

HB

189

24-LS0703\G
Bullock
4/27/05

CS FOR HOUSE BILL NO. 189(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska coastal management program; providing for an effective**
2 **date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an**
3 **effective date."**

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

5 *** Section 1.** Section 49, ch. 24, SLA 2003, is amended to read:

6 Sec. 49. Section 45 of this Act takes effect January 1, 2006 [JULY 1, 2005].

7 *** Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 189
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Coastal Management Programs RDU Comm Assist & Ec Dev (405)
 Component Community Advocacy
 Sponsor State Affairs
 Requester House Community & Regional Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 189 proposes an extension to the deadline coastal districts have to amend their plans, and would have no fiscal impact on the operations of the division.

Prepared by: Michael Black, Director
 Division: Community Advocacy
 Approved by: Edgar Blatchford, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone 907.269.4540
 Date/Time 4/26/05 6:53 PM
 Date 4/26/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB189-DNR-ACMP-04-2
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Relating to District Coastal Management RDU: Resource Development
Programs Component: Alaska Coastal Management
Sponsor: House State Affairs Program: _____
Requester: House C&RA Component No.: 2680

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services		199.1	99.5			
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	199.1	99.5	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		199.1	99.5			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	199.1	99.5	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 191 required the districts to have plans submitted by 6/30/2005, with the ACMP review process of those plans to be complete by 6/30/2006. Implementation of HB 189 extends the district submission deadline to one year after the State's revised coastal program is approved by NOAA. This fiscal note assumes NOAA approval by 1/1/2006, with the ACMP completion by 1/1/2008. Funding is available for existing staff through 6/30/2006, under the original plan. HB 189 will require us to retain 2-3 positions for the additional eighteen months, resulting in the fiscal note.

Prepared by: Randy Bates, Deputy Director Phone 269-8429
Division: Office of Project Management & Permitting Date/Time 4/27/2005
Approved by: Tom Irwin, Commissioner Date 4/27/2005
Agency: Natural Resources

FRANK H. MURKOWSKI
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

April 18, 2005

Coastal District Representatives

Re: Update to the Coastal Districts Following Receipt of Office of Coastal and Resource Management's (OCRM) Letter Addressing Preliminary Approval of the Amended Alaska Coastal Management Program (ACMP)

Dear Coastal District Representatives:

I am pleased to share with you a landmark letter issued by OCRM on April 14, 2005. That letter responds favorably to the State of Alaska's December 16, 2004, submission of *The Alaska Coastal Management Program, As Amended*, and concludes an arduous, detailed, comprehensive, and collaborative effort by the State of Alaska and OCRM on the approvability of the state's coastal program.

On February 23, 2005, I wrote OCRM a letter that took a firm position regarding our state's right to manage our coastal uses and resources in a manner consistent with our best judgment. OCRM took a hard look at the issues I identified and re-evaluated their position, as characterized in their January 28, 2005, letter. I appreciate OCRM's flexibility in reviewing the Coastal Zone Management Act (CZMA) and other approval criteria that resulted in a significantly modified list of requirements for Alaska's amended ACMP to be federally approved. OCRM's modified position truly assists our state in developing a coastal program that appropriately addresses the management and protection of Alaska's coastal uses and resources, balances the rights of stakeholders, and does so in a manner fully compliant with the CZMA and its implementing regulations.

Our discussions have culminated with OCRM's April 14, 2005, letter, which identifies the few remaining technical regulatory amendments necessary for the amended ACMP to meet the requirements of the CZMA. The state has agreed to make those revisions identified in the letter as required by law, but will not make further changes which OCRM sought as a policy directive but which had no legal basis.

Once the amended regulations have been adopted in accordance with Alaska's Administrative Procedures Act, OCRM will issue preliminary approval

of the amended ACMP. The revisions are discussed in detail in the OCRM letter and are briefly summarized below.

1. Pursuant to 16 U.S.C. 1455(d)(4) and 15 C.F.R. 923.82(a), the state must hold a public hearing on the amended ACMP before OCRM can make a preliminary approval decision. This public hearing is an opportunity for interested persons to provide oral and/or written testimony on the state's amended ACMP.
2. The Department of Natural Resources (DNR) will make regulatory revisions to the ACMP's state standards at 11 AAC 112 to accommodate the CZMA "effects test" for federal consistency reviews which is required by federal regulation. As described in DNR Commissioner Tom Irwin's April 7, 2005, letter to OCRM, this "effects test" applies to (a) federal agency activities if the federal agency determines that effects to any land or water use or natural resource of the coastal zone are reasonably foreseeable and the state has an enforceable policy addressing the use or resource; and (b) federal license or permit activities that are located within the state's defined coastal area or on the outer continental shelf.
3. The state will make regulatory revisions to the subsistence use standard to allow the state to designate subsistence use areas. This revision will address the potential gap between the effective date of the new state standards at 11 AAC 112 and the implementation of the revised coastal district plans.
4. The state will update the ACMP program description by incorporating into that document all of DNR's existing published guidance pertaining to district planning and implementation.

To secure timely preliminary approval of the amended ACMP, and to assure continued federal funding of the ACMP in state fiscal year 2006, DNR intends to expeditiously revise the regulations to satisfy these procedural requirements. The proposed schedule for accomplishing the above listed tasks and securing preliminary approval from OCRM is as follows:

- April 20, 2005 – DNR releases all proposed regulatory revisions for public review and comment, and provides public notice of the hearing on the amended ACMP;

Coastal District Representatives

April 18, 2005

Page 3

- May 20, 2005 - DNR conducts a public hearing on the amended ACMP in Anchorage;
- May 23, 2005 - DNR closes the public review and comment period on all proposed regulations;
- May 25, 2005 - Having considered all comments on the regulations and incorporated appropriate changes, DNR finalizes and adopts the revised regulations, and submits them to the Department of Law (DOL) for legal review;

May 31, 2005 - DOL transmits regulations to the Lieutenant Governor for filing, establishing an effective date of July 1, 2005;

June 1, 2005 - DNR submits to OCRM: (1) the adopted revised regulations, (2) the summary of the public hearing on amended ACMP, and (3) the revised program description;

July 1, 2005 - OCRM responds to the state, preliminarily approving the amended ACMP; OCRM initiates the NEPA process; and

December 31, 2005 - OCRM completes the NEPA process and approves amended ACMP, such that the state standards at 11 AAC 112 become effective on January 1, 2006.

Over the past several months, coastal district representatives have told us that while all districts will be able to submit a revised district coastal management plan by the July 1, 2005, deadline, additional time would improve the quality of those plans and the public outreach process. Three bills currently before the Legislature have requested various formulations of the request for additional time and the districts have recently indicated that an additional six months would be invaluable to their efforts. I agree.

Therefore, I am announcing that DNR will work with the Alaska State Legislature on Senate Bill 102 and House Bill (HB) ^{HB 189}~~186~~ to effect three deadline extensions within HB 191 (Chapter 24, SLA 2003). These three deadline extensions will:

- Amend Section 46(c) of HB 191 to extend by six months the district program sunset date;

Coastal District Representatives

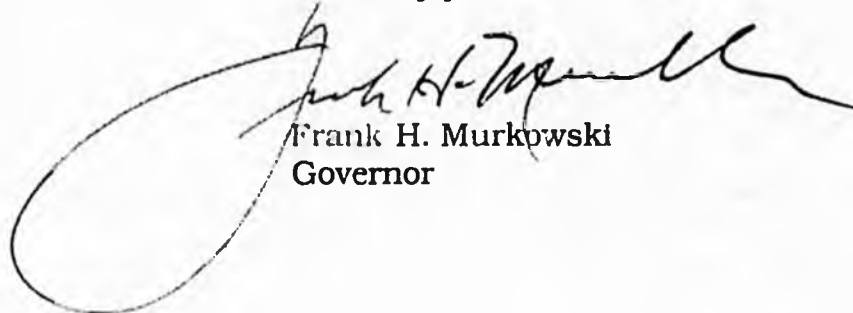
April 18, 2005

Page 4

- Amend Section 47(a) of HB 191 to extend by six months the revised district plan submission deadline; and
- Amend Section 49 of HB 191 to extend by six months the sunset date of the state standards at 6 AAC 80.010 – 6 AAC 80.90.

I hope you will join me in considering these developments a significant victory for all stakeholders in the ACMP process, and, most importantly for the coastal resources that we all work so hard to effectively manage. I am counting on your assistance and support as we complete the preliminary approval requirements and work through the deadline extension legislation you have requested, which will allow you to produce the best revised district plans possible.

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written over the typed name and title.

Frank H. Murkowski
Governor

Enclosure



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Silver Spring, Maryland 20910

APR 14 2005

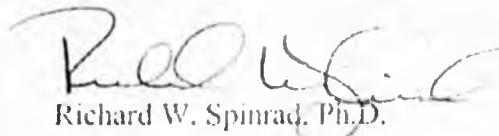
Mr. Thomas E. Irwin, Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3650

Dear Commissioner Irwin:

Thank you for your April 7, 2005, letter furthering our discussions on the National Oceanic and Atmospheric Administration's (NOAA's) review of the amendment to the Alaska Coastal Management Program. I am pleased to say that after many discussions this week between our staffs we have agreed on the steps necessary for NOAA to make a preliminary approval decision prior to July 1, 2005. These steps are set forth in the enclosure entitled, Remaining Steps for ACMP Preliminary Approval.

To complete the Coastal Zone Management Act amendment process and comply with the National Environmental Policy Act over the coming months will involve substantial staff time for both of our offices. We look forward to working with Alaska in a coordinated and collaborative fashion to complete the amendment to the Alaska Coastal Management Program.

Sincerely,


Richard W. Spinrad, Ph.D.
Assistant Administrator

Enclosure

Cc: Honorable Senator Ted Stevens
Honorable Senator Lisa Murkowski
Honorable Congressman Don Young
Ben Stevens, President of the Alaska State Senate
John Harris, Speaker of the Alaska State House of Representatives
Eldon Hout, Director OCFM
Henri Bisson, State Director BLM
John Goll, Regional Director MMS
Forrest Cole, Supervisor Tongass National Forest
John Katz, Office of the Governor
Dick LeFebvre, Deputy Commissioner DNR
Marty Rutherford, Deputy Commissioner DNR
McKie Campbell, Commissioner DF&G
Kurt Fredrickson, Commissioner DEC
Edgar Blatchford, Commissioner DCCED
Bill Jeffress, Director DNR, OPMP
Tony MacDonald, Executive Director CSO



Printed on Recycled Paper



ENCLOSURE – REMAINING STEPS FOR ACMP PRELIMINARY APPROVAL

GENERAL COMMENT

The changes proposed by Alaska, with further modification as described below, should meet Coastal Zone Management Act (CZMA) preliminary approval requirements. Once these changes are submitted to and reviewed by NOAA, NOAA will be able to make a preliminary approval decision. Changes submitted to NOAA for preliminary approval consideration should be, for any regulatory changes, a final rule by Alaska submitted to the Alaska Lieutenant Governor prior to publishing the final rule, and a revised Alaska Coastal Management Program (ACMP) document for the non-regulatory changes. As stated in our March 25, 2005, letter, the remainder of the items described in the January 28, 2005, letter and enclosures do not need to be made at this time for preliminary approval. Those items will need to be made to the ACMP document before final approval and NOAA believes that some of the items may be eliminated.

PUBLIC HEARING

A public hearing on the submission of the amendment must be held before NOAA can make a preliminary approval decision. This requirement is derived from CZMA section 306(d)(4) stating that for program approval that the "State has held public hearings in the development of the management program." This requirement is also applied to amendment requests because of the substantial change to a state's management program, under 15 CFR § 923.81(a). This requirement is for public hearings on the submission of a state's amendment request to NOAA; it does not refer to public hearings a state may have held during the development of the amendment at the state level. *See* 15 CFR § 923.81(b)(5) (describing documentation of public input during a state's development of an amendment).

