

**HOUSE BILL NO. 191**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/12/03

Referred: House Special Committee on Fisheries, Resources, Judiciary, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska coastal management program and to policies and  
2 procedures for consistency reviews and the rendering of consistency determinations  
3 under that program; relating to the functions of coastal resource service areas; creating  
4 an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy  
5 Council; annulling certain regulations relating to the Alaska coastal management  
6 program; relating to actions based on private nuisance; relating to zoning within a third  
7 class borough covered by the Alaska coastal management program; and providing for  
8 effective dates."

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

10 \* **Section 1.** AS 38.05.035(e)(1) is amended to read:

11 (1) with the consent of the commissioner and subject to the director's  
12 discretion, for a specific proposed disposal of available land, resources, or property, or

1 of an interest in them, the director, in the written finding,

2 (A) shall establish the scope of the administrative review on  
3 which the director's determination is based, and the scope of the written  
4 finding supporting that determination; the scope of the administrative review  
5 and finding may address only reasonably foreseeable, significant effects of the  
6 uses proposed to be authorized by the disposal;

7 (B) may limit the scope of an administrative review and finding  
8 for a proposed disposal to

9 (i) applicable statutes and regulations;

10 (ii) the facts pertaining to the land, resources, or  
11 property, or interest in them, that the director finds are material to the  
12 determination and that are known to the director or knowledge of which  
13 is made available to the director during the administrative review; and

14 (iii) issues that, based on the statutes and regulations  
15 referred to in (i) of this subparagraph, on the facts as described in (ii) of  
16 this subparagraph, and on the nature of the uses sought to be authorized  
17 by the disposal, the director finds are material to the determination of  
18 whether the proposed disposal will best serve the interests of the state;  
19 and

20 (C) may, if the project for which the proposed disposal is  
21 sought is a multiphased development, limit the scope of an administrative  
22 review and finding for the proposed disposal to the applicable statutes and  
23 regulations, facts, and issues identified in (B)(i) - (iii) of this paragraph that  
24 pertain solely to the disposal phase of the project when

25 (i) the only uses to be authorized by the proposed  
26 disposal are part of that phase;

27 (ii) the disposal is an oil and gas disposal and, before  
28 the next phase of the project may proceed, public notice and the  
29 opportunity to comment are provided under regulations adopted by the  
30 department [UNLESS THE PROJECT IS SUBJECT TO A  
31 CONSISTENCY REVIEW UNDER AS 46.40 AND PUBLIC

1 NOTICE AND THE OPPORTUNITY TO COMMENT ARE  
2 PROVIDED UNDER AS 46.40.096(c)];

3 (iii) the department's approval is required before the  
4 next phase of the project may proceed; and

5 (iv) the department describes its reasons for a decision  
6 to phase;

7 \* **Sec. 2.** AS 38.05.177(c) is amended to read:

8 (c) The director shall give notice under AS 38.05.945 of receipt of the lease  
9 application and call for comments from the public. The director's call for public  
10 comments must provide opportunity for public comment for a period of not less than  
11 60 days. If, after review of information received during the public comment period,  
12 the director determines that the discovery of a local source of natural gas would  
13 benefit the residents of an area, the director shall execute a lease for the area described  
14 in (b) of this section. The director shall execute the lease after completion of a title  
15 search **and** [,] the close of the public comment period [, AND, IF REVIEW IS  
16 REQUIRED UNDER AS 46.40, AFTER THE FINAL CONSISTENCY  
17 DETERMINATION IS MADE UNDER AS 46.40]. A lease entered into under this  
18 subsection gives the lessee the exclusive right to explore for, develop, and produce, for  
19 a term of three years, natural gas on the state land described in the lease; the right to  
20 explore for, develop, and produce is limited to gas from a field if a part of the field is  
21 within 3,000 feet of the surface.

22 \* **Sec. 3.** AS 38.05.825(a) is amended to read:

23 (a) Unless the commissioner finds that the public interest in retaining state  
24 ownership of the land clearly outweighs the municipality's interest in obtaining the  
25 land, the commissioner shall convey to a municipality tide or submerged land  
26 requested by the municipality that is occupied or suitable for occupation and  
27 development if the

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

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

31 (3) municipality has applied to the commissioner for conveyance of the

1 land under this section;

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

5 (5) land is classified for waterfront development or for another use that  
6 is consistent or compatible with the use proposed by the municipality, or the proposed  
7 use of the land is consistent or compatible with a land use plan adopted by the  
8 municipality or [,] the department [, OR THE ALASKA COASTAL POLICY  
9 COUNCIL]; and

10 (6) land

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

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

14 or

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

16 \* **Sec. 4.** AS 38.05.945(d) is amended to read:

17 (d) Notice at least 30 days before the action under (a)(5) of this section shall  
18 be given to appropriate

19 (1) regional fish and game councils established under AS 16.05.260;

20 and

21 (2) coastal resource districts [SERVICE AREAS ORGANIZED  
22 UNDER AS 46.40.110 - 46.40.210].

23 \* **Sec. 5.** AS 38.05.965 is amended by adding a new paragraph to read:

24 (25) "coastal resource district" has the meaning given in AS 46.39.900.

