

HB

243

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 229
 (S) Publish Date: 2/19/08

Identifier (file name): SB229-DNR-For-02-12-08 Dept. Affected: Natural Resources
 Title: Tanana Valley State Forest/Minto Flats State Game RDU: Resource Development
Refuge boundary adjustment Component: Forest Management & Development
 Sponsor: Sen. Thomas
 Requester: Senate Resources Component Number: 435

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill will add approx. 101,610 acres of land to the Tanana Valley State Forest (TVSF), delete approx. 66,218 acres, and redesignate approx. 4,298 acres as part of the Minto Flats State Game Refuge (MFSGR). This better aligns boundaries with the intent of the TVSF and MFSGR, increases land management efficiency, and updates the boundaries to correspond with correct and current land status. This proposal was developed and reviewed through the 2001 update to the TVSF Management Plan. Controversial parcels were removed following interagency and public review, and the package of changes in this bill had broad support and no known opposition. These changes will not require new positions or funding. There is no short-term impact on revenue, but it protects the revenue stream from timber receipts by ensuring that more commercial forest land will remain part of the long-term sustained yield land timber base to provide lumber, fuelwood, wildlife habitat, and recreation and tourism benefits.

Prepared by: Martha Freeman
 Division: Forestry
 Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 269-8473
 Date/Time February 12, 2008
 Date February 12, 2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: SB 229
 (S) Publish Date: 2/19/08

Identifier (file name): SB229-DFG-DWC-02-11-08 Dept. Affected: Fish & Game
 Title: Tanana Valley Forest/Minto Flats Refuge RDU: Wildlife Conservation
 Component: Wildlife Conservation
 Sponsor: Senator Thomas
 Requester: Senate Resources Committee Component Number: 473

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will have no fiscal impact on the Department of Fish and Game

Prepared by: David Thomson, Administrative Manager
 Division: Wildlife Conservation
 Approved by: Tom Lawson, Director
Division of Administrative Services

Phone 465-6194
 Date/Time 2/11/08 4:00 PM
 Date 2/11/2008

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

SB 229 – Relating to the Tanana Valley State Forest and to assignment of certain forest land to the Minto Flats State Game Refuge; and providing for an effective date.

Sponsor Statement

Senator Joe Thomas

Senate Bill 229 amends the boundaries of the Tanana Valley State Forest (TVSF) to correct errors in legal descriptions, reflect updated land status, and to better match the management intent for the Forest. This is done by adding and deleting boundary references to the legal descriptions in statute. These changes result in a net increase to the state forest of approximately 40,000 acres. SB 229 also moves approximately 4,300 acres from the state forest to the Minto Flats State Game Refuge.

In 1983 the Legislature created the 1.8 million-acre Tanana Valley State Forest that stretches from Manley to Tok. The forest is open to mining, gravel extraction, oil and gas leasing, and grazing. The Department of Natural Resources manages the state forests for a sustained yield of these resources, with the primary purpose of timber management (AS 41.17.200). The Bonanza Creek Experimental Forest, a 12,400-acre area dedicated to forestry research, is also located within the state forest.

State forests provide fish and wildlife habitat, clean water, opportunities for recreation and tourism, and minerals. In addition to the management of these resources, the Tanana Valley State Forest offers many recreational opportunities including hunting, fishing, trapping, camping, hiking, dog mushing, cross-country skiing, wildlife viewing snow machining, gold panning, boating, and berry-picking.

In 1996, the division updated the Tanana Valley State Forest Management Plan and established a citizens' advisory committee. The

12-member citizen's advisory committee, representing a variety of state forest users, actively participates in forest planning in the Tanana Basin. This entity has endorsed the recommendations on management of the forest and has carefully crafted the changes in a manner that resulted in support from all affected land users and owners.

SB 229 is supported by the Alaska State Forest Association, the Fairbanks Economic Development Corporation, hunting and recreation groups as well as all surrounding land owners.

Please join me in amending the Tanana Valley State Forest to better align with its original intent and support the passage of Senate Bill 229.

ALASKA STATE LEGISLATURE



SENATOR JOE THOMAS

Sectional Analysis

SB 229 – Amendments to the Boundary of the Tanana Valley State Forest and Assignment of Certain Forest Land to the Minto Flats State Game Refuge

This bill would implement changes to the boundary of the Tanana Valley State Forest (TVSF) recommended by the 2001 update to the TVSF Management Plan. Some land deleted from the State Forest would be reassigned to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process. The package of proposals was revised following the comment period, and the final package was non-controversial.

Section 1 – Minto Flats State Game Refuge. Section 1 amends the legal description for the Refuge to incorporate three parcels of land deleted from within the TVSF. (See map) These parcels are wetlands adjacent to the existing Refuge that do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

Section 2 – Tanana Valley State Forest. Section 2 repeals and reenacts the legal description for the TVSF. State Forests consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield" (AS 41.17.210(a)). Almost all of the 1.78 million acres in the Tanana Valley State Forest are commercially valuable forest land. Some State lands adjacent to the State Forest also contain valuable forest resources, and some land within the TVSF does not have commercial forest potential. The proposed changes to the TVSF would move approximately 101,610 acres of general domain state land into the State Forest, and delete approximately 66,220 acres, for a net increase of approximately 35,390 acres.

Land recommended for addition to the State Forest contains high-value commercial forest land, much of which is easily accessible. Most parcels are already classified for Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and provide access to other lands within the State Forest, while other parcels are isolated pieces of State land adjacent to the State Forest. Incorporating these into the TVSF would add to the value of the State Forest and consolidate management authority in these areas. One 160-acre parcel with

ALASKA STATE LEGISLATURE

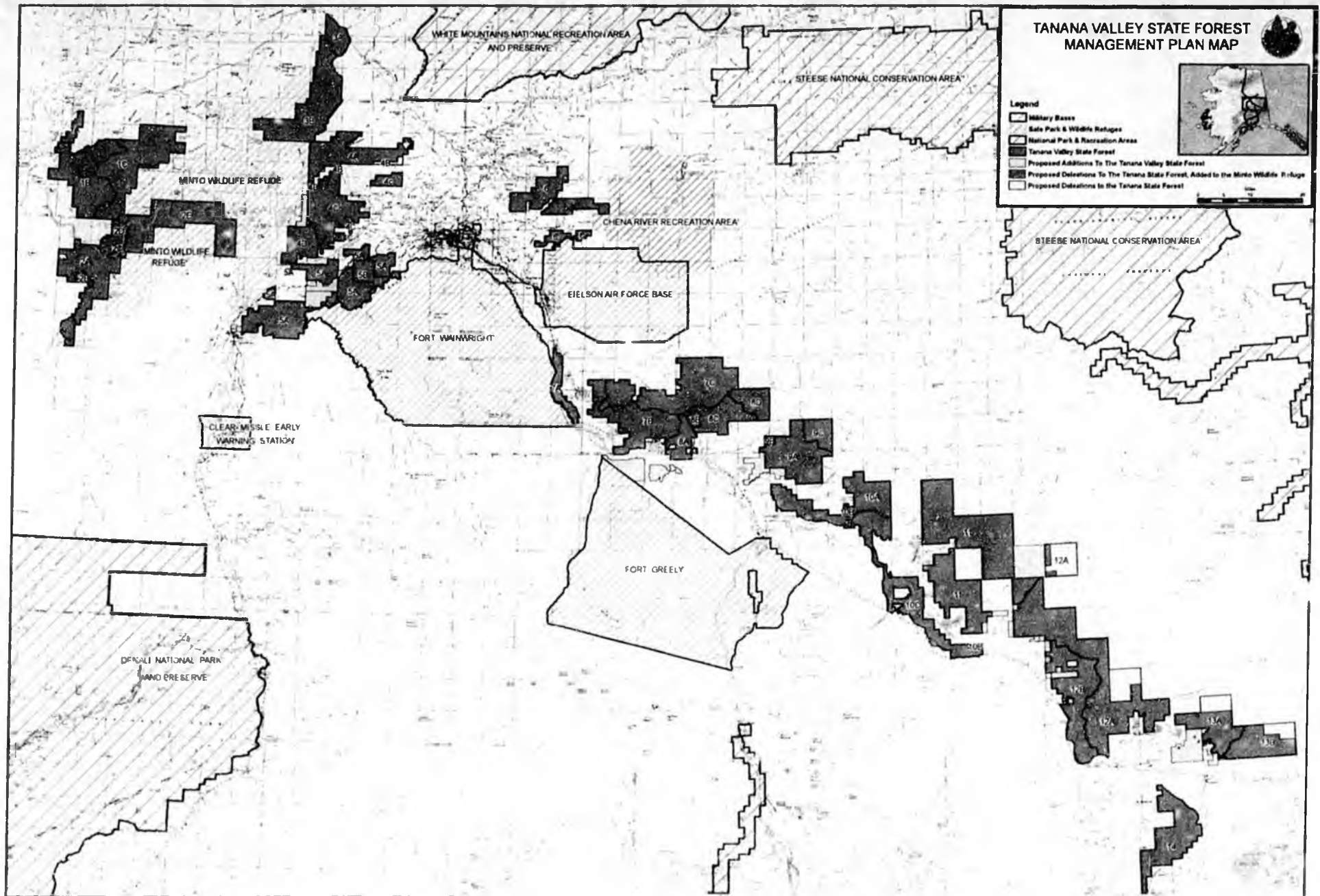


SENATOR JOE THOMAS

unusual prairie features would be added to the Volkmar Bluffs Research Natural Area within the State Forest.

Land recommended for deletion from the State Forest is not commercially valuable forest land. The deletions include the three wetland parcels recommended for addition to the Minto Flats State Game Refuge, wetlands and high-elevation lands north of Tok and Tanacross, and a parcel of high-value recreation land along the Chatanika River.

Land deleted from the Tanana Valley State Forest would be managed as part of the adjacent management units under the Tanana Basin Area Plan. These lands would remain open for public access and multiple use.





FAIRBANKS
Economic Development

301 Cushman St., Suite 301, Fairbanks, AK 9970

January 29, 2008

Dear Senator Joe Thomas,

The Fairbanks Economic Development Corporation (FEDC) strives to promote value added product development in Interior Alaska and, therefore, thanks you for your sponsorship of Senate Bill 229: An act relating to the Tanana Valley Forest.

Fairbanks' remote location poses some challenges to economic development. However, when looking to the abundant natural resources found in the Interior, there is also great opportunity for the creation of new, higher paying jobs through responsible development of those valuable resources.

FEDC has long been a supporter of Interior Forest product development and, in partnership with the State Division of Forestry, Tanana Chiefs Conference, and State of Alaska Office of Economic Development, publishes "New Growth"; a prospectus offering information to potential forest industry developers. Our continuing effort is to encourage and support existing & potential businesses aimed at developing local, value added forest products for use here in Alaska. The most crucial need in developing new forest product businesses is ensuring sustainable, easily accessible, high value forest lands for development.

FEDC strongly supports SB 229. Passage of this legislation will add over 100,000 acres of commercially valuable forest land to the State Forest. These lands would increase the amount of valuable forest resources available for the development of value added products for the Interior and the State of Alaska.

This initiative can be a great asset to the State of Alaska, the Interior and to our continued pursuit of a diversified, stable and self-sustaining economy. FEDC thanks you for your time and efforts in sponsoring this bill and is excited about the potential it will bring to our State Forest lands.


Jim Dodson
CEO/President
Fairbanks Economic Development Corporation


Cassie Pintel
Project Manager, Fairbanks Economic Development Corporation

CC: Chris Maisch
Marty Freeman

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

BOARD OF FORESTRY

SARAH PALIN, GOVERNOR

550 West 7th Avenue, Suite 1450
Anchorage, AK 99501

February 4, 2008

Senator Joe Thomas
State Capitol, Room 510
Juneau, AK 99801-1182

Dear Senator Thomas,

The Board of Forestry represents diverse interests with respect to forestry in Alaska. By law, it provides a forum for forest management issues on state land, and is charged with monitoring the implementation and effectiveness of the Forest Resources and Practices Act on all lands (AS 41.17.047).

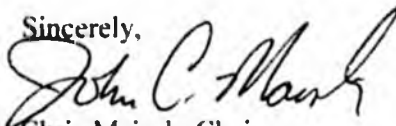
The Board of Forestry would like to express its support for SB 229, amendments to the boundary of the Tanana Valley State Forest and the Minto Flats Game Refuge. This bill would correct old drafting errors, update the boundaries to be consistent with changes in land status, add productive forest land to the State Forest, and delete wetlands and other non-productive forest land. The revised boundary will better match the purpose of State Forests, and the intent to include primarily commercially valuable forest land (AS 41.17.200.-210).

In the 25 years since it was established, the State Forest has proved its worth as a source of sawtimber and fuelwood, wildlife habitat, and hunting and recreation opportunities for Alaskans.

The changes in this bill were recommended by the 2001 update to the Tanana Valley State Forest Management Plan, with wide public support. The Board officially commended the Department of Natural Resources for the broad public process used to draft and revise the Tanana Valley State Forest Management Plan update. SB 229 will implement these widely supported recommendations.

We encourage prompt passage of SB 229, and thank you for introducing this bill.

Sincerely,



Chris Maisch, Chair

ALASKA BOARD OF FORESTRY

Rob Bosworth
Matt Cronin
Wayne Nicolls
John DiMarchi

Erin McLarmon
Bill Oliver
Rick Rogers
Ron Wolfe

Northland Wood Products, Inc.

4000 CUSHMAN - FAIRBANKS, ALASKA 99701-7534
TELEPHONE 907-452-4000
FAX 907-452-1391

February 29, 2008

Senator Joe Thomas,
State Capitol Room 510
Juneau, Ak 99801-1182

Dear Senator Thomas,

We support SB 229 amending the boundary of the Tanana State Forest and the Minto Flats game refuge. Northland Wood Products as a company has been harvesting timber in the Tanana State Forest, and what would become the State Forest, since 1965, for our sawmill here in Fairbanks. We were involved with the creation of the Tanana State Forest at that time, seeing the long term benefit of protecting this very valuable resource for future generations. As we see it, SB 229 is very beneficial in that it adds more timber to the State Forest base and consolidates the forest management authority over these areas.

We currently process 3 to 4 million board feet of timber each year and employ some 35 people year around, producing lumber and timbers for the local market. We are very dependent upon the forest resources in the Tanana State Forest and are very much in favor of any legislation that improves and strengthens it.

Again, we strongly support SB 229 and thank you for introducing it.

Sincerely,



Ronald D. Rasmussen
Vice President and Mgr, Woods Operations



Briefing:

Tanana Valley State Forest changes **DEPARTMENT OF NATURAL RESOURCES**

December 12, 2007
DIVISION OF FORESTRY

Background. The 2001 update to the TVSF Management Plan recommended a package of changes to the boundaries of the State Forest. As a part of that package, the plan recommends some of the deletions from the State Forest to be added to the Minto State Game Refuge. These proposals were thoroughly reviewed by the public and agencies during the planning process, and the proposals in the final plan were non-controversial. There were no comments on these proposals during the final comment period.

A. RECOMMENDATIONS FOR ADDITIONS TO THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

Alaska Statutes Section 41.17.210 states that State Forest proposals shall consist "primarily of commercially valuable forest land determined by the governor to be necessary for retention in State ownership for management under the principles of multiple use and sustained yield..." Almost all of the 1.78 million acres in the Tanana Valley State Forest is commercially valuable forest land. Some State lands adjacent to the State Forest, however, contain valuable forest resources that would benefit the State Forest by their addition to that legislatively designated area. The lands listed in the following packet, and shown on the accompanying map, are recommended for addition to the State Forest. They total approximately 101,610 acres.

The lands recommended for addition to the State Forest contain high-value commercial forest lands, many of which are easily accessible. Most are already classified Forestry under the Tanana Basin Area Plan, and all are compatible with the intent of the State Forest. Some have been harvested historically, and some provide access to other lands within the State Forest. Some of the smaller parcels are isolated pieces of State land adjacent to the State Forest. Adding them to the State Forest would add to the value of the State Forest and consolidate management authority in these areas.

B. RECOMMENDATIONS FOR DELETIONS FROM THE TANANA VALLEY STATE FOREST: Amend AS 41.17.400(d)

The Tanana Valley State Forest contains approximately 66,218 acres of land that do not contain valuable forest resources. On the basis of the statutory criteria in the previous section, DNR recommends several deletions from the Tanana Valley State Forest. Some of the lands are wetlands adjacent to the Minto Flats State Game Refuge that contain no commercially valuable timberland. Another area recommended for deletion contains the shorelands of the Chatanika River, an extremely high value recreation area. The other lands on the deletion list consist of two townships: one comprised of wetlands and the other made up of high-elevation, unforested lands.

C. ADDITIONS TO THE MINTO FLATS STATE GAME REFUGE OF LANDS RECOMMENDED FOR DELETION FROM THE TANANA VALLEY STATE FOREST: Amend AS 16.20.037(a).

Three parcels of land within the TVSF containing wetlands adjacent to the Minto Flats State Game Refuge are recommended to be withdrawn from the State Forest and added to the Refuge. They do not contain commercially valuable forest land, and would be better managed as part of the Refuge. They total 4,298 acres.

List of proposed additions to the Tanana Valley State Forest

The following list summarizes the recommended additions to the State Forest (a total of approximately 101,610 acres):

1. This strip of land, located between Minto Flats and the adjacent State Forest, contains productive upland forests of white spruce and hardwoods. The unit is presently accessed by the Dunbar-Livengood winter trail and will be accessed by an all-season forest road. (4,480 acres within T1N R6W F.M.)

2. These units are on Nenana Ridge, border the State Forest, and have similar values. They are highly productive, easily accessible, upland forests. Adding these units to the State Forest will consolidate the State's highest value forest lands under a single management authority and plan. (14,568 acres within T2S R4W, T2S R5W, and T3S R5W F.M.)

Note: If this subunit is added to the State Forest, the following management guidelines will be added to the entire Subunit 5A. "A 300-foot buffer from centerline on each side of the roadway should be managed to maintain or enhance scenic views along the highway. Development activities such as timber harvesting and land-use authorizations may be allowed within this buffer if the activity is designed to maintain or enhance the scenic values of the highway corridor, and to provide opportunities for viewing background scenery."

3. This unit has several parcels which comprise the bulk of the timberland occurring between Fort Greely and the Tanana River. The timber consists of productive white spruce stands along the Tanana River and mixed white spruce/hardwood stands on uplands to the South. Management goals would emphasize the area's wildlife, recreation, and timber resources. Because of habitat values in the floodplain, the recommended additions to the State Forest are south of the 1000-foot contour line from the Tanana River. (21,189 acres, within T7S R6E, T7S R7E, T7S R8E, T8S R5E, T8S R6E, T8S R7E, and T8S R8E F.M.)

4. This quarter-section lies adjacent to the Tanana Valley State Forest Subunit 10B, the Volkmar Bluffs Research Natural Area. It encompasses a large prairie feature that similar to the prairie system in the adjacent Tanana Valley State Forest research natural area. This amendment is designed to expand the research natural area to include the remainder of the prairie system. (160 acres within T9S R13E F.M.)

5. This unit consists of several small parcels of land near Dot Lake that were not included in the State Forest because of questionable land status. The primary purpose of adding these to the State Forest is to consolidate land management in the area. (9,600 acres within T21N R8E, T22N R8E, T23N R6E, and T23N R7E C.R.M.)

6. These block is located along the Tanana River near Tok between Native lands and the State Forest. The units contain commercial timber, have good access, and would be

valuable additions to the State Forest. (23,033 acres within T18N R13E, T19N R12E, and T19N R13E C.R.M.)

7. This small parcel north of Tanacross was excluded in the legal description of the TVSF because of federal interest. However, the federal interest is no longer valid. (40 acres within T21N R10E C.R.M.)

8. These three parcels of land are located near Dot Lake between Native lands and the State Forest. Their addition to the State Forest will consolidate management authority. (5,600 acres within T21N R8E and T23N R6E C.R.M.)

9. This township, north of Dot Lake, was left out of the TVSF legislation by a mistake in a legal description that substituted a wrong township. Although the unit is currently inaccessible, including it in the State Forest as originally proposed would offer some management efficiency because it shares common access and similar resource values with adjoining State Forest lands to the west and south. (23,040 acres, T25N R7E C.R.M.)

List of proposed deletions from the State Forest

The following list summarizes the recommended withdrawals (a total of approximately 66,071 acres):

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.

These two parcels of the Minto Flats along the Tolovana River are recommended for withdrawal so as to consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.

2. TVSF Subunit 3B: 2,400 acres within T4N R7W F.M.

This parcel consists of wetlands bordering the Minto Flats State Game Refuge. The area borders the Minto Flats State Game Refuge, and is recommended as an addition to the Refuge.

3. TVSF Subunit 4B: 2,400 acres within T3N R3W F.M.

This parcel contains shorelands of the Chatanika River. It is recommended as a TVSF withdrawal to be available for designation as part of the Chatanika State Recreation River corridor. In the interim it would be managed for public recreation and wildlife habitat as part of Tanana Basin Area Plan Subunit 1E1. The area is comprised mostly of poorly drained wetlands along the Chatanika River and contains little timberland.

4. TVSF Subunit 12A: 19,200 acres within T21N R10E C.R.M.

This township contains low relief and swampy, noncommercial forest; it was not included in the original administration proposal. The unit's inclusion in the State Forest does not offer any management advantages for adjacent State Forest lands. It would

become part of Tanana Basin Area Plan Subunit 6G1, which is designated for wildlife habitat and forestry.

5. TVSF Subunit 12A: 19,200 acres within T25N R8 C.R.M.

This township was apparently included in the State Forest because of a mistake made in the range. This unit is generally at a high elevation with few significant resources appropriate for the State Forest system. It would become part of Tanana Basin Area Plan Subunit 6J2 which is designated for resource management.

6. TVSF Subunit 13A, 13B: 21,120 acres within T19N R15E and T20N R13E C.R.M.

These two parcels were are underlain entirely by permafrost and forested with noncommercial black spruce. They have no other important resource values or advantages for inclusion in the State Forest. They would become part of Tanana Basin Area Plan Subunit 6J3 which is designated for wildlife habitat.

Additions to Minto State Game Refuge

1. TVSF Subunit 1C: 1,898 acres within T1N R11W and T2N R11W F.M.

These two parcels on the Minto Flats in TVSF Subunit 1C along the Tolovana River are recommended to be added to the Refuge. This change would consolidate most wetlands in Minto Flats under a single management intent. The areas are highly productive wildlife habitat but contain very little timberland. The area borders the Minto Flats State Game Refuge.

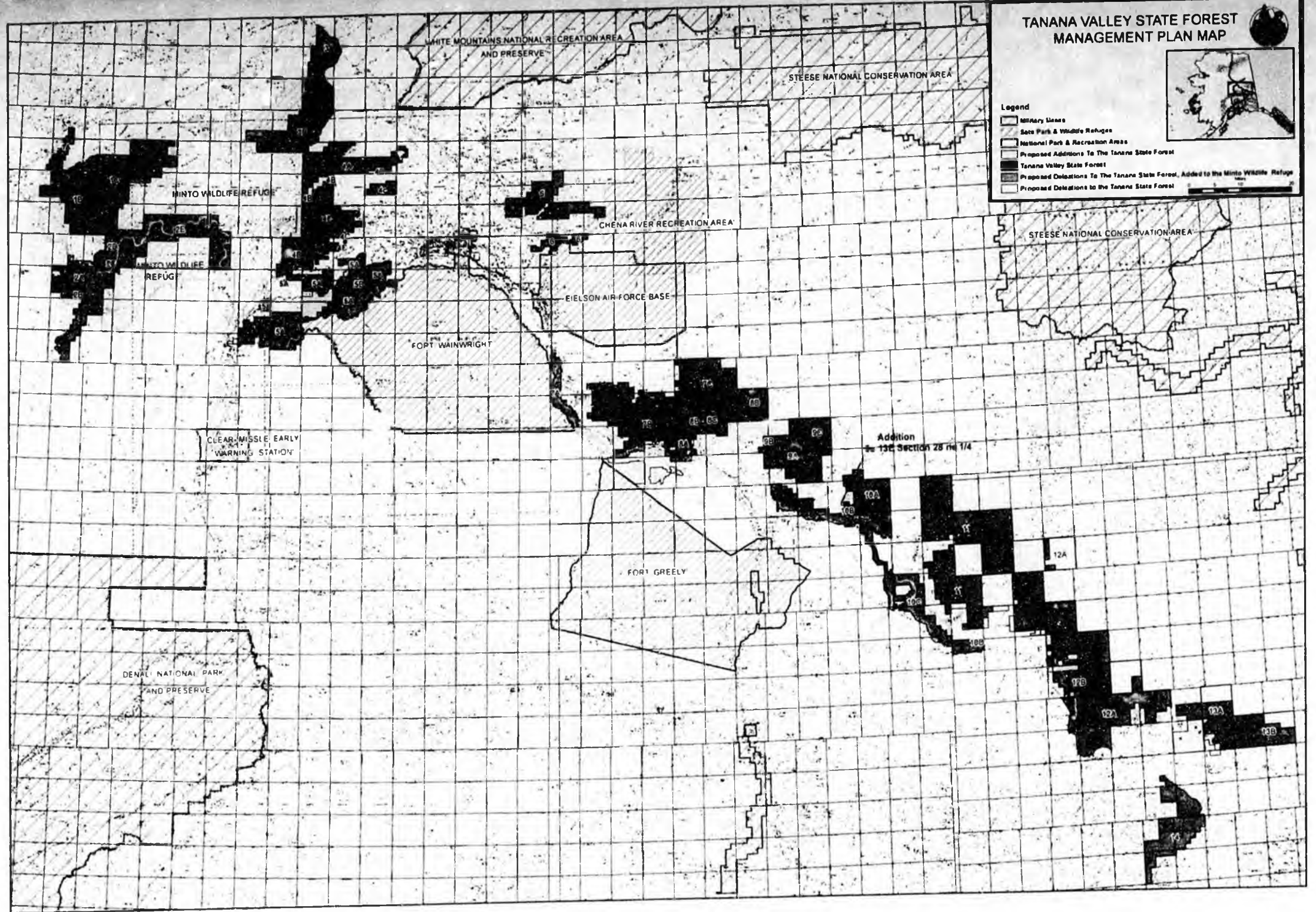
2. TVSF Subunit 3B: 2,400 acres within T4N R7W

This parcel consists of wetlands bordering the Minto Flats State Game Refuge.

TANANA VALLEY STATE FOREST MANAGEMENT PLAN MAP



- Legend**
- Military Sites
 - State Park & Wildlife Refuges
 - National Park & Recreation Areas
 - Proposed Additions To The Tanana State Forest
 - Tanana Valley State Forest
 - Proposed Deletions To The Tanana State Forest, Added to the Minto Wildlife Refuge
 - Proposed Deletions to the Tanana State Forest

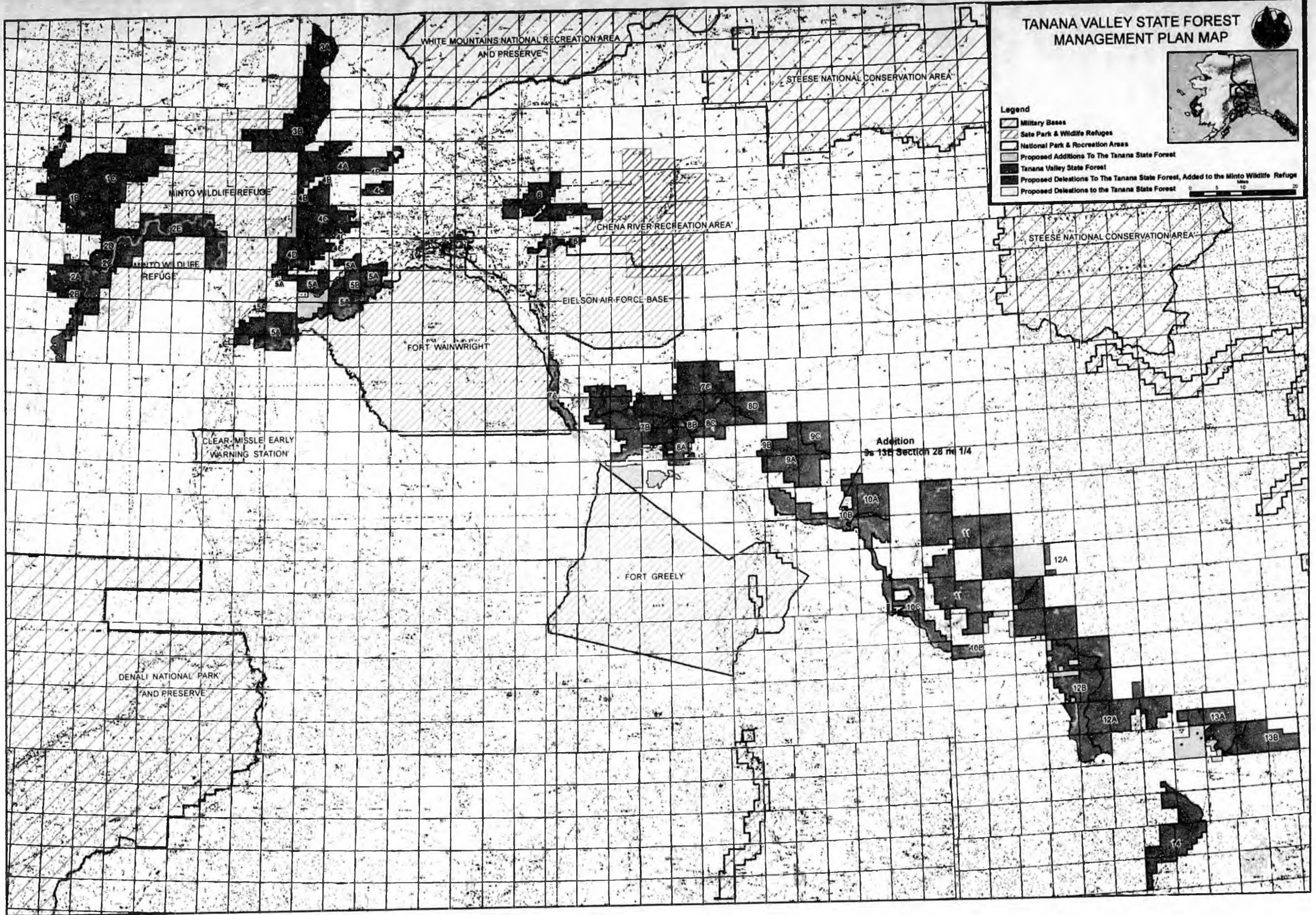


TANANA VALLEY STATE FOREST MANAGEMENT PLAN MAP



Legend

- Military Bases
- State Park & Wildlife Refuges
- National Park & Recreation Areas
- Proposed Additions To The Tanana State Forest
- Tanana Valley State Forest
- Proposed Deletions To The Tanana State Forest, Added to the Minto Wildlife Refuge
- Proposed Deletions to the Tanana State Forest



NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

April 8, 2008

Honorable Craig Johnson
Honorable Carl Gatto
Co-chairs House Resources Committee
State Capitol
Juneau, Alaska 99801

Sent by fax: 907-465-3872

Re: HB 243 Coastal Management

Dear Senators Johnson and Gatto:

This letter responds to the request for additional information during the Resources Committee meeting on April 4, 2008, for more information about our coastal management plan. I was not able to attend the meeting; however, John Chase, our community planner and coastal area specialist, did attend and provided testimony. During the meeting, the committee requested more information about the enforceable policies and designated areas disapproved by the Alaska Department of Natural Resources (DNR) for our coastal management plan.