The public hearing requirement for the submission of amendments to NOAA is tied to preliminary approval by 15 CFR § 923.82(a) and (c). These sections provide that NOAA cannot make a preliminary approval determination on a state's proposed amendment until the state has satisfied the applicable program approvability requirements and the procedural requirements of CZMA section 306(d), which include the public hearing requirement in section 306(d)(4) that is applied through 15 CFR § 923.81(a). The public notices and summaries for the public hearing, described in 15 CFR § 923.81(b)(3) and (4) relate to the section 306(d)(4) hearing.

The provisions in 15 CFR § 923.81(b)(3) and (4) regarding hearing summaries and concurrent Federal agency review provide that a state can submit hearing summaries 60 days after the hearing. This does not alter the requirement for a state's section 306(d)(4) hearing to be held before a preliminary approval determination is made.

Alaska is required to have at least one section 306(d)(4) hearing on the amendment submission. *See* 15 CFR § 923.81(a). Additional hearings are at the State's discretion. Alaska's responsibilities for the public hearing are to provide a public notice of the hearing 30 days in advance, note the time and location of the hearing and make available for public review at the time of the public notice, all agency materials pertinent to the hearings. The latter requirement could be satisfied by directing the public to the ACMP website and identifying the ACMP

amendment documents subject to the public hearing. At the hearing the State should make an opening statement about the purpose of the hearing (to provide the public an opportunity to comment on the State's ACMP submission to NOAA), and inviting any public comment. The State is not required to respond to comments. After the hearing, the State must submit to NOAA, within 30 days of the hearing, a transcript or summary of the hearing. 15 CFR § 923.58(d).

APPLICATION OF ENFORCEABLE POLICIES TO FEDERAL LANDS AND GEOGRAPHIC LOCATION DESCRIPTIONS (GLDS).

Paragraphs (a), (b) and (d) are satisfactory.

Paragraph (c) is satisfactory with the exception that the parenthetical "(occurring within the coastal zone)" is incorrect. A federal agency must provide a consistency determination for an activity, regardless of location, if the federal agency determines there will be effects to coastal uses or resources. This includes effects to uses or resources *of* the coastal zone (not *in* the coastal zone) where the use or resource affected is inland or seaward of the coastal zone. A state may, of course use the various provisions in NOAA's regulations to reach agreements with federal agencies regarding when and how federal consistency will apply to federal agency activities under 15 CFR part 930, subpart C (e.g., general concurrences, de minimis activities, beneficial activities).

The first sentence in paragraph (c) should be amended to read:

Federal agency activities that occur inland of the coastal zone boundary are only subject to ACMP consistency review process if the federal agency determines that effects to any land or water use or natural resource of the coastal zone ~~coastal-uses-or-resources (occurring-within-the-coastal-zone)~~ are reasonably foreseeable and the State has an enforceable policy addressing the use or resource.

APPLICATION OF DISTRICT POLICIES AND DESIGNATED AREAS

The language is not clear regarding the scope of district policies and designated areas. The proposed language merely says that CZMA and NOAA regulations apply for the State standards and District policies. Because the other State standards would still have the language limiting review to projects occurring within a designated area, the following language needs to be added after the term "projects" (additional language is underlined):

Notwithstanding any other provision, for the purposes of federal consistency reviews conducted under 16 USC 1456, projects, within or affecting land or water uses or natural resources of the coastal zone, will be subject to the state standards at 11 AAC 112.200 – 11 AAC 112.900 and the coastal district enforceable policies approved under 11 AAC 114 in accordance with the requirements of the applicable subparts of 15 C.F.R. part 930 and other relevant parts of Alaska's federally approved coastal management program.

The ACMP document or preamble to the rule change should discuss this change in the context of the CZMA "effects test" for federal consistency purposes. In particular, the discussion should note that for purposes of federal consistency reviews, projects within or affecting a district's designated area would be subject to the applicable state and district enforceable policies.

TECHNIQUE A

Alaska proposes to amend the subsistence use standard at 11 AAC 112.270(a) to read, "A project within a subsistence use area designated by the State or under 11 AAC 114.250(g) must . . ."

Technique A is meant to apply state enforceability to entire local government plan. While Alaska still has Technique A components, NOAA now recognizes that the ACMP is relying primarily on Technique B for implementation of State standards and that the only State standard presently reliant on District policies is the subsistence use policy. All other District policies are at the choice of the Districts and are not required for ACMP approval or to implement State standards. Therefore, Alaska's proposed change to its regulation is sufficient for NOAA to make a preliminary approval decision, because it would give the State the ability to designate subsistence use areas and enforce the subsistence use standard during District plan development, pursuant to 15 CFR § 923.42(b)(2), and would use 15 CFR § 923.42(b)(3)(i) for direct State enforcement of the subsistence use standard if a District failed to adopt a plan.

SCOPE AND CONTENT OF DISTRICT PLANS

NOAA looks forward to reviewing the revised/combined District guidance, which must satisfy the need for clarity pursuant to 15 CFR § 923.3(e)(1) and (2), prior to making a preliminary approval decision.

HABITATS POLICY

1. Comprehensive Habitat Management. The CZMA requires state programs to develop and maintain a management program sufficient to carry out the protection of coastal resources such as shorelands, wetlands, estuaries, floodplains, fish and wildlife and their habitat and to use the land and water resources of the coastal zone giving full consideration to the ecological values of those resources as well as need for compatible economic development. Further, the CZMA requires the management program to contain specific, comprehensive and enforceable policies to provide that protection and overarching management scheme. State coastal programs need to manage and protect those significant resources and areas that make a state's coastal zone a unique, vulnerable or valuable area, particularly wetlands, estuaries, tidelands and offshore areas. 16 USC § 1455(d)(1); 15 CFR §§ 923.1, 923.3, 923.10 and 923.11. NOAA finds that Alaska's habitat management components are sufficient for purposes of our preliminary approval decision.

2. Written Scientific Evidence. NOAA believes that 11 AAC 114.900(40) provides a sufficient definition of this phrase for purposes of our preliminary approval decision.

3. Significantly More Productive. Alaska now proposes to replace this phrase with "biologically and significantly productive" in asking the districts to designate significant habitats. NOAA appreciates this change as it removes the comparison of habitats by deleting the term "more." While the State believes that the term is commonly understood and applied, and requires no additional explanation, we continue to believe that "significantly productive" is not a term generally accepted in the scientific community. NOAA did not recommend "biological productivity" as a preferable term; rather we asked the State to provide a definition so that users, districts, and other affected interests would be on notice as to how "productivity" is being measured so they would know what to provide data on. However, NOAA finds that defining the term is not needed for preliminary approval.

4. Adjacent Habitat. To address NOAA's concerns regarding the "adjacency" requirement, Alaska proposes to revise 11 AAC 112.300(c)(1)(B)(ii) and 11 AAC 114.250(h)(2) to read "... that is shown by written scientific evidence to be biologically and significantly productive." This language is an improvement over the "adjacency" requirement previously proposed by Alaska. NOAA finds that Alaska's change is adequate for our preliminary approval decision. Please see, however, our comments under No. 3, above, regarding the definition of "biologically and significantly productive."

ALASKA STATE HOUSE OF REPRESENTATIVES



Interim Address:
345 W. Sterling Hwy
Suite 102B
Homer AK 99603
(907)-235-2921
Fax# (907)-235-4008

Session:
(307)-465-2689
FAX# (907) 465-3472
State Capital
Room 102

HOUSE STATE AFFAIRS COMMITTEE Representative Paul Seaton, Chairman

Sponsor Statement HB 189

The Alaska Coastal Management Program (ACMP) is a partnership between federal, state, and local governments providing state and local governments a voice in federal decision making. Alaska is one of 34 coastal and Great Lakes states and territories that utilize this program, a program that annually channels millions of dollars in federal grant money to the states. The ACMP has helped guide coastal development in the state since it was enacted in 1977.

Without the program the state and local governments lose their ability to control development on federal land and the Outer Continental Shelf. In addition the state will lose millions in federal coastal management planning money.

In 2003, HB 191 substantially revised the state coastal program. The federal Office of Ocean and Coastal Resource Management (OCRM) must approve the revised program. OCRM has determined that additional revisions are necessary before they can grant approval.

The 2003 legislation included state-imposed deadlines for revisions to local coastal programs. Coastal Districts are attempting to follow the statutory directive to revise their programs to meet the new requirements. However, OCRM has identified problems with the state's guidance to local districts regarding the scope and content of their program. The state will have to revise regulatory guidelines for the local districts before the new program can be approved by OCRM. In turn, the local districts will have to re-revise their programs to meet the new guidelines. It is a waste of time, money and effort for districts to revise their plans before the state's program is federally approved and any necessary changes have been made.

HB 189 bases the deadline for district coastal program revisions and annulment of the existing program on federal approval of the state's program. This extension will ensure an orderly and efficient transition to the new program.

Janet Eddy
2898 Sawmill Creek Road
Sitka, AK 99835

January 21, 2005

Representative Peggy Wilson
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Peggy:

I am writing this letter to express my support for extension of the July 1, 2005 statutory deadline for submitting revisions to Alaska Coastal Management Program (ACMP) district plans, including the Sitka Coastal Management Plan.

This extension is necessary due to complications resulting from new ACMP regulations effective July 2004. As I understand it, the interpretation of these regulations by the Alaska Department of Natural Resources (DNR) would not enable Sitka to establish meaningful enforceable policies, the local criteria that project applicants must meet. These policies provide the Sitka coastal district a "seat at the table" to ensure there is a proper balance between economic development and protection of other coastal uses and resources.

I understand a recent legislative hearing on the ACMP has been postponed by the House State Affairs Committee. I urge your support to ensure that the hearing is rescheduled and that testimony will be accepted from the public.

Sincerely,

A handwritten signature in cursive script that reads "Janet Leekley Eddy". The signature is written in dark ink and is positioned above the printed name.

Janet Eddy

cc: Representative Seaton, House State Affairs Committee



Municipality of Anchorage

P.O. Box 190650 • Anchorage, Alaska 99519-0650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

February 17, 2005

The Honorable Paul Seaton
Alaska State Legislature
State Capitol, Room 102
Juneau, AK 99801-1182

Dear Representative Seaton:

Last October I received a letter regarding the need to update Anchorage's Coastal Management Plan from Bill Jeffress, Director of the Office of Project Management and Permitting at the State of Alaska's Department of Natural Resources. The letter provided reasons for the revision as outlined in House Bill 191, which was passed by the Legislature in May 2003. The legislation provided some funding (\$41,000 for Anchorage) and required that coastal districts complete their plan updates by June 30, 2005. For a number of reasons, I am writing now to request that the Legislature revisit and adjust this deadline.

I understand the State is not expecting a comprehensive update of the plan, due to limited time and funding. However, the proposed deadline does cause concern as the plan update will have to be based on the State's new regulations and these have yet to be approved by the administering federal agency. The timing of the federal review and anticipated changes to the proposed regulations will affect the ability of Anchorage and other districts to update their plans under the current schedule. Given the pending federal review and approval, the schedule appears unattainable and should be revised to accommodate expected changes in the proposed standards and regulations.

To help address these concerns, the Municipality requests that the legislated submittal deadline for a concept-approved draft plan be extended by at least one year from the date of federal approval of the State's new regulations. This approach provides a more realistic schedule for completing the plan update and may better meet the intent of the original legislation.

Thank you for your consideration and action on this matter. The Municipality is available to work with the State's Office of Project Management and Permitting and the Legislature.

Sincerely,

Mark Begich
Mayor

cc: Governor Frank Murkowski
Bill Jeffress, Director, SOA, OPMP
Eldon Hout, Director, NOAA, OCRM
Tom Neison, MOA, Planning Department

Community, Security, Prosperity



Cenaliulriit Coastal Resource Service Area

PO Box 69, Mekoryuk, AK 99630 / Phone: 907-827-8748 / Fax: 827-8749 / E-Mail: Cenaliulriit2@starband.net
Toll Free: 1-877-827-8747

February 16, 2005

Honorable Donald Olson
State Capitol, Room 510
Juneau, AK 99801-1182

**Subject: Request for Alaska Coastal Management Program
Extension for the Rewrite of the District Plan Amendments**

Dear Senator Donald Olson:

Cenaliulriit Coastal Resource Service Area serves 38 Yup'ik villages. The legislature has placed an undue hardship, both financially and the time constraint to complete well thought plan amendments to conform to the requirements of House Bill 191.

