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<TARGET><BILL>HB 106</BILL><SUBJECT>HB
106</SUBJECT><COMM>SF IN27</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 4/16/11

FURTHER:

DATE TURNED
INTO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 106(FIN)

HB 106-COASTAL MANAGEMENT PROGRAM

"An Act extending the termination date of the Alaska coastal management program and relating to the extension; relating to the review of activities and regulations of the Alaska coastal management program; establishing the Alaska Coastal Policy Board; relating to the development, review, and approval of district coastal management plans; relating to the duties of the Department of Natural Resources relating to the Alaska coastal management program; relating to the review of certain consistency determinations; providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch. 31, SLA 2005; and providing for an effective date."

and recommends:






- be replaced with SCS CSHB 106 (FIN) Same Title Technical Title Change New Title/SCR No. _____
- adopt previous SCS _____ (Same Title Technical Title Change New Title/SCR No. _____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR	X			

PREVIOUS FISCAL NOTES				
Dept.	Fiscal	Indet.	Zero	FN #
DRC	X			7
DEC	X			8

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas			<input checked="" type="checkbox"/>	
	Egan		<input checked="" type="checkbox"/>		
	Ellis	<input checked="" type="checkbox"/>			
	Hoffman			<input checked="" type="checkbox"/>	
	STEGMAN			<input checked="" type="checkbox"/>	
CO-CHAIR:					
CO-CHAIR:					

Fiscal Note

State of Alaska
2011 Legislative Session

Bill Version: HB 106 (T)

Identifier: CSHB106(FIN)-DNR-DCOM-4-15-11
 Title: COASTAL MANAGEMENT PROGRAM
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: CONF COMM

Department: Department of Natural Resources
 Appropriation: Land & Water Resources
 Allocation: Alaska Coastal and Ocean Management
 OMB Component Number: 2680

Expenditures/Revenues

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

(Thousands of Dollars)

OPERATING EXPENDITURES	Appropriation		FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
	Required	Information					
Personal Services	3,260.0		3,260.0	3,260.0	3,260.0	3,260.0	3,260.0
Travel	251.6		251.6	141.8	141.8	121.8	121.8
Services	3,144.4		3,144.4	3,084.4	3,084.4	3,084.4	3,084.4
Commodities	59.8		54.2	54.2	54.2	54.2	54.2
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	6,715.8	0.0	6,710.2	6,540.4	6,540.4	6,520.4	6,520.4

Capital Expenditures

Change in Revenues ()							
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Fund Source (Operating Only)

1002 Fed Ropis	4,039.0		4,039.0	4,039.0	4,039.0	4,039.0	4,039.0
1003 G/F Match	1,672.6		1,672.6	1,672.6	1,672.6	1,672.6	1,672.6
1004 Gen Fund	664.1		658.5	488.7	488.7	468.7	468.7
1007 I/A Ropis	95.5		95.5	95.5	95.5	95.5	95.5
1061 CIP Ropis	244.6		244.6	244.6	244.6	244.6	244.6
Total	6,715.8	0.0	6,710.2	6,540.4	6,540.4	6,520.4	6,520.4

Estimate of any current year (FY2011) cost: 0.0

Positions

Full-time	34.0		34.0	34.0	34.0	34.0	34.0
Part-time							
Temporary							

Reason For Change:

CC: This fiscal note combines the additional funding requested with FY12 program funding removed by the Senate. Additionally, this fiscal note is updated to reflect changes made in the House Finance committee substitute.

This revised fiscal note includes \$1.36 million capital authorization (federal) for operating grants to communities so they have the funding necessary for local participation.

Analysis:

NOTE: The base budget (\$4,691.7 and 33 positions) was removed from the Senate version of the FY12 operating budget, making it subject to conference committee. The annual capital project request for the federal grant funds that are shared with DCCED for grants to communities and for DCCED's administration of the grants was removed from the Senate version of the FY12 Capital Budget making it subject to conference committee.

The Alaska Coastal Management Program (ACMP) will automatically terminate on July 1, 2011 (SLA2005, CH31, Sec 22). CSHB106(FIN) would extend the termination date to July 1, 2017.

Fiscal Note

State of Alaska

Bill Version: HB 106 (T)

2011 Legislative Session

This fiscal note reflects the increased fiscal impacts due to the additional Division of Coastal and Ocean Management (DCOM) duties, including the administration and implementation of the Alaska Coastal Policy Board (CPB). Those increased fiscal impacts are detailed below:

Personal Services

One additional position, a Project Coordinator (range 20), will be required to cover the additional work associated with the CPB and the coordination of district planning functions and information sharing.

Travel

The CPB will meet four times in-person in the first two years following establishment of the board, and will meet in-person twice annually after that. The CPB will need to meet more frequently in-person for the first two years in order to establish board protocols, review coastal district plans, and address issues of interest to ACMP participants. CPB travel includes nine members and two DCOM support staff.

In addition, recognizing coastal districts will be amending their district plans based on CSHB106(FIN), two DCOM staff will travel 5-6 different districts per year for four years to assist the districts with their plan amendments.

Five DCOM staff will travel to regional locations for two years to provide ACMP training and education on program changes and the revised ACMP implementing regulations.

The DCOM Director will travel to Washington, DC three times annually for two years to work with NOAA on program change approvals and NEPA requirements.

Contractual

The CPB will meet two times annually by teleconference, with each 2-day teleconference lasting 8 hours each day (including 20 phone lines). CSHB106(FIN) will require a substantial revision to all three chapters of the implementing ACMP regulations (11 AAC 110, 112, and 114). Contractual services will be required to develop and complete those revisions, including the Department of Law final review. The coordination and distribution of district planning and consistency review data and information requires postage and other fees. DCOM will also reimburse state agencies for their participation and implementation of the ACMP program.

Supplies

Supplies will be required for supporting the CPB (dictation/recorder equipment, packet materials and binders) and support staff (office

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

Fiscal Note Number
Bill Version
(H) Publish Date

8
CSHB 106(FIN)
4/15/11

Identifier (file name): HB106CS(FIN)-DEC-CO-04-15-11
 Title: Coastal Management Program
 Sponsor: House Rules Committee by Request of the Governor
 Requester: House Finance Committee
 Dept. Affected: Environmental Conserv
 Appropriation: Administration
 Allocation: Commissioner's Office
 OMB Component Number: 633

Expenditures/Revenues

(Thousands of Dollars)

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

	OPERATING EXPENDITURES	Appropriation Required	Information					
			FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Personal Services		5.0	0.0	5.0	5.0	5.0	5.0	5.0
Travel		7.0	0.0	7.0	5.0	5.0	5.0	5.0
Services		3.0	0.0	3.0	0.0	0.0	0.0	0.0
Commodities		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous		0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING		15.0	0.0	15.0	10.0	10.0	10.0	10.0

CHANGE IN REVENUES								
CAPITAL EXPENDITURES								

FUND SOURCE	(Thousands of Dollars)								
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	5.0	0.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	10.0	0.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0
TOTAL	15.0	0.0	15.0	10.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2011) cost

POSITIONS	Full-time	Part-time	Temporary						
	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)
 This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by: Joey Ausel, Budget Manager Phone: (907) 269-7599
 Division: Administrative Services Date/Time: 4/15/11 8:57 PM
 Approved by: Mary Siroky, Director Date: 4/15/2011
Administrative Services

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Additionally, the bill would require a review of the regulations related to DEC permitting and provide a report back to the Governor and the legislature by February 1, 2013.

Fiscal impacts are detailed below:

Personal Services, Travel and Supplies

DEC anticipates receiving \$10.0 in I/A from the Department of Natural Resources to assist with the Commissioner's travel and staff costs associated with participating on the Alaska Coastal Policy Board and costs associated with the review and report required by February 1, 2013.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number
 Bill Version
 (H) Publish Date

7
CSHB 106(FIN)
 4/15/11

Identifier (file name): HB106CS(FIN)-DEC-WQ-04-15-11

Title Coastal Management Program

Dept. Affected
 Appropriation
 Allocation

Environmental Conserv
 Water

Sponsor House Rules Committee by Request of the Governor

Water Quality

Requester House Finance Committee

OMB Component Number 2062

Expenditures/Revenues

(Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	0.0	86.3	86.3	86.3	86.3	86.3	86.3	86.3
Travel	5.0	5.2	10.2	10.2	10.2	10.2	10.2	10.2
Services	15.0	8.5	23.5	23.5	23.5	23.5	23.5	23.5
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	20.0	100.0	120.0	120.0	120.0	120.0	120.0	120.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES								

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	20.0	50.0	70.0	70.0	70.0	70.0	70.0	70.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1007 IA Receipts	0.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0
TOTAL	20.0	100.0	120.0	120.0	120.0	120.0	120.0	120.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

This fiscal note was modified to reflect the changes proposed by the CSHB 106(FIN). This note takes into consideration new requirements added to the bill for a review and report by the Alaska Coastal Policy Board before February 1, 2013.

Prepared by Joey Ausel, Budget Manager
 Division Administrative Services
 Approved by Mary Strocky, Director
Administrative Services

Phone (907) 269-7599
 Date/Time 4/15/11 8:57 PM
 Date 4/15/2011

FISCAL NOTE #7

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. CSHB 106(FIN)

Analysis

CSHB 106 would extend the Alaska Coastal Management Program termination date to July 1, 2017, creates an Alaska Coastal Policy Board of which the Commissioner of Environmental Conservation is a member.

Fiscal impacts are detailed below:

Travel & Contractual

These costs include travel to coastal policy board meetings for staff (when needed). Additionally, DEC will use contractual support for analysis in preparation for report required under Section 24.

SENATE CS FOR CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska coastal management program and
2 relating to the extension; relating to the review of activities and regulations of the Alaska
3 coastal management program; establishing the Alaska Coastal Policy Board; relating to
4 the development, review, and approval of district coastal management plans; relating to
5 the duties of the Department of Natural Resources relating to the Alaska coastal
6 management program; relating to the review of certain consistency determinations;
7 providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.
8 31, SLA 2005; and providing for an effective date."

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

10 *Section 1. AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

17 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
18 Board is created in the Department of Natural Resources. The board consists of the
19 following:

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
2 resource districts of each region; the governor may reject a list submitted under
3 this subparagraph and request that subsequent lists with different names be
4 submitted; one public member and one alternate member shall be appointed
5 from each of the following regions:

6 (i) northwest Alaska, including, generally, the area of
7 the North Slope Borough and the Northwest Arctic Borough; and the
8 Bering Strait area, including, generally, the area of the Bering Strait
9 regional educational attendance area;

10 (ii) southwest Alaska, including, generally, the area
11 within the Lower Yukon, Lower Kuskokwim, and Southwest regional
12 educational attendance areas and the Lake and Peninsula and Bristol
13 Bay Boroughs; and the Kodiak-Aleutians area, including the area of the
14 Kodiak Island and Aleutians East Boroughs and the Aleutian, Adak,
15 and Pribilof regional educational attendance areas;

16 (iii) Upper Cook Inlet area, including the Municipality
17 of Anchorage and the Matanuska-Susitna Borough; the Lower Cook
18 Inlet area, including, generally, the Kenai Peninsula Borough; and the
19 Prince William Sound area, including, generally, the area east of the
20 Kenai Peninsula Borough to 141 West longitude; and

21 (iv) Southeast Alaska, generally the area east of 141
22 West longitude;

23 (2) each of the following designated members:

- 24 (A) the commissioner of environmental conservation;
25 (B) the commissioner of fish and game;
26 (C) a deputy commissioner of natural resources;
27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. Except as provided
29 by (c) of this section, each member serves until a successor is appointed and qualified.
30 A public member may be reappointed.

31 (c) The board may recommend that the governor remove a public member for

1 cause. With or without a recommendation from the board, the governor may remove a
2 public member for cause after giving the public member written notice of the charges
3 and an opportunity to be heard upon not less than 10 days' notice. If a public member
4 is removed, the alternate member shall serve the remainder of the term, and a new
5 alternate shall be appointed under (a)(1) of this section. In this subsection, "for cause"
6 includes lack of contribution to the board's work, neglect of duty, incompetence,
7 inability to serve, poor attendance, and misconduct in office.

8 (d) The board shall designate co-chairs, one of whom shall be selected from
9 among the public members appointed under (a)(1) of this section and one from among
10 the members designated in (a)(2) of this section.

11 (e) If a member serving under (a)(1) of this section is unable to attend, the
12 alternate may attend. The names of alternates serving under (a)(1) of this section shall
13 be filed with the board.

14 (f) If a member serving under (a)(2) of this section is unable to attend, a
15 deputy commissioner in the same department may attend and act in place of the
16 member. The names of deputy commissioners serving as alternates for members
17 serving under (a)(2) of this section shall be filed with the board.

18 (g) Three public members and three designated members of the board
19 constitute a quorum. However, action may be taken only upon the affirmative vote of
20 at least two-thirds of the full membership of the board.

21 (h) The board shall meet at least four times a year and as often as necessary to
22 fulfill its duties under this chapter and AS 46.40. Meetings may be held and members
23 may vote telephonically, except one board meeting a year shall be held in person.

24 (i) Public members of the board are entitled to per diem and travel expenses
25 authorized by law for members of boards and commissions.

26 (j) Administrative support for the board shall be provided by the division in
27 the department responsible for coastal and ocean management. The director of the
28 division in the department responsible for coastal and ocean management may contract
29 with or employ persons as necessary to assist the board in carrying out the board's
30 duties and responsibilities.

31 (k) The board shall

1 (1) make recommendations to the department relating to the approval
2 or modification of a district coastal management plan under AS 46.40.060(b);

3 (2) provide a forum for the discussion of issues related to this chapter,
4 AS 46.40, and the coastal uses and resources of the state; and

5 (3) annually solicit from state and federal agencies information as to
6 whether they implemented any new statutes or regulations affecting coastal uses or
7 resources to determine if existing enforceable policies duplicate, restate, incorporate
8 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
9 so, direct a coastal resource district with such enforceable policies to resubmit its
10 coastal management plan for review under this chapter and AS 46.40; and

11 (4) review and provide comments to the department on regulations
12 proposed under this chapter and AS 46.40.

13 * **Sec. 4.** AS 46.39.010 is amended by adding a new subsection to read:

14 (d) Not later than January 20 each year, the department shall prepare an annual
15 report summarizing the department's efforts to draft and adopt regulations under this
16 chapter and AS 46.40 during the prior calendar year. The department shall notify the
17 legislature that the report is available and shall also post the report on the department's
18 Internet website.

19 * **Sec. 5.** AS 46.39.030 is amended to read:

20 **Sec. 46.39.030. Powers of the department.** The department may

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

24 (2) contract for necessary services;

25 (3) consult and cooperate with

26 (A) persons, organizations, and groups, public or private,
27 interested in, affected by, or concerned with coastal area planning and
28 management;

29 (B) agents and officials of the coastal resource districts of the
30 state, the Alaska Coastal Policy Board established in AS 46.39.005, and
31 federal and state agencies concerned with or having jurisdiction over coastal

1 planning and management;

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

4 * Sec. 6. AS 46.39.040 is amended to read:

5 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451
6 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

7 (1) develop statewide standards for the Alaska coastal management
8 program, and criteria for the preparation and approval of district coastal management
9 plans in accordance with AS 46.40;

10 (2) establish continuing coordination among state agencies to facilitate
11 the development and implementation of the Alaska coastal management program; in
12 carrying out its duties under this paragraph, the department shall initiate an
13 interagency program of comprehensive coastal resource planning for each geographic
14 region of the state;

15 (3) assure continued provision of [DATA AND] information to coastal
16 resource districts to carry out their planning and management functions under the
17 program; in providing information to a coastal resource district and coastal
18 resource service area under this paragraph, the department shall provide the
19 information by electronic transmission, or by mail if the addressee does not have
20 an electronic mail address, to the presiding officer of the governing body of the
21 coastal resource district and to other persons as may be designated in writing by
22 the district;

23 (4) summarize the minutes of the board's discussion of issues
24 related to this chapter, AS 46.40, and coastal uses and resources of the state.

25 * Sec. 7. AS 46.40.030 is amended to read:

26 **Sec. 46.40.030. Development of district coastal management plans.** (a)
27 Coastal resource districts shall develop and adopt district coastal management plans in
28 accordance with the provisions of this chapter. The plan adopted by a coastal resource
29 district shall be based upon a municipality's existing comprehensive plan or a new
30 comprehensive resource use plan or comprehensive statement of needs, policies,
31 objectives, and standards governing the use of resources within the coastal area of the

1 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
2 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
3 adopted under AS 46.40.040, and must include

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

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

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

10 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
11 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
12 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
13 WATER WITHIN THE COASTAL AREA; AND

14 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
15 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
16 the district coastal management plan and a designation of the enforceable policies
17 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
18 merit special attention.

19 (b) In developing enforceable policies in its coastal management plan under
20 (a) of this section, a coastal resource district shall meet the requirements of
21 AS 46.40.070 and ensure that the enforceable policies

22 (1) are clear and concise as to the activities and persons affected by
23 the policies;

24 (2) use prescriptive or performance-based standards that are
25 written in precise and enforceable language;

26 (3) address a coastal use or resource of concern to the residents of
27 the coastal resource district as demonstrated by local knowledge or supported by
28 scientific evidence; and

29 (4) employ the least restrictive means to achieve the objective of
30 the enforceable policy [MEET THE REQUIREMENTS OF AS 46.40.070 AND
31 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE

1 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
 2 OR FEDERAL AGENCIES].

3 *Sec. 8. AS 46.40.030 is amended by adding new subsections to read:

4 (c) In determining whether an enforceable policy employs the least restrictive
 5 means to achieve its objective, the following factors shall be considered:

6 (1) alternative methods of achieving the objective of the policy;

7 (2) local knowledge or scientific evidence supporting each alternative
 8 method; and

9 (3) how the alternative methods may affect other existing or potential
 10 uses.

11 (d) Additional factors that the department may require be addressed in
 12 determining whether an enforceable policy employs the least restrictive means to
 13 achieve its objective are as follows:

14 (1) the economic effects of alternative methods;

15 (2) the technological feasibility of the alternative methods; and

16 (3) any other relevant factors.

17 *Sec. 9. AS 46.40.040(b) is amended to read:

18 (b) Notwithstanding any other provision of law, AS 46.03, AS 46.04,
 19 AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
 20 exclusive enforceable policies of the Alaska coastal management program for those
 21 purposes. For those purposes only,

22 (1) the issuance of permits, certifications, approvals, and
 23 authorizations by the Department of Environmental Conservation establishes
 24 consistency with the Alaska coastal management program for those activities of a
 25 proposed project subject to those permits, certifications, approvals, and authorizations;

26 (2) for a consistency review of an activity that does not require a
 27 Department of Environmental Conservation permit, certification, approval, or
 28 authorization because the activity is a federal activity or the activity is located on
 29 federal land or the federal outer continental shelf, consistency with AS 46.03,
 30 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
 31 shall be established on the basis of whether the Department of Environmental

1 Conservation finds that the activity satisfies the requirements of those statutes and
2 regulations.

3 * Sec. 10. AS 46.40.050 is amended by adding a new subsection to read:

4 (c) A coastal resource district shall resubmit its coastal management plan, as
5 may be directed by the board under AS 46.39.005(K)(3).

6 * Sec. 11. AS 46.40.060(a) is amended to read:

7 (a) If, upon submission of a district coastal management plan for approval, the
8 department finds that the plan meets the provisions of this chapter [AND THE
9 STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY
10 THE DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY
11 RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may
12 approve the district coastal management plan, or may approve portions of the district
13 plan that meet those requirements.

14 * Sec. 12. AS 46.40.060(b) is amended to read:

15 (b) If the department finds that a district coastal management plan is not
16 approvable or is approvable only in part under (a) of this section, the department
17 shall explain in writing the basis for its decision. The coastal resource district that
18 submitted the plan may request that the department submit the plan or portions
19 of the plan to the board for review. The board shall review the plan or portions of
20 the plan and make recommendations relating to whether the department should
21 approve or modify the district coastal management plan in whole or in part [IT
22 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
23 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
24 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
25 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
26 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
27 RESOLVE DIFFERENCES].

28 * Sec. 13. AS 46.40.060(c) is amended to read:

29 (c) After the board has reviewed the district coastal management plan
30 and submitted recommendations under (b) of this section [IF, AFTER
31 MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the

1 department shall enter findings and, by order, may [REQUIRE]

2 (1) approve the plan or portions of the plan;

3 (2) require that the district coastal management plan be amended to
4 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
5 STANDARDS] and district plan criteria adopted by the department;

6 (3) require [(2)] that the district coastal management plan be revised
7 to accommodate a use of state concern; or

8 (4) require the coastal resource district to submit additional
9 information if, in the judgment of the department, additional information is
10 necessary for the department to approve the plan or portions of the plan [(3)
11 ANY OTHER ACTION BE TAKEN BY THE COASTAL RESOURCE DISTRICT
12 AS APPROPRIATE].

13 * Sec. 14. AS 46.40.060 is amended by adding new subsections to read:

14 (e) Only a coastal resource district affected by a decision of the department
15 under this section may request reconsideration of the decision. The request must be
16 made within 15 days after the decision, must be in writing, and must include a
17 statement of the specific issues and material facts that the coastal resource district
18 contends that the department overlooked, failed to consider, or misconceived. The
19 commissioner of natural resources may review the department's decision on the basis
20 of the request and determine whether the decision should be changed. The
21 commissioner may issue a determination in writing within 20 days after the issuance
22 of the decision. If the commissioner has not issued a written decision within the 20-
23 day period, the request for reconsideration shall be considered as denied. Denial of a
24 request for reconsideration is a final administrative order and decision of the
25 department.

26 (f) The superior courts of the state have jurisdiction to enforce orders of the
27 department entered under (c) and (e) of this section.

28 * Sec. 15. AS 46.40.070 is repealed and reenacted to read:

29 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
30 department shall approve a district coastal management plan submitted for review and
31 approval if, as determined by the department, the

1 (1) district coastal management plan meets the requirements of this
2 chapter and the district plan criteria adopted by the department; and

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

4 (A) do not duplicate, restate, incorporate by reference,
5 rephrase, or adopt state or federal statutes or regulations;

6 (B) are not preempted by or in conflict with state or federal
7 statutes or regulations;

8 (C) employ the least restrictive means to achieve the objective
9 of the enforceable policies;

10 (D) do not arbitrarily or unreasonably restrict uses of state
11 concern; and

12 (E) meet the requirements of (b) and (c) of this section.

13 (b) The enforceable policies in a district coastal management plan submitted
14 for review under this section must meet the requirements of (a) of this section and may
15 establish new standards or requirements that are within the authority of a state or
16 federal agency unless

17 (1) a state agency specifically objects to the proposed new standards or
18 requirements on the grounds that the proposed standards or requirements

19 (A) are based on scientific evidence or local knowledge relied
20 upon by the coastal resource district to satisfy the requirements of
21 AS 46.40.030 but that conflicts with the agency's interpretation of the scientific
22 evidence within the agency's area of expertise;

23 (B) conflict with the agency's allocation of existing or planned
24 agency resources to meet state policies and objectives; or

25 (C) conflict with agency priorities or objectives, or other state
26 policies;

27 (2) the proposed new standards or requirements address discharges,
28 emissions, contaminants, conditions, risks, or other matters that fall within the
29 authority of the Department of Environmental Conservation under AS 46.03,
30 AS 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.

31 (c) An approval of a district coastal management plan with enforceable

1 policies may not affect a person's rights or authorizations under an unexpired permit,
2 lease, or other valid existing right to explore or develop natural resources that predates
3 the date that the enforceable policy becomes final. An enforceable policy becomes
4 final when its adoption is no longer subject to further review through either a judicial
5 or administrative process.

6 (d) Notwithstanding AS 46.40.030(a)(4), in reviewing and approving a district
7 coastal management plan under (a) of this section, the department may not require a
8 district to designate areas for the purpose of developing an enforceable policy.

9 (e) In this section, "specifically objects" means that, during a review of a
10 district coastal management plan under AS 46.40.050 or 46.40.060 and their
11 implementing regulations, a written objection to the enforceable policy that establishes
12 the new standards or requirements is filed with the department by

- 13 (1) the commissioner or deputy commissioner of a state agency; or
- 14 (2) the attorney general of the state.

15 (f) Notwithstanding any other provision of this chapter, an enforceable policy
16 that establishes requirements within the authority of a state or federal agency shall be
17 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
18 with the enforceable policy.

19 *Sec. 16. AS 46.40.096(d) is amended to read:

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

22 (1) request consistency review comments for the proposed project
23 from state resource agencies, affected coastal resource districts, and other interested
24 parties as determined by regulation adopted by the department;

25 (2) prepare proposed consistency determinations;

26 (3) conduct an elevated review [COORDINATE SUBSEQUENT
27 REVIEWS] of proposed consistency determinations prepared under (2) of this
28 subsection; an elevated [A SUBSEQUENT] review of a proposed consistency
29 determination under this paragraph

30 (A) shall be conducted [IS LIMITED TO A REVIEW] by the
31 commissioners or deputy commissioners of the resource agencies

1 [DEPARTMENT];

2 (B) may occur only if requested by

3 (i) the project applicant;

4 (ii) a state resource agency; or

5 (iii) an affected coastal resource district; and

6 (C) shall be completed with the issuance of a written order

7 signed by at least two of the commissioners or deputy commissioners of

8 the resource agencies [BY THE DEPARTMENT] within 60 [45] days after

9 the initial request for an elevated [SUBSEQUENT] review under this

10 paragraph; if a written order is not issued in accordance with this

11 subparagraph, the proposed consistency determination under (2) of this

12 subsection is the final consistency determination and certification; and

13 (4) render the final consistency determination and certification

14 consistent with this subsection.

15 * Sec. 17. AS 46.40.096(o) is amended to read:

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

17 (1) do not apply to a consistency review involving the disposal of an

18 interest in state land or resources;

19 (2) are suspended

20 (A) from the time the reviewing entity determines that the

21 applicant has not adequately responded in writing within 14 days after the

22 receipt of a written request from the reviewing entity for additional

23 information, until the time the reviewing entity determines that the applicant

24 has provided an adequate written response;

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

26 (C) during the period of time a consistency review is

27 undergoing an elevated [A SUBSEQUENT] review under (d)(3) of this

28 section.

29 * Sec. 18. AS 46.40.096(q)(2) is amended to read:

30 (2) "reviewing entity" means the

31 (A) Department of Natural Resources, for a consistency review

1 subject to AS 46.39.010;

2 (B) commissioners or deputy commissioners of the resource
3 agencies for an elevated review;

4 (C) state agency identified in (b) of this section, for a
5 consistency review not subject to AS 46.39.010.

6 * Sec. 19. AS 46.40.180(b) is amended to read:

7 (b) If a city or village within a coastal resource service area fails to approve a
8 portion of the district coastal management plan prepared and submitted for approval
9 under (a) of this section, the governing body shall advise the coastal resource service
10 area board of its objections to the proposed plan and suggest alternative elements or
11 components for inclusion in the district coastal management plan. New matter
12 submitted by a city or village that is not inconsistent with the standards adopted
13 under AS 46.40.040 and meets the [STATEWIDE STANDARDS AND] district plan
14 criteria adopted under this chapter shall be accepted and the district coastal
15 management plan modified accordingly. If a city or village fails to provide objections
16 and suggested alternatives within the time limits established in this section, the coastal
17 resource service area board may adopt the district coastal management plan as initially
18 offered.

19 * Sec. 20. AS 46.40.210 is amended by adding new paragraphs to read:

20 (13) "board" means the Alaska Coastal Policy Board established in
21 AS 46.39.005;

22 (14) "commissioners" means the commissioners of the resource
23 agencies;

24 (15) "elevated review" means a review of a proposed consistency
25 determination by the commissioners or deputy commissioners of the resource
26 agencies.

27 * Sec. 21. AS 46.39.005 is repealed.

28 * Sec. 22. AS 46.40.060(d) is repealed.

29 * Sec. 23. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;

SCS CSHB 106(FIN)

-14-

New Text Underlined [DELETED TEXT BRACKETED]

1 STAGGERED TERMS. (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act,
2 within 30 days after the effective date of this section, the municipalities of each region
3 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons to
4 be considered for appointment as public members, and the names of three persons to be
5 considered as alternate members, from the region qualified under AS 46.39.005(a), added by
6 sec. 3 of this Act. Notwithstanding AS 46.39.005, added by sec. 3 of this Act, within 60 days
7 after the effective date of this section, the governor shall appoint, from the lists of names
8 submitted under AS 46.39.005(a)(1)(B), one member and one alternate member from each
9 region, or request subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and
10 shall appoint one at-large member and one alternate member to serve on the Alaska Coastal
11 Policy Board established by AS 46.39.005, added by sec. 3 of this Act. The governor shall
12 appoint the public members to three-year staggered terms. The alternate member for each
13 public member shall serve the same term as the public member. The governor shall specify
14 the term of each public member appointed subject to this section.