On October 31, 2006, the Commissioner of DNR adopted the Final Recommendation to the Commissioner on the Northwest Arctic Borough's coastal management plan. Since the Final Recommendation is too long to fax, I have arranged for a hard copy of it to be delivered to the Resources Committee. This finding may also be viewed on the Alaska Coastal Management Program (ACMP) website at the following address: http://alaskacoast.state.ak.us/District/Final_Tables/NorthWestArctic.htm

As background, the Northwest Arctic Borough has been revising our coastal management plan since 2005 at the request/direction of the state. We have met all of the deadlines, and we made a special effort to ensure our plan met all of the requirements in the revised ACMP statutes and regulations. Unfortunately, despite many efforts, all of our proposed important habitat areas and areas designated for historic and prehistoric resources were denied; and only one small subsistence use area was approved which contradicts local lifestyles of our Alaska residents that depend solidly on subsistence for our local economy and culture. We are currently in mediation with the state over the decision on our plan, and the mediation meeting is scheduled for May 6 -7, 2008 in Kotzebue.

NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

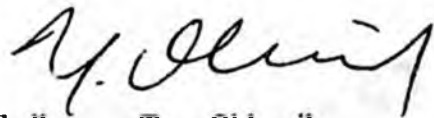
Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

I appreciate the committee's interest in HB 243, and I urge you to pass this bill from the committee. Please contact me if you have any questions about our proposed plan at (907) 442-2500 or by email at tokleasik@nwabor.org.

Sincerely,



Ukallaysaaq Tom Okleasik
Planning Director

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

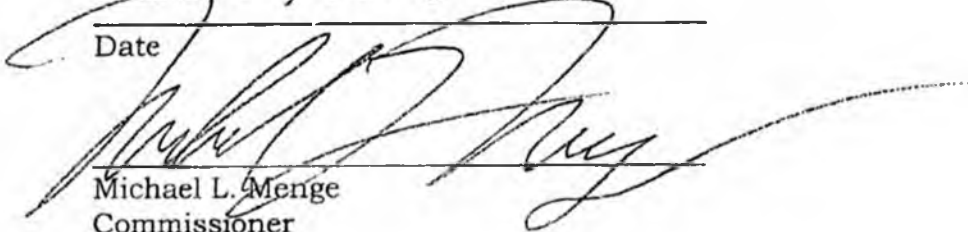
FRANK H. MURKOWSKI, GOVERNOR

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ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

The Commissioner of the Department of Natural Resources finds that the Northwest Arctic Borough Coastal Management Plan meets the requirements of AS 46.39, AS 46.40, 11 AAC 112 and 11 AAC 114 for coastal management plans, and pursuant to 11 AAC 114.345(k)(1), approves the plan in part, adopting by reference the findings and conclusions set forth in the October 26, 2006, recommendation of the Office of Project Management and Permitting.

Oct 31, 2006

Date



Michael L. Menge
Commissioner

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

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT AND PERMITTING

SOUTH CENTRAL REGIONAL OFFICE
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PIPELINE COORDINATOR'S OFFICE
411 WEST 4th AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501
PH: (907) 257-1351 FAX: (907) 272-3829

October 31, 2006

The Honorable Roswell Schaeffer Sr.
Northwest Arctic Borough
PO Box 1110
Kotzebue, AK 99752

RE: DNR Commissioner Approval of District Final Plan Amendment

Dear Mr. Schaeffer:

Thank you for submitting the Northwest Arctic Borough's revised coastal management program to the Department of Natural Resources (DNR) for our review. In accordance with 11 AAC 114.345(k), and based on DNR's Office of Project Management and Permitting's (OPMP) recommendations, the Commissioner of DNR approved the Northwest Arctic Borough's Final Plan Amendment on October 31, 2006. I congratulate you, your coastal coordinator, and the Northwest Arctic Borough in reaching and succeeding at this important milestone, and applaud the Borough's efforts in working with OPMP to obtain approval on the Final Plan Amendment.

While DNR has approved the Northwest Arctic Borough's Final Plan Amendment, the plan does not yet take effect. OPMP must submit the approved Final Plan Amendment to the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM) for their review and approval. OPMP will submit your approved Final Plan Amendment to OCRM by November 30, 2006. In addition, the Northwest Arctic Borough must approve or disapprove the approved Final Plan Amendment within 90 days following the DNR Commissioner's approval, and generally after the OCRM review and approval. The Northwest Arctic Borough has until January 29, 2007, to approve the Final Plan Amendment, unless the United States Department of Commerce has not fully approved the plan amendment under 16 U.S.C. 1455.

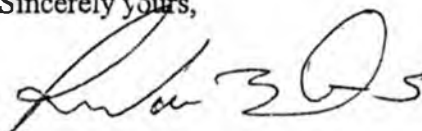
If you choose to mediate the Commissioner's decision you have until November 10, 2006 to notify OPMP of your decision to mediate. Otherwise a complete and clean electronic version (i.e., compact disk, 2 copies) of your Final Plan Amendment incorporating all the changes approved by the DNR Commissioner (including deleting all parts of the plan that were not approved) must be submitted within 15 days after approval. This is required before we can send your Final Plan Amendment to the Office of Ocean and Coastal Resource Management (OCRM) for their review and approval.

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

The Honorable Roswell Schaeffer Sr.
10/31/2006
Page 2

Again, congratulations on your approved Final Plan Amendment. If you have any questions about the process, please contact Jackie Brock at (907) 465-3177.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Randy Bates", written in a cursive style.

Randy Bates
Acting Director

cc: Kim Franklin, Coastal Coordinator

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

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

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

October 26, 2006

Dear Commissioner Menge:

RE: Northwest Arctic Borough Coastal Management Plan, Final Plan Amendment

The Office of Project Management and Permitting has prepared the final recommendation in accordance with 11 AAC 114.350 (j) for the Northwest Arctic Borough's Coastal Management Plan. Attached are the Final Findings and Conclusions document summarizing our recommendations, the district enforceable policy analysis table, and the designated area analysis table. Both tables detail the justification for the policies and designations and repeat our recommendations.

Per 11 AAC 114.345 (k), you have 15 days to approve the plan in whole or in part. The 15-day period ends on November 13, 2006. OPMP will send plans approved in whole or in part to the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management for their approval as a routine program change to the ACMP.

If you have any questions please do not hesitate to contact me at (907) 465-3177 or by e-mail at Jaclyn_Brock@dnr.state.ak.us.

Sincerely yours,



Jackie Brock
Coastal Resource Specialist

cc: Ed Fogels, Acting Deputy Commissioner, Department of Natural Resources
Randy Bates, Acting Director, Department of Natural Resources, OPMP/ACMP
Kim Franklin, Coastal Coordinator
Glenn Grey, Consultant

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

**Department of Natural Resources
Office of Project Management and Permitting**

**Final Recommendation on the
Final Plan Amendment (FPA) of the
Northwest Arctic Borough Coastal District
Coastal Management Plan**

October 26, 2006

RECOMMENDATION TO THE COMMISSIONER 3
SUMMARY FINDINGS 3
PLAN ANALYSIS and FINDINGS 4

ATTACHMENTS:

- 1. Enforceable Policy Analysis Table**
- 2. Designated Area Analysis Table**

INTRODUCTION

The Northwest Arctic Borough coastal district submitted the Final Plan Amendment (FPA) of its Coastal Management Plan on March 1, 2006 per 11 AAC 114.345(g). The Department of Natural Resources, Office of Project Management and Permitting (DNR, OPMP) released the preliminary recommendation for the Northwest Arctic Borough final plan amendment on June 6, 2006. OPMP provided a thirty day review and comment period from June 6, 2006 through July 6, 2006. Per 11 AAC 114.345(j), OPMP had thirty days to consider timely comments and negotiate resolution of any issues and to submit a final recommendation to the commissioner. This package of documents represents OPMP's final recommendation to the DNR Commissioner.

Office of Project Management and Permitting Review

The Alaska Coastal Management Program provides standards and regulations that guide or direct development of a district coastal management plan at 11 AAC 112 and 11 AAC 114. The Final Plan Amendment for the Northwest Arctic Borough Coastal Management Plan is analyzed against these regulations in these final comments to the commissioner. In accordance with 11 AAC 114.345(k), the commissioner will either (1) approve the request in whole or in part, (2) approve the request if the district makes each change that OPMP requires, (3) identify that the request is outside the scope of the amendments under this section, or (4) disapprove the request in whole or in part.

OPMP's final recommendations for the approvability of each district enforceable policy and each designated area are found in the respective attached tables and summarized on the next page.

FINAL RECOMMENDATION TO THE COMMISSIONER

Per 11 AAC 114.345 (j) OPMP recommends that the DNR Commissioner approve sections of the Northwest Arctic Borough's final plan amendment in part.

OPMP recommends **approval** for district enforceable policy: G-7.

OPMP recommends **approval** for the following designated areas: Lower Buckland River Subsistence Area and Natural Hazards designated areas.

OPMP **does not recommend** approval for district enforceable policies A1, A2, A3, A4, A5, A6, A7, B1, B2, B3, B4, B5, B6, B7, B8, B9, B-10, C-1, C-2, C3, D1, D-2, E-1, F1, F2, F3, G1, G2, G3, G4, G5, G6, G-7, H-1, H-2, H-3, H-4, H-5, H-6, H-7, H-8, H-9, H-10, H-11, H-12, H-13, H-14, H-15, H-16 and H-17.

OPMP **does not recommend** approval for the following designated areas: Sisoalik Spit Subsistence Use Area, Kobuk-Selawik Lakes Subsistence Use Area, Cape Espenberg/Goodhope River Subsistence Use Area, Kobuk River Delta Subsistence Use Area, Selawik River Delta Subsistence Use Area, Maniilaq River/Ambler Lowlands Subsistence Use Area, Inmachuk River Subsistence Use Area, North Fork Squirrel River/Omar River Subsistence Use Area, North Kivalina Coast Subsistence Use Area, Onion Portage Subsistence Use Area, Eschscholtz Bay Subsistence Use Area, Elephant Point/Choris Peninsula Subsistence Use Area, Kobuk River Sheefish/Chum Salmon/Whitefish Subsistence Use Area, Wulik River Subsistence Use Area, Noatak River Subsistence Use Area, Upper Kivalina River Subsistence Use Area, Important Habitat and Areas Important to the Study, Understanding or Illustration of History, Prehistory and Archeology.

In addition, OPMP finds that the Northwest Arctic Borough Coastal Management Plan includes all of the sections as required in 11 AAC 114.345 and as listed below.

		<u>Location in Plan</u>
11 AAC 114.200	Issues, Goals and Objectives	Chapter 2
11 AAC 114.210	Organization	Chapter 1
11 AAC 114.220	Coastal Zone Boundaries	Chapter 3
11 AAC 114.230	Resource Inventory	Chapter 6
11 AAC 114.240	Resource Analysis	Chapter 6
11 AAC 114.250	Subject Uses, Activities, and Designations	Chapter 6
11 AAC 114.260	Proper and Improper Uses and Activities	Chapter 5
11 AAC 114.270	District Enforceable Policies	Chapter 4
11 AAC 114.280	Implementation	Chapter
11 AAC 114.290	Public Participation	Chapter 1

OPMP recommends approval of these sections as meeting the requirements of 11 AAC 114.200 -114.290.

PLAN ANALYSIS AND FINDINGS

State Regulation **11 AAC 114.200 ISSUES, GOALS, AND OBJECTIVES**

FINDING:

OPMP finds that the Issues, Goals, and Objectives section of the FPA is approved based on the requirements of the regulations.

State Regulation **11 AAC 114.210 ORGANIZATION**

FINDING:

OPMP finds that the Organization section of the FPA is approved based on the requirements of the regulations.

State Regulation **11 AAC 114.220 COASTAL ZONE BOUNDARIES**

FINDING:

OPMP finds that the Coastal Zone Boundaries section of the FPA is approved based on the requirements of the regulations.

State Regulation **11 AAC 114.230 RESOURCE INVENTORY**

FINDING:

OPMP finds that sections of the Resource Inventory chapter of the FPA are approved based on the requirements of the regulations for specific policies.

State Regulation **11 AAC 114.240 RESOURCE ANALYSIS**

FINDING:

OPMP finds that sections of the Resource Analysis chapter of the FPA is approved based on the requirements of the regulations for specific policies.

State Regulation **11 AAC 114.250 SUBJECT USES, ACTIVITIES, AND DESIGNATIONS**

FINDING:

OPMP finds that sections of the Subject Uses, Activities, and Designations section of the FPA is approved based on the requirements of the regulations. See the attached Designated Area Analysis table for more information on specific Designate Areas.

State Regulation
11 AAC 114.260 PROPER AND IMPROPER USES

FINDING:

OPMP finds that the Proper and Improper Uses section of the FPA is approved based on the requirements of the regulations.

State Regulation
11 AAC 114.270 DISTRICT ENFORCEABLE POLICIES

FINDING:

OPMP finds that sections of the District Enforceable Policy section of the FPA is approved based on the requirements of the regulations. See the attached Enforceable Policy analysis table for information on specific policies.

State Regulation
11 AAC 114.280 IMPLEMENTATION

FINDING:

OPMP finds that the Implementation chapter of the FPA is approved based on the requirements of the regulations.

State Regulation
11 AAC 114.290 PUBLIC PARTICIPATION

FINDINGS:

OPMP finds that the Public Participation chapter of the FPA is approved based on the requirements of the regulations.

REQUIRED TEXTUAL CHANGES:

- Chapter 1, page 2: This statement: "*The regulations deemphasized the role of coastal districts and narrowed their ability to develop enforceable policies.*" Is an editorial comment. Once the coastal management plan is approved by the DNR Commissioner and the Office of Ocean and Coastal Resource and Management (OCRM), it carries the weight of law. Therefore, the plan must contain factual information and be free of editorial opinions. In this regard, this text must be deleted.
- Chapter 3, page 10: This statement is incorrect: "*...the enforceable policies enable the NAB to have a seat at the table during project consistency reviews.*" An approved coastal management plan enables the NAB to have a seat at the table during a consistency review.
- Chapter 4, page 20 Table 4-1; The citations in the Designated Area column are incorrect. The correct citations are provided here:

Designated Area
Natural Hazards Area (11 AAC 114.250(b))
Recreation (11 AAC 114.250(c))
Tourism (11 AAC 114.250(d))
Major Energy Facilities (11 AAC 114.250(e))
Commercial Fishing & Seafood Processing (11 AAC 114.250(f))
Subsistence (11 AAC 114.250(g))
Important Habitat (11 AAC 114.250(h))
History and Prehistory (11 AAC 114.250(i))

- The NAB-CMP list of acronyms incorrectly identifies two NPS units as national parks when in fact ANILCA identified them as national preserves. BLBNP should be Bering Land Bridge National Preserve, and NNP should be Noatak National Preserve. This is important because preserves allow recreational sport hunting and parks do not. Though the list also identifies Kobuk Valley National Park correctly, it fails to even note Cape Krusenstern National Monument.
- Appendix C needs to be updated to reflect the changes in enforceable policy and designated area language.

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<p><i>NATURAL HAZARDS</i> Natural Hazards Area Designations</p> <p>The NAB designates three types of natural hazard areas under 11 AAC 114.259(b) for all non-federal lands within the district's coastal zone:</p> <ul style="list-style-type: none"> • Permafrost: All offshore and onshore areas are designated as a natural hazard area for permafrost, • Ice Hazards: All offshore areas are designated as hazard areas for ice hazards, including shear zones, ice override, ice gouging and strudel scour, and • Flooding and Erosion: All areas within a half-mile of the mean high water of coastal waters within the 10-foot contour above mean high water are designated as flooding and erosion hazard areas. In addition, all areas within 10 feet above the ordinary high water of inland rivers are designated as flooding and erosion hazard areas. <p>Uses and activities that could be proposed for designated hazard areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p align="center"><i>Response</i></p>	<p align="center"><i>Comments/Discussion</i></p>
<p>1. Name of designated area? Location of description in plan? Location of justification in plan? Location of boundaries in plan?</p> <p><i>(OPMP will make this determination)</i></p>		
<p>2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the location?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<i>(OPMP will make this determination)</i>		
3. Does the designation exclude federal land?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
4. Is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area? (11 AAC 114.270(g))	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
5. For those natural hazard areas which are designated due to flooding, earthquakes, active faults, tsunamis, landslides, volcanoes, storm surges, ice formations, snow avalanches, erosion, or beach processes, does the Resource Inventory or Analysis describe the likelihood of occurrence of the natural hazard (i.e., what the possibility is that the natural hazard might occur) based on either scientific evidence or local usage?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
6. For those natural hazard areas designated due to <u>other types</u> of natural hazards, is the scientific basis for designating the natural process or adverse condition as a natural hazard provided? As well, is scientific evidence which supports the designation of the area provided and is the likelihood of occurrence described?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7. OPMP recommendation:	OPMP recommends this designated area be approved in whole.	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<i>SUBSISTENCE USE</i>		
Subsistence Areas		
<p>The NAB designates all nonfederal lands and waters within the subsistence use areas depicted on the subsistence maps in Appendix P as designated subsistence use areas under the authority of 11 AAC 114.250(g). These maps indicate subsistence use by the following types of subsistence use: Bowhead whale, polar bear, other marine mammals (seals, walrus, and beluga whale), large game (sheep, moose, caribou, and bear), small game, furbearers, salmon, other fish and marine invertebrates, and waterfowl and egg gathering.</p>		
<p>Data about subsistence use provided by the Division of Subsistence, Alaska Department of Fish and Game was combined with maps depicting the coastal zone boundaries and federal land. The NAB chose to include information about the total subsistence use area regardless of ownership because this information will be useful during project reviews. As described on the maps, the area designated for subsistence use includes only areas within the coastal zone excluding federal lands.</p>		
<p>In addition, the NAB designates specific geographic areas listed below as "designations within designations" important for subsistence as described in Section 6.4. These areas, identified in the original coastal management plan as being especially critical for subsistence, are identified on the maps in Appendix H. These subsistence use designations include only nonfederal lands and waters within the coastal zone.</p>		
<ul style="list-style-type: none"> 1) Sisoalik Spit Subsistence Use Area 2) Kobuk-Selawik Lakes Subsistence Use Area 3) Cape Espenberg/Goodhope River Subsistence Use Area 4) Kobuk River Delta Subsistence Use Area 5) Selawik River Delta Subsistence Use Area 6) Maniilaq River/Ambler Lowlands Subsistence Use Area 7) Inmachuk River Subsistence Use Area 8) Lower Buckland River Subsistence Use Area 9) North Fork Squirrel River/Omar River Subsistence Use Area 10) North Kivalina Coast Subsistence Use Area 	<i>Response</i>	<i>Comments/Discussion</i>

¹ 11 AAC 112.990(38) adopts the definition for subsistence uses in AS 16.05.940: "'subsistence uses' means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, clothing, tools or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, 'family' means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis."

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<p>11) Onion Portage Subsistence Use Area 12) Eschscholtz Bay Subsistence Use Area 13) Elephant Point/Choris Peninsula Subsistence Use Area 14) Kobuk River Sheefish/Chum Salmon/Whitefish Subsistence Use Area 15) Wulik River Subsistence Use Area 16) Noatak River Subsistence Use Area 17) Upper Kivalina River Subsistence Use Area</p> <p>Uses and activities that could be proposed for areas designated for these areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>The subsistence use areas designated by the NAB include other subsistence activities in addition to the actual areas where subsistence use occurs including preparation for subsistence harvests, transportation to and from harvest areas, and other uses included in the definition of subsistence uses.¹</p> <p>Unless prohibited by an enforceable policy, uses and activities that could be proposed for areas designated for subsistence include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>		
<p>1. Name of designated area? Location of description in plan? Location of justification in plan? Location of boundaries in plan?</p> <p><i>(OPMP will make this determination)</i></p>		
<p>2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the</p>	<p><input type="checkbox"/> Yes</p>	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

location? <i>(OPMP will make this determination)</i>	<input type="checkbox"/> No	
3. Does the designation exclude federal land?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Does the Resource Inventory and Analysis include documentation that the designation is in an area in which a subsistence use is an important use of the coastal resources?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
6. Is the designation not located in areas identified under AS 16.05.258 as nonsubsistence areas?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
7. Has the coastal district consulted with appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or groups prior to the designation of subsistence use areas? Does the district plan summarize and document the process and results of this consultation in the district plan?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8. OPMP recommendation:	<p>Subsistence use areas are designated under 11 AAC114.250 (g) which allows districts to designate areas where subsistence use is an important use of coastal resources. Under the definition of coastal areas or resources at AS 46.40.210 (3) "coastal use or resources" are defined as land and water use or natural resources of the coastal zone including subsistence.</p> <p>The Northwest Arctic Borough has chosen to designate all nonfederal lands and waters within the subsistence use areas depicted on the subsistence maps in Appendix P. The subsistence use areas in Appendix P are the same as the coastal district boundaries and include areas outside of the coastal zone.</p> <p>OPMP has provided coastal districts, including the Northwest Arctic</p>	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

Borough, with guidance and direction on how to designate, document, and map a subsistence use. In the subsistence Maps in appendix P, the district has designated the entire coastal district as a subsistence use area. This results in significant portions of the subsistence use areas located outside of the coastal zone. The designation as mapped cannot be approved.

The areas "designated within the designation" in Appendix H areas 1-17 show significant portions designated on federal lands. 11 AAC114.250 (g) which allows districts to designate areas where subsistence use is an important use of coastal resources. Under the definition of "coastal areas or resources" at AS 46.40 .210 (3) "coastal use or resources" are defined as land and water use or natural resources of the coastal zone including subsistence. The definition of coastal zone at AS 46.40.210 (4) specifically excluded federal lands from the coastal zone and thus, designated areas.

The following designated areas are either partially or entirely located on federal lands and cannot be approved:

- 1) Sisoalik Spit Subsistence Use Area
- 2) Kobuk-Selawik Lakes Subsistence Use Area
- 3) Cape Espenberg/Goodhope River Subsistence Use Area
- 4) Kobuk River Delta Subsistence Use Area
- 5) Selawik River Delta Subsistence Use Area
- 6) Maniilaq River/Ambler Lowlands Subsistence Use Area
- 7) Inmachuk River Subsistence Use Area
- 9) North Fork Squirrel River/Omar River Subsistence Use Area
- 10) North Kivalina Coast Subsistence Use Area
- 11) Onion Portage Subsistence Use Area
- 12) Eschscholtz Bay Subsistence Use Area
- 13) Elephant Point/Choris Peninsula Subsistence Use Area
- 14) Kobuk River Sheefish/Chum Salmon/Whitefish Subsistence Use Area
- 15) Wulik River Subsistence Use Area
- 16) Noatak River Subsistence Use Area
- 17) Upper Kivalina River Subsistence Use Area

The proposed designated subsistence uses areas do not comply with the regulations or the guidance provided by OPMP. fail to incorporate changes

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

	<p>recommended by OPMP to bring the use areas into compliance, and therefore are not recommended for approval.</p> <p>The Lower Buckland River Subsistence Use Area designated subsistence area is recommended for approval provided the following changes are made.</p> <ol style="list-style-type: none">1. Remove non-approved subsistence areas from the designated area map.
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Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<p><i>IMPORTANT HABITAT</i> Designated Important Habitat Areas</p>		
<p>The NAB establishes the following areas as Important Habitat Areas under 11 AAC 114.250(h). These areas are identified in maps identified in the three headings below:</p> <p>1) Sensitive habitats identified in the NOAA Northwest Arctic Alaska Environmentally Sensitivity Index (ESI) Maps 1 -12 (Appendix E) are designated as important habitat for the following species:</p> <ul style="list-style-type: none"> • Terrestrial Mammals <ul style="list-style-type: none"> • Muskox • Marine Mammals <ul style="list-style-type: none"> • Pinnipeds: Bearded seal, ringed seal, spotted seal, Steller sea lion, and walrus. • Whales: Beluga, blue, bowhead, fin, gray, killer, minke and northern right whale. • Birds <ul style="list-style-type: none"> • Diving Birds: Cormorant, loons, Pacific loon, pelagic cormorant, red-necked grebe, red-throated loon, yellow-billed loon. • Gulls/Terns: Aleutian tern, Arctic tern, glaucous gull, herring gull, mew gull. • Raptors: American peregrine falcon, Arctic falcon. • Seabirds: Black guillemot, common murre, crested auklet, dovekie, horned puffin, least auklet, murre, parakeet auklet, pigeon guillemot, thick-billed murre, tufted puffin, black-legged kittiwake, pomarine jaeger, seabirds. • Shorebirds: American golden plover, bar-tailed godwit, black-bellied plover, dunlin, Hudsonian godwit, long-billed dowicher, Pacific golden plover, pectoral sandpiper, red phalarope, red-necked phalarope, rock sandpiper, ruddy turnstone, semipalmated sandpiper, sharp-tailed sandpiper, western sandpiper, whimbrel. • Wading birds: Sandhill crane. • Waterfowl: American wigeon, black scoter, brant, Canada goose, common eider, dabbling ducks, emperor goose, geese, greater scaup, greater white-fronted goose, green-winged teal, king eider, long-tailed 	<p><i>Response</i></p>	<p><i>Comments/Discussion</i></p>

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

<p>duck, mallard, northern pintail, northern shoveler, red-breasted merganser, scoters, snow goose, spectacled eider, Steller's eider, surf scoter, tundra swan, white-winged scoter.</p> <ul style="list-style-type: none"> • Fish Sheefish, whitefish, Arctic char, Chinook salmon, chum salmon, coho salmon, dolly varden, pink salmon, sockeye salmon, Pacific herring, starry flounder, burbot, northern pike, rainbow smelt, Pacific halibut, saffron cod, capelin. • Invertebrates <ul style="list-style-type: none"> • Bivalves: Alaska razor clam, butter clam, crenulate astarte, pinkneck clam, Siberia softshell clam, softshell clam. • Crabs: Blue king crab, helmet crab, red king crab • Vegetation <ul style="list-style-type: none"> • Eelgrass <p>2) Excluding federal lands and waters, all anadromous waters in the coastal zone identified in the 2005 Fish Distribution Database (Appendix F), including a 1000-foot corridor on either side of the streams measured from the mean high water mark are designated as important habitat (ADFG 2005), and</p> <p>3) All nonfederal onshore areas of the coastal zone are designated as important habitat for caribou. The coastal zone boundary maps in Appendix B show the areas within the coastal zone and land ownership.</p> <p>Unless prohibited by an enforceable policy, uses and activities that could be proposed for areas designated for important habitat areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Applicants may determine if the area covered by their project is located in one of these areas by consulting the maps identified above. The coastal zone boundary maps in Appendix B may also be consulted to determine which areas are outside of the designations because they are federal land. Consulting these maps will make it clear which designations apply to the project area.</p>		
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Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department_ DNR/OPMP_ Phone_ 465-3177_ E-mail Address jaelyn_brock@dnr.state.ak.us

1. Name of designated area? Location of description in plan? Location of justification in plan? Location of boundaries in plan? <i>(OPMP will make this determination)</i>		
2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the location? <i>(OPMP will make this determination)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does the designation exclude federal land?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Do uses and activities within the designated areas have a direct and significant impact on coastal water? Does the Resource Inventory and Analysis include documentation to support this criterion?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Has the designated area been shown by written scientific evidence to be significantly productive habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7. OPMP recommendation:	OPMP recommends this designated area not be approved. The Northwest Arctic Borough also proposes to designate areas identified in the Coastal Resources Inventory and Environmentally Sensitivity Maps as important habitat areas. After consultation with OHMP and ADFG staff, it was determined that these maps do not meet the requirements of written scientific evidence as defined in 11 AAC 114.990(40). The ESI maps are a general inventory of fish and wildlife populations, but do not specify areas that are biologically and significantly productive and show a direct and significant impact on coastal water, as required at 11 AAC 114.250(h). In addition, Northwest Arctic Borough has not complied with the requirement	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department _DNR/OPMP_ Phone _465-3177_ E-mail Address jaclyna_brock@dnr.state.ak.us

demonstrating such. Therefore, the designated area is not recommended for approval.

The Northwest Arctic Borough proposes to designate all anadromous fish waters identified in the ADFG Fish Distribution Database Atlas as important habitat. The Northwest Arctic Borough has demonstrated compliance with 11 AAC 114.250(h) by including information showing the use of the areas will have a direct and significant impact on coastal water, and the areas are shown to be biologically and significantly productive. However, the proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8). As such, and as required by 11 AAC 114.270(e)(3), a district enforceable policy must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." The ADFG Fish Distribution Database Atlas is a matter authorized by state law, and is the authority under which other state laws are implemented. Northwest Arctic Borough has not demonstrated compliance with that statutes and regulations that require the coastal district to demonstrate that the matter is "not adequately addressed by state or federal law." AS 46.40.070(a)(2)(C). The designation of these streams duplicates existing ADF&G law without demonstrating the matter is not adequately addressed. Therefore the designated area is not recommended for approval.

Part 3 designates all offshore, non-federal areas in the Northwest Arctic Borough Coastal zone for caribou habitat. The designation references the coastal boundary atlas maps which are the appropriate scale and show federal lands. The criteria for designating important habitat at 11 AAC 114.250 (h) are that uses and activities within the designated areas have a direct and significant impact on coastal water and that the designated areas are shown by written scientific evidence to be significantly productive habitat. The discussion in Section 7.6.2 of the Resource Inventory and Analysis in the Northwest Arctic Borough Final Plan amendment (NWAB CMP pg. 111) provides a discussion of how caribou calving grounds are biologically and significantly productive based on scientific evidence. The discussion on page

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

	<p>111 references the map in Appendix Q. The caribou calving grounds that are biologically and significantly productive habitats as shown by written scientific evidence in the resource inventory and analysis according to the map in Appendix Q are not located in the areas within the Northwest Arctic Borough coastal zone, nor is a significant portion of the habitats located within the coastal district. These areas are also not directly linked to the discussion of direct and significant impact on coastal water as required by 11 AAC 114.250 (h).</p> <p>The proposed designated important habitat areas do not comply with the regulations or the guidance provided by OPMP, fail to incorporate changes recommended by OPMP to bring the use areas into compliance, and therefore is not recommended for approval.</p>
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Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department_ DNR/OPMP__ Phone_ 465-3177__ E-mail Address jaclyn_brock@dnr.state.ak.us

<p><i>HISTORY OR PREHISTORY</i> Designated Areas for the Understanding of History and Prehistory</p> <p>All onshore non-federal lands and waters within the NAB coastal zone and offshore areas within 1,000 feet of the mean high water of the shoreline of coastal waters are designated as important for the study, understanding or illustration of history prehistory (11 AAC 114.250(i)). The location of these designations may be found by consulting the coastal zone boundary maps in Appendix B. These maps identify the boundaries of this area designation, that is, non-federal lands within the coastal zone.</p> <p>Uses and activities that could be proposed for areas designated for historic and prehistoric areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p><i>Response</i></p>	<p><i>Comments/Discussion</i></p>
<p>1. Name of designated area? Location of description in plan? Location of justification in plan? Location of boundaries in plan?</p> <p><i>(OPMP will make this determination)</i></p>		
<p>2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the location?</p> <p><i>(OPMP will make this determination)</i></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>3. Does the designation exclude federal land?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>4. Is the area described or mapped at a scale sufficient to determine whether a use</p>	<p><input checked="" type="checkbox"/> Yes</p>	

Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn_brock@dnr.state.ak.us

or activity is located within the area?	<input type="checkbox"/> No	
5. Does the Resource Inventory and Analysis include documentation that the designated area is important to the study, understanding, or illustration of national state or local history or prehistory?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
6. OPMP Recommendation:	<p>OPMP recommends this area not be approved.</p> <p>Although the proposed designated area is justified, the proposed enforceable policies applicable for this Understanding of History and Prehistory area are not approvable (see enforceable policy analysis table for rationale). Since there is no state standard under 11 AAC 112 addressing impacts from proposed projects within designated are Important for Understanding of History and Prehistory a coastal district must have an approvable enforceable policy in order for the designated area to be meaningful and applicable. Without an enforceable policy applicable to the proposed designated recreation area, the designation of the area is meaningless for compliance purposes, and therefore is not recommended for approval.</p>	

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy A-1: Subsistence Use Priority

- a. Projects that do not give subsistence use the highest priority use of coastal lands and waters are not allowed.
- b. Projects that would deplete subsistence use opportunities, including the availability of subsistence resources, below the level sufficient to support customary and traditional uses as demonstrated in studies cited in the resource inventory and analysis or studies completed by the Alaska Department of Fish and Game, Division of Subsistence are not allowed.
- c. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy A-2: Subsistence Access

a. Activities that do not accommodate traditional and customary access to coastal resources used for subsistence are not allowed. Site-specific elements of public access include roads, waterways, trails, campsites, and aircraft landing areas. Traditional and customary means of access include but are not limited to aircraft, off-road vehicles, boat, snow machine, dogsled, and foot.

b. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 is specific in addressing impacts to subsistence use areas and "subsistence uses of coastal resources." The proposed coastal district policy addresses "access to subsistence resources" rather than the use areas of those resources, and does not address or mention the application of this policy in relation to the designated subsistence use areas. As such, the proposed enforceable policy does not comply with AS 46.40.070(a)(2), 11 AAC 114.270(e), and does not flow from the state standard at 11 AAC 112.270, as required at 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005).