25 \* **Sec. 6.** AS 41.17.900(e) is amended to read:

26 (e) Subject to 16 U.S.C. 1456(f) (Sec. 307(f) of the Coastal Zone Management  
27 Act of 1972, P.L. 92-583) as to private land, this chapter and the regulations adopted  
28 under this chapter establish the forest management standards, policies, and review  
29 processes under AS 46.39 [AS 46.40 (ALASKA COASTAL MANAGEMENT  
30 ACT)]. This subsection does not apply to timber harvest activity that requires a state  
31 or federal authorization under a provision of law other than this chapter.

1 \* **Sec. 7.** AS 41.21.492(b) is amended to read:

2 (b) Nothing in AS 41.21.491 - 41.21.495 affects the responsibilities of

3 (1) the Department of Fish and Game, the Board of Fisheries, or the  
4 Board of Game under AS 16 and AS 41.99.010;

5 (2) the Department of Environmental Conservation under AS 46.03; or

6 (3) state agencies and municipalities under AS 46.39 [AS 46.39.010  
7 AND AS 46.40.100].

8 \* **Sec. 8.** AS 41.21.504(b) is amended to read:

9 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of

10 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the  
11 Department of Fish and Game or the Board of Fisheries or the Board of Game;

12 (2) AS 46.03 regarding the responsibilities of the Department of  
13 Environmental Conservation; or

14 (3) AS 46.39 [AS 46.39.010 AND AS 46.40.100] regarding the  
15 responsibilities of state agencies and municipalities.

16 \* **Sec. 9.** AS 41.23.420(d) is amended to read:

17 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

18 (1) the Department of Fish and Game, the Board of Fisheries, the  
19 Board of Game, or the Department of Community and Economic Development under  
20 AS 08.54, AS 16, or AS 41.99.010;

21 (2) the Department of Environmental Conservation under AS 46.03; or

22 (3) state agencies and municipalities under AS 46.39 [AS 46.39.010  
23 AND AS 46.40.100].

24 \* **Sec. 10.** AS 44.33.781 is repealed and reenacted to read:

25 **Sec. 44.33.781. Assistance to local coastal resource districts.** (a) The  
26 department shall provide a program of research, training, and technical assistance to  
27 coastal resource districts. The technical assistance shall include the direct granting to  
28 the coastal resource districts of a portion of any money received by the state from the  
29 federal coastal zone management program, in amounts to be individually determined  
30 for each coastal resource district by the commissioner of community and economic  
31 development. State agencies shall assist the department in carrying out the purposes

1 of this section.

2 (b) In this section, "coastal resource district" has the meaning given in  
3 AS 46.39.900.

4 \* **Sec. 11.** AS 44.62.800(1) is amended to read:

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

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

12 (B) the Department of Corrections;

13 \* **Sec. 12.** AS 46.39 is amended by adding a new section to read:

14 **Sec. 46.39.007. Declaration of intent.** The legislature declares that

15 (1) the Alaska Coastal Management Program (ACMP) is intended to  
16 be a networked program that does not grant new permitting or regulatory authority to  
17 state agencies or create a new state permit system;

18 (2) the ACMP is intended to function so as to minimize delay,  
19 regulatory confusion, costly litigation, and uncertainty regarding the feasibility of new  
20 investment; to achieve these goals, statutory reform is needed;

21 (3) the environmental and natural resource protection standards of this  
22 state are among the strongest in the nation; by establishing these programs as the  
23 enforceable policies of the ACMP, the state will achieve a truly networked coastal  
24 management program that relies on existing regulatory authority to manage the coastal  
25 zone fairly, efficiently, and predictably;

26 (4) the state has chosen not to enact legislation similar to 42 U.S.C.  
27 4321 - 4370f (National Environmental Policy Act of 1969, as amended) and, in  
28 furtherance of the legislative findings expressed in sec. 1(7), ch. 38, SLA 1994, the  
29 ACMP is not intended to take the place of such a program.

30 \* **Sec. 13.** AS 46.39.010 is repealed and reenacted to read:

31 **Sec. 46.39.010. Coastal management duties.** (a) As authorized by

1 16 U.S.C. 1456 (sec. 307, Coastal Zone Management Act of 1972) and 15 C.F.R. Part  
2 930, the department shall, on behalf of the state, concur with or object to

3 (1) federal agency consistency determinations; and

4 (2) consistency certifications for federal licenses, federal permits, and  
5 OCS plans.

6 (b) The department may adopt regulations necessary to implement this  
7 chapter.

8 (c) The department shall

9 (1) consult with

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

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; and

15 (2) develop and maintain a program of technical and financial  
16 assistance to aid coastal resource districts.