15 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 of
16 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
17 management plan, or a portion of a district coastal management plan, shall be delayed until all
18 the public members and alternate members of the board are appointed under (a) of this
19 section.

20 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS. If a
23 plan of a coastal resource district was submitted to the Department of Natural Resources
24 before the effective date of this section, but is pending approval in its entirety before the
25 effective date of this section, the coastal resource district shall resubmit the entire plan to the
26 Department of Natural Resources for approval using the standards set out in AS 46.39 and
27 AS 46.40, as modified by this Act.

28 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 REVIEW AND REPORTS BY THE ALASKA COASTAL POLICY BOARD. (a)
31 Before February 1, 2013, the Alaska Coastal Policy Board shall review AS 46.40.040(b), as

1 amended by sec. 9 of this Act, AS 46.40.040(c), and AS 46.40.096(i), their implementing
 2 regulations, and related federal and state statutes and regulations, and prepare a report to the
 3 governor and the legislature on any proposed changes to the provisions of AS 46.40.

4 (b) On or before January 1, 2015, the Alaska Coastal Policy Board shall report to the
 5 governor and legislature on the effectiveness of AS 46.39 and AS 46.40 and regulations
 6 adopted under those chapters, with its recommendations for any proposed changes to any
 7 provision of AS 46.39 or AS 46.40.

8 * Sec. 26. The uncodified law of the State of Alaska is amended by adding a new section to
 9 read:

10 RETROACTIVITY AND REVIVAL. (a) The amendment to AS 44.66.020(a)(5)
 11 made by sec. 2 of this Act is retroactive to January 1, 2011.

12 (b) If, under AS 01.10.070(c), sec. 28 of this Act takes effect on or after July 1, 2011,
 13 sec. 28 of this Act is retroactive to July 1, 2011, and provisions repealed by sec. 18, ch. 31,
 14 SLA 2005, are revived. If a revived provision is amended by secs. 1, 2, 4 - 20, or 22 of this
 15 Act, it is revived as amended by secs. 1, 2, 4 - 20, and 22 of this Act. The revived provisions
 16 are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended by sec. 28 of this Act.

17 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011,
 18 AS 46.39.005, added by sec. 3 of this Act and repealed by sec. 21 of this Act, is revived.
 19 AS 46.39.005, as revived, is subject to repeal under secs. 21 and 29 of this Act and sec. 22,
 20 ch. 31, SLA 2005, as amended by sec. 28 of this Act.

21 * Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to
 22 read:

23 CONDITIONAL EFFECT. Section 21 of this Act takes effect only if secs. 1 - 13 and
 24 18, ch. 31, SLA 2005, take effect.

25 * Sec. 28. The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA 2005, is
 26 amended to read:

27 Sec. 22. Sections 1 - 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect
 28 July 1, 2017 [2011, UNLESS THE STATE'S REVISED COASTAL
 29 MANAGEMENT PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL
 30 OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND
 31 COASTAL RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF

1 COMMERCE, UNDER 16 U.S.C. 1455 AND 1457 (COASTAL ZONE
2 MANAGEMENT ACT OF 1972) BEFORE JANUARY 1, 2006. IF THE STATE'S
3 REVISED COASTAL MANAGEMENT PROGRAM IS NOT APPROVED
4 BEFORE JANUARY 1, 2006, BY THE NATIONAL OCEANIC AND
5 ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL
6 RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF
7 COMMERCE, THEN SECS. 1 - 13 AND 18 OF THIS ACT TAKE EFFECT MAY
8 10, 2006. THE COMMISSIONER OF NATURAL RESOURCES SHALL NOTIFY
9 THE REVISOR OF STATUTES ON FEBRUARY 1, 2006, WHETHER THE
10 REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS
11 DESCRIBED IN THIS SECTION].

12 * **Sec. 29.** If sec. 21 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and
13 18, ch. 33, SLA 2005, take effect.

14 * **Sec. 30.** Except as provided in sec. 29 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

ADOPTED 5/10/11

27-GH1965/H
Finley/Bullard
5/5/11

SENATE CS FOR CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska coastal management program and
2 relating to the extension; relating to the review of activities and regulations of the Alaska
3 coastal management program; establishing the Alaska Coastal Policy Board; relating to
4 the development, review, and approval of district coastal management plans; relating to
5 the duties of the Department of Natural Resources relating to the Alaska coastal
6 management program; relating to the review of certain consistency determinations;
7 providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.
8 31, SLA 2005; and providing for an effective date."

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

10 *Section 1. AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

17 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
18 Board is created in the Department of Natural Resources. The board consists of the
19 following:

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
2 resource districts of each region; the governor may reject a list submitted under
3 this subparagraph and request that subsequent lists with different names be
4 submitted; one public member and one alternate member shall be appointed
5 from each of the following regions:

6 (i) northwest Alaska, including, generally, the area of
7 the North Slope Borough and the Northwest Arctic Borough; and the
8 Bering Strait area, including, generally, the area of the Bering Strait
9 regional educational attendance area;

10 (ii) southwest Alaska, including, generally, the area
11 within the Lower Yukon, Lower Kuskokwim, and Southwest regional
12 educational attendance areas and the Lake and Peninsula and Bristol
13 Bay Boroughs; and the Kodiak-Aleutians area, including the area of the
14 Kodiak Island and Aleutians East Boroughs and the Aleutian, Adak,
15 and Pribilof regional educational attendance areas;

16 (iii) Upper Cook Inlet area, including the Municipality
17 of Anchorage and the Matanuska-Susitna Borough; the Lower Cook
18 Inlet area, including, generally, the Kenai Peninsula Borough; and the
19 Prince William Sound area, including, generally, the area east of the
20 Kenai Peninsula Borough to 141 West longitude; and

21 (iv) Southeast Alaska, generally the area east of 141
22 West longitude;

23 (2) each of the following designated members:

24 (A) the commissioner of environmental conservation;

25 (B) the commissioner of fish and game;

26 (C) a deputy commissioner of natural resources;

27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. Except as provided
29 by (c) of this section, each member serves until a successor is appointed and qualified.
30 A public member may be reappointed.

31 (c) The board may recommend that the governor remove a public member for

1 cause. With or without a recommendation from the board, the governor may remove a
2 public member for cause after giving the public member written notice of the charges
3 and an opportunity to be heard upon not less than 10 days' notice. If a public member
4 is removed, the alternate member shall serve the remainder of the term, and a new
5 alternate shall be appointed under (a)(1) of this section. In this subsection, "for cause"
6 includes lack of contribution to the board's work, neglect of duty, incompetence,
7 inability to serve, poor attendance, and misconduct in office.

8 (d) The board shall designate co-chairs, one of whom shall be selected from
9 among the public members appointed under (a)(1) of this section and one from among
10 the members designated in (a)(2) of this section.

11 (e) If a member serving under (a)(1) of this section is unable to attend, the
12 alternate may attend. The names of alternates serving under (a)(1) of this section shall
13 be filed with the board.

14 (f) If a member serving under (a)(2) of this section is unable to attend, a
15 deputy commissioner in the same department may attend and act in place of the
16 member. The names of deputy commissioners serving as alternates for members
17 serving under (a)(2) of this section shall be filed with the board.

18 (g) Three public members and three designated members of the board
19 constitute a quorum. However, action may be taken only upon the affirmative vote of
20 at least two-thirds of the full membership of the board.

21 (h) The board shall meet at least four times a year and as often as necessary to
22 fulfill its duties under this chapter and AS 46.40. Meetings may be held and members
23 may vote telephonically, except one board meeting a year shall be held in person.

24 (i) Public members of the board are entitled to per diem and travel expenses
25 authorized by law for members of boards and commissions.

26 (j) Administrative support for the board shall be provided by the division in
27 the department responsible for coastal and ocean management. The director of the
28 division in the department responsible for coastal and ocean management may contract
29 with or employ persons as necessary to assist the board in carrying out the board's
30 duties and responsibilities.

31 (k) The board shall

1 (1) make recommendations to the department relating to the approval
2 or modification of a district coastal management plan under AS 46.40.060(b);

3 (2) provide a forum for the discussion of issues related to this chapter,
4 AS 46.40, and the coastal uses and resources of the state; and

5 (3) annually solicit from state and federal agencies information as to
6 whether they implemented any new statutes or regulations affecting coastal uses or
7 resources to determine if existing enforceable policies duplicate, restate, incorporate
8 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
9 so, direct a coastal resource district with such enforceable policies to resubmit its
10 coastal management plan for review under this chapter and AS 46.40; and

11 (4) review and provide comments to the department on regulations
12 proposed under this chapter and AS 46.40.

13 * **Sec. 4.** AS 46.39.010 is amended by adding a new subsection to read:

14 (d) Not later than January 20 each year, the department shall prepare an annual
15 report summarizing the department's efforts to draft and adopt regulations under this
16 chapter and AS 46.40 during the prior calendar year. The department shall notify the
17 legislature that the report is available and shall also post the report on the department's
18 Internet website.

19 * **Sec. 5.** AS 46.39.030 is amended to read:

20 **Sec. 46.39.030. Powers of the department.** The department may

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

24 (2) contract for necessary services;

25 (3) consult and cooperate with

26 (A) persons, organizations, and groups, public or private,
27 interested in, affected by, or concerned with coastal area planning and
28 management;

29 (B) agents and officials of the coastal resource districts of the
30 state, the Alaska Coastal Policy Board established in AS 46.39.005, and
31 federal and state agencies concerned with or having jurisdiction over coastal

1 planning and management;

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

4 * Sec. 6. AS 46.39.040 is amended to read:

5 **Sec. 46.39.040. Duties of the department.** In conformity with 16 U.S.C. 1451
6 - 1464 (Coastal Zone Management Act of 1972), as amended, the department shall

7 (1) develop statewide standards for the Alaska coastal management
8 program, and criteria for the preparation and approval of district coastal management
9 plans in accordance with AS 46.40;

10 (2) establish continuing coordination among state agencies to facilitate
11 the development and implementation of the Alaska coastal management program; in
12 carrying out its duties under this paragraph, the department shall initiate an
13 interagency program of comprehensive coastal resource planning for each geographic
14 region of the state;

15 (3) assure continued provision of [DATA AND] information to coastal
16 resource districts to carry out their planning and management functions under the
17 program; in providing information to a coastal resource district and coastal
18 resource service area under this paragraph, the department shall provide the
19 information by electronic transmission, or by mail if the addressee does not have
20 an electronic mail address, to the presiding officer of the governing body of the
21 coastal resource district and to other persons as may be designated in writing by
22 the district;

23 (4) summarize the minutes of the board's discussion of issues
24 related to this chapter, AS 46.40, and coastal uses and resources of the state.

25 * Sec. 7. AS 46.40.030 is amended to read:

26 **Sec. 46.40.030. Development of district coastal management plans.** (a)
27 Coastal resource districts shall develop and adopt district coastal management plans in
28 accordance with the provisions of this chapter. The plan adopted by a coastal resource
29 district shall be based upon a municipality's existing comprehensive plan or a new
30 comprehensive resource use plan or comprehensive statement of needs, policies,
31 objectives, and standards governing the use of resources within the coastal area of the

1 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
2 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
3 adopted under AS 46.40.040, and must include

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

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

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

10 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
11 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
12 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
13 WATER WITHIN THE COASTAL AREA; AND

14 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
15 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
16 the district coastal management plan and a designation of the enforceable policies
17 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
18 merit special attention.

19 (b) In developing enforceable policies in its coastal management plan under
20 (a) of this section, a coastal resource district shall meet the requirements of
21 AS 46.40.070 and ensure that the enforceable policies

22 (1) are clear and concise as to the activities and persons affected by
23 the policies;

24 (2) use prescriptive or performance-based standards that are
25 written in precise and enforceable language;

26 (3) address a coastal use or resource of concern to the residents of
27 the coastal resource district as demonstrated by local knowledge or supported by
28 scientific evidence; and

29 (4) employ the least restrictive means to achieve the objective of
30 the enforceable policy [MEET THE REQUIREMENTS OF AS 46.40.070 AND
31 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE

L

1 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
2 OR FEDERAL AGENCIES].

3 * **Sec. 8.** AS 46.40.030 is amended by adding new subsections to read:

4 (c) In determining whether an enforceable policy employs the least restrictive
5 means to achieve its objective, the following factors shall be considered:

6 (1) alternative methods of achieving the objective of the policy;

7 (2) local knowledge or scientific evidence supporting each alternative
8 method; and

9 (3) how the alternative methods may affect other existing or potential
10 uses.

11 (d) Additional factors that the department may require be addressed in
12 determining whether an enforceable policy employs the least restrictive means to
13 achieve its objective are as follows:

14 (1) the economic effects of alternative methods;

15 (2) the technological feasibility of the alternative methods; and

16 (3) any other relevant factors.

17 * **Sec. 9.** AS 46.40.040(b) is amended to read:

18 (b) Notwithstanding any other provision of law, AS 46.03, AS 46.04,
19 AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
20 exclusive enforceable policies of the Alaska coastal management program for those
21 purposes. For those purposes only,

22 (1) the issuance of permits, certifications, approvals, and
23 authorizations by the Department of Environmental Conservation establishes
24 consistency with the Alaska coastal management program for those activities of a
25 proposed project subject to those permits, certifications, approvals, and authorizations;

26 (2) for a consistency review of an activity that does not require a
27 Department of Environmental Conservation permit, certification, approval, or
28 authorization because the activity is a federal activity or the activity is located on
29 federal land or the federal outer continental shelf, consistency with AS 46.03,
30 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
31 shall be established on the basis of whether the Department of Environmental

1 Conservation finds that the activity satisfies the requirements of those statutes and
2 regulations.

3 *Sec. 10. AS 46.40.050 is amended by adding a new subsection to read:

4 (c) A coastal resource district shall resubmit its coastal management plan, as
5 may be directed by the board under AS 46.39.005(k)(3).

6 *Sec. 11. AS 46.40.060(a) is amended to read:

7 (a) If, upon submission of a district coastal management plan for approval, the
8 department finds that the plan meets the provisions of this chapter [AND THE
9 STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY
10 THE DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY
11 RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may
12 approve the district coastal management plan, or may approve portions of the district
13 plan that meet those requirements.

14 *Sec. 12. AS 46.40.060(b) is amended to read:

15 (b) If the department finds that a district coastal management plan is not
16 approvable or is approvable only in part under (a) of this section, the department
17 shall explain in writing the basis for its decision. The coastal resource district that
18 submitted the plan may request that the department submit the plan or portions
19 of the plan to the board for review. The board shall review the plan or portions of
20 the plan and make recommendations relating to whether the department should
21 approve or modify the district coastal management plan in whole or in part [IT
22 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
23 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
24 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
25 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
26 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
27 RESOLVE DIFFERENCES].

28 *Sec. 13. AS 46.40.060(c) is amended to read:

29 (c) After the board has reviewed the district coastal management plan
30 and submitted recommendations under (b) of this section [IF, AFTER
31 MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the

1 department shall enter findings and, by order, may [REQUIRE]

2 (1) approve the plan or portions of the plan;

3 (2) require that the district coastal management plan be amended to
4 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
5 STANDARDS] and district plan criteria adopted by the department;

6 (3) require [(2)] that the district coastal management plan be revised
7 to accommodate a use of state concern; or

8 (4) require the coastal resource district to submit additional
9 information if, in the judgment of the department, additional information is
10 necessary for the department to approve the plan or portions of the plan [(3)
11 ANY OTHER ACTION BE TAKEN BY THE COASTAL RESOURCE DISTRICT
12 AS APPROPRIATE].

13 * **Sec. 14.** AS 46.40.060 is amended by adding new subsections to read:

14 (e) Only a coastal resource district affected by a decision of the department
15 under this section may request reconsideration of the decision. The request must be
16 made within 15 days after the decision, must be in writing, and must include a
17 statement of the specific issues and material facts that the coastal resource district
18 contends that the department overlooked, failed to consider, or misconceived. The
19 commissioner of natural resources may review the department's decision on the basis
20 of the request and determine whether the decision should be changed. The
21 commissioner may issue a determination in writing within 20 days after the issuance
22 of the decision. If the commissioner has not issued a written decision within the 20-
23 day period, the request for reconsideration shall be considered as denied. Denial of a
24 request for reconsideration is a final administrative order and decision of the
25 department.

26 (f) The superior courts of the state have jurisdiction to enforce orders of the
27 department entered under (c) and (e) of this section.

28 * **Sec. 15.** AS 46.40.070 is repealed and reenacted to read:

29 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
30 department shall approve a district coastal management plan submitted for review and
31 approval if, as determined by the department, the

- 1 (1) district coastal management plan meets the requirements of this
2 chapter and the district plan criteria adopted by the department; and
3 (2) enforceable policies of the district coastal management plan
4 (A) do not duplicate, restate, incorporate by reference,
5 rephrase, or adopt state or federal statutes or regulations;
6 (B) are not preempted by or in conflict with state or federal
7 statutes or regulations;
8 (C) employ the least restrictive means to achieve the objective
9 of the enforceable policies;
10 (D) do not arbitrarily or unreasonably restrict uses of state
11 concern; and
12 (E) meet the requirements of (b) and (c) of this section.
13 (b) The enforceable policies in a district coastal management plan submitted
14 for review under this section must meet the requirements of (a) of this section and may
15 establish new standards or requirements that are within the authority of a state or
16 federal agency unless
17 (1) a state agency specifically objects to the proposed new standards or
18 requirements on the grounds that the proposed standards or requirements
19 (A) are based on scientific evidence or local knowledge relied
20 upon by the coastal resource district to satisfy the requirements of
21 AS 46.40.030 but that conflicts with the agency's interpretation of the scientific
22 evidence within the agency's area of expertise;
23 (B) conflict with the agency's allocation of existing or planned
24 agency resources to meet state policies and objectives; or
25 (C) conflict with agency priorities or objectives, or other state
26 policies;
27 (2) the proposed new standards or requirements address discharges,
28 emissions, contaminants, conditions, risks, or other matters that fall within the
29 authority of the Department of Environmental Conservation under AS 46.03,
30 AS 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.
31 (c) An approval of a district coastal management plan with enforceable

1 policies may not affect a person's rights or authorizations under an unexpired permit,
2 lease, or other valid existing right to explore or develop natural resources that predates
3 the date that the enforceable policy becomes final. An enforceable policy becomes
4 final when its adoption is no longer subject to further review through either a judicial
5 or administrative process.

6 (d) Notwithstanding AS 46.40.030(a)(4), in reviewing and approving a district
7 coastal management plan under (a) of this section, the department may not require a
8 district to designate areas for the purpose of developing an enforceable policy.

9 (e) In this section, "specifically objects" means that, during a review of a
10 district coastal management plan under AS 46.40.050 or 46.40.060 and their
11 implementing regulations, a written objection to the enforceable policy that establishes
12 the new standards or requirements is filed with the department by

- 13 (1) the commissioner or deputy commissioner of a state agency; or
- 14 (2) the attorney general of the state.

15 (f) Notwithstanding any other provision of this chapter, an enforceable policy
16 that establishes requirements within the authority of a state or federal agency shall be
17 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
18 with the enforceable policy.

19 * Sec. 16. AS 46.40.096(d) is amended to read:

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

22 (1) request consistency review comments for the proposed project
23 from state resource agencies, affected coastal resource districts, and other interested
24 parties as determined by regulation adopted by the department;

25 (2) prepare proposed consistency determinations;

26 (3) conduct an elevated review [COORDINATE SUBSEQUENT
27 REVIEWS] of proposed consistency determinations prepared under (2) of this
28 subsection; an elevated [A SUBSEQUENT] review of a proposed consistency
29 determination under this paragraph

30 (A) shall be conducted [IS LIMITED TO A REVIEW] by the
31 commissioners or deputy commissioners of the resource agencies

1 [DEPARTMENT];

2 (B) may occur only if requested by

- 3 (i) the project applicant;
- 4 (ii) a state resource agency; or
- 5 (iii) an affected coastal resource district; and

6 (C) shall be completed with the issuance of a written order

7 signed by at least two of the commissioners or deputy commissioners of

8 the resource agencies [BY THE DEPARTMENT] within 60 [45] days after

9 the initial request for an elevated [SUBSEQUENT] review under this

10 paragraph; if a written order is not issued in accordance with this

11 subparagraph, the proposed consistency determination under (2) of this

12 subsection is the final consistency determination and certification; and

13 (4) render the final consistency determination and certification

14 consistent with this subsection.

15 * Sec. 17. AS 46.40.096(o) is amended to read:

- 16 (o) The time limitations in (n) of this section
- 17 (1) do not apply to a consistency review involving the disposal of an
- 18 interest in state land or resources;
- 19 (2) are suspended

20 (A) from the time the reviewing entity determines that the

21 applicant has not adequately responded in writing within 14 days after the

22 receipt of a written request from the reviewing entity for additional

23 information, until the time the reviewing entity determines that the applicant

24 has provided an adequate written response;

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

26 (C) during the period of time a consistency review is

27 undergoing an elevated [A SUBSEQUENT] review under (d)(3) of this

28 section.

29 * Sec. 18. AS 46.40.096(q)(2) is amended to read:

- 30 (2) "reviewing entity" means the
- 31 (A) Department of Natural Resources, for a consistency review

1 subject to AS 46.39.010;

2 (B) commissioners or deputy commissioners of the resource
3 agencies for an elevated review;

4 (C) state agency identified in (b) of this section, for a
5 consistency review not subject to AS 46.39.010.

6 * Sec. 19. AS 46.40.180(b) is amended to read:

7 (b) If a city or village within a coastal resource service area fails to approve a
8 portion of the district coastal management plan prepared and submitted for approval
9 under (a) of this section, the governing body shall advise the coastal resource service
10 area board of its objections to the proposed plan and suggest alternative elements or
11 components for inclusion in the district coastal management plan. New matter
12 submitted by a city or village that is not inconsistent with the standards adopted
13 under AS 46.40.040 and meets the [STATEWIDE STANDARDS AND] district plan
14 criteria adopted under this chapter shall be accepted and the district coastal
15 management plan modified accordingly. If a city or village fails to provide objections
16 and suggested alternatives within the time limits established in this section, the coastal
17 resource service area board may adopt the district coastal management plan as initially
18 offered.

19 * Sec. 20. AS 46.40.210 is amended by adding new paragraphs to read:

20 (13) "board" means the Alaska Coastal Policy Board established in
21 AS 46.39.005;

22 (14) "commissioners" means the commissioners of the resource
23 agencies;

24 (15) "elevated review" means a review of a proposed consistency
25 determination by the commissioners or deputy commissioners of the resource
26 agencies.

27 * Sec. 21. AS 46.39.005 is repealed.

28 * Sec. 22. AS 46.40.060(d) is repealed.

29 * Sec. 23. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:
31

TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;

1 STAGGERED TERMS. (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act,
2 within 30 days after the effective date of this section, the municipalities of each region
3 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons to
4 be considered for appointment as public members, and the names of three persons to be
5 considered as alternate members, from the region qualified under AS 46.39.005(a), added by
6 sec. 3 of this Act. Notwithstanding AS 46.39.005, added by sec. 3 of this Act, within 60 days
7 after the effective date of this section, the governor shall appoint, from the lists of names
8 submitted under AS 46.39.005(a)(1)(B), one member and one alternate member from each
9 region, or request subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and
10 shall appoint one at-large member and one alternate member to serve on the Alaska Coastal
11 Policy Board established by AS 46.39.005, added by sec. 3 of this Act. The governor shall
12 appoint the public members to three-year staggered terms. The alternate member for each
13 public member shall serve the same term as the public member. The governor shall specify
14 the term of each public member appointed subject to this section.

15 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 12 of
16 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
17 management plan, or a portion of a district coastal management plan, shall be delayed until all
18 the public members and alternate members of the board are appointed under (a) of this
19 section.

20 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS.** If a
23 plan of a coastal resource district was submitted to the Department of Natural Resources
24 before the effective date of this section, but is pending approval in its entirety before the
25 effective date of this section, the coastal resource district shall resubmit the entire plan to the
26 Department of Natural Resources for approval using the standards set out in AS 46.39 and
27 AS 46.40, as modified by this Act.

28 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **REVIEW AND REPORTS BY THE ALASKA COASTAL POLICY BOARD.** (a)
31 Before February 1, 2013, the Alaska Coastal Policy Board shall review AS 46.40.040(b), as

1 amended by sec. 9 of this Act, AS 46.40.040(c), and AS 46.40.096(i), their implementing
2 regulations, and related federal and state statutes and regulations, and prepare a report to the
3 governor and the legislature on any proposed changes to the provisions of AS 46.40.

4 (b) On or before January 1, 2015, the Alaska Coastal Policy Board shall report to the
5 governor and legislature on the effectiveness of AS 46.39 and AS 46.40 and regulations
6 adopted under those chapters, with its recommendations for any proposed changes to any
7 provision of AS 46.39 or AS 46.40.

8 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **RETROACTIVITY AND REVIVAL.** (a) The amendment to AS 44.66.020(a)(5)
11 made by sec. 2 of this Act is retroactive to January 1, 2011.

12 (b) If, under AS 01.10.070(c), sec. 28 of this Act takes effect on or after July 1, 2011,
13 sec. 28 of this Act is retroactive to July 1, 2011, and provisions repealed by sec. 18, ch. 31,
14 SLA 2005, are revived. If a revived provision is amended by secs. 1, 2, 4 - 20, or 22 of this
15 Act, it is revived as amended by secs. 1, 2, 4 - 20, and 22 of this Act. The revived provisions
16 are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended by sec. 28 of this Act.

17 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011,
18 AS 46.39.005, added by sec. 3 of this Act and repealed by sec. 21 of this Act, is revived.
19 AS 46.39.005, as revived, is subject to repeal under secs. 21 and 29 of this Act and sec. 22,
20 ch. 31, SLA 2005, as amended by sec. 28 of this Act.

21 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 **CONDITIONAL EFFECT.** Section 21 of this Act takes effect only if secs. 1 - 13 and
24 18, ch. 31, SLA 2005, take effect.

25 * **Sec. 28.** The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA 2005, is
26 amended to read:

27 Sec. 22. Sections 1 - 13 and 18, **ch. 31, SLA 2005**, [OF THIS ACT] take effect
28 July 1, **2017** [2011, UNLESS THE STATES REVISED COASTAL
29 MANAGEMENT PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL
30 OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND
31 COASTAL RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF

1 COMMERCE, UNDER 16 U.S.C. 1455 AND 1457 (COASTAL ZONE
2 MANAGEMENT ACT OF 1972) BEFORE JANUARY 1, 2006. IF THE STATE'S
3 REVISED COASTAL MANAGEMENT PROGRAM IS NOT APPROVED
4 BEFORE JANUARY 1, 2006, BY THE NATIONAL OCEANIC AND
5 ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL
6 RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF
7 COMMERCE, THEN SECS. 1 - 13 AND 18 OF THIS ACT TAKE EFFECT MAY
8 10, 2006. THE COMMISSIONER OF NATURAL RESOURCES SHALL NOTIFY
9 THE REVISOR OF STATUTES ON FEBRUARY 1, 2006, WHETHER THE
10 REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS
11 DESCRIBED IN THIS SECTION].

12 * **Sec. 29.** If sec. 21 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and
13 18, ch. 33, SLA 2005, take effect.

14 * **Sec. 30.** Except as provided in sec. 29 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

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Bullard
4/18/11

SENATE CS FOR CS FOR HOUSE BILL NO. 106(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SPECIAL SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Alaska coastal management program and
 2 relating to the extension; relating to the review of activities and regulations of the Alaska
 3 coastal management program; establishing the Alaska Coastal Policy Board; relating to
 4 the development, review, and approval of district coastal management plans; relating to
 5 the duties of the Department of Natural Resources relating to the Alaska coastal
 6 management program; relating to the review of certain consistency determinations;
 7 providing for an effective date by amending the effective date of secs. 1 - 13 and 18, ch.
 8 31, SLA 2005; and providing for an effective date."