The Alaska Department of Natural Resources (ADNR) completed and submitted its regulations without an adequate opportunity for input from the coastal districts and the federal Office of Ocean and Coastal Resource Management (OCRM). The ADNR gave us no opportunity to understand how the regulations would affect our plans.

There are many grave issues the coastal districts are concerned about, mainly our timing, with a deadline of July 1st, 2005. This timing does not give me time to explain this whole process, especially to residents of the district who speak Yup'ik Eskimo. The regulations are not perceived as conforming to federal coastal zone requirements. This is a definite conflict for our district.

Cenaliulriit CRSA at their board meeting on January 13th supported an extension of the deadline to July 1, 2006. In fact, OCRM also recommends an extension to the state's plan amendment.

If you have any questions, contact me at the above number.

Sincerely,

John Oscar
Program Director

cc: Cenaliulriit Board of Directors
Senator Gary Stevens
Senator Paul Seaton, Chair, House State Affairs Committee



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

January 28, 2005

Mr. Thomas E. Irwin, Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3650

Dear Commissioner Irwin:

Thank you for submitting the revised proposed Alaska Coastal Management Program (ACMP) document, received on December 17, 2004, for consideration as a program amendment under the Coastal Zone Management Act (CZMA) (December 17 ACMP Document). Since receipt of the December 17 ACMP Document, the Office of Ocean and Coastal Resource Management (OCRM) and Alaska Department of Natural Resources (DNR) staff have worked together and made significant progress in addressing several issues regarding the approval of the ACMP amendment. This letter, with enclosures, provides further comments regarding: your December 16, 2004, letter; CZMA approval issues; and scheduling/timing issues. OCRM is committed to working with the state to meet the objectives of Alaska House Bill 191 (HB 191) and the CZMA.

Alaska's December 16, 2004, Letter

I would like to briefly clarify some of the process issues concerning OCRM's preliminary approval decision raised in your December 16, 2004, letter. Alaska's first program amendment submission, dated September 30, 2004, was received in OCRM on October 5, 2004, and is referred to in OCRM's administrative record as the October 5 ACMP Document. Alaska's second program amendment submission, dated December 16, 2004, was received on December 17, 2004, and is referred to in OCRM's administrative record as the December 17 ACMP Document. On October 8, 2004, OCRM determined that the October 5 ACMP Document was insufficient. OCRM's letter dated November 4, 2004, provided Alaska with detailed comments and required improvements. Notwithstanding the October 8 determination of insufficiency, based on assurances from Alaska of timely resubmission of an improved amendment, on November 4, 2004, OCRM started the 120-day amendment approval time period in accordance with CZMA section 306(e).

As stated in OCRM's November 4, 2004, letter, OCRM continues to work diligently to collect information and data necessary to comply with the National Environmental Policy Act (NEPA). After the state submits to OCRM an ACMP document that resolves the issues identified in this letter and enclosures and proposed regulations revising the ACMP as recommended in this letter, OCRM will be able to begin the NEPA scoping process. After Alaska holds a public hearing on the ACMP amendment pursuant to CZMA section 306(d)(4) (that can be held in conjunction with OCRM's NEPA scoping meeting), OCRM will be in a position to make a preliminary approval decision and provide a more certain schedule to complete the NEPA process, pursuant to 15 CFR § 923.82(c). Therefore, pursuant to CZMA section 306(e)(2) (16 USC 1455(e)(2)), OCRM extends the ACMP amendment review period until the NEPA process is complete and its final record of decision on the ACMP program amendment request is issued.

Correspondence between the state and OCRM
regarding the state's revised ACMP
Jan. 28-Mar. 3, 2005



Printed on Recycled Paper



CZMA Approval Issues

The enclosures provide detailed explanations of the remaining approval issues, briefly described below. OCRM must be satisfied that the state has addressed these issues before OCRM can initiate the NEPA process or make a preliminary approval decision.

1. **Application of District Policies and Designated Areas.** Revisions must be made to ACMP regulations or the ACMP document to address CZMA approval issues concerning the following policies or policy areas: subsistence use policy; natural hazards area policy; important habitat policy; recreational use areas; tourism use areas; commercial fishing and seafood processing facilities sites; major energy facilities sites policy; and the important history or prehistory areas.

OCRM proposes these changes to ensure the ACMP regulations comply with the objectives of the CZMA and apply the federal consistency requirement to designated areas. The ACMP must address effects to those uses and resources identified by the ACMP and not be limited to the location of a project. *See e.g.*, 16 USC §§ 1452(2)(A), (C), (J), 1452(4), 1452(6), 1456(c)(1) and 1456(c)(3)(A); 15 CFR §§ 923.3(b), 923.11(b), and 15 CFR part 930. Enclosures I and III discuss this concern in detail.

2. **Compliance with Local Government Implementation Requirements - Technique A.** The ACMP as drafted does not comply with two of the five Technique A requirements for district implementation of ACMP policies. (When a state chooses to implement part of its coastal management program through local government implementation, the state must meet five requirements to ensure the local plans are enforced, under "Technique A" regulations at 15 CFR § 923.42.) The state is not able to assure that coastal management decisions will comply with ACMP enforceable policies during the development of local programs, pursuant to 15 CFR § 923.42(b)(2). Also, the state is not able to assure that coastal management decisions will comply with ACMP enforceable policies if a district fails to adopt a plan, pursuant to 15 CFR § 923.42(b)(3). Enclosure II discusses this concern in detail.
3. **Scope and Content of District Plans.** The ACMP does not clearly articulate the new role for district programs. The regulations and ACMP document must provide clear guidance to the districts and other affected interests on the scope and content of district programs and policies, including the "flow from" principle in 11 AAC 114.270(a)(1), which plays an important role in describing the parameters of district policies. The ACMP should consult with OCRM, districts, and other affected parties as part of any effort to amend this rule. A key program approvability requirement is that state coastal programs must provide a "clear understanding of the content of the program, especially in identifying who will be affected . . ." and a "clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program." 15 CFR § 923.3(e)(1) and (2). Enclosure IV discusses this concern in detail.
4. **Habitats Policy.** The ACMP habitats policy at 11 AAC 112.300 does not include clear mechanisms for the comprehensive management of fish and wildlife habitat, including the resolution of conflicts among competing uses of habitat. First, the standards proposed in the first part of the policy do not address impacts to the biological and other functions of habitat, and they apply only to specified geographic locations. Second, the criteria for designation of "important

habitat" areas to which broader habitat standards may apply lacks clarity, definition, and consistency with accepted scientific terminology and concepts. Changes are needed to comply with CZMA requirements including the scope of state enforceable policies. See 16 USC § 1452(2)(A), and 15 CFR §§ 923.3(b), 923.3(c), 923.3(d) and (e), and 923.40. Enclosure V discusses the habitat issues in detail.

Scheduling/Timing Issues

With respect to scheduling issues, it is important to have a mutual understanding of the effect of the July 1, 2005, deadline established by HB 191. We would like to summarize our understanding of the deadline. A detailed discussion of the deadline and possible alternatives is contained in Enclosure VIII, as well as a tentative schedule for completing the ACMP amendment approval process.

OCRM understands that DNR has concluded that if OCRM has not approved the ACMP amendment by July 1, 2005, the state will have no enforceable ACMP standards, because the old ACMP standards (6 AAC 80) will no longer be effective and the new ACMP standards (11 AAC 112) will not be effective until approved by OCRM. Therefore, after July 1, 2005, the federally approved ACMP would consist of only the district plans and district enforceable policies already approved by OCRM. While the ACMP amendment is in transition toward approval, OCRM believes the ACMP could continue to receive CZMA grants, fund efforts to revise the ACMP and district plans, and use the districts' enforceable policies for state and federal consistency reviews.

While both OCRM and DNR have worked diligently and made significant strides to complete review of the ACMP amendment, OCRM will not, despite its best efforts, be able to complete its review and NEPA analysis by July 1, 2005. The magnitude of the changes proposed for the ACMP regulations, the necessity to develop a revised program document, and the absence of complete district plan guidance raise significant CZMA approvability and NEPA issues. These issues are not easily addressed within the compressed time period established by state law. In fact, OCRM has not been able to issue preliminary approval or initiate the NEPA process because the proposed ACMP revisions and explanations are still in a state of flux. I am pleased, however, that there appears to be agreement between our offices that DNR will further amend the ACMP regulations to address some of the CZMA approval issues.

In addition, while DNR has provided opportunities for district and public input, OCRM believes that our combined efforts to meet the July 1, 2005, deadline, have limited the ability to have a broader dialogue between DNR, the districts and other affected parties on the content and scope of the new ACMP. As a result, district and public understanding of the proposed ACMP has suffered. Of particular concern is the difficulty districts have encountered in their efforts to revise district plans to meet the deadline. The state and OCRM need to agree on tasks and a process leading to ACMP approval and then set revised goals and deadlines. Assuming DNR submits the proposed regulatory changes and revised ACMP document, as described in this letter and enclosures, in February, OCRM anticipates a program amendment decision date around December 31, 2005.

In order to address these timing concerns, OCRM recommends that the state continue to rely on the old ACMP regulations previously approved by OCRM, and not just district plans and policies, during completion of the ACMP amendment approval process. This would require the state legislature to either remove or extend the July 1, 2005, deadline in HB 191, Sec. 49. OCRM also recommends that the statutory deadline for submitting district plans be extended until the final ACMP approval requirements

have been completed, pursuant to HB 191, Sec. 47(a), so that districts and other affected parties clearly understand the districts' role.

Another issue related to scheduling matters is the state's question of whether OCRM can grant "interim" or "conditional" approval of the ACMP while the ACMP amendment is being processed. As discussed with DNR staff, OCRM may not grant interim or conditional approval. The CZMA does not provide authority to grant an interim or conditional approval of a coastal management program or an amendment to a program. Instead, the CZMA provides specific authority for "preliminary approval" of program amendments. The effect of preliminary approval is to allow the continued use of CZMA funds to implement the proposed amendment during the CZMA approval process, but for no longer than six months. The CZMA authorizes a preliminary approval when OCRM determines the amendment "is likely to meet the approval standards in this section [306(d)] . . ." 16 USC § 1455(e). Finally, the CZMA provides certainty to federal agencies and other affected interests by not authorizing an amendment that has received preliminary approval to be used for federal consistency purposes.

Conclusion

Although the December 17 ACMP Document is improved in many ways over the earlier submission, revisions are still needed to provide a sufficient description of the ACMP so that affected parties can determine the nature and scope of the changes to the program. Until such revisions are made, OCRM is unable to either provide preliminary approval or begin its NEPA review process. To address deficiencies within the existing document, OCRM offers specific guidance as described in the enclosures. Additionally, OCRM urges the State to take necessary action in addressing the July 1, 2005, deadline, in order to both ensure continuity of Alaska's existing program and sufficient time to carefully and comprehensively review the state's program amendment submission.

We look forward to continue working with your staff on this amendment request. Please contact me or Bill Millhouser, at 301-713-3155, extension 189, if you have any questions.

Sincerely,



Eldon Hout
Director

Enclosures

cc: Bill Jeffress, Director, OPMP
Randy Bates, ACMP Program Manager
John Katz, Alaska Washington, D.C. office
State Representative Paul Seaton

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. BOX 110001
JUNEAU ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

February 23, 2005

Richard W. Spinrad, Ph.D.
Assistant Administrator
National Ocean Services
National Oceanic and Atmospheric
Administration (NOAA)
SSMC4, Room 13632
1305 East-West Hwy
Silver Spring, MD 20910

Subject: State of Alaska's Response to the Office of Ocean and Coastal
Resource Management's January 28, 2005, Letter and Enclosures
Relating to Alaska Coastal Management Program Amendment
Approval Issues

Dear Dr. Spinrad:

I have reviewed the letter and attachments from the Office of Ocean and Coastal Resource Management (OCRM), dated January 28, 2005. In that decisional document, OCRM denied preliminary approval of Alaska's amendment, and explained why it would not initiate the NEPA process required for later approval of a revised amendment. After careful study of the issues, I have concluded that the Alaska Coastal Management Program (ACMP) as envisioned and mandated by OCRM differs from the ACMP that I believe will best manage the competing uses and demands placed upon Alaska's coastal resources.

