

CS FOR SENATE BILL NO. 161(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 2/8/08

Referred: Resources, Finance

Sponsor(s): SENATOR OLSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program; establishing the Alaska**
2 **Coastal Policy Council; and providing for an effective date."**

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

4 *** Section 1.** AS 38.05.825(a) is amended to read:

5 (a) Unless the commissioner finds that the public interest in retaining state
6 ownership of the land clearly outweighs the municipality's interest in obtaining the
7 land, the commissioner shall convey to a municipality tide or submerged land
8 requested by the municipality that is occupied or suitable for occupation and
9 development if the

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

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

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

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

4 (5) land is classified for waterfront development or for another use that
5 is consistent or compatible with the use proposed by the municipality, or the proposed
6 use of the land is consistent or compatible with a land use plan adopted by the
7 municipality, [OR] the department, **or the Alaska Coastal Policy Council**
8 **established in AS 46.39.005**; and

9 (6) land

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

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

13 or

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

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

1 municipality or [,] the department [, OR THE ALASKA COASTAL POLICY
2 COUNCIL ESTABLISHED IN AS 46.39.005]; and

3 (6) land

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

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

7 or

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

9 * **Sec. 3.** AS 44.62.800(1) is amended to read:

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

13 (A) a board, a commission, a council other than the Alaska
14 Coastal Policy Council established in AS 46.39.005, an authority, or a public
15 corporation of the executive branch of state government authorized or required
16 by law to make regulations; or

17 (B) the Department of Corrections;

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

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

22 (A) a board, a commission, a council [OTHER THAN THE
23 ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN
24 AS 46.39.005], an authority, or a public corporation of the executive branch of
25 state government authorized or required by law to make regulations; or

26 (B) the Department of Corrections;

27 * **Sec. 5.** AS 46.39 is amended by adding a new section to article 1 to read:

28 **Sec. 46.39.005. Alaska Coastal Policy Council.** (a) There is created in the
29 Department of Natural Resources the Alaska Coastal Policy Council. The council
30 consists of the following:

31 (1) nine public members appointed by the commissioner from a list

1 composed of at least three names from each region, nominated by the municipalities of
2 each region; the nominees shall be the mayor or member of the assembly or council of
3 a municipality; one public member shall be appointed from each of the following
4 general regions:

5 (A) northwest Alaska, including, generally, the area of the
6 North Slope Borough and the Northwest Arctic Borough;

7 (B) Bering Strait, including, generally, the area of the Bering
8 Strait regional educational attendance area;

9 (C) southwest Alaska, including, generally, the area within the
10 Lower Yukon, Lower Kuskokwim, and Southwest regional educational
11 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs;

12 (D) Kodiak-Aleutians, including the area of the Kodiak Island
13 and Aleutians East Boroughs and the Aleutian, Adak and Pribilof regional
14 educational attendance areas;

15 (E) Upper Cook Inlet, including the Municipality of Anchorage
16 and the Matanuska-Susitna Borough;

17 (F) Lower Cook Inlet, including, generally, the area within the
18 Kenai Peninsula Borough;

19 (G) Prince William Sound, including, generally, the area east of
20 the Kenai Peninsula Borough to 141 West longitude;

21 (H) northern Southeast Alaska, including the area southeast of
22 141 West longitude and north of 57 North latitude, including the entirety of the
23 City and Borough of Sitka; and

24 (I) southern Southeast Alaska, including that portion of
25 southeastern Alaska not contained within the area described in (H) of this
26 paragraph;

27 (2) each of the following:

28 (A) the commissioner of commerce, community, and economic
29 development;

30 (B) the commissioner of environmental conservation;

31 (C) the commissioner of fish and game;

1 (D) the commissioner of natural resources; and

2 (E) the commissioner of transportation and public facilities.

3 (b) Each public member appointed by the commissioner under (a)(1) of this
4 section serves a term of two years and until a successor is appointed and qualified. A
5 public member may be reappointed.

6 (c) The council shall designate cochaIRS, one of whom shall be selected from
7 among the public members appointed under (a)(1) of this section and one from among
8 the members designated in (a)(2) of this section.