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy A-3: Subsistence Impacts

a. For projects with potentially conflicting activities with subsistence, the applicant shall include information in the analysis required by 11 AAC 114.270(b) about reasonably foreseeable adverse impacts related to:

- 1) Access to subsistence uses of resources,
- 2) Changes in the amount or availability of plants or animals harvested in the subsistence use area,
- 3) The social welfare of subsistence users from a reduction of subsistence uses, and
- 4) The ability to maintain a subsistence use priority.

b. For a large project, an applicant must include additional information in the analysis required by 11 AAC 112.270(b) about reasonably foreseeable adverse impacts from the project associated with:

- 1) The number of temporary or permanent residents housed at the project site,
- 2) Recreational use of subsistence use areas by project staff,
- 3) Any infrastructure or service improvements required for the project and its workers, and
- 4) Cumulative impacts to subsistence.

c. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b) - (i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already requires that the applicant submit an analysis of reasonable foreseeable adverse impacts of the project to subsistence uses of the area. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy A-4: Commercial Recreation

- a. The following commercial recreational uses and facilities are not allowed:
- 1) Activities that would diminish subsistence use by displacing existing fish and wildlife populations, including the location of temporary camps in areas that could affect migration of caribou,
 - 2) Activities that would interference with subsistence harvests, and
 - 3) Activities that would disturb subsistence use including noise from repeated use of flight paths over areas used for subsistence during times of subsistence use.
- b. The unauthorized use of private property including cabins by commercial recreational users is not allowed.
- c. The disposal of trash or human waste is not allowed in subsistence use areas.
- d. Donation of spoiled game to subsistence users by commercial recreation users is not allowed..
- e. Disturbance of caribou by commercial recreation users during the first 24 hours after the first group of caribou travels through an area is not allowed.
- f. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPPM's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Subsection A: The State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection B: AS 11.46.300-350 already addresses unauthorized use of private property. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection C: Solid waste and human waste disposal are matters the Department of Environmental Conservation has authority to regulate.

Subsection D and E: This part of the policy is neither clear nor concise as to the activities and persons affected by the policies and the requirements of the policies and are not written in enforceable language.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy A-5: Mining and Subsistence

a. Mining activities that are incompatible with subsistence uses are not allowed. Incompatible uses include the following:

- 1) Activities producing mechanical noise that disrupts subsistence use, including the availability of subsistence resources, and
- 2) Transportation routes associated with mines that significantly affect subsistence uses or access to those uses.

b. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas, and requires that the applicant submit an analysis of reasonably foreseeable adverse impacts of the project to subsistence uses of the area. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy B-1: Fish Habitat</p> <p>a. Project activities that would result in a net decrease to the productivity of fish habitat are not allowed. Productivity is directly related to losses to the following functions: Spawning, migration, rearing, and over-wintering.</p> <p>b. Projects within 100 feet landward of the ordinary high water mark from fish habitat are not allowed. This requirement does not apply to projects that require an over-water or water edge location, nor does it preclude necessary stream, river, or lake crossings.</p> <p>c. Sand and gravel operations that do not consolidate operations to the maximum extent practicable are not allowed.</p> <p>d. Applicants for sand and gravel extraction in or adjacent to fish habitat shall include in the project description measures that will prevent or reduce adverse impacts to fish habitat including berms, settling ponds and measures to prevent fish entrapment.</p> <p>e. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the proposed enforceable policy duplicates AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Also, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy B-2: Mining Operations Near Fish Habitat

a. Applicant* for mining projects, other than sand and gravel extraction, in or adjacent to fish habitat that do not incorporate measures into the project description to prevent significant adverse impacts to fish habitat are not allowed. Mining projects that do not include provisions to minimize alteration to streams or channels are not allowed.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 14.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(i)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 provide broad authority to manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

The proposed policy also intends to apply to projects outside of the designated area, which is strictly prohibited. 11 AAC 110.015 addresses the application of enforceable policies to activities outside the designated areas.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy B-3: Offshore Mining</p> <p>a. Other than sand and gravel extraction, mining that would significantly affect fish and wildlife habitat is not allowed. Mining and mineral processing operations that are not compatible with the use of adjacent uplands are not allowed.</p> <p>b. Mining operations without conflict avoidance agreements with affected local governments are not allowed.</p> <p>c. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy B-6: Water Bird Habitat

a. Project activities that would result in channelization, diversion, or damming of water bodies that would alter the natural hydrological conditions and have a significant adverse impact on migratory or nesting shorebird, seabird, or waterfowl habitat are not allowed.

b. This policy relates to uses and activities for fish habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by water birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy B-7: Natural Processes

a. Applicants proposing to conduct an activity on previously undisturbed sites shall address the activity's reasonably foreseeable impacts to habitats in the analysis that accompanies the consistency certification, or for federal activities, in the federal consistency determination.

b. Habitats for which there is scientific evidence of effects from climate change, including rare or endangered plant or animal species that inhabit the project area, the applicant shall include in the analysis that accompanies the consistency certification of federal consistency determination a description of BMPs that minimize project impacts to these resources and help maintain populations of such species.

c. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 111.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the proposed enforceable policy duplicates AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy B-8: Dredging and Filling in Waters</p> <p>a. The following dredging or filling activities in streams, rivers, lakes, wetlands, or saltwater areas including tideflats are not allowed:</p> <ol style="list-style-type: none"> 1) Activities that do not avoid significant impacts to fish and wildlife habitat; 2) Activities that do not avoid significant interference with critical life history phases of wildlife and fish including migration, spawning and calving, and rearing; 3) Activities that do not limit areas of direct disturbance to as small an area as practicable; and 4) Activities that do not maintain circulation and drainage patterns in the area of the fill. <p>b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 33 C.F.R. Parts 320-323, and 18 AAC 60 and 70 manage the disposal of dredged materials into wetlands, rivers, lakes and streams and tideflats. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy B-9: Disposal of Dredged Materials

a. Other than sand and gravel resources, uncontained dredged materials disposed of onshore in riparian areas is not allowed.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(f)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 33 C.F.R. Parts 320-323, and 18 AAC 60 and 70 manage the disposal of dredged materials into riparian areas. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy B-10: Structures Over Waters

a. Structures in or over streams, lakes, rivers, wetlands, or saltwater including tideflats with the following effects are not allowed:

- 1) Structures that decrease fish and wildlife habitat productivity, including effects to fish and wildlife migration, spawning, and rearing, and
- 2) Structures that reduce opportunities for fish harvesting activities.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 manage resident and anadromous fish waters, including the placement and impacts associated with bridges and culverts. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy C-1: Cultural, historic and Archeological Surveys

a. Applicants proposing to conduct activities that would disturb historic or prehistoric resources including activities in historic areas such as fish camps culture camps or Native allotments shall consult with the NAB prior to submission of a consistency certification to determine if a resource survey is necessary. The resource survey will be used by the NAB and appropriate state and federal agencies to determine what alternative measures will be necessary to protect historic or prehistoric resource. The NAB shall require a resource survey if one or more of the following circumstances exist:

- 1) The proposed activity is with one mile of a known historic or prehistoric site catalogued by the State Historic Preservation Office or by the NANA regional Native corporation, or
- 2) The project is a large project.

b. This policy relates to uses and activities for areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 114.250(i) as described in Section 4.4.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The policy is neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. Further language suggestions were made by OPMP on September 19, 2006 which would have made this policy approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy C-2: Cultural Resource Protection</p> <p>a. The applicant shall ensure that the following standards are implemented to protect historic and prehistoric resources:</p> <ol style="list-style-type: none"> 1) Archaeological, prehistoric and historic resources shall be protected from adverse impacts caused by surrounding project uses and activities. 2) Known artifacts of significant historic, prehistoric or archeological importance shall not be disturbed during project development unless the landowner and the NAB approve the action. 3) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall notify the landowner and the NAB before continuing work that could damage the artifacts. 4) Historical artifacts shall not be removed from lands in the NAB without permission from the landowner and affected communities. <p>b. This policy relates to uses and activities for areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 114.250(i) as described in Section 4.4.2</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(k)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The policy is neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. Further language suggestions were made by OPMP on September 19, 2006 which would have made this policy approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

Northwest Arctic Borough: OPMP District Policy Analysis Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy D-1: Bank Stabilization</p> <p>a. All stream or lake bank cuts, fills or exposed earthwork adjacent to water bodies, including streams, wetlands and marine waters, shall be stabilized to prevent erosion into adjoining waters, during operation and following cessation of development activities.</p> <p>b. This policy relates to uses and activities for areas designated as flooding and erosion hazard areas under 11 AAC 114.250(b) as described in Section 4.4.5.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Stabilizing erosion prone areas is considered an appropriate measure for the known natural hazard of erosion and therefore already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing erosion is not adequately addressed.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the impacts to water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy D-2: Design and Siting Criteria

- a. Ground disturbing or construction activities in areas vulnerable to erosion, landslides, melting permafrost, and other unstable ground conditions shall not be allowed unless demonstrated in the project description that measures implemented by the applicant will guarantee the ability of the activity or project to withstand naturally-generated forces and protect the viability of biological resources.
- b. Development activities shall minimize removal of existing vegetative cover in erosion prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native species or by other appropriate erosion control measures when re-vegetation alone would not prevent erosion.
- c. The applicant shall use appropriate measures to minimize run-off which might otherwise cause accelerated erosion, and retain natural drainage patterns and natural groundwater recharge areas.
- d. Projects in permafrost areas shall be designed to minimize heat transfer to the ground in order to avoid melting the permafrost and causing slumping, flooding, thermokarst, or draining.
- e. Projects in areas subject to ice hazards shall not be allowed unless the applicant demonstrates in the project description that measures will adequately prevent damage from reasonably foreseeable ice hazards.
- f. Part a of this policy relates to uses and activities for all areas designated as natural hazard areas under 11 AAC 114.250(b). Parts b and c apply to areas designated as flooding and erosion hazard areas. Part d applies to areas designated as susceptible to permafrost hazards. Part e applies to areas designated as ice hazards as described in Section 4.4.5.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Appropriate measures to prevent damage from known natural hazards is already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing identified natural hazards in the Northwest Arctic Borough is not adequately addressed.

It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

Northwest Arctic Borough: OPMP District Policy Analysis Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy E-1: Coastal Facilities</p> <p>a. In planning for and approving major waterfront facilities, docks, piers, cargo handling and storage areas, commercial fishing support facilities, marinas, and other structures placed in coastal waters, priority will be given to facilities that do not duplicate other coastal facilities and to facilities that optimize the use of coastal land and water.</p> <p>b. This policy applies to uses and activities in and adjacent to coastal waters, and it applies to the statewide Coastal Development standard subject use (11 AAC 112.200(c)).</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

This policy is neither clear nor concise as to the activities and persons affected by the policies and requirements of the policies.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy F-1: Utility Corridors</p> <p>a. Utility corridors, including pipelines and transmission lines, that do not minimize adverse impacts to fish and wildlife populations and habitat are not allowed. Projects that do not use existing corridors capable of accommodating the purposes of the project are not allowed.</p> <p>b. Above-ground utility lines and pipelines in caribou habitat shall be buried wherever geographical conditions permit. Utility lines and pipelines in these areas that cannot be buried due to soil or geographical conditions that do not significantly reduce the productivity of moose or caribou habitat are allowed.</p> <p>c. This policy is established under the statewide Utility Routes and Facilities standard subject use (11 AAC 112.240) and it applies throughout the coastal area.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Pipelines are included in the definition of "utilities routes or facilities" at 11 AAC 112.990(30), and are therefore addressed specifically within the State Utility Routes and Facilities Standard at 11 AAC 112.240(b)(2). The proposed policy is also addressed within the State Habitat Standard at 11 AAC 112.300. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy F-2: Transportation Corridors

a. The following activities are not allowed:

- 1) Transportation corridors that do not minimize or prevent adverse impacts to fish and wildlife populations and habitat and prevent the loss of fish and wildlife habitat and loss or displacement of fish and wildlife populations.
- 2) Transportation corridors that do not minimize the number of river, stream, and lake crossings to the extent practicable,
- 3) Transportation corridors that do not maintain bank stability and prevent erosion, and
- 4) Transportation corridors that do not use existing corridors when traffic can be accommodated on the existing corridors.

b. Transportation corridors that significantly reduce the productivity of caribou habitat are not allowed.

c. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Transportation corridors are included in the definition of "transportation routes or facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The proposed policy is also addressed within the State Habitat Standard at 11 AAC 112.300. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy F-3: Off-Road Access

- a. Off-road tundra travel associated with a project that destroys tundra vegetation, fragile soils, permafrost, or wetlands is not allowed.
- b. Operations in caribou calving areas that involve repeated off-road vehicle are not allowed during the calving period.
- c. Operations in moose over-wintering areas during sensitive periods when significant populations of moose are present are not allowed.
- d. Project-related off-road vehicle use that interferes with subsistence uses or caribou migration are not allowed.
- e. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Roads are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy F-4: New Airstrips

- a. Activities related to new airstrips that disturb fish and wildlife populations through physical, visual, and acoustical disturbances are not allowed.
- b. Projects for new airstrips that do not involve consultation with affected communities and the NAB are not allowed. Projects that limit options for future community growth by splitting the village in two parts are not allowed.
- c. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Air terminals and facilities are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy G-1: Land-Based Seismic Surveys

a. Seismic surveys occurring on land will be located, designed, and conducted in a manner that avoids significant disturbances to fish and wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife. Depending on site-specific concerns, seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation used may be required by the coordinating agency after consultation with the NAB.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230)

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed coastal district policy addresses land-based seismic surveys which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005). "Land-based seismic surveys" are not considered development as a "major energy facility," as defined at 11 AAC 112.990(14).

In addition, certain habitats and aspects of the proposed policy are already addressed by the State Energy Facilities Standard at 11 AAC 112.230, the State Habitat Standard at 11 AAC 112.300, and the State's authority at AS 41.14.840 and AS 41.14.870. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy G-2: Water-Based Seismic Surveys

a. Seismic surveys sited in fresh and marine waters shall minimize adverse effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques, other than explosives, that do not significantly affect fish and wildlife. Seismic surveys shall be timed to avoid impacts to commercial and subsistence fishing and migrating smolts.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed coastal district policy addresses water-based seismic surveys which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005). "Water-based seismic surveys" are not considered development as a "major energy facility," as defined at 11 AAC 112.990(14).

In addition, certain habitats and aspects of the proposed policy are already addressed by the State Energy Facilities Standard at 11 AAC 112.230, the State Habitat Standard at 11 AAC 112.300, and the State's authority at AS 41.14.840 and AS 41.14.870. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy G-3: Oil and Gas Leasing</p> <p>a. Oil and gas lease sales that would result in significant adverse effects to fish and wildlife populations or their habitat and to commercial fishing and subsistence uses are not allowed.</p> <p>b. This policy relates to uses and activities for areas designated as important habitat under 11 AAC 112.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commission:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see designated area analysis table for justification. Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, oil and gas leasing is considered a "use of state concern" as defined at AS 46.40.210. Under AS 46.40.060, the district has not demonstrated that this policy does not arbitrarily or unreasonably restrict a use of state concern.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the effects of oil and gas processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy G-4: Siting of Energy Facilities</p> <p>a. Permanent energy facilities in the following areas are not allowed:</p> <ol style="list-style-type: none"> 1) Designated important habitat areas, and 2) Areas where there would be significant adverse impacts to subsistence uses or commercial fishing. <p>b. The applicant shall submit an analysis with the consistency certification or federal consistency determination that describes measures that will be implemented to prevent or reduce conflicts with fish and wildlife and their habitat, subsistence uses and commercial fishing.</p> <p>c. Applicants shall demonstrate in the project application packet that it has consulted with the borough and affected communities regarding measures to minimize the probability of spills or other forms of contamination and dispersal of emissions for activities that are not regulated under AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and the regulations developed under these statutes. The coordinating agency shall provide an opportunity for public comments for these matters during the consistency review.</p> <p>d. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Subsection (a)(1) of the proposed policy are already addressed by 11 AAC 112.230 (1), (11)-(14) and 11 AAC 112.300. In addition, the proposed Important Habitat designated Area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, subsection (a)(1) of the proposed policy will not be applicable, nor permissible.

Subsection (a)(2) of the proposed policy is already addressed by 11 AAC 112.230 (1) and (13).

Subsection (b) of the proposed policy is addressed by 11 AAC 112.230(1), (11)-(14), and 11 AAC 112.300

Subsection (c) is already addressed by 11 AAC 110.215, the requirements in the consistency review packet. This subsection of the policy also does not flow from 11 AAC 112.230 Energy Facilities state standard. Further, this subsection addresses matters regulated by the Department of Environmental Conservation. Finally, this subsection is also already addressed by 11 AAC 110.245 comment deadlines.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy G-5: Dismantlement, Restoration and Rehabilitation

a. Applicants shall include alternative measures in the project description that is submitted with the consistency certification that outline plans for the dismantlement of oil and gas facilities and restoration and rehabilitation of the project area at the end of the useful life of the facilities. This plan shall include measures to return the area to pre-project conditions, to the extent practicable, describe when these measures will be implemented, and document expected costs and resources available to implement the measures.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends that the enforceable policy not be approved.

The proposed coastal district policy addresses dismantlement, restoration, and rehabilitation of oil and gas facilities which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005).

11 AAC 112.230 addresses where new energy facilities are located, while the proposed district policy addresses dismantlement, restoration, and rehabilitation at the completion of the facilities usefulness.

Habitats are adequately addressed by the avoid, minimize, mitigate sequence at 11 AAC 112.300

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy G-6: Hydroelectric Projects

a. An applicant proposing to site a hydroelectric project in an area that will result in a decrease in fish production in the affected water body shall include an analysis with the consistency certification or federal consistency determination that describes measures that will be implemented to maintain or enhance stocks of commercial or subsistence fish species.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the Designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this enforceable policy not be approved.

Various State and federal agency laws, including AS 41.14.840, AS 41.14.870, and 33 C.F.R. Parts 320-323 manage impacts from energy facilities on fish and wildlife habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately address

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy G-7: Wind Generation</p> <p>a. Wind generation projects shall be sited to minimize mortality to birds.</p> <p>b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy be approved in whole.

This enforceable policy flows from the Energy Facilities State Standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.

The policy addresses a matter regulated by state law, namely 11 AAC 112.230. The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.

Northwest Arctic Borough: OPMP District Policy Analysis Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy H-1: Sisoalk Spit Subsistence Area</p> <p>a. Project activities are not allowed during periods of subsistence use for trapping, sheep hunting, moose hunting, egg gathering, waterfowl hunting, marine mammal hunting, and fishing that usually occur in this area between June 1 and September 30.</p> <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters..</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200, 112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMF District Policy Analysis Table

POLICY TEXT:

Policy H-2: Kobuk-Selawik Lakes Subsistence Area

a. Project activities are not allowed during periods of subsistence use activities. The approximate times of use are indicated in parentheses when known:

- 1) Seal hunting (September - October)
- 2) Herring spawning (May - June)
- 3) Waterfowl hunting (April 15 - October)
- 4) Fishing (year-round)
- 5) Egg gathering (June 1 - July 31)
- 6) Trapping
- 7) Berry picking (summer and fall)

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OFMP District Policy Analysis Table

POLICY TEXT:

Policy H-3: Cape Espenberg/Goodhope River Subsistence Area

a. Project activities are not allowed during periods of subsistence use activities. The approximate times of use are indicated in parentheses:

- 1) Seal and walrus hunting (May 1 - July 15)
- 2) Moose hunting (September - May)
- 3) Waterfowl hunting (August 1 - October 31)
- 4) Trapping (winter)
- 5) Egg gathering (June 1 - July 31)
- 6) Fishing (year-round)
- 7) Berry picking (summer and fall)

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-4: Kobuk River Delta Subsistence Use Area

a. Project activities are not allowed during periods of subsistence use activities. Subsistence use activities generally occur during the times indicated in parentheses:

- 1) Waterfowl hunting (July 1 - August 15)
- 2) Fishing (year-round)
- 3) Trapping (April 1 - June 10)
- 4) Berry picking (summer and fall)
- 5) Trapping
- 6) Moose hunting

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters. .

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy H-5: Selawik River Delta Subsistence Use Area</p> <p>a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:</p> <ol style="list-style-type: none"> 1) Waterfowl hunting (April - October) 2) Fishing (year-round) 3) Trapping (April 1 - June 10) <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters..</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the LNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-6: Manillaq River/Ambler Lowlands Subsistence Use Area

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Caribou hunting (mid-August - mid-October)
- 2) Waterfowl hunting (May 1 - 31 and September 1 - 30)
- 3) Fishing (year-round)
- 4) Berry picking (summer and fall)
- 5) Trapping

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters..

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.40G, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy H-7: Inmachuk River Subsistence Use Area</p> <p>a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:</p> <ol style="list-style-type: none"> 1) Fishing (year-round) 2) Moose, caribou, and musk-ox hunting (August - March) 3) Beluga whale hunting (June and July) 4) Trapping (winter) 5) Waterfowl hunting (April-September) 6) Egg gathering (May-July) 7) Berry picking and herb gathering (summer and fall) <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-8: Lower Buckland River Subsistence Use Area

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Waterfowl hunting (April 15 - June 15 and August 15 - Sept. 15)
- 2) Seal hunting (April 15 - October 31)
- 3) Other marine mammals
- 4) Moose hunting (September - March)
- 5) Fishing (year-round)
- 6) Berry picking and herb gathering (summer and fall)

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC, 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was recommended for approval, 11 AAC 114.270 (g) requires that a description or map that is developed with an enforceable policy under 11 AAC 114.270 must be referenced in the enforceable policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

In addition, the State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas, and requires that the applicant submit an analysis of reasonably foreseeable adverse impacts of the project to subsistence uses of the area. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-9: North Fork Squirrel River/Omar River Subsistence Use Area

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Caribou hunting (mid-August - mid-October)
- 2) Fishing (year-round)
- 3) Waterfowl hunting (September - October)
- 4) Trapping (winter)
- 5) Egg gathering (May-July)

b. This policy relates to uses and activities for designated subsistence use areas under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-10: North Kivallina Coast Subsistence Use Area

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Marine mammal hunting (March 15 - July 15)
- 2) Waterfowl hunting (April 1 - May 31 and September 1 - 30)
- 3) Egg gathering (May-July)

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-11: Onion Portage Subsistence Use Area

a. Development projects are not allowed in this area during times of subsistence use.

b. The following uses are improper uses and are prohibited in the area at any time due to their impact to subsistence uses:

- 1) Floodplain gravel extraction, and
- 2) The construction of any structure not related to:
 - cultural resource management,
 - fish and wildlife management, or
 - subsistence activities.

c. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy H-12: Eschsoltz Bay Subsistence Use Area</p> <p>a. Development activities are prohibited during periods of subsistence use activities. The general times of subsistence use is indicated below.</p> <ol style="list-style-type: none"> 1) Beluga Whales (subsistence harvest of beluga whales, which usually takes place in a two-to four-week period between June 1 and July 15) 2) Spotted Seals <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-13: Elephant Point/Choris Peninsula Subsistence Use Area

a. Project activities are not allowed in this area during times of subsistence use.

b. Priority Uses: The following uses are priority uses in the area and activities shall avoid significant adverse impacts to these uses and resources:

- 1) Subsistence activities,
- 2) Cultural resource management, and
- 3) Fish and wildlife management.

c. Beluga Whales: Activities are not allowed in the area during times when subsistence use is occurring generally during a two-to four-week period between June 1 and July 15.

d. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-287, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-14: Kobuk River Sheefish/Chum Salmon/Whitefish Subsistence Use Area

a. All non-subsistence uses within this area are prohibited during times of subsistence use.

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-15: Wullk River Subsistence Use Habitat Area

a. Project activities are not allowed in this area during times of subsistence use.

b. This policy relates to uses and activities for designated for this subsistence use area under the authority of 11 AAC 114.250(g). Parts a and c relate to uses and activities for areas designated as important habitat under 11 AAC 114.250(h). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of those policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:

Policy H-16: Noatak River Subsistence Use Area

- a. Project activities are not allowed in this area during times of subsistence use.
- b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). Parts b, c and d relate to uses and activities for areas designated as important habitat under 11 AAC 114.250(h). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

Northwest Arctic Borough: OPMP District Policy Analysis Table

POLICY TEXT:	CRITERIA:
<p>Policy H-17: Upper Kivalina River Subsistence Use Area</p> <p>a. Project activities are not allowed in this area during times of subsistence use.</p> <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.270 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

Northwest Arctic Borough: OPMP District Policy Analysis Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

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The Commissioner of the Department of Natural Resources finds that the North Slope Borough Coastal Management Plan meets the requirements of AS 46.39, AS 46.40, 11 AAC 112 and 11 AAC 114 for coastal management plans, and pursuant to 11 AAC 114.345(k)(1), approves the plan in part, adopting by reference the findings and conclusions set forth in the October 23, 2007 recommendation of the Office of Project Management and Permitting.

10/31/2007

Date



Thomas E. Irwin
Commissioner

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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October 31, 2007

The Honorable Edward Itta Sr.
Mayor of North Slope Borough
P.O. Box 69
Barrow, AK 99723

RE: Commissioner Approval of the North Slope Borough's Final Plan Amendment

Dear Mr. Itta:

Thank you for submitting the North Slope Borough's revised coastal management program to the Department of Natural Resources (DNR) for our review. In accordance with 11 AAC 114.345(k), and based on DNR's Office of Project Management and Permitting's (OPMP) recommendations, the Commissioner of DNR approved the North Slope Borough's Final Plan Amendment on October 31, 2007.

While DNR has approved the North Slope Borough's Final Plan Amendment, the plan does not yet take effect. OPMP must submit the approved Final Plan Amendment to the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM) for their review and approval. OPMP will submit your approved Final Plan Amendment to OCRM by November 30, 2007. In addition, the North Slope Borough must approve or disapprove the approved Final Plan Amendment within 90 days following the DNR Commissioner's approval and generally after the OCRM review and approval. The North Slope Borough has until January 29, 2008, to approve the Final Plan Amendment by ordinance, unless the United States Department of Commerce has not fully approved the plan amendment under 16 U.S.C. 1455.

If you choose to mediate the Commissioner's decision, you have until November 13, 2007 to notify OPMP of your decision to mediate. Otherwise a complete and clean electronic version (i.e., compact disk, 2 copies) of your Final Plan Amendment incorporating all the changes approved by the DNR Commissioner (including deleting all parts of the plan that were not approved) must be submitted within 15 days after approval. This is required before we can send your Final Plan Amendment to the Office of Ocean and Coastal Resource Management (OCRM) for their review and approval.

I recognize that certain portions of your plan amendment weren't approved by the DNR Commissioner, and I understand that this may be a source of frustration and concern for you. There

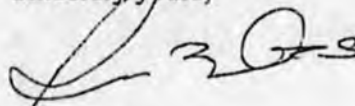
"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

Mr. Itta
10/31/07
Page 2

are specific legal reasons for disapproving these sections, most of which are regulatory based. The ACMP regulations limit the topics and opportunities for coastal districts to write enforceable policies. The DNR Commissioner is aware of this limitation, has expressed his desire to revisit that regulatory limitation, and has publicly acknowledged the need to conduct a full evaluation on the ACMP regulations to identify needed revisions. It is our intent to initiate that formal evaluation one year after the ACMP reform efforts (coastal district plan revisions, ABC List revisions, etc.) are fully implemented. We expect the reform efforts to be complete no later than June 30, 2008. It is my hope and desire that you will join us in that evaluation effort, and work with us to make the necessary regulatory revisions that will allow the coastal districts to have a more robust plan.

Again, congratulations on your approved Final Plan Amendment. If you have any questions about the process, please contact David Gann at (907) 465-3529.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Randy Bates", written over a horizontal line.

Randy Bates
Deputy Director

cc: Johnny Aiken, Coastal Coordinator
cc: Glenn Gray, Coastal Consultant

**Department of Natural Resources
Office of Project Management and Permitting**

**Final Recommendation on the
Final Plan Amendment (FPA) of the
North Slope Borough Coastal District
Coastal Management Plan**

October 23, 2007

RECOMMENDATION TO THE COMMISSIONER3
SUMMARY FINDINGS3
PLAN ANALYSIS and FINDINGS4

ATTACHMENTS:

- 1. Enforceable Policy Analysis Table**
- 2. Designated Area Analysis Table**

INTRODUCTION

The North Slope Borough coastal district submitted the Final Plan Amendment (FPA) of its Coastal Management Plan on April 12, 2007 per 11 AAC 114.345(g). The Department of Natural Resources, Office of Project Management and Permitting (DNR, OPMP) released the preliminary recommendation for the North Slope Borough final plan amendment on June 12, 2006. OPMP provided a thirty day review and comment period from June 12, 2006 through July 12, 2006. Per 11 AAC 114.345(j), OPMP had thirty days to consider timely comments and negotiate resolution of any issues and to submit a final recommendation to the commissioner. Negotiations continued through 2006 and early 2007 until the North Slope Borough submitted their revised FPA on July 16, 2007. This package of documents represents OPMP's final recommendation to the DNR Commissioner.