The original ACMP, approved by OCRM in 1979, provided the standards and protections necessary and appropriate at that time to manage effectively the uses, areas, and resources of the state's coastal zone. Over the next 25 years, the program evolved, into a complex, confusing set of requirements which unnecessarily delayed projects in Alaska without corresponding environmental benefits. Therefore, on May 21, 2003, I signed into law House Bill (HB) 191 (chapter 24 SLA 2003) which amended the ACMP in a manner that simplified and clarified the fragmented and defective 25 year old program, while still comprehensively and responsibly managing Alaska's coastal uses and resources.

Richard W. Spinrad, Ph.D.

February 23, 2005

Page 2

During the development of the statutory amendments included within HB 191, as well as the development of the regulations implementing HB 191, the state invited OCRM's participation and review of the amendments, requesting guidance and recommendations to ensure ultimate and timely program approval by OCRM. The state thought it had received that guidance, as well as a commitment from OCRM to work jointly to resolve program approval issues at the earliest juncture. The state then worked long and hard to develop a comprehensive program description of the amended ACMP that satisfied the federal approval criteria, while still fulfilling the mandates of HB 191. I am advised that discussions between the state and OCRM to reach this goal were proceeding constructively into January 2005, with OCRM identifying minor modifications to the ACMP regulations and program description as appropriate for program approval.

Considering this history, and OCRM's intimate involvement with the amended program from its legislative inception, I was dismayed to review OCRM's January 28, 2005, denial decision wherein OCRM not only retreated from program approval positions conveyed to state staff during prior discussions, but failed to adequately evaluate the state's prior submissions against the federal rules, and added entirely new criteria and rationale to justify its denial decision.

OCRM's denial decision adopts a highly prescriptive interpretation of the Coastal Zone Management Act (CZMA), extending, well beyond Congress' mandate when enacting the CZMA "to encourage and assist the states to exercise effectively their responsibilities in the coastal zone" 16 U.S.C. 1452.

It is instructive to review the Congressional Commerce Committee's 1971 findings (Calendar No. 510, Report No. 92-526, p. 15-16) that led to the creation of the CZMA, which legislation clearly intended that each state, and not the federal government, manage its coastal uses and resources as that state saw fit:

It is the Committee's intent to recognize the need for expanded state participation in the control of land and water use decisions involving important state or regional interests.... In adopting the states as the focal points for development of comprehensive plans and implementation of management programs for the coastal and estuarine zone, the

Richard W. Spinrad, Ph.D.

February 23, 2005

Page 3

Committee has concluded that the states have, in varying degrees, the resources, administrative machinery, enforcement powers, and constitutional authority on which to build a sound coastal management program.... The principles on which state authority with respect to water regimes are based date back at least to Magna Carta....

We do not believe that the positions OCRM asserts in its January 28, 2005, decision "assists" Alaska in developing our program. Rather, OCRM has now conditioned approval of our program upon OCRM's interpretation of what is best for our state. Under this administration Alaskans decide what is best for Alaska.

I will not detail all of OCRM's unacceptable new mandates to obtain approval of our program, but will list the most significant:

- Mandated direct-control ACMP regulatory standards. OCRM calls for amended ACMP state standards that independently and comprehensively manage the coastal resources. To the contrary, the federal regulations implementing the CZMA allow for comprehensive management of those resources through a network of existing state and federal regulatory authorities. We believe that existing state and federal authorities aggressively manage Alaska's natural resources, coastal and inland. Considering the adequacy of the existing networked structure, we are unwilling to assent to a federal agency dictating duplicative or additional standards along our coasts that confuse stakeholders, unnecessarily delay projects and erode Alaska's sovereignty.
- Mandated expanded role of coastal districts. Consistent with the spirit of HB 191, the state's amended ACMP regulations limited the subject and scope of coastal district enforceable policies. OCRM now asserts that this limitation on coastal district policies raises program approval concerns. The state disagrees with OCRM's position. The ACMP is a networked program, relying on implementation techniques "A" and "B" under 15 C.F.R. 923.42 and 15 C.F.R. 923.43, respectively. State agencies are to implement their existing authorities as well as the standards and policies of the ACMP. Additionally, municipal coastal districts share in the responsibility of implementing their coastal district plan policies through municipal code or ordinance. I would like to emphasize that few other states have coastal districts or their equivalent and there is no requirement that Alaska include

Richard W. Spinrad, Ph.D.

February 23, 2005

Page 4

coastal districts as part of our coastal management program. However, we included districts to supplement existing state and federal authorities where the matter is of local concern. The balance of authority between the state and the coastal districts is a matter within the discretion granted a state in the CZMA, and therefore any specific balance of authority directed by OCRM is inappropriately addressed as a program approval issue. Again, this is a simple matter of state's rights.

- Expanded and unpredictable federal "effects" test. OCRM's decision contained an expansive "Geographic Location Description" (GLD) requirement that would impose an "effects test" requirement well beyond what OCRM had previously required, and beyond what the state feels is necessary to adequately protect coastal uses and resources. Representatives from other federal agencies have also expressed concern with OCRM's federal effects test and the GLD as a "new national policy" with additional burdens never previously considered. This requirement is particularly disappointing considering recent positive communications between the state and OCRM wherein OCRM suggested reasonable amendments to the ACMP regulations. The amended language would have ensured that enforceable policies would be applicable to federal lands to address any activity (regardless of location) that may affect any coastal use or resource located within the state's coastal zone. The state agreed with OCRM's interpretation of the federal regulations on this issue and began preparing, verbatim, the regulatory fix that OCRM had recommended. Unfortunately, the expanded GLD concept contained in the January 28, 2005, documents effectively withdrew OCRM's agreement on how to capture the federal effects test in the regulations, and is unacceptable.

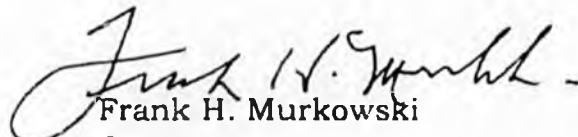
Back in 1971, Congress saw the wisdom of leaving the development of an appropriate coastal management program within the broad framework of the CZMA to each state's judgment of its special priorities and needs. I regret that OCRM has departed from its original legislative mandate and has not allowed Alaska to implement our amended program utilizing existing regulatory tools and in accordance with Alaska's priorities and needs.

Therefore, if OCRM does not immediately abandon the new requirements and broken promises contained in its January 28, 2005, decision, the ACMP will expire by operation of law in the summer of 2005.

Richard W. Spinrad, Ph.D.
February 23, 2005
Page 5

We have worked hard to forge relationships with federal agencies and participate in federal decision-making processes independent of ACMP requirements, so we are confident that Alaska's voice will be heard in federal activity and authorization processes even without the formality of the CZMA's federal consistency tools. Still, we acknowledge that a streamlined ACMP would serve a valuable purpose in effectively managing Alaska's coastal uses and resources. This is the reason that my staff has been working for two years to amend the program to provide a fair, predictable, and protective networked management scheme. Unfortunately, OCRM will not allow Alaska to implement that program at this time. The State of Alaska will continue to ensure that resources, coastal and inland, are adequately managed and protected with or without federal participation.

Sincerely yours,


Frank H. Murkowski
Governor



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
 Silver Spring, Maryland 20910

MAR 3 2005

The Honorable Frank H. Murkowski
 Governor of the State of Alaska
 Juneau, Alaska 99811-0001

Dear Governor Murkowski:

Thank you for your recent letter on Alaska's pending efforts to undertake a major restructuring of the Alaska Coastal Management Program (ACMP). The enclosed summary analysis provides responses to the specific issues raised in your correspondence.

We believe the continued viability of the federally approved ACMP is of great importance to Alaska and the Nation. The letter of January 28, 2005, to Alaska's Department of Natural Resources (DNR) Commissioner Irwin was intended neither as a denial nor a decision, but rather as a further, albeit important, informational step in the process.

Our input did not add criteria and was neither a departure from earlier positions nor an effort to impose new national policies. It was a summary of the few remaining issues to meeting the Coastal Zone Management Act (CZMA) requirements necessary for preliminary approval of a revised ACMP. It also included recommendations for resolving these issues as requested by DNR. Our input was intended as part of the continuing coordination and dialogue at the staff level – not as a federal mandate or prescription, and it was not an effort to shift the balance of authority.

As you may know, there are significant benefits from participating in the CZMA program. Since the 1970s, Alaska has been awarded approximately \$130 million in coastal management funds from the National Oceanic and Atmospheric Administration (NOAA). Additionally, NOAA has identified \$2.6 million for Alaska coastal programs in FY 2005. With CZMA federal consistency authority, Alaska has a powerful tool to review and influence federal actions affecting the coastal zone, including offshore aquaculture and energy development. In addition, the collaborative relationships Alaska enjoys with federal agencies are often forged because of federal consistency.

Further, in response to the U.S. Commission on Ocean Policy's final report, President Bush recently released the U.S. Ocean Action Plan, which states that we will continue to work with state, tribal, and local stakeholders to develop comprehensive strategies to protect the Nation's coastal resources and build upon the successes of existing programs, including the CZMA.

As I stated at the outset, the continued viability of the ACMP is of great importance and we urge you to work with us to take action to prevent its expiration this summer. I propose sending a delegation headed by NOAA's National Ocean Service Policy Director, Thomas Kitsos, Ph.D., to Juneau this month to review the few remaining issues and develop a mutually agreeable course of action that would allow for preliminary approval.

Sincerely,

Richard W. Spinrad, Ph.D.
 Assistant Administrator

Enclosure



Printed on Recycled Paper



**Response to Specific Issues Raised
In
State of Alaska's February 23, 2005 Letter**

1. Page 1, paragraph 1: "OCRM denied preliminary approval"

The Office of Ocean and Coastal Resource Management's (OCRM's) January 28 letter did not deny preliminary approval. Rather, it indicated OCRM's inability within the legal requirements of the Coastal Zone Management Act (CZMA) to grant preliminary approval until certain CZMA requirements are satisfied. For example, the State's December 17 submission for local district plans did not meet two of the five CZMA requirements that have been in place for thirty years.

2. Page 2, paragraph 2: "...denial decision retreated from program approval decisions conveyed to state staff...added entirely new criteria and rationale..."

Throughout the review and coordination process, OCRM has consistently used provisions of the CZMA as the basis for its opinions and feedback on State of Alaska input. The January 28 letter provided feedback on new information submitted in the State of Alaska's December 17 Submission. For example, NOAA's guidance to the State regarding the scope of the federal consistency effects test and application of the state's subsistence use policy is based on long-standing CZMA requirements.

3. Page 2, paragraph 3: "OCRM's denial decision adopts a highly prescriptive interpretation of the Coastal Zone Management Act (CZMA)"

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements.

4. Page 3, 1st bullet: "[OCRM] Mandated direct-control ACMP regulatory standards"

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements.

5. Page 3, 2nd bullet: "[OCRM] Mandated expanded role of coastal districts...balance of authority directed by OCRM is inappropriately addressed as a program approval issue"

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements. Further, none of the OCRM feedback should be interpreted as attempting to "shift the balance of authority."

