

SCR

103

SENATE COMMUNITY & REGIONAL AFFAIRS
COMMITTEE MEETING

June 9, 1978

Present: Senators Orsini, Ferguson, Sumner and Willis

Absent: Senator Hackney

The Senate Community and Regional Affairs Committee met directly after session this day and passed out CSHB 134 with "INDIVIDUAL RECOMMENDATIONS" and CSHCR 125 am (C&RA) with a 'Letter of Intent' that passed out with "INDIVIDUAL RECOMMENDATIONS".



Official Business

Alaska State Legislature

Senate

Committee on

Community & Regional Affairs

June 9, 1978

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

Information received by the Senate Community and Regional Affairs Committee has identified six sections of the coastal zone regulations submitted by the Alaska Coastal Policy Council which, in the opinion of the Committee, warrants change. These appear in the standards for timber harvest (5AAC 80.100). Three of these sections, namely 6AAC 80.100 (a), (b)(3), and (d) were deleted entirely by the House of Representatives. We concur in this result.

There are three other sections which are also of concern. Section (b)(2) of the regulations, as submitted by the Policy Council, requires that timber harvest activities in the coastal area be conducted so as to "assure unrestricted fish movement in coastal waters". The word "unrestricted" as appears in this section is absolute in its requirement, therefore placing an unreasonable burden upon the timber industry. On the other hand, the Committee does desire that fish movement in coastal waters be assured. Since we cannot amend this section and therefore have a choice only between adopting it entirely or deleting it entirely, we wish to pass the section without change. However, we strongly urge the Alaska Coastal Policy Council to delete the word "unrestricted" as it appears in this section for the reason given.

For the same reason we also urge the Alaska Coastal Policy Council to delete the word "unrestricted" as it appears in Section (c)(4). Again, we will pass this section as written, but believe that the word "unrestricted" places an unreasonable burden upon the timber industry.

Finally, we urge the Alaska Coastal Policy Council to delete the words "potential for" in Section (b)(1) as submitted by the Council. As presently written, that section requires that timber harvest activities in coastal areas be conducted so that "the location of facilities and the layout of logging systems shall be managed so as to minimize potential for adverse environmental impacts". Industry should minimize adverse environmental impacts. However, the words "potential for" add an open-ended burden, the meaning of which we are uncertain; we therefore strongly urge that these words be deleted by the Alaska Coastal Policy Council.

It is the intent of the Committee with respect to the timber harvesting process section under review that, for the reasons stated above, the Alaska Coastal Policy Council review the sections discussed above and resubmit them with the recommended changes.

JOE ORSINI, Chairman



Official Business

Alaska State Legislature

Senate

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

May 10, 1978

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D. C. 20510

Dear Senator Stevens: *Ted*

I have enclosed for your information and background use a copy of a letter recently submitted to this Committee by the U.S. Coast Guard regarding the implementation of the Alaska Coastal Management Act.

My reason for bringing this letter to your attention involves its implicit questioning of the concept underlining the Coastal Management Act passed by the Alaska Legislature in 1976. Specifically, Rear Admiral J.B. Hayes believes that when the Alaska Legislature authorized the creation of local management districts it violated the intent of the federal Coastal Zone Management Act:

"b. Section 923.12(a) requires the State to 'develop policies and procedures by which uses determine to be subject to the management program will be permitted conditioned, modified and/or prohibited. These policies and procedures regarding management of uses and/or their impacts must be capable of effective implementation at the time of program approval'. Alaska's section 6 AAC 85.070 and 6 AAC 85.080 delegates these functions to the districts. This creates a situation where each district's uses and policies may differ and is therefore not authorized under the federal regulations."

I believe that Admiral Hayes' concerns overlook two underlying elements. First, local district programs must be consistent with the statewide Guidelines and Standards adopted by the Alaska Coastal Policy Council and these regulations, in turn, guarantee priority of action to matters of national concern. Secondly, regulations to be effective and equitable, must accurately reflect local circumstances. The differences in topography, climate, biota and human activity between such areas as southeast Alaska, upper Cook Inlet or the Bering Sea coast are more fundamental than those separating Washington State from Oregon, or New Jersey from North Carolina. Yet these states all have individual, essentially uncoordinated coastal programs for the Coast Guard to deal with.