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

10 * Section 1. AS 44.37.020 is amended by adding a new subsection to read:

11 (c) In administering the Alaska coastal management program under AS 46.39
 12 and AS 46.40, the Department of Natural Resources may consider how subsistence

1 uses may be affected.

2 * **Sec. 2.** AS 44.66.020(a) is amended to read:

3 (a) Agency programs and activities listed in this subsection that are
4 specifically designated as provided in AS 44.66.030 are subject to termination during
5 the regular legislative session convening in the month and year set out after each:

6 (1) programs in the budget categories of general government, public
7 protection, and administration of justice - January, 1980;

8 (2) programs in the budget categories of education and the University
9 of Alaska - January, 1981;

10 (3) programs in the budget categories of health and social services -
11 January, 1982;

12 (4) programs in the budget categories of natural resources
13 management, development, and transportation - January, 1983;

14 (5) the Alaska coastal management program (AS 46.40) - January,
15 2017 [2011].

16 * **Sec. 3.** AS 46.39 is amended by adding a new section to article 1 to read:

17 **Sec. 46.39.005. Alaska Coastal Policy Board.** (a) The Alaska Coastal Policy
18 Board is created in the Department of Natural Resources. The board consists of the
19 following:

20 (1) five public members appointed by the governor; the public
21 members shall include

22 (A) one at-large member and an alternate member from any
23 coastal resource district who is a representative of

24 (i) a Native regional corporation established under 43
25 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

26 (ii) a mining organization;

27 (iii) an oil and gas organization; or

28 (iv) any other resource development or extraction
29 industry;

30 (B) four members from a list composed of at least three names
31 from each region, and four alternate members from a list composed of at least

1 three names from each region, nominated and submitted by the coastal
2 resource districts of each region; the governor may reject a list submitted under
3 this subparagraph and request that subsequent lists with different names be
4 submitted; one public member shall be appointed from each of the following
5 regions:

6 (i) northwest Alaska, including, generally, the area of
7 the North Slope Borough and the Northwest Arctic Borough; and the
8 Bering Strait area, including, generally, the area of the Bering Strait
9 regional educational attendance area;

10 (ii) southwest Alaska, including, generally, the area
11 within the Lower Yukon, Lower Kuskokwim, and Southwest regional
12 educational attendance areas and the Lake and Peninsula and Bristol
13 Bay Boroughs; and the Kodiak-Aleutians area, including the area of the
14 Kodiak Island and Aleutians East Boroughs and the Aleutian, Adak,
15 and Pribilof regional educational attendance areas;

16 (iii) Upper Cook Inlet area, including the Municipality
17 of Anchorage and the Matanuska-Susitna Borough; the Lower Cook
18 Inlet area, including, generally, the Kenai Peninsula Borough; and the
19 Prince William Sound area, including, generally, the area east of the
20 Kenai Peninsula Borough to 141 West longitude; and

21 (iv) Southeast Alaska, generally the area east of 141
22 West longitude;

23 (2) each of the following designated members:

- 24 (A) the commissioner of environmental conservation;
25 (B) the commissioner of fish and game;
26 (C) a deputy commissioner of natural resources;
27 (D) the commissioner of transportation and public facilities.

28 (b) Public members serve staggered terms of three years. Each member serves
29 until a successor is appointed and qualified. A public member may be reappointed.
30 The governor may remove a member of the board for inefficiency, neglect of duty, or
31 misconduct in office, in which event the alternate member shall serve the remainder of

1 the term and a new alternate shall be appointed under (a)(1) of this section.

2
3 (c) The board shall designate co-chairs, one of whom shall be selected from
4 among the public members appointed under (a)(1) of this section and one from among
5 the members designated in (a)(2) of this section.

6 (d) If a member serving under (a)(1) of this section is unable to attend, the
7 alternate may attend. The names of alternates serving under (a)(1) of this section shall
8 be filed with the board.

9 (e) If a member serving under (a)(2) of this section is unable to attend, a
10 deputy commissioner in the same department may attend and act in place of the
11 member. The names of alternates serving under (a)(2) of this section shall be filed
12 with the board.

13 (f) Three public members and three designated members of the board
14 constitute a quorum. However, action may be taken only upon the affirmative vote of
15 at least two-thirds of the full membership of the board.

16 (g) The board shall meet at least four times a year and as often as necessary to
17 fulfill its duties under this chapter and AS 46.40. Meetings may be held and members
18 may vote telephonically, except one board meeting a year shall be held in person.

19 (h) Public members of the board are entitled to per diem and travel expenses
20 authorized by law for members of boards and commissions.

21 (i) Administrative support for the board shall be provided by the division in
22 the department responsible for coastal and ocean management. The director of the
23 division in the department responsible for coastal and ocean management may contract
24 with or employ persons as necessary to assist the board in carrying out the board's
25 duties and responsibilities.

26 (j) The board shall
27 (1) make recommendations to the department relating to the approval
28 or modification of a district coastal management plan under AS 46.40.060(b);

29 (2) provide a forum for the discussion of issues related to this chapter,
30 AS 46.40, and the coastal uses and resources of the state; and

31 (3) annually solicit from state and federal agencies information as to
whether they implemented any new statutes or regulations affecting coastal uses or

1 resources to determine if existing enforceable policies duplicate, restate, incorporate
2 by reference, rephrase, or adopt the new state or federal statutes or regulations, and if
3 so, direct a coastal resource district with such enforceable policies to resubmit its
4 coastal management plan for review under this chapter and AS 46.40; and
5 (4) review and provide comments to the department on regulations
6 proposed under this chapter and AS 46.40.

7 * Sec. 4. AS 46.39.010 is amended by adding a new subsection to read:

8 (d) Not later than January 20 each year, the department shall prepare an annual
9 report summarizing the department's efforts to draft and adopt regulations under this
10 chapter and AS 46.40 during the prior calendar year. The department shall notify the
11 legislature that the report is available and shall also post the report on the department's
12 Internet website.

13 * Sec. 5. AS 46.39.030 is amended to read:

14 **Sec. 46.39.030. Powers of the department.** The department may

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

18 (2) contract for necessary services;

19 (3) consult and cooperate with

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

23 (B) agents and officials of the coastal resource districts of the
24 state, **the Alaska Coastal Policy Board established in AS 46.39.005**, and
25 federal and state agencies concerned with or having jurisdiction over coastal
26 planning and management;

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

29 * Sec. 6. AS 46.39.040 is amended to read:

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

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

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

9 (3) assure continued provision of [DATA AND] information to coastal
10 resource districts to carry out their planning and management functions: under the
11 program; in providing information to a coastal resource district and coastal
12 resource service area under this paragraph, the department shall provide the
13 information by electronic transmission, or by mail if the addressee does not have
14 an electronic mail address, to the presiding officer of the governing body of the
15 coastal resource district and to other persons as may be designated in writing by
16 the district;

17 (4) summarize the minutes of the board's discussion of issues
18 related to this chapter, AS 46.40, and coastal uses and resources of the state.

19 * Sec. 7. AS 46.40.030 is amended to read:

20 **Sec. 46.40.030. Development of district coastal management plans.** (a)

21 Coastal resource districts shall develop and adopt district coastal management plans in
22 accordance with the provisions of this chapter. The plan adopted by a coastal resource
23 district shall be based upon a municipality's existing comprehensive plan or a new
24 comprehensive resource use plan or comprehensive statement of needs, policies,
25 objectives, and standards governing the use of resources within the coastal area of the
26 district. The plan must meet the [STATEWIDE STANDARDS AND] district plan
27 criteria adopted under AS 46.40.040, may not be inconsistent with the standards
28 adopted under AS 46.40.040, and must include

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

31 (2) a statement, list, or definition of the land and water uses and

1 activities subject to the district coastal management plan;

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

4 (4) [A DESCRIPTION OF THE USES AND ACTIVITIES THAT
5 WILL BE CONSIDERED PROPER AND THE USES AND ACTIVITIES THAT
6 WILL BE CONSIDERED IMPROPER WITH RESPECT TO THE LAND AND
7 WATER WITHIN THE COASTAL AREA; AND

8 (5)] a designation of any [, AND THE POLICIES THAT WILL BE
9 APPLIED TO THE USE OF,] areas which merit special attention under [WITHIN]
10 the district coastal management plan and a designation of the enforceable policies
11 that will be applicable within those areas which [RESOURCE DISTRICT THAT]
12 merit special attention.

13 (b) In developing enforceable policies in its coastal management plan under
14 (a) of this section, a coastal resource district shall meet the requirements of
15 AS 46.40.070 and ensure that the enforceable policies

16 (1) are clear and concise as to the activities and persons affected by
17 the policies;

18 (2) use prescriptive or performance-based standards that are
19 written in precise and enforceable language;

20 (3) address a coastal use or resource of concern to the residents of
21 the coastal resource district as demonstrated by local knowledge or supported by
22 scientific evidence; and

23 (4) employ the least restrictive means to achieve the objective of
24 the enforceable policy [MEET THE REQUIREMENTS OF AS 46.40.070 AND
25 MAY NOT DUPLICATE, RESTATE, OR INCORPORATE BY REFERENCE
26 STATUTES AND ADMINISTRATIVE REGULATIONS ADOPTED BY STATE
27 OR FEDERAL AGENCIES].

28 * Sec. 8. AS 46.40.030 is amended by adding a new subsection to read:

29 (c) In determining whether an enforceable policy employs the least restrictive
30 means to achieve its objective, the following factors shall be considered:

31 (1) alternative methods of achieving the objective of the policy;

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3 method;
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(2) local knowledge or scientific evidence supporting each alternative

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(3) how the alternative methods may affect other existing or potential uses; and

(4) any other relevant factors.

* Sec. 9. AS 46.40.040(a) is amended to read:

(a) Except as provided in [(b) OF THIS SECTION AND] AS 41.17, the department shall

(1) by regulation, adopt, under the provisions of AS 44.62 (Administrative Procedure Act) for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, statewide standards and district coastal management plan criteria for

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

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

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

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

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

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

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

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

(3) undertake review and approval of district coastal management

1 plans in accordance with this chapter;

2 (4) initiate a process for identifying and managing uses of state
3 concern within specific areas of the coast;

4 (5) develop procedures or guidelines for consultation and coordination
5 with federal agencies managing land or conducting activities potentially affecting the
6 coastal area of the state;

7 (6) by regulation, establish a consistency review and determination or
8 certification process that conforms to the requirements of AS 46.40.096.

9 * Sec. 10. AS 46.40.040(b) is amended to read:

10 (b) Notwithstanding any other provision of law, AS 46.03, AS 46.04,
11 AS 46.09, AS 46.14, and the regulations adopted under those statutes constitute the
12 exclusive enforceable policies of the Alaska coastal management program for those
13 purposes. For those purposes only,

14 (1) the issuance of permits, certifications, approvals, and
15 authorizations by the Department of Environmental Conservation establishes
16 consistency with the Alaska coastal management program for those activities of a
17 proposed project subject to those permits, certifications, approvals, and authorizations;

18 (2) for a consistency review of an activity that does not require a
19 Department of Environmental Conservation permit, certification, approval, or
20 authorization because the activity is a federal activity or the activity is located on
21 federal land or the federal outer continental shelf, consistency with AS 46.03,
22 AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes
23 shall be established on the basis of whether the Department of Environmental
24 Conservation finds that the activity satisfies the requirements of those statutes and
25 regulations.

26 * Sec. 11. AS 46.40.050 is amended by adding a new subsection to read:

27 (c) A coastal resource district shall resubmit its coastal management plan, as
28 may be directed by the board under AS 46.39.005(j)(3).

29 * Sec. 12. AS 46.40.060(a) is amended to read:

30 (a) If, upon submission of a district coastal management plan for approval, the
31 department finds that the plan meets the provisions of this chapter [AND THE

1 STATEWIDE STANDARDS AND DISTRICT PLAN CRITERIA ADOPTED BY
 2 THE DEPARTMENT AND DOES NOT ARBITRARILY OR UNREASONABLY
 3 RESTRICT OR EXCLUDE USES OF STATE CONCERN], the department may
 4 approve the district coastal management plan, or may approve portions of the district
 5 plan that meet those requirements.

6 * Sec. 13. AS 46.40.060(b) is amended to read:

7 (b) If the department finds that a district coastal management plan is not
 8 approvable or is approvable only in part under (a) of this section, the department
 9 shall explain in writing the basis for its decision. The coastal resource district that
 10 submitted the plan may request that the department submit the plan or portions
 11 of the plan to the board for review. The board shall review the plan or portions of
 12 the plan and make recommendations relating to whether the department should
 13 approve or modify the district coastal management plan in whole or in part [IT
 14 SHALL DIRECT THAT DEFICIENCIES IN THE PLAN SUBMITTED BY THE
 15 COASTAL RESOURCE DISTRICT BE MEDIATED. IN MEDIATING THE
 16 DEFICIENCIES, THE DEPARTMENT MAY CALL FOR ONE OR MORE PUBLIC
 17 HEARINGS IN THE DISTRICT. THE DEPARTMENT SHALL MEET WITH
 18 OFFICIALS OF THE COASTAL RESOURCE DISTRICT IN ORDER TO
 19 RESOLVE DIFFERENCES].

20 * Sec. 14. AS 46.40.060(c) is amended to read:

21 (c) After the board has reviewed the district coastal management plan
 22 and submitted recommendations under (b) of this section [IF, AFTER
 23 MEDIATION, THE DIFFERENCES HAVE NOT BEEN RESOLVED], the
 24 department shall enter findings and, by order, may [REQUIRE]

- 25 (1) approve the plan or portions of the plan;
- 26 (2) require that the district coastal management plan be amended to
 27 meet [SATISFY] the provisions of this chapter [OR MEET THE STATEWIDE
 28 STANDARDS] and district plan criteria adopted by the department; or
 29 (3) require [(2)] that the district coastal management plan be revised
 30 to accommodate a use of state concern [; OR (3) ANY OTHER ACTION BE TAKEN
 31 BY THE COASTAL RESOURCE DISTRICT AS APPROPRIATE].

1 * **Sec. 15.** AS 46.40.060 is amended by adding new subsections to read:

2
3 (e) Only a coastal resource district affected by a decision of the department
4 under this section may request reconsideration of the decision. The request must be
5 made within 15 days after the decision, must be in writing, and must include a
6 statement of the specific issues and material facts that the coastal resource district
7 contends that the department overlooked, failed to consider, or misconceived. The
8 commissioner of natural resources may review the department's decision on the basis
9 of the request and determine whether the decision should be changed. The
10 commissioner may issue a determination in writing within 20 days after the issuance
11 of the decision. If the commissioner has not issued a written decision within the 20-
12 day period, the request for reconsideration shall be considered as denied. Denial of a
13 request for reconsideration is a final administrative order and decision of the
14 department.

15 (f) The superior courts of the state have jurisdiction to enforce orders of the
16 department entered under (c) and (e) of this section.

17 * **Sec. 16.** AS 46.40.070 is repealed and reenacted to read:

18 **Sec. 46.40.070. Requirements for department review and approval.** (a) The
19 department shall approve a district coastal management plan submitted for review and
20 approval if, as determined by the department, the

21 (1) district coastal management plan meets the requirements of this
22 chapter and the district plan criteria adopted by the department; and

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

24 (A) do not duplicate, restate, incorporate by reference,
25 rephrase, or adopt state or federal statutes or regulations;

26 (B) are not preempted by or in conflict with state or federal
27 statutes or regulations;

28 (C) employ the least restrictive means to achieve the objective
29 of the enforceable policies;

30 (D) do not arbitrarily or unreasonably restrict uses of state
31 concern; and

(E) meet the requirements of (b) and (c) of this section.

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(b) The enforceable policies in a district coastal management plan submitted for review under this section must meet the requirements of (a) of this section and may establish new standards or requirements that are within the authority of a state or federal agency unless

(1) a state agency specifically objects to the proposed new standards or requirements on the grounds that the proposed standards or requirements

(A) are based on scientific evidence or local knowledge relied upon by the coastal resource district to satisfy the requirements of AS 46.40.030 but that conflicts with the agency's interpretation of the scientific evidence within the agency's area of expertise;

(B) conflict with the agency's allocation of existing or planned agency resources to meet state policies and objectives; or

(C) conflict with agency priorities or objectives, or other state policies;

(2) the proposed new standards or requirements address discharges, emissions, contaminants, conditions, risks, or other matters that fall within the authority of the Department of Environmental Conservation under AS 46.03, AS 46.04, AS 46.09, AS 46.14, and regulations adopted under those statutes.

(c) An approval of a district coastal management plan with enforceable policies may not affect a person's rights or authorizations under an unexpired permit, lease, or other valid existing right to explore or develop natural resources that predates the date that the enforceable policy becomes final. An enforceable policy becomes final when its adoption is no longer subject to further review through either a judicial or administrative process.

(d) In reviewing and approving a district coastal management plan under (a) of this section, the department may not require a district to designate areas for the purpose of developing an enforceable policy.

(e) In this section, "specifically objects" means that, during a review of a district coastal management plan under AS 46.40.050 or 46.40.060 and their implementing regulations, a written objection to the enforceable policy that establishes the new standards or requirements is filed with the department by

- 1 (1) the commissioner or a deputy commissioner of a state agency; or
- 2 (2) the attorney general of the state.

3 (f) Notwithstanding any other provision of this chapter, an enforceable policy
4 that establishes requirements within the authority of a state or federal agency shall be
5 superseded upon the enactment of a law or adoption of a regulation that is inconsistent
6 with the enforceable policy.

* Sec. 17. AS 46.40.096(d) is amended to read:

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

(1) request consistency review comments for the proposed project
10 from state resource agencies, affected coastal resource districts, and other interested
11 parties as determined by regulation adopted by the department;

(2) prepare proposed consistency determinations;

(3) conduct an elevated review [COORDINATE SUBSEQUENT
14 REVIEWS] of proposed consistency determinations prepared under (2) of this
15 subsection; an elevated [A SUBSEQUENT] review of a proposed consistency
16 determination under this paragraph

(A) shall be conducted [IS LIMITED TO A REVIEW] by the
18 commissioners or deputy commissioners of the resource agencies
19 [DEPARTMENT];

(B) may occur only if requested by

- 21 (i) the project applicant;
- 22 (ii) a state resource agency; or
- 23 (iii) an affected coastal resource district; and

(C) shall be completed with the issuance of a written order
25 signed by at least two of the commissioners or deputy commissioners of
26 the resource agencies [BY THE DEPARTMENT] within 60 [45] days after
27 the initial request for an elevated [SUBSEQUENT] review under this
28 paragraph; if a written order is not issued in accordance with this
29 subparagraph, the proposed consistency determination under (2) of this
30 subsection is the final consistency determination and certification; and
31

1 (4) render the final consistency determination and certification
2 consistent with this subsection.

3 * Sec. 18. AS 46.40.096(g) is amended to read:

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

6 (1) an activity that

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

10 (B) IS SUBJECT TO AUTHORIZATION BY THE
11 DEPARTMENT OF ENVIRONMENTAL CONSERVATION UNDER THE
12 REQUIREMENTS DESCRIBED IN AS 46.40.040(b);]

13 (2) activities excluded from a consistency review under AS 41.17; and
14 (3) the issuance of an authorization or permit issued by the Alaska Oil
15 and Gas Conservation Commission.

16 * Sec. 19. AS 46.40.096(k) is amended to read:

17 (k) Except as provided in (g) of this section, AS 41.17, [AS 46.40.040(b)] and
18 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)
19 of this section, is limited to activities that are located within the areas described in (l)
20 of this section and that either are subject to a state resource agency permit, lease,
21 authorization, approval, or certification or are the subject of a coastal resource district
22 enforceable policy approved by the department under this chapter. The scope of a
23 consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and
24 15 C.F.R. Part 930.

25 * Sec. 20. AS 46.40.096(o) is amended to read:

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

27 (1) do not apply to a consistency review involving the disposal of an
28 interest in state land or resources;

29 (2) are suspended

30 (A) from the time the reviewing entity determines that the
31 applicant has not adequately responded in writing within 14 days after the

1 receipt of a written request from the reviewing entity for additional
2 information, until the time the reviewing entity determines that the applicant
3 has provided an adequate written response;

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

5 (C) during the period of time a consistency review is
6 undergoing an elevated [A SUBSEQUENT] review under (d)(3) of this
7 section.

8 * Sec. 21. AS 46.40.096(q)(2) is amended to read:

9 (2) "reviewing entity" means the

10 (A) Department of Natural Resources, for a consistency review
11 subject to AS 46.39.010;

12 (B) commissioners or the deputy commissioners of the
13 resource agencies for an elevated review;

14 (C) state agency identified in (b) of this section, for a
15 consistency review not subject to AS 46.39.010.

16 * Sec. 22. AS 46.40.180(b) is amended to read:

17 (b) If a city or village within a coastal resource service area fails to approve a
18 portion of the district coastal management plan prepared and submitted for approval
19 under (a) of this section, the governing body shall advise the coastal resource service
20 area board of its objections to the proposed plan and suggest alternative elements or
21 components for inclusion in the district coastal management plan. New matter
22 submitted by a city or village that is not inconsistent with the standards adopted
23 under AS 46.40.040 and meets the [STATEWIDE STANDARDS AND] district plan
24 criteria adopted under this chapter shall be accepted and the district coastal
25 management plan modified accordingly. If a city or village fails to provide objections
26 and suggested alternatives within the time limits established in this section, the coastal
27 resource service area board may adopt the district coastal management plan as initially
28 offered.

29 * Sec. 23. AS 46.40.210 is amended by adding new paragraphs to read:

30 (13) "board" means the Alaska Coastal Policy Board established in
31 AS 46.39.005;

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(14) "commissioners" means the commissioners of the resource agencies;

(15) "elevated review" means a review of a proposed consistency determination by the commissioners, or their deputies, of the resource agencies;

(16) "local knowledge" means a body of knowledge or information about the coastal environment or the human use of that environment, including information passed down through generations, if that information is

(A) derived from experience and observations; and

(B) generally accepted by the local community;

(17) "scientific evidence" means facts or data that are

(A) premised upon established chemical, physical, biological, or ecosystem management principles as obtained through scientific method and submitted to the division in the department responsible for ocean and coastal management to furnish proof of a matter required under this chapter;

(B) in a form that would allow resource agency review for scientific merit; and

(C) supported by one or more of the following:

(i) written analysis based on field observation and professional judgment along with photographic documentation;

(ii) written analysis from a professional scientist with expertise in the specific discipline; or

(iii) site-specific scientific research that may include peer-review level research or literature.

* Sec. 24. AS 46.39.005 is repealed.

* Sec. 25. AS 46.40.060(d) is repealed.

* Sec. 26. AS 46.40.040(b), 46.40.040(c), and 46.40.096(i) are repealed.

* Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: MEMBERS OF THE ALASKA COASTAL POLICY BOARD;
STAGGERED TERMS. (a) Notwithstanding AS 46.39.005(a), added by sec. 3 of this Act, within 30 days after the effective date of this section, the municipalities of each region

1 identified in AS 46.39.005(a)(1)(B) shall submit to the governor the names of three persons
2 from the region qualified under AS 46.39.005(a), added by sec. 3 of this Act. Notwithstanding
3 AS 46.39.005, added by sec. 3 of this Act, within 60 days after the effective date of this
4 section, the governor shall appoint, from the lists of names submitted under
5 AS 46.39.005(a)(1)(B), one member and one alternate from each region, or request
6 subsequent lists of names in accordance with AS 46.39.005(a)(1)(B), and shall appoint one at-
7 large member and one alternate to serve on the Alaska Coastal Policy Board established by
8 AS 46.39.005, added by sec. 3 of this Act. The governor shall appoint the public members to
9 three-year staggered terms. The alternate for each member shall serve the same term as the
10 member. The governor shall specify the term of each member appointed subject to this
11 section.

12 (b) Notwithstanding the requirements of AS 46.40.060(b), as amended by sec. 13 of
13 this Act, a review by the Alaska Coastal Policy Board relating to a district coastal
14 management plan, or a portion of a district coastal management plan, shall be delayed until all
15 the public members and alternates of the board are appointed under (a) of this section.

16 * Sec. 28. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 TRANSITION: PENDING DISTRICT COASTAL MANAGEMENT PLANS. If a
19 plan of a coastal resource district was submitted to the Department of Natural Resources
20 before the effective date of this section, but is pending approval in its entirety before the
21 effective date of this section, the coastal resource district shall resubmit the entire plan to the
22 Department of Natural Resources for approval using the standards set out in AS 46.39 and
23 AS 46.40, as modified by this Act.

24 * Sec. 29. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 REVIEW AND REPORT BY THE ALASKA COASTAL POLICY BOARD.

27 Notwithstanding secs. 9, 18, 19, 26, and 34 of this Act, before February 1, 2013, the Alaska
28 Coastal Policy Board shall review AS 46.40.040(b), as amended by sec. 10 of this Act,
29 AS 46.40.040(c), and AS 46.40.096(i), their implementing regulations, and related federal and
30 state statutes and regulations, and prepare a report to the governor and the legislature on any
31 proposed changes to the provisions of AS 46.40.

1 * **Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 RETROACTIVITY AND REVIVAL. (a) The amendment to AS 44.66.020(a)(5)
4 made by sec. 2 of this Act is retroactive to January 1, 2011.

5 (b) If, under AS 01.10.070(c), sec. 32 of this Act takes effect on or after July 1, 2011,
6 sec. 32 of this Act is retroactive to July 1, 2011, and provisions repealed by sec. 18, ch. 31,
7 SLA 2005, are revived. If a revived provision is amended by secs. 1, 2, 4 - 8, 10 - 17, 20 - 23,
8 and 25 of this Act, it is revived as amended by secs. 1, 2, 4 - 8, 10 - 17, 20 - 23, and 25 of this
9 Act. The revived provisions are subject to repeal under sec. 22, ch. 31, SLA 2005, as amended
10 by sec. 32 of this Act, and under sec. 26 of this Act.

11 (c) If, under AS 01.10.070(c), this section takes effect on or after July 1, 2011,
12 AS 46.39.005, added by sec. 3 of this Act and repealed by sec. 24 of this Act, is revived.
13 AS 46.39.005, as revived, is subject to repeal under secs. 24 and 33 of this Act and sec. 22,
14 ch. 31, SLA 2005, as amended by sec. 32 of this Act.

15 * **Sec. 31.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 CONDITIONAL EFFECT. Section 24 of this Act takes effect only if secs. 1 - 13 and
18 18, ch. 31, SLA 2005, take effect.

19 * **Sec. 32.** The uncodified law of the State of Alaska enacted in sec. 22, ch. 31, SLA 2005, is
20 amended to read:

21 Sec. 22. Sections 1 - 13 and 18, ch. 31, SLA 2005, [OF THIS ACT] take effect
22 July 1, 2017 [2011, UNLESS THE STATES REVISED COASTAL
23 MANAGEMENT PROGRAM HAS NOT BEEN APPROVED BY THE NATIONAL
24 OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND
25 COASTAL RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF
26 COMMERCE, UNDER 16 U.S.C. 1455 AND 1457 (COASTAL ZONE
27 MANAGEMENT ACT OF 1972) BEFORE JANUARY 1, 2006. IF THE STATE'S
28 REVISED COASTAL MANAGEMENT PROGRAM IS NOT APPROVED
29 BEFORE JANUARY 1, 2006, BY THE NATIONAL OCEANIC AND
30 ATMOSPHERIC ADMINISTRATION, OFFICE OF OCEAN AND COASTAL
31 RESOURCE MANAGEMENT, UNITED STATES DEPARTMENT OF

1 COMMERCE, THEN SECS. 1 - 13 AND 18 OF THIS ACT TAKE EFFECT MAY
2 10, 2006. THE COMMISSIONER OF NATURAL RESOURCES SHALL NOTIFY
3 THE REVISOR OF STATUTES ON FEBRUARY 1, 2006, WHETHER THE
4 REVISED COASTAL MANAGEMENT PROGRAM HAS BEEN APPROVED AS
5 DESCRIBED IN THIS SECTION].

6 * Sec. 33. If sec. 24 of this Act takes effect, it takes effect on the date that secs. 1 - 13 and
7 18, ch. 33, SLA 2005, take effect.

8 * Sec. 34. Sections 9, 18, 19, and 26 of this Act take effect July 1, 2013.

9 * Sec. 35. Except as provided in secs. 33 and 34 of this Act, this Act takes effect
10 immediately under AS 01.10.070(c).