Office of Project Management and Permitting Review

The Alaska Coastal Management Program provides standards and regulations that guide or direct development of a district coastal management plan at 11 AAC 112 and 11 AAC 114. The Final Plan Amendment for the North Slope Borough Coastal Management Plan is analyzed against these regulations in these final comments to the commissioner. In accordance with 11 AAC 114.345(k), the commissioner will either (1) approve the request in whole or in part, (2) approve the request if the district makes each change that OPMP requires, (3) identify that the request is outside the scope of the amendments under this section, or (4) disapprove the request in whole or in part.

OPMP's final recommendations for the approvability of each district enforceable policy and each designated area are found in the respective attached tables and summarized on the next page.

FINAL RECOMMENDATION TO THE COMMISSIONER

Per 11 AAC 114.345 (j) OPMP recommends that the DNR Commissioner approve sections of the North Slope Borough's final plan amendment in part.

OPMP recommends **approval** for the following district enforceable policies **in part**: B-1, B-2, B-3, F-3, and D-3.

OPMP **does not recommend approval** for district enforceable policies A-1, A-2, A-3, A-4, A-5, A-6, A-7, C-1, C-2, C-4, C-5, C-6, C-7, C-8, C-9, C-10, D-1, D-2, D-4, E-1, E-2, E-3, F-1, F-2, H-1, and H-2.

OPMP recommends **approval** for the following designated areas **in part**: Natural Hazards and Subsistence Use.

OPMP recommends **approval** for the following designated areas **in whole**: Sites Suitable for the Development of Major Energy Facilities and Areas Important to the Study, Understanding or Illustration of History, Pre-history and Archeology.

OPMP **does not recommend approval** for the following designated areas: Important Habitat.

In addition, OPMP finds that the North Slope Borough Coastal Management Plan includes all of the sections as required in 11 AAC 114.345 and as listed below.

		<u>Location in Plan</u>
11 AAC 114.200	Issues, Goals and Objectives	Chapter 2
11 AAC 114.210	Organization	Chapter 5
11 AAC 114.220	Coastal Zone Boundaries	Chapter 4
11 AAC 114.230	Resource Inventory	Chapter 7
11 AAC 114.240	Resource Analysis	Chapter 7
11 AAC 114.250	Subject Uses, Activities, and Designations	Chapters 3, 5
11 AAC 114.260	Proper and Improper Uses and Activities	Chapter 5
11 AAC 114.270	District Enforceable Policies	Chapter 3
11 AAC 114.280	Implementation	Chapter 5
11 AAC 114.290	Public Participation	Chapter 6

OPMP recommends approval of these sections as meeting the requirements of 11 AAC 114.200 -114.290.

PLAN ANALYSIS AND FINDINGS

***State Regulation* 11 AAC 114.200 ISSUES, GOALS, AND OBJECTIVES**

FINDING:

OPMP finds that the Issues, Goals, and Objectives section of the FPA meets the requirements of the regulations and recommends approval with the following exceptions:

- References to policies and designated areas which are not recommended for approval are not approvable and must be removed.

The Issues, Goals and Objectives represent the district's concerns and ways for the district to address their concerns. The state does not assume responsibility for implementation of the objectives or strategies. OPMP recommends approval of the Issues, Goals and Objectives with this understanding by the district.

***State Regulation* 11 AAC 114.210 ORGANIZATION**

FINDING:

OPMP finds that the section of the FPA is approved based on the requirements of the regulations.

***State Regulation* 11 AAC 114.220 COASTAL ZONE BOUNDARIES**

FINDING:

OPMP finds that the Coastal Zone Boundaries section of the FPA is approved based on the requirements of the regulations.

***State Regulation* 11 AAC 114.230 RESOURCE INVENTORY**

FINDING:

OPMP finds that the Resource Inventory and Analysis section of the FPA meets the requirements of the regulations and supports those enforceable policies and designated areas which are recommended for approval. OPMP recommends that the following components of the Resource Inventory not be approved:

- All references to the designation of the following designated areas which are not recommended for approval:
 - Subsistence Use Areas for Fish and Gathering

- Natural Hazard Areas for Permafrost: All coastal waters south of Point Hope
 - Natural Hazard Areas for Erosion: Areas within 20 feet of the mean high water mark of rivers
 - Important Habitat
- All references to proposed enforceable policies which are not recommended for approval

State Regulation
11 AAC 114.240 RESOURCE ANALYSIS

FINDING:

OPMP finds that sections of the Resource Analysis chapter of the FPA is approved based on the requirements of the regulations for specific policies.

State Regulation
11 AAC 114.250 SUBJECT USES, ACTIVITIES, AND DESIGNATIONS

FINDING:

OPMP finds that the Subject Uses and Activities section of the FPA meets the requirements of the regulations. Designated areas are addressed in Chapter 3 Enforceable Policies, Chapter 7 Resource Inventory and Analysis, Appendix D: Designated Area and Enforceable Policy Designation, Appendix H: Areas Designated as Suitable for Energy Facilities, Appendix K: Enforceable Policy Cross Reference Table and the Designated Area Cross Reference Table, Appendix L: Designated Area Cross Reference Table, and Appendix O: Subsistence Use Areas and Designations. OPMP finds that some of the designated areas and enforceable policies are approvable, while others are not approvable. The attached **Designated Area Analysis Table and Enforceable Policy Table** analyzes the proposed designated areas and policies for compliance with the regulations and identifies those designated areas and enforceable policies that are approvable and those that are not approvable. All references throughout the coastal management plan to designated areas and enforceable policies which are not recommended for approval are also not recommended for approval.

State Regulation
11 AAC 114.260 PROPER AND IMPROPER USES

FINDING:

OPMP finds that the Proper and Improper Uses section of the FPA is approved based on the requirements of the regulations.

State Regulation
11 AAC 114.270 DISTRICT ENFORCEABLE POLICIES

FINDING:

OPMP finds that only part of the proposed enforceable policies in the District Enforceable Policy section of the FPA meet the requirements of the regulations. The attached **Enforceable Policy Analysis Table** analyzes the proposed policies for compliance with the regulations and identifies those policies, or parts of policies that are recommended for approval. All references throughout the coastal management plan and its appendices to enforceable policies or parts of enforceable policies which are not recommended for approval are also not recommended for approval.

State Regulation
11 AAC 114.280 IMPLEMENTATION

FINDING:

OPMP finds that the Implementation chapter of the FPA is approved based on the requirements of the regulations.

State Regulation
11 AAC 114.290 PUBLIC PARTICIPATION

FINDINGS:

OPMP finds that the Public Participation chapter of the FPA is approved based on the requirements of the regulations.

REQUIRED TEXTUAL CHANGES:

Once the coastal management plan is approved by the DNR Commissioner and the Office of Ocean and Coastal Resource and Management (OCRM), it carries the weight of law. Therefore, the plan must contain factual information and be free of editorial opinions. In this regard, the following text must be deleted.

P. 3: "The regulations deemphasized the role of coastal districts and narrowed their ability to develop enforceable policies." This is an editorial opinion.

P.20: In the second paragraph "These policies give the NSB "a seat at the table"...", change the term "These policies" to "An approved coastal management plan".

P. 21: Footnote 2 at the bottom of the page is incorrect. The statewide standards at 11 AAC 112 went into effect on January 1, 2006.

P. 22: Table 3-1 incorrectly cites the source in 11 AAC 114.250. The regulations referred to in 11 AAC 114.250 are 11 AAC 112.200- 11 AAC 112.240, 11 AAC 112.260- 11 AAC 112.280 and 11 AAC 114.250 (b)-(i).

P. 22: Footnote 4 is incorrect. Districts can write an enforceable policy that applies to Energy Facilities without designating an area.

P. 41: Several definitions duplicate definitions in state statutes and regulations and must be deleted. The following terms are duplicative: avoid; federal consistency determination; habitat; important habitat; major facility or major project; minimize, minimizing, and minimized; mitigate; natural hazards; offshore; ordinary high water; and significant adverse impacts.

P. 47: "Previously, a consistency review was conducted for any activity that would affect coastal resources or uses." This statement is incorrect. Consistency reviews have always only been conducted when there is a state or federal permit triggered by the project or activity.

P. 51: "...but this will no longer be the case because of new restrictions to the district's ability to develop meaningful enforceable policies." This is an editorial opinion. Plus it has nothing to do with the first part of the sentence, which states "The NSB historically incorporated its coastal management program enforceable policies into Title 19..." The revised regulations do not restrict the NSB Assembly's authority to enact ordinances.

P. 74: The new ACMP regulations don't define the term "subsistence uses." The ACMP regulations use the Department of Fish and Game definition of "subsistence uses."

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy H-1: Protection of Coastal Resources and Uses

- a. Transportation corridors are not allowed when the anticipated use can be accommodated by existing corridors.
- b. Major transportation corridors along the coast aligned north to south are not allowed.
- c. Major pipelines along the coast aligned east to west are not allowed.
- d. Inland pipelines that would corral caribou, including pipelines aligned east to west, are not allowed.
- e. Above-ground pipelines are not allowed in areas known as thaw bulbs where the ground cannot safely support the pipeline.
- f. Above ground pipelines located within 500 feet of roads are not allowed. Buried pipelines in roads are allowed.
- g. Pipelines that cannot withstand the impact of a 338 caliber rifle are not allowed.
- h. Pipelines shall maintain an elevation of at least 7 feet, unless the pipeline is buried, or the applicant has demonstrated in the project description that there will be no significant adverse impacts to wildlife passage.
- i. Subsection "a" of this policy is established pursuant to the statewide Transportation Routes and Facilities standard subject use (11 AAC 112.280), and it applies to uses and activities associated with transportation routes and facilities. Subsection "b" of this policy is established pursuant to the statewide Utility Routes and Facilities standard subject use (11 AAC 112.240), and it applies to uses and activities associated with utility routes and facilities.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Parts a, d, g and h of this policy are not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

In addition for parts a and b, roads are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Furthermore for parts c, f, e, g and h, pipelines are included in the definition of "utilities routes or facilities" at 11 AAC 112.990(30), and are therefore addressed specifically within the State Utility Routes and Facilities Standard at 11 AAC 112.240(b)(2). The proposed policy is also addressed within the State Habitat Standard at 11 AAC 112.300. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy H-2: Water Crossings

a. Transportation routes and facilities shall avoid crossing waterbodies unless the crossing is necessary to the purpose and function of the route or facility. When it is necessary to cross water, the applicant shall:

- 1) Consolidate crossings at a single location unless consolidation will cause more adverse effects than separate crossings,
- 2) Conduct construction activities during times when significant numbers of fish and wildlife are not present, especially during critical life stages,
- 3) Use elevated, open pile or pier structures when practicable and otherwise use culverts placed to accommodate the high water mark of record, or
- 4) Site, construct and maintain ice bridges to allow free passage of over-wintering fish by locating crossings in areas where the river freezes to the bottom. Where it is not possible to site an ice bridge in an area that freezes to the bottom, the applicant shall include a monitoring provision in the project description to ensure the ice bridge does not obstruct fish passage.

b. River crossings that restrict free passage of fish are not allowed.

c. This policy is established pursuant to the statewide Transportation Routes and Facilities standard subject use (11 AAC 112.280), and it applies to uses and activities associated with transportation routes and facilities.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

Roads are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

In addition, the proposed enforceable policy duplicates the authority of AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy A-1: Subsistence Use Priority

a. When there are potentially conflicting uses, subsistence use of plants, fish and wildlife, including marine mammals, shall be the highest priority use of the lands and waters in the coastal area.

b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence in Section 3.5.1.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

This policy is not clear and concise and is not enforceable.

The justification in Appendix D of the NSB plan refers to language that does not exist in the policy:

“Subsection a) requires that subsistence use be given a priority by state agencies during the consistency review process. Subsection b) specifies that projects shall not deplete subsistence use activities below the level of customary and traditional use as indicated in studies. The policy uses precise, prescriptive and enforceable language.”

The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy A-2: Subsistence Access</p> <p>a. Project activities shall not interfere with customary and traditional access to subsistence resources unless the applicant demonstrates in the project description that similar alternative access will be provided that is acceptable to the borough without reducing overall access to subsistence resources.</p> <p>b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence under Section 3.5.1.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

This policy is not clear and concise and is subjective, and is therefore not enforceable.

Part a is not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that projects within subsistence use areas must avoid or minimize impacts to subsistence uses of coastal resources. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore not permissible.

The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use protection through the application of the avoid or minimize sequence. Subsistence use includes access to the resource. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed by 112.270.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy A-3: Analysis of Subsistence Impacts

a. The subsistence effects analysis required by 11 AAC 112.270(b) shall:

- 1) Be based on, or be consistent with, scientific and/or local knowledge,
- 2) Include a discussion of reasonably foreseeable adverse project effects to the availability of subsistence resources for taking for subsistence use, including project-related events or activities with the potential to affect subsistence use by causing subsistence resources to abandon or avoid hunting areas, to directly displace subsistence users, to place physical barriers between subsistence resources and subsistence users, or to cause subsistence resources to become unfit for human consumption, and
- 3) Include a discussion of whether effects of the project can reasonably be expected to reduce subsistence uses by an affected community below levels of customary and traditional use, either annually or seasonally. Customary and traditional use shall be determined on the basis of information in studies cited in the resource inventory and analysis, by studies completed by the Alaska Department of Fish and Game, Division of Subsistence, or by other peer-reviewed studies related to North Slope subsistence.

b. For major projects with reasonably foreseeable adverse impacts to the availability of subsistence resources for taking for subsistence use, the subsistence effects analysis required by 11 AAC 112.270(b) shall not be deemed complete until the applicant:

- 1) Submits the subsistence effects analysis to the NSB to verify conclusions and identify potential mitigation measures no later than 30 days prior to submission to the coordinating agency under 11 AAC 112.270(b),
- 2) Demonstrates that traditional knowledge about subsistence uses and effects has been incorporated into the analysis from available literature and from village or tribal entities closest to the project site,
- 3) Include measures for monitoring effects to subsistence uses, and
- 4) Include a provision in the project description for annual review by the NSB of monitoring data related to subsistence uses and the resources on which they depend, to ensure that measures to counter adverse impacts to the availability of subsistence resources to meet subsistence needs are effective.

c. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

The term "major projects" is vague and not enforceable language.

- b. 1): This statement is not enforceable, as the policy states that it occurs before the consistency review. In addition, there is no mitigation sequence in the State subsistence standard.
- b. 2) This action already occurs during a consistency review.
- b. 3) This statement is vague and the policy does not state who monitors.
- b. 4) This statement is not enforceable, as it occurs after the consistency review.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy A-4: Project Disturbance to Subsistence

a. The following project activities are not allowed, with the exception of activities that are necessary to protect human health and safety:

- 1) Aircraft flying below 1500 feet over subsistence use areas for bowhead whales, other marine mammals and caribou when subsistence use is occurring, and
- 2) Aircraft flying below 1,500 feet over concentrations of 50 or more caribou during critical periods including spring migration (generally between April and May), calving (generally between the end of May and the 3rd week of June), insect relief (generally between July and August), and rutting (generally late September through the first week of November).

b. Activities that displace subsistence uses or subsistence resources during times of subsistence use are not allowed unless the applicant has reached an agreement with the NSB Department of Planning and Community Services that there are no reasonable alternatives to activities. Such activities include vessel, land or air traffic; drilling; and geophysical surveys.

c. For activities with a potential to significantly affect subsistence uses, applicants shall include measures in the project description to coordinate activities with communities to avoid disturbance to subsistence uses to the maximum extent practicable.

d. Applicants shall contact the NSB Department of Planning and Community Services to determine when subsistence use is occurring before conducting activities that would displace subsistence uses or subsistence resources during times of subsistence use.

e. Non-subsistence uses are not allowed between August 1 and October 31 in all nonfederal lands and waters within the coastal zone of the following areas: Anaktuvuk River, Kanayut River, Nanushuk River, May Creek, and Itkillik River.

f. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

The policy language is not clear and concise, nor is it enforceable.

In addition, the State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy A-5: Visual Compatibility with Subsistence</p> <p>a. The applicant shall include measures in the project description demonstrating that, to the extent practicable, facilities and structures are designed or sited to blend in with the surrounding landscape unless the applicant demonstrates that such measures would propose threats to wildlife. Measures shall include one or more of the following: Use of colors similar to the surrounding environment, use of non-reflective surfaces, facility design that uses similar shapes or lines as the surrounding environment, or placement of facilities so they are screened from coastal waters or navigable aquatic water bodies.</p> <p>b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence use in areas designated for subsistence use in Section 3.5.1.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46 40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas, The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy A-6: Subsistence Whaling and Harvest of Marine Mammals</p> <p>a. Offshore activities are not allowed if they would reduce the availability of marine mammals for taking for subsistence use below the level of customary and traditional use, as determined by the Borough based on studies referenced in the resource inventory and analysis, studies completed by the Alaska Department of Fish and Game, Division of Subsistence, or other relevant studies.</p> <p>b. Project activities that would reduce the availability of bowhead whales for taking for subsistence use, seasonally or annually, below the level of the subsistence quota set by International Whaling Commission (IWC) are not allowed.</p> <p>c. Offshore activities are not allowed if they would affect subsistence harvest of bowhead whales by changing behavior or distribution in such a way that the whales are:</p> <ol style="list-style-type: none"> 1) Not available in areas where they may be harvested, or 2) Are in areas where they may be harvested but subsistence users face more danger or there is a greater risk that the harvest product will spoil during transport. <p>d. Noise-producing activities that result in received sound levels of 120 decibels where whales are located during times of subsistence whaling are not allowed.</p> <p>e. Applicants proposing to conduct activities that reasonably may be expected to alter the availability of marine mammals for subsistence use shall include at least one or more of the following measures in the project description:</p> <ol style="list-style-type: none"> 1) Use of bottom-founded drilling structures, 2) Use of temporary facilities, 3) Use of low-noise producing equipment, or 4) Timing activities to occur outside of the subsistence hunting periods. <p>f. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for bowhead whaling subsistence use in Section 3.5.1.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

Sections a-c of this policy are not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that the designated area be manage to avoid or minimize significant adverse impacts. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.

Subsection d is not enforceable.

In addition, the State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas, The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

POLICY TEXT:

Policy A-7: Compatibility of Commercial Recreation with Subsistence

a. Commercial recreation activities and facilities, including temporary facilities, shall be located, designed, and conducted to prevent or reduce adverse impacts to subsistence from:

- 1) The loss or displacement of fish and wildlife populations,
- 2) Interference with subsistence use, and
- 3) Noise from flights over villages, cabins or other traditional locations used for subsistence.

b. Commercial recreation activities that disrupt subsistence uses or the availability of subsistence resources are not allowed.

c. During the first 24 hours after the first group of caribou travels through an area, commercial recreation users shall not disturb caribou in such a way alters migration patterns.

d. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the policy not be approved.

Subsection b of this policy is not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that the designated area be managed to avoid or minimize significant adverse impacts. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.

Subsection c of this policy is not enforceable.

In addition, the State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy B-1: Consultation and Surveys

a. Applicants shall contact the NSB Department of Planning and Community Services, the Inupiat Community of the Arctic Slope (ICAS), and all affected tribes in the NSB to determine whether a resource survey shall be submitted with the consistency review packet. A resource survey shall be required by the NSB, ICAS or the affected tribe if one or more of the following circumstances exist:

- 1) The proposed activity is within one-mile of a known historic or prehistoric site catalogued by the Alaska Office of History and Archeology or the NSB Inupiaq History Language and Culture Commission,
- 2) The project is a large project, or
- 3) The project involves an onshore seismic survey.

b. The resource survey shall provide the basis for alternative measures proposed by review participants.

c. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important to the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the following part of this policy be approved.

a. Applicants shall contact the NSB Department of Planning and Community Services, and the Inupiat Community of the Arctic Slope (ICAS) to determine whether a resource survey shall be submitted with the consistency review packet. A resource survey shall be required by the NSB, ICAS or the affected tribe if one or more of the following circumstances exist:

- 1) The proposed activity is within one-mile of a known historic or prehistoric site catalogued by the Alaska Office of History and Archeology or the NSB Iñupiaq History Language and Culture Commission,*
- 2) The project involves an onshore seismic survey.*

b. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important to the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

The following parts of the policy are not recommended for approval:

- a. "and all affected tribes in the NSB" is not clear and concise and is not enforceable.
- a. 2): "large project" the definition of the term is vague.
- b: This activity already occurs during a consistency review.

North Slope Borough District Enforceable Policy Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy B-2: Cultural Resource Protection</p> <p>a. Uses and activities shall comply with the following standards:</p> <ol style="list-style-type: none"> 1) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall immediately notify the landowner and the NSB, and 2) Project activities shall not interfere with noncommercial use of historic or prehistoric sites. <p>b. This policy applies to uses and activities that may affect historic or prehistoric resources in areas designated as for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the following part of this policy be approved.

a. Uses and activities shall comply with the following standards:

- 1) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall immediately notify the landowner and the NSB*

b. This policy applies to uses and activities that may affect historic or prehistoric resources in areas designated as for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

Subsection a.2) of this policy is not recommended for approval. The term "interfere" is vague and is not enforceable.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy B-3: Graves</p> <p>a. Applicants are not allowed to disturb obvious graves.</p> <p>b. In the case of an inadvertent discovery of skeletal remains, work that would further disturb the remains shall cease immediately. The discoverer shall then contact the landowner and the NSB to be advised how to proceed.</p> <p>c. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends part a. and part c. of this policy be approved.

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

Part b. of this policy restates policy B-2 (a), and is not recommended for approval.

North Slope Borough District Enforceable Policy Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy C-1: Bowhead Whale Habitat</p> <p>a. The following project activities that would adversely affect bowhead whale migration, feeding, mating, and calving areas are not allowed:</p> <ol style="list-style-type: none"> 1) Noise-producing activities that result in levels of industrial sound above 120 decibels where bowhead whales are located during times of subsistence whaling, 2) Shipping activities within 10 miles of bowhead whales without a conflict avoidance agreement with the Alaska Eskimo Whaling Commission, 3) Activities that would disturb migrating bowhead whale mothers with calves (May 10 – July 1 and August 1 – October 15), 4) Seismic survey activities occurring within 12 miles of migrating bowhead whales, and 5) Multiple seismic surveys occurring less than 50 miles apart. <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat for bowhead whales as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

The protection of the bowhead whale is addressed under the Marine Mammal Protection Act and the Endangered Species Act. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bowhead whales. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy C-2: Specific Habitat Protection</p> <p>a. For projects with the potential for significant adverse impacts to the following habitats, applicants shall include measures in the project description to avoid, minimize or mitigate the habitat functions that relate to the special productivity of the habitat:</p> <ol style="list-style-type: none"> 1) Offshore areas, including sea ice (for species dependent on offshore habitats including bowhead whales, other marine mammals, seabirds and fish), 2) Estuaries including nutrients and freshwater supplied by aquatic systems (for species that depend on estuaries during an important life stage), 3) Wetlands, including nutrients and the destruction of habitat (for migratory birds and other fish and wildlife that depend on wetlands during important life stages), 4) Tidel flats including nutrients (for species dependent on tidel flats habitats), 5) Exposed high-energy coasts including coastal erosion (for species dependent on this habitat type), 6) Rivers, streams and lakes, including maintenance of instream flow in quantities needed to maintain productivity of species that use this habitat (for anadromous and resident fish and other species dependent on this habitat type), and 7) Upland habitat including natural drainage patterns, natural groundwater recharge, and habitat characteristics important for coastal species (for caribou, moose, muskox, bear, and other species dependent on upland habitat). <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

The State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat: offshore areas, estuaries, wetlands, tideflats, rivers, streams and lakes. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed. Upland habitats are not identified in the important habitat designation and therefore do not flow from 11 AAC 114.250 (h).

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy C-4: Freshwater and Coastal Waters</p> <p>a. Unless a project meets the criteria in subsection "b," facilities shall not be allowed within:</p> <ol style="list-style-type: none"> 1) 500-feet from anadromous water bodies, 2) 250-feet from headwater streams creeks and tributaries, and 3) 100-feet from all other water bodies. <p>b. The setbacks in subsection "a" of this policy may be adjusted by the coordinating agency if the NSB determines that the facility will not significantly affect the function of the habitat including consideration of existing instream and riparian vegetation, slope, soil type, potential for erosion and other natural hazards, and other potential adverse effects of the project on the physical, biological and chemical characteristics of the habitat and the project activities meet one or more of the following criteria:</p> <ol style="list-style-type: none"> 1) Existence of a significant public need for the project activity, 2) The facility is a temporary structure located during a time when anadromous fish are not present, 3) The facility is a bridge, or 4) The facility must be located nearer to the waterbody for health and safety concerns. <p>c. Project activities, including bridges, culverts, docks, pipelines, causeways and ice road crossings shall not:</p> <ol style="list-style-type: none"> 1) Block winter fish passage or displace overwintering fish in pools, and 2) Adversely affect habitat functions, including the capability for spawning, feeding, rearing, and overwintering unless the applicant restores the habitat to support these functions after project disturbance. <p>d. Culverts shall not be used in areas where they repeatedly wash out during flood events.</p> <p>e. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 114.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

State and federal agency authorities, including AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 provide broad authority to manage resident and anadromous fish waters, including the placement and impacts associated with bridges and culverts. The State Habitat Standard at 11 AAC 112.300 also already addresses impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy C-5: Displacement from Habitat

a. Projects activities and facilities shall not reduce the special productivity of the habitat by displacing fish or wildlife in the following habitats, including displacement from noise, project activities or barriers to migration:

- 1) Arctic cisco along their nearshore easterly spring migration from the McKenzie River.
- 2) Caribou calving and insect relief areas,
- 3) Areas used by bird populations for molting, and
- 4) Marine mammal haul-out and rookeries.

b. Applicants for projects with a reasonable likelihood to adversely affect coastal species shall adopt one or more of the following measures into the project description:

- 1) Locating activities outside of major migration routes or areas of concentration,
- 2) Scheduling activities during times when migrations are not occurring,
- 3) Halting operations when concentrations of species would be deflected or disturbed, or
- 3) Reducing noise from activities.

c. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

b. This part of the policy is vague and not enforceable.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by cisco, bird populations and marine mammals. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy C-6: Marine Mammal Haul-outs and Seabird Colonies</p> <p>a. Project activities that adversely impact marine mammals at haul-outs or rookeries or seabirds at seabird colonies are not allowed, including effects that would result in displacement, injury or mortality.</p> <p>b. Travel is not allowed within the distances from marine mammal haul-outs and seabird colonies outlined in this policy unless the travel is essential and the distances cannot be met for health or safety considerations.</p> <ol style="list-style-type: none"> 1) Fixed-wing and helicopter aircraft travel must maintain a minimum altitude of 1,500 feet. 2) Marine watercraft and other activities producing levels of noise that would affect behavior of marine mammals shall maintain the following horizontal distances while species are present: <ol style="list-style-type: none"> i. A 1.5-mile horizontal distance from important seabird colonies and rookeries (generally between April 15 and September 30), ii. A 0.5-mile horizontal distance from marine mammal haul-out sites (generally between May 1 and December 31), and iii. A 0.5-mile horizontal distance from identified haul-out sites for seals (generally between March 1 and September 30). <p>c. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • Does the policy address or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because parts a and b of the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be manage to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bird populations. Specifically, barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by nesting birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy C-7: Bird Nesting and Molting Areas

- a. Project activities that would significantly disturb nesting, brooding or molting birds are not allowed, including activities that would force birds away from nests or chicks or cause molting birds to exhibit stress behavior.
- b. The applicant shall include measures in the project description to meet this policy, including avoidance of nesting and brooding sites, avoidance of areas with molting birds, or timing of activities outside the nesting and molting period.
- c. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bird populations. Specifically, barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by nesting birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy C-8: Caribou Calving Areas</p> <p>a. Project activities that would result in significant adverse impacts to caribou in calving areas during periods of calving are not allowed.</p> <p>b. The applicant shall include measures in the project description to meet this policy that include one or more of the following:</p> <ol style="list-style-type: none"> 1) Timing of activities outside of calving periods (generally between the end of May and the third week of June), 2) Location of activities one mile from calving areas, 3) No permanent facilities in calving areas, 4) Use of convoys during calving periods where this technique is expected to be effective, or 5) Other technologies where the applicant provides convincing information about their effectiveness. <p>b. This policy applies to uses and activities in caribou calving areas included in important habitat areas designated under 11 AAC 114.250(h) as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy C-9: Bear Dens and Seal Lairs

a. Applicants for projects in polar bear and seal habitat shall conduct a pre-activity survey for bear dens or seal lairs.

b. With the exception of essential travel during poor weather conditions where it would be unsafe to meet this policy, fixed-wing and helicopter aircraft shall maintain a minimum altitude of 1,500 feet and aircraft, marine watercraft and other activities producing high levels of noise shall maintain a one-mile horizontal distance for polar bear dens and a 0.5-mile distance from brown bear dens.

c. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) as described in Section 3.5.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(3)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

Barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by polar bears. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy C-10: Kasegaluk Lagoon

a. Project activities occurring on the barrier islands or in the marine and estuarine waters of the Kasegaluk Lagoon that would interfere with the annual harvest of beluga whales, displace them or reduce the availability of whales for harvest are not allowed. Subsistence hunting of beluga whales usually begins in mid-June, but it may begin earlier or later than this date.

b. This policy applies to uses and activities that affect important habitat areas in Kasegaluk Lagoon designated under 11 AAC 114.250(h) as described in Section 3.5.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-287, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by Beluga whales. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy D-1: Project Applications for Hazard Areas

a. Applicants for projects located in areas subject to ice hazards during times when such hazards are reasonably foreseeable shall:

- 1) Prepare an ice management plan, reviewed and approved by an engineer experienced in ice hazards and consistent with local knowledge, that describes systems that will be used for surveillance and detection of ice hazard events and for reporting such hazards to the NSB, and
- 2) Incorporate measures into the project description that demonstrate facilities will be adequately protected from ice hazards. Applicants shall demonstrate in their project description that local knowledge about ice hazards has been considered when developing these measures.

b. Applicants shall provide an analysis in their project application packet about potential hazards and measures to avoid or minimize adverse effects to habitat and subsistence uses from project activities that could be affected by natural hazards. The analysis shall include conservative estimates of hazard potentials.

c. Subsection "a" of this policy applies to uses and activities in areas designated for ice hazards under 11 AAC 114.250(b) as described in Section 3.5.4. Subsection "b" applies to uses and activities in all areas designated as natural hazard areas under 11 AAC 114.250(b) as described in Section 3.5.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, descriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards and the involvement of approved engineers. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat that could be affected by natural hazards. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy D-2: Ice Hazards</p> <p>a. Project facilities and activities shall not be located in areas subject to ice hazards unless there is a significant public need for the facility, and measures are included in the project description to avoid adverse effects to subsistence use and habitat from ice override, ridging, pack ice movement, ice gouging, strudel scour, and the active shear zone.</p> <p>b. In cases where an approval by an engineer under provisions in 11 AAC 112.200(d)(2)(A) conflicts with local knowledge or scientific information about ice hazards in the project area, the coordinating agency shall consult with an independent third-party, funded by the applicant, to resolve the dispute.</p> <p>c. This policy applies to uses and activities in areas designated for ice hazards under 11 AAC 114.250(b) as described in Section 3.5.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards and the involvement of approved engineers. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection b is not approvable because it dictates action by a State agency.