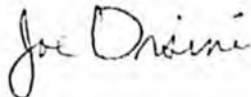
May 10, 1978

These regional disparities were the basis for the Alaska Legislature's decision to authorize local management districts. I seriously doubt that a monolithic set of regulations would well serve coastal management in this state or treat equitably the diversity of Alaska's peoples and regions.

I hope that the concerns expressed by Admiral Hayes can be satisfactorily settled here in Alaska. While I can sympathize with the Coast Guard's irritation at being asked to comment on six separate drafts of the proposed regulations within a six month period, these requests should also be seen as evidence of the State's good faith efforts to involve federal agencies in each step of the preparation of the regulations.

If, however, the differences with the Coast Guard escalate beyond the state level and the legality of Alaska's Coastal Management Act is challenged or jeopardized in Washington, D.C., I would hope that you would be able to explain to the federal government the compelling reasons for the structure of Alaska's Coastal Management Act, and to work towards preventing its dilution at the federal level. I have a great deal of personal apprehension that failure to have Alaska's Act adopted by the federal government would lead to an increase in Federal control in Alaska's coastal area. I hope this apprehension is not justified.

Sincerely,



JOE ORSINI
Chairman, Senate
Community and Regional
Affairs Committee

JO:gd

cc: Senator Poland
Senator Rader, President
Rep. Rudd
Rep. Cowper



DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS.
Commander (dpl)
17th Coast Guard District
P. O. Box 3-5000
Juneau, Ak 99802
(907) 586-7355

16000

1 MAY 1978

Honorable Joseph L. Orsini
State of Alaska Senate
Pouch V
Juneau, AK 99811

Dear Mr. Orsini:

The Coast Guard appreciates the opportunity to correspond with you. committee concerning the 13 April 1978 Standards and Guidelines for Alaska's Coastal Management Program (ACMP). These Standards and Guidelines represent a considerable departure from the previous drafts on which the Coast Guard was allowed to comment. The Coast Guard feels that this version of the Standards and Guidelines is severely deficient in the areas of participation, specificity, and priority of uses.

Participation. The Office of Coastal Zone Management in Alaska has attempted to provide federal agencies with the opportunity to participate in the development of Alaska's program. Section 923.51 of the federal regulations requires, however, that the State "provide for federal agency input on a timely basis." The Coast Guard feels that the State has been deficient in this regard due to the shortness of time allowed for agency comments between successive drafts of the Standards and Guidelines. This is the sixth occasion in the last six months that the Coast Guard has commented on a different draft of this document. This rapidity of drafts has not allowed sufficient time for coordination between the various agencies of the Department of Transportation, nor the opportunity to carefully evaluate the content of the Program. Furthermore, this "final" version of the Standards and Guidelines was approved by the Council and submitted to the legislature without an opportunity for federal review, even though it differed substantially from previous drafts. Written comments have yet to be received by the Coast Guard addressing our stated concerns. The Coast Guard feels therefore that this past history of short lead times for response combined with the lack of formal feedback from the State does not meet the federal requirements for participation.

Section 306(c)(1) of the Coastal Zone Management Act requires federal agency participation in the development of the Program at an early stage in the process. The Coast Guard recommends that a provision for this participation be included in section 6 AAC 80.020 of the Standards.

The Coast Guard has commented on several occasions that a mechanism is needed for government participation at the district level in the development of the local plans. The Coast Guard is concerned that each district may develop its own mechanism for government participation and then cite compliance or non-compliance with this mechanism as evidence of government participation. Because the actual decision concerning adequacy of participation will be made at the State level by the Council, the Coast Guard feels that it is very important that a well developed State mechanism for participation be defined as part of the ACMP. If this accomplished, the process will not vary from district to district and all parties will have a clear understanding of their responsibilities and opportunities. It is therefore recommended that Section 85.100 be expanded to detail exactly when, where, and how government agencies will be allowed to participate in the development process.

Priority of Uses.