STATE CAPITOL
PO Box 110001
Juneau, Alaska 99811-0001
907-465-3500
fax: 907-465-3532



Governor Sean Parnell
STATE OF ALASKA

550 West 7th Avenue #1700
Anchorage, Alaska 99501
907-269-7450
fax: 907-269-7463
www.gov.alaska.gov
Governor@alaska.gov

January 14, 2011

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault,

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill extending the termination date of the Alaska coastal management program by six years and relating to the extension; relating to the review of activities of the Alaska coastal management program; and providing for an effective date by amending the effective date of Sec. 22, Ch. 31, SLA 2005.

The Alaska coastal management program is currently set to automatically terminate on July 1, 2011. I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Parnell".

Sean Parnell
Governor

Enclosure

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

April 17, 2011

The Honorable Lyman Hoffman
Co-Chair, Senate Finance Committee
Alaska State Senate
State Capitol, Room 518
Juneau, AK 99801-1182

RE: House Bill 106

Dear Senator Hoffman:

In testimony to the House Finance Committee, I was asked by Representative Reggie Joule to comment on the Department of Natural Resources' (DNR) policy regarding designated areas under the Alaska Coastal Management Program (ACMP—AS 46.39 and 46.40). Please accept this letter as further confirmation and commitment by DNR to that testimony.

Under current statutes, coastal districts are not required to designate areas where a local enforceable policy may apply. Current regulations, however, do require such a designation. This requirement has been a source of frustration for many coastal districts as they have sought to develop approvable policies under the ACMP.

During legislative debate of House Bill 106, statutory language specifically prohibiting DNR from requiring designated areas for the purpose of developing local enforceable policies was included in the committee substitute adopted by the House Resources Committee as well as the Senate Community and Regional Affairs Committee. DNR does not object to the policy change, but in reviewing the statutory language with the Department of Law questions were raised concerning the need to include such language if the current statutes already allow the policy change to occur. As a result, the relevant subsection in proposed AS 46.40.070 was deleted in the committee substitute adopted by the House Finance Committee.

With substantive changes to the program included as part of legislation extending the repeal of the ACMP, revisions to the governing regulations will have to be promulgated in the next year. Those regulations will eliminate the designated area requirement for local enforceable policies.

Sincerely,



Joseph R. Balash
Deputy Commissioner

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



ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

January 6, 2011

Members of the Legislative
Budget and Audit Committee:

We have reviewed the commissioner of the Department of Natural Resources' (DNR) response to the preliminary audit report on the Alaska Coastal Management Program, Part 1. Nothing in the response causes us to reconsider our conclusions; therefore, we reaffirm the conclusions.


However we offer the following clarifications.

On page 2 of the response, the DNR's commissioner noted that page 9 of the Background Information section does not address Ch. 28, SLA 02. However, we adequately addressed that legislation in footnote 23 on page 20 of the Report Conclusions.

On page 2 of the response, the commissioner rightly points out that the Department of Environmental Conservation (DEC) is not totally removed from all consistency review obligations. Our statement on page 10 is overly broad and should have been written as follows:

Changes included... removing the DEC permits [emphasis added] from the consistency review process providing that "DEC's air, land, and water quality standards are the exclusive standards for the ACMP for those purposes;" and requiring the coastal resource districts to rewrite the their district coastal management plans.

Sincerely,


Pat Davidson, CPA
Legislative Auditor

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

February 7, 2011

Members of the Legislative Budget
and Audit Committee:

We have reviewed the commissioner of the Department of Natural Resources' (DNR) response to the preliminary audit report on the Alaska Coastal Management Program (ACMP), Part 2.

We offer the following comments.

Certain aspects of ACMP operations are not open and transparent.

Our evaluation of the openness and transparency of the ACMP in the Division of Coastal and Ocean Management's (DCOM) operations is not tied to compliance with the Administrative Procedures Act which establishes guidelines for the process used to develop and implement regulations. The ACMP is a collaborative process, and its successful operations require maintaining the active involvement of all participants. Operations that are open and transparent increase the likelihood of maintaining participants' active involvement.

Therefore, our conclusions about recording or taking minutes at working group meetings, distributing review participant materials, DCOM providing formal feedback to comments received during the reevaluation process, and status updates regarding the ACMP reevaluation are areas that are noteworthy to avoid the risk of losing coastal resource district participants' active involvement.

DCOM's policy regarding consultants disregards resource coastal district's autonomy.

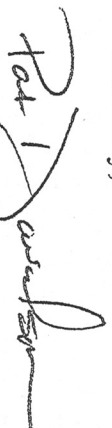
DNR objects to our conclusions and recommendations about allowing coastal districts to choose their own point of contact. DNR may choose to obtain a legal opinion from the Department of Law to support its position. Absent that, it is not reasonable that an agreement between DCOM and the Department of Commerce, Community, and Economic Development regarding the administration of grants can dictate to coastal districts, most of which are political subdivisions, how those organizations can choose to manage their operations.

Members of the Legislative Budget
and Audit Committee

February 7, 2011

In summary, we reaffirm the conclusions and recommendations contained in this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Davidson". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Pat Davidson, CPA
Legislative Auditor



ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

December 8, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is
submitted for your review.

DEPARTMENT OF NATURAL RESOURCES ALASKA COASTAL MANAGEMENT PROGRAM PART 1

November 26, 2010

Audit Control Number
10-30060A-11

This is the first part of a two-part report. The overall objective of the audit is a performance evaluation and sunset review of the Alaska Coastal Management Program (ACMP). This report addresses the impact of Ch. 24, SLA 03 and subsequent regulatory changes on the establishment of district enforceable policies, the scope of consistency reviews, the ACMP's ability to meet its objectives, and the State's rights under the Coastal Zone Management Act.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

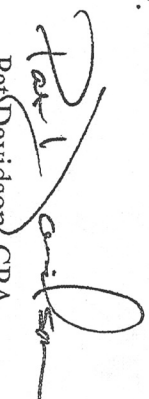

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Department of Natural Resources (DNR), Alaska Coastal Management Program (ACMP). The emphasis of our report is to evaluate the effect of Ch. 24, SLA 03 and subsequent regulatory changes on the ACMP's operations, to determine whether there is a demonstrated public need for its continued existence, and to determine if it has been operating in an efficient and effective manner.

This report shall be considered by the committee of reference during the legislative oversight process in determining whether the ACMP should be reauthorized. Chapter 31 of the SLA 2005, Section 18, repeals the ACMP statutes. As a result, this program will terminate on June 30, 2011, unless it is reauthorized.

Objectives

The objectives of this audit are as follows:

1. Determine whether regulatory changes in 11 AAC 112 and 114 limit the establishment of district enforceable policies and whether this limitation is consistent with legislative intent and state law.
2. Determine whether DNR is properly implementing the local concern requirement.
3. Determine whether the Department of Environmental Conservation (DEC) carveout is being implemented in accordance with legislative intent and how it has affected the scope of the ACMP's consistency reviews.
4. Determine whether changes to the statewide standards limit the ACMP's ability to meet its objectives.
5. Determine whether changes to the ACMP have diminished the State's rights under the Coastal Zone Management Act of 1972 (CZMA).
6. Determine whether DNR is operating the program openly and transparently, whether DNR will allow consultants to be consistency review participants, and whether DNR is an appropriate agency to administer the program.
7. Determine whether the ACMP's changes have affected participation, decision making, and consensus building.

8. Determine whether the ACMCP is operating in the public's interest and whether it should be reauthorized.

The assessment of the ACMCP's operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need.

Scope

This is the first part of a two-part report. The scope of the first part includes objectives one through five that are discussed above. Overall, our review spanned from FY 94 to FY 11. The scope for specific procedures is identified in the Methodology section discussion below.

Methodology

We reviewed the CZMA, Ch. 24, SLA 03 (HB 191) and committee minutes, ACMCP statutes and regulations, draft ACMCP statutes and regulations, and former ACMCP statutes and regulations. We reviewed these documents to ascertain the intent of the legislature, analyze the ACMCP's statutory and regulatory changes, and evaluate whether the 2004 regulatory changes were consistent with legislative intent and state law.

To gain an understanding of the ACMCP's operations and activities, we reviewed the following documents:

- The ACMCP *Handbook of Statutes & Regulations*;
- The FY 04 to FY 10 free conference committee reports;
- The FY 95 to FY 10 attorney general opinions;
- The FY 10 semi-annual performance reports;
- The “*Application for Assistance under the Coastal Zone Management Act, July 2009 - December 2010*”;
- FY 10 to FY 11 coastal resource district grant documents;
- FY 08 to FY 10 financial reports;
- The FY 09 to FY 10 Office of Management and Budget performance measures;
- ACMCP reevaluation documents and comments from 2008;
- The National Oceanic and Atmospheric Administration’s (NOAA) “*Final Evaluation Findings Alaska Coastal Management Program October 2002 – August 2007*”;
- *The Classification of State Agency Approvals* (ABC List) documents; and
- The ACMCP website.

We also attended two working group meetings and a coastal resource district meeting.

To determine whether the Division of Coastal and Ocean Management’s (DCOM) coordinated consistency reviews were performed in accordance with ACMCP regulations in 11 AAC 110, we reviewed electronic files for 39 consistency reviews selected from

consistency reviews coordinated by DCOM and entered into their database during FY 10. To obtain a cross-section of consistency reviews statewide, we randomly selected from each of the 28 participating coastal resource districts and from one of the nonparticipating coastal resource districts. We also reviewed the one consistency review that was elevated to DNR's commissioner for review during FY 10.

We determined the number of FY 10 consistency reviews that were found to be: (1) consistent with the ACMMP, (2) consistent with alternative measures, (3) inconsistent, and (4) the number elevated. We compared these figures to those for FY 94 consistency reviews. We also compared the number of consistency reviews that coastal resource districts commented on in FY 10 to those in FY 94. These comparisons were made to analyze the impact of the ACMMP's changes on consistency reviews.

We examined a sample of nine pairs of DCOM-coordinated consistency reviews judgmentally selected from five coastal resource districts. Each pair consisted of two consistency reviews of similar projects in the same coastal resource district. One consistency review was selected from the period FY 07 to FY 10 and the other from FY 00 to FY 04. We compared them to determine what effect, if any, the ACMMP changes had on the length of consistency reviews, coastal district participation, district enforceable policies, and consistency review outcomes. We also reviewed a sample of consistency reviews identified by coastal resource districts in response to survey questions.

We reviewed the district coastal management plans in effect before the ACMMP's 2003 changes for: the 28 currently participating coastal resource districts;¹ the 28 submitted revised district coastal management plans;² the 25 approved district coastal management plans;³ and the four mediated plans and supporting documents. The purpose of the review was to evaluate the changes in the number and kinds of enforceable policies and designated areas and the reasons for disapproval. We reviewed the mediated plans for consistent application of the regulations.

We interviewed DNR's management as well as DCOM's management and staff regarding various aspects of ACMMP operations. We also interviewed DEC, the Department of Commerce, Community, and Economic Development, working group members, industry stakeholders, the Environmental Protection Agency, and NOAA regarding the impact of the ACMMP's changes.

We interviewed the regional coastal resource district representatives and conducted a web survey of coastal resource district coordinators regarding the impact of the ACMMP's changes on the ability to establish enforceable policies and designate areas, the scope of the ACMMP consistency reviews, and the State's rights under the CZMA. The survey also asked for the

¹ DCOM provided these district coastal management plans on disc.

² *OPMP Preliminary* plans were reviewed at <http://www.alaskacoast.state.ak.us/District/html/ProgressFinal.htm>.

³ *Final Plan in Effect* plans were reviewed at <http://www.alaskacoast.state.ak.us/District/html/ProgressApproval.htm>.

coordinator's assessment of DNR's administration of the ACMF and whether the program is operating in the public's interest.

We reviewed websites and NOAA's final evaluation findings reports for Washington, California, Texas, Louisiana, and Florida. We also interviewed program personnel regarding their states' coastal management programs. We compared these programs to the ACMF with regard to lead agencies, oversight bodies, local plans, and local participation in federal consistency reviews.

ORGANIZATION AND FUNCTION

The Alaska Coastal Management Program (ACMP) is a voluntary state program authorized by the amended Coastal Zone Management Act of 1972 (CZMA). The ACMP is a networked program driven by the participation and cooperation of various state agencies, coastal resource districts, industry, and the public.

The Division of Coastal and Ocean Management (DCOM)

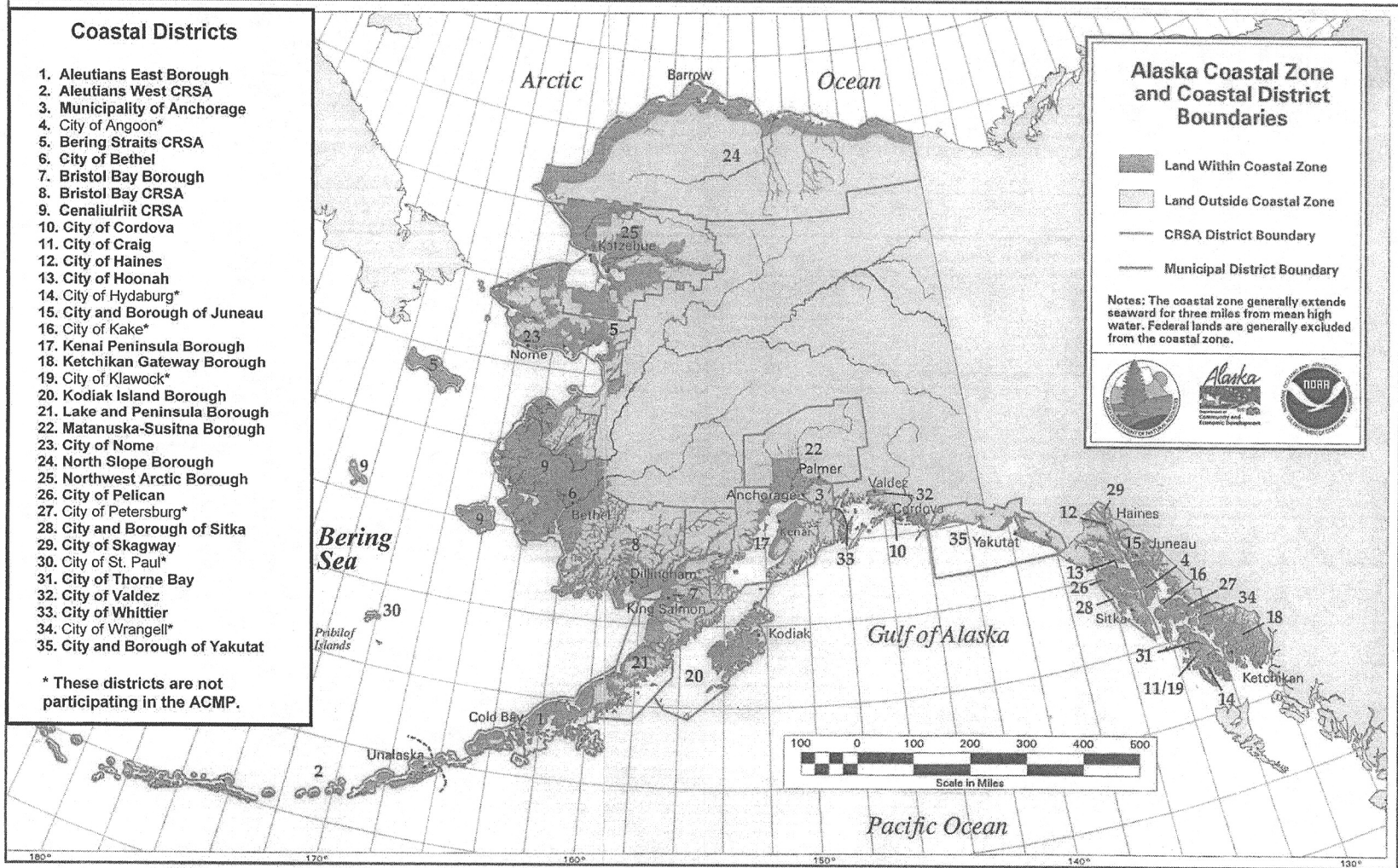
The ACMP is administered by the Department of Natural Resources (DNR), DCOM. Administration of the program includes:

- Reviewing and approving district coastal management plans.
- Coordinating the ACMP's consistency reviews.
- Proposing statutory and regulatory changes to improve coastal management.
- Funding grants and offering technical assistance to coastal resource districts.
- Coordinating regular working group and district meetings.
- Encouraging participation of coastal resource districts and the general public.

DNR is one of three resource agencies involved in the implementation of the ACMP. The other two resource agencies are the Department of Environmental Conservation (DEC) and the Department of Fish and Game (DFG). Other participating agencies include the Department of Commerce, Community, and Economic Development (DCCED); the Department of Transportation and Public Facilities (DOTPF); and the Department of Law (Law). Divisions within DNR that participate are: the Division of Agriculture (Agriculture); the Division of Geological and Geophysical Surveys (DGGGS); the Division of Forestry (Forestry); the Division of Mining, Land, and Water; the Division of Oil and Gas (DOG); and the Division of Parks and Outdoor Recreation (Parks). These agencies receive ACMP and CZMA funding for their involvement in the ACMP. Responsibilities of the agencies may include:

- Providing technical assistance during district coastal management plan review and consistency reviews.
- Issuing permits for activities subject to the ACMP consistency review process.
- Coordinating and reviewing proposed coastal projects for consistency with the ACMP.
- Monitoring and reviewing projects to ensure compliance with the ACMP.
- Participating in special ACMP projects and the ACMP working group.

Exhibit 1



Provided by DNR

In the spring of 2008, DCOM began organizing monthly district teleconferences to facilitate better communication between itself and the coastal resource districts. Agenda items are determined jointly by DCOM and the coastal resource districts.

The Coastal Resource Districts

As shown in Exhibit 1, Alaska's coastal zone has 35 coastal resource districts. Local government participation in the ACMMP is voluntary; currently, there are 28 coastal resource districts participating through local implementation of the program. Twenty-five of the districts have approved district coastal management plans, which include their district enforceable policies and designated areas. Of the participating coastal resource districts without plans, one is awaiting final approval and two are pending. Projects that go through a consistency review in districts without an approved plan are reviewed for consistency with the statewide coastal management plan.

Most of the coastal resource districts are organized local governments with zoning and other land use authority granted through Title 29 of the Alaska Statutes. These local governments implement their own district coastal management plans under that authority. Four coastal districts are not organized governments. These districts have formed coastal resource service areas (CRSAs) to participate in the ACMMP. The CRSAs do not have land use planning and zoning authority and must rely on state agencies to enforce their district coastal management plans.

The ACMMP Working Group

The ACMMP working group consists of eight agency representatives, six DNR division contacts, and four coastal resource district representatives. The agency members represent each of the participating departments (DCCED, DEC, DFG, Law, and DOTPF) as well as several divisions within DNR including DCOM, Agriculture, Forestry, DGGs, DOG, and Parks. The four coastal resource district members represent the four regions of the coastal zone: northwest, southwest, southcentral, and southeast.

Responsibilities of the working group members include resolving interagency disagreements, advising their respective commissioners of ACMMP viewpoints and policies, disseminating information throughout their agencies, and coordinating timely agency assistance to the coastal resource districts. The working group meets monthly via teleconference. Meeting topics vary and may include proposed legislation, draft regulations, ACMMP projects, and other pertinent items.

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BACKGROUND INFORMATION

Congress passed the federal Coastal Zone Management Act of 1972 (CZMA) to promote effective management, beneficial use, protection, and development of coastal zones nationwide. The federal program encourages states to participate in coastal management and provides funding to assist states in implementing programs at the state level. In addition to receiving funding, states participating in the CZMA have the right to review federal agency and federally-permitted activities occurring in coastal zones or affecting coastal zone uses and resources. The CZMA also encourages, but does not require, the participation of local governments.⁴

In 1977, the Alaska legislature enacted the Alaska Coastal Management Program (ACMP) within the Office of the Governor, Division of Policy Development and Planning. Also established was the Coastal Policy Council (CPC), which consisted of state agency and local government officials. The CPC's responsibilities included providing leadership for the program, adopting guidelines and standards, reviewing and approving district coastal management plans, and hearing petitions regarding compliance with and implementation of district coastal management plans.

Consistent with the CZMA, the objectives of the ACMP center on the effective management of coastal zones through balancing the protection and development of coastal uses and resources. The eight objectives of the ACMP are listed in Exhibit 2 (right).

In 2003, the legislature enacted Ch. 24, SLA 03, which revised

Exhibit 2

ACMP Objectives

AS 46.40.020. The Alaska coastal management program shall be consistent with the following objectives:

- (1) the use, management, restoration, and enhancement of the overall quality of the coastal environment.
- (2) the development of industrial or commercial enterprises that are consistent with the social, cultural, historic, economic, and environmental interests of the people of the state;
- (3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;
- (4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;
- (5) the protection and management of significant historic, cultural, natural, and aesthetic values and natural systems or processes within the coastal area;
- (6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water uses adjacent to that land;
- (7) the recognition of the need for continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs;
- (8) the full and fair evaluation of all demands on the land and water in the coastal area.

⁴16 U.S.C. 1451-1456.

AS 46.39 and AS 46.40 and substantially changed the ACMF. Changes included: transferring the development and implementation of the ACMF from the CPC to the Department of Natural Resources (DNR); eliminating the CPC; revising statewide standards and regulations; removing the Department of Environmental Conservation (DEC) from the consistency review process, providing that “*DEC’s air, land, and water quality standards are the exclusive standards of the ACMF for those purposes*”;⁵ and requiring the coastal resource districts to rewrite their district coastal management plans.

The ACMF is implemented through the consistency review process.

The cornerstone of the ACMF is the consistency review process. Through the consistency review process, activities located within or that will have an effect on the coastal zone are evaluated for consistency with the ACMF’s enforceable policies which include state resource agency authorities, statewide standards, and district enforceable policies. Participants in the consistency review process include the resource agencies, state agencies that have requested participation, affected coastal resource districts, applicants, and interested public. The process is applicable to activities that require a resource agency authorization⁶ or federal authorization and federal agency activities.

Within DNR, the Division of Coastal and Ocean Management (DCOM) coordinates consistency reviews for activities that require an authorization from two or more resource agencies or divisions within DNR. DCOM also coordinates reviews of federal agency activities and activities that require a federal consistency determination or certification.

If an activity requires an authorization from only one DNR division, that division coordinates the consistency review and determination process.⁷ Similarly, if a project requires an authorization from a single state resource agency,⁸ that agency coordinates the consistency review and determination process.

When a project is submitted for review, if requested, the coordinating agency will provide information about the consistency review requirements to the applicant.⁹ A pre-review assistance meeting may be held among the applicant, coordinating agency, resource agencies, and potentially affected coastal resource districts.

⁵The ACMF Handbook of Statutes & Regulations, p. 158.

⁶Per 11 AAC110.990(a)(6)(A), “*A permit, license, authorization, certification, approval, or other form of permission that a resource agency is empowered to issue to an applicant and that is identified in the C List.*” Examples of authorizations on the C List are: aquatic farm and hatchery permits, offshore mining leases, and oil discharge contingency plans for oil tankers and oil barges.

⁷The Division of Agriculture; the Division of Forestry; the Division of Mining, Land and Water; and the Division of Oil and Gas.

⁸DEC or the Department of Fish and Game.

⁹Per 11 AAC 110.990(a)(4), “*Applicant means a person who submits an application for a resource agency or federal authorization...or an OCS plan to the United States Secretary of the Interior.*”

Once a packet is determined to be complete, the consistency review begins. Reviews are scheduled for completion within 30 days or 50 days depending on the authorizations that are needed.¹⁰ As part of the review, the coordinating agency:

- Publicly notices the consistency review;
 - Distributes the consistency review packet to the review participants;
 - Accepts comments on the consistency of the project from the review participants and general public, and distributes the comments to the applicant and other review participants;
 - Facilitates discussion among the review participants to attempt to achieve consensus if no consensus exists;
 - Renders a proposed consistency determination¹¹ with any alternative measures; and
 - Renders a final consistency determination.¹²
- Exhibit 3 on the following page illustrates the consistency review process and the corresponding timeline.

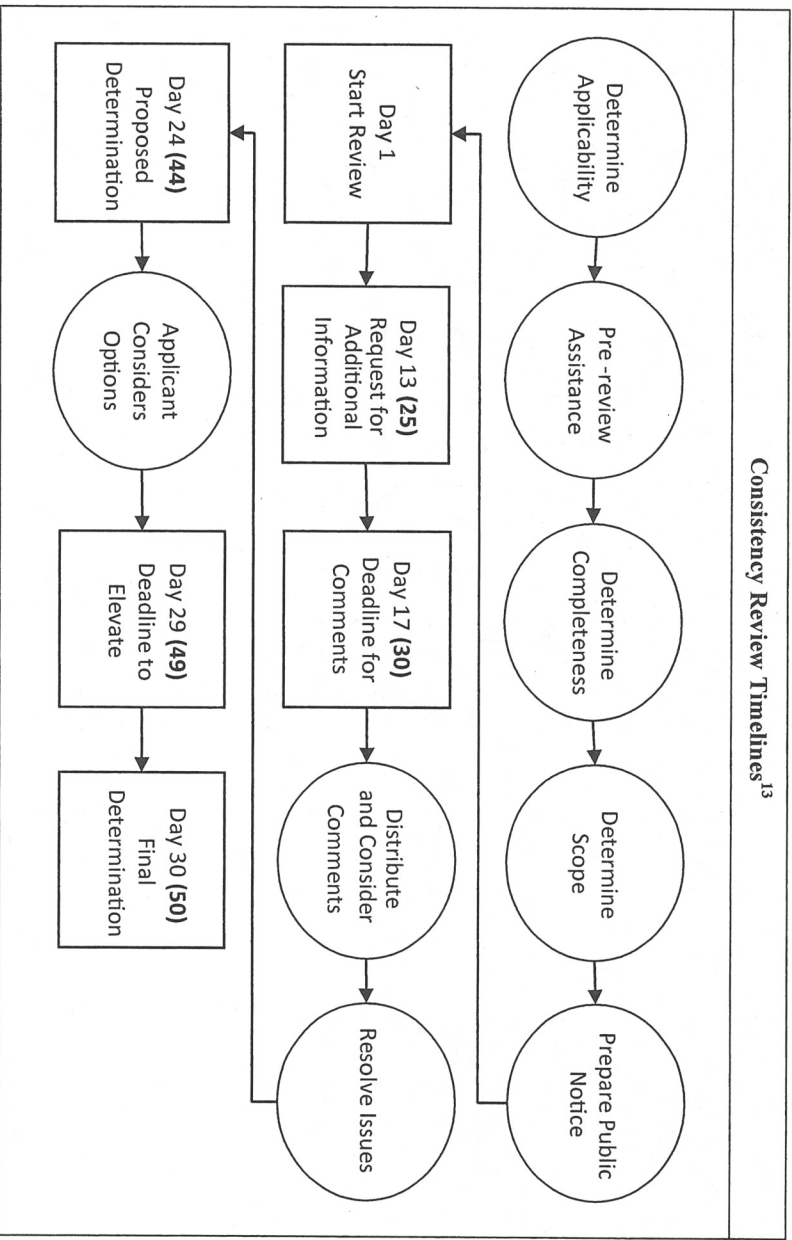
¹⁰Per 11 AAC 110.230, unless all required authorizations of the project are specifically listed in the C List as 30-day authorizations, the project is subject to a 50-day review.

¹¹Per 11 AAC 110.255(f), a proposed consistency determination must (1) contain a description of the proposed project and scope of the project, (2) concur with or object to the applicant's consistency certification, (3) state the availability of an elevation and deadline for requesting one, and (4) be issued by electronic mail or facsimile to the applicant and review participants who may request an elevation.

¹²Per 11 AAC 110.260(a), a final consistency determination must (1) contain a description of the proposed project and scope of the project, (2) concur with or object to the applicant's consistency certification, and (3) state that it is a final administrative order and decision under the program.

Exhibit 3

Consistency Review Timelines¹³



Comments of consistency review participants are given due deference¹⁴ depending on the participant's area of responsibility or expertise. For example, the Department of Fish and Game (DFG) generally would be afforded due deference with regard to the statewide habitats standard, whereas a coastal resource district generally would be afforded due deference with regard to its district plan. The coastal resource district could still comment on a project's consistency with a statewide standard, but to be given due deference, it would have to provide evidence to support its position and demonstrate expertise in the field.

¹³The timeline provides the critical deadlines for a 30-day consistency review. The numbers in the parentheses are the deadlines for a 50-day review.