North Slope Borough District Enforceable Policy Table

<i>POLICY TEXT:</i>	<i>CRITERIA:</i>
<p>Policy D-3: Flooding and Erosion Hazards</p> <p>a. Applicants shall minimize excessive runoff which will cause accelerated hydraulic or thermal erosion and to retain natural drainage patterns and natural groundwater recharge areas. Methods to control erosion include:</p> <ol style="list-style-type: none"> 1) Minimizing and limiting areas of ground disturbance near waterbodies, 2) Siting facilities away from areas subject to erosion, 3) Stabilizing disturbed areas as soon as possible after disturbance, 4) Scheduling activities to avoid high winds, waves, and seasonal flooding, and 5) Best available technology proven to control erosion. <p>b. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plants or by other appropriate erosion control measures.</p> <p>c. All stream or lake bank cuts, fills or exposed earthwork adjacent to streams, wetlands or marine waters shall be stabilized to prevent erosion of soil into adjoining waters during construction, operation and following abandonment of development activities.</p> <p>d. In areas where the coast is actively eroding, specifically in those areas not protected by barrier islands, the applicant shall conduct a survey to determine recent and long-term erosion rates.</p> <p>e. This policy applies to uses and activities in areas designated as flooding and erosion natural hazards pursuant 11 AAC 114.250(b) as described in Section 3.5.4.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy be approved in part. OPMP recommends the following part of the policy be approved.

b. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plants or by other appropriate erosion control measures.

OPMP recommends the following parts of this policy not be approved.

b. the phrase "or areas subject to mass wasting" refers to a natural hazard designation that has not been proposed by the district, and has not been approved by OPMP.

Parts a, c and d for the following reasons:

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy D-4: Permafrost Hazards

a. Applicants shall incorporate the best available technologies into project descriptions to prevent disturbance to permafrost that would result in danger to human health or safety or habitat damage. Where disturbance to the organic mat is unavoidable, the disrupted area shall be stabilized to avoid disturbance to the permafrost layer.

b. Applicants for tundra travel activities shall include measures in the project description to monitor effects of tundra travel and to avoid damage to permafrost soils including one or more of the following activities:

- 1) Timing of activities to occur when the ground is adequately frozen or has adequate snow cover so there will be no habitat damage.
- 2) Developing a schedule for use of different types of vehicles depending on snow cover and depth of frozen soil layer using the best available information, or
- 3) Use of vehicles that will not result in damage to the tundra.

c. This policy applies to uses and activities in areas designated as a permafrost natural hazard under 11 AAC 114.250(b) as described in Section 3.5.4.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy E-1: Oil and Gas Activities and Facilities</p> <p>a. Applicants shall demonstrate in the project description how they have worked with local communities and the NSB to site oil and gas activities in a manner that avoids or minimizes adverse environmental and social impacts.</p> <p>b. When project activities have a potential to result in cumulative impacts, applicants shall include an analysis of cumulative impacts in the consistency evaluation required by 11 AAC 110.215(a)(1)(C) or 11 AAC 110.410(c)(1)(B).</p> <p>c. The State of Alaska shall provide an opportunity for the NSB to comment on the siting of energy facilities with respect to the effects to air and water quality for projects not regulated by Alaska Department of Environmental Conservation (DEC) under AS 46.03, AS 46.04, AS 46.14 and the regulations adopted under those statutes.</p> <p>d. Subsection "a" applies to uses and activities in areas designated as suitable for energy facilities under 11 AAC 114.250(e) as described in Section 3.5.5. Subsections "b" and "c" apply to the energy facilities subject use under 11 AAC 112.230 including offshore uses and activities not regulated by DEC.</p>	<ul style="list-style-type: none"> • <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i> • <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i> • <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i> • <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i> • <i>Does the policy use precise, prescriptive and enforceable language?</i> • <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i> • <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i> • <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> ○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i> ○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i> ○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i> ○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i> • <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> ○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i> ○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i>

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The State Energy Facilities Standard at 11 AAC 112.230 already addresses appropriate measures in the siting of energy facilities with consideration of social and environmental impacts. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

In addition, AS 46.40.040(b), AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes are the exclusive enforceable policies of the ACMP. Therefore, a district enforceable policy can not address a matter covered by these statutes and regulations.

Furthermore, uses or permits for mineral or petroleum resource extraction are uses of state concern under 11 AAC 112.230 (b).

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy E-2: Geophysical Surveys

a. Geophysical surveys occurring on land shall be located, designed, and conducted in a manner so as to prevent significant adverse effects to wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife. The applicant shall include in the project description site-specific measures to prevent adverse effects including seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation and equipment used.

b. Geophysical surveys in fresh waters and coastal waters, including on- or under-water ice surveys, shall prevent effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques that do not significantly effect fish and wildlife. Use of explosives, other than from air guns, in these waters for geophysical surveys is not allowed. Geophysical surveys shall be timed to avoid impacts to subsistence hunting and fishing, marine mammal migrations, and migrating fish smolts.

c. All geophysical activities taking place offshore during the open water season shall be coordinated with the Alaska Eskimo Whaling Commission and tribes and shall be scheduled so that such work occurs well outside the time and area of the bowhead whale migration. Applicants shall include measures in the project description to coordinate their operations with other seismic surveys occurring during the same period to address the cumulative effects of seismic operations on bowhead whales. To the extent practicable, geophysical operators shall conduct operations so that no more than one seismic vessel is operating in the Beaufort Sea or the nearshore Chukchi Sea at any given time as the bowhead migration approaches these areas. No geophysical surveys of any kind will be permitted in the spring lead systems.

d. This policy applies to uses and activities covered by the statewide energy facilities standard (11 AAC 112.230), and it applies to all uses and activities associated with siting of energy facilities, including exploration activities.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern: (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

The proposed coastal district policy addresses geophysical seismic surveys which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005). "Geophysical surveys" are not considered development as a "major energy facility," as defined at 11 AAC 112.990(14).

In addition, certain habitats and aspects of the proposed policy are already addressed by the State Energy Facilities Standard at 11 AAC 112.230, the State Habitat Standard at 11 AAC 112.300, and the State's authority at AS 41.14.840 and AS 41.14.870. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy E-3: Dismantlement, Restoration and Rehabilitation

a. Applicants shall include a plan for the dismantlement, restoration and rehabilitation (DRR) of oil and gas facilities with the consistency certification. This plan shall include DRR measures, identify at what point in the project development the measures will be implemented, and identify resources available to fund the DRR.

b. To the maximum extent practicable and to the satisfaction of the borough, the measures shall be designed to return the project area to pre-project conditions, especially in regard to habitat functions and visual impacts to the landscape.

c. DRR measures shall be implemented when a facility is no longer being used and there are no specific plans for future use, unless the NSB agrees that an alternate plan or site treatment is preferable to the one describe in the DRR plan.

d. Upon abandonment, project completion or expiration of permit authorizations, whichever occurs first, permitting agencies may amend required measures identified in the original plan if the NSB agrees:

- 1) There is a demonstrated future use for the site, or
- 2) The original measures would cause greater adverse effects.

e. This policy applies to areas uses and activities in areas designated as suitable for energy facilities under 11 AAC 114.250(e) as described in Section 3.5.5.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(f)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends that the enforceable policy not be approved.

The proposed coastal district policy addresses dismantlement, restoration, and rehabilitation of oil and gas facilities which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005).

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy F-1: Effects of Mining and Mineral Processing

a. For mining and mineral processing activities, the applicant shall incorporate measures into the project description measures to prevent or reduce adverse impacts to important habitat. These measures shall address effects from noise, dust, operations, construction in wetlands or permafrost, habitat alteration, water diversion or reservation, and disposal of mine tailings to habitat functions related to the support of fish and wildlife. Measures shall include restrictions to timing of operations, noise control, setbacks and buffers, or erosion control.

b. To the extent practicable, mining facilities shall be sited to avoid conflict with competing uses.

c. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) as described in Section 3.5.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.400?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

State and federal agency authorities, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 provide broad authority to manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:	CRITERIA:
<p>Policy F-2: Disposal of Excavation Spoils</p> <p>a. Disposal of mine tailings and excavation spoils in lakes, ponds, and wetlands is not allowed unless the applicant demonstrates in the project description that there are no other alternatives.</p> <p>b. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) as described in Section 3.5.2.</p>	<ul style="list-style-type: none"> • Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? • Is this a matter that the Department of Environmental Conservation has the authority to regulate? • Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? • Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? • Does the policy use precise, prescriptive and enforceable language? • Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern? • Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)? • Are the criteria to establish that the policy addresses a matter of local concern (above) documented? <ul style="list-style-type: none"> ○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)]. ○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)]. ○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)]. ○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)]. • Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420? <ul style="list-style-type: none"> ○ If yes, is the description or map of the designated area referenced in the enforceable policy? ○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends this policy not be approved.

Uses or permits for mineral or petroleum resource extraction are uses of state concern under 11 AAC 112.230 (b).

In addition, various State and federal agency authorities, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 provide broad authority to manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

North Slope Borough District Enforceable Policy Table

POLICY TEXT:

Policy F-3: Sand and Gravel Extraction

a. After an applicant demonstrates that upland alternatives are not practicable, sand and gravel projects in from barrier islands, spits and coastal waters, including intertidal areas shall meet the following criteria.

- 1) For the portions of rivers and streams considered coastal waters:
 - i) Larger rivers and streams shall be used before siting operations in smaller rivers and streams,
 - ii) Braided river systems shall be used before siting operations in other river systems,
 - iii) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology,
 - iv) Skimming of gravel bars in streambeds shall be allowed only when other alternatives are not practicable; use of gravel bars shall occur during periods of low flow and from areas above the low-flow water level, and
 - v) When practicable, operations shall avoid removal of large rocks or natural debris from streambeds; when it is not practicable to leave such material in the streambed, comparable materials shall be replaced by an applicant.
- 2) Applicants shall include in the project description measures to monitor the adverse impacts of gravel operations.

b. Review and approval of sand and gravel extraction in areas other than coastal waters, shall use the following criteria.

- 1) Upland areas shall be used first to the maximum extent practicable. 2) Inactive stream channels shall be used before siting operations in active channels and deltas.
- 3) Larger rivers and streams shall be used before siting operations in smaller rivers and streams.
- 4) Braided river systems shall be used before siting operations in other river systems.
- 5) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology and anadromous fish habitat.
- 6) Skimming of gravel bars in streambeds shall be allowed when other alternatives are not practicable. Use of gravel bars shall occur during periods of low flow and from areas above the low-flow water level.

CRITERIA:

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
 - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
 - Demonstrated as sensitive to development in the F source Analysis [11 AAC 114.270(h)(1)(B)].
 - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
 - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
 - If yes, is the description or map of the designated area referenced in the enforceable policy?
 - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

North Slope Borough District Enforceable Policy Table

POLICY TEXT continued:

- 7) Pit excavations from areas adjacent to rivers shall be separated from the active channel by a buffer designed to maintain the separation for two or more decades.
- 8) When practicable, operations shall avoid removal of large, woody debris from streambeds. When it is not practicable to leave such material in the streambed, comparable materials shall be replaced by an applicant.
- 9) Applicants shall include in the project description measures to monitor the adverse impacts of gravel operations on anadromous fish habitat to determine if actual impacts exceed those predicted.

c. Subsection "a" relates to uses and activities covered by the statewide sand and gravel extraction policy (11 AAC 112.260), and it applies throughout the coastal area to the types of areas mentioned in the policy. Subsection "b" relates to uses and activities affecting areas designated as important habitat (11 AAC 112.250(h)) as described in Section 3.5.2.

CRITERIA:

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
 - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
 - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
 - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
 - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
 - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
 - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

North Slope Borough District Enforceable Policy Table

OPMP's Final Recommendation to the DNR Commissioner:

OPMP recommends the following part of this policy be approved:

a. After applicant demonstrates that upland alternatives are not practicable, sand and gravel projects in from barrier islands, spits and coastal waters, including intertidal areas shall meet the following criteria.

- 1) For the portions of rivers and streams considered coastal waters:
 - i) Larger rivers and streams shall be used before siting operations in smaller rivers and streams,*
 - ii) Braided river systems shall be used before siting operations in other river systems, and*
 - iii) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology.**

b. Review and approval of sand and gravel extraction in areas other than coastal waters, shall use the following criteria.

- 1) Upland areas shall be used first to the maximum extent practicable.*
- 2) Inactive stream channels shall be used before siting operations in active channels and deltas.*
- 3) Larger rivers and streams shall be used before siting operations in smaller rivers and streams.*
- 4) Braided river systems shall be used before siting operations in other river systems.*

Part a 2) is not approvable because the state retains authority to monitor consistency under 46.40.070(a)(2)(A).

Part b 5), 6), 7), 8), and 9) is not approvable because the State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that these matters are not adequately addressed.

Part c is not approvable because policies written under the Sand and Gravel State Standard at 11 AAC 112.260 are limited to coastal water. In addition, the State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that these matters are not adequately addressed.

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

NATURAL HAZARDS

3.5.4 Natural Hazard Area

The North Slope Borough designates three types of natural hazard areas pursuant to 11 AAC 114.250(b). These designated areas are located in the coastal zone and exclude federal lands and waters. The statewide standard at 11 AAC 112.210 and enforceable policies D1 – D4 apply to these designations.

- 1) **Permafrost:** The NSB designates the entire coastal zone as a permafrost hazard area.
- 2) **Ice Hazards:** The NSB designates the following areas as ice hazard areas: All coastal waters; onshore areas adjacent to the Beaufort Sea located within 450 feet of the mean high water mark, and onshore areas adjacent to the Chukchi Sea within 850 feet of the mean high water mark. Ice hazards include ice ridging, shear zones, ice break-off, strudel scour, ice gouging, ice override and ice pileup. Maps 6 and 7 in Appendix B illustrate certain types of ice hazards, however, these maps are not meant to replace the description of ice hazards area in the preceding sentence.
- 3) **Flooding and Erosion:** All onshore areas within a 10-foot contour measured from mean high water of rivers and streams and areas within the 10-foot contour of coastal waters measured from the mean high water mark are designated as flooding hazard areas. Areas within 20 feet of the mean high water mark of rivers and within 50 feet from the mean high water mark of coastal waters are designated as erosion hazard areas.

Uses and activities that could be proposed for areas designated for natural hazards include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.

Comments/Discussion

In accordance with 11 AAC 114.250(b), a district shall consider the likelihood of occurrence of natural hazards and may designate an areas for natural hazards. In the resource inventory and analysis, the NSB discusses the likelihood of occurrence of permafrost, ice hazards, and flooding and erosion; however, the likelihood of occurrence was not discussed for subsea permafrost south of Point Hope and for erosion in rivers.

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p>OPMP recommendation to the DNR Commissioner:</p>	<p>OPMP recommends that the following natural hazard designations be approved:</p> <ol style="list-style-type: none">1. Permafrost: the entire onshore area of the coastal zone, and all coastal waters from Point Hope north and eastward to the border of Canada as a permafrost natural hazard area.2. Ice Hazards: approved in whole3. Flooding and Erosion: All onshore areas within a 10-foot contour measured from mean high water of rivers and streams and areas within the 10-foot contour of coastal waters measured from the mean high water mark are designated as flooding hazard areas. Areas within 50 feet from the mean high water mark of coastal waters are designated as erosion hazard areas. <p>OPMP recommends that the following natural hazard designations not be approved:</p> <ol style="list-style-type: none">1. Permafrost: All coastal waters south of Point Hope.2. Erosion: Areas within 20 feet of the mean high water mark of rivers.
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North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p><i>SITES SUITABLE FOR THE DEVELOPMENT OF MAJOR ENERGY FACILITIES</i></p> <p>3.5.5 Energy Facility Areas</p> <p>The NSB designates areas identified in the map in Appendix H as Suitable for Major Energy Facilities pursuant to 11 AAC 114.250(e). These areas include lands zoned by the NSB as Development Districts within the coastal zone. Federal lands are excluded from these designations.</p> <p>Uses and activities that could be proposed for areas designated for Energy Facilities include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p align="center"><i>Comments/Discussion</i></p> <p>In accordance with 11 AAC 114.250(e), a district shall consider and may designate, in cooperation with the state, sites suitable for the development of major energy facilities. The District documents consultation with the state in Appendix I.</p>
<p>OPMP's Recommendation to the DNR Commissioner:</p>	<p>OPMP recommends the Sites Suitable for the Development of Major Energy Facilities designation be approved in whole.</p>

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

SUBSISTENCE USE

3.5.1 Subsistence Areas

The NSB designates the following types of subsistence use areas within its coastal zone under authority of 11 AAC 114.250(g): 1) Marine mammals, 2) land mammals, 3) fish, 4) waterfowl, 5) furbearers, and 6) gathering (vegetation, berries, wood, and invertebrates). The designated subsistence use areas include the areas within the coastal zone identified as subsistence use areas on the maps in Appendix O, excluding federal land. Each type of subsistence use includes the following species:

- **Marine Mammals:** Polar bear, bearded seal, harbor or spotted seal, ribbon seal, ringed seal, walrus, beluga whale, and gray whale. Bowhead whale subsistence use areas are described below.
- **Land Mammals:** Black bear, grizzly bear, caribou, moose, and Dall sheep.
- **Fish:** Blackfish, capelin, Arctic Char, Arctic cod, ling cod, Arctic flounder, grayling, northern pike, chum salmon, humpback salmon, sculpin, rainbow smelt, sucker, lake trout, Arctic cisco, broad whitefish, humpback whitefish, least cisco, and round whitefish.
- **Waterfowl:** Eggs, lesser brant, sandhill crane, common eider, king eider, spectacled eider, Stellar's eider, Canada goose, lesser snow goose, white-fronted goose, Arctic loon, common loon, red throated loon, common murre, thickbilled murre, oldsquaw, snowy owl, pintail, rock ptarmigan, and willow ptarmigan.
- **Furbearers:** Arctic fox, red fox, snowshoe hare, lynx, hoary marmot, mink, porcupine, Arctic ground squirrel, weasel, wolf, and wolverine.
- **Gathering:** Clams, king crab, tanner crab, shrimp, blueberry, cloudberry, cranberry, crowberry, grass roots, Hudson's Bay tea, sourdock, swamp grass, wild celery, wild chives, wild potato, wild rhubarb, wild spinach, willow leaves, alder bark, birch trees, willow brush, driftwood, sod, spruce trees, and timber logs.

The data for the subsistence use maps were obtained from two studies.

Comments/Discussion

In accordance with 11 AAC 114.250(g), a district may, after consultation with the appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or groups, designate areas in which "a subsistence use" is an important use of coastal resources. OPMP provided guidance that the subsistence use has to be resource specific in order to provide an applicant enough information ahead of time so as to be able to complete the analysis or evaluation of reasonably foreseeable adverse impacts of the project on subsistence use.

In order to facilitate manageable subsistence use designations for both the district and applicant, OPMP decided to allow districts to group together similar species with similar lifecycles. Because of the varying lifecycles of fish, fish is too broad of a category to be acceptable for a subsistence use designation. Similarly, gathering is also too broad of a category since it encompasses gathering both on land and in the marine environment. Therefore, both the fish and the gathering categories cannot be approved as written.

In addition, the bowhead whale subsistence use for Wainwright fall, Point Hope fall, and Point Lay cannot be approved because the district has not shown as per 11 AAC 114.990 (23) that bowhead whale subsistence use in these areas at these times is a current and actual use. In addition, these designations were added after the preliminary review and recommendation and were not a part of the OPMP public review process.

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

Pedersen, S. 1979. *Regional Subsistence Land Use: North Slope Borough, Alaska. Occasional Paper No. 21*, Conservation and Environmental Protection, North Slope Borough and Anthropology and Historic Preservation, Cooperative Park Studies Unit, Univ. of Alaska, Fairbanks, Alaska.

Pedersen, Sverre. 1986. *Nuiqsut Subsistence Land Use Mapping: 1986 Update of Selected Land Use Categories. North Slope Subsistence Data Atlas*. Open File Report #86-01. Division of Subsistence, Alaska Department of Fish and Game, Fairbanks, Alaska.

The NSB designates the following subsistence use areas for bowhead whales.

Kaktovik: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from August to October: The area circumscribed from Anderson Point in Camden Bay due north to the coastal zone boundary, to Humphrey Point due north to the coastal zone boundary.

Nuiqsut: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from August to October: The area circumscribed from the Nechelik Channel of the Colville River due north to the coastal zone boundary, to the eastern point of Flaxman Island due north to the coastal zone boundary and due south to the shore.

Barrow Fall Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from the mouth of Tuapaktushak Creek due north to the coastal zone boundary, to Cape Halkett due east to the coastal zone boundary.

Barrow Spring Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from the mouth of Tuapaktushak Creek due west to the coastal zone boundary, to Scott Point due north to the coastal

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

zone boundary.

Wainwright Spring Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from Point Franklin due north to coastal zone boundary, to the Kuk River mouth due west to the coastal zone boundary.

Wainwright Fall Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from Point Franklin due north to coastal zone boundary, to the Kuk River mouth due west to the coastal zone boundary.

Point Hope Spring Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from March to June: The area circumscribed from Cape Lisburne due north to the coastal zone boundary, to Cape Thompson due south to the coastal zone boundary.

Point Hope Fall Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from Cape Lisburne due north to the coastal zone boundary, to Cape Thompson due south to the coastal zone boundary.

Point Lay Spring Subsistence Use Area: Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from Cape Beaufort due west to the coastal zone boundary, to Icy Cape due west to the coastal zone boundary.

The subsistence use designations are necessary to support the enforceable policies on subsistence. In compliance with 11 AAC 114.270(a), these policies address only uses and activities identified in 11 AAC 114.250(g) (i.e., subsistence uses and activities).

Although federal land is not included in these designations because

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p>it is technically not part of the NSB's coastal zone, activities on federal land and waters are reviewed for consistency with the enforceable policies written for subsistence designations if activities would affect coastal resources or uses.</p> <p>Uses and activities that could be proposed for areas designated for subsistence include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Studies and local knowledge that support the designations may be found below in the resource inventory and analysis, in the justification for the designation (Appendix D) and in the Annotated Subsistence Bibliography (Appendix J).</p>	
<p>OPMP's Recommendation to the DNR Commissioner:</p>	<p>OPMP recommends that the following subsistence use designated areas be approved:</p> <ol style="list-style-type: none"> 1. Marine mammals 2. Land mammals 3. Waterfowl 4. Furbearers 5. Kaktovik bowhead whale 6. Nuiqsut bowhead whale 7. Barrow fall bowhead 8. Barrow spring bowhead 9. Wainwright spring bowhead 10. Point Hope spring bowhead <p>OPMP recommends that the following subsistence use areas not be approved:</p> <ol style="list-style-type: none"> 1. Fish 2. Gathering 3. Wainwright fall bowhead 4. Point Hope fall bowhead 5. Point Lay spring bowhead

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<i>IMPORTANT HABITAT</i>	<i>Comments/Discussion</i>
<p>3.5.2 Important Habitat Areas</p> <p>The NSB designates the following areas as important Habitat Areas under 11 AAC 114.250(h).</p> <ul style="list-style-type: none"> • Bowhead Whales: All marine waters within the NSB are designated as important habitat for the productivity of bowhead whales. These waters are used for migration, feeding, mating, and calving. • Beluga Whales: All marine waters within the NSB are designated as important habitat for the productivity of beluga whales. These waters are used for migration, feeding and calving. • Most Environmentally Sensitive Areas: The following habitats identified in Maps 1-4 and 6-7 in Appendix G are designated as important habitat: Seabird colonies, kelp/benthic invertebrates, eider nesting concentrations, snow geese nesting concentrations, waterfowl nesting concentrations, waterfowl molting areas, waterfowl concentrations (including fall and spring), black brant nesting concentrations, polar bear confirmed coastal denning areas, spotted seal haul-out concentrations, anadromous waters, ringed seal breeding and pupping along shore/ast ice, beluhka wale concentration areas, and walrus haul-out concentrations. These habitats have been identified by the Office of Project Management and Permitting as meeting the scientific criteria for important habitat through the process that lead to the creation of the Most Environmentally Sensitive Areas (MESA) in Appendix G-1. • Environmental Sensitivity Index Maps: Areas with sensitive biological resources identified in the 23 Environmental Sensitivity Index (ESI) maps including sensitive habitats for marine mammals, terrestrial mammals, birds, fish, kelp, and multi-group areas (Appendix G-2). • Anadromous Waters: All anadromous waters identified in the Fish Distribution Database are designated as important habitat, including a 1000-foot corridor on either side of the streams as measured from the mean high water mark (Appendix G-3). • Kasegaluk Lagoon: Kasegaluk Lagoon is designated as important habitat including the barrier islands, passes between the islands, mudflats and coastal waters shoreward of the barrier islands and a 100-foot area landward of coastal waters. Kasegaluk Lagoon is 	<p>In accordance with 11 AAC 114.250(h), a district shall consider and may designate areas as important habitat if</p> <ol style="list-style-type: none"> 1. the use of the designated area has a direct and significant impact on coastal water 2. the designated area is shown by written scientific evidence to be biologically and significantly productive. <p>Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8).</p> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)."</p> <p>State and Federal regulations collectively and comprehensively address the protection of bowhead and beluga whale habitats. NSB's designated important habitat areas for bowhead and beluga whales duplicate existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> • Most Environmentally Sensitive Areas: The MESA maps do not meet the OPMP mapping requirements. The designated areas are not defined as such on the maps, the applicable enforceable policies are not listed, the appropriate logos are not used, and the name of the district is not included in the title. In addition, these designated area requests duplicate state and federal law. Therefore, these maps cannot be approved. • Environmental Sensitivity Index Maps: After consultation with Alaska Department of Fish and Game, and the Office of Habitat Management and Permitting, it

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p>located at 70 28' N, 160 29' W (NE end); 69 16' N, 163 18' W (SW end).</p> <ul style="list-style-type: none"> • Caribou Calving Area: Major caribou calving areas depicted on the map in Appendix G-4 titled <i>Central Arctic Herd Caribou Calving Areas and Seasonal Ranges</i>, which includes the area depicted as concentrated areas, are designated important habitat. • Seals: All non-federal coastal waters in the NSB are designated as important habitat for ringed, spotted and bearded seals. • Polar Bear: The NSB designates the following area as important habitat for polar bear denning: All coastal waters and barrier islands within the NSB coastal zone and lands within 25 kilometers of the mean high water mark of coastal waters between 151° longitude and the border of the Alaska National Wildlife Refuge. No federal lands are included in this designation. • Bird Nesting and Molting Areas: All barrier islands in the NSB and Kasegaluk, Elson and Simpson lagoons are designated important habitat because they provide critical habitat for nesting and molting birds. <p>Uses and activities that could be proposed for areas designated for important habitat include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Applicants can determine whether their project is located in one of these areas by referencing the maps. Federal lands are excluded from these designations.</p>	<p>was determined that the ESI maps do not fulfill the criterion of "written scientific evidence" as per 11 AAC 112.300 (c)(1)(B)(ii), and cannot be approved.</p> <p>The maps do not meet the OPMP mapping requirements. The designated areas are not defined as such on the maps, the applicable enforceable policies are not listed, the appropriate logos are not used, and the name of the district is not included in the title. In addition, these designated area requests duplicate state and federal law. Therefore, these maps cannot be approved.</p> <ul style="list-style-type: none"> • Anadromous Waters: The proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8). <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." The ADFG Fish Distribution Database Atlas is a matter authorized by state law, and serves as the authority under which other state laws are implemented. NSB's designation for anadromous waters duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> • Kasegaluk Lagoon: Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8). <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." 11 AAC 112.300(b) already addresses the substance of this designation. NSB's designation for seals duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p>
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North Slope Borough Coastal Management Plan: Designated Area Analysis Table

	<ul style="list-style-type: none">• Caribou: 11 AAC 114.250 (h) (1) states that a district shall consider and may designate portions of habitat areas listed in 11 AAC 112.300(a)(1) – (8) and other habitats in the coastal area as important habitat if the use of those designated portions have a direct and significant impact on coastal water. <p>11 AAC 114.990 (13) “direct and significant impact” means an effect of a use, or an activity associated with the use, that will proximately contribute to a material change or alteration of the coastal waters...”</p> <p>NSB has not demonstrated in Appendix D that an immediate, or proximate, direct and significant impact exists from all NSB caribou habitat designations.</p> <p>In addition, the maps from Appendix G-4 do not meet OPMP’s mapping requirements. These maps need to state in the legend the applicable enforceable policies.</p> <ul style="list-style-type: none">• Seals: Proposed designated areas are considered to be an “enforceable policy” under the definition at AS 46.40.210(8). <p>11 AAC 114.270(e)(3) requires that district enforceable policies must “not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C).” 11 AAC 112.300(b) already addresses the substance of this designation. NSB’s designation for seals duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none">• Polar Bear: Proposed designated areas are considered to be an “enforceable policy” under the definition at AS 46.40.210(8). <p>11 AAC 114.270(e)(3) requires that district enforceable policies must “not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C).” 11 AAC 112.300(b) already</p>
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North Slope Borough Coastal Management Plan: Designated Area Analysis Table

	<p>addresses the substance of this designation. NSB's designation for Polar Bears duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> • Bird Nesting and Molting Areas: Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8). <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." 11 AAC 112.300(b) already addresses the substance of this designation. NSB's designation for Bird Nesting and Molting Areas duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p>
	<p>OPMP recommends that the Important Habitat designation not be approved.</p>

North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p><i>HISTORY OR PREHISTORY</i></p> <p>3.5.3 Historic and Archaeological Areas</p> <p>The North Slope Borough designates the following areas important for the study, understanding and illustration of historic, prehistoric, and archaeological resources (11 AAC 114.250(i)): 1) the entire onshore area, and 2) offshore areas within 1,000 feet of the mean high water mark. Federal lands are excluded from these designations. Enforceable policies B-1 – B-3 apply to this designation.</p> <p>Uses and activities that could be proposed for Historic and Prehistoric areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p align="center"><i>Comments/Discussion</i></p> <p>In accordance with 11 AAC 114.250(i), A district shall consider and may designate areas of the coast that are important to the study, understanding, or illustration of national, state, or local history or prehistory.</p>
<p>OPMP's Recommendation to the DNR Commissioner:</p>	<p>OPMP recommends that the History and Preshistory designations be approved in whole.</p>

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB243(CRA)
 () Publish Date: _____

Identifier (file name): HB243CSCRA-DNR-DCOM-03-20-2008 Dept. Affected: Natural Resources
 Title: An Act Relating to the Alaska Coastal Management Program RDU: Resource Development
 Component: Coastal & Ocean Mgmt
 Sponsor: Rep. Joule, Edgmon
 Requester: H CRA Component Number: 2680

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services							
Travel	284.0		284.0	284.0	284.0	284.0	284.0
Contractual	890.0		10.0	10.0	10.0	10.0	10.0
Supplies	10.0		10.0	10.0	10.0	10.0	10.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	1,184.0	0.0	304.0	304.0	304.0	304.0	304.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	1,184.0		304.0	304.0	304.0	304.0	304.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	1,184.0	0.0	304.0	304.0	304.0	304.0	304.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This following issues contained within CSHB243 (CRA) will have the following fiscal impact.

Travel & Supplies - Based on the level of state agency authority transferred to the Coastal Policy Board, it's expected that the Board will need to meet at least twice a month to fulfill the obligations and provide the services outlined in the proposed legislation.