6. Page 4, 1st bullet: " 'Geographic Location Description' (GLD) requirements...impose[s] an 'effects test' requirement well beyond what OCRM had previously required...effectively withdrew OCRM's agreement on how to capture the federal effects test in regulations"

There was no intent in OCRM's January 28 letter to expand the scope of the federal consistency effects test or to establish "new national policy." OCRM's description of federal consistency and the use of "geographic location descriptions" in Enclosure III of its January 28 letter applies long-standing statutory and regulatory requirements. The description is not a departure from previous discussions with Alaska DNR staff. The information provided was in response to an Alaska DNR staff request for a detailed description of how the geographic location provision could apply in all circumstances, using the subsistence use policy as an example; and, that is what was provided. In addition, as stated in OCRM's January 28 letter, it is up to the State of Alaska to decide whether to describe geographic locations outside its coastal zone. This provides Alaska with substantial control over what federal license or permit activities it will review for federal consistency and the extent to which it will exert states' rights over federal actions affecting Alaska's coastal uses or resources.

7. Page 4, final paragraph: "ACMP will expire by operation of law in the summer of 2005"

The "summer of 2005" expiration is the result of Alaska HB 191, and not any ZMA or federally imposed deadline.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING
ALASKA COASTAL MANAGEMENT PROGRAM**

■ **SOUTHCENTRAL REGIONAL OFFICE**
550 W 7TH AVENUE SUITE 1660
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470 FAX: (907) 269-3891

□ **CENTRAL OFFICE**
302 GOLD STREET, SUITE 202
JUNEAU, ALASKA 99801
PH: (907) 465-3562 FAX: (907) 465-3075

□ **PIPELINE COORDINATOR'S OFFICE**
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501
PH: (907) 2857-1351 FAX: (907) 272-3829

March 3, 2005

Representative Paul Seaton
Chair, House State Affairs Committee
Room 102
State Capitol
Juneau, AK 99801-1182

Re: Response to ACMP Oversight Hearing Question About Regulatory Sunset of ACMP

This letter responds to your query at the conclusion of the February 24, 2005, House State Affairs Committee hearing on the Alaska Coastal Management Program (ACMP). You requested an explanation of the procedure by which the ACMP would "expire" on July 1, 2005, without federal approval of the amended ACMP, and without Legislative action.

Please note that this analysis responds to your specific question on how the regulatory sunset of the ACMP could occur without Legislative action; it does not address the general question of whether it would occur. Allowing the ACMP to sunset by operation of law is but one of many approaches being considered by DNR as we continue our negotiations with the National Oceanic and Atmospheric Administration (NOAA) over the process and regulatory changes required to obtain approval of the amended ACMP.

The Department of Law has advised that the transition provisions of HB 191, passed by the 23rd Legislature, were designed to allow the ACMP to expire without further Legislative action if the final actions for program approvability were not completed by the mandated deadlines. Section 45 of HB 191 annuls the existing statewide standards at 6 AAC 80.040 - 6 AAC 80.900, and Section 49 makes annulment effective on July 1, 2005. The new ACMP statewide standards at 11 AAC 112.200 - 11 AAC 112.990 do not apply to consistency reviews until they receive NOAA approval under 16 U.S.C. 1455(e). If NOAA does not approve the new statewide standards at 11 AAC 112.200 - 11 AAC 112.990 by July 1, 2005, then Sections 45 and 49 of HB 191 would effectively terminate the ACMP statewide standards. Once the statewide standards are annulled, 11 AAC 110 and 11 AAC 114 would simultaneously cease to have operational effect.

Sincerely yours,



William R. Jeffress
Director

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

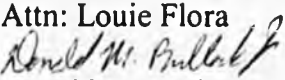
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2005

SUBJECT: Letter from the Department of Natural Resources on the regulatory sunset of the Alaska Coastal Management Program (HB 189)

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for a review of the letter dated March 3, 2005, from William R. Jeffress, Director, DNR Office of project Management and Permitting, Alaska Coastal Management Program, to you regarding the regulator sunset of the Alaska Coastal Management Program. In that letter, the director closes by stating, "Once the existing statewide standards are annulled, 11 AAC 110 and 11 AAC 114 would simultaneously cease to have operational effect." In particular, you asked whether I agree with the conclusion of the director.

In short, I do. Chapter 24, SLA 2003 provides that the existing regulations in 6 AAC 80.040 - 6 AAC 80.900 and 6 AAC 85.020 - 6 AAC 85.900 will be annulled no later than July 1, 2005.¹ The new regulations implementing ch. 24, SLA 2003 have been adopted by DNR, but are not yet effective and will not take effect until NOAA approves the state's revised coastal management program. Unless NOAA approves the states revised coastal management program on or before July 1, 2005, or ch. 24, SLA 2003 is amended, the existing regulations will be annulled and the new regulations would not be effective. In other words, there would be no effective regulations in place to implement the program.

If I may be of further assistance, please advise.

DNB:med
05-164.med

¹ Secs. 45 and 49, ch. 24, SLA 2003. If DNR's regulations implementing ch. 24, SLA 2003 were effective before that date, the regulations attorney was instructed to remove the regulations scheduled for annulment as being obsolete. Sec. 48(c), ch. 24, SLA 2003.



Lake and Peninsula Borough

P.O. Box 495
King Salmon, Alaska 99613

Telephone: (907) 246-3421
Fax: (907) 246-6602



MAYOR A.J. SWORTH'S TESTIMONY FOR HOUSE STATE OF AFFAIRS COMMITTEE OVERSIGHT HEARING ON COASTAL MANAGEMENT PLANS 02/24/2005

Questions for 2/24/05 (8:00 a.m. to 10:00 a.m.) House State Affairs Committee Oversight hearing on the Coastal Management Plan district plan revisions.

As there is only two hours for this oversight hearing, we felt that the best thing to ensure that testimony would be short and to the point would be to provide you with a list of questions pertinent to the oversight hearing. Please limit responses to ten minutes so that we can fit all testifiers within the two-hour time period.

1. Please provide an example for the committee of an enforceable policy that was utilized in your coastal district prior to the revision process, and how the revision will affect the activity that the policy was used to enforce.

Answer: The example I will use is L&P Borough Policy A-6 Disposal of Dredge Spoil. First I will read you the existing policy and then I will read you the revised version trying to utilize the new regulations and statutes as explained by DNR staff.

A-6 Disposal of Dredge Spoil

Existing Policy

Dredged materials disposed of in shoreline landfills shall not cause significant alternation of important habitats or significant adverse impacts to coastal processes such as circulation, sediment transport, and coastal erosion and deposition patterns. On shore disposal sites for dredged material shall be contained and stabilized to prevent erosion and leaching into adjacent waters. Off shore

Chignik Bay • Chignik Lagoon • Chignik Lake • Egegik • Igiugig • Iliamna • Ivanof Bay • Kokhanok • Levelock
Newhalen • Nondalton • Pedro Bay • Perryville • Pilot Point • Pope Vannoy • Port Alsworth • Port Heiden • Ugashik

Testimony of Coastal District representatives
House State Affairs, 2/24/05

disposal of dredged spoil shall avoid important marine habitat and be conducted in compliance with state and federal water quality regulations.

New Revised Policy

Dredged materials disposed of in coastal water shall not cause significant adverse impacts to coastal processes such as circulation, sediment transport, and coastal erosion and deposition patterns.

The new policy would not have any power nor the detail and exact identification as the old policy and has zero local control over off shore disposal of dredged material.

Another example is Policy A-7 which we have used on numerous consistency reviews requiring compliance for project approval.

A-7 Navigation Obstructions

Existing Policy

Uses and activities in coastal waters shall meet the following requirements:

a) Structures and buoys placed in navigable waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses of coastal habitats; and

b) To the extent feasible and prudent, all developments, structures, and facilities in marine and estuarine waters of the Borough shall be sited, constructed, operated, and maintained in a manner that does not create a hazard or obstruction to marine transportation or commercial fishing operations.

New Revised Policy A-7

Structures in navigable coastal waters shall be visibly marked and placed in a manner to minimize navigation hazards or obstructions to other uses including marine transportation or commercial fishing operations.

The Borough Planning Commission used this policy on several occasions in the last five years to enforce safety issues. Recently it was used on projects in Lake Clark and the Ugashik River. In

both cases because of this policy we were able to require the project to be modified and in one case required the applicant to remove the structure because it was a navigational hazard. If this policy is lost the borough will have to depend on other state and federal agencies to police local safety issues.

2. Why is the program important to your district and how has it been used to address specific issues. For programs managed by a municipality with planning powers, what does the ACMP give you above what you can do in your municipal code under Title 29 powers? For programs in the unorganized borough, Coastal Resource Service Areas (CRSA), how is this program useful considering the CRSA does not have planning and zoning powers?

Answer: The Alaska Coastal Management Program has been very helpful to the Lake and Peninsula Borough. Through this program we have been very successful in getting grants from such programs as the Coastal Impact Assistance Program (CIAP) which was instrumental in helping the Borough accomplish Community Profile Mapping of all 18 of our communities. We applied for grants directly from the ACMP that also contributed to this very successful mapping program. However the coastal management program is most important to the Borough because it allows local input on development matters. For example under the States new revised regulations Lake Iliamna would no longer be within the newly defined "coastal zone" because Lake Iliamna is not salt water affected. The Lake and Peninsula Borough has the five largest fresh water lakes in Alaska within its boundaries. Lake Iliamna, Becherof Lake, Naknek Lake, Lake Clark and the Ugashik Lakes. All of our communities are located on either a saltwater coastline or a freshwater river or lake. The coastline whether it is salt or freshwater is very vital to our citizens subsistence life style. We depend on the ocean and the freshwater lakes within our Borough for a large portion of our food. Lake Iliamna is the largest fresh water lake in Alaska and is one of the largest natural red salmon hatcheries in the world. It is also home to fresh water harbor seals, one of only two lakes in the world with this distinction. Lake Iliamna must remain protected under our coastal management program. A lot of work by a lot of local residents went into the current plan. The Lake and Peninsula Borough spent five years writing our last coastal management plan and held public meetings in all 18 of our communities to get buy in by the local citizens. The public

process within our Borough is very important because the men, women and children of our Borough are the Borough. We think the removal of Lake Iliamna from the coastal management program can be compared to requiring the Great Lakes to be removed from the coastal management program in the lower 48 states. But because Iliamna, Becherof, Naknek, Lake Clark and the Ugashik Lakes are not within the newly defined coastal zone we will have no local say on development on their shorelines.

Infancy of Borough: *The L&PB is a relatively new Borough and as such our title 29 powers are still in the development stage. We have ordinances for development permits, subdivision and flood insurance that have enforced Title 29 to some degree. We know the new Community Profile mapping and future GIS system we are building will serve us well into the future. However, the current Borough coastal management plan provides a vital tool for managing the coastal zone, critically important to a young borough such as ours. Many of our coastal management policies are interwoven throughout our Borough ordinances and will prove to be a challenge to sort out and effectively change.*

Federal Consistency: *It is however more important to note that the ACMP provides the only tool that requires federal agencies to be consistent to the maximum extent practicable with the ACMP and L&PB CMP. This was one of the main reasons Alaska chose to participate in the program back in the 70's. In the L&PB, as with many parts of Alaska, vast areas are under federal management. The ACMP is the only way to ensure that activities conducted on federal lands and waters address local issues and concerns. This is a critical tool that must be safeguarded. L&PB is very concerned with the manner in which the State is proposing to implement the ACMP. It pretty much cleans out our tool box. For example within Katmai National Park, a recent project by the Park Service to dredge an area used for barge landing came through the Borough for review. Under the new program we would not even be at the table.*

3. What are the main problems that you are experiencing with the enforceable policy revision process mandated by HB 191 and associated regulations?

Answer:

A major problem we are experiencing with the revision process is exactly what HB 191 set out to resolve. An objective of House Bill 191 was to provide clear and concise guidance. To date we have not received either clear or concise guidance from DNR and the Office of Project Management and Permitting. The Bill also directed to provide uniformity in coastal management throughout the state. However, the new regulations and the new statues have created uniform confusion through out all the coastal districts. The bill further directed that the ACMP should relate to matters of local concern. We live in these affected coastal districts and we have expressed dire concern over how this program is being changed at the local level and how we will no longer have the voice our current plan provides us over projects within our borough boundaries.