¹⁴Per 11 AAC 110.990(a)(25), "Due deference" means that deference that is appropriate in the context of (A) the commenter's expertise or area of responsibility; and (B) all the evidence available to support any factual assertions of the commenter." Deference is the respectful submission or yielding to the judgment, opinion, will, etc., of another.

For consistency determinations that concur with the applicant's consistency certification, the determination explains how the proposed project is consistent with applicable enforceable policies. For objections to the project, the determination identifies the specific enforceable policies and the reasons why the proposed project is inconsistent with those enforceable policies. The determination also includes any changes made by the coordinating agency between issuing the proposed consistency determination and issuing the final consistency determination. The coordinating agency provides the final consistency determination to the applicant, each resource agency, and each agency or person who submitted timely comments.¹⁵

There is a 90-day deadline for a consistency review regardless of the issuance of a DEC or other excluded permit. This deadline does not include a review involving the disposal of an interest in state land or resources. The review clock is stopped if the applicant has not responded in writing within 14 days to a request for additional information. It is also stopped when requested by the applicant and when a decision is elevated to the DNR commissioner.¹⁶ If a determination has not been made at the end of 90 days, the project is presumed to be consistent.

Exhibit 4 (to the right above) provides an example of a project that was reviewed for consistency with the ACMF.

The DEC carveout excludes air, land, and water quality issues under DEC's authority from the consistency review.

Chapter 24 of the SLA 2003 changed the ACMF by excluding DEC permits from the consistency review process, and making DEC's regulations the exclusive standards for air, land, and water quality for those purposes. For activities that require DEC permits,¹⁷ DEC's issuance of the permit establishes consistency with the ACMF. For activities that do not involve DEC permits, such as federal agency activities or activities on federal land or the Outer Continental Shelf, DEC first evaluates whether the activity complies with DEC statutes and regulations and then provides its findings to DNR.¹⁸

Exhibit 4

Big Lake Dock Expansion Project

This 2010 project proposed to construct an expansion to an existing personal use dock on Big Lake. The activity required a U.S. Army Corps of Engineers permit and an Alaska DFG Fish Habitat Permit, a C List authorization, triggering an ACMF consistency review. Because both a state permit and federal permit were required, this review was coordinated by DCOM. Review participants included the three resource agencies and the Matanuska-Susitna Borough. The 50-day review was completed timely in 38 days and the final consistency determination was that the project was consistent with the ACMF enforceable policies, which included three applicable district enforceable policies.

¹⁵ 11 AAC 110.260.

¹⁶ 11 AAC 110.265.

¹⁷ Permits, certifications, approvals, and authorizations.

¹⁸ AS 46.40.040(b).

The change was implemented to streamline the process by insulating the consistency review from delays associated with some of DEC's more complex permits and authorizations. While this change allows for concurrent reviews by DEC and the ACMF, it also eliminates the ability of coastal resource districts to develop specific enforceable policies addressing air, land, and water quality issues that are under the authority of DEC.

Coastal resource districts participate in the ACMF through district coastal management plans.

Coastal resource districts participate in the ACMF through the development of district coastal management plans, which include district enforceable policies and designated areas, and through participation in consistency reviews. Chapter 24 of the SLA 2003 required coastal resource districts to rewrite their district coastal management plans. Prior to Ch. 24, SLA 03, there were 33 district plans. Now, there are 25 approved plans, two pending and one in final negotiations. The other five coastal resource districts opted not to continue participating in the ACMF.

Areas can be designated by coastal resource districts during plan development. For example, according to regulation 11 AAC 114.250(g)-(h), a coastal resource district can, “*after consultation with appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or group, designate areas in which subsistence use is an important use of coastal resources.*” Also, a coastal resource district can designate portions of a coastal area as important habitat if “(1) the use of those designated portions have a direct and significant impact on coastal water; and (2) the designated portions are shown by written scientific evidence to be biologically and significantly productive.”

Additionally, an area subject to district enforceable policies “*that will be used to determine whether a specific land or water use or activity will be allowed...must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area.*”¹⁹

In addition to being designated during plan development, subsistence use; important habitat; historic, prehistoric, and archeological resources; and natural hazard areas can be designated by the State during a consistency review.

Per 11 AAC 114.250 and 114.270, district enforceable policies may address only uses and activities identified in the statewide standards and designations listed in Exhibits 5 and 6 (following page).

¹⁹ 11 AAC 114.270(g).

Statutes and regulations provide several specific requirements for district enforceable policy approval. District enforceable policies may not “duplicate, restate or incorporate by reference” state or federal statutes or regulations and cannot address a matter regulated by state or federal law or included in the statewide standards discussed above unless the policy addresses a matter of local concern. Additionally, the policy must be clear, concise, precise, prescriptive, and “not arbitrarily or unreasonably restrict or exclude uses of state concern.”²⁰

For a matter to be of local concern, the coastal use or resource must be within a defined portion of the district’s coastal zone and must describe or map, in a manner sufficient for plan development and implementation, (1) major land or water uses or activities that are or have been conducted or designated within or adjacent to the district, and (2) major land and resource responsibilities within or adjacent to the district. The coastal use or resource must also have been:

*Demonstrated as sensitive to development in the resource analysis, [not be] adequately addressed by state or federal law... [be of] unique concern to the coastal resource district as demonstrated by local usage or scientific evidence that has been documented in the resource analysis.*²¹

A district coastal management plan must also include an inventory of coastal resources, district resources, and a resource analysis of the impacts of uses and activities that are subject to the district plan. The resource analysis may include appropriate and pertinent local knowledge.²²

Exhibit 5

Statewide Standards District Policies May Address
Coastal Development
Natural Hazard Areas
Coastal Access
Energy Facilities
Utility Routes and Facilities
Sand and Gravel Extraction
Subsistence
Transportation Routes and Facilities

Exhibit 6

Designations District Policies May Address
Natural Hazard
Recreational Use
Tourism Use
Major Energy Facilities
Commercial Fishing and Seafood Processing
Subsistence Use
Important Habitat
Historical and Pre-historical

²⁰ 11 AAC 114.270(c)-(e).

²¹ 11 AAC 114.270(h)(1).

²² 11 AAC 114.230-240.

Comprehensive reevaluation of the ACPMP, which started in 2008, has not, to date, resulted in either an administration's bill to the legislature or any regulatory changes.

Chapter 24 of the SLA 2003 mandated that DNR adopt regulations implementing revisions to the consistency review process, statewide standards, and district plan criteria by July 1, 2004. The process involved state and federal agencies, coastal resource districts, and the public. DNR contractors discussed proposed changes with stakeholders at district conferences and draft regulations were presented at the annual, statewide ACPMP conference. Proposed regulations were released for public comment, amended, and adopted on May 24, 2004. DNR subsequently proposed revisions to the statewide standards and the district plan criteria. These were adopted on September 24, 2004, after public comment and amendment.

Following the passage of Ch. 24, SLA 03 and the revisions to the implementing regulations, there was growing discontent among the coastal resource districts over limitations in their ability to establish district enforceable policies. At the January 29, 2008, Senate Community and Regional Affairs hearing on SB 161, the director of DCOM addressed their concerns, acknowledging:

There have been challenges and he [Director Bates] recognizes that the regulations are more stringent than HB 191 [Ch. 24, SLA 03] intended. DNR will look at what was done to see if the promulgation of the regulations governing district plans was appropriate and what can be done to improve the program. Commissioner Irwin intends to formally and openly reevaluate the regulations, and he will include the coastal districts, public, industry, agency, and applicants. There will be an open dialogue to re-craft the regulations and improve the program.

At a minimum, the reevaluation would reconsider the DEC carveout, the districts' ability to write enforceable policies, the requirements for designated areas, and consistency review issues. In its evaluation of the program, the ACPMP's federal oversight agency, the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCCRM) encouraged DNR's efforts.

On February 22, 2008, a letter from the DCOM director announced that the reevaluation would begin in June 2008. DNR was soliciting comments from the ACPMP's participants on the ACPMP's guiding statutes in AS 46.39 and AS 46.40, and the implementing regulations in 11 AAC 110, 112, and 114. The written comments resulting from the reevaluation process were intended to be the foundation for proposed statutory changes prepared by DNR to be submitted for consideration during the 2009 legislative session. Subsequent regulations to implement the changes were to be finalized between March and August 2009.

Multiple workshops, teleconferences, and comment periods occurred between June and December 2008 regarding the reevaluation issues and the drafting of proposed statutes and regulations. However, a consensus on the proposed statutory changes could not be reached

among the coastal districts and industry. No legislative bill on the proposed ACMP statutory changes was introduced by the administration to the 26th Legislature. DNR is now focusing on proposing revisions to the consistency review process contained in 11 AAC 110.

Local government involvement varies among the coastal states.

The CZMA encourages the participation of local governments in coastal zone management; however, it does not require it. While there are some similarities among state programs, according to OCRM, the ACMP is unique. Alaska chose a strong role for coastal resource districts; the relationship in other states is different. Most states have land use policies; however, most states do not have the local concern issues addressed by Alaska.

A review of California, Florida, Texas, and Louisiana found that these states have local policies with varying degrees of authority through local zoning and ordinances. The local zoning and ordinances are written at the local level into local plans. Although zoning and ordinances must be consistent with the state coastal plans, they are not incorporated into the state plans.

All of the states have some form of local permitting authority. California, Louisiana and Florida turn permitting authority over to the local programs once they have plans approved by their state lead agencies. Local policies in Texas are primarily performance standards intended to avoid, minimize and/or compensate for adverse impacts to the coastal natural resource areas. Some states retain permitting and regulatory authority over specific areas such as development on tidelands, submerged lands, and public trust lands.

Texas and California have a council or commission with direct responsibility for implementation of their state programs. Louisiana also has a commission; however, the commission does not have direct authority over its local programs. The councils include local government representation.

The local governments in all four reviewed states are able to participate in the federal consistency review process; their comments are taken into consideration in determining consistency. The California Coastal Commission encourages public participation and local government input into the federal consistency review process and contacts commenters for input and feedback. To the extent that they issue permits, Louisiana's local programs have the lead role in the consistency review for uses of local concern. Exhibit 7 (following page) compares Alaska to the four reviewed states.

Exhibit 7

Comparison of Four State Coastal Management Programs to the ACMP

State	Coastline Miles	Lead Agency	Board or Commission	Local Enforceable Policies Part of State Coastal Plan	Level of Local Participation in Federal Consistency Reviews
Alaska	44,500	Department of Natural Resources	No	Yes	Local governments participate in reviews. Comments given due deference for district enforceable policies and designated areas.
California	3,427	California Coastal Conservancy, Bay Conservation and Development Commission, and California Coastal Commission	Yes	Not since mid-1990s	Public participation and local government input encouraged and solicited.
Florida	8,436	Department of Environmental Protection	No	No	Local government comments considered during consistency review.
Louisiana	7,721	Department of Natural Resources	Yes (advisory)	No	Local governments can comment. They have lead role in review for uses of local concern when their permits are issued.
Texas	3,359	General Land Office	Yes	No	Local government comments considered during consistency review.

REPORT CONCLUSIONS

The objectives of this audit are as follows:

1. Determine whether regulatory changes in 11 AAC 112 and 114 limit the establishment of district enforceable policies and whether this limitation is consistent with legislative intent and state law.
2. Determine whether the Department of Natural Resources (DNR) is properly implementing the local concern requirement.
3. Determine whether the Department of Environmental Conservation (DEC) carveout is being implemented in accordance with legislative intent and how it has affected the scope of the Alaska Coastal Management Program's (ACMP) consistency reviews.
4. Determine whether changes to the statewide standards limit the ACMP's ability to meet its objectives.
5. Determine whether changes to the ACMP have diminished the State's rights under the Coastal Zone Management Act of 1972 (CZMA).
6. Determine whether DNR is operating the program openly and transparently, whether DNR will allow consultants to be consistency review participants, and whether it is the appropriate agency to administer the program.
7. Determine whether the ACMP's changes have affected participation, decision making, and consensus building.
8. Determine whether the ACMP is operating the in public's interest and should be reauthorized.

The assessment of the ACMP's operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of demonstrated public need.

This report is the first part of a two-part report. The first part includes the first five objectives that are discussed above. The remaining three objectives will be addressed in the second report.

Changes to ACPM statutes and regulations have limited the ability of coastal resource districts to establish enforceable policies.

Changes to ACPM statutes in AS 46.40 and regulations in 11 AAC 112 and 114 have limited the ability of coastal resource districts to establish enforceable policies. Currently, there are 25 coastal resource districts with approved district coastal management plans. Prior to the ACPM's changes, their district plans had over 1,300 enforceable policies.²³ During district plan revision, the coastal resource districts submitted approximately 490 enforceable policies for approval.²⁴ Of these, approximately 210 were approved. The reduction in number is largely due to local concern and designated area requirements as well as the requirement that district enforceable policies flow from statewide standards. Of the approximately 490 enforceable policies submitted, approximately 170 were denied because the local concern requirements were not met; almost 60 were denied because the designated area requirements were not met, and over 45 were denied because they did not flow from a statewide standard. While these requirements do limit district enforceable policies, they are consistent with statutes and the intent of the legislature that enforceable policies be clear, concise, non-duplicative, and related to matters of local concern.

1. Coastal resource districts establish enforceable policies for local concerns, but requirements for approval are difficult to meet.

District enforceable policies must relate to a statewide standard or designated area; however, they cannot address a subject matter regulated or authorized by state or federal law unless they relate specifically to a matter of local concern. According to AS 46.40.070(a)(2)(C), a matter of local concern refers to:

A specific coastal use or resource within a defined portion of the district's coastal zone, that is (i) demonstrated as sensitive to development; (ii) not adequately addressed by state or federal law; and (iii) of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence.

Matters of local concern cannot address air, land, or water quality issues that are under the authority of DEC.

Of the approximately 490 enforceable policies submitted for approval, approximately 35 percent were disapproved at least partially because the coastal resource district did

²³Prior to the 2003 ACPM changes, Ch. 28, SLA 02 mandated that a coastal resource district could "not incorporate by reference statutes and administrative regulations adopted by state agencies." It also required district coastal management programs that were not consistent with the law to submit revised programs to the CPC within one year. According to DNR management, coastal resource districts did not submit revised programs that would be in compliance with Ch. 28, SLA 02.

²⁴There are multiple reasons for the reduction in the number of policies (see footnote 22) and not all are related to the changes in 11 AAC 112 and 114; however, based on the scope of our audit, our discussion focuses on the enforceable policies eliminated for not meeting the local concern requirement.

not show that the policies addressed matters of local concern. More than half of the coastal resource districts surveyed believed they had enforceable policies disallowed even though they met the statutory requirement. Expressing the frustration felt by many, one coastal resource district coordinator said he did “*not know what it would take to provide enough documentation to prove local concern.*”

Under the former ACMF, if a district program addressed the same subject as a statewide standard, the district program governed.²⁵ Now a coastal resource district must demonstrate that a matter is not adequately addressed by state or federal law for its enforceable policy to be approved. A matter can be adequately addressed if an agency has the authority to regulate, whether or not it has regulations concerning the matter.

Some coastal resource districts believe that DNR’s interpretation of “*adequately addressed*” leaves several areas, such as habitat and subsistence, inadequately covered. According to one resource agency, DNR is properly implementing this policy; however, this agency adds that there may be areas that are not addressed by any agencies or district plans, such as the upland habitat.²⁶

During its reevaluation of the ACMF in 2008, the Division of Coastal and Ocean Management (DCOM) proposed changes to the draft form of AS 46.40.070(a)(2)(C) for informal public comment. The draft removed the requirement that a coastal resource district demonstrate that a policy relates to a matter of local concern. The proposed replacement language mandated that a policy could not redefine, replace or otherwise modify state or federal statutes or regulations or establish new standards or requirements within the authority of a state or federal agency *unless* approved by that state or federal agency.²⁷

2. Designated area requirements limit the ability of coastal resource districts to establish enforceable policies for subsistence uses and important habitats.

For many coastal resource districts, designated area requirements have led to fewer district enforceable policies. For a couple coastal resource districts, designated area requirements, among other concerns, have resulted in them withdrawing their plans from consideration, and for at least one coastal resource district, designated area requirements have led to separation from the ACMF.

As discussed in Background Information, under the revised regulations, coastal resource districts cannot establish policies that relate to subsistence use and important habitats unless a specific designated area is approved.

²⁵ 6 AAC 80.010(b).

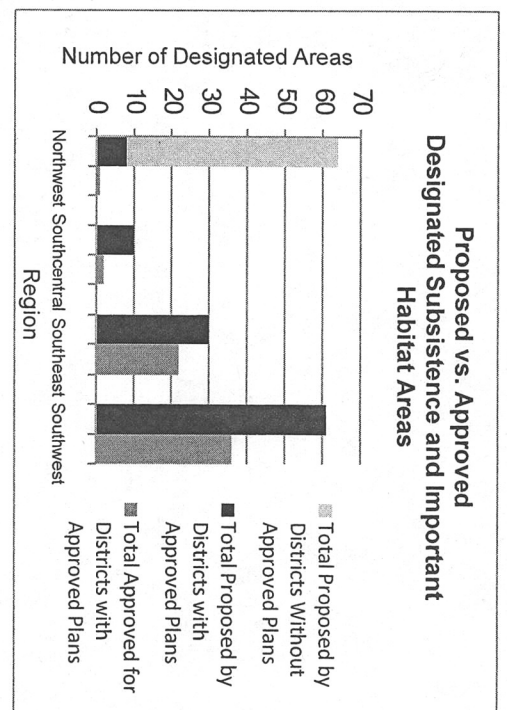
²⁶ The habitat standard manages upland habitat if it can be designated as important habitat.

²⁷ We recognize that DNR’s release of draft changes for discussion purposes does not constitute the department’s official position on the matter.

In total, the 28 participating

Exhibit 8

coastal resource districts submitted approximately 120 habitat and subsistence policies for approval. Approximately 30 percent, were disallowed at least in part because they did not have an approved designated area.



When they were amending their district plans, the 28 participating coastal resource districts proposed approximately 165 habitat and subsistence designated areas. (See Exhibit 8 above.) Approximately 60 areas were approved. The northwest region has the lowest percentage of approved designated areas because the three coastal resource districts with the largest number of proposed designated areas in that region do not have approved district plans.²⁸ These three coastal resource districts accounted for approximately 35 percent of the proposed subsistence use and important habitat designated areas.

Excluding designated areas proposed by those districts without approved plans, overall, approximately 55 percent of the proposed areas were approved. Further analysis shows that approximately 80 percent of the subsistence use areas were approved; conversely, approximately 70 percent of the important habitat areas were disapproved.

Common reasons for disallowing important habitat designations included that the map or basis of designation did not meet the regulatory requirements in 11 AAC 114.250(h) or the map did not meet the requirements of written scientific evidence. (See Exhibit 9 to the right.) Recognizing that Alaska's vast coastal

Exhibit 9

Requirements for Designating Subsistence Use and Important Habitat Areas

Subsistence Use – According to 11 AAC 114.250(g), a coastal resource district may “after consultation with appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or group, designate areas in which subsistence use is an important use of coastal resources.”

Important Habitat – According to 11 AAC 114.250(h), a coastal resource district may “designate portions of a coastal area as important habitat if (1) the use of those designated portions have a direct and significant impact on coastal water; and (2) the designated portions are shown by written scientific evidence to be biologically and significantly productive.”

²⁸The three coastal resource districts which currently do not have approved district coastal management plans are: the North Slope Borough, the Northwest Arctic Borough, and the Bering Straits Coastal Resource Service Area.

resources and relatively limited scientific information and studies make designating areas for some coastal resource districts cost-intensive, DCOM offers grants to coastal resource districts to help defray the cost.

Another challenge noted by both agency and coastal resource districts is that some resources are found in different locations at different times, making it difficult to define an exact location for subsistence use designation. One reason subsistence use designations were not allowed was that they were based on the entire coastal zone without sufficient documentation that subsistence was an important use of all areas in the coastal zone.

Areas designated by coastal resource districts were also disallowed because the designated areas included federal lands. Under AS 46.40.210(4), federal lands are specifically excluded from the coastal zone definition. This is not a new requirement under the revised statutes and regulations. However, prior to the ACPMP changes, coastal resource districts did designate areas on federal lands and this practice was inadvertently allowed by the federal government.²⁹

The National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (OCRM), the ACPMP's federal oversight agency, suggested in its June 2008 final evaluation findings report that DNR revisit the requirements for designated areas, especially those relating to important habitat and subsistence use. During its reevaluation of the ACPMP in 2008, DCOM proposed, in draft form for informal public comment, to remove the designated area requirements. We see this is an indication that DCOM may understand that designated area requirements are too limiting.

3. Clarifying standards and policies and reducing redundancy were the legislature's intent.

The legislative findings in Ch. 24, SLA 03 clearly establish the intent to modify the existing enforceable policies. Specifically, the stated legislative intent was to:

²⁹ According to "Final Evaluation Findings Alaska Coastal Management Program October 2002 – August 2007," OCRM, June 2008, p. 48:

The exclusion of federal lands from a state's coastal zone and the application of the Coastal Zone Management Act (CZMA) federal consistency provision to federally excluded lands and to federal waters have not changed over time... [Office of Coastal and Resource Management] understands that prior to the 2005 ACPMP amendment the ACPMP allowed coastal resource districts to establish a 'designated area' for District policies on federal land. This practice was not consistent with the CZMA and National Oceanic and Atmospheric Administration (NOAA) regulations. Unfortunately, as discussed during OCRM's review of the 2005 ACPMP amendment, OCRM was either not aware this was occurring at that time or OCRM inadvertently overlooked the CZMA and regulatory requirements.

- Reduce delays and avoid regulatory confusion, costly litigation, and uncertainty to allow new investment to become more feasible.
- Update and reform the ACMMP statewide standards to be clear and concise.
- Update and reform the district plans so that enforceable policies are clear, concise, more uniform, related to local concerns, and non-duplicative of state and federal laws.
- Develop and implement these reforms administratively by DNR.

DNR has changed the standards in 11 AAC 112 for clarity and to reduce duplication with other state authorities. Their authority to adopt statewide standards to identify the boundaries of the coastal area and to determine the land and water uses and activities subject to the ACMMP is included in AS 46.40.040.

Under 11 AAC 114.270, a district enforceable policy must:

- Be clear and concise and use precise, prescriptive, and enforceable language;
- Relate to a statewide standard or designated area;
- Not address a matter regulated or authorized by state or federal law unless it is a matter of local concern; and
- Not arbitrarily or unreasonably restrict or exclude uses of state concern.

While these requirements do place limits on coastal resource districts' ability to establish enforceable policies, they are consistent with the intent of Ch. 24, SLA 03 that enforceable policies be clear, concise, non-duplicative and related to matters of local concern.

Overall, although consistent, DNR recognizes that the district plan requirements contained in 11 AAC 114 are more stringent than intended under HB 191. One indication of this may be that out of approximately 490 district enforceable policies submitted for approval following the ACMMP changes, approximately 45 percent were denied at least in part because the coastal resource districts could not meet the designated area or local concern requirements.

DNR should review requirements for designating areas and establishing local concern to determine where changes can be made to accommodate coastal resource districts' ability to write district enforceable policies without duplicating state or federal law.

As intended by the legislature, the DEC carveout excludes air, land, and water quality issues under DEC's authority from ACMCP reviews.

One of the provisions of Ch. 24, SLA 03, which revised AS 46.39 and AS 46.40, was to remove DEC permitting from the consistency review process.³⁰ According to 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 constitute the exclusive enforceable policies of the Alaska coastal management program for those purposes (emphasis added).*"³¹ These combined changes are referred to as the "DEC carveout".

Whether the activity is onshore, in state waters, or on the Outer Continental Shelf (OCS), air, land, and water quality issues under the authority of DEC are now outside the purview of the ACMCP consistency review process. Therefore, a coastal resource district cannot establish district enforceable policies for air, land, or water quality issues under the authority of DEC even if it could demonstrate the matter is not adequately addressed by state or federal law.

As intended by AS 46.40.040(b) and Ch. 24, SLA 03, the DEC carveout eliminated district enforceable policies that addressed air, land, and water quality issues under the authority of DEC from district coastal management plans. As previously stated, legislative intent was partially to avoid regulatory confusion, to revise district plans so that they do not duplicate state and federal requirements, and to minimize delays in the ACMCP process.

The consistency review for a project begins once the review packet is complete, including applications for all required permits. However, some DEC permits (e.g., air quality) take several months just for the application to be complete. Carving out DEC permitting processes streamlines the process by allowing the ACMCP review and the DEC permitting to occur concurrently rather than consecutively.

From the perspective of industry, the DEC carveout has been a positive change in the consistency review process. However, from the coastal resource districts' perspective, there are many disadvantages to the DEC carveout.

The industry stakeholders we interviewed expressed satisfaction with the ACMCP revisions stating that the DEC carveout has reduced delays in the consistency review process and increased developers' confidence in engaging in projects within the coastal zone.

The coastal resource districts, on the other hand, believe that the DEC carveout goes too far. Coastal resource districts express concern that there are gaps in DEC statutes and regulations

³⁰For activities that require permits or other authorizations, DEC's issuance of the permit or other authorization establishes consistency with the ACMCP. For activities that do not involve permits or other authorization, such as federal activities or activities on federal land or the OCS, DEC reviews the activity for consistency and provides its findings to DNR. AS 46.60.040(b).

³¹Although they cannot have enforceable policies that relate to these issues, coastal resource districts that have Title 29 authorities still can have local ordinances that address air, land, and water quality issues. Title 29 of the Alaska Statutes empowers incorporated boroughs with regional planning and land use regulation responsibilities.

that cannot be resolved due to the revised ACMCP statutes and regulations prohibiting coastal resource districts from creating enforceable policies over air, land, and water quality issues under the authority of DEC. For example, DEC regulates the requirement of oil discharge prevention and contingency plans for certain facilities.³² However, oil terminal facilities with storage capacity of 5,000 barrels of crude oil or 10,000 barrels of noncrude oil or less are exempted from the discharge prevention and contingency plan requirements. DEC points out, that for the State to require oil discharge prevention and contingency plans for smaller facilities would be cost prohibitive.

Coastal resource districts are able to comment on DEC's air, land, and water quality issues. However, without enforceable policies, their comments are considered, but they are not given due deference.³³

Through the ACMCP consistency review process, coastal resource districts have the right to elevate a decision. The ACMCP uses an "elevation" process which involves direct communication with the DNR commissioner, is relatively informal, and occurs within 45 days. Coastal resource districts also have the right to appeal a DEC permit decision through DEC's appeals process. However, the DEC appeals process usually involves a hearing officer, is formal, and can be lengthy.

DEC provides consistency findings for certain activities that do not require a permit, such as activities on the OCS. In contrast to permit decisions which can be appealed, DEC consistency findings cannot be elevated. That is, if a coastal resource district disagreed with DEC's consistency finding related to an activity on the OCS, there is no recourse.

Coastal resource districts stated that DEC controlling the review of land, air, and water quality issues eliminates the collaborative opportunities among coastal resource districts, applicants, and resource agencies to determine if an activity will have an adverse impact on coastal uses and resources. Some districts questioned how impacts to air, land, and water quality issues can be considered without jointly considering the impacts to other uses and resources, such as habitat, subsistence, and recreation. During our coastal resource district survey, 59 percent of the districts stated that the DEC carveout affects ACMCP reviews in their coastal resource districts.

In response to the confusion and concerns expressed by various ACMCP program participants, OCRM suggested that DNR evaluate the effectiveness of retaining the DEC carveout in its final evaluation findings report issued in June 2008. During its reevaluation of the ACMCP,

³² Examples of these facilities include: oil terminal facilities; offshore and onshore production and exploration wells; refineries; transmission pipelines; oil pipelines; oil tankers; and noncrude vessels and barges.

³³ For activities that are permitted by DEC, the permitting process provides an opportunity for public comment. When an activity does not require a permit, such as an activity on the OCS, there is no opportunity for comment through DEC's formal public process. In such instances, ACMCP regulations require DEC to provide its consistency findings to DNR on the final day of the consistency review. To allow for public comment, however, DNR has implemented a policy for DEC to provide its consistency findings on day 44 of a 50 day review.

DCOM did consider and propose, in draft form, for informal public comment, elimination of the DEC carveout.

