



# LAWS OF ALASKA

**2003**

**Source**

CSHB 191(FIN) am

**Chapter No.**

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**AN ACT**

Relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; and providing for an effective date.

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**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1



## AN ACT

1 Relating to the Alaska coastal management program and to policies and procedures for  
2 consistency reviews and the rendering of consistency determinations under that program;  
3 eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the  
4 Alaska coastal management program; and providing for an effective date.

5 \_\_\_\_\_  
6 \* **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section  
7 to read:

8 FINDINGS. The legislature finds that

9 (1) the Alaska coastal management program (ACMP) is intended to function  
10 with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty  
11 regarding the feasibility of new investment;

12 (2) there is a need to update and reform the existing statewide standards of the

1 ACMP so that they are clear and concise and provide needed predictability as to the  
2 applicability, scope, and timing of the consistency review process under the program;

3 (3) there is a need to update and reform the district coastal management plans  
4 under the ACMP so that the local enforceable policies within those plans are clear and  
5 concise, provide greater uniformity in coastal management throughout the state, relate to  
6 matters of local concern, and do not duplicate state and federal requirements;

7 (4) the state has chosen not to enact legislation similar to 42 U.S.C. 4321 -  
8 4370f (National Environmental Policy Act of 1969, as amended) and, in furtherance of the  
9 legislative findings expressed in sec. 1(7), ch. 38, SLA 1994, the ACMP is not intended to  
10 take the place of such a program;

11 (5) to achieve these goals, statutory reform is needed; and

12 (6) to implement these needed reforms at the administrative level, it is in the  
13 best interest of the state for the development and implementation of the ACMP to be  
14 transferred from the Alaska Coastal Policy Council to the Department of Natural Resources.

15 \* **Sec. 2.** AS 38.05.825(a) is amended to read:

16 (a) Unless the commissioner finds that the public interest in retaining state  
17 ownership of the land clearly outweighs the municipality's interest in obtaining the  
18 land, the commissioner shall convey to a municipality tide or submerged land  
19 requested by the municipality that is occupied or suitable for occupation and  
20 development if the

21 (1) land is within or contiguous to the boundaries of the municipality;

22 (2) use of the land would not unreasonably interfere with navigation or  
23 public access;

24 (3) municipality has applied to the commissioner for conveyance of the  
25 land under this section;

26 (4) land is not subject to a shore fisheries lease under AS 38.05.082,  
27 or, if the land is subject to a shore fisheries lease, the commissioner determines it is in  
28 the best interests of the state to convey the land;

29 (5) land is classified for waterfront development or for another use that  
30 is consistent or compatible with the use proposed by the municipality, or the proposed  
31 use of the land is consistent or compatible with a land use plan adopted by the

municipality or [,] the department [, OR THE ALASKA COASTAL POLICY COUNCIL]; and

(6) land

(A) is required for the accomplishment of a public or private development approved by the municipality;

(B) is the subject of a lease from the state to the municipality;

or

(C) has been approved for lease to the municipality.

\* **Sec. 3.** AS 44.33.781 is amended to read:

**Sec. 44.33.781. Planning assistance for development and maintenance of district coastal management plans [PROGRAMS].** The department shall conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development, [AND] implementation, and maintenance of district coastal management plans [PROGRAMS] under AS 46.40. The technical assistance shall include the direct granting to the coastal resource districts of a portion of any funds received by the state from the federal coastal zone management program, in amounts to be individually determined for each coastal resource district by the commissioner of community and economic development. State agencies shall assist the department in carrying out the purposes of this section.

\* **Sec. 4.** AS 44.62.800(1) is amended to read:

(1) "agency" means a department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that "agency" does not include

(A) a board, [,] a commission, [,] a council, [EXCEPT THE ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN AS 46.39.020;] an authority, [,] or a public corporation of the executive branch of state government authorized or required by law to make regulations; or

(B) the Department of Corrections;

\* **Sec. 5.** AS 46.39.010 is amended by adding a new subsection to read:

(c) The department may adopt regulations necessary to implement this chapter.

1     \* **Sec. 6.** AS 46.39.030 is amended to read:

2                 **Sec. 46.39.030. Powers of the department [COUNCIL].** The **department**  
3                 [COUNCIL] may

4                         (1) apply for and accept grants, contributions, and appropriations,  
5                         including application for and acceptance of federal funds that may become available  
6                         for coastal planning and management;

7                         (2) contract for necessary services;

8                         (3) consult and cooperate with

9                                 (A) persons, organizations, and groups, public or private,  
10                                interested in, affected by, or concerned with coastal area planning and  
11                                management;

12                               (B) agents and officials of the coastal resource districts of the  
13                                state, and federal and state agencies concerned with or having jurisdiction over  
14                                coastal planning and management;

15                         (4) take any reasonable action necessary to carry out the provisions of  
16                 **this chapter or AS 46.40** [AS 46.39.020 - 46.39.050].

17     \* **Sec. 7.** AS 46.39.040 is amended to read:

18                 **Sec. 46.39.040. Duties of the department [COUNCIL].** In conformity with  
19                 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the  
20                 **department** [COUNCIL] shall

21                         (1) [THROUGH THE PUBLIC HEARING PROCESS AND THE  
22                         RECORDING OF THE MINUTES OF THE HEARINGS,] develop **statewide**  
23                         [GUIDELINES AND] standards **for the Alaska coastal management program, and**  
24                         **criteria** for the preparation [OF,] and **approval of district coastal management**  
25                         **plans** [APPROVE,] in accordance with AS 46.40 [, THE ALASKA COASTAL  
26                         MANAGEMENT PROGRAM];

27                         (2) establish continuing coordination among state agencies to facilitate  
28                         the development and implementation of the Alaska coastal management program; in  
29                         carrying out its duties under this paragraph, the **department** [COUNCIL] shall initiate  
30                         an interagency program of comprehensive coastal resource planning for each  
31                         geographic region **of the state** [DESCRIBED IN AS 46.39.020(a)(1)];

1 (3) assure continued provision of data and information to coastal  
2 resource districts to carry out their planning and management functions under the  
3 program.