Guidance for revising the district coastal management plans has been confusing, imprecise, and subject to regular changes by DNR staff. New ACMP regulations were adopted in July 2004, revised in August 2004 and will likely be revised again this spring.

During the House Resources Committee testimony on 4/28/03, DNR provided nine "model enforceable policies that addressed specific locations within particular districts and generally defined portions. DNR stated that these policies allow "for quite a lot of breadth in local enforceable policies . . . They allow a great deal of flexibility within local enforceable policies. They just simply require that they be more concise." Since that time DNR has removed the sample enforceable policies provided to the legislature in 2003 from its website, but has yet to explain why the policies are no longer applicable.

Again during testimony on HB 191 on 4/23/03 House Resources Committee, Marty Rutherford stated "HB191 does not eliminate the district's place at the table. They will be at the table. They will have due deference on their enforceable policies, and that is something that the districts need to hear again, because it's important to them and we recognize it".

Another example: Senate Resources Committee, April 28, 2003:

[MARTY RUTHERFORD] ... the Murkowski administration feels, after looking at these district enforceable policies [nine examples provided by DNR], that the districts put a great deal of effort into establishing them. The Administration's strategy is to have the resource agencies review all of the local enforceable policies as they are being rewritten to be more concise and non-duplicative, as well as to see if they should be developed into statewide standards. She said the policies demonstrate that districts have a great deal of room to develop policies that address issues of local concern.

However, guidance from the DNR staff has truly indicated the opposite because the state OPMP continues to address any policy with the term "the field is covered" meaning we cannot write a policy on that subject or issue and in turn because the field is covered we have no due deference on that subject. Simply put we've lost our voice!

***Regulations Conflict with Intent of HB 191:** The new regulations contradict testimony by the Administration on HB 191. In contrast to what was promised to the Legislature, interpretation of the new regulations by DNR impose extreme limitations on enforceable policies, remove the ability for districts to address air and water quality matters not addressed by DEC, diminish the effectiveness of statewide standards, remove the ability for district policies to apply to federal land and waters, and add to regulatory confusion. It appears that DNR will be revising the ACMP regulations, but the agency has not explained to the districts exactly what it intends to address in the new revisions.*

***Wasted Time & Money:** The state Coastal Management Program must be approved by the federal Office of Ocean and Coastal Resource Management (OCRM). Based on the recent letter from OCRM dated January 28, 2005 it is very likely that state program changes will need to be made for federal approval. These changes will directly impact requirements for local district plans. The federal process will not be completed before district plan revisions must be submitted to DNR. In that same letter OCRM stated the environmental Impact Statement is not expected to be completed until December 2005. In our opinion this is a waste of time, money and effort for districts to revise their plans before the state's program is federally approved and any necessary changes have been*

made. Simply put, we think the State has put the cart in front of the horse by requiring the Districts to complete their plans before the State has an approved amendment from the Federal Government. [This is not good long range planning.] The state has not even developed final guidance on the existing regulations, and may still develop new regulations. The EIS cannot even be started until OCRM approves the State's program.

Changes Will Stop or Delay Development: According to DNR, certain district policies may only "disallow" uses. This will force districts to prohibit certain kinds of development rather than establish criteria to allow it.

Insufficient Time: The timeline for coastal districts revising their plans began July 2004 when DNR first adopted regulations implementing the coastal program changes; district plans must be submitted for review by July 1, 2005. Due to the confusing regulations and varying interpretations by DNR, most districts are still unclear how to proceed with plan revisions. Once the direction is made clear, there appears to be insufficient time for districts to meet the regulatory process requirements for district plan revisions, i.e. July 1, 2005. Extending the time period for plan approval would spread DNR's present work load out over a more manageable time period, which will assist DNR in their plan review. The current DNR staff cannot possibly adequately review and approve 26 district plans in 12 months. Look how long it has taken them to write the regulations, regulations that to date, raise significant questions within most districts and within OCRM.

4. How has removal of air and water quality issues affected the ability of your district to manage coastal resources and uses?

DNR has said that districts cannot develop any air or water quality policies even for matters not addressed by DEC. Under this interpretation, there will be gaps that the districts cannot address. Specifically the removal of mining from the enforceable policies directly affects our ability to be at the table in regards to air and water quality issues related to mining as related to our current coastal management plan. By removing Air, Land and Water Quality the process to approve, consistency reviews will follow a double track. The most direct impact on our districts ability to manage coastal resources is we

will not even be able to comment or even review many projects thus eliminating our seat at the table. The opportunity to be at the table was repeatedly promised in public testimony during the passing of HB 191. For Example: Marty Rutherford to the 4/28/03 House Resources Committee. Because the DEC "air and water quality standards do not address some things, in those areas, the local communities would be able to develop their own local policy . . ."

Another example: Pat Galvin told the House Finance Committee that "[t]he language was changed to make specific references to statutory provisions so not to presume that air, land and water quality are the exclusive product of that Department." He said that Section 11 is specifically designed to reference only statutes that DEC is actually regulating. (5/3/03)

However based on the new regulations and interpretation of the new regulations by DNR staff we cannot write any such policy on any Air, Land and Water Quality issues thus removing our seat at the table on that issue.

5. What kinds of policies are you able to develop under the current regulations?

Answer:

The ability to write effective enforceable policies is very difficult if not impossible if we follow the guidance we have been given from the DNR staff. Through January 2005, DNR has unofficially provided ever-changing interpretations of the regulations; interpretations we think conflict with the legislative intent of HB 191. If followed, DNR's directives would reduce local communities' role in coastal development. For example when the first draft of the regulations was presented to the districts in February of 2004 the draft regulations stated that a district may develop an enforceable policy that addresses a matter of local concern, including:

- (1) setbacks and siting criteria;*
- (2) wetlands management; and*
- (3) nonpoint source pollution controls.*

This has since been removed from the final version of the regulations.

Another example, during the October 2004 workshop in Anchorage the guidance for writing a policy was that it could be written only if there was not a State or Federal law that covered the subject. Now the most recent guidance from DNR is that a policy must now flow from State law. Moving targets are hard to hit. Additional time for this process would allow the legislature to review the progress of this issue and hopefully make some adjustments. We strongly encourage the legislature to reevaluate HB 191. Many promises were made during the passage of that bill. Promises were made for instance, that subsistence would not be affected when in fact, we are now told by DNR, and that no policies may be written on subsistence because of the language in the regulations. We have deep concerns that the new regulations affectively eliminated input into development of mines, oil and gas resources and the opportunity for locals to weigh in on Air, Land and Water quality issues on projects in their own backyards.

6. What do you foresee as the impact to your coastal district if the ACMP disappears?

Answer:

The elimination of the local voice. Uncontrolled and unmonitored development of the salt and freshwater coastlines within our Borough. Loss of funding for coastal planning. No local government likes to see the loss of funding. Our Borough has been very productive with the funds we have received from coastal management and combined them with other grants to accomplish a very large and productive mapping and GIS project that will benefit local government, the Borough, State and the Federal Government for many years to come. Now due to the proposed changes we fear the increased possibility of impure water in our fresh water, lakes, rivers and streams. Freshwater and salt water are directly related to each other. Both tie directly back into the ecosystem of our region, our State and the world. We think the dilution or elimination of the coastal management program is a very poor decision by the State. We strongly urge this committee to consider rethinking what HB 191 has done to the program and how opposed the coastal districts of Alaska are to there resulting program revisions and most especially to the perceived "Heavy Handed" manner of DNR.

I kindly thank this committee for the opportunity to testify on behalf of the Lake and Peninsula Borough.

Thank You!

Glen Alsworth

Mayor

ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

1. Please provide an example for the committee of an enforceable policy that was utilized in your coastal district prior to the revision process, and how the revision will affect the activity that the policy was used to enforce.

The AWCRSA has had policies related to setbacks in important habitat areas such as near anadromous fish waters. Following the state ACMP workshop we were informed in an October 15 email from OPMP that the use of setbacks would not be conceivable since it would most likely not meet the matter of local concern test since the "avoid, minimize, mitigate" standards so completely occupy the field that it would very difficult, to impossible, to show that the law is inadequate. But rather than refer to one particular policy I would like to relate to the effect of the revision on our ability to have an enforceable program on the whole. The AWCRSA does not enforce their program but rather relies on state agencies to carry the enforceable components of our program through to the permit. In the past this was accomplished through stipulations. More recently the previous regulations were changed to have the project description include the requirements necessary to make the project consistent. Just prior to the complete revision of the ACMP the AWCRSA had finished a substantial revision to our coastal management program as part of our ten year review cycle. Many of the policies had been reworded, changed to administrative policies, or deleted as part of this revision resulting in a Revised Public Hearing Draft. Of the 41 policies remaining from the previous revision, 22 additional policies had to be deleted due to the current program changes leaving a mere 19 under our current amendment. The 19 that remain required documentation and rewording prior to submission to the October ACMP work shop to be used as examples for others to follow and for our state agency meeting. We received the previously mentioned OPMP email after the state workshop and the completion, or so we thought, of our policy section. It is debatable how effective the remaining policies will be or what will be left for enforceable components following state review.

2. Why is the program important to your district and how has it been used to address specific issues. For programs in the unorganized borough, Coastal Resource Service Areas (CRSA), how is this program useful considering the CRSA does not have planning and zoning powers?

Coastal districts frequently use the term "a seat at the table" to describe the importance of the program. The AWCRSA is no exception in this regard. The coastal program draws in the local voice and gives the citizens of the district an opportunity to have a say in how projects are conducted and it gives the applicant, and the state reviewers, an understanding of the important needs of the area. One specific example is the Atka hydropower project. The AWCRSA worked with the state reviewers, the community, and the applicant to develop a mitigation measure that would be of real benefit to the community and be reasonable for the applicant. Last fiscal year the AWCRSA completed 5 state consistency reviews, 6 less than the 11 we participated in for the previous fiscal year, and an amount equal to the first two quarters of this fiscal year. But aside

from the consistency reviews that we participate in the AWCRSA is an active political subdivision of the state. Last year we documented 118 coordination and assistance events including monthly Regular Board meetings, providing copies of documents and information to state agencies and potential applicants, participating in ACMP teleconferences, and updating and maintaining a state of the art web page. A major project for this year will be participating with the Aleutian Pribilofs Island Association and the Department of Commerce to complete a mapping project for the communities of Atka and Nikolski. The maps will be used by state agencies and applicants to reduce costs when designing and planning projects in these remote communities.

3. What are the main problems that you are experiencing with the enforceable policy revision process mandated by HB 191 and associated regulations?

Inconsistency. Prior to the October workshop we had a different understanding of where we were headed than we did at the conclusion of the workshop and in the months that have followed. The state has created an impossible threshold for a local coastal district to raise a matter of local concern and write local policies. In their December response to questions posed at the October coastal district workshop the Department of Natural Resources (DNR) stated: *The threshold for determining whether a matter is regulated or authorized by state or federal law [and therefore triggering the "local concern" test] is whether an agency has the authority to regulate a matter, regardless of whether the agency has developed regulations on that matter.* In subsequent discussions it became apparent that there is basically no area that the state could not potentially regulate, hence, no area for local coastal district policies. This was a contradiction to our previous guidance and much different than we were lead to believe during HB191 testimony.

The criteria for determining when a coastal use or resource is not adequately addressed by state or federal law is another area of major inconsistency. Seven months ago it was understood that districts could develop policies where it could be demonstrated that state authority either did not address an area (a "gap") or if it could be shown that the laws were not adequate to met local needs. DNR's recent response to this question is: *The criterion for determining adequacy is whether the matter is already addressed by state or federal law ... even if there is no regulation on a given matter, that the resource agency has the authority to regulate that matter makes the matter one that is "regulated or authorized by state or federal law." The same analysis is true with respect to whether the matter is "adequately addressed." As discussed in a later response, a district may not write a policy more stringent than the state or federal standard, arguing that the matter has been "inadequately addressed".* So the previous argument has been expanded to eliminate local discretion.