Section 923.13 of the federal regulations requires that the State must: "(1) Identify what constitute uses of regional benefit; and (2) identify those methods that shall be used to assure that unreasonable restrictions or exclusions of such uses by local land and water use regulations shall not occur." The Coast Guard finds no mention of regional benefit, national interest, or defense considerations in the Guidelines and Standards. National Defense, including Coast Guard functions and responsibilities such as search and rescue and fisheries enforcement, should be identified in Chapter 80, Article 2 of the Standards as an important priority use of the Coastal Zone. This priority provides the basis for regulating future land and water use, provides a common reference point for resolving potential conflicts, and is important for future acquisition of areas not presently controlled by the Coast Guard.

Section 6 AAC 80.080 of the Standards addresses water based transportation routes. Under the Ports and Waterways Safety Act of 1972, the Coast Guard is authorized to establish vessel traffic services in ports, harbors, and other waters subject to congested vessel traffic. Any district plans dealing with the management and control of vessel traffic should be coordinated with the Coast Guard to insure such plans are compatible with Coast Guard traffic control responsibilities. There is also considerable regional and national interest connected with transportation and these considerations should be mentioned in this section.

Specificity. The present Standards and Guidelines are lacking in specificity and substance and, as a result, the plans developed and implemented by the Alaska Coastal Resource Districts may vary so widely that the Coast Guard may be compelled to operate under as many as 50 different

plans within Alaska rather than under one plan which is implemented by various local government units. This situation would present an unacceptable burden on the Coast Guard and other federal agencies and is therefore considered a serious defect which must be remedied.

The Coast Guard feels that the Standards and Guidelines are deficient in the following areas concerning specificity:

a. The standards and criteria upon which decisions pursuant to the program will be based are not sufficiently specific to provide "(i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program." These provisions are required by section 923.3(a)(2) of the Federal Coastal Zone Management Approval Regulations.

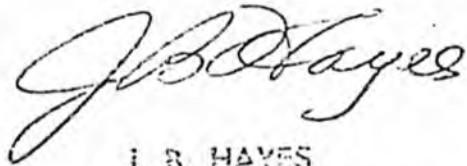
b. Section 923.12(a) requires the States to "develop policies and procedures by which uses determined to be subject to the management program will be permitted, conditioned, modified, and/or prohibited. These policies and procedures regarding management of uses and/or their impacts must be capable of effective implementation at the time of program approval." Alaska's section 6 AAC 85.070 and 6 AAC 85.080 delegates these functions to the districts. This creates a situation where each district's uses and policies may differ and is therefore not authorized under the federal regulations.

The effective implementation required under this section can not occur under Alaska's present Standards and Guidelines. If the State delegates the responsibilities of establishing uses and policies to the individual districts (85.070 and 85.080), and the district policies and uses are not submitted to NOAA with the ACMP (district plans will be developed later), it is impossible to implement meaningful management procedures regarding unknown uses and policies. It is therefore not clear what status the Program will have before the district plans are in place.

c. Section 923.12(e) of the Federal regulations states that "to the extent a state's government program policies are generalized, performance standards that will be used to enforce these policies will need to be sufficiently explicit and specific that persons affected by the management program will have a reasonable understanding of what uses would be permitted in which locations of the Coastal Zone and under what condition." The Coast Guard feels that the Standards are neither explicit nor specific and do not provide the required clear understanding as to what uses are permitted in any location.

The Coast Guard is very interested in coastal zone management and desires to work closely with the State of Alaska in implementing the ACMP. However, the mere opportunity to comment on the various stages of combined plan development when with the lack of response received concerning these comments, can not be considered real participation. The continued failure of the State to react to the concerns expressed herein is viewed as a matter of concern and is considered a serious continuing deficiency under the federal regulations. I am hopeful that these defects can be corrected before the ACMP is sent to NOAA, and am looking forward to continuing interaction with the State in coastal zone matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. B. Hayes".

J. B. HAYES

Rear Admiral, U. S. Coast Guard
Commander Seventeenth Coast Guard District

SENATE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE MINUTES

April 25, 1978

Present: Senators Orsini, Sumner, Willis and Ferguson; Roger Allington, Co-Chairman of the Alaska Coastal Management Council; Murray Walsh, Office of Coastal Management; Bruce Aronson, Department of C&RA; Pat Sharrock, ABC Board; Jim Rolle, Alaska Municipal League.

Absent: Senator Hackney came latter part of meeting.

The meeting was called to order at 3:10.

SB 533, SB 208, SB 599 and SCR 103 were the bills before the Committee.