The ACMMP was designed to operate as a networked program. The three resource agencies' activities are integral to this network, but the activities under the authority of DEC have been carved out. Furthermore, coastal districts can write enforceable policies for activities authorized by DNR and the Department of Fish and Game (DFG) provided they relate to matters of local concern, but not for air, land, and water quality issues under DEC's authority.

DNR should develop proposals to reintegrate DEC permitting processes into the ACMMP process while maintaining the benefits of allowing the processing of complex DEC permits to run concurrently with the ACMMP consistency review. DNR should continue dialog with coastal resource districts and industry regarding the ability of coastal resource districts to write district enforceable policies for air, land, and water quality issues authorized by DEC provided they relate to matters of local concern.

Changes to the statewide standards may limit ability to meet ACMMP objectives.

The impact that the changes to the statewide standards in 11 AAC 112 have had on achieving the ACMMP objectives is subjective and difficult to measure.

A review of the standards indicates that many of the modifications clarified the standards and others eliminated duplicate authorities. For example, the mining standard was revised and the wetlands definition redefined to match the federal definition.

The mining and mineral standard was revised because it was a restatement of law; mining activities are still subject to the consistency review, which is triggered by the permitting process. The term *wetlands* was redefined to include only saltwater wetlands and freshwater wetlands that drain directly to coastal waters. With the United States Army Corp of Engineers managing wetlands, the change was made to focus the State's attention on the coast and saline waters.

However, some federal and state agencies and coastal resource districts express concern that the less robust habitats standard has lessened the ACMMP's ability to achieve some of its objectives.

A review of the changes to the habitats statewide standard shows that the management goals of the standard have been narrowed for some habitat types. For example, the standard for wetlands used to be to manage them "*to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important*

habitat, and the discharge of toxic substances.”³⁴ The standard is now to “avoid, minimize, or mitigate significant adverse impacts to water flow and natural drainage patterns.”³⁵

The federal Environmental Protection Agency (EPA) in its reevaluation comments to DCOM pointed out that:

While the old standard made achieving consistency extremely difficult, the current standard makes protecting the ecological integrity of the coastal habitats nearly impossible...because the functioning of a habitat such as a wetland is not solely dependent on maintaining water flow and natural drainage patterns.³⁶

In its reevaluation comments, DFG stated that the revised habitats standard improved protection for riparian buffers and the “avoid, minimize, and mitigate sequence” was more applicable. However, DFG also stated the standard “undermanages the aquatic habitats found within an estuary ecosystem” and the “habitat found in offshore areas that are important to and used by coastal species.”³⁷ Similar concerns were expressed about the tideflats, rivers, streams, and lakes habitat types.

The modified habitats standard may hinder the ability to achieve some ACPM objectives, such as the “full and fair evaluation of all demands on the land and water in the coastal area.”³⁸

In its final evaluation findings report issued in June 2008, OCRM encouraged DNR “to demonstrate the effectiveness of the standards in protecting coastal habitat [by monitoring] how the standards are implemented through permitted projects.”³⁹

DCOM management believes that while the standards have been modified, the ACPM’s objectives can be met through the comprehensive application of state resource agency authorities in addition to the standards. Rather than limit the State’s ability, DCOM asserts that changes to the standards have facilitated meeting the ACPM’s objectives by furthering the interests of the public from a statewide perspective that includes resource development.

³⁴11 AAC 80.130(a)(3).

³⁵11 AAC 112.300(b)(3).

³⁶The EPA, Region 10 Office, letter to DCOM regarding the reevaluation of the ACPM, August 15, 2008, p. 4, <http://alaskacoast.state.ak.us/Enews/Re-eval2008/index.html>.

³⁷DFG, letter to DCOM regarding the reevaluation of the ACPM, August 15, 2008, p. 5, <http://alaskacoast.state.ak.us/Enews/Re-eval2008/Public9%20Comments%20Page.html>.

³⁸AS 46.40.020.

³⁹“Final Evaluation Findings Alaska Coastal Management Program October 2002 – August 2007,” OCRM, June 2008, p.15.

The ACMCP's changes have not diminished the State's rights under the CZMA.

The CZMA, as amended, gives states certain rights with regard to federal agency activities and federally licensed or permitted activities within or outside the coastal zone that affect any land or water use or natural resource of the coastal zone. States have the right to evaluate the consistency of those activities with the enforceable policies of their approved state management programs.⁴⁰

The 2003 statutory and 2004 regulatory changes to the ACMCP have not reduced Alaska's rights under the CZMA. The State still has and does take advantage of its rights to weigh in on federal decisions through the consistency review process. While the State has retained its rights, regulatory changes may have affected the purview of the consistency review.

Requiring area designations to be able to apply certain statewide standards potentially reduces the purview of consistency reviews. Difficulty in establishing designated areas, as discussed previously, may result in the inability to fully evaluate the impact of activities on the OCS or on federal lands to subsistence uses and important habitats in the coastal zone. Regulations do allow for the designation of subsistence and important habitat areas during consistency reviews. However, this option must be exercised and designated areas must be approved by DCOM for the state and coastal resource districts to be able to apply the subsistence use and important habitats standard to the federal activity or federally-permitted activity.

⁴⁰16 U.S.C. 1456(c).

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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR
 P.O. BOX 114000
JUNEAU, ALASKA 99811-1000
PHONE: (907) 465-2400
FAX: (907) 465-3886
 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

January 4, 2011

RECEIVED

JAN 04 2011

Pat Davidson
Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

LEGISLATIVE AUDIT

RE: Alaska Coastal Management Program Audit -- Preliminary Special Report, Part 1,
dated December 14, 2010

Dear Ms. Davidson:

Thank you for the preliminary audit report on *A Special Report on the Department of Natural Resources, Alaska Coastal Management Program, December 14, 2010*. At your request, my agency has reviewed the preliminary audit report and evaluated your conclusions.

My understanding is the intent of the audit report is to provide objective and factual information regarding the Alaska Coastal Management Program (ACMP) and the questions associated with the audit. While we agree with many of the conclusions reached here, we have some concerns with the information contained in the preliminary audit report.

The audit process and timeframe

It is obvious that the Division of Legislative Audit (DLA) staff involved with this audit have put in a great deal of time and effort to understand the ACMP and to provide an objective and comprehensive evaluation of the program. It is my understanding that several DLA staff were involved and assigned various research tasks, and individually worked with Division of Coastal and Ocean Management (DCCOM) staff on issues of interest. The interrelationships of laws, agencies, ACMP participants, and issues present a significant barrier for anyone wishing to develop a deep understanding of the program; its varied connections and nuances increase the challenge exponentially. I recognize the monumental task it was for you and your staff to complete this preliminary audit report in a timely manner given the short four months you had to initiate and complete the audit findings. We very much appreciate these efforts.

The Background Information

As a general matter, the report provides helpful information on the program. There are, however, three elements which, if included, would help provide a more accurate understanding of the program.

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

First, on page 9, the section does not address the substance of the Legislature's enactment of Ch. 28, SLA 02, which mandated changes to the coastal district plans to prohibit and eliminate policies that, "incorporated by reference statute and administrative regulations adopted by state agencies." Despite this clear directive from the Legislature, there is no evidence that coastal districts nor the Coastal Policy Council made attempts to abide by that law and amend coastal district plans.

Second, on page 10 it is reported that the Department of Environmental Conservation (DEC) was removed from the consistency review process. While DEC has been excluded from the coordinated consistency review process, DEC is, in certain circumstances, the agency that coordinates consistency reviews. Additionally, DEC provides findings for other coordinated consistency reviews. Therefore, DEC is not removed from all consistency review obligations.

Finally, on page 10 the summary of the consistency review process identifies the ACMCP's enforceable policies, which include state resource agency authorities, statewide standards, and district enforceable policies. An important component of those policies is the relationship of resource agency authorities within the ACMCP. As described in the program description of *The Alaska Coastal Management Program as amended June 2, 2005*:

The ACMCP has developed and maintains "a list of resource agency authorizations for activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource." 11AAC 11.750(a). That list, set out in Volume 1 of the "C List," identifies those state resource agency permits that require authorization for a given use or activity. As such, those resource agency authorities, as applied within the coastal zone of the state, constitute an important component of the ACMCP authority and enforceable policy system.

The Report Conclusions

Overall, we can support three of the four main conclusions reached by the report. Generally, the audit has found that the changes implemented by DNR since 2003 have been consistent with the intent of the Legislature. Specifically, the report concludes that the ACMCP changes have not diminished the State's rights under the Coastal Zone Management Act. We agree.

One conclusion with which we have concerns is that "*Changes to the statewide standards may limit the ability to meet ACMCP objectives.*" (page 27-28). The DLA analysis does not consider the entirety of ACMCP authorities and how they collectively contribute to meeting the ACMCP objectives, and therefore, in our view, presents an incorrect conclusion.

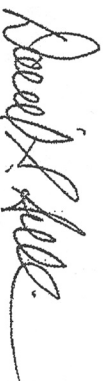
The federal law at 15 C.F.R. 923.11(a)(3) requires that the state explain how land and water uses will be managed, and that the state define the enforceable policies and other governing authorities. As described in the program description of *The Alaska Coastal Management Program as amended June 2, 2005*, robust and comprehensive management of the coastal uses and resources is accomplished through the incorporation of the state resource agency authorities, the statewide standards at 11 AAC 112, and the district enforceable policies developed under 11 AAC 114. The Office of Ocean and Coastal Resource Management (OCRM), in its approval finding dated December 29, 2005, found that "...the ACMCP adequately explains how land and water uses will be managed, and the ACMCP adequately describes enforceable policies and other governmental authorities."

The federal law at 15 C.F.R. 923.43(b) also requires that a state coastal program have the "requisite direct authority to plan and regulate land and water uses subject to the coastal management plan." Based on the ACPMP program description, OCRM, in its approval finding, found that "... the ACPMP statute, as amended, when combined with existing State authorities (State permit, lease, and other authorizations) ... provide adequate authority to manage the identified uses to be managed."

It appears that DLA's analysis and conclusion on whether the ACPMP objectives are met is based on a limited number of the overall ACPMP enforceable policies and authority. For example, the DLA analysis and discussion on the habitats focuses solely on the Habitat Standard at 11 AAC 112.300, but does not consider how other authorities contribute to the overall robust and comprehensive approach to habitat management and resource protection under the ACPMP. Other authorities, such as DEC water quality authorities, DFG fish habitat authorities, various DNR authorities addressing habitat, and coastal district enforceable policies must be considered when addressing whether the ACPMP objectives are met, particularly as it relates to habitat protection.

Again, thank you for the opportunity to provide a written response to the preliminary audit report on the ACPMP.

Sincerely,



Daniel S. Sullivan
Commissioner

cc: Joe Balash, DNR, Deputy Commissioner
Randy Bates, DNR, DCOM, Director

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ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

January 11, 2011

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF NATURAL RESOURCES
ALASKA COASTAL MANAGEMENT PROGRAM
PART 2

December 29, 2010

Audit Control Number
10-30060B-11

This is the second part of a two-part report. The overall objective of the audit is a performance evaluation and sunset review of the Alaska Coastal Management Program (ACMP). This report addresses the openness and transparency of the ACMP's operations, the ability of consultants to be consistency review participants, the Department of Natural Resources' appropriateness to administer the program, and the effect of the ACMP's changes on participation, decision-making, and consensus building. This report also addresses the public's continuing need for the program and the ACMP's operating effectiveness and efficiency.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.



Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Department of Natural Resources (DNR), Alaska Coastal Management Program (ACMP). The emphasis of our report is to evaluate the effect of Ch. 24, SLA 03 and subsequent regulatory changes on the ACMP's operations, to determine whether there is a demonstrated public need for its continued existence, and to determine if it has been operating in an efficient and effective manner.

This report shall be considered by the committee of reference during the legislative oversight process in determining whether the ACMP should be reauthorized. Chapter 31 of the SLA 2005, Section 18, repeals the ACMP statutes. As a result, this program will terminate on June 30, 2011, unless it is reauthorized.

Objectives

The objectives of this audit are as follows:

1. Determine whether regulatory changes in 11 AAC 112 and 114 limit the establishment of district enforceable policies and whether this limitation is consistent with legislative intent and state law.
2. Determine whether DNR is properly implementing the local concern requirement.
3. Determine whether the Department of Environmental Conservation (DEC) carveout is being implemented in accordance with legislative intent and how it has affected the scope of the ACMP's consistency reviews.
4. Determine whether changes to the statewide standards limit the ACMP's ability to meet its objectives.
5. Determine whether changes to the ACMP have diminished the State's rights under the Coastal Zone Management Act of 1972 (CZMA).
6. Determine whether DNR is operating the program openly and transparently, whether DNR will allow consultants to be consistency review participants, and whether DNR is an appropriate agency to administer the program.
7. Determine whether the ACMP's changes have affected participation, decision making, and consensus building.

8. Determine whether the ACMCP is operating in the public's interest and whether it should be reauthorized.

The assessment of the ACMCP's operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need.

Scope

This is the second part of a two-part report. The scope of the second part includes objectives six through eight that are discussed above. Overall, our review spanned from FY 94 to FY 11. The scope for specific procedures is identified in the Methodology section discussion below.

Methodology

We reviewed the CZMA, Ch. 24, SLA 03 (HB 191) and committee minutes, ACMCP statutes and regulations, draft ACMCP statutes and regulations, and former ACMCP statutes and regulations. We reviewed these documents to ascertain the intent of the legislature, analyze the ACMCP's statutory and regulatory changes, and evaluate whether the 2004 regulatory changes were consistent with legislative intent and state law.

To gain an understanding of the ACMCP's operations and activities, we reviewed the following documents:

- The ACMCP *Handbook of Statutes & Regulations*;
- The FY 04 to FY 10 free conference committee reports;
- The FY 95 to FY 10 attorney general opinions;
- The FY 10 semi-annual performance reports;
- The "Application for Assistance under the Coastal Zone Management Act, July 2009 - December 2010;"
- FY 10 to FY 11 coastal resource district grant documents;
- FY 08 to FY 10 financial reports;
- The FY 09 to FY 10 Office of Management and Budget performance measures;
- ACMCP reevaluation documents and comments from 2008;
- The National Oceanic and Atmospheric Administration's (NOAA) "Final Evaluation Findings Alaska Coastal Management Program October 2002 – August 2007;"
- *The Classification of State Agency Approvals* (ABC List) documents; and
- The ACMCP website.

We also attended two working group meetings and a coastal resource district meeting.

To determine whether the Division of Coastal and Ocean Management's (DCOM) coordinated consistency reviews were performed in accordance with ACMCP regulations in

11 AAC 110, we reviewed electronic files for 39 consistency reviews selected from consistency reviews coordinated by DCOM and entered into their database during FY 10. To obtain a cross-section of consistency reviews statewide, we randomly selected from each of the 28 participating coastal resource districts and from one of the nonparticipating coastal resource districts. We also reviewed the one consistency review that was elevated to DNR's commissioner for review during FY 10.

We determined the number of FY 10 consistency reviews that were found to be: (1) consistent with the ACPMP, (2) consistent with alternative measures, (3) inconsistent, and (4) elevated. We compared these figures to those for FY 94 consistency reviews. We also compared the number of consistency reviews that coastal resource districts commented on in FY 10 to those in FY 94. These comparisons were made to analyze the impact of the ACPMP's changes on consistency reviews.

We examined a sample of nine pairs of DCOM-coordinated consistency reviews judgmentally selected from five coastal resource districts. Each pair consisted of two consistency reviews of similar projects in the same coastal resource district. One consistency review was selected from the period FY 07 to FY 10 and the other from FY 00 to FY 04. We compared them to determine what effect, if any, the ACPMP changes had on the length of consistency reviews, coastal district participation, district enforceable policies, and consistency review outcomes. We also reviewed a sample of consistency reviews identified by coastal resource districts in response to survey questions.

We tested a sample of eight single agency reviews conducted by DEC; the Department of Fish and Game; the Division of Oil and Gas; the Division of Mining, Land, and Water; and the Division of Forestry to determine whether the agencies consulted with coastal resource districts during the review. The reviews were haphazardly selected from the reviews conducted by each agency during FY 10. We also tested a sample of 10 Division of Habitat permits that were made consistent by general consistency determinations (GCD).¹ The sample was haphazardly selected from lists provided by DCOM permits from FY 05 to FY 10. We reviewed them to determine whether the Division of Habitat was consulting with coastal resource districts before issuing permits that are consistent by GCD.

We reviewed the district coastal management plans in effect before the 2003 ACPMP changes for: the 28 currently participating coastal resource districts;² the 28 submitted revised district coastal management plans;³ the 25 approved district coastal management plans;⁴ and the four mediated plans and supporting documents. The purpose of the review was to evaluate the changes in the number and kinds of enforceable policies and designated areas and the reasons

¹GCDs apply to activities, requiring resource agency authorizations, which can be made consistent through the adoption of standard alternative measures. *An alternative measure is a modification to a project that if adopted would achieve consistency with the ACPMP's enforceable policies.* 11 AAC 110.990(a)(3).

²DCOM provided these district coastal management plans on disc.

³The *Office of Project Management/Permitting* preliminary plans were reviewed at <http://www.alaskacoast.state.ak.us/District/html/ProgressFinal.htm>.

⁴*Final Plan in Effect* plans were reviewed at <http://www.alaskacoast.state.ak.us/District/html/ProgressApproval.htm>.

for disapproval. We reviewed the mediated plans for consistent application of the regulations. We also compared the district plans' submission dates to their dates of approval by the DNR commissioner to evaluate the efficiency of the district plan review process.

We interviewed DNR's management as well as DCOM's management and staff regarding various aspects of ACMF operations. We also interviewed DEC, the Department of Community, Commerce, and Economic Development, working group members, industry stakeholders, the Environmental Protection Agency, and NOAA regarding the impact of the ACMF's changes.

We interviewed the regional coastal resource district representatives and conducted a web survey of coastal resource district coordinators regarding the impact of the ACMF's changes on the ability to establish enforceable policies and designate areas, the scope of the ACMF consistency reviews, and the State's rights under the CZMA. The survey also asked for the coordinator's assessment of DNR's administration of the ACMF and whether the program is operating in the public's interest.

ORGANIZATION AND FUNCTION

The Alaska Coastal Management Program (ACMP) is a voluntary state program authorized by the amended Coastal Zone Management Act of 1972 (CZMA). The ACMP is a networked program driven by the participation and cooperation of various state agencies, coastal resource districts, industry, and the public.

The Division of Coastal and Ocean Management (DCOM)

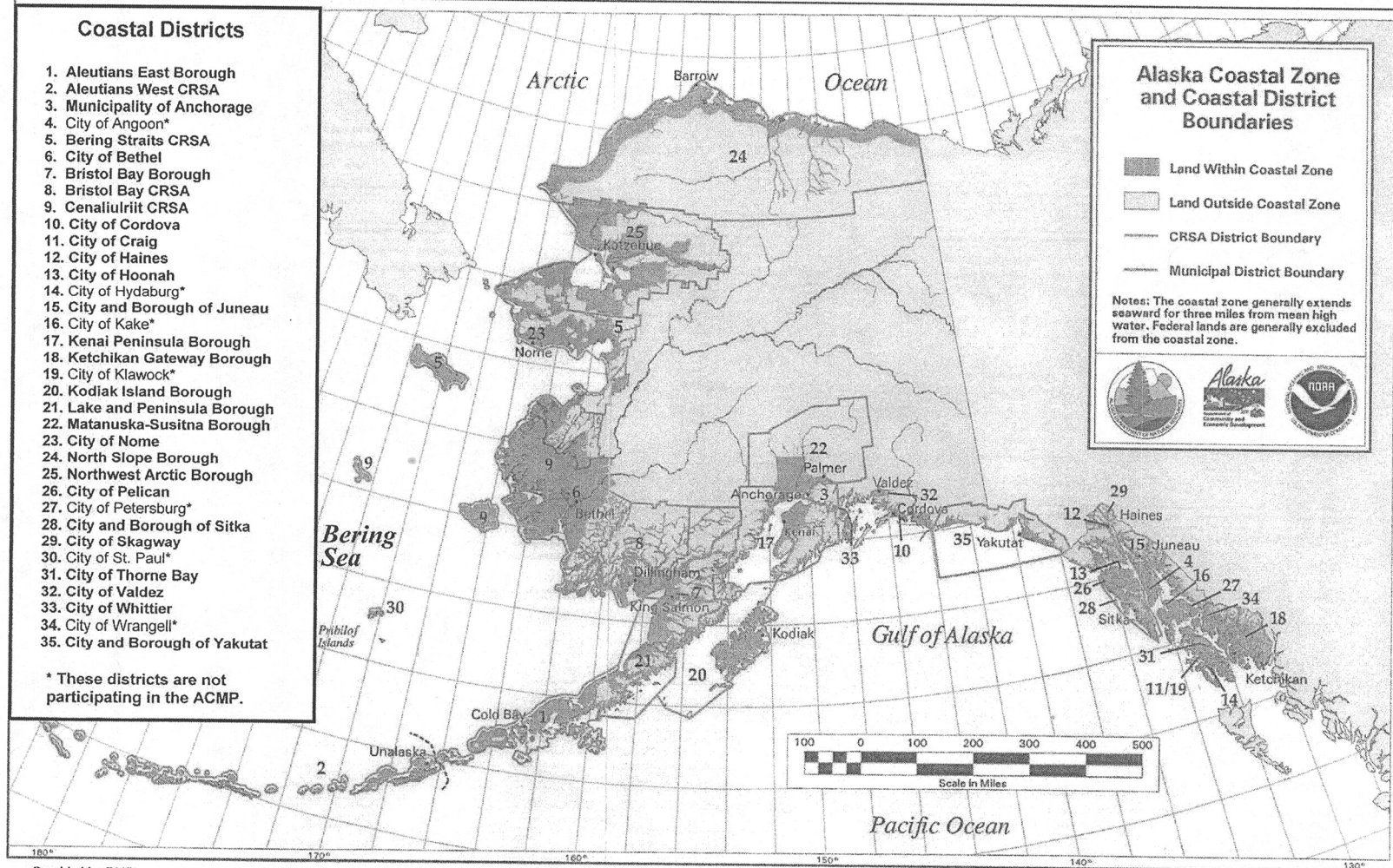
The ACMP is administered by the Department of Natural Resources (DNR), DCOM. Administration of the program includes:

- Reviewing and approving district coastal management plans.
- Coordinating the ACMP's consistency reviews.
- Proposing statutory and regulatory changes to improve coastal management.
- Funding grants and offering technical assistance to coastal resource districts.
- Coordinating regular working group and district meetings.
- Encouraging participation of coastal resource districts and the general public.

DNR is one of three resource agencies involved in the implementation of the ACMP. The other two resource agencies are the Department of Environmental Conservation (DEC) and the Department of Fish and Game (DFG). Other participating agencies include the Department of Commerce, Community, and Economic Development (DCCED); the Department of Transportation and Public Facilities (DOTPF); and the Department of Law (Law). Divisions within DNR that participate are: the Division of Agriculture (Agriculture); the Division of Geological and Geophysical Surveys (DGGS); the Division of Forestry (Forestry); the Division of Mining, Land, and Water; the Division of Oil and Gas (DOG); and the Division of Parks and Outdoor Recreation (Parks). These agencies receive ACMP and CZMA funding for their involvement in the ACMP. Responsibilities of the agencies may include:

- Providing technical assistance during district coastal management plan review and consistency reviews.
- Issuing permits for activities subject to the ACMP consistency review process.
- Coordinating and reviewing proposed coastal projects for consistency with the ACMP.
- Monitoring and reviewing projects to ensure compliance with the ACMP.
- Participating in special ACMP projects and the ACMP working group.

Exhibit 1



Provided by DNR

In the spring of 2008, DCOM began organizing monthly district teleconferences to facilitate better communication between itself and the coastal resource districts. Agenda items are determined jointly by DCOM and the coastal resource districts.

The Coastal Resource Districts

As shown on the map (Exhibit 1, previous page), Alaska's coastal zone has 35 coastal resource districts. Local government participation in the ACMMP is voluntary; currently, there are 28 coastal resource districts participating through local implementation of the program. Twenty-five of the districts have approved district coastal management plans, which include their district enforceable policies and designated areas. Of the participating coastal resource districts without plans, one is awaiting final approval and two are pending. Projects that go through a consistency review in districts without an approved plan are reviewed for consistency with the statewide coastal management plan.

Most of the coastal resource districts are organized local governments with zoning and other land use authority granted through Title 29 of the Alaska Statutes. These local governments implement their own district coastal management plans under that authority. Four coastal districts are not organized governments. These districts have formed coastal resource service areas (CRSAs) to participate in the ACMMP. The CRSAs do not have land use planning and zoning authority and must rely on state agencies to enforce their district coastal management plans.

The ACMMP Working Group

The ACMMP working group consists of eight agency representatives, six DNR division contacts, and four coastal resource district representatives. The agency members represent each of the participating departments (DCCED, DEC, DFG, Law, and DOTPF) as well as several divisions within DNR including DCOM, Agriculture, Forestry, DGGs, DOG, and Parks. The four coastal resource district members represent the four regions of the coastal zone: northwest, southwest, southcentral, and southeast.

Responsibilities of the working group members include resolving interagency disagreements, advising their respective commissioners of ACMMP viewpoints and policies, disseminating information throughout their agencies, and coordinating timely agency assistance to the coastal resource districts. The working group meets monthly via teleconference. Meeting topics vary and may include proposed legislation, draft regulations, ACMMP projects, and other pertinent items.

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BACKGROUND INFORMATION

Congress passed the federal Coastal Zone Management Act of 1972 (CZMA) to promote effective management, beneficial use, protection, and development of coastal zones nationwide. The federal program encourages states to participate in coastal management and provides funding to assist states in implementing programs at the state level. In addition to receiving funding, states participating in the CZMA have the right to review federal agency and federally-permitted activities occurring in coastal zones or affecting coastal zone uses and resources. The CZMA also encourages, but does not require, the participation of local governments.⁵

Exhibit 2

ACMP Objectives

AS 46.40.020. The Alaska coastal management program shall be consistent with the following objectives:

- (1) the use, management, restoration, and enhancement of the overall quality of the coastal environment.
- (2) the development of industrial or commercial enterprises that are consistent with the social, cultural, historic, economic, and environmental interests of the people of the state;
- (3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;
- (4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;
- (5) the protection and management of significant historic, cultural, natural, and aesthetic values and natural systems or processes within the coastal area;
- (6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;
- (7) the recognition of the need for continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs;
- (8) the full and fair evaluation of all demands on the land and water in the coastal area.

Consistent with the CZMA, the

ACMP's objectives center on the effective management of coastal zones through balancing the protection and development of coastal uses and resources. The eight objectives of the ACMP are listed in Exhibit 2 (right).

In 2003, the legislature enacted Ch. 24, SLA 03, which revised AS 46.39 and AS 46.40 and

⁵16 U.S.C. 1451-1456.

substantially changed the ACMMP.⁶ Changes included: transferring the ACMMP's development and implementation from the CPC to the Department of Natural Resources (DNR); eliminating the CPC; revising statewide standards and regulations; removing the Department of Environmental Conservation (DEC) permits from the consistency review process, providing that "*DEC's air, land, and water quality standards are the exclusive standards of the ACMMP for those purposes*";⁷ and requiring the coastal resource districts to rewrite their district coastal management plans.

The ACMMP is implemented through the consistency review process.

The cornerstone of the ACMMP is the consistency review process. Through the consistency review process, certain activities located within or that will have an effect on the coastal zone are evaluated for consistency with the ACMMP's enforceable policies which include state resource agency authorities, statewide standards, and district enforceable policies. Participants in the consistency review process include the resource agencies, state agencies that have requested participation, affected coastal resource districts, applicants, and the interested public. The process is applicable to activities that require a resource agency authorization⁸ or federal authorization and federal agency activities.

Within DNR, the Division of Coastal and Ocean Management (DCOM) coordinates consistency reviews for activities that require an authorization from two or more resource agencies or divisions within DNR. DCOM also coordinates reviews of federal agency activities and activities that require a federal consistency determination or certification.

If an activity requires an authorization from only one DNR division, that division coordinates the consistency review and determination process.⁹ Similarly, if a project requires an authorization from a single state resource agency,¹⁰ that agency coordinates the consistency review and determination process.