4 \* **Sec. 8.** AS 46.40.010 is amended to read:

5 **Sec. 46.40.010. Development of Alaska coastal management program.** (a)

6 The department [ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN  
7 AS 46.39.020] shall approve, in accordance with this chapter, the Alaska coastal  
8 management program.

9 (b) The department [COUNCIL] may approve the Alaska coastal  
10 management program for a portion or portions of the coastal area before approving the  
11 complete program under (a) of this section. Portions of the program approved under  
12 this subsection shall be incorporated into the Alaska coastal management program.

13 (c) The Alaska coastal management program shall be reviewed by the  
14 department [COUNCIL] and, when appropriate, revised to

15 (1) add newly approved district coastal management plans  
16 [PROGRAMS], or revisions and amendments to the Alaska coastal management  
17 program;

18 (2) integrate newly approved district coastal management plans  
19 [PROGRAMS], or revisions and amendments of district coastal management plans  
20 [PROGRAMS], with existing approved plans [PROGRAMS] and with plans  
21 developed by state agencies;

22 (3) add new or revised state statutes, policies, regulations, or other  
23 appropriate material;

24 (4) review the effectiveness of implementation of district coastal  
25 management plans [PROGRAMS]; and

26 (5) consider new information acquired by the state and coastal resource  
27 districts.

28 (d) All reviews and revisions shall be in accordance with the statewide  
29 [GUIDELINES AND] standards and district plan criteria adopted [BY THE  
30 COUNCIL] under AS 46.40.040.

31 \* **Sec. 9.** AS 46.40.030 is amended to read:

1                   **Sec. 46.40.030. Development of district coastal management plans**  
2 **[PROGRAMS].** (a) Coastal resource districts shall develop and adopt district coastal  
3 management **plans** [PROGRAMS] in accordance with the provisions of this chapter.  
4 The **plan** [PROGRAM] adopted by a coastal resource district shall be based upon a  
5 municipality's existing comprehensive plan or a new comprehensive resource use plan  
6 or comprehensive statement of needs, policies, objectives, and standards governing the  
7 use of resources within the coastal area of the district. The **plan** [PROGRAM] must  
8 **meet** [BE CONSISTENT WITH] the **statewide** [GUIDELINES AND] standards **and**  
9 **district plan criteria** adopted [BY THE COUNCIL] under AS 46.40.040 and must  
10 include

11                   (1) a delineation within the district of the boundaries of the coastal area  
12 subject to the district coastal management **plan** [PROGRAM];

13                   (2) a statement, list, or definition of the land and water uses and  
14 activities subject to the district coastal management **plan** [PROGRAM];

15                   (3) a statement of policies to be applied to the land and water uses  
16 subject to the district coastal management **plan** [PROGRAM];

17                   (4) [ REGULATIONS, AS APPROPRIATE, TO BE APPLIED TO  
18 THE LAND AND WATER USES SUBJECT TO THE DISTRICT COASTAL  
19 MANAGEMENT PROGRAM;

20                   (5)] a description of the uses and activities **that** [WHICH] will be  
21 considered proper and the uses and activities **that** [WHICH] will be considered  
22 improper with respect to the land and water within the coastal area;

23                   [(6) A SUMMARY OR STATEMENT OF THE POLICIES WHICH  
24 WILL BE APPLIED AND THE PROCEDURES WHICH WILL BE USED TO  
25 DETERMINE WHETHER SPECIFIC PROPOSALS FOR LAND OR WATER USES  
26 OR ACTIVITIES SHALL BE ALLOWED;] and

27                   **(5)** [(7)] a designation of, and the policies **that** [WHICH] will be  
28 applied to the use of, areas within the coastal resource district **that** [WHICH] merit  
29 special attention.

30                   (b) In developing **enforceable policies in its coastal management plan**  
31 [STATEMENTS OF POLICIES AND REGULATIONS] under (a) of this section, a



1 coastal resource district **shall meet the requirements of AS 46.40.070 and** may not  
2 **duplicate, restate, or** incorporate by reference statutes and administrative regulations  
3 adopted by state **or federal** agencies.

4 \* **Sec. 10.** AS 46.40.040 is amended to read:

5 **Sec. 46.40.040. Statewide standards and district plan criteria [DUTIES**  
6 **OF THE ALASKA COASTAL POLICY COUNCIL]. Except as provided in (b)**  
7 **of this section and AS 41.17, the department [THROUGH THE PUBLIC**  
8 **HEARING PROCESS AND THE RECORDING OF THE MINUTES OF THE**  
9 **HEARINGS, THE ALASKA COASTAL POLICY COUNCIL] shall**

10 (1) by regulation, adopt under the provisions of AS 44.62  
11 (Administrative Procedure Act) for the use of and application by coastal resource  
12 districts and state agencies for carrying out their responsibilities under this chapter,  
13 **statewide [GUIDELINES AND] standards and district coastal management plan**  
14 **criteria** for

15 (A) identifying the boundaries of the coastal area subject to the  
16 **Alaska [DISTRICT] coastal management program;**

17 (B) determining the land and water uses and activities subject  
18 to the **Alaska [DISTRICT] coastal management program;**

19 (C) developing policies applicable to the land and water uses  
20 subject to the **Alaska [DISTRICT] coastal management program;**

