options**
 - Establish Coastal Policy Board
 - Move agency
 - Elevations: Add other resource agency commissioners
- **DEC Carveout**
 - Allow districts to fill gaps in air and water quality laws
 - Allow ACMP review to begin without complete PSD Air Permit Application
 - Establish a public comment period and elevation provision for OCS reviews
- **Timeline**
 - Allow exception to 90-day timeline for large projects

ACMP: Possible Regulatory Changes

- **Eliminate designated areas**
 - This will allow state to exercise rights under the federal Coastal Zone Management Act (i.e. review of impacts to coastal uses and resources while on federal land & OCS)
- **Enforceable policies**
 - Remove more stringent requirements
 - Allow districts to fill gaps
- **Statewide standards**
 - Allow standards to apply throughout coastal zone
 - Redefine coastal waters and wetlands
 - Amend habitats standard
 - Reinstate upland habitats
 - Allow consideration of impacts to all coastal habitats
 - Reinstate minerals standard