17 (d) In conformity with 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act  
18 of 1972, as amended), the department shall develop the Alaska Coastal Management  
19 Program

20 (1) using the management technique recognized in 16 U.S.C.  
21 1455(d)(11)(B);

22 (2) that applies, as authorized by 16 U.S.C. 1456(c), to

23 (A) activities within the coastal zone; and

24 (B) activities on federal lands, including the federal outer  
25 continental shelf, that would affect any land or water use or natural resource of  
26 the state's coastal zone; for purposes of this subparagraph those activities  
27 consist of any activity on the federal outer continental shelf and any activity on  
28 federal lands that are within the geographic boundaries of the state's coastal  
29 zone notwithstanding the exclusion of federal lands in 16 U.S.C. 1453(1);

30 (3) using appropriate statutes drawn from the following list and  
31 appropriate regulations adopted under those statutes as the enforceable policies of the

1 ACMP:

2 (A) Department of Fish and Game:

3 (i) AS 16.05.840, 16.05.850, 16.05.870, and 16.05.890;

4 (ii) AS 16.20 (Conservation and Protection of Alaskan  
5 Wildlife);

6 (iii) AS 16.40.100 - 16.40.199 (Aquatic Farming);

7 (iv) AS 16.40.210 (Finfish Farming);

8 (B) Department of Natural Resources:

9 (i) AS 27.19 (Reclamation);

10 (ii) AS 27.21 (Alaska Surface Coal Mining Control and  
11 Reclamation Act);

12 (iii) AS 38.04 (Policy for Use and Classification of  
13 State Land Surface);

14 (iv) AS 38.05 (Alaska Land Act);

15 (v) AS 38.35 (Right-of-Way Leasing Act);

16 (vi) AS 41.06 (Geothermal Resources);

17 (vii) AS 41.14 (Rivers, Lakes, and Streams);

18 (viii) AS 41.17 (Forest Resources and Practices);

19 (ix) AS 41.21 (Parks and Recreational Facilities);

20 (x) AS 41.23 (Multiple Use Management of Public  
21 Resources);

22 (xi) AS 41.35.010 - 41.35.240 (Alaska Historic  
23 Preservation Act);

24 (xii) AS 46.15 (Alaska Water Use Act);

25 (C) Department of Environmental Conservation:

26 (i) AS 16.10.010 - 16.10.050 (functions related to  
27 permit and licensing concerning interference with streams and waters);

28 (ii) AS 46.03 (Environmental Conservation);

29 (iii) AS 46.04 (Oil and Hazardous Substance Pollution  
30 Control);

31 (iv) AS 46.09 (Hazardous Substance Release Control);

1 (v) AS 46.14 (Air Quality Control);

2 (4) using local policies adopted under (e) of this section as additional  
3 enforceable policies of the ACMP for federal consistency reviews authorized by  
4 16 U.S.C. 1456(c)(1) and (2) and federal consistency certifications under 16 U.S.C.  
5 1456(c)(3)(B);

6 (5) using local policies included in (f) of this section as additional  
7 enforceable policies of the ACMP for federal consistency reviews authorized by  
8 16 U.S.C. 1456(c)(1) and (2) on the outer continental shelf and for federal consistency  
9 certifications under 16 U.S.C. 1456(c)(3)(B); and

10 (6) that for consistency reviews, implements the enforceable policies  
11 listed in (3) of this subsection only by complying with the permit requirements under  
12 the statutes and regulations listed as the enforceable policies for the activities for  
13 which approval is sought.

14 (e) Upon nomination of the ordinance by the municipality and after public  
15 notice and an opportunity for comment, the department may include local ordinances  
16 adopted by a municipality under AS 29 as enforceable policies, within or seaward of  
17 the municipality, for federal consistency reviews authorized by 16 U.S.C. 1456(c)(1)  
18 and (2) and federal consistency certifications under 16 U.S.C. 1456(c)(3)(B) if the  
19 local ordinances do not duplicate existing state requirements or unreasonably restrict  
20 uses of state concern. Once a local ordinance is adopted as an enforceable state policy  
21 by the department, the department shall, in consultation with the municipality,  
22 interpret and apply the ordinance as a part of federal consistency reviews authorized  
23 by 16 U.S.C. 1456(c)(1) and (2) and federal consistency certifications under 16 U.S.C.  
24 1456(c)(3)(B). If an ordinance adopted by the department as a state enforceable  
25 policy is implemented through a local permit, consistency with the enforceable policy  
26 shall be conclusively presumed by the granting of the permit by the municipality.  
27 Unless readopted by the department as amended, a local ordinance ceases to be an  
28 enforceable state policy if the local ordinance is amended or repealed.

29 (f) The following former district coastal management program enforceable  
30 policies that were approved by the Alaska Coastal Policy Council are adopted as  
31 enforceable policies, within or seaward of the corresponding district, for federal

1 consistency reviews authorized by 16 U.S.C. 1456(c)(1) and (2) on the federal outer  
 2 continental shelf and for federal consistency certifications under 16 U.S.C.  
 3 1456(c)(3)(B), except that the department may, upon petition of a borough whose  
 4 policy is listed in this subsection, delete that policy as an enforceable policy of the  
 5 ACMP:

6 (1) North Slope Borough enforceable policies 2.4.3(a)-(d); 2.4.4(b),  
 7 (h); 2.4.5; 2.4.5.1(a), (c), dated May 6, 1988;

8 (2) Aleutians East Borough enforceable policies 7.2 A-7, G-3, G-4, G-  
 9 5, dated November 16, 1992;

10 (3) Aleutians West Coastal Resource Service Area enforceable policies  
 11 B-7, J-2, dated August 30, 1991;

12 (4) Bering Straits Coastal Resource Service Area enforceable policies  
 13 A-1, B-3, B-14, dated December 22, 1989;

14 (5) Bristol Bay Borough enforceable policy 1.1, dated January 3, 1984;