21 (D) developing regulations applicable to the land and water  
22 uses subject to the **Alaska [DISTRICT] coastal management program;**

23 (E) developing policies and procedures to determine whether  
24 specific proposals for the land and water uses or activities subject to the  
25 **Alaska [DISTRICT] coastal management program shall be allowed;**

26 (F) designating and developing policies for the use of areas of  
27 the coast **that [WHICH] merit special attention; and**

28 (G) measuring the progress of a coastal resource district in  
29 meeting its responsibilities under this chapter;

30 (2) develop and maintain a program of technical and financial  
31 assistance to aid coastal resource districts in the development and implementation of

1 district coastal management **plans** [PROGRAMS];

2 (3) undertake review and approval of district coastal management  
3 **plans** [PROGRAMS] in accordance with this chapter;

4 (4) initiate a process for identifying and managing uses of state  
5 concern within specific areas of the coast;

6 (5) develop procedures or guidelines for consultation and coordination  
7 with federal agencies managing land or conducting activities potentially affecting the  
8 coastal area of the state;

9 (6) by regulation, establish a consistency review and determination or  
10 certification process that conforms to the requirements of AS 46.40.096.

11 \* **Sec. 11.** AS 46.40.040 is amended by adding new subsections to read:

12 (b) AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted  
13 under those statutes constitute the exclusive enforceable policies of the Alaska coastal  
14 management program for those purposes. For those purposes only,

15 (1) the issuance of permits, certifications, approvals, and  
16 authorizations by the Department of Environmental Conservation establishes  
17 consistency with the Alaska coastal management program for those activities of a  
18 proposed project subject to those permits, certifications, approvals, and authorizations;

19 (2) for a consistency review of an activity that does not require a  
20 Department of Environmental Conservation permit, certification, approval, or  
21 authorization because the activity is a federal activity or the activity is located on  
22 federal land or the federal outer continental shelf, consistency with AS 46.03,  
23 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes  
24 shall be established on the basis of whether the Department of Environmental  
25 Conservation finds that the activity satisfies the requirements of those statutes and  
26 regulations.

27 (c) For a consistency review described in (b)(2) of this section, the  
28 department, in addition to its review under AS 46.40.096 of all other enforceable  
29 policies applicable to the project, shall coordinate with the Department of  
30 Environmental Conservation and issue the Department of Environmental  
31 Conservation's finding of whether the activity satisfies the requirements of the statutes

1 and regulations described in (b)(2) of this section.

2 \* **Sec. 12.** AS 46.40.050 is repealed and reenacted to read:

3 **Sec. 46.40.050. Submission of district plans by coastal resource districts.**

4 (a) A coastal resource district must review and resubmit its coastal management plan  
5 for reapproval every 10 years after its approval by the department under  
6 AS 46.40.060.

7 (b) Within 30 months after certification of the organization of a new coastal  
8 resource district, the coastal resource district shall complete and submit to the  
9 department a proposed district coastal management plan. If, after receipt of a written  
10 request for extension from the coastal resource district, the department considers an  
11 extension proper, the department may grant an extension to a date that is within 54  
12 months after certification of the results of the coastal resource district's organization.  
13 A request under this subsection must include the reasons for the extension.

14 \* **Sec. 13.** AS 46.40.060 is amended to read:

15 **Sec. 46.40.060. Review and approval by the department [COUNCIL].** (a)

16 If, upon submission of a district coastal management plan [PROGRAM] for approval,  
17 the department [COUNCIL] finds that the plan meets [PROGRAM IS  
18 SUBSTANTIALLY CONSISTENT WITH] the provisions of this chapter and the  
19 statewide [GUIDELINES AND] standards and district plan criteria adopted by the  
20 department [COUNCIL] and does not arbitrarily or unreasonably restrict or exclude  
21 uses of state concern, the department [COUNCIL] may approve [GRANT  
22 SUMMARY APPROVAL OF] the district coastal management plan [PROGRAM], or  
23 may approve portions of the district plan that meet those requirements [PROGRAM  
24 WHICH ARE CONSISTENT].

25 (b) If the department [COUNCIL] finds that a district coastal management  
26 plan [PROGRAM] is not approvable or is approvable only in part under (a) of this  
27 section, it shall direct that deficiencies in the plan [PROGRAM] submitted by the  
28 coastal resource district be mediated. In mediating the deficiencies, the department  
29 [COUNCIL] may call for one or more public hearings in the district. The department  
30 [COUNCIL] shall meet with officials of the coastal resource district in order to resolve  
31 differences.

1 (c) If, after mediation, the differences have not been resolved [TO THE  
2 MUTUAL AGREEMENT OF THE COASTAL RESOURCE DISTRICT AND THE  
3 COUNCIL, THE COUNCIL SHALL CALL FOR A PUBLIC HEARING AND  
4 SHALL RESOLVE THE DIFFERENCES IN ACCORDANCE WITH AS 44.62  
5 (ADMINISTRATIVE PROCEDURE ACT). AFTER A PUBLIC HEARING HELD  
6 UNDER THIS SUBSECTION], the department [COUNCIL] shall enter findings  
7 and, by order, may require

8 (1) that the district coastal management plan [PROGRAM] be  
9 amended to satisfy [MAKE IT CONSISTENT WITH] the provisions of this chapter  
10 or meet the statewide [GUIDELINES AND] standards and district plan criteria  
11 adopted by the department [COUNCIL];

12 (2) that the district coastal management plan [PROGRAM] be revised  
13 to accommodate a use of state concern; or

14 (3) any other action be taken by the coastal resource district as  
15 appropriate.

16 (d) The superior courts of the state have jurisdiction to enforce orders of the  
17 department [COUNCIL] entered under (c) of this section.