9 (d) Each member of the council shall select one person to serve as a
10 permanent alternate at meetings of the council. If a member of the council is unable to
11 attend, the member shall advise the alternate, who may attend and act in the place of
12 the member. The alternate for a public member appointed under (a)(1) of this section
13 shall, at the time of the alternate's designation and throughout the period of service as
14 a permanent alternate, be the mayor or member of the assembly or council of a
15 municipality within the region from which the permanent member is appointed. The
16 alternate for a designated member serving under (a)(2) of this section shall be a deputy
17 commissioner of the department or the director of a division in the department. The
18 names of alternates shall be filed with the council.

19 (e) Four public members and three designated members of the council
20 constitute a quorum, but one or more of the members designated by the council may
21 hold hearings. All decisions of the council shall be by a majority vote of the members
22 present and voting.

23 (f) Members of the council or their alternates are entitled to per diem and
24 travel expenses authorized by law for members of boards and commissions.

25 (g) If an incumbent public member ceases to meet the qualifications
26 prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists
27 among the public members for any other reason except for a vacancy because of the
28 expiration of the term of a public member, the commissioner shall, within 30 days
29 after the establishment of the vacancy by lack of qualification or other reason, make an
30 appointment, to be immediately effective, for the unexpired portion of the term. An
31 appointment by the commissioner made under this subsection to fill an unexpired term

1 of a public member shall comply with the requirements of (a)(1) of this section;
 2 however, the commissioner may appoint from qualified persons without soliciting
 3 from municipalities nominations of persons to fill the unexpired portion of the term.

4 * **Sec. 6.** AS 46.39.010(a) is amended to read:

5 (a) The **council** [DEPARTMENT OF NATURAL RESOURCES] shall
 6 render, on behalf of the state, all federal consistency determinations and certifications
 7 authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management Act of 1972), and
 8 each conclusive state consistency determination when a project requires a permit,
 9 lease, or authorization from two or more state resource agencies.

10 * **Sec. 7.** AS 46.39.010(b) is amended to read:

11 (b) The **council** [DEPARTMENT] may adopt regulations necessary to
 12 implement this chapter.

13 * **Sec. 8.** AS 46.39.030 is amended to read:

14 **Sec. 46.39.030. Powers of the council [DEPARTMENT].** The **council**
 15 [DEPARTMENT] may

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

19 (2) contract for necessary services;

20 (3) consult and cooperate with

21 (A) persons, organizations, and groups, public or private,
 22 interested in, affected by, or concerned with coastal area planning and
 23 management;

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

27 (4) take any reasonable action necessary to carry out the provisions of
 28 this chapter or AS 46.40.

29 * **Sec. 9.** AS 46.39.040 is amended to read:

30 **Sec. 46.39.040. Duties of the council [DEPARTMENT].** In conformity with
 31 16 U.S.C. 1451 - 1464 (Coastal Zone Management Act of 1972), as amended, the

1 **council** [DEPARTMENT] shall

2 (1) develop statewide standards for the Alaska coastal management
3 program [,] and criteria for the preparation and approval of district coastal
4 management plans in accordance with AS 46.40;

5 (2) establish continuing coordination among state agencies to facilitate
6 the development and implementation of the Alaska coastal management program; in
7 carrying out its duties under this paragraph, the **council** [DEPARTMENT] shall
8 initiate an interagency program of comprehensive coastal resource planning for each
9 geographic region of the state;

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

13 * **Sec. 10.** AS 46.39.900 is amended to read:

14 **Sec. 46.39.900. Definitions** [DEFINITION]. In this chapter, unless the
15 context requires otherwise,

16 (1) **"council" means the Alaska Coastal Policy Council established**
17 **in AS 46.39.005;**

18 (2) "department" means the Department of Natural Resources.

19 * **Sec. 11.** AS 46.40.010 is amended to read:

20 **Sec. 46.40.010. Development of Alaska coastal management program.**

21 (a) The **Alaska Coastal Policy Council** [DEPARTMENT] shall approve, in
22 accordance with this chapter, the Alaska coastal management program.

23 (b) The **council** [DEPARTMENT] may approve the Alaska coastal
24 management program for a portion or portions of the coastal area before approving the
25 complete program under (a) of this section. Portions of the program approved under
26 this subsection shall be incorporated into the Alaska coastal management program.