Prepared by: Randy Bates, Director
 Division: Coastal & Ocean Management
 Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 907-465-8797
 Date/Time March 20, 2008
 Date March 20, 2008

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. CSHB243(CRA)

ANALYSIS CONTINUATION

In order to re-write the guiding regulations, the Division of Coastal & Ocean Management (DCOM) will need to secure contractual services for the promulgation and final Department of Law review of the regulations (\$50.0 in the first year). Additional legal advice to support the board's required actions is expected to cost \$10.0 annually.

In order to revise, amend and approve the district coastal management plans, additional funds will be required. These funds are granted to the individual districts to make their plan updates. Based on past requests for funding the district plan amendments and the anticipated level of revision, an estimated additional \$840.0 will be required.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 243 (CRA)
 () Publish Date: _____

Identifier (file name): P:3243CS(CRA)-DEC-CO-03-20-08 Dept. Affected: Environmental Conservation
 Title: An Act relating to the Alaska coastal management program RDU: Administration
 Component: Office of the Commissioner
 Sponsor: Representative Joule
 Requester: Community & Regional Affairs Component Number: 633

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	10.0		10.0	10.0	10.0	10.0	10.0	10.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	10.0	0.0	10.0	10.0	10.0	10.0	10.0	10.0

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

CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF	10.0		10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	10.0	0.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation amends Alaska statutes pertaining to the Alaska Coastal Management Program (ACMP). One amendment requires that the Department provide public notice and opportunity for public comment for certain ACMP findings. A total of \$10.0 in contractual funding will be needed to pay for additional advertising and other costs associated with the new public notice requirement.

Prepared by: Mike Maher, Director
 Division: Information and Administrative Services
 Approved by: Dan Easton, Deputy Commissioner
Department of Environmental Conservation

Phone 465-5256
 Date/Time 3/20/08 12:05 PM
 Date 465-5066

Jeanne Ostnes

From: Marlene Campbell [campbell@cityofsitka.com]
Sent: Monday, April 07, 2008 10:36 AM
To: Rep. Craig Johnson
Subject: *****SPAM***** FW: Testimony on HB 243 in House Resources Committee

Apparently you did not receive my e-mail due to my mis-typing the address. Sorry! Here is another attempt. –
 Marlene Campbell

From: Marlene Campbell [mailto:campbell@cityofsitka.com]
Sent: Friday, April 04, 2008 5:36 PM
To: 'House Resources Committee'; 'Representative.Craig_Johnson@legis.state.ak.us';
 'Representative_Anna_Fairclough@legis.state.ak.us'; 'Representative_Paul_Seaton@legis.state.ak.us';
 'Representative_Bob_Roses@legis.state.ak.us'; 'Representative_Peggy_Wilson@legis.state.ak.us';
 'Representative_Bryce_Edggmon@legis.state.ak.us'; 'Representative_David_Guttenberg@legis.state.ak.us';
 'Representative_Scott_Kawasaki@legis.state.ak.us'; 'Representative_Reggie_Joule@legis.state.ak.us'
Cc: 'marie_murray@legis.state.ak.us'
Subject: Testimony on HB 243 in House Resources Committee

Please accept my profound apology for signing up to testify and not being able to do so today. I was in the Sitka LIO at 12:45PM and waited until 2:00, when I had to leave for an important pre-scheduled meeting. I told the LIO director I would submit abbreviated comments in writing. This is a summary of my comments.

Mr. Chairman and members of the House Resources Committee:

I am Marlene Campbell, Government Relations Director for the City and Borough of Sitka, where I have served as Coastal Management Coordinator since 1987. I am grateful to Representative Joule for introducing this legislation and to your committee for discussing it. This legislation is very important to coastal communities throughout Alaska. I realize it is probably too late to comment, but if the bill has not yet passed out of House Resources, I would very much appreciate your considering my comments.

House Bill 191, and the State's "streamlining the coastal management program" that followed, resulted in Alaska's Coastal Management Program, and the coastal districts' "seat at the table" in coastal consistency review of major issues in their local coastal zone, virtually being extinguished. The few Sitka Coastal Program enforceable policies not eliminated are now so restricted that they no longer give Sitka any voice in the management decision making on permits for use of the 300 miles of coastline within the City and Borough of Sitka. Without any meaningful ability to appeal the DNR agency decisions on how extreme the reduction in local control should be, Sitka's "standing" to participate in the review process was virtually terminated. Sitka has not been able to take over Coastal Management by putting enforceable policies in City code, because with the very small staff, management of coastal policies would be impossible. Coastal communities have been virtually eliminated from the ACMP process, and we have no advocates or standing with the bureaucratic agency review process now in place despite platitudes to the contrary.

HB 243 would help restore some of the balance between agency external decision-making and the ability of coastal communities to meaningfully comment on permits for development of their area's lands and/or waters. It would enable coastal districts to at least learn what the Department of Environmental Conservation is reviewing and issuing permits on in the "DEC Carve-Out" currently "off limits" to coastal reviewers or the local community. It would restore a "seat at the table" for coastal districts by empowering a coastal policy board including representatives from coastal communities, and limit the vast "over-reaching" control of the Office of Project Management and Permitting (now Office of Ocean and Coastal Management).

Alaska's coastal communities should have a right to formulate reasonable local enforceable coastal policies which protect our environment while permitting responsible development. Our citizens should have a right to comment on permit requests that could either cause real harm or perhaps great benefit to our coastal communities. Some

local control, or at least involvement, of the coastal districts and our coastal residents needs to be restored. This legislation will help achieve that important goal.

I am also very pleased to see Subsistence included in areas of the legislation that can be addressed as part of our coastal programs. Most coastal districts have not been able to get any Subsistence or Habitat enforceable policies approved, and Subsistence and habitat protection are a vital part of our Coastal Management efforts at the local level. Sitka is a Rural community for Subsistence, and more than 90 percent of Sitka households regularly engage in Subsistence activities. Subsistence and Habitats are vital components of Sitka's coastal zone.

HB 293 is a great start to re-energize the Alaska Coastal Management Program to make it meaningful again to Alaska's many coastal communities. Your support for this bill will be greatly appreciated. Thank you for the opportunity to comment.

Marlene Campbell, Government Relations Director
City and Borough of Sitka
907-747-1855 phone
907-747-1856 fax
campbell@cityofsitka.com e-mail

**Testimony by Edward Itta, Mayor
North Slope Borough
House Resources Committee
House Bill 243 - Coastal Management
Friday, April 4, 2008**

Thank you, Mister Chairman and members of the Committee. My name is Edward Itta, Mayor of the North Slope Borough.

I appreciate this opportunity to speak with the committee today, and I thank you for considering HB 243, which deals with what used to be one of Alaska's most successful examples of federal, state and local co-management – the Alaska Coastal Management Program. The previous administration pushed for wholesale changes in the ACMP, and while I believe their intentions were honorable, the effect was to strip meaningful local involvement out of the process. The original ACMP was brilliantly conceived, in that it brought together the interests of developers with the concerns of local residents, resulting in development that had local buy-in. Using the original ACMP, on the North Slope, the overwhelming majority of projects went through without a hitch, and they had the local seal of approval when they went forward. It was a recipe for stability in the development process.

This version of House Bill 243 helps to recapture parts of the original program's success, so I want to express our support for the bill before you today. It would solve many of the problems we have faced under current ACMP regulations. I recognize that it may be tough to get all the way back

to the original program, but this bill does fix some of the most troublesome aspects of the current law.

The Borough supports responsible resource development, and for over 20 years the ACMP was an important way to find a balance between development and protection of coastal resources and uses. But as changes have been implemented in recent years, that balance has been lost. Almost all of our proposed enforceable policies have been denied by the State, so we have had to rely on our Title 29 planning and zoning process for local input. While the permit process is an effective tool, we miss the opportunities provided by the former coastal management program to work cooperatively with state and federal agencies in developing compatible permit stipulations.

The bill before you would help restore a meaningful ACMP. Most importantly, it would make it clear that coastal districts may establish meaningful enforceable policies. We believe HB 191, passed in 2003, would have allowed us to do this, but the regulations adopted by the last administration have eliminated this possibility. 26 of the 31 policies we proposed for our coastal plan revision were denied, including all important habitat designations and some of the important subsistence use areas, and we have been informed that the 5 remaining policies must be changed significantly before they will be approved.

The bill also puts air and water quality permits back into the ACMP process. Since the Alaska Department of Environmental Conservation permits have been removed from the consistency review process, there has been a lot of

confusion. For example, we have been told that we can no longer comment on the effects of a potential oil spill on habitat or subsistence.

The Borough also supports the provision in the bill to reestablish the Coastal Policy Council. The former council was effective in approving coastal district plans and establishing policy because it was composed of both state government staff and locally elected officials.

Finally, HB 243 makes it clear that all Outer Continental Shelf activities affecting coastal resources or uses would be considered in ACMP reviews. Currently, as a result of changes to the program, certain effects from offshore oil and gas activities are no longer considered.

I want you to know that I have the greatest respect for Tom Irwin and have appreciated his willingness to work with us on a number of other issues.

About Coastal Zone Management, however, I am very encouraged by this bill, and I hope the committee will approve it.

Again, thank you for your time.

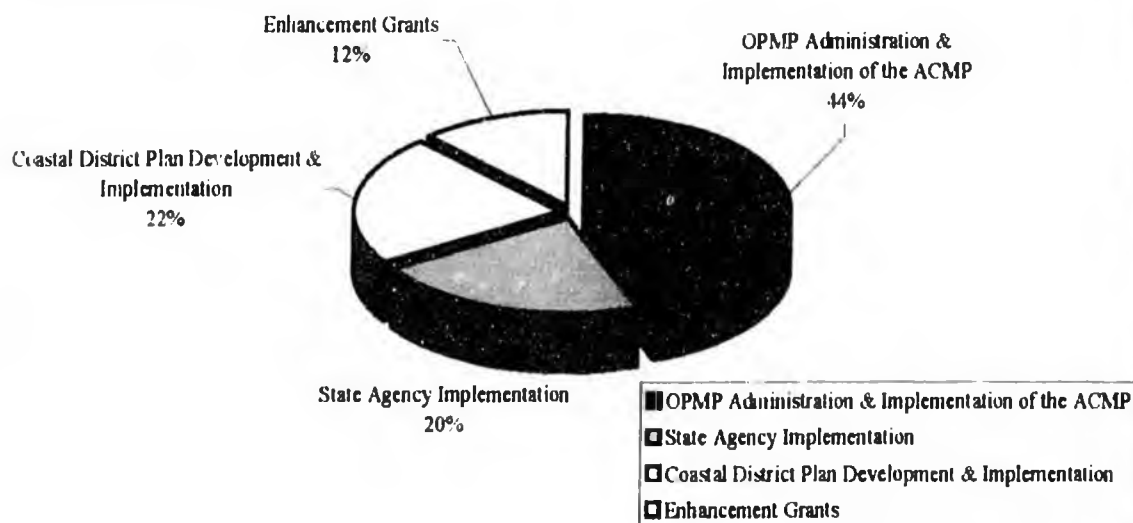
Alaska Coastal Management Program



Key Fiscal Year 2007 Accomplishments

- Continue to establish the Alaska Coastal Management Program (ACMP) within the Department of Natural Resources (DNR). This office leads on all issues and matters relating to the state's coastal zone, waters, uses, and resource, and administers and implements the ACMP
- Secured federal approval of reform changes to ACMP
- Coordinated or expedited approximately 215 consistency reviews for resource development projects within the coastal zone
- Provided coordinated and consolidated State response on all National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management proposed rules, regulations, and initiatives
- Worked with Minerals Management Service, Forest Service, US Army Corps of Engineers, Bureau of Land Management, Federal Aviation Administration, and the Departments of Environmental Conservation and Transportation and Public Facilities to identify coastal consistency issues that would be resolved through the application of MOU's or other effective coordination and cooperation means

ACMP Funding



ACMP Originally Approved:
1979

Coastal Population in 1979:
330,960

Coastal Population in 2004:
538,332

Miles of Coastline:
44,500

CZMA Funds:
\$2,503,000

State and Other
Matching Funds:
\$1,967,000

Total:
\$4,470,000

ACMP State Contact

Randy Bates, Director - DCOM, T: 907.465.8797, F: 907.465.3075

E-mail: randy.bates@alaska.gov

Alaska Coastal Management Program



Program Goals and Objectives

The Alaska Coastal Management Program (ACMP) oversees the responsible development of coastal uses and resources, federal activities within the coastal zone, and activities on the Outer Continental Shelf.

ACMP Structure and Organization

The ACMP is a voluntary State program, authorized by the Coastal Zone Management Act of 1972, as amended. The Division of Coastal and Ocean Management (DCOM), within the Department of Natural Resources, is the lead agency for the ACMP. Previously the ACMP was located within the Office of Project Management and Permitting (OPMP), but was split from OPMP and housed within the newly formed DCOM. Several state agencies participate in the implementation of the ACMP. In addition, several coastal municipalities and service areas (collectively known as coastal districts) voluntarily participate in the implementation of the ACMP. This structure and organization of state agencies and coastal districts provides for a networked implementation scheme designed to comprehensively manage coastal uses and resources.

The primary tool used to implement the ACMP is the consistency review process at 11 AAC 110. Through this process, proposed resource development activities are reviewed for consistency and compliance with the State's coastal management program which includes State laws, State standards, and district enforceable policies.

Value of ACMP

Having a federally approved coastal management program allows the State the opportunity to:

- Balance the need for economic investment and development in the coastal areas with the need to protect and manage the uses and resources of the coastal areas
- Act as State's liaison to federal agencies (1) conducting/permitting activities within the State's coastal area and the Outer Continental Shelf; (2) involving federal laws/initiatives that effect development of the coastal zone, waters, uses or resources of the State
- Act as the department's lead on issues affecting or addressing the coastal waters affecting the State
- Apply State ACMP enforceable policies to federal agency activities
- Provide project applicants with a single point of contact for the State's review of resource development permit applications
- Incorporate coastal district input and knowledge for reasoned decisions

Key Fiscal Years 2008 and 2009 Priorities and Needs

- Finalize coastal district plan amendments review and approval
- Educate and train participants on implementation of ACMP
- Evaluate the ACMP implementing regulations and determine whether amendments are necessary
- Develop and seek approval for State Coastal Impact Assistance Program and for the Coastal and Estuarine Land Conservation Program

A Program of the
Division of Coastal and
Ocean Management



"The Alaska Coastal Management Program provides stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity."



ALASKA DEPARTMENT OF NATURAL RESOURCES - DIVISION OF COASTAL AND OCEAN MANAGEMENT
JUNEAU OFFICE: 302 GOLD ST, SUITE 202, PO BOX 111030 - JUNEAU, AK 99811-1030 - T: 907.465.3562 - F: 907.465.3075
ANCHORAGE OFFICE: 550 W 7TH AVE., SUITE 705 - ANCHORAGE, AK 99501-3559 - T: 907.269.7470 - F: 907.269.3981
WWW.ALASKACOAST.STATE.AK.US

District Plan Status

Amended Plans Now In Effect:

1. AW CRSA
2. Anchorage
3. Bethel
4. Bristol Bay Borough
5. Craig
6. Haines
7. Hoonah
8. Ketchikan
9. Lake & Peninsula (effective 4/6/03)
10. Mat-Su
11. Nome
12. Pelican
13. Sitka
14. Skagway
15. Thorne Bay
16. Valdez
17. Whittier
18. Yakutat

Amended Plans Sent to OCRM

1. Aleutians East
2. Bristol Bay CRSA
3. Cordova
4. Juneau

Amended Plans Waiting To Be Sent to OCRM

1. Cenaliuriiit CRSA- We are working in-house to removed portion of the plan not approved by the DNR Commissioner.

Mediation

1. Bering Straits CRSA- Requested mediation.
2. North Slope Borough- Requested mediation.
3. Northwest Arctic Borough- Requested mediation.

Amended Plans Approved & Waiting for Local Adoption:

1. Kenai Peninsula
2. Kodiak Island

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF COASTAL AND OCEAN MANAGEMENT
<http://www.alaskacoast.state.ak.us>

□ **SOUTHCENTRAL REGIONAL OFFICE**
550 W 7th AVENUE SUITE 705
ANCHORAGE, ALASKA 99501
PH: (907) 269-7470 FAX: (907) 269-3891

X **CENTRAL OFFICE**
302 GOLD STREET, SUITE 202
P.O. Box 111030
JUNEAU, ALASKA 99811-1030
PH: (907) 465-3562 FAX: (907) 465-3075

February 22, 2008

ACMP Participant

RE: Re-evaluation of ACMP

Dear ACMP Participant:

As you know, in 2003 the Alaska State Legislature mandated the reform of the ACMP that included revised statutes, regulations, district coastal management plans, and other ACMP processes, and included deadlines for those revision efforts. Though the reform effort is nearing its completion, it has not been without its difficulties. The Department of Natural Resources (DNR) has had a challenging time managing and implementing the change process and the reform efforts. During the process, DNR has heard from the various participants on the successes and failures of the changes, and on the efforts to implement those changes, most recently during public testimony on Senate Bill (SB) 161.

Although the State opposes SB 161 for a variety of reasons, DNR does support the concept of re-evaluating certain changes that were made to the ACMP. Specifically, DNR recognizes the need and is interested in re-evaluating the following statutory and regulatory provisions of the ACMP:

- Revisit the DEC carveout (i.e., coordination of review involving DEC authorizations, application of other ACMP enforceable policies to DEC authorized activities, etc.)
- Revisit the coastal district's authority and ability to write enforceable policies, revisit the requirements for designated areas to address certain coastal uses and resources
- Address the consistency review scope of the project (i.e., aspects of the project that are subject to review)
- Make other necessary clarifying and technical edits to the regulations

At the 2007 ACMP conference in Juneau, DNR Commissioner Tom Irwin announced DNR's intention to re-evaluate the ACMP changes. I re-affirmed DNR's commitment to evaluating these changes in my testimony on SB 161 on January 29, 2008. While we previously established an informal timeframe for this re-evaluation to begin in July 2009, it is obvious, based on the input that DNR has heard, that we need to begin the program re-evaluation sooner than originally identified. With this in mind, it is my intention to formally and openly re-evaluate the ACMP changes identified above by inviting input from the networked participants (coastal districts, state agencies, industry, and members of the public). Based on that input, DNR will prepare a responsive statutory

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

ACMP Participants – ACMP Re-evaluation
February 22, 2008
Page 2

proposal for consideration during the 2009 legislative session, and a subsequent regulatory package for implementing the changes. The proposed schedule for this re-evaluation and development of proposed changes to the ACMP laws is as follows:

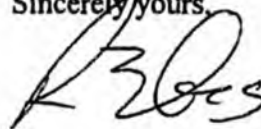
- June 2008 – Complete the review of the *List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP* (i.e., the “ABC List”)
- July 2008 – Initiate a 30-day comment period to solicit input and suggested statutory and regulatory revisions
- August-October 2008 – Develop proposed statutory revisions
- November 2008 – Hold workshops to go over proposed statutory revisions; initiate a comment period to solicit input
- December 2008 – Finalize proposed statutory revisions
- January 2009 – Introduce bill addressing proposed statutory revisions.
- March through August 2009 – Promulgate and finalize regulatory revisions implementing the revised statutes (as appropriate) and addressing other identified regulatory revisions.

The DCOM has identified this re-evaluation of the ACMP within the *2006 Enhancement Grants Program Assessment and Strategy*, meaning DCOM has prioritized this initiative and identified it as eligible for federal funding under the ACMP. This effort is important to the success of the ACMP, and will be completed within the timeframes described above.

This re-evaluation is intended to identify and develop additional changes to the ACMP that will strengthen the ACMP as a State program, that will benefit applicants and the public in the coordination of projects, and that will enhance the coastal district participation and input into State decision-making regarding activities occurring in the coastal area and on the outer continental shelf.

I look forward to initiating the re-evaluation of the ACMP. Your participation in this effort is important to the future and success of the program.

Sincerely yours,



Randy Bates
Director

cc: DCOM Staff
Legislators
Coastal Districts
Coastal Currents “e-list”

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: crockett@aoga.org
Marilyn Crockett, Executive Director

April 4, 2008

TO: House Resources Committee

Re: CSHB 243(CRA) – Alaska Coastal Management Program

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 17 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA and its members have been actively engaged in the Alaska Coastal Management Program since the program was first established some 30 years ago. We were engaged with the state and local districts in the development of their respective plans at that initial stage, and have continued to be involved in subsequent revisions to the program over the last three decades.

Perhaps no other industry in Alaska has had more experience with the program than the oil and gas industry. It is for that reason that we have remained engaged throughout the comprehensive statutory and regulatory revisions of the program that began in 2003 with passage of HB 191 and continue today.

As you know, the Department of Natural Resources had planned to begin a re-evaluation of the program in July, 2009. This timeframe would have provided a year-long period of time to gain experience operating under the new program to identify whether additional changes were warranted.

On February 22, 2008, the Department of Natural Resources announced it will initiate this review process one year earlier than planned. While we continue to believe that the full year of implementation and experience would have been valuable to assess future program revisions, the DNR review process now before us should be allowed to be completed.

The Alaska Coastal Management Program along with other local, state, and federal permitting and regulatory programs that guide planning and development in the State of Alaska's coastal zone are comprehensive and expansive. It will take time and considerable resources to conduct a program review with the objective of "getting it right". We encourage your Committee and the rest of the Alaska Legislature to, at a minimum, allow the Department of Natural Resources process to be carried out prior to moving forward with statutory changes to the Program.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Crockett".

MARILYN CROCKETT
Executive Director

TO: Representative Johnson and Representative Gatto and members of the House Resources Committee

FROM: Thede Tobish, Senior Planner & Coastal District Coordinator, Planning Department, Municipality of Anchorage

SUBJECT: **CS FOR HOUSE BILL NO. 243 (CRA) // "An Act relating to the Alaska coastal management program and establishing the Alaska Coastal Policy Board."**

Committee Members, my name is Thede Tobish. I am a senior planner and I have been the Municipality of Anchorage's coastal district coordinator since 1990. The Anchorage Coastal District supports this bill because it addresses and fixes both major and minor conflicts and shortcomings promulgated by HB 191 and SB 102. It also goes a long way to meeting the collective needs and concerns of coastal districts, as outlined in the Alaska Coastal District Association's letters and recent testimony. I had the fortune to work with the original coastal policy council as it had originally functioned. That system worked very well and went a long way to accurately and fairly representing coastal districts, state agencies, the public, and regulated private interests. SB 102 inappropriately dismissed this effective system, so this bill before you resurrects a similar system.

Without going into details, SB 102 and the state's interpretation and implementation of its regulations and guidelines weakened Anchorage's coastal management plan. Our plan had included dozens of carefully crafted enforceable policies. We now have five with very limited application. Anchorage was one of the country's first local governments to construct a wetlands management plan, which was originally an element of and enforced by our local coastal management plan. With the new regulations, the policies from that plan were left out of our new coastal plan.

This is one of many ways in which the state's changes effectively reduced or eliminated a district's ability to shape or participate in decisions. Our local plan went from being a fine example of how coastal districts craft customized policies to reflect local issues, needs, concerns, and long term goals to essentially a shell document with limited information or direction. We complied with the new regulations as best we could and followed the state's confusing interpretations of the new regulations because we really had no choice. HB 243 offers coastal districts a foundation to fix shortcomings of the revised program and resurrect local control in the way envisioned by the original coastal program. Our main issues are twofold, first that the statute get reworked to provide clear direction to both the state and coastal districts on how local plans and especially enforceable policies can be crafted to provide due deference, and two, that an appropriate adjudicatory authority is reestablished to fairly handle conflicts in the program. We encourage your support of this bill.

Sincerely Yours,

Thede Tobish
April 3, 2008



Alaska Conservation Alliance

Uniting for Alaska's Future

April 4, 2008

The Honorable Representative Reggie Joule
State Capitol
Juneau, Alaska 99801

Re: HB 243 – Coastal Management Program

Dear Representative Joule,

On behalf of the Alaska Conservation Alliance (ACA), a consortium of 40 Alaska-based conservation groups, I would like to express our support for HB 243. As you know this act revises the Alaska Coastal Management Program (ACMP)

HB 243 is an important chance to revise the Coastal Zone Management Program in a way to restore local buy-in for management decisions made by the program. This bill accomplishes this by clarifying the existing statute, creating a policy board and bringing water and air quality concerns back into the discussion. Most importantly, this bill gives local communities greater input into the decision-making process; something that the original ACMP was built around. By allowing more community input, the ACMP will benefit not only from the local knowledge of these communities but will also make resource development decisions easier and less controversial by including more stakeholders in the decision-making process.

I strongly encourage the Alaska Legislature to pass HB 243. Thank you for your time and consideration.

Sincerely,

Kate Troll
Executive Director

CC: House Resources Committee Members

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4833
Fax (907) 465-4586
1-800-782-4833
Representative_Reggie_Joule@legis.state.ak.us



During Interim:
P.O. Box 673
Kotzebue, Alaska 99752
(907) 442-3880
Fax (907) 442-3022

Alaska State Legislature
REPRESENTATIVE REGGIE JOULE

Sponsor Statement

CS HB 243 Coastal Management Plan

"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board"

CS HB 243 is an effort to improve the partnership between the State of Alaska and coastal communities under the Coastal Zone Management Program. This legislation will give coastal districts a seat at the table in the review of proposed state and federal resource development actions. An effective review process that accounts for local concerns will encourage local support for important responsible development projects in our coastal communities.

The bill focuses on three primary areas:

- 1) It provides clarification that districts may develop meaningful policies.
- 2) It establishes a Coastal Policy Board made up of resource agencies and coastal districts to agree on policy issues, approve regulations, and district management plans.
- 3) It brings water and air quality concerns of the Department of Environmental Conservation back to the table during consistency reviews.

This bill attempts to correct problems brought about by the enactment of HB 191. I support responsible development of our coastal resources. I believe that this can best and most expeditiously be accomplished through restoring some meaningful involvement of coastal communities in development decisions that directly affect them.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB243(CRA)
 () Publish Date: _____

Identifier (file name): HB243CSCRA-DNR-DCOM-03-20-2008 Dept. Affected: Natural Resources
 Title An Act Relating to the Alaska Coastal Management Program RDU Resource Development
 Component Coastal & Ocean Mgmt
 Sponsor Rep. Joule, Edgmon
 Requester H. CRA Component Number 2680

Expenditures/Revenues (Thousand of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services							
Travel	284.0		284.0	284.0	284.0	284.0	284.0
Contractual	890.0		10.0	10.0	10.0	10.0	10.0
Supplies	10.0		10.0	10.0	10.0	10.0	10.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	1,184.0	0.0	304.0	304.0	304.0	304.0	304.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	1,184.0		304.0	304.0	304.0	304.0	304.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	1,184.0	0.0	304.0	304.0	304.0	304.0	304.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This following issues contained within CSHB243 (CRA) will have the following fiscal impact.

Travel & Supplies - Based on the level of state agency authority transferred to the Coastal Policy Board, it's expected that the Board will need to meet at least twice a month to fulfill the obligations and provide the services outlined in the proposed legislation.

Prepared by: Randy Bates, Director
 Division: Coastal & Ocean Management
 Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 907-465-8797
 Date/Time March 20, 2008
 Date March 20, 2008

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. CSHB243(CRA)

ANALYSIS CONTINUATION

In order to re-write the guiding regulations, the Division of Coastal & Ocean Management (DCOM) will need to secure contractual services for the promulgation and final Department of Law review of the regulations (\$50.0 in the first year). Additional legal advice to support the board's required actions is expected to cost \$10.0 annually.

In order to revise, amend and approve the district coastal management plans, additional funds will be required. These funds are granted to the individual districts to make their plan updates. Based on past requests for funding the district plan amendments and the anticipated level of revision, an estimated additional \$840.0 will be required.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 243 (CRA)
 () Publish Date: _____

Identifier (file name): HB243CS(CRA)-DEC-CO-03-20-08 Dept. Affected: Environmental Conservation
 Title: An Act relating to the Alaska coastal management program RDU: Administration
 Component: Office of the Commissioner
 Sponsor: Representative Joule
 Requester: Community & Regional Affairs Component Number: 633

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	10.0		10.0	10.0	10.0	10.0	10.0	10.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	10.0	0.0	10.0	10.0	10.0	10.0	10.0	10.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	10.0		10.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	10.0	0.0	10.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation amends Alaska statutes pertaining to the Alaska Coastal Management Program (ACMP). One amendment requires that the Department provide public notice and opportunity for public comment for certain ACMP findings. A total of \$10.0 in contractual funding will be needed to pay for additional advertising and other costs associated with the new public notice requirement.

Prepared by: Mike Maher, Director
 Division: Information and Administrative Services
 Approved by: Dan Easton, Deputy Commissioner
Department of Environmental Conservation

Phone 465-5256
 Date/Time 3/20/08 12:05 PM
 Date 465-5066

**CS House Bill 243 Coastal Management
Version 25-LS0896E
Sectional Analysis**

Sec. 1:

What It Does:

- Establishes a 7-person Alaska Coastal Policy Board to include the 3 resource agency commissioners (Department of Natural Resources – DNR, Environmental Conservation – DEC and Fish and Game- ADFG) and a coastal district representative from each of 4 regions. The Board addresses policy issues including:
 - Developing coastal policy,
 - Approving ACMP regulations and
 - Approving coastal district management plans.
 - Creates an efficient body to make major policy decisions
 - Board is half the size of the original Coastal Policy Council
 - Governor appoints public members because board approves regulations

Why Needed:

- Since many coastal management issues affect all 3 resource agencies and coastal districts, it is appropriate to create a board to address policy issues.
- Coastal districts have reported that concentration of all the decision-making power in one agency has resulted in a lack of balance for decisions on coastal management issues.

What It Does Not Do:

- Unlike the former Coastal Policy Council, DNR retains the authority to make consistency determinations for proposed development projects.

Sec. 2:

What It Does:

- Requires Board approval of ACMP regulation changes before adopted by DNR
 - DNR retains the authority to develop the regulations for review by the Board.

Why Needed:

- The current system is flawed.
 - In its testimony to the Senate CR&A Committee, DNR stated that the current ACMP regulations it adopted are more stringent than what was intended by the Legislature.
 - Approval by the Coastal Policy Board will provide a “check and balance” to the rule-making process.

Sec. 3:

What It Does:

- Gives authority to the board to take reasonable actions to implement ACMP statutes (AS 46.39 -Coastal Management Administration and AS 46.40 - The Alaska Coastal Management Program).
 - **Grants:** Gives districts representation in the grant process.
 - **Contract Authority:** Gives the Board authority to contract for services.
 - **Consultation:** Gives the board authority to consult with other agencies and organizations.

Why Needed: Coastal districts have indicated that a local-state board would provide more balance for coastal management decisions.

Sec. 4:

What It Does:

- **Standards:** Gives authority for the Board to approve ACMP statewide standards (requirements for development projects).
- **Plan Approval Criteria:** Gives Board the authority to approve standards and criteria for preparation and approval of coastal district plans.
- **Removes Ineffective Requirement:** Adds more efficiency to coastal management by removing a provision to develop regional coastal plans, a provision that was never implemented.

Why Needed: This provision sets out duties of the board. It provides more balance in coastal management by ensuring there will be district and state agency participation in developing development standards and plan approval criteria.

Sec. 5:

What It Does: Makes the Board subject to the Administrative Procedures Act in AS 46.39.900.

Why Needed: Since the Board establishes coastal policy and approves regulations, it appropriate that it be subject to the Administrative Procedures Act.