15 (6) Bristol Bay Coastal Resource Service Area enforceable policies  
 16 4.2 - 4.7, dated February 17, 1987;

17 (7) Cenaliulriit Coastal Resource Service Area enforceable policies B-  
 18 9, C-4, C-5, I-6, dated September 24, 1999;

19 (8) Northwest Arctic Borough enforceable policies 6.3.3(1), (2), (10),  
 20 dated January 7, 1998;

21 (9) City of St. Paul enforceable policy 11.1, dated April 14, 2000;

22 (10) Kenai Peninsula Borough enforceable policies 5.6, 5.7, 5.9, 6.4c,  
 23 12.6, dated July 3, 1990;

24 (11) Lake and Peninsula Borough enforceable policies B-8, J-2, dated  
 25 October 31, 1996;

26 (12) City and Borough of Yakutat enforceable policies 5.2, 5.3, 5.5,  
 27 6.4c, dated May 13, 1999;

28 (13) City and Borough of Sitka enforceable policy 9.1, dated May 31,  
 29 1989;

30 (14) Kodiak Island Borough enforceable policies 5 and 11 for Energy  
 31 Facilities, dated March 15, 1984.

1 (g) In selecting enforceable policies under (d)(3) of this section, the  
 2 department may, for purposes of the ACMP, limit the applicability of an enforceable  
 3 policy to appropriate activities or to appropriate sectors of the area described in (d)(2)  
 4 of this section.

5 (h) The department may apply for and accept grants, contributions, and other  
 6 sources of money, including application for and acceptance of federal money that may  
 7 become available under 16 U.S.C. 1451 - 1465. The department and the Department  
 8 of Community and Economic Development may provide grants to coastal resource  
 9 districts consistent with 16 U.S.C. 1451 - 1465.

10 \* **Sec. 14.** AS 46.39 is amended by adding new sections to article 2 to read:

11 **Sec. 46.39.055. Duties of resource agencies.** The resource agencies shall  
 12 coordinate and cooperate with the department in the administration of this chapter.

13 **Sec. 46.39.060. State consistency review.** (a) For activities in the coastal  
 14 zone that only require state permits, the issuance of the applicable state permits  
 15 implementing the enforceable policies in AS 46.39.010 constitutes consistency with  
 16 the ACMP.

17 (b) Those activities subject to consistency review under this chapter that are  
 18 not federal activities subject to 16 U.S.C. 1456, are not OCS plans, do not require a  
 19 federal permit listed in AS 46.39.080, and do not require a state permit implementing  
 20 the enforceable policies in AS 46.39.010 are conclusively determined to be consistent  
 21 with the ACMP.

22 **Sec. 46.39.065. Consistency review for federally administered permits.** (a)  
 23 If a person requests a federally-administered permit listed in AS 46.39.080 for an  
 24 activity within an area described in AS 46.39.010(d)(2), the person shall provide a  
 25 copy of the consistency certification submitted under 16 U.S.C. 1456(c) and 15 C.F.R.  
 26 930.57 to the department. The consistency certification must identify the activity for  
 27 which approval is sought and the federal agencies from which approval is sought, and  
 28 must set out which state permits are required for the proposed activity.

29 (b) The department shall coordinate with the other state resource agencies  
 30 responsible for issuance of any required state permits implementing the state's  
 31 enforceable policies in AS 46.39.010(d)(3) and, within five days after issuance of the

1 required permits, issue a written concurrence to the federal agencies identified in the  
2 consistency certification.

3 (c) If a required state permit is denied, the department shall issue an objection  
4 and further proceedings regarding the objection are governed by 16 U.S.C. 1456 and  
5 15 C.F.R. 930.110 - 131.

6 (d) Except for an activity conducted by the federal government, an activity on  
7 federal land that is not subject to a federal permit listed in AS 46.39.080 and that does  
8 not require a state permit is conclusively determined to be consistent with the  
9 enforceable policies of the ACMP.

10 (e) Except for an activity conducted by the federal government, an activity on  
11 federal land that is subject solely to a federally administered permit, including a  
12 nationwide or general permit, and that does not require a state permit is conclusively  
13 determined to be consistent with the enforceable policies of the ACMP.

14 **Sec. 46.39.070. Consistency review for federal activities and outer**  
15 **continental shelf plans.** (a) If a federal activity is proposed within an area described  
16 in AS 46.39.010(d)(2), the federal agency proposing the activity shall submit to the  
17 department a determination of consistency as required by 16 U.S.C. 1456 and  
18 15 C.F.R. Part 930.

19 (b) If a person requests approval of an OCS plan, the person shall submit to  
20 the department a consistency certification in the manner provided in AS 46.39.065(a).

21 (c) For federal activities that, absent federal consistency review provided in  
22 16 U.S.C. 1456, are not subject to an enforceable policy of AS 46.39.010(d)(3), and  
23 for OCS plans, the department shall coordinate with the resource agency administering  
24 the enforceable policy to determine whether the proposed activity would meet the state  
25 permit requirements implementing the enforceable policy. For federal activities that,  
26 absent federal consistency review provided in 16 U.S.C. 1456, are not subject to an  
27 enforceable policy of AS 46.39.010(d)(4) – (5), and for OCS plans, the department  
28 shall apply the enforceable policy in accordance with AS 46.39.010(e) and (f) to  
29 determine whether the proposed activity is consistent with the enforceable policy.