18 \* **Sec. 14.** AS 46.40.070 is repealed and reenacted to read:

19 **Sec. 46.40.070. Requirements for department review and approval.** (a)

20 The department shall approve a district coastal management plan submitted for review  
21 and approval if

22 (1) the district coastal management plan meets the requirements of this  
23 chapter and the statewide standards and district plan criteria adopted by the  
24 department; and

25 (2) the enforceable policies of the district coastal management plan

26 (A) are clear and concise as to the activities and persons  
27 affected by the policies, and the requirements of the policies;

28 (B) use precise, prescriptive, and enforceable language; and

29 (C) do not address a matter regulated or authorized by state or  
30 federal law unless the enforceable policies relate specifically to a matter of  
31 local concern; for purposes of this subparagraph, "matter of local concern"

1 means a specific coastal use or resource within a defined portion of the  
2 district's coastal zone, that is

3 (i) demonstrated as sensitive to development;

4 (ii) not adequately addressed by state or federal law;

5 and

6 (iii) of unique concern to the coastal resource district as  
7 demonstrated by local usage or scientific evidence.

8 (b) A decision by the department under this section shall be given within 90  
9 days after submission of the district coastal management plan to the department.

10 \* **Sec. 15.** AS 46.40.090 is amended to read:

11 **Sec. 46.40.090. Implementation of district coastal management plans**  
12 **[PROGRAMS].** (a) A district coastal management plan [PROGRAM] approved  
13 under this chapter [BY THE COUNCIL AND THE LEGISLATURE] for a coastal  
14 resource district that [WHICH] does not have and exercise zoning or other controls on  
15 the use of resources within the coastal area shall be implemented by appropriate state  
16 agencies as provided in AS 46.40.096. Implementation shall be in accordance with  
17 the comprehensive use plan or the statement of needs, policies, objectives, and  
18 standards adopted by the district.

19 (b) A coastal resource district that [WHICH] has and exercises zoning or  
20 other controls on the use of resources within the coastal area shall implement its  
21 district coastal management plan [PROGRAM]. Implementation shall be in  
22 accordance with the comprehensive use plan or the statement of needs, policies,  
23 objectives, and standards adopted by the district.

24 \* **Sec. 16.** AS 46.40.094(a) is amended to read:

25 (a) The provisions of this section apply to a use or activity for which a  
26 consistency determination is required if

27 (1) at the time the proposed use or activity is initiated, there is  
28 insufficient information to evaluate and render a consistency determination for the  
29 entirety of the proposed use or activity;

30 (2) the proposed use or activity is capable of proceeding in discrete  
31 phases based upon developing information that was not available to the project

1        **applicant at the time of the previous** [OBTAINED IN THE COURSE OF A] phase;  
2        and

3                    (3) each subsequent phase of the proposed use or activity is subject to  
4        discretion to implement alternative decisions based upon the developing information.

5        \* **Sec. 17.** AS 46.40.096(a) is amended to read:

6                    (a) The **department** [COUNCIL] shall, by regulation, establish a consistency  
7        review and determination process that conforms to the requirements of this section.

8        \* **Sec. 18.** AS 46.40.096(b) is amended to read:

9                    (b) If a consistency review is not subject to AS 46.39.010 because the project  
10       for which a consistency review is made requires a permit, lease, or authorization from  
11       only one state **resource** agency, that state **resource** agency shall coordinate the  
12       consistency review of the project. The state **resource** agency shall coordinate the  
13       consistency review according to the requirements of the regulations adopted by the  
14       **department** [COUNCIL] under this section.

15       \* **Sec. 19.** AS 46.40.096(c) is amended to read:

16                    (c) The regulations adopted by the **department** [COUNCIL] under this  
17       section must include provisions for public notice and provide the opportunity for  
18       public comment. The regulations adopted under this subsection may make  
19       distinctions relating to notice based upon differences in project type, anticipated effect  
20       of the project on coastal resources and uses, other state or federal notice requirements,  
21       and time constraints. However, a notice given under this subsection must contain  
22       sufficient information, expressed in commonly understood terms, to inform the public  
23       of the nature of the proposed project for which a consistency determination is sought,  
24       and must explain how the public may comment on the proposed project.

25       \* **Sec. 20.** AS 46.40.096(d) is amended to read:

26                    (d) In preparing a consistency review and determination for a proposed  
27       project, the reviewing entity shall

28                    (1) request consistency review comments for the proposed project  
29       from state resource agencies, affected coastal resource districts, and other interested  
30       parties as determined by regulation adopted by the **department** [COUNCIL];

31                    (2) prepare proposed consistency determinations;

1 (3) coordinate subsequent reviews of proposed consistency  
2 determinations prepared under (2) of this subsection; a subsequent review of a  
3 proposed consistency determination under this paragraph

4 (A) is limited to a review by the department [STATE  
5 RESOURCE AGENCIES]; [AND]

6 (B) may occur only if requested by

7 (i) the project applicant;

8 (ii) a state resource agency; or

9 (iii) an affected coastal resource district; and

10 **(C) shall be completed by the department within 45 days**  
11 **after the initial request for subsequent review under this paragraph;**

12 (4) render the final consistency determination and certification.

13 \* **Sec. 21.** AS 46.40.096(g) is amended to read:

14 (g) The reviewing entity shall [MAY] exclude from the consistency review  
15 and determination process for a project

16 (1) an activity that

17 **(A)** is authorized under a general or nationwide permit that has  
18 previously been determined to be consistent with the Alaska [APPLICABLE]  
19 coastal management program [PROGRAMS]; or

20 **(B) is subject to authorization by the Department of**  
21 **Environmental Conservation under the requirements described in**  
22 **AS 46.40.040(b);**

23 (2) **activities excluded from a consistency review under AS 41.17;**

24 **and**

25 **(3)** the issuance of an authorization or permit issued by the Alaska Oil  
26 and Gas Conservation Commission.