When a project is submitted for review, if requested, the coordinating agency will provide information about the consistency review requirements to the applicant.¹¹ A pre-review

⁶Prior to the 2003 ACMMP changes, Ch. 28, SLA 02 mandated that a coastal resource district could not "*incorporate by reference statutes and administrative regulations adopted by state agencies*." It also required district coastal management programs that were not consistent with the law to submit revised programs to the CPC within one year. According to DNR management, coastal resource districts did not submit revised programs that would be in compliance with Ch. 28, SLA 02

⁷The ACMMP Handbook of Statutes & Regulations, p. 158

⁸Per 11 AAC 110.990(a)(6)(A), "*A permit, license, authorization, certification, approval, or other form of permission that a resource agency is empowered to issue to an applicant and that is identified in the C List.*" Examples of authorizations on the C List are: aquatic farm and hatchery permits, offshore mining leases, and oil discharge contingency plans for oil tankers and oil barges.

⁹The Division of Agriculture; the Division of Forestry; the Division of Mining, Land and Water; and the Division of Oil and Gas.

¹⁰DEC or the Department of Fish and Game.

¹¹Per 11 AAC 110.990(a)(4), "*Applicant means a person who submits an application for a resource agency or federal authorization... or an OCS plan to the United States Secretary of the Interior.*"

assistance meeting may be held among the applicant, coordinating agency, resource agencies, and potentially affected coastal resource districts.

Once a packet is determined to be complete, the consistency review begins. Reviews are scheduled for completion within 30 days or 50 days depending on the authorizations that are needed.¹² As part of the review, the coordinating agency:

- Publicly notices the consistency review;
- Distributes the consistency review packet to the review participants;
- Accepts comments on the consistency of the project from the review participants and general public, and distributes the comments to the applicant and other review participants;
- Facilitates discussion among the review participants to attempt to achieve consensus, if no consensus exists;
- Renders a proposed consistency determination¹³ with any alternative measures; and
- Renders a final consistency determination.¹⁴

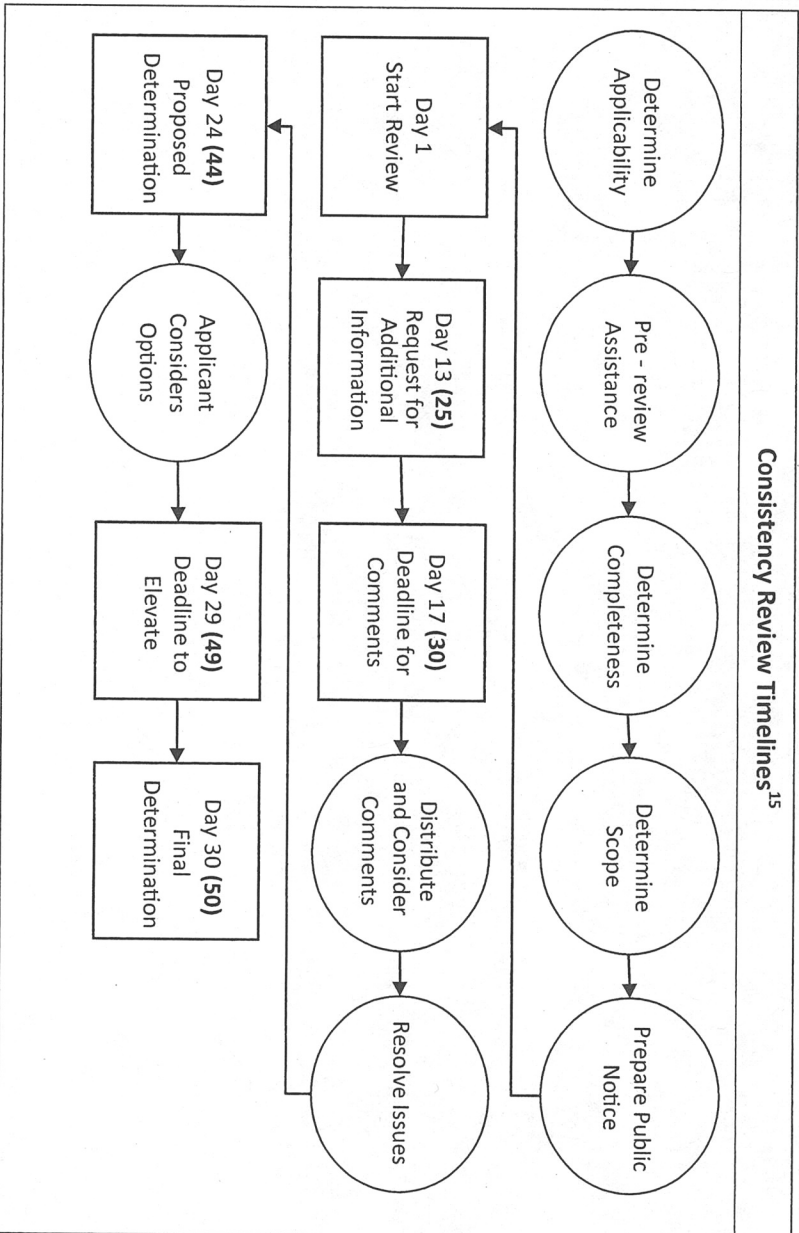
Exhibit 3 (next page) illustrates the consistency review process and the corresponding timeline.

¹²Per 11 AAC 110.230, unless all required authorizations of the project are specifically listed in the C List as 30-day authorizations, the project is subject to a 50-day review.

¹³Per 11 AAC 110.255(f), a proposed consistency determination must (1) contain a description of the proposed project and scope of the project, (2) concur with or object to the applicant's consistency certification, (3) state the availability of an elevation and deadline for requesting one, and (4) be issued by electronic mail or facsimile to the applicant and review participants who may request an elevation.

¹⁴Per 11 AAC 110.260(a), a final consistency determination must (1) contain a description of the proposed project and scope of the project, (2) concur with or object to the applicant's consistency certification, and (3) state that it is a final administrative order and decision under the program.

Consistency Review Timelines¹⁵



Comments of consistency review participants are given due deference¹⁶ depending on the participant's area of responsibility or expertise. For example, the Department of Fish and Game (DFG) generally would be afforded due deference with regard to the statewide habitats standard, whereas a coastal resource district generally would be afforded due deference with regard to its district plan. The coastal resource district could still comment on a project's consistency with a statewide standard, but to be given due deference, it would have to provide evidence to support its position and demonstrate expertise in the field. For consistency determinations that concur with the applicant's consistency certification, the determination explains how the proposed project is consistent with applicable enforceable policies. For objections to the project, the determination identifies the specific enforceable policies and the reasons why the proposed project is inconsistent with those enforceable policies. The determination also includes any changes made by the coordinating agency between issuing the proposed consistency determination and issuing the final consistency determination. The coordinating agency provides the final consistency determination to the

¹⁵The timeline provides the critical deadlines for a 30-day consistency review. The numbers in the parentheses are the deadlines for a 50-day review.

¹⁶Per 11 AAC 110.990(a)(25), "Due deference" means that deference that is appropriate in the context of (A) the commenter's expertise or area of responsibility; and (B) all the evidence available to support any factual assertions of the commenter." Deference is the respectful submission or yielding to the judgment, opinion, will, etc., of another.

applicant, each resource agency, and each agency or person who submitted timely comments.¹⁷

There is a 90-day deadline for a consistency review regardless of the issuance of a DEC or other excluded permit. This deadline does not include a review involving the disposal of an interest in state land or resources. Reasons for the review clock to be stopped include if the applicant has not responded in writing to a request for additional information within 14 days. It is also stopped when requested by the applicant and when a decision is elevated to the DNR commissioner.¹⁸ If a determination has not been made at the end of 90 days, the project is presumed to be consistent.

Exhibit 4 (to the right) provides an example of a project that was reviewed for consistency with the ACMP.

The DEC carveout excludes air, land, and water quality issues under DEC's authority from the consistency review.

Chapter 24 of the SLA 2003 changed the ACMP by excluding DEC permits from the consistency review process, and making DEC's regulations the exclusive standards for air, land, and water quality for those purposes. For activities that require DEC permits,¹⁹ DEC's issuance of the permit establishes consistency with the ACMP. For activities that do not involve DEC permits, such as federal agency activities or activities on federal land or the Outer Continental Shelf, DEC first evaluates whether the activity complies with DEC statutes and regulations and then provides its findings to DNR.²⁰

The change was implemented to streamline the process by insulating the consistency review from delays associated with some of DEC's more complex permits and authorizations. While this change allows for concurrent reviews by DEC and the ACMP, it also eliminates the ability of coastal resource districts to develop specific enforceable policies addressing air, land, and water quality issues that are under the authority of DEC.

Exhibit 4

Big Lake Dock Expansion Project

This 2010 project proposed to construct an expansion to an existing personal use dock on Big Lake. The activity required a U.S. Army Corps of Engineers permit and an Alaska, DFG, Fish Habitat Permit, a C List authorization, triggering an ACMP consistency review. Because both a state permit and federal permit were required, this review was coordinated by DCOM. Review participants included the three resource agencies and the Matanuska-Susitna Borough. The 50-day review was completed timely in 38 days and the final consistency determination was that the project was consistent with the ACMP enforceable policies, which included three applicable district enforceable policies.

¹⁷11 AAC 110.260.

¹⁸11 AAC 110.265.

¹⁹Permits, certifications, approvals, and authorizations.

²⁰AS 46.40.040(b).

Coastal resource districts participate in the ACMMP through district coastal management plans.

Coastal resource districts participate in the ACMMP through the development of district coastal management plans, which include district enforceable policies and designated areas, and through participation in consistency reviews. Chapter 24 of the SLA 2003 required coastal resource districts to rewrite their district coastal management plans. Prior to Ch. 24, SLA 03, there were 33 district plans. Now, there are 25 approved plans, two pending and one in final negotiations. The other five coastal resource districts opted not to continue participating in the ACMMP.

Areas can be designated by coastal resource districts during plan development. For example, according to regulation 11 AAC 114.250(g)-(h), a coastal resource district can, “*after consultation with appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or group, designate areas in which subsistence use is an important use of coastal resources.*”

Also, a coastal resource district can designate portions of a coastal area as important habitat if “(1) the use of those designated portions have a direct and significant impact on coastal water; and (2) the designated portions are shown by written scientific evidence to be biologically and significantly productive.”

Additionally, an area subject to district enforceable policies “*that will be used to determine whether a specific land or water use or activity will be allowed...must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area.*”²¹

In addition to being designated during plan development, subsistence use; important habitat; historic, prehistoric, and archeological resources; and natural hazard areas can be designated by the State during a consistency review.

Per 11 AAC 114.250 and 11 AAC 114.270, district enforceable policies may address only uses and activities identified in the statewide standards and designations listed in Exhibits 5 and 6 (to the right above).

Exhibit 5

Statewide Standards that District Policies May Address
Coastal Development
Natural Hazard Areas
Coastal Access
Energy Facilities
Utility Routes and Facilities
Sand and Gravel Extraction
Subsistence
Transportation Routes and Facilities

Exhibit 6

Designations that District Policies May Address
Natural Hazard
Recreational Use
Tourism Use
Major Energy Facilities
Commercial Fishing and Seafood Processing
Subsistence Use
Important Habitat
Historical and Pre-historical

²¹ 11 AAC 114.270(g).

Statutes and regulations provide several specific requirements for district enforceable policy approval. District enforceable policies may not “*duplicate, restate or incorporate by reference*” state or federal statutes or regulations and cannot address a matter regulated by state or federal law or included in the statewide standards discussed above *unless* the policy addresses a matter of local concern. Additionally, the policy must be clear, concise, precise, prescriptive, and “*not arbitrarily or unreasonably restrict or exclude uses of state concern.*”²²

For a matter to be of local concern, the coastal use or resource must be within a defined portion of the district’s coastal zone and must describe or map, in a manner sufficient for plan development and implementation, (1) major land or water uses, or activities that are or have been conducted or designated within or adjacent to the district, and (2) major land and resource ownership, jurisdiction and management responsibilities within or adjacent to the district. The coastal use or resource must also have been:

*Demonstrated as sensitive to development in the resource analysis, [not be] adequately addressed by state or federal law... [be of] unique concern to the coastal resource district as demonstrated by local usage or scientific evidence that has been documented in the resource analysis.*²³

A district coastal management plan must also include an inventory of coastal resources, district resources, and a resource analysis of the impacts of uses and activities that are subject to the district plan. The resource analysis may include appropriate and pertinent local knowledge.²⁴

Comprehensive reevaluation of the ACOMP, which started in 2008, has not, to date, resulted in either an administration’s bill to the legislature or any regulatory changes.

Chapter 24 of the SLA 2003 mandated that DNR adopt regulations implementing revisions to the consistency review process, statewide standards, and district plan criteria by July 1, 2004. The process involved state and federal agencies, coastal resource districts, and the public. DNR contractors discussed proposed changes with stakeholders at district conferences and draft regulations were presented at the annual, statewide ACOMP conference. Proposed regulations were released for public comment, amended, and adopted on May 24, 2004. DNR subsequently proposed revisions to the statewide standards and the district plan criteria. These were adopted on September 24, 2004, after public comment and amendment.

Following the passage of Ch. 24, SLA 03 and the revisions to the implementing regulations, discontentment has grown among the coastal resource districts over limitations in their ability to establish district enforceable policies. At the January 29, 2008, Senate Community

²² 11 AAC 114.270(c)-(e).

²³ 11 AAC 114.270(h)(1).

²⁴ 11 AAC 114.230-240.

and Regional Affairs hearing on SB 161, the director of DCOM addressed their concerns, acknowledging:

There have been challenges and he [Director Bates] recognizes that the regulations are more stringent than HB 191 [Ch. 24, SLA 03] intended. DNR will look at what was done to see if the promulgation of the regulations governing district plans was appropriate and what can be done to improve the program. Commissioner Irwin intends to formally and openly reevaluate the regulations, and he will include the coastal districts, public, industry, agency, and applicants. There will be an open dialogue to re-craft the regulations and improve the program.

At a minimum, the reevaluation would reconsider the DEC carveout, the districts' ability to write enforceable policies, the requirements for designated areas, and consistency review issues. In its evaluation of the program, the ACMP's federal oversight agency, the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM) encouraged DNR's efforts.

On February 22, 2008, a letter from the DCOM director announced that the reevaluation would begin in June 2008. DNR was soliciting comments from the ACMP's participants on the ACMP's guiding statutes in AS 46.39 and AS 46.40, and the implementing regulations in 11 AAC 110, 112, and 114. The written comments resulting from the reevaluation process were intended to be the foundation for proposed statutory changes prepared by DNR to be submitted for consideration during the 2009 legislative session. Subsequent regulations to implement the changes were to be finalized between March and August 2009.

Multiple workshops, teleconferences, and comment periods occurred between June and December 2008 regarding the reevaluation issues and the drafting of proposed statutes and regulations. However, a consensus on the proposed statutory changes could not be reached among the coastal districts and industry. No legislative bill on the proposed ACMP statutory changes was introduced by the administration to the 26th Legislature. DNR is now focusing on proposing revisions to the consistency review process contained in 11 AAC 110.

The ACMP provides funding to coastal resource districts.

The ACMP receives funding from its federal oversight agency, OCRM. A portion of this funding is provided to coastal resource districts through CZMA, Sec. 306, Required Tasks Grants, and CZMA, Sec. 309, Enhancement Grants. These grants are administered by the Department of Commerce, Community, and Economic Development (DCCED). Exhibit 7 (next page) lists the coastal resource district grant awards for FY 11.

Section 306 grants support implementation of district coastal management programs, required tasks, and special projects. Participating coastal resource districts' required tasks include:

- *Participation in project consistency reviews;*
- *Municipal implementation of coastal district policies;*
- *Grant reporting; and*
- *ACMP coordination and outreach within the coastal district.*²⁶

Funding is based on each coastal resource district's population, implementation responsibilities, permitting activity, and other financial resources as well as whether the coastal resource district is a borough or city. CZMA, Sec. 309, Enhancement Grants are awarded to coastal districts for special projects that improve coastal management in the State and result in program change.

ABC List revision process began in 2006.

The Classification of State Agency Approvals, or "ABC List," identifies categories and descriptions of uses and activities that may impact the coastal zone. Some of the uses and activities would require state resource agency and federal permits that trigger an individual consistency review while others would be determined to be categorically or generally consistent with the ACMP without an individual consistency review.

- The A List contains categorically consistent determinations that apply to activities, requiring resource agency authorizations, which only have a minimal impact on the coastal zone. Examples of A List activities would be open burning of materials not prohibited by 18 AAC 50.065, scientific and educational collecting, and investigation of archeological resources.

Exhibit 7

FY 11 Grant Awards ²⁵	
Aleutians East Borough	\$17,000
Aleutians West CRSA	\$73,000
Anchorage	\$38,500
Bering Straits CRSA	\$73,000
Bethel	\$6,000
Bristol Bay Borough	\$53,000
Bristol Bay CRSA	\$73,000
Ceñalluirit CRSA	\$70,000
Cordova	\$6,000
Craig	\$6,000
Haines Borough	\$13,000
Hoonah	\$6,000
Juneau	\$38,500
Kenai Peninsula Borough	\$59,400
Ketchikan Gateway Borough	\$24,000
Kodiak Island Borough	\$24,000
Lake & Peninsula Borough	\$31,940
Matanuska-Susitna Borough	\$38,500
Nome	\$6,000
North Slope Borough	\$38,500
Northwest Arctic Borough	\$17,000
Pelican	\$6,000
Sitka	\$24,000
Skagway	\$13,000
Thorne Bay	\$4,300
Valdez	\$6,000
Whittier	\$6,000
Yakutat	\$13,000
Total	\$784,640

²⁵ Amounts represent CZMA, Sec. 306, Required Tasks Grants funding except for Bristol Bay Borough, Kenai Peninsula Borough, and Lake and Peninsula Borough. For these three coastal resource districts, amounts include CZMA, Sec. 306, Required Tasks Grants, and CZMA, Sec. 309, Enhancement Grants.

²⁶ http://www.commerce.state.ak.us/dca/planning/acmp/section_306_required_tasks_grants.htm

- The B List contains generally consistent determinations that apply to activities, requiring resource agency authorizations, which can be made consistent through the adoption of standard alternative measures.²⁷ Examples of B List activities would be the application of pesticides registered by the Environmental Protection Agency to private or public land and the moorage of floating houses in navigable waters within Alaska.
- Activities authorized by permits on the C List are subject to an individual consistency review. Examples of authorizations on the C List would be aquatic farm and hatchery permits, offshore mining leases, and oil discharge contingency plans for oil tankers and oil barges.

Chapter 31 of the SLA 2005 mandated that DNR review and update the ABC List's categorically and generally consistent determinations within two years after OCRM's approval of the amended ACMP. OCRM approved the amended ACMP on December 29, 2005. The revision process, which began in March 2006, has not been completed.

²⁷ An alternative measure is a modification to a project that if adopted would achieve consistency with the ACMP's enforceable policies. 11 AAC 110.990(a)(3)

REPORT CONCLUSIONS

The Alaska Coastal Management Program (ACMP) is operated openly and transparently in many ways, but is lacking in certain aspects.

The ACMP process is a very participatory process that requires continuing and clear communications. Therefore, the concepts of openness and transparency are critical to maintaining active involvement by state agencies, coastal resource districts, industry, and the public. While in many ways the ACMP is operated through an open and transparent process, there are certain aspects of its process where openness and transparency are deficient.

Examples of these certain deficiencies include:

- The Division of Coastal and Ocean Management (DCOM) does not generally record or take minutes for working group meetings. While there are agendas, there are no recordings or minutes of working group meetings. However, during the reevaluation, the workshops were documented by a third-party facilitator.
- DCOM does not distribute review participant materials to coastal resource district consultants even if requested to by the coastal resource district. (See Recommendation 1.)
- DCOM management did not respond in writing to ACMP reevaluation comments provided by coastal resource districts, other state agencies, industry, and the public. Written comments were submitted by various ACMP participants during the 2008 ACMP reevaluation's two comment periods. DCOM says it responded to the comments during teleconferences, but had not responded in writing since the formal public process had not started. Several coastal districts said they either received no response or were only told that their comments were considered.
- DCOM has not kept participants actively informed about the status of the ACMP reevaluation process. Recognizing the process for statutory or regulatory changes that are controversial can be prolonged, it becomes essential to maintain communication with the participants to ensure their continued engagement in the overall project. This project started in 2008 and has not been completed.

ACMP participants were asked to participate in the reevaluation and many of them did expect there would be change. However, it has been over two years without change and several ACMP participants are disillusioned by the process. One coastal resource district said there is no visibility in decision-making. One agency agrees saying that there is the perception that the Department of Natural Resources (DNR) commissioner's office is working "behind closed doors" and no one knows how its

decisions are made. For example: in October 2009, DNR requested an attorney general opinion on coastal districts' authority to develop enforceable policies. A year later coastal resource districts have not been informed of the attorney general opinion's status. To DCOM management's knowledge, the request was forwarded to the Office of the Governor, but has not moved to the Department of Law.²⁸

While there is no requirement that DCOM record meetings or respond to comments it solicited, doing so would improve openness and transparency both in fact and in appearance. DNR should improve its openness and transparency to maintain a participatory and collaborative environment for the various parties involved in the ACMP process.

DCOM's policy regarding consultants disregards coastal district autonomy.

DCOM's unwritten policy is that consultants cannot be on consistency review participant lists. Management's intent is to improve coastal district representation in the ACMP. However, such an unwritten policy denies coastal districts autonomy over what is ultimately a coastal district management decision.

DCOM maintains two distribution lists for project reviews: an interested party list and a review participant list. Recipients on the interested party list receive the project review start-up letter and a copy of submitted comments if requested. The review participants receive review suspension and re-start notices, proposed consistency determinations, and other project information, which is also available on DCOM's FTP internet site.

There is no written policy or regulation that specifically prohibits distribution of materials to a consultant. However, DCOM's unwritten policy is that the point of contact must be a board member or employee of the coastal resource district. According to DCOM, it complicates matters when a third party is requesting to be the point of contact because all review participants need to clearly know who the district point of contact is and who can comment during a review. DCOM's decision to disallow consultants is based on feedback they received at their annual meetings where coastal resource districts stated they want local representation.

DCOM's communication regarding its policy to not add consultants to consistency review participant lists has been inconsistent. For example, communicating that a board chair can designate a consultant and subsequently requesting information regarding how the district would like the consultant to act on its behalf sends mixed signals when previous requests have been denied. Furthermore, while DCOM's intent in denying consultant involvement is to bolster coastal district representation, this unwritten policy disregards the coastal district's right to determine on its own behalf when that representation is best achieved through a consultant. (See Recommendation 1.)

²⁸ According to the Department of Law, as of December 20, 2010, it has not received DNR's request for an attorney general opinion.

DNR is an appropriate agency to administer the ACMP.

The ACMP's objectives center on the effective management of the coastal zone through balancing the protection and development of coastal uses and resources. Key components of the ACMP's objectives include, for example, enhancing environment's overall quality, development consistent with the interests of the people, sound conservation and sustained yield, and evaluating all demands on land and water in coastal areas.

DNR is one of three resource agencies involved in the implementation of the ACMP. DNR's mission is "*to develop, conserve, and enhance natural resources for present and future Alaskans.*"²⁹ Furthermore, as outlined in AS 38.04.005(a)-(b), DNR's purpose is to ensure that the use of state land is in the public's interest. Both its mission and purpose are consistent with the objectives of the ACMP. As such, DNR is an appropriate agency to administer the ACMP.

The ACMP's other two resource agencies are the Department of Environmental Conservation (DEC) and the Department of Fish and Game (DFG). DEC and DFG have similar missions as that of DNR.³⁰ Their common purpose – to protect and enhance Alaska's natural resources and ensure that development is in the best interest of the public – also supports the objectives of the ACMP. Therefore, DEC and DFG could be appropriate agencies as well. Finally, because the coordination function is a critical element of the ACMP process, the Office of the Governor could also be considered an appropriate location for the ACMP.

ACMP changes have centralized decision-making and lessened consensus building among review participants.

Changes made to the ACMP following passage of Ch. 24, SLA 03 have centralized in the DNR commissioner's office decision-making that was formerly the Coastal Policy Council (CPC) and the resource agency directors or commissioners' responsibility. The changes have also lessened the consensus-building aspect of the ACMP consistency review.

Prior to statutory changes in 2003, the ACMP was governed by the CPC. The CPC consisted of the Office of Management and Budget director, six state agency commissioners, and nine local government officials. The CPC was responsible for:

- Adopting ACMP regulations and supporting resolutions;

²⁹<http://dnr.alaska.gov/>

³⁰DEC's mission statement is "*conserving, improving, and protecting Alaska's natural resources and environment to enhance the health, safety, economic and social well being of Alaskans.*" <http://dec.alaska.gov/>

DFG's mission is "*to protect, maintain, and improve the fish, game, and aquatic plant resources of the state, manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle.*" <http://www.adfg.state.ak.us/mission.php>

- Reviewing and approving coastal district management plans;
- Providing general policy leadership for implementation of the ACMP; and
- Hearing petitions regarding compliance with and implementation of district coastal management plans.

Under the former program, consistency review determinations could be elevated first to the resource agency directors and then to the resource agency commissioners.

Chapter 24 of the SLA 2003 eliminated the CPC and transferred the ACMP's development and implementation from the CPC to DNR. The DNR commissioner now has sole responsibility for approving coastal district management plans and reviewing consistency determinations that are elevated to him. This centralized decision-making has been criticized for lacking impartiality and local representation. However, a perceived weakness of the CPC was that sometimes the local members were not well-informed.

In our prior audit of the ACMP in 1995, we noted that the consistency review is generally a consensus-building process. During the current audit, we reviewed 38 consistency review files for participating coastal resource districts to determine if comments were considered and due deference afforded in accordance with regulations. In 37 of the reviews, comments were considered and due deference was properly given. In one consistency review, DCOM did not properly follow the consensus process. The consistency review determination was elevated to the commissioner, and the commissioner concurred with the coastal resource district on this matter.

Since they were not elevated, consensus is considered to have been reached on 37 of the 38 consistency reviews tested; however, it is not the same consensus-building process it once was. During FY 10, coastal resource districts commented in approximately 45 percent of the consistency reviews versus approximately 70 percent in 1994. According to a resource agency staff member, the *"balance of power has changed because applicants and agencies do not listen as much to districts because districts do not have [as many] policies anymore...some districts do not show up to [consistency review meetings] because they are disheartened."*

In addition to the elimination of the CPC, three other changes contributed to the reduced consensus-building nature of the ACMP process. First, the number of coastal resource district enforceable policies was reduced resulting in fewer coastal resource district comments. Second, the movement of the program from the Office of the Governor to a resource agency may have strained relationships among program participants. As one staff member noted, *"If you move the program to one agency, the other agencies do not want to play."* And third, another significant difference noted by resource agencies and coastal districts is that DEC is not the strong participant that it was before the DEC carveout.

The legislature should reauthorize the ACMMP.

Chapter 31 of the SLA 2005, Section 18, repeals the ACMMP statutes. As a result, this program will terminate on June 30, 2011. In developing our conclusion on whether the ACMMP should be reauthorized, we evaluated the ACMMP's operations using the 11 criteria set out in AS 44.66.050(c) to determine if the program has demonstrated a public need for its continued operation.

The ACMMP's mission is to provide "*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.*"³¹ Through the ACMMP's coordinated consistency review process, the State and coastal resource districts evaluate activities occurring in or having an effect on the state's coastal zone. This evaluation extends to federal agency and federally-permitted activities.

We found that there is a demonstrated public need for the program's continued existence. Therefore, we recommend the legislature either repeal Ch. 31, SLA 05, Sections 1-13, 18 and 22 or, if another program evaluation is preferred, the legislature can amend Section 22 to state, in part: "*Sections 1 - 13 and 18 of this Act take effect July 1, 2015.*"

This four-year period would allow time for DNR to complete its 2008 reevaluation of the ACMMP and finalize regulation changes and the ABC List revision initiated in 2006. At the end of the four year period, the program could again be evaluated in accordance with AS 44.66.050(c).

³¹<http://alaskacoast.state.ak.us/>

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Coastal and Ocean Management (DCOM) should allow coastal resource districts to designate their own representation.

DCOM will not distribute review participant materials to a consultant or allow a consultant to be designated by coastal resource districts as a point of contact for consistency reviews. DCOM does not have a written policy against doing so and regulations in 11 AAC 110.235(d)(2)³² and 11 AAC 110.990(a)(41)³³ do not exclude consultants from being the designated contact for a coastal resource district, nor do they exclude them from the consistency review participant distribution list. DCOM's intent for disallowing consultants is to bolster coastal district representation in the Alaska Coastal Management Program (ACMP) and maintain a single point of contact.