30 (d) If each resource agency determines that the proposed federal activity or  
31 OCS plan meets that agency's enforceable policy permit requirements under

1 AS 46.39.010(d)(3) made applicable by the ACMP, and if the department determines  
 2 that the proposed federal activity or OCS plan is consistent with the enforceable  
 3 policies of AS 46.39.010(d)(4) – (5), the department shall concur with the consistency  
 4 determination. If one of the resource agencies determines that the proposed federal  
 5 activity or OCS plan does not satisfy that resource agency's enforceable policy permit  
 6 requirements under AS 46.39.010(d)(3), or if the department determines that the  
 7 proposed federal activity or OCS plan is inconsistent with an enforceable policy of  
 8 AS 46.39.010(d)(4) - (5) made applicable by the ACMP, the department shall, if  
 9 feasible, issue a conditional concurrence under 15 C.F.R. 930.4 setting out conditions  
 10 that would render the proposed federal activity or OCS plan consistent. If the  
 11 proposed federal activity or OCS plan cannot be rendered consistent, the department  
 12 shall object to the consistency determination.

13 (e) If the department objects to the consistency determination, or if the  
 14 department's conditional concurrence is deemed an objection under 15 C.F.R.  
 15 930.4(b), further proceedings on the objection are governed by 16 U.S.C. 1456 and 15  
 16 C.F.R. 930.110 - 131.

17 **Sec. 46.39.072. Construction with other laws.** Nothing in this chapter shall  
 18 be construed to

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

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

24 (3) diminish the zoning or planning authority of municipalities under  
 25 AS 29.

26 **Sec. 46.39.075. Scope of review.** (a) The scope of a consistency review  
 27 under this chapter is limited to the discrete activities proposed by the applicant for  
 28 which approval is sought, regardless of whether the activity is part of a larger project  
 29 or development that includes additional activities that may be subject to separate  
 30 consistency reviews.

31 (b) Except as provided in (c) of this section, an activity is subject to no more

1 than one consistency review under this chapter.

2 (c) If an applicant seeks the renewal or reissuance of an authorization for an  
 3 existing activity that has previously been subject to consistency review under  
 4 AS 46.39.060 - 46.39.070 or under former AS 46.40, or the issuance of an  
 5 authorization to replace an expired authorization for an existing activity that has  
 6 previously been subject to consistency review under AS 46.39.060 - 46.39.070 or  
 7 under former AS 46.40, the activity is conclusively determined to be consistent with  
 8 the ACMP unless the applicant proposes a modification. If an applicant proposes a  
 9 modification to an existing activity, the consistency review procedures of  
 10 AS 46.39.060 - 46.39.070 apply to the modification.

11 **Sec. 46.39.080. Identification of federally administered permits.** (a) For  
 12 purposes of 16 U.S.C. 1456 and 15 C.F.R. 930.53(a), the following federal  
 13 authorizations are subject to consistency review under this chapter:

14 (1) a United States Department of Agriculture, United States Forest  
 15 Service permit

16 (A) required under 36 C.F.R. Part 251 for outfitter and guide  
 17 operations for freshwater boat trips that include a designated area for exclusive  
 18 commercial use by the permit holder;

19 (B) for mining plans of operation required under 36 C.F.R.  
 20 228.4 - 228.8, and that require an environmental assessment or environmental  
 21 impact statement under 42 U.S.C. 4332 (National Environmental Policy Act);

22 (C) required under 36 C.F.R. 228.58 - 228.61 for mineral  
 23 material sales and sites, if those sales and sites are greater than five acres or not  
 24 previously reviewed;

25 (D) required under 36 C.F.R. Part 251 for a hotel, a motel, a  
 26 resort, a service station, a fish hatchery, mariculture, a liquid waste disposal  
 27 area, a sewage transmission line, hydroelectric projects, oil and gas pipelines,  
 28 an airport, a heliport, a dam, a reservoir, water transmission, a fish ladder,  
 29 power lines, telephone lines, or a water easement; or

30 (E) for ground-disturbing construction that requires one or  
 31 more of the following:

1 (i) an environmental assessment or environmental  
2 impact statement under 42 U.S.C. 4332 (National Environmental  
3 Policy Act);

4 (ii) a permit from the United States Environmental  
5 Protection Agency under 33 U.S.C. 1342 (sec. 402 of the Clean Water  
6 Act);

7 (iii) a permit from the United States Department of  
8 Defense, Army Corps of Engineers, under 33 U.S.C. 1344 (sec. 404 of  
9 the Clean Water Act);

10 (iv) an authorization from the Department of  
11 Environmental Conservation under 18 AAC 50, 18 AAC 60, 18 AAC  
12 70, or 18 AAC 72 with respect to air emissions, solid waste, or  
13 wastewater;

14 (v) an authorization from the department under  
15 AS 41.14, or from the Department of Fish and Game under  
16 AS 16.05.840 or 16.05.870;

17 (vi) a department water rights or tidelands authorization  
18 under AS 46.15.010 - 46.15.160 and regulations adopted under those  
19 statutes;

20 (2) a permit from the United States Secretary of Commerce under  
21 33 U.S.C. 1441, for activities in a national marine sanctuary;