27 \* **Sec. 22.** AS 46.40.096 is amended by adding new subsections to read:

28 (i) For purposes of those activities of a proposed project that are subject to  
29 (g)(1)(B) of this section, the consistency of those activities is determined by the  
30 issuance of the applicable permits, certifications, approvals, and authorizations by the  
31 Department of Environmental Conservation.

1 (j) Except as provided in AS 41.17, 16 U.S.C. 1456, and 15 C.F.R. Part 930, a  
2 consistency review of a project under this section is triggered by an activity within the  
3 areas described in (l) of this section that is subject to a state resource agency permit,  
4 lease, authorization, approval, or certification.

5 (k) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b), and  
6 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)  
7 of this section, is limited to activities that are located within the areas described in (l)  
8 of this section and that either are subject to a state resource agency permit, lease,  
9 authorization, approval, or certification or are the subject of a coastal resource district  
10 enforceable policy approved by the department under this chapter. The scope of a  
11 consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and  
12 15 C.F.R. Part 930.

13 (l) The regulations adopted under (a) of this section apply, as authorized by 16  
14 U.S.C. 1456(c), to

15 (1) activities within the coastal zone; and

16 (2) activities on federal land, including the federal outer continental  
17 shelf, that would affect any land or water use or natural resource of the state's coastal  
18 zone; for purposes of this paragraph, those activities consist of any activity on the  
19 federal outer continental shelf and any activity on federal land that are within the  
20 geographic boundaries of the state's coastal zone notwithstanding the exclusion of  
21 federal land in 16 U.S.C. 1453(1).

22 (m) As part of the regulations adopted under (a) of this section, the department  
23 shall establish a list of permits, certifications, leases, approvals, and authorizations  
24 issued by a state resource or federal agency that will trigger a consistency review  
25 under (j) of this section. In addition, the department shall establish in regulation  
26 categories and descriptions of uses and activities that, for purposes of evaluating  
27 consistency with the Alaska coastal management program, are determined to be  
28 categorically consistent or generally consistent after the inclusion of standard  
29 alternative measures. These categories of uses and activities must be as broad as  
30 possible so as to minimize the number of projects that must undergo an individualized  
31 consistency review under this section.



1 (n) Except as provided in (o) of this section, a consistency review under this  
2 section shall be completed within 90 days after the receipt of a complete application  
3 by the state. If a consistency review is not completed by the time specified in this  
4 subsection, the activity subject to review is conclusively presumed consistent.

5 (o) The time limitations in (n) of this section

6 (1) do not apply to a consistency review involving the disposal of an  
7 interest in state land or resources;

8 (2) are suspended

9 (A) from the time the reviewing entity determines that the  
10 applicant has not adequately responded in writing within 14 days after the  
11 receipt of a written request from the reviewing entity for additional  
12 information, until the time the reviewing entity determines that the applicant  
13 has provided an adequate written response;

14 (B) during a period of time requested by the applicant;

15 (C) during the period of time a consistency review is  
16 undergoing a subsequent review under (d)(3) of this section.

17 (p) A consistency review and determination for those activities of a project not  
18 excluded under (g) of this section may not be delayed or withheld pending issuance of  
19 the permits, certifications, approvals, and authorizations referred to in (g) of this  
20 section but shall proceed regardless of the status of those permits, certifications,  
21 approvals, and authorizations.

22 \* **Sec. 23.** AS 46.40.100(a) is amended to read:

23 (a) **As provided in AS 46.40.090 and 46.40.096, municipalities**  
24 [MUNICIPALITIES] and state resource agencies shall administer land and water use  
25 regulations or controls in conformity with district coastal management **plans**  
26 [PROGRAMS] approved **under this chapter** [BY THE COUNCIL] and in effect.

27 \* **Sec. 24.** AS 46.40.100(b) is amended to read:

28 (b) A party that is authorized under (g) of this section may file a petition  
29 showing that a district coastal management **plan** [PROGRAM] is not being  
30 implemented. A petition filed under this subsection may not seek review of a  
31 proposed or final consistency determination regarding a specific project. On receipt of

1 a petition, the **department** [COUNCIL], after giving public notice in the manner  
2 required by (f) of this section, shall convene a hearing to consider the matter. A  
3 hearing called under this subsection shall be held in accordance with regulations  
4 adopted **under this chapter** [BY THE COUNCIL]. After hearing, the **department**  
5 [COUNCIL] may order that the coastal resource district or a state resource agency  
6 take any action with respect to future implementation of the district coastal  
7 management **plan** [PROGRAM] that the **department** [COUNCIL] considers  
8 necessary, except that the **department** [COUNCIL] may not order that the coastal  
9 resource district or a state agency take any action with respect to a proposed or final  
10 consistency determination that has been issued.

11 \* **Sec. 25.** AS 46.40.100(c) is amended to read:

12 (c) In determining whether an approved district coastal management **plan**  
13 [PROGRAM] is being implemented by a coastal resource district that exercises zoning  
14 authority or controls on the use of resources within the coastal area or by a state  
15 resource agency, the **department** [COUNCIL] shall find in favor of the district or the  
16 state resource agency, unless the **department** [COUNCIL] finds a pattern of  
17 nonimplementation.

18 \* **Sec. 26.** AS 46.40.100(e) is amended to read:

19 (e) The superior courts of the state have jurisdiction to enforce lawful orders  
20 of the **department under this chapter** [COUNCIL].