- Sec. 6:** **What It Does:** Establishes authority for the Board to:
- Approve ACMP program changes
 - **Why Needed:** Ensures that there will be district and state agency participation in approval of ACMP changes
 - The effectiveness of coastal district plans will be evaluated.
 - **Why Needed:** Ensures that there will be district and state agency participation in approval of ACMP changes.
- Sec. 7:** **What It Does:** Adds "subsistence" to the list of values included in the ACMP objectives.
- **Why Needed:** The previous administration made it difficult for coastal districts to address effects to subsistence uses and resources in their coastal management plans.
- Sec. 8:** **What It Does:**
- Makes a conforming amendment requiring approval of ACMP regulations adopted by the Department.
 - Deleted language relating to the duties of the Board has been moved to AS 46.40.040(d) (See Section 10).
- Why Needed:**
- Needed for conformity.
 - Needed to distinguish duties of DNR and the Board.
- Sec. 9:** **What It Does:**
- Retains DEC's authority for determining consistency of matters it regulates.
 - **Why Needed:** DEC retains authority to make findings of consistency with the ACMP for matters it regulates.
 - It would not be appropriate for DEC's decision-making authority to be second guessed during ACMP consistency reviews.
 - Requires public notice for DEC consistency findings for projects located on federal lands and waters when there are no DEC authorizations.
 - **Why Needed:** The public notice requirement is needed because when DEC does not have a permit, there are not opportunities in statute for public comment on air and water quality issues.
 - This provision is especially important for reviews of Outer Continental Shelf activities because DEC does not issue permits for federal waters.
- Sec. 10:** **What It Does:**
- Subsection (d) Moves language deleted from AS 46.40.040(a) to a new section outlining responsibilities of the Board.
 - **Why Needed:** Necessary to establish duties of the Board.
 - Subsection (e) clarifies that aspects of air and water discharges not covered by DEC laws or regulations shall be reviewed for consistency with the statewide standards and district enforceable policies. DEC retains authority to determine a project's consistency with its laws.
 - **Why Needed:** Necessary because some project activities affect aspects of air or water quality effects that are not regulated by DEC. Such activities would be reviewed for consistency with the statewide ACMP standards in 11 AAC 112 and the coastal district enforceable policies.
 - For example, DEC regulates activities that could lead to an oil spill. It would determine consistency of those activities with its statutes and regulations. Since DEC does not have any laws about effects to subsistence, those activities would also be reviewed for consistency with the statewide subsistence standard and coastal district policies that relate to subsistence.

Sec. 11: What It Does:

- Establishes authority for the Board to approve coastal district plans. Plans are required to be reviewed every 10 years.
 - **Why Needed:** Board approval of district plans is appropriate because the board represents the resource agencies and coastal districts. Currently, only one agency approves plans, and many meaningful enforceable policies have been disapproved.

Sec. 12: What It Does:

- Establishes authority for the Board to approve coastal district plans if it finds the plans meet the district plan criteria.
 - **Why Needed:** Board approval of district plans is needed to ensure representation of resource agencies and coastal districts.
- Establishes the Board's role in mediation of decisions on the approval of district plans and requires use of the Administrative Procedures Act if mediation does not lead to an agreement.
 - **Why Needed:** Since the Board approves coastal management plans, it is appropriate that the Board oversees the mediation process. The Administrative Procedures Act includes procedures to resolve disputes.
 - **Note:** Previous to the changes to the ACMP in 2003, no coastal districts requested mediation in the 30-year history of the ACMP.

Sec. 13: What It Does: Outlines requirements for Board approval of district plans. Amends three criteria for approval of enforceable policies to clarify what policies may address.

- Changes to AS 46.40.070(a)(1) require district plan approval criteria to be specified in regulation.
 - **Why Needed:** Necessary to reduce confusion and make it clear what criteria will be used to approve plans.
 - During recent approvals of district plans, coastal districts report that DNR added many new approval criteria after the regulations were adopted. Some of the criteria were issued in emails or verbally and went beyond a common sense interpretation of the regulations.
- Changes to AS 46.40.070(2)(B) allow district enforceable policies to be performance based.
 - **Why Needed:** Industry prefers performance-based policies because it gives them the flexibility to find new solutions that will address concerns.
- The change to AS 46.40.070(2)(C)(ii) adds the word "specific" to clarify that a statute or regulation must address a specific matter for that matter to be considered adequately addressed.
 - **Why Needed:** Provision needed because coastal districts have reported that DNR has denied proposed enforceable policies, even when no statute or regulation addresses the matter. DNR has stated that because an agency could address the matter, a district may not address the matter in its enforceable policies.
 - This interpretation by DNR, if taken to the extreme, would eliminate the ability for districts to have any enforceable policies because federal and state agencies have broad authority.
 - The legislative intent of HB 191 (2003) was to allow districts to establish enforceable policies for matters not addressed in state or federal law.
- The change to AS 46.40.070(2)(C)(iii) replaces the word "unique" with the word "special."
 - **Why Needed:** The purpose of this requirement is to limit district policies to matters of local concern (as opposed to matters of state or federal concern). A matter of special concern to a district may also be a concern of another district, so the term "special" is more appropriate.
 - For example, a subsistence use of special concern to one district may also be of concern to another district, but it is not necessarily a state or federal concern.

Sec. 14: What It Does: Clarifies legislative intent of Chapter 24 SLA 03 (HB 191) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.

- **Why Needed:** This change is needed because the ACMP regulations added complex requirements for districts to designate areas before certain types of policies could be written (e.g., subsistence, habitat, recreation, historic resources, or natural hazards).
 - DNR has denied many designated areas proposed by districts.
 - By denying subsistence use areas proposed by the districts, subsistence uses can no longer be addressed during an ACMP consistency review.
 - Federal lands cannot be designated, so the requirement for designations diminishes state's rights.
 - For example, since federal lands cannot be designated, it is not clear whether certain statewide standards, such as the subsistence standard, apply to federal lands and waters.

Secs. 15, 16 and 17: Make conforming amendments regarding approval of ACMP regulations by the Board.

- **Why Needed:** Necessary to establish that the Board approves ACMP regulations.

Sec. 18: **What It Does:**

- Makes a conforming amendment regarding approval of ACMP regulations by the Board.
 - **Why Needed:** This is necessary to establish that the Board approves ACMP regulations.
- Replaces the term "subsequent review" with the commonly used term "elevation."
 - **Why Needed:** This change makes statutes easier to understand because pre-decision appeals of the proposed consistency determination are called "elevations."
- Requires concurrence of resource agencies for resolution of elevations of a proposed consistency determination.
 - **Why Needed:** Currently the Alaska Department of Natural Resources makes the final decision on elevations even though issues may relate to responsibilities of other resource agencies.
 - This change will ensure a balanced decision by bringing all the resource agencies to the table to resolve elevation issues.
 - Prior to 2003, all resource agencies participated in elevations.

Sec. 19: **What It Does:**

- Adds the word "aspect" to AS 46.40.096(g)(1) regarding removal from individual consistency reviews aspects of activities that are covered by a general or nationwide permits.
 - **Why Needed:** Because more than one agency may permit an activity, this change is needed to ensure there is an individual ACMP review of aspects of activities not covered by the general or nationwide permits.
- Eliminates exemption of air and water quality permits from the coordinated ACMP review process. DEC retains the authority to find consistency of air and water quality activities with its statutes and regulations, but with this change, DEC will participate in the coordinated ACMP review process.
 - **Why Needed:**
 - This provision is needed to coordinate the DEC review with other aspects of the ACMP review. Coordination of the review will ensure that an applicant receives a timely and coordinated response.
 - The intent of this provision is to coordinate the DEC proposed decision with the request for additional information deadline and the comment deadline for the ACMP review.

Sec. 20: **What It Does:** Makes a conforming amendment regarding Board approval of coastal district plans.

- **Why Needed:** This is necessary to establish that the Board approves ACMP regulations.

Sec. 21: **What It Does:**

- Clarifies that the ACMP regulations shall address activities on federal lands and waters.
 - **Why Needed:** During recent reviews of activities on federal Outer Continental Shelf (OCS) reviews, the Department of Natural Resources has excluded certain activities from the ACMP review.

- This exclusion of activities appears to conflict with the intent of the Legislature because it diminishes the state's right to review activities on the OCS that affect coastal resources or uses.
- Clarifies that seismic surveys in federal OCS waters are subject to ACMP reviews.
 - **Why Needed:** This provision is needed because seismic surveys have been demonstrated to affect coastal resources including marine mammals. DNR has not responded to repeated requests by coastal districts to include seismic survey activities for OCS ACMP reviews.

Sec. 22: **What It Does:** Makes a conforming amendment regarding approval of ACMP regulations by the Board, including regulations listing which authorizations trigger a consistency review and the list of activities that are categorically or generally consistent (i.e., activities that do not require an individual ACMP review).

- **Why Needed:** Approval of regulations by the Board is appropriate because it includes representatives of resource agencies and districts.

Sec. 23: **What It Does:**

- Exempts federal activities and federally-permitted activities from the 90-day review schedule.
 - **Why Needed:**
 - Federal activities and federally permitted activities often include complex issues that require more than a 90-day review.
 - This is a states' rights issue because forcing reviews to be completed within 90 days can force the state to comment on a review before pertinent information is available from the federal review.
- Requires suspension of the 90-day time frame when an applicant is required to provide additional information. Currently, the review can only be extended when it has been determined that the applicant has not adequately responded.
 - **Why Needed:** Extension of the review when the information is requested will encourage applicants to provide a timely response because the 90-day timeline is extended when the request occurs.

Sec. 24: **What It Does:** Establishes the Board's role in reviewing a petition regarding non-implementation of a coastal district program.

- **Why Needed:** A petition asserting that a coastal program is not being implemented properly is a policy issue that is best addressed by the Board which has agency and district representation.
 - A petition regarding non-implementation is extremely rare.

Sec. 25, 27 and 28: **What It Does:** Make conforming amendments to Board action on a petition.

- **Why Needed:** A petition is a policy issue best addressed by the Board [See Sec. 24]

Sec. 26: **What It Does:** Clarifies that Board orders are subject to enforcement by superior courts.

- **Why Needed:** Necessary to specify that Board orders are subject to superior courts.

Sec. 29: **What It Does:** Makes a conforming amendment to Board approval of district plans including areas meriting special attention.

- **Why Needed:** Areas meriting special attention are part of coastal district plans, and it is appropriate that the board approves criteria for these designations.

Sec. 30: **What It Does:** Makes a conforming amendment to the definition of "coastal zone" regarding Board's role in approving coastal boundary changes.

- **Why Needed:** Boundaries are part of coastal district plans, and it is appropriate for the Board to approve changes to district boundaries.

Sec. 31: **What It Does:** Makes a conforming amendment to the definition of "district coastal management plan" regarding Board's role in approving district plans.

- **Why Needed:** It is appropriate for the Board to approve coastal district plans because the Board represents resource agencies and coastal districts.

Sec. 32: **What It Does:** Makes a conforming amendment to the definition of "enforceable policy" regarding Board's role in approving policies included in district plans.

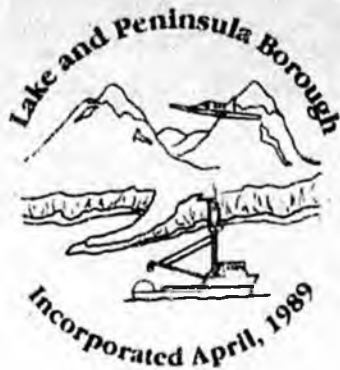
- **Why Needed:** District enforceable policies are parts district coastal management plans, and it is appropriate for the Board to approve changes to district plans.

Sec. 33: **What It Does:** Defines "Board" in the definitions section.

- **Why Needed:** It is important to include a reference to the definition of the Board.

Sec. 34: **What It Does:** Repeals AS 46.40.096(i) which relates to activities reviewed by DEC.

- **Why Needed:**
 - This provision must be repealed because it references AS 46.40.096(g)(1) which is eliminated in Section 19 of this bill,
 - This provision is not needed because it is redundant of AS 46.40.040(b).



Lake and Peninsula Borough

*P.O. Box 495
King Salmon, Alaska 99613*

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



March 18, 2008

The Honorable Representative Reggie Joule
State Capitol, Room 421
Juneau, Alaska 99801-1182

Subject: HB 243, an Act relating to the Alaska Coastal Management Program; and establishing the Alaska Coastal Policy Board

Dear Representative Joule,

The Lake and Peninsula Borough would like to provide the following comment regarding the proposed HB 243, an Act relating to the Alaska Coastal Management Program (ACMP); and establishing the Alaska Coastal Policy Board that is currently in committee in the Alaska Legislature.

The Lake and Peninsula Borough supports HB 243 because it requires the Alaska Department of Environmental Conservation (ADEC) to participate in consistency reviews that affect air, land and water quality, clarifies the criteria for the approval of district enforceable policies, establishes the Coastal Policy Board, eliminates the requirement for designated areas, and reestablishes the protection of subsistence as an objective of the Alaska Coastal Management Program as well as the recognition of subsistence values concerning land usage adjacent to the water. I will try to address each issue below and how these topics have affected the program since the passage of HB 191 in 2003.

AIR AND WATER QUALITY

1. **Background:** The ACMP statutes were amended by HB 191 (Chapter 24 SLA 03) to remove Alaska Department of Environmental Conservation (ADEC) authorizations from individual ACMP reviews. Removal of ADEC authorizations from ACMP reviews has resulted in a number of unanticipated problems:

- a. Confusion about what specific activities are included in the scope of review. This lack of clarity occurs when a project requires an ADEC authorization or an Environmental Protection Agency authorization or when it involves Outer Continental Shelf (OCS) activities.

b. The Alaska Department of Natural Resources (ADNR) is not following guidance it issued regarding its review of activities not regulated by federal NPDES or 404 permits (i.e., the guidance states that such activities not addressed by the ADEC or Army Corps of Engineers must be part of coordinated ACMP review).

c. As a result of this change districts can no longer comment on activities regulated by ADEC that affect other coastal uses and resources. For example, effects from an oil spill or other discharges on subsistence uses and resources can no longer be considered because this activity is excluded from the coordinated ACMP review, and the agency has no regulations or statutes that address effects of discharges on subsistence.

2. CLARIFIES CRITERIA FOR ENFORCEABLE POLICIES

This bill better clarifies the intent in Section 19, which addresses AS 46.40.070 in several paragraphs by being more specific on policy approval. This is critical to the coastal districts as it will allow the districts to establish local control through policies that were previously denied by DNR Staff when plans were reviewed. It amends three criteria for approval of enforceable policies to better clarify what policies may address. It clarifies the legislative intent of Chapter 24 SLA 03 (HB 191) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.

3. ESTABLISHES THE COASTAL POLICY BOARD

The establishment of the Coastal Policy Board is the key to the success of this bill as it returns control of the approval of district coastal management plans back to the districts. This will happen because the members of the Coastal Policy Board will be appointed from the coastal districts of Alaska who are much closer to local issues and will more closely understand and relate to the unique issues districts face when writing policies for plan approval. This bill also establishes the Board's role in the mediation of decisions on the approval of district plans as well as gives the Board approval authority for plans mentioning areas meriting special attention.

4. SUBSISTENCE IS NOW INCLUDED IN THE ACMP

Subsistence is very important to the culture of the citizens within the Lake & Peninsula Borough. This bill adds subsistence to the values included in the Alaska Coastal Management Plan objectives.

In summary the Lake and Peninsula Borough is in support of HB 243 as it requires the Alaska Department of Environmental Conservation (ADEC) to participate in consistency reviews that affect air, land and water quality, clarifies the criteria for the approval of district enforceable policies, establishes the Coastal Policy Board, eliminates the

requirement for designated areas, and reestablishes the protection of subsistence as an objective of the Alaska Coastal Management Program. We encourage all committees to please hear this bill and move it along as soon as possible.

Finally the Lake and Peninsula Borough does not support any recommendations that suggest a working group or committee be formed to resolve the problems created by HB191 from 2003. This move is simply a stall tactic by those making that recommendation. However, we encourage the legislators to act on this bill as it will not require districts to re-write their plans but specifically require DNR/DCOM to make the regulations more specific and puts local control back where it belongs.

We thank you for the opportunity to comment on this very important bill. If you have questions please contact Marv Smith at 907-246-3421.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Alsworth". The signature is stylized with a large, looped initial "G" and a long, sweeping underline.

Glen Alsworth
Mayor/Lake and Peninsula Borough

Which Coastal District is Your Community In?

CITY	DISTRICT	CITY	DISTRICT
Adak	Aleutians West CRSA	Chignik Lagoon ...	Lake and Peninsula Borough
Akhiok	Kodiak	Chignik Lake.....	Lake and Peninsula Borough
Akiachak	Ceñaliulriit CRSA	Chugiak	Anchorage
Akiak	Ceñaliulriit CRSA	Clam Gulch.....	Kenai Peninsula
Akutan	Aleutians East	Clark's Point	Bristol Bay CRSA
Alakanuk	Ceñaliulriit CRSA	Coffman Cove.....	None*
Aleknagik	Bristol Bay CRSA	Cohoe	Kenai Peninsula
Alexander Creek.....	Mat-Su Borough	Cold Bay	Aleutians East
Ambler	Northwest Arctic	Cooper Landing.....	Kenai Peninsula
Amchitka	Aleutians West CRSA	Cordova	Cordova
Anaktuvuk Pass.....	North Slope Borough	Council	Bering Straits CRSA
Anchor Point	Kenai Peninsula	Craig	Craig
Anchorage	Anchorage	Cube Cove	None*
Angoon	Angoon	Deadhorse	North Slope Borough
Aniak	Ceñaliulriit CRSA	Deering	Northwest Arctic
Atka	Aleutians West CRSA	Dillingham.....	Bristol Bay CRSA
Atmautluak	Ceñaliulriit CRSA	Diomedes	Bering Straits CRSA
Atkasuk	North Slope Borough	Dora Bay	None*
Attu	Aleutians West CRSA	Douglas	Juneau
Barrow	North Slope Borough	Dutch Harbor	Aleutians West CRSA
Bethel	Bethel	Eagle River	Anchorage
Big Lake	Mat-Su Borough	Edna Bay	None*
Bird Creek	Anchorage	Eek	Ceñaliulriit CRSA
Brevig Mission	Bering Straits CRSA	Egegik	Lake and Peninsula Borough
Buckland	Northwest Arctic	Ekuk	Bristol Bay CRSA
Candle	Northwest Arctic	Ekwok	Bristol Bay CRSA
Cape Chiniak	None*	Elfin Cove	None*
Cape Pole	None*	Elim.....	Bering Straits CRSA
Cape Yakataga	None*	Elmendorf AFB	Anchorage
Chefornak	Ceñaliulriit CRSA	Emmonak	Ceñaliulriit CRSA
Chenega Bay.....	None*	English Bay	Kenai Peninsula
Chevak	Ceñaliulriit CRSA	Excursion Inlet.....	None*
Chickaloon.....	Mat-Su Borough	Eyak	Cordova
Chignik	Lake and Peninsula Borough	False Pass.....	Aleutians East
Chignik Bay	Lake and Peninsula Borough	Fortuna Ledge	Ceñaliulriit CRSA

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Fl. Richardson	Anchorage	Kipnuk	Ceñaliulriit CRSA
Funter Bay	None*	Kivalina	Northwest Arctic
Gambell	Bering Straits CRSA	Klawock	Klawock
Girdwood	Anchorage	Klukwan	None*
Golovin	Bering Straits CRSA	Kobuk	Northwest Arctic
Goodnews Bay	Ceñaliulriit CRSA	Kodiak	Kodiak
Gravina Island	Ketchikan	Kokhanok	Lake and Peninsula
Gustavus	None*	Kokhanok Bay	Lake and Peninsula
Haines	Haines	Koliganek	Ceñaliulriit CRSA
Halibut Cove	Kenai Peninsula	Kongiganak	Ceñaliulriit CRSA
Happy Valley	Kenai Peninsula	Kotlik	Ceñaliulriit CRSA
Hawkins Island	None*	Kotzebue	Northwest Arctic
Hinchinbrook Island	None*	Koyuk	Bering Straits CRSA
Hobart Bay	None*	Kuiu Island	None*
Hollis	None*	Kupreanof	None*
Homer	Kenai Peninsula	Kwethluk	Ceñaliulriit CRSA
Hoonah	Hoonah	Kwigillingok	Ceñaliulriit CRSA
Hooper Bay	Ceñaliulriit CRSA	Labouchere Bay	None*
Hope	Kenai Peninsula	Lake Louise	Mat-Su Borough
Houston	Mat-Su Borough	Larsen Bay	Kodiak
Hydaburg	Hydaburg	Levelock	Lake and Peninsula
Igiugig	Lake and Peninsula Borough	Long Island	None*
Iliamna	Lake and Peninsula Borough	Lower Kalskag	Ceñaliulriit CRSA
Indian	Anchorage	Manokotak	Bristol Bay CRSA
Ivanof Bay	Lake and Peninsula Borough	Marshall	Ceñaliulriit CRSA
Juneau	Juneau	Mekoryuk	Ceñaliulriit CRSA
Kachemak	Kenai Peninsula	Metlakatla	None*
Kake	Kake	Meyers Chuck	None*
Kaktovik	North Slope Borough	Moose Pass	Kenai Peninsula
Kalgin Island	Kenai Peninsula	Mountain Village	Ceñaliulriit CRSA
Karluk	Kodiak	Mt. Edgecumbe	Sitka
Kasaan	None*	Naknek	Bristol Bay Borough
Kasiqluk	Ceñaliulriit CRSA	Nanwalek	Kenai Peninsula
Kasilof	Kenai Peninsula	Napakiak	Ceñaliulriit CRSA
Kenai	Kenai Peninsula	Napaskiak	Ceñaliulriit CRSA
Ketchikan	Ketchikan	Naukali	None*
Kiana	Northwest Arctic	Nelson Lagoon	Aleutians East
King Cove	Aleutians East	New Stuyahok	Bristol Bay CRSA
King Salmon	Bristol Bay Borough	Newhalen	Lake and Peninsula

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Newtok	Ceñaliulriit CRSA	Prudhoe Bay	North Slope Borough
Nightmute	Ceñaliulriit CRSA	Quinhagak	Ceñaliulriit CRSA
Nikiski	Kenai Peninsula	Red Mountain	Kenai Peninsula
Nikolski	Aleutians West CRSA	Ridgeway	Kenai Peninsula
Ninilchik	Kenai Peninsula	Rowan Bay	None*
Noatak	Northwest Arctic	Russian Mission	Ceñaliulriit CRSA
Nome	Nome	Sand Point	Aleutians East
Nondalton	Lake and Peninsula	Savoonga	Bering Straits CRSA
Noorvik	Northwest Arctic	Sawmill Bay	None*
Nuiqsut	North Slope Borough	Saxman	Ketchikan
Nunapitchuk	Ceñaliulriit CRSA	Scammon Bay	Ceñaliulriit CRSA
Old Harbor	Kodiak	Security Bay	None*
Oscarville	Ceñaliulriit CRSA	Selawik	Northwest Arctic
Ouzinkie	Kodiak	Seldovia	Kenai Peninsula
Palmer	Mat-Su Borough	Seward	Kenai Peninsula
Pedro Bay	Lake and Peninsula Borough	Shaktoolik	Bering Straits CRSA
Pelican	Pelican	Sheep Mountain	Mat-Su Borough
Pennock Island	Ketchikan	Sheldon Point	Ceñaliulriit CRSA
Perryville	Lake and Peninsula Borough	Shemya AFS	Aleutians West CRSA
Petersburg	Petersburg	Shishmaref	Bering Straits CRSA
Pilot Point	Lake and Peninsula Borough	Shungnak	Northwest Arctic
Pilot Station	Ceñaliulriit CRSA	Sitka	Sitka
Pitkas Point	Ceñaliulriit CRSA	Skagway	Skagway
Platinum	Ceñaliulriit CRSA	Skwentna	Mat-Su Borough
Point Baker	None*	Soldotna	Kenai Peninsula
Point Hope	North Slope Borough	South Naknek	Bristol Bay Borough
Point Lay	North Slope Borough	Squaw Harbor	Aleutians East
Polk Inlet	None*	St. George Island	None*
Port Alexander	None*	St. Mary's	Ceñaliulriit CRSA
Port Alsworth	Lake and Peninsula	St. Michael	Bering Straits CRSA
Port Armstrong	None*	St. Paul	St. Paul
Port Clarence	Bering Straits CRSA	Stebbins	Bering Straits CRSA
Port Graham	Kenai Peninsula	Sterling	Kenai Peninsula
Port Heiden	Lake and Peninsula Borough	Sunrise	None*
Port Lions	Kodiak	Sutton	Mat-Su Borough
Port Moller	Aleutians East	Talkeetna	Mat-Su Borough
Port Protection	None*	Tatitlek	None*
Portage	Anchorage	Tazlina	None*
Post Lake	Mat-Au Borough	Teller	Bering Straits CRSA

*Note: "None" means a coastal community not within a coastal district.

CITY	DISTRICT	CITY	DISTRICT
Tenakee Springs.....	None*	Valdez.....	Valdez
Thorne Bay.....	Thorne Bay	Wainwright.....	North Slope Borough
Tin City.....	Bering Straits CRSA	Wales.....	Bering Straits CRSA
Togiak.....	Bristol Bay CRSA	Wasilla.....	Mat-Su Borough
Toksook Bay.....	Ceñaliulriit CRSA	Whale Pass.....	None*
Tolstoi Bay.....	None*	White Mountain.....	Bering Straits CRSA
Trapper Creek.....	Mat-Su Borough	Whittier.....	Whittier
Tuluksak.....	Ceñaliulriit CRSA	Willow.....	Mat-Su Borough
Tuntutuliak.....	Ceñaliulriit CRSA	Wrangell.....	Wrangell
Tununak.....	Ceñaliulriit CRSA	Yakutat.....	Yakutat
Tutka Bay.....	Kenai Peninsula		
Twin Hills.....	Bristol Bay CRSA		
Two Moon Bay.....	None*		
Tyonek.....	Kenai Peninsula		
Ugashik.....	Lake and Peninsula		
Umiat.....	North Slope Borough		
Unakwik Inlet.....	None*		
Unalakleet.....	Bering Straits CRSA		
Unalaska.....	Aleutians West CRSA		
Ungalik.....	Bering Straits CRSA		

For more information contact:

The Alaska Coastal Management Program
Juneau — 907- 465-3075
Anchorage — 907-269-7470

*Note: "None" means a coastal community not within a coastal district.



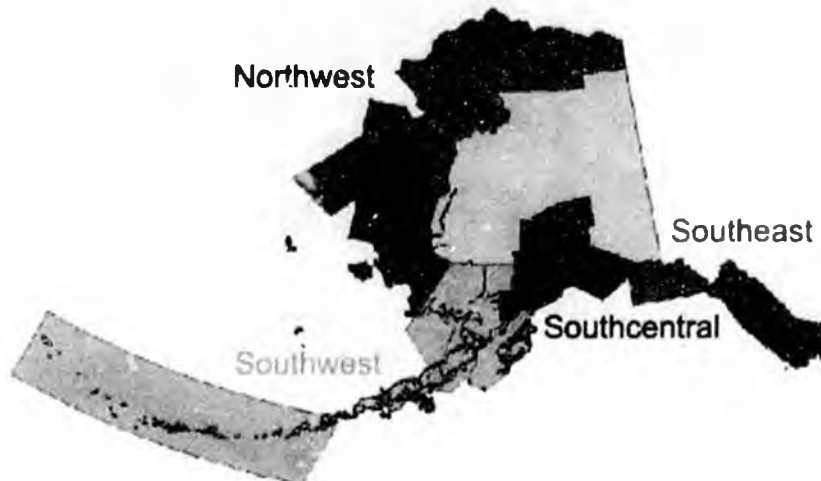
Alaska Coastal Management Program

Division of Coastal and Ocean Management
Department of Natural Resources

Welcome to the longest coast in the U.S.

State of Alaska > Natural Resources > DCOM > ACMP

Explore Alaska's Coastal Districts



- [District Locator \(PDF\)](#)
- [Regional Contacts Info](#)
- [Coastal District Enforceable Policies](#)
- [District Coastal Zone Boundaries \(31kb PDF\)](#)
- [Explore Alaska's Coast](#)
- [Email Coastal Districts](#)
- [GIS Protocols](#)

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FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB243
 () Publish Date: _____

Identifier (file name): HB243-DNR-DCOM -03-14-08 Dept. Affected: Natural Resources
 Title An Act Relating to the Alaska Coastal Management Program RDU Resource Development
 Component Coastal and Ocean Management
 Sponsor Joule, Edgmon
 Requester H CRA Component Number 2680

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
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	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact to DNR.

Prepared by: Randy Bates, Director
 Division: Coastal and Ocean Management
 Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 465-8797
 Date/Time March 14, 2008
 Date March 14, 2008

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-4855
Fax (907) 465-4586
1-800-782-4833

Representative_Reggie_Joule@legis.state.ak.us



During Interim:
P.O. Box 673
Kotzebue, Alaska 99752
(907) 442-3880
Fax (907) 442-3022

Alaska State Legislature
REPRESENTATIVE REGGIE JOULE

Date: March 20, 2008

To: Representative Johnson, Co-Chair Resources
Representative Gatto, Co-Chair Resources

From: Representative Joule *RJ*

Re: Request for Hearing

I would like to formally request a hearing on CS HB 243, "An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board." I have attached the committee substitute, sponsor statement, fiscal note, sectional analysis, and some other pertinent information. If possible we would appreciate a hearing as soon as possible. If you have any questions or concerns, please contact our office. I appreciate your consideration of this request.

NORTHWEST ARCTIC BOROUGH

P.O. Box 1110

Kotzebue, Alaska 99752

(907) 442.2500 or (800) 478.1110

Fax: (907) 442.3740 or 2930

April 8, 2008

Honorable Craig Johnson
Honorable Carl Gatto
Co-chairs House Resources Committee
State Capitol
Juneau, Alaska 99801

Sent by fax: 907-465-3872

Re: HB 243 Coastal Management

Dear Senators Johnson and Gatto:

This letter responds to the request for additional information during the Resources Committee meeting on April 4, 2008, for more information about our coastal management plan. I was not able to attend the meeting; however, John Chase, our community planner and coastal area specialist, did attend and provided testimony. During the meeting, the committee requested more information about the enforceable policies and designated areas disapproved by the Alaska Department of Natural Resources (DNR) for our coastal management plan.

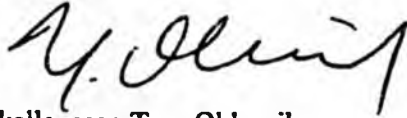
On October 31, 2006, the Commissioner of DNR adopted the Final Recommendation to the Commissioner on the Northwest Arctic Borough's coastal management plan. Since the Final Recommendation is too long to fax, I have arranged for a hard copy of it to be delivered to the Resources Committee. This finding may also be viewed on the Alaska Coastal Management Program (ACMP) website at the following address: http://alaskacoast.state.ak.us/District/Final_Tables/NorthWestArctic.htm

As background, the Northwest Arctic Borough has been revising our coastal management plan since 2005 at the request/direction of the state. We have met all of the deadlines, and we made a special effort to ensure our plan met all of the requirements in the revised ACMP statutes and regulations. Unfortunately, despite many efforts, all of our proposed important habitat areas and areas designated for historic and prehistoric resources were denied; and only one small subsistence use area was approved which contradicts local lifestyles of our Alaska residents that depend solidly on subsistence for our local economy and culture. We are currently in mediation with the state over the decision on our plan, and the mediation meeting is scheduled for May 6 -7, 2008 in Kotzebue.