22 (3) a permit from the United States Department of Defense, Army  
23 Corps of Engineers,

24 (A) under 33 U.S.C. 401 and 403 (secs. 9 and 10 of the Rivers  
25 and Harbors Act), authorizing the construction of bridges, causeways, dams,  
26 and dikes, and the obstruction of navigable waters;

27 (B) under 43 U.S.C. 1333 (sec. 4 of the Outer Continental Shelf  
28 Lands Act), authorizing artificial islands or fixed structures on the outer  
29 continental shelf;

30 (C) under 33 U.S.C. 1413 (sec. 103 of the Marine Protection  
31 Research and Sanctuaries Act), authorizing ocean dumping outside the limits

1 of the territorial sea; or

2 (D) under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act),  
3 authorizing discharges of dredged or fill material into navigable waters;

4 (4) a United States Department of Energy, Federal Energy Regulatory  
5 Commission

6 (A) license for the construction and operation of non-federal  
7 hydroelectric projects and associated transmission lines under 16 U.S.C. 797(e)  
8 and 808 (secs. 4(e) and 15 of the Federal Power Act);

9 (B) order for interconnection of electric transmission facilities  
10 under 16 U.S.C. 824a(b) (sec. 202(b) of the Federal Power Act);

11 (C) permission and approval for the abandonment of natural  
12 gas pipeline facilities under 15 U.S.C. 717f(b) (sec. 7(b) of the Natural Gas  
13 Act); or

14 (D) certificate of public convenience and necessity for the  
15 construction and operation of natural gas pipeline facilities, including both  
16 interstate pipeline and liquefied natural gas terminal facilities under 15 U.S.C.  
17 717f(c) (sec. 7(c) of the Natural Gas Act);

18 (5) a United States Environmental Protection Agency

19 (A) permit required under 33 U.S.C. 1342 (sec. 402 of the  
20 Clean Water Act), authorizing discharge of pollutants into navigable waters;

21 (B) permit required under 33 U.S.C. 1345 (sec. 405 of the  
22 Clean Water Act), authorizing disposal of sewage sludge;

23 (C) permit under 40 C.F.R. Part 63 for new sources or for  
24 modification of existing sources, or a waiver of compliance allowing  
25 extensions of time to meet air quality standards under 42 U.S.C. 7412(c)(1)  
26 (sec. 112(c)(1) of the Clean Air Act); or

27 (D) air quality exemption granted under 40 C.F.R. 60.14 or  
28 40 C.F.R. 64.2 for stationary sources;

29 (6) a United States Department of the Interior,

30 (A) Bureau of Land Management permit and license under  
31 43 C.F.R. Part 2920, for drilling and mining and related facilities on public

1 lands;

2 (B) Bureau of Land Management permit under 43 C.F.R.  
3 2800.0-1 - 2808.6, for pipeline rights-of-way on public lands;

4 (C) Bureau of Land Management permit and license under  
5 43 C.F.R. 2800.0-1 - 2808.6, for rights-of-way on public lands;

6 (D) Minerals Management Service OCS plans within the  
7 meaning given in 15 C.F.R. 930.73;

8 (E) National Park Service right-of-way permit under 36 C.F.R.  
9 14.1-14.96; or

10 (F) Bureau of Land Management, Mineral Management  
11 Service, and United States Fish and Wildlife Service right-of-way permit under  
12 43 C.F.R. Part 2880;

13 (7) a United States Nuclear Regulatory Commission permit and license  
14 for the

15 (A) siting of nuclear facilities under 10 C.F.R. Part 52;

16 (B) construction of nuclear facilities under 10 C.F.R. Part 52;

17 or

18 (C) operation of nuclear facilities under 10 C.F.R. Parts 54 -  
19 55;

20 (8) a United States Department of Transportation, United States Coast  
21 Guard permit under

22 (A) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act) and  
23 33 C.F.R. Part 321, for construction or modification of bridge structures and  
24 causeways across navigable waters;

25 (B) 33 U.S.C. 1501 - 1524, for siting, construction, and  
26 operation of deepwater ports; or

27 (C) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act),  
28 authorizing the obstruction of navigable waters.

29 (b) An activity not conducted by the federal government that requires a  
30 federally administered nationwide or general permit and does not require a state or  
31 municipal permit implementing the enforceable policies in AS 46.39.010 is

1 conclusively determined to be consistent with the enforceable policies of the ACMP.

2 **Sec. 46.39.085. Public participation.** The department shall ensure that any  
3 public notice issued by a state resource agency complies with the requirements of  
4 15 C.F.R. 930.42 or 15 C.F.R. 930.61, as applicable. For federal activities and OCS  
5 plans, the department shall ensure public notice as required by 15 C.F.R. 930.61.