27 (c) The Alaska coastal management program shall be reviewed by the **council**
28 [DEPARTMENT] and, when appropriate, revised to

29 (1) add newly approved district coastal management plans [,] or
30 revisions and amendments to the Alaska coastal management program;

31 (2) integrate newly approved district coastal management plans [,] or

1 revisions and amendments of district coastal management plans [,] with existing
2 approved plans and with plans developed by state agencies;

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

5 (4) review the effectiveness of implementation of district coastal
6 management plans; and

7 (5) consider new information acquired by the state and coastal resource
8 districts.

9 (d) All reviews and revisions shall be in accordance with the statewide
10 standards and district plan criteria adopted under AS 46.40.040 **or adopted by the**
11 **council.**

12 * **Sec. 12.** AS 46.40.020 is amended to read:

13 **Sec. 46.40.020. Objectives.** The Alaska coastal management program shall be
14 consistent with the following objectives:

15 (1) the use, management, restoration, and enhancement of the overall
16 quality of the coastal environment;

17 (2) the development of industrial or commercial enterprises that are
18 consistent with the social, cultural, historic, economic, and environmental interests of
19 the people of the state;

20 (3) the orderly, balanced utilization and protection of the resources of
21 the coastal area consistent with sound conservation and sustained yield principles;

22 (4) the management of coastal land and water uses in such a manner
23 that, generally, those uses **that** [WHICH] are economically or physically dependent on
24 a coastal location are given higher priority when compared to uses **that** [WHICH] do
25 not economically or physically require a coastal location;

26 (5) the protection and management of significant historic, cultural,
27 natural, **subsistence**, and aesthetic values and natural systems or processes within the
28 coastal area;

29 (6) the prevention of damage to or degradation of land and water
30 reserved for their natural **and subsistence** values as a result of inconsistent land or
31 water usages adjacent to that land;

1 (7) the recognition of the need for a continuing supply of energy to
 2 meet the requirements of the state and the contribution of a share of the state's
 3 resources to meet national energy needs; and

4 (8) the full and fair evaluation of all demands on the land and water in
 5 the coastal area.

6 * **Sec. 13.** AS 46.40.030(a) is amended to read:

7 (a) Coastal resource districts shall develop and adopt district coastal
 8 management plans in accordance with the provisions of this chapter. The plan adopted
 9 by a coastal resource district shall be based upon a municipality's existing
 10 comprehensive plan or a new comprehensive resource use plan or comprehensive
 11 statement of needs, policies, objectives, and standards governing the use of resources
 12 within the coastal area of the district. The plan must meet the statewide standards and
 13 district plan criteria adopted under AS 46.40.040 **or adopted by the council** and must
 14 include

15 (1) a delineation within the district of the boundaries of the coastal area
 16 subject to the district coastal management plan;

17 (2) a statement, list, or definition of the land and water uses and
 18 activities subject to the district coastal management plan;

19 (3) a statement of policies to be applied to the land and water uses
 20 subject to the district coastal management plan;

21 (4) a description of the uses and activities that will be considered
 22 proper and the uses and activities that will be considered improper with respect to the
 23 land and water within the coastal area; and

24 (5) a designation of, and the policies that will be applied to the use of,
 25 areas within the coastal resource district that merit special attention.

26 * **Sec. 14.** AS 46.40.040(a) is amended to read:

27 (a) Except as provided in (b) of this section and AS 41.17, the **council**
 28 [DEPARTMENT] shall

29 (1) by regulation, adopt, under the provisions of AS 44.62
 30 (Administrative Procedure Act) for the use of and application by coastal resource
 31 districts and state agencies for carrying out their responsibilities under this chapter,

1 statewide standards and district coastal management plan criteria for

2 (A) identifying the boundaries of the coastal area subject to the
3 Alaska coastal management program;

4 (B) determining the land and water uses and activities subject
5 to the Alaska coastal management program;

6 (C) developing policies applicable to the land and water uses
7 subject to the Alaska coastal management program;

8 (D) developing regulations applicable to the land and water
9 uses subject to the Alaska coastal management program;

10 (E) developing policies and procedures to determine whether
11 specific proposals for the land and water uses or activities subject to the Alaska
12 coastal management program shall be allowed;

13 (F) designating and developing policies for the use of areas of
14 the coast that merit special attention; and

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

17 (2) **after public hearing,**

18 (A) develop and maintain a program of technical and financial
19 assistance to aid coastal resource districts in the development and
20 implementation of district coastal management plans;

21 (B) [(3)] undertake review and approval of district coastal
22 management plans in accordance with this chapter;

23 (C) [(4)] initiate a process for identifying and managing uses of
24 state concern within specific areas of the coast;

25 (D) [(5)] develop procedures or guidelines for consultation and
26 coordination with federal agencies managing land or conducting activities
27 potentially affecting the coastal area of the state;

28 (3) [(6)] by regulation, establish a consistency review and
29 determination or certification process that conforms to the requirements of
30 AS 46.40.096.