SENATE BILL 533

Senator Sumner moved and asked unanimous consent that the Committee pass out CSSB 533 with individual recommendations.

SENATE BILL 208

Bruce Aronson, Dept. of C&RA, testified that the Department supports SB 208. Senator Sumner moved and asked unanimous consent that the Committee pass out SB 208 with individual recommendations.

SENATE BILL 599

Chairman Orsini stated that SB 599 is an outgrowth from discussions on SB 183, which is part of the Governor's Alcohol package. The bill does essentially two things -- first, it allows a municipality to adopt ordinances by which either new, renewal or transferred liquor licenses could be rejected by a municipality. If a municipality does not act to reject the license request within 30 days the application is automatically placed before the ABC Board.

Senator Sumner questioned the need to transfer a state level function, such as liquor licensing, to the local government level.

Chairman Orsini stated that Section 1 and 2 both deal with municipalities but were separate from each other. Section 2 gives an intermediate means of municipal alcoholic control if the municipality votes to do this. It would limit sales to nondistilled alcoholic beverages, such as beer and wine.

Chairman Orsini stated that he had spoken with CHAR Lobbyist, Dorothea MacDonald, and she initially had no objection to the bill but stated that the CHAR executive committee later decided to oppose it.

Pat Sharrock, Director of the Alcohol Beverage Control Board, stated that one provision of the bill that he does like is the requirement for a municipality to place a license application on its agenda for a public hearing. He stated that one area of the bill seemed to be a conflict or a duplication, which is where the applicant and the ABC

Board both would be required to send a copy of the application to the governing body involved. In regards to the 30 day waiting period provided for a municipality to disapprove an application he asked that it be specified when the 30 day count-down would begin.

Mr. Sharrock had no comments on Section 2 of the bill.

Jim Rolle, Alaska Municipal League, in response to the concern that the municipalities may be given too much power by being able to reject applications, stated that now the only protest to the ABC Board is generally in the area of health and zoning. He stated that this bill would give municipalities an option. Then if they chose not to adopt appropriate ordinances the ABC Board would continue to make the decisions. He stated that the municipal officials are, in his opinion, as effective as the ABC Board in judging what is good for their community and what isn't.

He also stated that he agreed with Mr. Sharrock that the 30 day period is confusing. He also had no comment on Section 2.

COASTAL MANAGEMENT GUIDELINES AND STANDARDS

Chairman Orsini stated that the Committee now has SCR 103 before the Committee approving the regulations.

Roger Allington, Co-Chairman of the Alaska Coastal Policy Council, stated that the Coastal Management regulations are slightly different from other regulations. For one, he pointed out that they are being promulgated by a specially-organized body, the Alaska Coastal Policy Council, composed of government and public members. He also noted that the intent of the regulations was to establish broad policy principles and allow local municipalities and district to draw up their own management programs essentially on a zoning basis. Furthermore, the areas themselves would draw their own boundaries for coastal management jurisdiction, providing certain criteria were met.

Although the Council extensively revised the final version of the regulations, Allington stated that on the last part of Section 85, concerning council review, was new. He also stated that there was a major change in the Timber Harvest Section of the regulations which was requested by the timber industry. There was also work done on the subsistence section. The question was raised of what would happen if local or state agency regulations conflicted with the Coastal Regulations. Mr. Allington replied that the agencies or local governments must bring their regulations into conformity with the coastal management program.

Murray Walsh, Coastal Zone Management Office, stated that the critical time would be the next six or seven months which would bring out the flaws and problems of the regulations. He also stated that the Legislature should consider an increase in state funding of this program just to give the coastal management more flexibility and eliminate some of that federal dependence.

The meeting was adjourned at 4:35.

→ Coast Policy Regs

Roger Allington

muni use these regs to set up zoning

desire for max flexibility by local districts

~~nothing~~ see 80.010(b) - intent in st. regs the intent is that local ~~pl~~ dist plans override st regs, if dist plans in conformance w/coast pol guide

funding - Fed CZM (+ 700K FY79)
CEIP funds may also be used

US Dept of the Interior

~~Bar~~ - used boundaries of D plan beach habitat (ocean to mountains) - we use entire borough as "coastal zone"

possible for council to "cause planning to be done" if muni do not act