21 \* **Sec. 27.** AS 46.40.100(f) is amended to read:

22 (f) Upon receipt of a petition under (b) of this section, the **department**  
23 [COUNCIL] shall give notice of the hearing at least 10 days before the scheduled date  
24 of the hearing. The notice must

25 (1) contain sufficient information in commonly understood terms to  
26 inform the public of the nature of the petition; and

27 (2) indicate the manner in which the public may comment on the  
28 petition.

29 \* **Sec. 28.** AS 46.40.100(h) is amended to read:

30 (h) If the **department** [COUNCIL] finds a pattern of nonimplementation  
31 under (c) of this section, the **department** [COUNCIL] may order a coastal resource

1 district or a state resource agency to take action with respect to future implementation  
2 of the district coastal management plan [PROGRAM] that the department  
3 [COUNCIL] considers necessary to implement the district coastal management plan  
4 [PROGRAM]. The department's [COUNCIL'S] determination under (c) of this  
5 section and any order issued under this subsection shall be considered a final  
6 administrative order for purposes of judicial review under AS 44.62.560.

7 \* **Sec. 29.** AS 46.40.110 is repealed and reenacted to read:

8 **Sec. 46.40.110. Authority in the unorganized borough.** A coastal resource  
9 service area in the unorganized borough organized under AS 29.03.020 and  
10 AS 46.40.110 - 46.40.180 before the effective date of this bill section shall exercise  
11 those authorities and perform those duties required under this chapter.

12 \* **Sec. 30.** AS 46.40.140(a) is amended to read:

13 (a) Each coastal resource service area [, UPON ORGANIZATION,] shall have  
14 an elected board representing the population of the service area. The board shall have  
15 the powers and duties and perform the functions prescribed for or required of coastal  
16 resource districts.

17 \* **Sec. 31.** AS 46.40.140(d) is amended to read:

18 (d) The term of office of a member of a coastal resource service area board is  
19 three years [, EXCEPT THAT THE TERMS OF THE MEMBERS OF THE FIRST  
20 BOARD ELECTED AFTER ORGANIZATION OF A COASTAL RESOURCE  
21 SERVICE AREA SHALL BE DETERMINED BY LOT, WITH TWO MEMBERS  
22 SERVING ONE-YEAR TERMS, TWO MEMBERS SERVING TWO-YEAR  
23 TERMS, AND THREE MEMBERS SERVING THREE-YEAR TERMS]. Members  
24 serve until their successors are elected and have qualified. This section does not  
25 prohibit the reelection of a board member.

26 \* **Sec. 32.** AS 46.40.140(e) is amended to read:

27 (e) The lieutenant governor shall provide for the election of the members of  
28 coastal resource service area boards. [THE FIRST ELECTION OF BOARD  
29 MEMBERS SHALL OCCUR AT THE SAME TIME AS THE ORGANIZATION  
30 ELECTION UNDER AS 46.40.130(b)].

31 \* **Sec. 33.** AS 46.40.140(f) is amended to read:

1 (f) **Election** [EXCEPT FOR THE FIRST ELECTION] of members of coastal  
2 resource service area boards [, ELECTIONS] shall be held annually on the date of  
3 election of members of regional educational attendance area boards under  
4 AS 14.08.071(b). [FOR AN ELECTION UNDER THIS SUBSECTION OR UNDER  
5 (e) OF THIS SECTION, A NEWLY ELECTED BOARD MEMBER TAKES  
6 OFFICE AT THE FIRST COASTAL RESOURCE SERVICE AREA BOARD  
7 MEETING AFTER CERTIFICATION OF THE ELECTION.] If no candidate files  
8 for election to a seat on the coastal resource service area board, the seat is considered  
9 vacant at the time a newly elected member would have taken office.

10 \* **Sec. 34.** AS 46.40.150 is amended to read:

11 **Sec. 46.40.150. Elections in coastal resource service areas. Elections**  
12 **[ORGANIZATION ELECTIONS]** under **AS 46.40.110 - 46.40.180** [AS 46.40.130  
13 AND OTHER ELECTIONS, INCLUDING RECALL ELECTIONS CONDUCTED  
14 UNDER AS 46.40.140,] shall be administered by the lieutenant governor in the  
15 general manner provided in AS 15 (Election Code). In addition, the lieutenant  
16 governor may adopt regulations necessary to the conduct of coastal resource service  
17 area board elections. The state shall pay all election costs.

18 \* **Sec. 35.** AS 46.40.180(a) is amended to read:

19 (a) Before adoption by a coastal resource service area board, [OR BY THE  
20 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER  
21 AS 46.40.170,] a district coastal management **plan** [PROGRAM] shall be submitted  
22 for review to each city or village within the coastal resource service area. The council  
23 of a city or traditional village council shall consider the **plan** [PROGRAM] submitted  
24 for review. Within 60 days of submission, the council of a city or traditional village  
25 council shall either approve the **plan** [PROGRAM] or enter objections to all or any  
26 portion of the **plan** [PROGRAM].

27 \* **Sec. 36.** AS 46.40.180(b) is amended to read:

28 (b) If a city or village within a coastal resource service area fails to approve a  
29 portion of the district coastal management **plan** [PROGRAM] prepared and submitted  
30 for approval under (a) of this section, the governing body shall advise the coastal  
31 resource service area board [OR THE DEPARTMENT, AS APPLICABLE,] of its

1 objections to the proposed plan [PROGRAM] and suggest alternative elements or  
2 components for inclusion in the district coastal management plan [PROGRAM]. New  
3 matter submitted by a city or village that meets [WHICH IS SUBSTANTIALLY  
4 CONSISTENT WITH] the statewide [GUIDELINES AND] standards and district  
5 plan criteria adopted under this chapter [BY THE COUNCIL] shall be accepted  
6 and the district coastal management plan [PROGRAM] modified accordingly. If a  
7 city or village fails to provide objections and suggested alternatives within the time  
8 limits established in this section, the coastal resource service area board [OR THE  
9 DEPARTMENT, AS APPLICABLE,] may adopt the district coastal management  
10 plan [PROGRAM] as initially offered.