31 * **Sec. 15.** AS 46.40.040(b) is amended to read:

1 (b) AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted
 2 under those statutes constitute the exclusive enforceable policies of the Alaska coastal
 3 management program for those purposes. [FOR THOSE PURPOSES ONLY,

4 (1) THE ISSUANCE OF PERMITS, CERTIFICATIONS,
 5 APPROVALS, AND AUTHORIZATIONS BY THE DEPARTMENT OF
 6 ENVIRONMENTAL CONSERVATION ESTABLISHES CONSISTENCY WITH
 7 THE ALASKA COASTAL MANAGEMENT PROGRAM FOR THOSE
 8 ACTIVITIES OF A PROPOSED PROJECT SUBJECT TO THOSE PERMITS,
 9 CERTIFICATIONS, APPROVALS, AND AUTHORIZATIONS;

10 (2) FOR A CONSISTENCY REVIEW OF AN ACTIVITY THAT
 11 DOES NOT REQUIRE A DEPARTMENT OF ENVIRONMENTAL
 12 CONSERVATION PERMIT, CERTIFICATION, APPROVAL, OR
 13 AUTHORIZATION BECAUSE THE ACTIVITY IS A FEDERAL ACTIVITY OR
 14 THE ACTIVITY IS LOCATED ON FEDERAL LAND OR THE FEDERAL OUTER
 15 CONTINENTAL SHELF, CONSISTENCY WITH AS 46.03, AS 46.04, AS 46.09,
 16 AND AS 46.14 AND THE REGULATIONS ADOPTED UNDER THOSE
 17 STATUTES SHALL BE ESTABLISHED ON THE BASIS OF WHETHER THE
 18 DEPARTMENT OF ENVIRONMENTAL CONSERVATION FINDS THAT THE
 19 ACTIVITY SATISFIES THE REQUIREMENTS OF THOSE STATUTES AND
 20 REGULATIONS.]

21 * **Sec. 16.** AS 46.40.040 is amended by adding a new subsection to read:

22 (d) To the extent that AS 46.03, AS 46.04, AS 46.09, AS 46.14 and the
 23 regulations adopted under those statutes do not address a potential effect on coastal
 24 resources or uses, the coordinating agency shall review all project activities to ensure
 25 that air or water discharges are consistent with statewide standards and the enforceable
 26 policies of the coastal resource district.

27 * **Sec. 17.** AS 46.40.050 is amended to read:

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

29 (a) A coastal resource district must review and resubmit its coastal
 30 management plan for reapproval every 10 years after its approval by the **council**
 31 [DEPARTMENT] under AS 46.40.060.

1 (b) Within 30 months after certification of the organization of a new coastal
 2 resource district, the coastal resource district shall complete and submit to the **council**
 3 [DEPARTMENT] a proposed district coastal management plan. If, after receipt of a
 4 written request for extension from the coastal resource district, the **council**
 5 [DEPARTMENT] considers an extension proper, the **council** [DEPARTMENT] may
 6 grant an extension to a date that is within 54 months after certification of the results of
 7 the coastal resource district's organization. A request under this subsection must
 8 include the reasons for the extension.

9 * **Sec. 18.** AS 46.40.060 is amended to read:

10 **Sec. 46.40.060. Review and approval [BY THE DEPARTMENT].** (a) If,
 11 upon submission of a district coastal management plan for approval, the **council**
 12 [DEPARTMENT] finds that the plan meets the provisions of this chapter and the
 13 statewide standards and district plan criteria adopted by the **council** [DEPARTMENT]
 14 and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the
 15 **council** [DEPARTMENT] may approve the district coastal management plan, or may
 16 approve portions of the district plan that meet those requirements.