NORTHWEST ARCTIC BOROUGH**P.O. Box 1110****Kotzebue, Alaska 99752****(907) 442.2500 or (800) 478.1110****Fax: (907) 442.3740 or 2930**

I appreciate the committee's interest in HB 243, and I urge you to pass this bill from the committee. Please contact me if you have any questions about our proposed plan at (907) 442-2500 or by email at tokleasik@nwabor.org.

Sincerely,



Ukallaysaq Tom Okleasik
Planning Director

Debra Higgins

From: Bates, Randall W (DNR) [randy.bates@alaska.gov]
Sent: Tuesday, April 08, 2008 4:09 PM
To: Debra Higgins
Cc: Lesh, Melanie G (DNR)
Subject: ACMP Information
Attachments: 080408 NSB Mediation Brief.pdf; 080408 NAB Mediation Brief.pdf

Debra,

Thanks for your good work and support during the H RES hearing for HB 243 regarding the Alaska Coastal Management Program. During the hearing last Friday (April 4), I was asked to share with the committee members information regarding the North Slope Borough and Northwest Arctic Borough coastal management plans, their proposed enforceable policies, and the issues related to the pending mediation. The members can find information as follows:

1. North Slope Borough coastal management plan information -
http://www.alaskacoast.state.ak.us/District/Final_Tables/NorthSlope.htm
2. Northwest Arctic Borough coastal management plan information -
http://www.alaskacoast.state.ak.us/District/Final_Tables/NorthWestArctic.htm
3. State of Alaska briefs for the North Slope Borough and the Northwest Arctic Borough – attached in .PDF

If you would be willing to forward this information as appropriate, I would appreciate it. If I can provide you or the H RES members any additional information or answer any other questions, please let me know.

Again, thanks!

Randy

4/8/2008

I. INTRODUCTION

The Alaska Coastal Management Program (ACMP) was formed in 1977 under the authority of the federal Coastal Zone Management Act of 1972. Since 1977, the ACMP has undergone significant changes, yet the program has maintained its original objective of properly managing the competing demands upon, preservation of, and sustainable use of Alaska's rich and diverse coastal resources. A list of the ACMP's procedural history pertinent to this mediation follows:¹

- 1972 - Federal Coastal Zone Management Act provides a forum to address the increasing demands for the use and enjoyment of coastal resources.
- 1977 - Alaska Coastal Management Act is established as a program within the Office of the Governor administered through the Division of Governmental Coordination (DGC). The Governor appoints the Coastal Policy Council (CPC) to make program policy decisions.
- August 1997 - The ACMP Assessment Steering Committee is formed to evaluate the efficiency of the program and outline problems within the program.
- 1997 - Senate Bill 308 requires reform of the coastal district plans requiring that coastal district plans not incorporate by reference statutes and administrative regulations by state agencies. No coastal districts amend their coastal plan in light of this bill and the CPC fails to enforce the bill.
- November 27, 2002 - NOAA's Office of Ocean and Coastal Resource Management (OCRM) approves an amendment of the previous ACMP as a routine program change. This routine program change includes changes to 6 AAC 50 (the former regulations governing the consistency review process) and incorporates the requirements of Senate Bill 308 into the program.
- February 12, 2003 - Executive Order 106 transfers responsibility for the ACMP from DGC to the Department of Natural Resources (DNR) Office of Project Management and Permitting (OPMP).
- May 21, 2003 - Governor Murkowski signs House Bill 191 into law. The bill recites the need to update the existing statewide standards to make them clear and concise, and to provide predictability in the consistency review process. The bill also calls for an update and reform of the district coastal management plans so that "the local enforceable policies within these plans are clear and concise, provide greater uniformity in coastal management throughout the state, relate to matters of local concern, and do not duplicate state and federal requirements." The new plans are to be submitted to OPMP by July 1, 2005.
- May 26, 2005 - Governor Murkowski signs Senate Bill 102 into law. This bill nullifies and voids district enforceable policies that conflict with state law and extends the deadline for districts to submit their revised coastal management plans by eight months (to March 1, 2006).
- July 1, 2005 - The original deadline established by Senate Bill 191 for coastal districts to review their existing plans, revise as necessary, and submit them to DNR for review and approval.

¹ Many of the legislative acts listed included numerous changes to the ACMP. Only those changes that are pertinent to this mediation are detailed.

- July 1, 2006 -- The original date that existing coastal plans were to sunset (except those submitted before July 1, 2005 and approved by DNR).
- March 1, 2006 – New date (first extension) for coastal districts to review their existing plans, revise as necessary, and submit them to DNR for review and approval.
- March 1, 2007 – New date for existing coastal plans to sunset (except those submitted before March 1, 2006 and approved by DNR).
- September 1, 2007 – New date (second extension) for existing coastal plans to sunset (except those submitted before March 1, 2006 and approved by DNR).
- October 2007 – The Office of Project Management and Permitting (OPMP) is split apart with Large Project Permitting staying within OPMP and the creation of the Division of Coastal and Ocean Management (DCOM) to manage the ACMP.

The ACMP relies, in part, on local implementation of the ACMP through the coastal district management plans. As a result of the legislative overhaul of the ACMP, twenty eight coastal districts throughout Alaska have amended or are in the process of amending their coastal district management plans. The new statewide standards at 11 AAC 112 and the plan amendment regulations at 11 AAC 114 establish the requirements for coastal district plan approval by the Department of Natural Resources. The approval of a coastal district plan is contingent upon the district plan's compliance with the statutory requirements of AS 46.40 and the implementing regulations at 11 AAC 112 and 11 AAC 114.

The North Slope Borough (NSB) triggered the State's review and approval process of the NSB coastal district plan amendment when it submitted its draft plan to the former OPMP on March 1, 2006. The former OPMP released its preliminary recommendations and comments to that draft on June 12, 2006. A thirty day public review and comment period was held on the proposed plan amendments and on the former OPMP's analysis and preliminary recommendations.

The NSB submitted its final plan amendment to the former OPMP in October 2007. This plan was evaluated pursuant to the applicable statutes and regulations and was submitted to the DNR Commissioner on October 31, 2007. The former OPMP recommended that the DNR Commissioner adopt NSB's plan in part and disapprove the NSB's plan in part – the Commissioner adopted the former OPMP's final recommendations pursuant to 11 AAC 114.335(e). The NSB requested mediation pursuant to 11 AAC 114.350(a)(2) for the following unapproved portions of its plan: enforceable policies A-1 through A-7, B-1 through B-3, C-1 through C-2, C-4 through C-10, D-1 through D-4, E-1 through E-3, F-1 through F-3, H-1 through H-2; natural hazard designated areas (specifically permafrost designation for all coastal waters south of Point Hope and the erosion designation for all areas within 20 feet of the mean high water mark of rivers); subsistence use designated areas (specifically the subsistence use designation for fish, gathering, Wainwright fall bowhead whale hunt, Point Hope fall bowhead whale hunt, and Point Lay spring bowhead whale hunt); important habitat designated areas, and technical edits to the CMP text.

II. DESIGNATED AREAS

A district must have approved designated areas for natural hazards, subsistence use, and important habitat in order to develop enforceable policies applicable to those areas. *See* 11 AAC 114.250, 11 AAC 114.270, and the ACMP program description at §5.3.9.2. (submitted with the ACMP program amendment approved by NOAA's OCRM). The criteria for designating these areas are listed at 11 AAC 114.250(b), (g), (h). In addition, designated areas must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. *See* 11 AAC 114.270(g). To assist districts with the mapping of designated areas, the former OPMP developed mapping standards that are applied to all proposed coastal district management plan amendments. These standards are applied to ensure that all designated area maps meet the requirements of 11 AAC 114.250 and 11 AAC 114.270. In order for the former OPMP to recommend approval for designated areas, the district must have demonstrated that each designated area meets the above requirements and standards. A discussion follows regarding each disapproved designated area the NSB is mediating.

Natural Hazards

The NSB's designated natural hazard areas for permafrost for all coastal waters south of Point Hope and for erosion for all areas within 20 feet of the mean high water mark of rivers cannot be approved because the NSB did not discuss the likelihood for occurrence as required by 11 AAC 114.250(b) for subsea permafrost south of Point Hope and for erosion in rivers.

Subsistence

The NSB's designated subsistence use area for fish and gathering cannot be approved because the designation is too broad to meet the requirements of 11 AAC 114.250(g). The subsistence designated use area is too broad because the NSB's designated "fish" category contains fish with varying lifecycles, and the designated "gathering" category contains both gathering on land and in the marine environment. 11 AAC 114.250(g) states that a "district may ... designate areas in which *a* subsistence use is an important use of coastal resources and designate such areas." (emphasis added).

The former OPMP provided coastal districts, including the NSB, with guidance and direction on how to designate, document, and map *a* subsistence use. The designated subsistence use areas for "fish" and "gathering" is too broad because there is not a clear breakdown of the category of use (i.e., marine fish harvest, freshwater fish harvest, anadromous fish harvest, marine gathering, land-based gathering, etc.).

The bowhead whale subsistence use for Wainwright fall, Point Hope fall, and Point Lay cannot be approved because the district has not shown per 11 AAC 114.990(23) that bowhead whale subsistence use in these areas at these times is a current and actual use. In addition, these designations were added after the preliminary review and were not a part of the former OPMP public review process.

Important Habitat

The NSB's designated important habitat areas cannot be approved for two reasons: 1) the areas address matters authorized under state law without documentation

that the matter is not adequately addressed under state law and 2) the designated area maps do not meet the state's mapping requirements.

The proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8). 11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." NSB's designated important habitat areas duplicate existing state authority without demonstrating the matter is not adequately addressed. For example, the NSB designates "All anadromous waters identified in the Fish Distribution Database are designated as important habitat, including a 1000-foot corridor on either side of the stream as measured from the mean high water mark (Appendix G-3)." The ADFG Fish Distribution Database Atlas is a matter authorized by state law and is the authority under which other state laws are implemented. The NSB's designation duplicates existing ADF&G authority without demonstrating the matter is not adequately addressed.

In addition, the designated important habitat area maps do not meet the mapping requirements for the following reasons:

1. The legends do not state they are important habitat designated area maps, they do not list applicable enforceable policies, and they do not include the correct agency logos.
2. The maps designate areas on federal land.
3. The maps are not clear and concise as to what is actually being designated.
4. The maps include designations outside the coastal district boundary.
5. The maps are not backed up by written and scientific evidence that the areas have direct and significant impacts on coastal water and are biologically and significantly productive.

III. ENFORCEABLE POLICIES

A break down of each category of enforceable policies and a general discussion follows:

Natural Hazards

There were four proposed natural hazards policies (D-1 through D-4). Only D-3 was approved in part. These policies are not approvable because they address a matter that is already adequately addressed by the Natural Hazards State Standard at 11 AAC 112.210. The Natural Hazards State Standard at 11 AAC 112.210 (c) reads:

Development in a natural hazard area may not be found consistent unless the applicant has taken appropriate measures in the siting, design, construction, and operation of the proposed activity to protect public safety, services, and the environment from potential damage caused by known natural hazards.

This Natural Hazards State Standard applies in all areas designated as a natural hazard including areas designated by the NSB. In addition, "appropriate measures in the siting, design, construction, and operation of the proposed activity" is further defined in 11 AAC 112.210(d).

Subsistence Use

The subsistence use policies are not approvable because many of the policies address matters already covered under the subsistence state standard at 11 AAC 112.270 which addresses the avoidance and minimization of impact to subsistence uses of coastal resources within designated subsistence use areas. NSB has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matters are not adequately addressed by the subsistence state standard. Policy A-2 addresses access to the subsistence use areas. Enforceable policies for subsistence use are only applicable within the designated area. Therefore, this policy is not approvable because it does not flow from the state standard at 11 AAC 112.270 and does not comply with 11 AAC 114.270(a)(1). Policies A-3 and A-6 through A-7 address the availability of subsistence resources. Availability of subsistence resources is outside the purview of the ACMP. The Alaska Department of Fish and Game is authorized to ensure the availability of fish and game resources. The Subsistence State Standard simply tries to protect identified subsistence uses from reasonably foreseeable impacts from proposed projects in identified subsistence use areas.

Important Habitat

At the most basic level, all of the enforceable policies for important habitat are not approvable under 11 AAC 114.250 and 11 AAC 114.270. The regulations require that an approved designated area must exist before a district can draft enforceable policies in this area. 11 AAC 114.270 also requires that a description or map developed under that subsection must be referenced in the applicable enforceable policy. The NSB does not have an approved designated area for important habitat for the reasons stated above, and, as a result, the NSB enforceable policies cannot be approved.

In addition, the important habitat policies are not approvable for the following reasons. First, some policies duplicate the authority of AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 that provides protection to fish and wildlife habitat. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The NSB has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the important habitat is not adequately protected by these authorities. Third, many policies address areas adjacent to designated important fish habitat. Enforceable policies for important habitat are only applicable within the designated area. Therefore, these policies are not approvable because they do not flow from the state standard at 11 AAC 112.300 and do not comply with 11 AAC 114.270(a)(1).

Energy Facilities

The energy facilities policies are not approvable for the following reasons. First, the energy facilities policies address activities that do not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and do not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program as amended June 2, 2005* (approved by OCRM December 29, 2005). Second, many of the proposed policies address activities already addressed by the state energy facility at 11 AAC 112.230, 11 AAC 112.300 and under the state's authority at AS 41.14.840 and AS

41.14.870. The district has not demonstrated pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e) that the matters are not adequately addressed under these authorities.

Transportation Routes and Facilities and Utility Routes and Facilities

The transportation routes and facilities and utility routes and facilities are not approvable because they address a matter that is already adequately addressed by the Transportation Routes and Facilities State Standard at 11 AAC 112.280 and the Utility Routes and Facilities State Standard at 11 AAC 112.240. The NSB has not shown, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed. The Transportation Routes and Facilities and the Utility Routes and Facilities State Standards do not require designated areas and are applicable through the coastal zone as appropriate.

Conclusion

For the most part, the NSB's proposed enforceable policies duplicate, restate, or incorporate by reference statutes and administrative regulations adopted by state or federal agencies, or address matters regulated by state or federal law that are not matters of local concern, or do not otherwise meet the requirements in AS 46.40.070. Each of the policies being addressed by this mediation cannot be approved for one or more of these reasons.

IV. SOLUTION

Components of the NSB's coastal management plan do not meet the requirements of the regulations. The Division of Coastal and Ocean Management (DCOM) can only approve the unapproved portions of the NSB's coastal management plan if the NSB makes substantial changes to comply with the regulations and mapping requirements, as described above.

V. CONCLUSION

The statewide standards listed in 11 AAC 112 are designed to be broad standards and are meant to be applied by resource agencies as well as coastal districts during a project's consistency review. Because these standards are so broad, it is only in rare circumstances that the interests of coastal districts may not be addressed by a statewide standard. This is why the regulations allow districts to develop enforceable policies under specific circumstances. The districts may continue to review projects and advise the state reviewing agency of the issues that were once covered by former district policies, yet under the current ACMP laws, many of these policies simply cannot be written into individual district plans. Such is the case with the unapproved portions of the NSB's coastal management plan.

I. INTRODUCTION

The Alaska Coastal Management Program (ACMP) was formed in 1977 under the authority of the federal Coastal Zone Management Act of 1972. Since 1977, the ACMP has undergone significant changes, yet the program has maintained its original objective of properly managing the competing demands upon, preservation of, and sustainable use of Alaska's rich and diverse coastal resources. A list of the ACMP's procedural history pertinent to this mediation follows:¹

- 1972 - Federal Coastal Zone Management Act provides a forum to address the increasing demands for the use and enjoyment of coastal resources.
- 1977 - Alaska Coastal Management Act is established as a program within the Office of the Governor administered through the Division of Governmental Coordination (DGC). The Governor appoints the Coastal Policy Council (CPC) to make program policy decisions.
- August 1997 - The ACMP Assessment Steering Committee is formed to evaluate the efficiency of the program and outline problems within the program.
- 1997 - Senate Bill 308 requires reform of the coastal district plans requiring that coastal district plans not incorporate by reference statutes and administrative regulations by state agencies. No coastal districts amend their coastal plan in light of this bill and the CPC fails to enforce the bill.
- November 27, 2002 - NOAA's Office of Ocean and Coastal Resource Management (OCRM) approves an amendment of the previous ACMP as a routine program change. This routine program change includes changes to 6 AAC 50 (the former regulations governing the consistency review process) and incorporates the requirements of Senate Bill 308 into the program.
- February 12, 2003 - Executive Order 106 transfers responsibility for the ACMP from DGC to the Department of Natural Resources (DNR) Office of Project Management and Permitting (OPMP).
- May 21, 2003 - Governor Murkowski signs House Bill 191 into law. The bill recites the need to update the existing statewide standards to make them clear and concise, and to provide predictability in the consistency review process. The bill also calls for an update and reform of the district coastal management plans so that "the local enforceable policies within those plans are clear and concise, provide greater uniformity in coastal management throughout the state, relate to matters of local concern, and do not duplicate state and federal requirements." The new plans are to be submitted to OPMP by July 1, 2005.
- May 26, 2005 - Governor Murkowski signs Senate Bill 102 into law. This bill nullifies and voids district enforceable policies that conflict with state law and extends the deadline for districts to submit their revised coastal management plans by eight months (to March 1, 2006).
- July 1, 2005 - The original deadline established by Senate Bill 191 for coastal districts to review their existing plans, revise as necessary, and submit them to DNR for review and approval.

¹ Many of the legislative acts listed included numerous changes to the ACMP. Only those changes that are pertinent to this mediation are detailed.

- July 1, 2006 – The original date that existing coastal plans were to sunset (except those submitted before July 1, 2005 and approved by DNR).
- March 1, 2006 – New date (first extension) for coastal districts to review their existing plans, revise as necessary, and submit them to DNR for review and approval.
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- September 1, 2007 – New date (second extension) for existing coastal plans to sunset (except those submitted before March 1, 2006 and approved by DNR).
- October 2007 – The Office of Project Management and Permitting (OPMP) is split apart with Large Project Permitting staying within OPMP and the creation of the Division of Coastal and Ocean Management (DCOM) to manage the ACMP.

The ACMP relies, in part, on local implementation of the ACMP through the coastal district management plans. As a result of the legislative overhaul of the ACMP, twenty eight coastal districts throughout Alaska have amended or are in the process of amending their coastal district management plans. The new statewide standards at 11 AAC 112 and the plan amendment regulations at 11 AAC 114 establish the requirements for coastal district plan approval by the Department of Natural Resources. The approval of a coastal district plan is contingent upon the district plan's compliance with the statutory requirements of AS 46.40 and the implementing regulations at 11 AAC 112 and 11 AAC 114.

The Northwest Arctic Borough (NAB) triggered the State's review and approval process of the NAB coastal district plan amendment when it submitted its draft plan to the former OPMP on March 1, 2006. The former OPMP released its preliminary recommendations and comments to that draft on June 6, 2006. A thirty day public review and comment period was held on the proposed plan amendments and on the former OPMP's analysis and preliminary recommendations.

The NAB submitted its final plan amendment to the former OPMP in September 2006. This plan was evaluated pursuant to the applicable statutes and regulations and was submitted to the DNR Commissioner on October 26, 2006. The former OPMP recommended that the DNR Commissioner adopt NAB's plan in part and disapprove the NAB's plan in part – the Commissioner adopted the former OPMP's final recommendations pursuant to 11 AAC 114.335(e). The NAB requested mediation pursuant to 11 AAC 114.350(a)(2) for the following unapproved portions of its plan: enforceable policies A-1 through A-5, B-1 through B-3 and B-6 through B-10, C-1 through C-2, D-1 through D-2, E-1, F-1 through F-4, G-1 through G-6, H-1 through H-17; subsistence use designated areas (specifically the Sisoalik Spit Subsistence Use Area, the Kobuk-Selawik Lakes Subsistence Use Area, the Cape Espenberg/Goodhope River Subsistence Use Area, the Kobuk River Delta Subsistence Use Area, the Selawik River Delta Subsistence Use Area, the Maniilaq River/Ambler Lowlands Subsistence Use Area, the Inmachuk River Subsistence Use Area, the North Fork Squirrel River/Omar River Subsistence Use Area, the North Kivalina Coast Subsistence Use Area, the Onion Portage Subsistence Use Area, the Eschscholtz Bay Subsistence Use Area, the Elephant Point/Choris Peninsula Subsistence Use Area, the Kobuk River Sheefish/Chum

Salmon/Whitefish Subsistence Use Area, Wulik River Subsistence use Area, the Noatak River Subsistence Use Area, and the Upper Kivalina River Subsistence Use Area); important habitat designated areas; areas important to the study, understanding, or illustration of history, prehistory, and archeology; and technical edits to the CMP text.

II. DESIGNATED AREAS

A district must have approved designated areas for subsistence use, important habitat, and history, prehistory, and archeology in order to develop enforceable policies applicable to those areas. *See* 11 AAC 114.250, 11 AAC 114.270, and the ACMP program description at §5.3.9.2. (submitted with the ACMP program amendment approved by NOAA's OCRM). The criteria for designating these areas are listed at 11 AAC 114.250(b), (g), (h). In addition, designated areas must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. *See* 11 AAC 114.270(g). To assist districts with the mapping of designated areas, the former OPMP developed mapping standards that are applied to all proposed coastal district management plan amendments. These standards are applied to ensure that all designated area maps meet the requirements of 11 AAC 114.250 and 11 AAC 114.270. In order for the former OPMP to recommend approval for designated areas, the district must have demonstrated that each designated area meets the above requirements and standards. A discussion follows regarding each disapproved designated area the NAB is mediating.

Subsistence

The NAB's designated subsistence use area cannot be approved because the designation is too broad to meet the requirements of 11 AAC 114.250(g). 11 AAC 114.250(g) states that a "district may ... designate areas in which *a* subsistence use is an important use of coastal resources and designate such areas." (emphasis added).

The former OPMP provided coastal districts, including the NAB, with guidance and direction on how to designate, document, and map a subsistence use. The designated subsistence use areas are too broad because there is not a clear breakdown of the category of use. In addition, the subsistence use maps provided by the NAB in Appendix P designate subsistence uses outside of the coastal zone boundary.

The NAB also designates subsistence use areas in Appendix H. These subsistence use designations are sub-designations of subsistence use areas designated in Appendix P. The subsistence use areas mapped in Appendix H include a significant portion of federal land which, according to OCRM, is not allowed.

Important Habitat

The NAB's designated important habitat areas cannot be approved for two reasons: 1) the areas address matters authorized under state law without documentation that the matter is not adequately addressed under state law, 2) the designated area maps do not meet the state's mapping requirements, and 3) the discussion of direct and significant impact on coastal waters, specifically for caribou calving grounds, is not directly tied to the area proposed for designation.

The proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8). 11 AAC 114.270(c)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or

federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C).” NAB’s designated important habitat areas duplicate existing state authority without demonstrating the matter is not adequately addressed. For example, the NAB designates “...all anadromous waters in the coastal zone identified in the 2005 Fish Distribution Database (Appendix F), including a 1000-foot corridor on either side of the streams measured from the mean high water mark...”. The ADFG Fish Distribution Database Atlas is a matter authorized by state law and is the authority under which other state laws are implemented. The NAB’s designation duplicates existing ADF&G authority without demonstrating the matter is not adequately addressed.

In addition, the designated important habitat area maps do not meet the mapping requirements for the following reasons:

1. The legends do not state they are important habitat designated area maps, they do not list applicable enforceable policies, and they do not include the correct agency logos.
2. The maps designate areas on federal land.
3. The maps are not clear and concise as to what is actually being designated.
4. The maps include designations outside the coastal district boundary.
5. The maps are not backed up by written and scientific evidence that the areas have direct and significant impacts on coastal water and are biologically and significantly productive.

All onshore, non-federal areas in the NAB is designated for caribou habitat. The criteria for designating important habitat at 11 AAC 114.250(h) are that uses and activities within the designated areas have a direct and significant impact on coastal water and that the designated areas are shown by written scientific evidence to be significantly productive habitat. The NAB provides a discussion on how caribou calving grounds are biologically and significantly productive based on scientific evidence. The caribou calving grounds that are biologically and scientifically productive habitats as shown by written scientific evidence in the resource inventory and analysis are not located in the areas within the NAB’s coastal zone nor are a significant portion within the coastal district.

History, Prehistory, and Archeology

The NAB’s designated area for history, prehistory, and archeology can not be approved since there are no approved enforceable policies. The proposed enforceable policies applicable for the designated history, prehistory, and archeology area is not approvable (see enforceable policy discussion below). Because there is no state standard under 11 AAC 112 that addresses impacts from proposed projects within a designated history, prehistory, and archeology area, a coastal district must have an approvable enforceable policy in order for the designated area to be meaningful and applicable. Without an enforceable policy applicable to the proposed designated history, prehistory, and archeology area, the designation of the area is meaningless for compliance purposes, and therefore is not approvable.

III. ENFORCEABLE POLICIES

A break down of each category of enforceable policies and a general discussion follows:

Subsistence Use

The subsistence use policies are not approvable because many of the policies address matters already covered under the subsistence state standard at 11 AAC 112.270 which addresses the avoidance and minimization of impact to subsistence uses of coastal resources within designated subsistence use areas. NAB has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matters are not adequately addressed by the subsistence state standard. Policy A-2 addresses access to the subsistence use areas. Enforceable policies for subsistence use are only applicable within the designated area. Therefore, this policy is not approvable because it does not flow from the state standard at 11 AAC 112.270 and does not comply with 11 AAC 114.270(a)(1). Policies A-3 and A-5 address the availability of subsistence resources. Availability of subsistence resources is outside the purview of the ACMP. The Alaska Department of Fish and Game and the Federal Subsistence Board is authorized to address the harvest and availability of fish and game resources. The Subsistence State Standard simply tries to protect identified subsistence uses from reasonably foreseeable impacts from proposed projects in identified subsistence use areas.

Important Habitat

At the most basic level, all of the enforceable policies for important habitat are not approvable under 11 AAC 114.250 and 11 AAC 114.270. These regulations require that an approved designated area must exist before a district can draft enforceable policies in this area. 11 AAC 114.270 also requires that a description or map developed under that subsection must be referenced in the applicable enforceable policy. The NAB does not have an approved designated area for important habitat for the reasons stated above, and, as a result, the NAB enforceable policies cannot be approved.

In addition, the important habitat policies are not approvable for the following reasons. First, some policies duplicate the authority of AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 that provides protection to fish and wildlife habitat. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The NAB has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the important habitat is not adequately protected by these authorities. Third, many policies address areas adjacent to designated important fish habitat. Enforceable policies for important habitat are only applicable within the designated area. Therefore, these policies are not approvable because they do not flow from the state standard at 11 AAC 112.300 and do not comply with 11 AAC 114.270(a)(1).

History, Prehistory, and Archeology

The history, prehistory, and archeology policies are not approvable because they are neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy in accordance with AS 46.40.070(a)(2)(A) and 11 AAC 114.270(e)(1). In addition, the former OPMP made suggestion on both June 6, 2006, and

September 19, 2006, which would have made these policies approvable; however, the NAB chose not to make the recommended changes. Therefore, these policies can not be approved.

Natural Hazards

There were two proposed natural hazards policies (D-1 through D-2). These policies are not approvable because they address a matter that is already adequately addressed by the Natural Hazards State Standard at 11 AAC 112.210. The Natural Hazards State Standard at 11 AAC 112.210 (c) reads:

Development in a natural hazard area may not be found consistent unless the applicant has taken appropriate measures in the siting, design, construction, and operation of the proposed activity to protect public safety, services, and the environment from potential damage caused by known natural hazards.

This Natural Hazards State Standard applies in all areas designated as a natural hazard including areas designated by the NAB. In addition, "appropriate measures in the siting, design, construction, and operation of the proposed activity" is further defined in 11 AAC 112.210(d).

In addition, natural hazard policy D-1 attempts to manage impacts to water quality and habitat that is already addressed by various state and federal laws including AS 41.14.840, AS 41.14.870, 18 AAC 60, and 18 AAC 70. The state habitat standard at 11 AAC 112.300 also addresses certain aspects of impacts to habitat. The NAB has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e) that the matter addressing impacts to habitat is not adequately addressed.

DCOM made recommendations to the NAB on June 6 2006, that would have made natural hazard policy D-2 approvable; however, the NAB chose not to make the recommended changes. Therefore, this policy can not be approved.

Coastal Development

The coastal development policy is not approvable because the policy is neither clear nor concise as to the activities and persons affected by the policies and requirements of the policies in accordance with AS 46.40.070(a)(2)(A) and 11 AAC 114.270(e)(1).

Utility Routes and Facilities and Transportation Routes and Facilities

The utility routes and facilities and transportation routes and facilities are not approvable because they address a matter that is already adequately addressed by the Utility Routes and Facilities State Standard at 11 AAC 112.240 and the Transportation Routes and Facilities State Standard at 11 AAC 112.280. The NAB has not shown, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed. The Utility Routes and Facilities and the Transportation Routes and Facilities State Standards do not require designated areas and are applicable through the coastal zone as appropriate. In addition, policies F-1 and F-2 address matters already addressed by the habitat state standard at 11 AAC 112.300.

Energy Facilities

The energy facilities policies are not approvable for the following reasons. First, the energy facilities policies address activities that do not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and do not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program as amended June 2, 2005* (approved by OCRM December 29, 2005). Second, many of the proposed policies address activities already addressed by the state energy facility at 11 AAC 112.230, the state habitat standard at 11 AAC 112.300, and under the state's authority at AS 41.14.840 and AS 41.14.870. The district has not demonstrated pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e) that the matters are not adequately addressed under these authorities. Third, oil and gas leasing are considered "uses of state concern" as defined at AS 46.40.210. Under 46.40.060, the district has not demonstrated that this policy does not arbitrarily or unreasonably restrict a use of state concern.

Conclusion

For the most part, the NAB's proposed enforceable policies duplicate, restate, or incorporate by reference statutes and administrative regulations adopted by state or federal agencies, *or* address matters regulated by state or federal law that are not matters of local concern, or do not otherwise meet the requirements in AS 46.40.070. Each of the policies being addressed by this mediation cannot be approved for one or more of these reasons.

IV. SOLUTION

Components of the NAB's coastal management plan do not meet the requirements of the regulations. The Division of Coastal and Ocean Management (DCOM) can only approve the unapproved portions of the NAB's coastal management plan if the NAB makes substantial changes to comply with the regulations and mapping requirements, as described above.

V. CONCLUSION

The statewide standards listed in 11 AAC 112 are designed to be broad standards and are meant to be applied by resource agencies as well as coastal districts during a project's consistency review. Because these standards are so broad, it is only in rare circumstances that the interests of coastal districts may not be addressed by a statewide standard. This is why the regulations allow districts to develop enforceable policies under specific circumstances. The districts may continue to review projects and advise the state reviewing agency of the issues that were once covered by former district policies, yet under the current ACMP laws, many of these policies simply cannot be written into individual district plans. Such is the case with the unapproved portions of the NAB's coastal management plan.