6 \* **Sec. 15.** AS 46.39.900 is repealed and reenacted to read:

7 **Sec. 46.39.900. Definitions.** In this chapter, unless the context requires  
8 otherwise,

9 (1) "ACMP" means the Alaska Coastal Management Program;

10 (2) "coastal resource district" means each of the following that  
11 contains a portion of the coastal zone of the state:

12 (A) unified municipalities;

13 (B) organized boroughs of any class that exercise planning and  
14 zoning authority;

15 (C) home rule, first class, and second class cities within  
16 boroughs that do not exercise planning and zoning authority;

17 (D) home rule, first class, and second class cities of the  
18 unorganized borough;

19 (3) "coastal zone" means the coastal waters including lands within and  
20 under those waters, and adjacent shorelands, including the waters within and under  
21 those shorelands, within the boundaries approved by the Alaska Coastal Policy  
22 Council and the federal Office of Ocean and Coastal Resource Management as of  
23 July 1, 2003; "coastal zone" includes areas added as a result of any boundary changes  
24 by the department after July 1, 2003, in conformance with 16 U.S.C. 1451 - 1465  
25 (Coastal Zone Management Act of 1972, as amended); "coastal zone" does not include

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

27 (B) areas deleted as a result of any boundary changes by the  
28 department after July 1, 2003 in conformance with 16 U.S.C. 1451 - 1465  
29 (Coastal Zone Management Act of 1972, as amended);

30 (4) "department" means the Department of Natural Resources;

31 (5) "OCS plan" has the meaning given in 15 C.F.R. 930.71 and 930.73;

1 (6) "resource agency" means the Department of Environmental  
 2 Conservation, the Department of Fish and Game, or the Department of Natural  
 3 Resources;

4 (7) "state permit" means a permit, authorization, certification,  
 5 approval, or other form of permission that a state resource agency is authorized to  
 6 issue, and the requirements of which are adopted as the enforceable policies under  
 7 AS 46.39.010(d)(3);

8 (8) "uses of state concern" means those land and water uses that would  
 9 significantly affect the long-term public interest; "uses of state concern" include

10 (A) uses of national interest, including the use of resources for  
 11 the siting of ports and major facilities that contribute to meeting national  
 12 energy needs, construction and maintenance of navigational facilities and  
 13 systems, resource development of federal land, and national defense and  
 14 related security facilities that are dependent upon coastal locations;

15 (B) uses of more than local concern, including those land and  
 16 water uses that confer significant environmental, social, cultural, or economic  
 17 benefits or burdens beyond a single coastal resource district;

18 (C) the siting of major energy facilities, activities pursuant to a  
 19 state or federal oil and gas lease, or large-scale industrial or commercial  
 20 development activities that are dependent on a coastal location and that,  
 21 because of their magnitude or the magnitude of their effect on the economy of  
 22 the state or the surrounding area, are reasonably likely to present issues of  
 23 more than local significance;

24 (D) facilities serving statewide or interregional transportation  
 25 and communication needs; and

26 (E) uses in areas established as state parks or recreational areas  
 27 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat  
 28 areas under AS 16.20.

29 \* **Sec. 16.** AS 09.45.230(b)(2)(B)(iv); AS 38.05.037(b)(2); AS 39.50.200(b)(38);  
 30 AS 44.33.844(5); AS 44.62.800(2)(B); AS 46.39.020, 46.39.030, 46.39.040, 46.39.050;  
 31 AS 46.40.010, 46.40.020, 46.40.030, 46.40.040, 46.40.050, 46.40.060, 46.40.070, 46.40.080,

1 46.40.090, 46.40.094, 46.40.096, 46.40.100, 46.40.110, 46.40.120, 46.40.130, 46.40.140,  
 2 46.40.150, 46.40.160, 46.40.170, 46.40.180, 46.40.190, 46.40.200, and 46.40.210 are  
 3 repealed.

4 \* **Sec. 17.** Section 19 of this Act is repealed.

5 \* **Sec. 18.** The following regulations are annulled:

6 (1) 6 AAC 50.005 - 6 AAC 50.990;

7 (2) 6 AAC 80.010 - 6 AAC 80.900;

8 (3) 6 AAC 85.020 - 6 AAC 85.900.

9 \* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding new sections to  
 10 read:

11 TRANSITION: ALASKA COASTAL PROGRAM EVALUATION COUNCIL. (a)

12 There is created in the Department of Natural Resources the Alaska Coastal Program  
 13 Evaluation Council. The council shall wind up its affairs before July 1, 2005. The council  
 14 consists of 14 members comprised of the commissioners of environmental conservation, fish  
 15 and game, and natural resources, four industry representatives, and seven public members.  
 16 The four industry representatives shall be appointed by the governor and drawn from four  
 17 separate industries. Each industry representative must have at least 10 years of experience in  
 18 commercial fishing, mining, oil and gas, or timber harvesting. The seven public members  
 19 shall be appointed by the governor from a list comprised of at least three names from each  
 20 region, nominated by the municipalities of each region. The public member nominees must  
 21 be the mayor or member of the assembly or council of a municipality. One public member  
 22 shall be appointed from each of the following general regions:

23 (1) northwest Alaska, including, generally, the area of the North Slope  
 24 Borough and the Northwest Arctic Borough;

25 (2) Bering Straits, including, generally, the area of the Bering Straits regional  
 26 educational attendance area;

27 (3) southwest Alaska, including, generally, the area within the Lower Yukon,  
 28 Lower Kuskokwim, and Southwest regional educational attendance areas and the Lake and  
 29 Peninsula and Bristol Bay Boroughs;

30 (4) Kodiak-Aleutians, including the area of the Kodiak Island and Aleutian  
 31 East Boroughs and the Aleutian, Adak, and Pribilof regional educational attendance areas;

1 (5) Cook Inlet, including the Kenai Peninsula Borough, the Municipality of  
2 Anchorage, and the Matanuska-Susitna Borough;

3 (6) Prince William Sound, including, generally, the area east of the Kenai  
4 Peninsula Borough to 141 W. longitude;

5 (7) southeast Alaska, including the area southeast of 141 W. longitude.