17 (b) If the **council** [DEPARTMENT] finds that a district coastal management
 18 plan is not approvable or is approvable only in part under (a) of this section, **the**
 19 **council** [IT] shall direct that deficiencies in the plan submitted by the coastal resource
 20 district be mediated. In mediating the deficiencies, the **council** [DEPARTMENT] may
 21 call for one or more public hearings in the district. The **council** [DEPARTMENT]
 22 shall meet with officials of the coastal resource district in order to resolve differences.

23 (c) If, after mediation, the differences have not been resolved **and mutually**
 24 **agreed to by the coastal resource district and the council, the council shall call for**
 25 **a public hearing and shall resolve the differences in accordance with AS 44.62**
 26 **(Administrative Procedure Act). After the public hearing, the council**
 27 [DEPARTMENT] shall enter findings and, by order, may require

28 (1) that the district coastal management plan be amended to satisfy the
 29 provisions of this chapter or meet the statewide standards and district plan criteria
 30 adopted by the **council** [DEPARTMENT];

31 (2) that the district coastal management plan be revised to

1 accommodate a use of state concern; or

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

4 (d) The superior courts of the state have jurisdiction to enforce orders of the
5 **council** [DEPARTMENT] entered under (c) of this section.

6 * **Sec. 19.** AS 46.40.070 is amended to read:

7 **Sec. 46.40.070. Requirements for council [DEPARTMENT] review and**
8 **approval.** (a) The **council** [DEPARTMENT] shall approve a district coastal
9 management plan submitted for review and approval if

10 (1) the district coastal management plan meets the requirements of this
11 chapter and the statewide standards and district plan criteria **in regulations** adopted by
12 the **council** [DEPARTMENT]; and

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

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

16 (B) use precise [, PRESCRIPTIVE,] and enforceable language
17 **that is either prescriptive or performance-based;** and

18 (C) do not address a matter regulated or authorized by state or
19 federal law unless the enforceable policies relate specifically to a matter of
20 local concern; for purposes of this subparagraph, "matter of local concern"
21 means a specific coastal use or resource within a defined portion of the
22 district's coastal zone, that is

23 (i) demonstrated as sensitive to development;

24 (ii) not adequately addressed by state or federal law
25 **because the specific matter is not addressed in state or federal law;**

26 and

27 (iii) of **special** [UNIQUE] concern to the coastal
28 resource district as demonstrated by local usage or scientific evidence.

29 (b) A decision by the **council** [DEPARTMENT] under this section shall be
30 given within 90 days after submission of the district coastal management plan to the
31 **council** [DEPARTMENT].

1 * **Sec. 20.** AS 46.40.070 is amended by adding a new subsection to read:

2 (c) A coastal resource district enforceable policy may address an effect on any
3 coastal use or resource and may not be required to be associated with a particular area
4 designation.

5 * **Sec. 21.** AS 46.40.094(d) is amended to read:

6 (d) In this section, "agency responsible for the consistency determination"
7 means the Alaska Coastal Policy Council [DEPARTMENT OF NATURAL
8 RESOURCES], for a consistency determination required to be made under
9 AS 46.39.010; and the commissioner of the resource agency that coordinates a
10 consistency review for a proposed use or activity, or for a proposed phase of a use or
11 activity, when required by this chapter for which a permit, lease, or authorization is
12 required to be approved or issued only by that resource agency.

13 * **Sec. 22.** AS 46.40.096(a) is amended to read:

14 (a) The council [DEPARTMENT] shall, by regulation, establish a consistency
15 review and determination process that conforms to the requirements of this section.

16 * **Sec. 23.** AS 46.40.096(b) is amended to read:

17 (b) If a consistency review is not subject to AS 46.39.010 because the project
18 for which a consistency review is made requires a permit, lease, or authorization from
19 only one state resource agency, that state resource agency shall coordinate the
20 consistency review of the project. The state resource agency shall coordinate the
21 consistency review according to the requirements of the regulations adopted by the
22 council [DEPARTMENT] under this section.

23 * **Sec. 24.** AS 46.40.096(c) is amended to read:

24 (c) The regulations adopted by the council [DEPARTMENT] under this
25 section must include provisions for public notice and provide the opportunity for
26 public comment. The regulations adopted under this subsection may make distinctions
27 relating to notice based upon differences in project type, anticipated effect of the
28 project on coastal resources and uses, other state or federal notice requirements, and
29 time constraints. However, a notice given under this subsection must contain sufficient
30 information, expressed in commonly understood terms, to inform the public of the
31 nature of the proposed project for which a consistency determination is sought, and

1 must explain how the public may comment on the proposed project.