11 \* **Sec. 37.** AS 46.40.180(c) is amended to read:

12 (c) Objection by a city council under (b) of this section is limited to objection  
13 to elements of the plan [PROGRAM] affecting resources or the use of resources  
14 within the corporate limits of the city. Objection by a traditional village council under  
15 (b) of this section is limited to objection to elements of the plan [PROGRAM]  
16 affecting resources or the use of resources within the village or within two miles of the  
17 village.

18 \* **Sec. 38.** AS 46.40 is amended by adding a new section to read:

19 **Sec. 46.40.195. Construction with other laws.** Nothing in this chapter shall  
20 be construed to

21 (1) diminish state jurisdiction, responsibility, or rights in the field of  
22 planning, development, or control of land or water resources, submerged land, or  
23 navigable water;

24 (2) affect in any way any state requirement imposed under a federal  
25 authorization or federal waiver of sovereign immunity; or

26 (3) diminish the zoning or planning authority of municipalities under  
27 AS 29.

28 \* **Sec. 39.** AS 46.40.210(2) is amended to read:

29 (2) "coastal resource district" means each of the following that  
30 contains a portion of the coastal area of the state:

31 (A) unified municipalities;

1 (B) organized boroughs of any class that exercise planning and  
2 zoning authority;

3 (C) home rule and first class cities of the unorganized borough  
4 or within boroughs that do not exercise planning and zoning authority;

5 (D) second class cities of the unorganized borough, or within  
6 boroughs that do not exercise planning and zoning authority, that have  
7 established a planning commission, and that, in the opinion of the  
8 commissioner of community and economic development, have the capability  
9 of preparing and implementing a comprehensive district coastal management  
10 plan [PROGRAM] under AS 46.40.030;

11 (E) coastal resource service areas established and organized  
12 under AS 29.03.020 and AS 46.40.110 - 46.40.180;

13 \* **Sec. 40.** AS 46.40.210(3) is amended to read:

14 (3) "consistency review" means the evaluation of a proposed project,  
15 the scope of which is determined under AS 46.40.094 and 46.40.096, against the  
16 statewide standards adopted [BY THE COUNCIL] under AS 46.40.040 for those  
17 evaluations and the enforceable policies in an applicable [A] district coastal  
18 management plan [PROGRAM] approved [BY THE COUNCIL] under  
19 AS 46.40.060;

20 \* **Sec. 41.** AS 46.40.210(5) is amended to read:

21 (5) "department" means the Department of Natural Resources  
22 [COMMUNITY AND ECONOMIC DEVELOPMENT];

23 \* **Sec. 42.** AS 46.40.210(8) is amended to read:

24 (8) "uses of state concern" means those land and water uses that  
25 [WHICH] would significantly affect the long-term public interest; "uses of state  
26 concern" [THESE USES, SUBJECT TO COUNCIL DEFINITION OF THEIR  
27 EXTENT,] include

28 (A) uses of national interest, including the use of resources for  
29 the siting of ports and major facilities that [WHICH] contribute to meeting  
30 national energy needs, construction and maintenance of navigational facilities  
31 and systems, resource development of federal land, and national defense and

1 related security facilities that are dependent upon coastal locations;

2 (B) uses of more than local concern, including those land and  
3 water uses **that** [WHICH] confer significant environmental, social, cultural, or  
4 economic benefits or burdens beyond a single coastal resource district;

5 (C) the siting of major energy facilities, activities pursuant to a  
6 state **or federal** oil and gas lease, or large-scale industrial or commercial  
7 development activities **that** [WHICH] are dependent on a coastal location and  
8 **that** [WHICH], because of their magnitude or the magnitude of their effect on  
9 the economy of the state or the surrounding area, are reasonably likely to  
10 present issues of more than local significance;

11 (D) facilities serving statewide or interregional transportation  
12 and communication needs; and

13 (E) uses in areas established as state parks or recreational areas  
14 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat  
15 areas under AS 16.20;

16 \* **Sec. 43.** AS 46.40.210 is amended by adding new paragraphs to read:

17 (10) "coastal use or resource" means a land or water use or natural  
18 resource of the coastal zone; "coastal use or resource" includes subsistence, recreation,  
19 public access, fishing, historic or archaeological resources, geophysical resources, and  
20 biological or physical resources found in the coastal zone on a regular or cyclical  
21 basis;

22 (11) "coastal zone" means the coastal water including land within and  
23 under that water, and adjacent shoreland, including the water within and under that  
24 shoreland, within the boundaries approved by the former Alaska Coastal Policy  
25 Council and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465  
26 (Coastal Zone Management Act of 1972, as amended); "coastal zone" includes areas  
27 added as a result of any boundary changes approved by the department and by the  
28 United States Secretary of Commerce under 16 U.S.C. 1451 - 1465; "coastal zone"  
29 does not include

30 (A) those lands excluded under 16 U.S.C. 1453(1); or

31 (B) areas deleted as a result of any boundary changes by the

1 department in conformance with 16 U.S.C. 1451 - 1465;

2 (12) "district coastal management plan" means a plan developed by a  
3 coastal resource district, including enforceable policies of that plan, setting out  
4 policies and standards to guide public and private uses of land and water within that  
5 district and approved by the department as meeting the requirements of this chapter  
6 and the regulations adopted under this chapter;

7 (13) "enforceable policy" means a policy established by this chapter or  
8 approved by the department as a legally binding policy of the Alaska coastal  
9 management program applicable to public and private activities;

10 (14) "project" means all activities that will be part of a proposed  
11 development.