Designation is the second major area of concern. Some specific standards, such as recreation and subsistence, only have substance through the local coastal district programs as there are no implementing authorities within the state. It is necessary for local coastal district programs to designate these areas to be able to subsequently develop policies that would apply within the designated boundaries. It is our understanding that state or local programs may not "designate" on federal lands and we cannot have polices in the absence of designations. Prior to the revision of the coastal program local policies had "blanket" applicability throughout the district and would be considered during federal activities. Now, without designations, neither the state nor local programs will be able to affect federal consistency for these state standards.

Aside from the inconsistency and the need to designate our district has grave concerns about our loss of due deference in the decision making process. For example, in the case of subsistence policies the districts have been told that the mere existence of designated areas will guarantee involvement with the decision making process and assure the district of a seat at the table. However, once the district is involved how will determinations be made? If there are no written policies then the districts will need to craft development rules ad hoc and then proceed to try to convince the state through presenting compelling evidence that something should be done a particular way. This can only result in uncertainty for developers.

4. How has removal of air and water quality issues affected the ability of your district to manage coastal resources and uses?

The separation of the air and water quality reviews from a coordinated consistency review has resulted in a confusing disconnected process. For example, in May of 2004 the AWCRSA reviewed a Magone Marine project in Unalaska to expand their dock facilities. We provided comments to OPMP and OPMP provided the proposed consistency determination on July 7th. On July 8th we received a letter from DEC describing a Magone project at the same location involving an oil water separator permit and requesting our assistance in determining the scope of consistency review for the project and containing the standard DEC boilerplate that "the specific activities subject to DEC authorization are excluded...". I contacted Mr. Bates and explained to him that this was a good example of why the DEC carve out was not good for the applicant, the district, or the state. The DEC permit, although essentially part of the same project, was removed and triggering a different review. In the DEC review the AWCRSA would only be able to comment as a member of the public on DEC regulated matters and not be afforded due deference. He called his Anchorage office and was told there had not been a recent Magone review. When he relayed this information to me I provided him with my copy and he apologized. The great majority of the projects that occur within our district relate to air and water quality issues. We are home to the number one seafood processing port in

the nation and we have large quantities of fuel and cargo transported between and around our islands.

5. What kinds of policies are you able to develop under the current regulations?

With all due respect, this question should be more appropriately addressed to the administration. We completed our plan evaluation in June and felt we had a direction in which to proceed. We had a public work session in September to complete our policy work specifically to be able to request our agency meeting at the October ACMP workshop. Following the workshop and the agency meeting we were faced with confusion regarding the issues I have previously addressed, namely, gaps that could be addressed by our policies or whether the state "completely occupied the field" leaving no room for crafting policies, whether policies could be applied to designated subsistence areas or if the only choice was to avoid or minimize impacts in the areas we designated requiring us to come to the review to negotiate minimizing. We have struggled mightily with policy development. As stated earlier, of our original 41 policies that remained since the former state review of our revised public hearing draft, 19 remain. The 19 that remain do so in a large part to our reluctance to continue to whittle away without receiving a formal written response from the state. We harbor serious doubt that the remaining policies will survive the upcoming state review.

6. What do you foresee as the impact to your coastal district if the ACMP disappears?

The citizens of the AWCRSA will receive little notice for projects occurring in their area, will be unable to provide a coordinated response, and any response provided will not be afforded due deference. They will lose their status as local experts and the state will lose its ability to call upon local expertise to understand local desires. Additionally, beneficial projects such as the community mapping project may not be acted upon.

The revision of the ACMP requires a thorough and accurate evaluation to completely understand the significance of the changes and implement the new requirements. This process needs to occur in partnership with all the stakeholders involved to retain the important elements of the coastal program. In the seven months that we have been revising our local plan we have received mixed signals to the point that we are uncertain how to proceed. We have acted in good faith and are sending out our amended plan today for the required review. However, we are reluctant to continue to invest our time and resources in an effort that may not result in a viable program. We know that the changes as most recently described would greatly affect our ability to include meaningful local policies and comment on state and federal permit reviews. The AWCRSA wants their seat at the table and to continue to be of benefit to the citizens of the region. It makes sense to take the time necessary to get it right.

Municipality of Anchorage Testimony to House State Affairs Committee
February 24, 2005

My name is Thede Tobish, I am the Senior Environmental Planner and Coastal District coordinator and I am providing testimony for the Municipality of Anchorage. I have been in this position since 1990, and I have worked both as an applicant and as a CZM planner since the mid - 1980's.

Chair Seaton, members of the House State Affairs Committee, thank you very much for providing the Municipality of Anchorage with this opportunity to provide testimony for ACMP oversight.

The Anchorage Coastal District would like to convey two main points for your consideration.

First, relative to the Plan Revision process, I want to make it clear that the Municipality of Anchorage is on record with a request to extend or revamp the Plan Revision schedule for an appropriate amount of time, which should be triggered by the federal adoption of the State's proposed new cam regulations.

Second, and related to your committee's list of questions, is that most of Anchorage's examples and issues with the State's new regulations are best framed by wetland permitting actions.

Anchorage's most prominent examples of oft used enforceable policies and how the State's regulation changes affect these policies is the Anchorage Wetlands Management Plan.

Under the guidance and auspices of Alaska's CZM program, Anchorage was able to create and implement the Nation's first local wetlands management plan in 1982. This plan became State law as a component of Anchorage's CZM Plan, and it allowed Anchorage to obtain the nation's first locally managed General Permits from the Corps of Engineers. Because of the CZM program, Anchorage, instead of the Corps, issued wetland permits. These GPs allowed projects to move forward, with protective measures, in a matter of days or weeks, versus months or more under a federal permit timetable.

This wetlands plan includes an enforceable policy for essentially every freshwater wetland in the Municipality, some 219 sites and over 11,000 acres. The Alaska CZM program provided a formal vehicle thru which Anchorage implemented its policies, mainly on federal wetland and related permit actions.

Federal permit decisions now require a State consistency finding, which always incorporates Anchorage's enforceable policies. Each of these policies includes a very detailed and unique management strategy, linked directly to Anchorage area issues. Thru this plan and its enforceable policies, Anchorage essentially has the means and opportunity to regularly influence federal permit actions. Such details are unheard of in most other Corps districts, where federal agencies otherwise dictate federal permits.

I cannot stress enough how much this wetlands plan, and its implementation process thru the State's program, has provided Anchorage with the ability to expand our community infrastructure and conserve coastal resources. CZM allowed the Municipality to create these very locally determined policies and essentially required the Corps to comply with our strategies, which in many instances were less stringent than what federal conditions might have required, and accommodated our growth.

With the new State regs, it is at best unclear, and otherwise to me fairly obvious that Anchorage's wetlands plan is no longer viable as a component of our Coastal Plan. Virtually none of our wetland plan enforceable policies can be carried in our new Plan revision.

The Municipality is exploring other ways to implement these policies and retain some element of local control on federal permit actions. But the State's proposed regulations, and their current interpretation and guidance, have had the opposite effect of what was intended in HB 191 of providing local determination, at least relative to wetland activities in Anchorage. This has been marginalized.

This is probably a lot of detail for one item but it should provide you with an example of how the State's CZM program has been vital to the Anchorage district. Anchorage clearly would look a lot different than it does now, had we not had the State program and the ability to affect and influence federal wetland permit decisions. At this time, without the CZM vehicle, it is not

clear how these enforceable policies will be applied to federal actions, or if the Anchorage District retains an active seat at the wetland permit table.

Title 29 authorities do provide Anchorage with considerable ability to manage and address issues in the coastal boundary, but the formal vehicle that the State's program provides, allows for significant flexibility, especially since most development issues in Anchorage's coastal zone require state and/or federal environmental permits.

The State's CZM program also provided Anchorage the ability to create and actually apply local and customized definitions for water dependency and water related actions. In many cases these definitions actually overrode federal findings and definitions. The state's original consistency process, coupled with the Municipality's enforceable policies and definitions, allowed us to work with applicants on nearly every project, to modify proposals, or effectuate a faster, more acceptable finding that balanced the coastal resource and the applicant's needs. It is not clear if the new state regs will allow this give and take process. There is instead potential to negatively impact applicants with more prescriptive requirements and policies.

The main problem for Anchorage with the enforceable policy revision process is the fact that the guidelines and their various interpretations are a constantly moving target, and have been so since last summer. We still have confusion and uncertainties with how to write policies and where they are applicable. Because of this we remain reluctant to produce a public

hearing draft, and possibly waste the time and the very limited budget required for our public review and approval process, until final regs are approved and clarified as a result of the federal review process.

The Municipality is still trying to determine how removal of the air and especially the water quality issues will affect the district. Anchorage is the only large city in the state with a federal NPDES permit requirement. One of the key methods we had planned to implement the terms and conditions of this permit was via our CZM program. That avenue is now removed from our toolbox, so we are still formulating a plan of attack.

We have not yet developed new enforceable policies for our revision, but these will be few and mostly related to recreation and possibly geophysical issues. We are of course very concerned also that according to ADNR, new policies may be limited to prohibitions of certain land uses and activities, which could be contrary to our local land use plans, and may preclude some development. While this may require that we rely more on Title 29 powers, the current CZM regs offered desired flexibility, especially during boom years.

My wetlands plan discussion and the impacts of and uncertainties with the new state regs, should illustrate what types of impacts could accrue to our district if the ACMP goes away. Anchorage also has benefited from the financial assistance that this program has provided since 1979, which has variously contributed to staffing, equipment purchase, and loads of mapping and software products. But most importantly, losing the ACMP completely

Municipality of Anchorage Testimony to House State Affairs Committee
February 24, 2005

would leave the Anchorage district without a formal seat at the table of any federal or possibly any state permit action.

Thank you again for the chance to address these issues. Most important to Anchorage at this time, is the need to change the revision process schedule to allow for the federal review and necessary adjustments and clarifications to the state's proposed regulations. No district has the time or the budget to chase these regulations over the next year, and still meet the intent and timeframes of HB 191.

Thede Tobish _____

Senior Environmental Planner/Coastal District Coordinator

February 24, 2005



Cenaliulriit Coastal Resource Service Area

PO Box 69, Mekoryuk, AK 99630 / Phone: 907-827-8748 / Fax: 827-8749 / E-Mail: cenaliulriit2@starband.net
Toll Free: 1-877-827-8747

TESTIMONY
FEBRUARY 24, 2005
8:00AM

Alaska Coastal Management Program Oversight Hearing

Thank you Chairman Paul Seaton and the Honorable Committee Members:

I'm John Oscar, Program Director for the Cenaliulriit Coastal Resource Service Area. On behalf of my board members we serve 38 villages in the Yukon-Kuskokwim delta.¹ We have approximately 21,000 residents in this area. Cenaliulriit district has one of largest number of dependents to renewable resources than any other part of the whole United States. Subsistence is an essential component of the Yup'ik people. Subsistence is history, culture, tradition, and it is deeply rooted to daily family living, it prevents dire poverty from hunger in the remotest places of Alaska, it sustains life.

The people of the Yukon-Kuskokwim Coastal Resource Management Area (CRSA) fervently believe in the wise use and management of their resources for future sustainability. But it is uncertain with the current requirements. One example I wish to share is a project that was only 200 feet above the village of Pilot Station. This airport project was only a few feet outside our coastal zone, and our policies could not apply in this case, even if the activity affected berry-picking sites around and near the project. The only time we were made aware of this was when the portion of this project was in question of being inside Cenaliulriit zone. The mining policies were taken out in the current regulations. We have mining projects as we speak in the Marshall District, Goodnews Bay District, Nyac District, and now including Red Devil and Donlin Creek Districts. What does this mean to the potential impact of mining, or large sand and gravel extractions near subsistence resource sites, wetlands and waterways, a few feet to a few miles above a village? Where is the due deference? How much influence do the current regulations provide those most affected in the decision making process? The rewritten regulations leave an unpredictable future for the people in the process, or at least a death in the public process. The ability of folks to comment or apply policies on mining under House B191 has been taken away, and is no longer our concern.