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

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

5 (1) request consistency review comments for the proposed project
6 from state resource agencies, affected coastal resource districts, and other interested
7 parties as determined by regulation adopted by the **council** [DEPARTMENT];

8 (2) prepare proposed consistency determinations;

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

12 (A) is limited to a review by **state resource agencies** [THE
13 DEPARTMENT];

14 (B) may occur only if requested by

15 (i) the project applicant;

16 (ii) a state resource agency; or

17 (iii) an affected coastal resource district; and

18 (C) shall be completed by the **council** [DEPARTMENT]
19 within 45 days after the initial request for subsequent review under this
20 paragraph;

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

22 * **Sec. 26.** AS 46.40.096(g) is amended to read:

23 (g) The reviewing entity shall exclude from the consistency review and
24 determination process for a project

25 (1) **an aspect of** an activity that

26 [(A)] is authorized under a general or nationwide permit that
27 has previously been determined to be consistent with the Alaska coastal
28 management program; [OR

29 (B) IS SUBJECT TO AUTHORIZATION BY THE
30 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE
31 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

1 (2) activities excluded from a consistency review under AS 41.17; and

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

4 * **Sec. 27.** AS 46.40.096(k) is amended to read:

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 **council** [DEPARTMENT] under this chapter. The
11 scope of a consistency review subject to 16 U.S.C. 1456 is determined under 16
12 U.S.C. 1456 and 15 C.F.R. Part 930.

13 * **Sec. 28.** AS 46.40.096(l) is amended to read:

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

16 (1) activities within the coastal zone; and

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

23 * **Sec. 29.** AS 46.40.096(m) is amended to read:

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

1 as possible so as to minimize the number of projects that must undergo an
2 individualized consistency review under this section.

3 * **Sec. 30.** AS 46.40.096(o) is amended to read:

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

5 (1) do not apply to a consistency review involving

6 (A) the disposal of an interest in state land or resources;

7 (B) an activity proposed by a federal agency; or

8 (C) an activity permitted by a federal agency;

9 (2) are suspended

10 (A) from the time a review schedule is modified in response
11 to [THE REVIEWING ENTITY DETERMINES THAT THE APPLICANT
12 HAS NOT ADEQUATELY RESPONDED IN WRITING WITHIN 14 DAYS
13 AFTER THE RECEIPT OF] a written request from the reviewing entity for
14 additional information, until the time the reviewing entity determines that the
15 applicant has provided an adequate written response;

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

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

19 * **Sec. 31.** AS 46.40.096(q)(2) is amended to read:

20 (2) "reviewing entity" means the

21 (A) Alaska Coastal Policy Council [DEPARTMENT OF
22 NATURAL RESOURCES], for a consistency review subject to AS 46.39.010;

23 (B) state agency identified in (b) of this section, for a
24 consistency review not subject to AS 46.39.010.

25 * **Sec. 32.** AS 46.40.100(b) is amended to read:

26 (b) A party that is authorized under (g) of this section may file a petition
27 showing that a district coastal management plan is not being implemented. A petition
28 filed under this subsection may not seek review of a proposed or final consistency
29 determination regarding a specific project. On receipt of a petition, the council
30 [DEPARTMENT], after giving public notice in the manner required by (f) of this
31 section, shall convene a hearing to consider the matter. A hearing called under this

1 subsection shall be held in accordance with regulations adopted under this chapter.
 2 After hearing, the **council** [DEPARTMENT] may order that the coastal resource
 3 district or a state resource agency take any action with respect to future
 4 implementation of the district coastal management plan that the **council**
 5 [DEPARTMENT] considers necessary, except that the **council** [DEPARTMENT] may
 6 not order that the coastal resource district or a state agency take any action with
 7 respect to a proposed or final consistency determination that has been issued.

8 * **Sec. 33.** AS 46.40.100(c) is amended to read:

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

14 * **Sec. 34.** AS 46.40.100(e) is amended to read:

15 (e) The superior courts of the state have jurisdiction to enforce lawful orders
 16 of the **council** [DEPARTMENT] under this chapter.