12 \* **Sec. 44.** AS 38.05.037(b)(2); AS 39.50.200(b)(38); AS 44.62.800(2)(B); AS 46.39.020,  
13 46.39.050; AS 46.40.080, 46.40.120, 46.40.130, 46.40.140(c), 46.40.160, 46.40.170,  
14 46.40.200, and 46.40.210(4) are repealed.

15 \* **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to  
16 read:

17 ANNULMENT OF CERTAIN REGULATIONS. The following regulations are  
18 annulled:

19 (1) 6 AAC 80.010 - 6 AAC 80.900;

20 (2) 6 AAC 85.020 - 6 AAC 85.900.

21 \* **Sec. 46.** The uncoded law of the State of Alaska is amended by adding a new section to  
22 read:

23 TRANSITION: GENERAL PROVISIONS. (a) The Department of Natural  
24 Resources shall adopt regulations under AS 44.62 (Administrative Procedure Act)  
25 implementing this Act in order that the regulations are effective no later than July 1, 2004.

26 (b) Until sec. 45 of this Act takes effect or the regulations attorney removes the  
27 regulations under sec. 48(c) of this Act, whichever occurs first, regulations adopted to  
28 implement the Alaska coastal management program at 6 AAC 80 and 6 AAC 85 remain in  
29 effect and, notwithstanding any contrary provision of this Act, the Department of Natural  
30 Resources may implement and enforce the regulations.

31 (c) Notwithstanding any contrary provision of this Act, the repeal of the Alaska



1 Coastal Policy Council enacted by sec. 44 of this Act, and the repeal of the Alaska Coastal  
2 Policy Council's duties in AS 46.40.040, as amended by sec. 10 of this Act, a district coastal  
3 management program, including its enforceable policies, approved by the former Alaska  
4 Coastal Policy Council remains in effect for purposes of AS 46.39 and AS 46.40 until July 1,  
5 2006, unless the Department of Natural Resources disapproves or modifies all or part of the  
6 program before July 1, 2006.

7 (d) Consistency reviews pending on the day before the effective date of secs. 17 - 22  
8 of this Act and initiated under the provisions of AS 46.40.096, as that section existed before  
9 the changes made by secs. 17 - 22 of this Act, may, at the applicant's option exercised no  
10 more than 60 days after the effective date of secs. 17 - 22 of this Act, be continued and  
11 completed under the procedures and enforceable policies under the provisions of AS 46.39  
12 and AS 46.40 as they existed before the changes made by this Act.

13 (e) Except as provided in (d) of this section, contracts, rights, liabilities, and  
14 obligations created by or under a law repealed by this Act remain in effect notwithstanding  
15 this Act's taking effect.

16 \* **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 TRANSITION AND APPLICABILITY OF CERTAIN PROVISIONS:  
19 SUBMISSION OF DISTRICT PLANS BY COASTAL RESOURCE DISTRICTS FOR  
20 INITIAL IMPLEMENTATION OF THIS ACT. (a) Within one year after the effective date  
21 of regulations adopted by the Department of Natural Resources implementing changes to  
22 AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 and 44 of this Act, or by July 1, 2005,  
23 whichever is later, coastal resource districts shall review their existing district coastal  
24 management program and submit to the Department of Natural Resources for review and  
25 approval a revised district coastal management plan meeting the requirements of AS 46.40, as  
26 amended by this Act, and the implementing regulations.

27 (b) Upon request, the Department of Natural Resources shall consult with coastal  
28 resource districts to identify plan amendments that will meet the standards and guidelines  
29 established under this Act.

30 (c) AS 46.40.070(b), enacted by sec. 14 of this Act, does not apply to a revised  
31 district coastal management plan submitted under (a) of this section.

1     \* **Sec. 48.** The uncoded law of the State of Alaska is amended by adding a new section to  
2 read:

3           REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to

4                 (1) change the heading of

5                         (A) AS 46.39 from "Coastal Management Administration; Alaska  
6 Coastal Policy Council" to "Coastal Management Administration";

7                         (B) article 2 of AS 46.40 from "Coastal Management Programs in the  
8 Unorganized Borough" to "Coastal Management Plans in the Unorganized Borough";

9                         (C) AS 46.40.180 from "Approval of programs in coastal resource  
10 service areas" to "Approval of plans in coastal resource service areas";

11                 (2) delete the heading of article 2 of AS 46.39 and renumber article 3 of  
12 AS 46.39 as article 2.

13           (b) Wherever in the Alaska Administrative Code the terms "Alaska Coastal Policy  
14 Council" or "Coastal Policy Council" are used, or the term "council" is used to refer to the  
15 Alaska Coastal Policy Council, the regulations attorney is instructed to change those terms to  
16 read as "Department of Natural Resources," "DNR," "department" or "commissioner of  
17 natural resources" when to do so would be consistent with AS 44.62.125(b)(6) and the  
18 changes made by this Act.

19           (c) If regulations adopted by the Department of Natural Resources under sec. 46 of  
20 this Act take effect before the effective date of sec. 45 of this Act, the regulations attorney is  
21 instructed to remove from the Alaska Administrative Code the regulations listed in sec. 45 of  
22 this Act, as being obsolete. The lieutenant governor shall notify the regulations attorney of  
23 the effective date of the regulations adopted by the Department of Natural Resources under  
24 sec. 46 of this Act.

25     \* **Sec. 49.** Section 45 of this Act takes effect July 1, 2005.

26     \* **Sec. 50.** Except as provided in sec. 49 of this Act, this Act takes effect immediately under  
27 AS 01.10.070(c).