Refusing to allow consultants to be on a consistency review distribution list has resulted in timely information not being available to review the status of a project and provide comments when board member contacts were inaccessible. While the intent of the unwritten policy is to encourage coastal resource district representation in the ACMP, it does not recognize coastal resource districts' autonomy in determining how that representation is best achieved.

DCOM should facilitate coastal resource district participation in the ACMP by allowing coastal resource districts to designate consultants as their point of contact if they decide it is in their best interest to do so.

Recommendation No. 2

DNR should complete the ABC List revision and ACMP reevaluation it began years ago.

Completion of the ABC List revision is three years past the deadline set out in Ch. 31, SLA 05. Additionally, while the ACMP reevaluation does not have a similar statutory deadline, the Department of Natural Resources (DNR) had planned to have a proposal ready for the 26th Legislature's consideration. In 2006, DNR began revising the ACMP's ABC List

³² "On or before Day 3, the coordinating agency shall provide to each review participant a copy of the consistency review packet, the review schedule with a solicitation for review participants' comments, and a deadline for receipt of comment; and (3) either (A) provide a copy of the consistency review packet to a person requesting the information; or (B) make a copy of the consistency review packet available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district."

³³ "Review participant means a resource agency, a state agency that has requested participation in a consistency review, and an affected coastal resource district."

and in 2008 the agency embarked on a comprehensive reevaluation of the ACMF's statutes and regulations. While DNR has directed resources toward both initiatives, neither process has been completed. Additionally, the proposed 11 AAC 110 regulation changes DNR planned to release for public comment in October 2010 have not been released.

With both the ABC List revision and the ACMF reevaluation, lack of consensus was the reason given for not pursuing change. As a result, the ACMF is operating with an outdated list of categorical and general consistency determinations and with regulations that are more stringent than anticipated under Ch. 24, SLA 03. There is concern among coastal resource districts and resource agencies that DNR is not open and transparent and lacks follow-through. While DNR has administered the ACMF effectively in other respects, it has failed to operate effectively and efficiently in this regard.

DNR has had almost five years to revise the ABC List and over two years to reevaluate the ACMF's statutes and regulations. It is time for DNR to act effectively. DNR should commit to completing both processes timely.

ANALYSIS OF PUBLIC NEED

The following analyses of the Alaska Coastal Management Program (ACMP) activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The ACMP has operated in the public's interest by conducting consistency reviews, funding and providing technical assistance to coastal resource districts to develop and implement district coastal management plans, conducting various coastal resource management projects, encouraging the participation of coastal resource districts and the general public, and providing information on coastal zone management.

The cornerstone of the ACMP is the consistency review process. Through the ACMP's consistency review process, activities in or that have an effect on the coastal zone are reviewed for consistency with the ACMP's enforceable policies. Activities can be determined to be consistent through individual consistency reviews or expedited reviews. In FY 10, Division of Coastal and Ocean Management (DCOM) coordinated over 170 individual consistency reviews. Expedited reviews include general consistency and categorical consistency determinations. Categorically consistent determinations apply to activities that have only a minimal impact on coastal uses or resources. Generally consistent determinations apply to activities that can be made consistent through the adoption of standard alternative measures.

As discussed in Background Information, the ACMP provides grants to coastal resource districts to develop and implement district coastal management plans, perform required tasks, and conduct special projects.³⁴ Grants awarded to coastal resource districts in FY 11 totaled \$784,640.

In addition to funding, DCOM provides technical assistance to coastal resource districts. Almost two-thirds of the coastal resource districts surveyed were critical of the technical assistance they received during district plan revision. However, several coastal resource districts were complimentary of DCOM's consistency review staff stating they were professional, work well with the regional coordinators, try hard to involve and communicate more with the districts, and keep districts informed of projects in their area of the coastal zone.

³⁴Funding could be used to support scientific studies for the designation of areas, such as important habitats.

Various studies are funded through the ACMP. Recent ACMP studies include the Natural Hazards Resilience Project. The objective of this study was to research the resiliency approach to natural hazards planning and develop guidance on how it can be implemented through coastal district management plans. The resiliency approach includes an “assessment of socio-economic structures, environmental systems and habitats, and traditional critical infrastructure.”³⁵ Another ACMP study is the Cumulative Impacts on Dock Project. The objective of this study is to improve Alaska’s dock permitting process by studying and comparing the dock management regimes of other states. The ACMP also funded studies in the Coastal Nonpoint Source Pollution Program. One study performed under this program was of fish habitat conditions on private timberlands in southeast Alaska. Another study has been to develop a Clean Harbor Certification program to protect water quality and marine life from pollutants.

The ACMP also serves the public’s interest by encouraging the participation of coastal resource districts and the general public and by providing information about the ACMP and coastal zone management. As discussed in Report Conclusions, the coastal resource districts and the general public are involved in the ACMP’s fundamental processes – including the consistency review and the ACMP reevaluation. DCOM facilitates monthly coastal resource district meetings to disseminate ACMP information and coordinate assistance to coastal resource districts.

DCOM also maintains the ACMP website that provides information about the program, the consistency review process, coastal resource districts, and district coastal management plans. It also provides links to reference materials, guidance for the coastal resource districts, current ACMP news, and ACMP activities. Its outreach and education page has interactive games, educational web links, pamphlets, and brochures.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Depending on which ACMP participant is asked, the Department of Environmental Conservation (DEC) carveout has been either an enhancement or an impediment. According to industry, delays in the consistency review process have been reduced by removing air, land, and water quality issues under DEC’s authority from the ACMP consistency review process and allowing the ACMP consistency review process to run concurrently with the processing of more complex permits. However, according to other ACMP participants, the DEC carveout has diminished the value of the ACMP as a networked program because consensus-building is lessened and impacts to air, land, and water quality are considered in isolation from other uses and resources. Additionally, DEC consistency findings cannot be elevated, which puts a constraint on public participation. The DEC carveout is discussed in

³⁵The Natural Hazards Resiliency Working Group, “Maximizing Natural Hazards Planning: The Resiliency Approach and Possibilities in Alaska,” August 13, 2010.

*Department of Natural Resources, Alaska Coastal Management Program, Part 1.*³⁶

As previously discussed in Report Conclusions, the ACMMP's statutory and regulatory changes coupled with the Department of Natural Resource's (DNR) operational practices have led several coastal resource districts to question whether they can meaningfully participate in the ACMMP. A reduced coastal resource district role, DNR's lack of follow-through on regulation projects, and DNR's perceived lack of openness and transparency adds to their discontent.

A practice of primarily one Department of Fish and Game (DFG), Division of Habitat office has been to issue permits that are consistent through general consistency determinations (GCD)³⁷ without consulting DCOM or the coastal resource district. Activities that require permits that are subject to GCDs may be excluded from an individual consistency review. However, regulations require that the coordinating agency consult with the coastal resource district and resource agencies before making that determination. According to DFG, the regulations are unclear and it is following the procedures agreed on with DCOM until DCOM revises the regulations. DCOM is addressing this issue in its revision of 11 AAC 110.

In FY 11, another impediment to operations has been DCOM's lack of authority to administer grants. Because DCOM does not have the statutory authority to administer grants, it contracts with the Department of Commerce, Community, and Economic Development (DCCED) to administer the awards on DCOM's behalf. This year's grants were supposed to be awarded in July 2010; however, they were not awarded until early October 2010. The two agencies disagreed on their respective roles. While DCCED has the responsibility of monitoring the grantees, the Office of Ocean and Resource Management (OCRM) believes the federal oversight agency for the ACMMP, DCOM retains responsibility for the proper use of the funds. Some coastal resource districts noted that the delay in receiving the funds caused by DCOM and DCCED's disagreement created a hardship for them.

On the following page, Exhibit 8 shows the ACMMP's expenditures for FY 08 through FY 10.

³⁶Audit control number 10-30060A-11

³⁷Generally consistency determinations apply to activities, requiring resource agency authorizations, which can be made consistent with the ACMMP through adoption of standard alternative measures.

Exhibit 8

Schedule of Expenditures
(Unaudited)

	FY 08	FY 09	FY 10
Expenditures			
Personal Services	\$1,866,382	\$2,153,872	\$ 2,165,520
Travel	110,254	74,268	60,155
Services	818,081	855,424	870,261
Commodities	26,156	18,339	29,347
Grants and Benefits	502,743	1,193,124	832,050
Total Expenditures	\$3,323,616	\$4,295,027	\$ 3,957,333

Source: State Accounting System

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

Since 2003, DNR has not pursued any statutory changes. In response to concerns regarding the effectiveness of the 2003 statutory and 2004 regulatory changes to the ACMF, DNR conducted a comprehensive reevaluation of the program in 2008. The comments were to be the basis of proposed statutory and regulatory changes to be considered during the 2009 legislative session. Because industry and coastal resource districts were unable to reach a consensus, the administration did not introduce a bill.

Over the last year, DNR has been focusing its efforts on revising the 11 AAC 110 regulations, which provide guidance on the consistency review.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

In general, coastal resource districts and agencies believe that DNR has encouraged interested persons to report to it concerning the effect of its regulations and decisions. However, an overall concern is the agency's lack of responsiveness to comments.

Of the agencies interviewed, seven out of nine agencies stated that DNR has encouraged interested persons to report to it. Additionally, just under half of the coastal resource districts surveyed are positive about DNR's encouragement. What is cited as a concern by both agencies and coastal resource districts, however, is not that DNR does not encourage feedback, but that it does not appear to act on feedback provided. Several agencies and coastal resource districts stated that DNR does not follow through on comments received. As

previously discussed, the 2008 ACMCP reevaluation solicited feedback from ACMCP participants, but their efforts did not lead to any new statutes or regulations. Furthermore, the ABC List revision began almost five years ago and has not been completed.

There is not a consistent belief among participants that the working group is functioning as intended. According to several coastal resource districts and agency working group members, the working group is ineffective and without clear objectives. To a minority of agency working group members, however, the working group has been collaborative and a vehicle for participants to relay information to DCOM. Suggestions for increasing its focus and effectiveness include establishing clear objectives and meeting when there are high priority topics rather than monthly.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The ACMCP is a networked program driven by the participation and cooperation of various state agencies, coastal resource districts, industry, and the public. Although DNR has not made any regulatory changes since 2005, it has encouraged public participation in the drafting of proposed regulations. The ACMCP consistency review process is a public process as well.

As part of its comprehensive 2008 reevaluation of the ACMCP statutes and regulations, DNR held multiple workshops, teleconferences, and public comment periods to solicit input and feedback from ACMCP participants. However, consensus could not be reached between industry and coastal resource districts and no legislative bill on the proposed ACMCP statutory changes was introduced by the administration to the 26th Legislature. During 2009, DNR focused its efforts on revising the consistency review process contained in 11 AAC 110. The working group and coastal resource districts were involved in this process as well. Proposed regulations were expected to be released for formal public comment in October 2010.

Projects being reviewed by the ACMCP are open to public review and comment. Under 11 AAC 110.500, each consistency review must be publicly noticed, the notice must solicit public comments, and the review materials must be made available in a public place. Our testing of 39 consistency reviews confirmed that DNR is properly providing public notice of consistency reviews coordinated by DCOM.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period FY 07 through FY 10, the Office of Victims' Rights reported no complaints filed with it regarding the ACMCP. The Office of the Ombudsman reported two complaints filed. These complaints are under investigation. Additional inquiries or complaints during

this period were reported by DCCED and DNR.

The coastal resource districts submit quarterly and annual progress reports to the DCCED, Division of Community and Regional Affairs (DCRA). The quarterly and annual progress reports provide an opportunity for coastal resource districts to provide comments regarding program operations. Over the four-year period of FY 07 through FY 10, 29 concerns from 15 coastal resource districts were reported regarding the ACMP's changes. Concerns included: the inability to write enforceable policies; gaps in enforceable policies; and the inability to designate areas. According to DCOM management, there were no written responses to the coastal resource districts, but DCOM reads each coastal resource district's quarterly reports. If the coastal resource district or DCOM has concerns, DCOM usually calls the coastal resource district and/or DCRA. DCCED also received five letters of inquiry or complaint. The subjects of the correspondence included coastal resource district hiring practices, district plan revision, and ACMP management concerns. Three of the inquiries or complaints had been resolved. The remaining two letters had received written responses from DNR, and the agency and coastal resource district were working on resolving the matters.

In addition to correspondence received by DCCED and reevaluation comments, DNR received two letters of inquiry during FY 07 through FY 10. One letter requested assistance from DCOM and the other requested delay of the ABC List review. DNR provided a written response to the first request, but not the second. Although there is no record of DNR responding to the second request, the ABC List revision is pending revision of 11 AAC 110.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

This criterion is not applicable since the ACMP does not regulate any occupations or professions.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

The Division of Personnel reported one complaint regarding the ACMP that was closed due to lack of substantial evidence.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The general consensus among participants of the ACMP is that changes are necessary for the program to better serve the public's interest. Completing the ABC List revision initiated in 2006 and the ACMP reevaluation initiated in 2008 are at the forefront of needed actions.

Statutory, regulatory, and ABC List revisions were the main issues mentioned by agencies. The ABC List update was also stressed by industry participants as requiring attention. Coastal districts emphasized that statutory and regulatory changes were needed to specifically address the DEC carve-out, designated areas, and local concern requirements.

In March 2006, DCOM began the ABC List revision. The process has not been completed due to lack of consensus over how generally consistent determinations will be implemented. DCOM has determined that the 11 AAC 110 revisions need to be completed before the ABC List can be revised. DCOM has been working on the 11 AAC 110 revisions and planned to release proposed changes for public comment in October 2010.

As previously discussed, DNR began a comprehensive reevaluation of the ACMMP in 2008. Multiple workshops, teleconferences, and public comment periods were held between June and December 2008 to solicit input and feedback from ACMMP participants. The proposed statutes were to be finalized and introduced to the legislature for consideration in January 2009, with the finalized changes made to the regulations between March and August 2009. When consensus could not be reached between industry and coastal resource districts, no legislative bill on the proposed ACMMP statutory changes was introduced by the administration to the legislature. As discussed in Report Conclusions, some ACMMP participants have expressed frustration over DNR's perceived lack of follow-through. (See Recommendation 2.)

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

The ACMMP's objectives are contained in AS 46.40.020. These objectives center on effective management of the coastal zone through balancing the protection and development of coastal uses and resources. As discussed in the ACMMP part 1 report,³⁸ achievement of these objectives is subjective and difficult to measure. However, some of the ACMMP's primary responsibilities provide an indication of DNR's operational effectiveness and efficiency in administering the program. Among its accomplishments are revision and implementation of ACMMP regulations, district coastal management plan review and approval, and consistency reviews.

Following enactment of Ch. 24, SLA 03, DNR was tasked with revising the ACMMP regulations. Changes were made to the regulations guiding the consistency review process and district plans as well as the statewide standards. The revised regulations were drafted and implemented within a short time period. The ACMMP's federal oversight agency OCRM commended DNR for its efforts and diligence in implementing the ACMMP's changes and for maintaining a federally-approved program. As previously discussed, DNR has been less

³⁸Department of Natural Resources, Alaska Coastal Management Program, Part 1, November 26, 2010; Audit control number 10-30060-11

effective and efficient in moving forward with its 2008 reevaluation of the ACMCP and with the ABC List revision process it began in 2006.

Chapter 24 of the SLA 2003 required coastal resource districts to revise their district coastal management plans. The plans were to be revised and submitted to DNR for review by March 1, 2006.³⁹ When Ch. 24, SLA 03 was enacted, there were 33 district coastal management plans. Of these plans, 28 were revised and submitted to DNR for review and 25 have been approved and are in effect.⁴⁰ Approximately 70 percent of the approved district plans were reviewed, revised as necessary, and approved by the DNR commissioner within approximately a year of initial plan submission. Almost one-third of these went through the process within seven months. The remaining plans were approved within two years of initial plan submission. Assisting 28 coastal resource districts in the development of their district plans in this timeframe is notable in itself, but even more so given that DNR was concurrently learning and implementing new regulations and dealing with a staff shortage.

The intent of Ch. 24, SLA 03 was partially to minimize delays. Based on our testing, it appears that the ACMCP has been effective in meeting this intent. As part of our review, we evaluated the efficiency of DCOM's coordination of consistency reviews during FY 10. We tested a sample of 37 consistency reviews for timely completion. The sample included both 30-day and 50-day reviews. In compliance with regulations, the final consistency determination was issued on or before day 30 or day 50 of the review for all 37 consistency reviews.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The ACMCP offers the State unique benefits that are not provided by other agencies or programs. Two benefits are a “seat at the table” and coordination.

The Coastal Zone Management Act of 1972 (CZMA) is the only program that gives states the right to formally influence federal decisions regarding the coastal zone. The ACMCP is Alaska's mechanism for participating in the CZMA. Through implementation of the coordinated consistency review process, the State evaluates the impacts of federal agency and federally-permitted activities on the uses and resources of the state's coastal zone. The ACMCP also provides coastal resource districts the opportunity to participate and provide a local perspective.

The ACMCP coordinates permitting and consistency reviews for projects and developments. It also coordinates state, local, national, and private interests in the management of coastal uses and resources.

³⁹Chapter 24 of the SLA 2003 required district coastal management plans be revised and submitted for review by July 1, 2005. Chapter 31 of the SLA 2005 extended this date to March 1, 2006.

⁴⁰North Slope Borough, Northwest Arctic Borough, and Bering Straits Coastal Resource Service Area do not have approved district coastal management plans.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

P. O. BOX 111000
JUNEAU, ALASKA 99811-1000
PHONE: (907) 465-2400
FAX: (907) 465-3886
 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

February 4, 2011

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LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

RE: Alaska Coastal Management Program Audit -- Preliminary Audit Report, Part 2,
dated December 29, 2010

Dear Ms. Davidson:

Thank you for the preliminary audit report on the *Department of Natural Resources, Alaska Coastal Management Program, December 29, 2010*. At your request, my agency has reviewed the preliminary audit report and evaluated your conclusions.

My understanding is the intent of the audit report is to provide objective and factual information regarding the Alaska Coastal Management Program (ACMP) and the questions and statutory requirements associated with the audit. While we agree with many of the conclusions reached here, we disagree with one of the recommendations and have some concerns with the information contained in the preliminary audit report.

The Audit Process and Timeframe

It is obvious that the Division of Legislative Audit (DLA) staff involved with this audit have put in a great deal of time and effort to understand the ACMP and to provide an objective and comprehensive evaluation of the program. It is my understanding that several DLA staff were involved and assigned various research tasks, and individually worked with the Division of Coastal and Ocean Management (DCOM) staff of issues of interest. The interrelationships of laws, agencies, ACMP participants, and issues present a significant barrier for anyone wishing to develop a deep understanding of the program; its varied connections and nuances increase the challenge exponentially. I recognize the monumental task it was for you and your staff to complete this preliminary audit report in a timely manner given the short five months you had to initiate and complete the audit findings. We very much appreciate these efforts.

The Report Conclusions

Overall, we can support four of the five main conclusions reached by the audit report. Generally, the audit report has found that the changes implemented by DNR since 2003 have been consistent

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

with the intent of the Legislature. Specifically, the report concludes that the ACMCP is operated openly and transparently, that the Department of Natural Resources is an appropriate agency to administer the ACMCP, that the changes have centralized ACMCP decision-making in the DNR Commissioner's Office, and that the Legislature should reauthorize the ACMCP. While we generally agree with these four conclusions, we have concerns with two of them.

In the conclusion that "*The Alaska Coastal Management Program (ACMP) is operated openly and transparently in many ways, but is lacking in certain aspect,*" we are concerned with the latter component of the conclusion. The DLA analysis provides examples of certain perceived deficiencies that do not consider in their entirety the ACMCP authorities and DCOM actions. The following are DNR's responses to the items raised in the DLA analysis:

- DLA analysis – DCOM does not generally record or take minutes for working group meetings.

DNR response: As agreed to by participating ACMCP working group members and coastal district coordinators, DCOM does not generally record minutes for working group or coastal district meetings. Prior to 2003, some working group meetings were recorded, while some other work sessions of the working group were not. However, prior to 2003, the functions of the Division of Governmental Coordination (DGC) were performed on behalf of the Coastal Policy Council (CPC), and those DGC functions were subject to certain aspects of the Administrative Procedures Act in terms of public notices and meeting minutes. These informal participant meetings are not subject to the same public notice and meeting minute requirements that the former DGC or CPC were, and should not be held accountable as such.

- DLA Analysis – DCOM does not distribute review participant materials to coastal resource district consultants. This unwritten policy disregards coastal district autonomy over what is ultimately a coastal district management decision.

DNR Response: See the discussion below (page 4) addressing "*DCOM's policy regarding consultants disregards coastal district autonomy.*"

- DLA Analysis – DCOM management did not respond in writing to ACMCP reevaluation comments provided by coastal resource districts, state agencies, industry and the public.

DNR Response: In June 2008, the DCOM director initiated the re-evaluation of the ACMCP to recognize "... the ongoing challenges and the need to address certain implementation problems..." associated with the ACMCP. ACMCP participants were invited to provide comments and propose changes to the ACMCP.

The DLA analysis and conclusions have misunderstood the purpose of DCOM's re-evaluation process. Indeed, the audit report identifies what DLA feels could or should have been changed. The ACMCP re-evaluation and associated comments were intended to identify potential changes to the ACMCP that would strengthen the ACMCP, that would benefit applicants and the public in the coordination of projects, and that would enhance coastal district participation and input into the State decision-making under the ACMCP. DCOM and the ACMCP participants worked hard to develop and discuss potential ACMCP program changes. The re-evaluation documents that were prepared and shared did not necessarily

reflect the division, department, or Administration position, but rather were prepared as conceptual ideas to solicit input and comments and to evaluate whether consensus on certain issues could be achieved. The informal, draft documents that were prepared, including proposed statutes and conforming regulations, should not be considered as the department's proposal for change.

The commenting opportunities under the re-evaluation were informal processes not governed by the Administrative Procedures Act. DCOM considered and evaluated each comment received from the commentors. DCOM did convene public workshops and meetings to bring commentors and interested parties together to discuss their comments and recommendations, as well as division, department, and administration's response and position. During each of the re-evaluation workshops and meetings, DCOM responded verbally to the comments, variations of proposed changes, and the effect or impact a particular change might have on the various ACMP participants.

- DLA Analysis – DCOM has not kept participants actively informed about the status of the ACMP reevaluation process.

DNR Response: The DLA conclusion is inaccurate. DCOM has held monthly meetings of the working group and coastal districts to address any issue a participant would like addressed. DCOM has actively advised the meeting participants of the status of the re-evaluation, which includes legislative actions, updates, meetings, hearings, initiatives, and bills, as well as the preparation and promulgation of the consistency review regulations. In addition to the public meetings DCOM has held to address the re-evaluation, DCOM staff have made individual and personal contact with various ACMP participants, including every active coastal district coordinator, to discuss the status of the re-evaluation and/or the potential changes to the 11 AAC 110 consistency review regulations.

The second conclusion with which we have concerns is that "*ACMP changes have centralized decision-making and lessened consensus building among review participants.*" Within the DLA analysis, you state that "... the number of coastal resource district enforceable policies was reduced resulting in fewer coastal resource district comments." It is true that coastal districts have fewer policies as a result of the 2003 legislative directive requiring that district policies be clear, concise, related to local concerns, and not duplicative of state and federal laws.

There are many other factors that could lead to fewer coastal district comments, which could include

- Other existing state laws already address the issue;
- Applicants better understand the clearer ACMP enforceable policies and thus are proposing more refined and compliant projects at the outset; and
- DCOM's pre-application assistance is answering questions, gathering information, and addressing issues prior to the district commenting, therefore minimizing conflicts prior to the start of the consistency review process.

It is important to recognize that coastal districts can comment on the project utilizing enforceable policies including the statewide standards and separately under various state authorities. Coastal districts have confirmed their dislike for commenting utilizing the statewide standards and other state authorities, but it remains a viable commenting opportunity not embraced by the districts.

The main conclusion which we cannot support is "DCOM's policy regarding consultants disregards coastal district autonomy." A single, established point of contact within the coastal district is critical for purposes of consistency within consistency reviews. As discussed within the background information of the audit report, state agencies conducting consistency reviews are obligated to consult with coastal districts, and must be aware of and notified of the district staff that is the designated point of contact. In an already complex consistency review process, having a 3rd party serve as a district's point of contact for a single project or for a short period of time does not benefit the process or the participants.

DCOM has written this requirement into this and prior fiscal year grants with DCCED and the coastal districts to read:

"The Point of Contact [within a coastal district] must be the designated program director or district coordinator and may be temporarily delegated to another employee of the coastal district or a CRSA board member of the coastal district only. The district will provide both DCOM and DCRA written notice of any change to the ACOMP Point of Contact within 2 business days."

The DLA analysis on the consultant and coastal district autonomy is based upon an isolated circumstance with a single consultant representing a single coastal resource service area that did not have an approved plan and was not receiving funding due to significant financial management issues and failures. The DLA conclusion is based on an isolated circumstance, is legally flawed, and includes incorrect information related to the purported unwritten policy.

It is also important to note that the DLA analysis does not consider or acknowledge the ACOMP regulations that are controlling on this subject. 11 AAC 110.990(41) defines a review participant to mean "a resource agency, a state agency that has requested participation in a consistency review, and an affected coastal resource district." Based on this legal definition, it does not appear that a district could delegate coastal district status outside of the organization for purposes of consistency reviews under 11 AAC 110.

DLA Audit Recommendations

DLA Recommendation No. 1 – The Division of Coastal and Ocean Management should allow coastal resource districts to designate their own representation.

DNR does not support this recommendation, as it relates to outside consultants.

The recommendation includes incorrect information related to the written policy (see the discussion above on DCOM's written policy on a district's point of contact) and is legally flawed [see the discussion above on the definition of a review participant at 11 AAC 110.990(41)].

A coastal district establishes its staff as preferred point of contact. The coastal district may then designate an alternative point of contact for the district, but that alternative point of contact must be another employee of the coastal district or a CRSA board member of the coastal district. The coastal district may utilize the services of a consultant to support and assist the coastal district in the review and analysis of a project under 11 AAC 110 and a district planning effort under 11 AAC

114, but the district can not and should not delegate the responsibility of formal representation of the district to a 3rd party.

DLA Recommendation No. 2 – DNR should complete the ABC List revisions and ACMMP re-evaluation it began years ago.

DNR concurs with this recommendation.

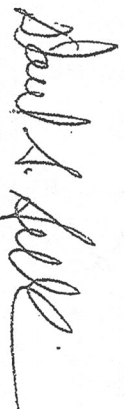
DCOM intends to initiate the formal public review and comment process for the consistency review regulations at 11 AAC 110 after the completion and release of the DLA audit report. DCOM will meet and exceed the requirements of the Administrative Procedure's Act to notice and offer commenting opportunities on the proposed regulations. Based on the anticipated public comment period, DNR's consideration of comments, the Department of Law review, the review and approval process of the Office of Ocean and Coastal Resource Management, and the filing timeframe and process with the Lieutenant Governor, I anticipate the regulation revisions to 11 AAC 110 will go into effect on or before December 2011.

The ABC List revision process will proceed concurrent with the 11 AAC 110 regulation revisions. Phase 1 of the ABC List revision is substantially complete, pending DCOM's issuance of the final consistency determination. DCOM is currently working with ACMMP participants to clarify and refine the new proposed generally consistent determinations (GCD's) under Phase 2 of the ABC List revision. DCOM anticipates initiating the Phase 2 consistency review for the new proposed GCD's in April 2011. Once DCOM issues the final consistency determinations for both phases of the revised ABC List, DNR will initiate a discrete regulation revision to 11 AAC 110 to include the effective date of the revised ABC List. Based on the review and approval process as described above for the regulation revisions, I anticipate the ABC List revisions will go into effect on or before December 2011.

As part of the implementation of the regulation and ABC List revisions, DCOM intends to embark on an intensive effort of outreach and training for the coastal districts, state agencies, industry, and interested members of the public.

Again, thank you for the opportunity to review the preliminary audit report on the ACMMP. I look forward to seeing the issues addressed and the audit report finalized. If you have any questions on the issues described within this letter or in the attachment, please contact the DCOM Director Randy Bates. He can be contacted at randy.bates@alaska.gov or (907) 465-8797.

Sincerely,



Daniel S. Sullivan
Commissioner

cc: Joe Balash, DNR, Deputy Commissioner
Randy Bates, DNR, DCOM, Director