17 * **Sec. 35.** AS 46.40.100(f) is amended to read:

18 (f) Upon receipt of a petition under (b) of this section, the **council**
 19 [DEPARTMENT] shall give notice of the hearing at least 10 days before the
 20 scheduled date of the hearing. The notice must

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

23 (2) indicate the manner in which the public may comment on the
 24 petition.

25 * **Sec. 36.** AS 46.40.100(h) is amended to read:

26 (h) If the **council** [DEPARTMENT] finds a pattern of nonimplementation
 27 under (c) of this section, the **council** [DEPARTMENT] may order a coastal resource
 28 district or a state resource agency to take action with respect to future implementation
 29 of the district coastal management plan that the **council** [DEPARTMENT] department
 30 considers necessary to implement the district coastal management plan. The **council's**
 31 [DEPARTMENT'S] determination under (c) of this section and any order issued under

1 this subsection shall be considered a final administrative order for purposes of judicial
2 review under AS 44.62.560.

3 * **Sec. 37.** AS 46.40.210(1) is amended to read:

4 (1) "area **that** [WHICH] merits special attention" means a delineated
5 geographic area within the coastal area **that** [WHICH] is sensitive to change or
6 alteration and **that** [WHICH], because of plans or commitments or because a claim on
7 the resources within the area delineated would preclude subsequent use of the
8 resources to a conflicting or incompatible use, warrants special management attention,
9 or **that** [WHICH], because of its value to the general public, should be identified for
10 current or future planning, protection, or acquisition; these areas, subject to the
11 **council's** [DEPARTMENT'S] definition of criteria for their identification, include [:]

12 (A) areas of unique, scarce, fragile, or vulnerable natural
13 habitat, cultural value, historical significance, or scenic importance;

14 (B) areas of high natural productivity or essential habitat for
15 living resources;

16 (C) areas of substantial recreational value or opportunity;

17 (D) areas where development of facilities is dependent upon
18 the utilization of, or access to, coastal water;

19 (E) areas of unique geologic or topographic significance **that**
20 [WHICH] are susceptible to industrial or commercial development;

21 (F) areas of significant hazard due to storms, slides, floods,
22 erosion, or settlement; and

23 (G) areas needed to protect, maintain, or replenish coastal land
24 or resources, including coastal flood plains, aquifer recharge areas, beaches,
25 and offshore sand deposits;

26 * **Sec. 38.** AS 46.40.210(4) is amended to read:

27 (4) "coastal zone" means the coastal water including land within and
28 under that water, and adjacent shoreland, including the water within and under that
29 shoreland, within the boundaries approved by the former Alaska Coastal Policy
30 Council **before May 22, 2003**, and by the United States Secretary of Commerce under
31 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act of 1972, as amended); "coastal

1 zone" includes areas added as a result of any boundary changes approved by the
2 **council** [DEPARTMENT] and by the United States Secretary of Commerce under 16
3 U.S.C. 1451 - 1465; "coastal zone" does not include

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

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

6 **council** [DEPARTMENT] in conformance with 16 U.S.C. 1451 - 1465;

7 * **Sec. 39.** AS 46.40.210(7) is amended to read:

8 (7) "district coastal management plan" means a plan developed by a
9 coastal resource district, including enforceable policies of that plan, setting out
10 policies and standards to guide public and private uses of land and water within that
11 district and approved by the **council** [DEPARTMENT] as meeting the requirements of
12 this chapter and the regulations adopted under this chapter;

13 * **Sec. 40.** AS 46.40.210(8) is amended to read:

14 (8) "enforceable policy" means a policy established by this chapter or
15 approved by the **council** [DEPARTMENT] as a legally binding policy of the Alaska
16 coastal management program applicable to public and private activities;

17 * **Sec. 41.** AS 46.40.210 is amended by adding a new paragraph to read:

18 (13) "council" has the meaning given in AS 46.39.900.

19 * **Sec. 42.** AS 46.40.040(c), 46.40.096(i), and 46.40.210(6) are repealed.

20 * **Sec. 43.** AS 46.39.005 and 46.39.900(1) are repealed.

21 * **Sec. 44.** Sections 2, 4, and 43 of this Act take effect on the effective date described in sec.
22 22, ch. 31, SLA 2005, as that date may be amended from time to time.