6 (b) Each member appointed under (a) of this section serves until July 1, 2005, unless  
7 removed for cause by the governor.

8 (c) Each member of the council shall select one person to serve as a permanent  
9 alternate at meetings of the council. If a member of the council is unable to attend, the  
10 member shall advise the alternate, who may attend and act in place of the member. The  
11 names of alternates shall be filed with the council.

12 (d) Eight members of the council constitute a quorum. All decisions of the council  
13 shall be by a majority vote of the members present and voting. The meetings are subject to  
14 AS 44.62.310 - 44.62.312 (Open Meetings of Governmental Bodies). The council may use  
15 teleconferencing to conduct its meetings.

16 (e) Members of the council are entitled to per diem and travel expenses authorized by  
17 law for members of boards and commissions.

18 (f) A member must meet the qualifications set out in (a) of this section for nomination  
19 in order to continue to serve on the council. If a member fails to meet those qualifications or  
20 if a vacancy exists among the members for any other reason, the governor shall, within 30  
21 days after the establishment of the vacancy by lack of qualification or other reason, make an  
22 appointment, to be immediately effective, for the unexpired portion of the life of the council.  
23 An appointment by the governor made under this subsection to fill an unexpired term of a  
24 member shall comply with the requirements of (a) of this section. However, the governor  
25 may appoint from qualified persons without soliciting from municipalities nominations of  
26 persons to fill the unexpired portion of the term.

27 (g) The council may

28 (1) consult with

29 (A) persons, public or private, that are interested in, affected by, or  
30 concerned with coastal area planning and management;

31 (B) agents and officials of the coastal resource districts of the state,

1 and federal and state agencies concerned with or having jurisdiction over coastal  
2 planning and management; and

3 (2) take any reasonable action necessary to carry out the provisions of this  
4 section.

5 (h) The council shall

6 (1) review the effectiveness of the Alaska Coastal Management Program  
7 contained in AS 46.39;

8 (2) no later than April 15, 2005, report to the governor concerning the  
9 performance of the program.

10 (i) The council shall use the staff of the Department of Natural Resources in  
11 discharging its powers and duties.

12 \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
13 read:

14 TRANSITION. (a) The Department of Natural Resources may proceed to adopt  
15 regulations necessary to implement this Act. The regulations take effect under AS 44.62  
16 (Administrative Procedure Act), but not before the effective date of the respective provisions  
17 of this Act.

18 (b) The Department of Natural Resources, Department of Fish and Game, and  
19 Department of Environmental Conservation shall review the categorically consistent  
20 approvals and general concurrence determinations under the former Alaska coastal  
21 management program as it existed on February 1, 2003, and no later than January 1, 2004,  
22 shall, to the extent feasible, create general permits similar to the categorically consistent  
23 approvals and general concurrence determinations that were available under the former  
24 Alaska coastal management program as it existed on February 1, 2003, with appropriate  
25 modifications reflecting the changes in law made by this Act.

26 (c) Consistency reviews initiated under former AS 46.40.096, AS 44.19.145(a)(11), or  
27 AS 46.39.010 before July 1, 2003, may at the applicant's option exercised no later than July 1,  
28 2003, be continued and completed under the procedures and enforceable policies under  
29 former AS 46.39 and 46.40 as they existed on June 30, 2003.

30 (d) Except as provided in (c) of this section, contracts, rights, liabilities, and  
31 obligations created by or under a law repealed or a regulation abrogated by this Act, and in

1 effect on the day before the effective date of this Act, remain in effect notwithstanding this  
2 Act's taking effect.

3 \* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to change the  
6 heading of

7 (1) AS 46.39 from "Coastal Management Administration; Alaska Coastal  
8 Policy Council" to "The Alaska Coastal Management Program";

9 (2) article 1 of AS 46.39 from "Coastal Management Administration" to  
10 "Development of the Alaska Coastal Management Program";

11 (3) article 2 of AS 46.39 from "Alaska Coastal Policy Council" to "Alaska  
12 Coastal Management Program Consistency Reviews."

13 (b) Wherever in the Alaska Administrative Code the terms "division of governmental  
14 coordination of the office of management and budget," "DGC," or "director of the division of  
15 governmental coordination" are used, the regulations attorney is instructed to change those  
16 terms to read, respectively, as "Department of Natural Resources," "DNR," or "commissioner  
17 of 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 \* **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 CONDITIONAL EFFECT. This Act takes effect only if Executive Order 106 takes  
22 effect.

23 \* **Sec. 23.** If this Act takes effect, sec. 20 of this Act takes effect immediately under  
24 AS 01.10.070(c).

25 \* **Sec. 24.** If this Act takes effect, sec. 17 of this Act takes effect July 1, 2005.

26 \* **Sec. 25.** If this Act takes effect, except as provided in secs. 23 and 24 of this Act, this Act  
27 takes effect July 1, 2003.