Cenaliulriit has only 1-first class city, which is St. Mary's, 25-second class cities, and 12 tribally run communities. These communities utilize the policies that address resource protection with subsistence as a primary part of their decision making process under Cenaliulriit. They do not have

¹ The district includes **one** first class city (Saint Mary's), **25** second class cities (Akiak, Alakanuk, Aniak, Chefornek, Chevak, Eek, Emmonak, Goodnews Bay, Hooper Bay, Kotlik, Kwethluk, Marshall, Mekoryuk, Mountain Village, Napakiak, Napaskiak, Newtok, Nightmute, Nunam Iqua, Nunapitchuk, Pilot Station, Platinum, Quinhagak, Russian Mission, Scammon Bay, and Toksook Bay) and **12** unincorporated cities (Akiachak, Atmaultluk, Kasigluk, Kipnuk, Kongiganak, Kwigillingok, Oscarville, Pitka's Point, Tuluksak, Tuntutuliak, and Tununak).

ordinances to land, air and water quality standards, or policies relating to resource protection. So this program is the only avenue they have to address those issues.

The main problem we are faced with is the weakened or in some cases eliminated, our ability to successfully share comments that require careful planning. We cannot address issues relating to land, air and water quality standards, and we cannot share our concerns to habitat standards. It is like saying "You may comment toward this project, but you cannot say anything about the impacts it will have to your resources and its relationship to land, air, water quality and the habitat areas."

The other problem we are faced with is the uncertainty of the new regulations that have been evolving since the inception of House Bill 191, with very little influence or input from the districts toward that plan. I have to explain these regulations to my 38 villages in Yup'ik Eskimo, or in other words a third language that meshes English and Yup'ik in plain language. To do this would require time and funds to meet with the leadership, which is must happen now and late April, before everyone gets busy with renewable resource activity. I have no solid base to which to share them, as those regulations are not written in stone.

In most cases, scientific evidence in the western world has more bearing than traditional knowledge. We must provide the evidence of usage and documentation to prove those resources would be affected by development. We are also concerned about decisions that will be based on bias behind desks that are hundreds of miles away. Where is it that we can apply land, air and water quality standards? Where is it that we can apply habitat standards? Are we not speaking of the same animal?

We are working with villages to improve solid waste sites and meeting and conferring with updating these sites. In cooperation with other entities, we are also in process of implementing to help villages to develop policies relating to infrastructure development and future planning for future sites. With the current regulations, we are not able to provide policies that would otherwise protect them when a project is outside their immediate vicinity or town site. There is no protection.

With inadequate resources, I would have to meet with leadership during times when they are not hunting or fishing, and the spring-summer would be impossible. I calculated I would have to travel over 5,000 air miles in my district to explain the project and acquire support to the new regulations that may not set well with them.

We have a deadline of July 1, 2005 to complete this project, but in my district we are guaranteed to fail because of the vastness of the region and its people. Without the coastal management program, what guarantee do these people have, when decisions are being made for them in Anchorage or Juneau? We are concerned about the forests in South America, and other parts of the world, but not our backyard. We are concerned, if the Alaska Coastal Management Program was removed from the state, and then what protection do we have from decisions that would be made in D.C.?

In closing, my Uncle, Oscar Usugan, who has long passed away, said, "My learning and knowledge was handed down by your ancient's ancients, where the whole group was as important as one person's fate, your children's children preservation for the long term. Yet, today, we're threatened by the pervasiveness of the human nature. We live in a hurried world of technology, the clock, and the Western thought for self-gain, and forget who holds our lives. We are faced with written laws and regulations that change instantly the next day. From a far off land, from a few who offer promises and good words, but in the end you are forgotten, when the true face of hidden misdeeds and false words is revealed in their crafty laws."

**Testimony of Peter Freer, City and Borough of
Juneau
House State Affairs 2/24/05**

The Juneau Coastal Management Program was prepared over a several-year period before being adopted in 1987. Citizens and decision-makers acted seriously and responsibly in fashioning a program that both promoted coastal development and conserved coastal resources. The heart of that program are the enforceable policies that are incorporated into the state program and followed by state and federal permitting agencies. The central features of the program—local control and permit coordination—have been lost in the revision.

1. If possible, could you provide an example for the committee of an enforceable policy that is being utilized by your coastal district, and how the revision will affect the activity that the policy is used to regulate?

The JCMP has over 80 enforceable policies in areas including coastal development, habitat, transportation and utilities, recreation, energy facilities, mining, fish and seafood processing and timber harvesting. We rely considerably on Coastal Development and Habitat policies. Almost all, if not all of these policies, will be eliminated under the revised program. Because these policies are the heart of the plan, the due deference otherwise granted to local districts in state and federal permitting will be eliminated.

2. Why is the coastal program important to your district?

It is important to understand that, upon adoption, local coastal programs become elements of the state program. Because they are locally-developed, they promote local knowledge and values in the statewide plan, and provide for local control consistent with the constitutional mandate for maximum local self-governance. The program, as we have known it, gives local governments, and citizens, a 'seat at the table' as decisions are made that affect them. The program provided for institutional coordination and organized and coordinated permitting, in effect making partners out of the different levels of government and giving applicants one-stop shopping.

3. What are the main problems that you are experiencing with the enforceable policy revision process mandated by HB 191 and regulation?

The guidance provided by DNR on the revised regulations essentially eliminates the ability of districts to have enforceable policies of any kind. The district role in the program has been reduced almost to nothing.

4. Are you able to develop policies under the current revision requirements?

We believe that our ability to develop policies has been severely restricted if not eliminated under DNR's guidance. In fact, DNR staff has suggested that districts could prepare plans that do not have policies at all, but an expanded resource inventory and analysis section instead. Without a policy basis, however, the plans would lack specific guidance and be essentially impossible to implement.

5. What do you foresee as the impact to your coastal district if the coastal program was repealed?

As a home rule government, Juneau has broad powers, and sophisticated planning authority. We can use this authority in lieu of the ACMP, but would exercise it without the benefits of the ACMP, including one-stop shopping for the applicant; institutionalized agency coordination; ongoing, programmatic communication; pooling of agency knowledge and expertise; joint problem-solving; and due deference to local policies in the issuance of state and federal permits.

In closing, I would like to remind the committee that Juneau is one of the premier cruise ship destinations in the world; it is one of the hard-rock mining centers of the state and home to the largest silver mine in North America; it has extensive port and industrial development on its waterfront; it is home port to a large commercial fishing fleet and has an expanding seafood processing sector. All of this development was reviewed and approved under the Juneau Coastal Management Program as it existed prior to the adoption of HB 191. The program accommodated development and promoted a local voice and a local role in development permitting. Thank you for this opportunity to testify.

ALASKA STATE HOUSE OF REPRESENTATIVES



Interim Address:
345 W. Sterling Hwy
Suite 102B
Homer AK 99603
(907)-235-2921
Fax# (907)-235-4008

Session:
(907)-465-2689
FAX# (907) 465-3472
State Capital
Room 102

HOUSE STATE AFFAIRS COMMITTEE Representative Paul Seaton, Chairman

Memorandum

*Glen Gray
Plans Consultant
Call if questions
789-7822*

**To: Representative Bill Thomas, Co-Chair House Community and Regional Affairs
Representative Kurt Olson, Co-Chair House Community and Regional Affairs**

From: Representative Paul Seaton

Date: March 8, 2005

Re: Hearing for HB 189

I respectfully request that you hear HB 189 "an act relating to an extension for review and approval of revisions to the Alaska coastal management program" at your earliest convenience.

Attached please find:

- HB 189
- Sponsor statement
- Support letters
- Correspondence between the state and the federal Office of Ocean and Coastal Resource Management
- Letter from DNR about the regulatory sunset of ACMP
- Legal on sunset of ACMP
- Testimony from Coastal District representatives

HOUSE BILL NO. 189

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE STATE AFFAIRS COMMITTEE

Introduced: 3/1/05

Referred: Community and Regional Affairs, State Affairs, Resources

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an extension for review and approval of revisions to the Alaska
2 coastal management program; providing for an effective date by amending the effective
3 date of sec. 45, ch. 24, SLA 2003; and providing for an effective date."

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

5 * **Section 1.** The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA
6 2003, is amended to read:

7 (c) Notwithstanding any contrary provision of ch. 24, SLA 2003 [THIS ACT],
8 the repeal of the Alaska Coastal Policy Council enacted by sec. 44, ch. 24, SLA 2003
9 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in
10 AS 46.40.040, as amended by sec. 10, ch. 24, SLA 2003 [OF THIS ACT], a district
11 coastal management program, including its enforceable policies, approved by the
12 former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and
13 AS 46.40 until ^(delete) ~~the revised district coastal management plan is approved by~~ ~~JULY~~
14 ~~1, 2006,~~ UNLESS] the Department of Natural Resources [DISAPPROVES OR

Jan. 1, 2007

*↓
none*

1 MODIFIES ALL OR PART OF THE PROGRAM BEFORE ^{need this} JULY 1, 2006].

2 * Sec. 2. The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA 2003,
3 is amended to read:

4 (a) Within ^{18 mo.} ~~one year~~ after ^{delete} ~~review and approval of the state's revised coastal~~
5 management program by the National Oceanic and Atmospheric Administration,
6 Office of Ocean and Coastal Resource Management, United States Department of
7 Commerce, under 16 U.S.C. 1455 and 1457 (Coastal Zone Management Act of
8 1972) [THE EFFECTIVE DATE OF REGULATIONS ADOPTED BY THE
9 DEPARTMENT OF NATURAL RESOURCES IMPLEMENTING CHANGES TO
10 AS 46.40.010 - 46.40.090, ENACTED BY SECS. 8 - 15 AND 44 OF THIS ACT, OR
11 ~~BY JULY 1, 2005, WHICHEVER IS LATER~~, coastal resource districts shall review
12 their existing ^{Jan 1, 2006} district coastal management program and submit to the Department of
13 Natural Resources for review and approval a revised district coastal management plan
14 meeting the requirements of AS 46.40 [, AS AMENDED BY THIS ACT,] and the
15 implementing regulations.

16 * Sec. 3. The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003, is
17 repealed and reenacted to read:

18 Sec. 49: Section 45, ch. 24, SLA 2003, takes effect on the date that the
19 commissioner of natural resources certifies to the lieutenant governor that the National
20 Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource
21 Management, United States Department of Commerce, under 16 U.S.C. 1455(e), has
22 approved the revised coastal management program.

23 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

delete
Add Sec. 49 in Randy's draft

insert Sec 3 in Randy's draft

Randy's Draft
4/27/05

CS FOR SENATE BILL NO. 102(RES)

"An Act relating to an extension for review and approval of revisions to the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an effective date."

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

* Section 1. The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA 2003, is amended to read:

(c) Notwithstanding any contrary provision of ch. 24, SLA 2003 [THIS ACT], the repeal of the Alaska Coastal Policy Council enacted by sec. 44, ch. 24, SLA 2003 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in AS 46.40.040, as amended by sec. 10, ch. 24, SLA 2003 [OF THIS ACT], a district coastal management program, including its enforceable policies, approved by the former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and AS 46.40 until January 1, 2007 [JULY 1, 2006], unless the Department of Natural Resources disapproves or modifies all or part of the program before January 1, 2007 [JULY 1, 2006].

* Sec. 2. The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA 2003, is amended to read:

(a) Within eighteen months [ONE YEAR] after the effective date of the regulations adopted by the Department of Natural Resources implementing changes to AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 and 44 of ch. 24, SLA 2003 [THIS ACT], or by January 1, 2006 [JULY 1, 2005], whichever is later, coastal resource districts shall review their existing district coastal management program and submit to the Department of Natural Resources for review and approval a revised district coastal management plan meeting the requirements of AS 46.40 [, AS AMENDED BY THIS ACT,] and the implementing regulations.

* Sec. 3. The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003, is amended to read:

Sec. 49. Section 45, ch. 24, SLA 2003 [OF THIS ACT], takes effect January 1, 2006 [JULY 1, 2005].

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).