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Mr. Ron Bolton
Asst. Planning Dir.
City & Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Mr. Ginny Chitwood
204 Franklin Street
Juneau, AK 99801

Mr. Ed Brannon
US Forest Service
Department of Agriculture
Box 1628
Juneau, AK 99802

Roy Clayton
General Delivery
Haines, AK 99827

Mr. Richard Buck
Federal Disaster Assistance
Dept. of Housing & Urban Dev.
1319 Second Avenue, RM M-16
Seattle, WA 98101

Mr. David Cline
Audobon Society
800 Glacier Ave.
Suite E
Juneau, AK 99801

Mr. Al Carson
Dept. of Natural Resources
323 E Fourth Avenue
Anchorage, AK 99501

Mr. Phil Daniels
United Fishermen of Alaska
Box 1352
Juneau, AK 99811

Mr. Chuck Chappell
Division Transportation Planner
FHA - US Dept. of Transportation
Box 1648
Juneau, AK 99802

Jim Duncan
RR 4 Box 4316
Juneau, AK 99803

Mr. Jim Cheatham
AK Power Administration
Dept. of Energy
Box 50
Juneau, AK 99802

Jim Duncan
Attn: Gordon Stockdale
Pouch V - Mail Stop 3100
Juneau, AK 99811

Dick Folta
Lynn Canal Conservation, Inc.
Box 37
Haines, AK 99827

Mr. Chuck Hawley
Alaska Miners Association
8740 Hartzell Rd
Anchorage, AK 99507

LCDR Rick Gallien
17th Coast Guard District (dpl)
U.S. Dept. of Transportation
Box 3-5000
Juneau, AK 99802

Mr. Hank Hays
State & Private Forestry
USFS
Pouch 6606
Anchorage, AK 99501

Mr. Paul Gates
U.S. Dept. of the Interior
Box 120
Anchorage, AK 99510

Carl Heinmiller
General Delivery
Haines, AK 99827

Mr. Henry Hall
SE District Office
Dept. of Nat'l Resources
Mail Stop 1000

Mr. Mark Hickock
AK Wilderness Society
1589 Sunrise Drive
Anchorage, AK 99504

Mr. Kenneth Hammons
Alaska Lumber & Pulp Company
Box 1050
Sitka, AK 99835

Andy Hughes
Project Manager
SE AK Transportation Study
SE Regional Office - DOT/PF
Mail Stop 2506

Marvin Hartshom
General Delivery
Haines, AK 99827

Mr. Larry Kimball
Community & Regional Affairs
225 Cordova St., Bldg. B
Anchorage, AK 99501

Mr. Dee Koester
Tidelands Officer
SE District Office
Dept. of Natural Resources
Mail Stop 1000

Mr. Weymeth Long
Soil Conservation Svc
US Dept. of Agriculture
2221 E Northern Lights Blvd.
Anchorage, AK 99502

David Laist
Marine Mammals Commission
1625 I Street NW, Rm. 307
Washington, DC 20006

Mr. Mike Miller
Environmental Coordinator
Division of Highways
Pouch Z

Mr. William Lloyd
US Army Corps of Engineers
Box 7002
Anchorage, AK 99510

Ben Mitchell
USFS
Box 1980
Sitka, AK 99835

Mr. Joe Loescher
Hughes, Thorsness, Gontz
Powell & Brundin
509 W 3rd Street
Anchorage, AK 99501

Mr. Donald Montgomery
USFW, US Dept. of the Interior
Box 1287
Juneau, AK. 99802

Mr. Robert Loescher
Div. of Nat. Resources
Sealaska Corp.
1 Sealaska Plaza
Juneau, AK 99801

Eileen Mulaney
OCZM
3300 Whitehaven Street, NW
Washington, D.C. 20235

Mr. Richard Logan
Chief
Habitat Protection Section
DF&G
Mail Stop 1100

Mr. Nan Nalder
US Dept. of Energy
915 2nd Avenue
Room 1910
Seattle, WA 98174

Lorie Nelson
General Delivery
Haines, AK 99827

3
Mr. John Pedrick
Office of General Counsel
NOAA
3300 Whitehaven Street NW
Washington, D.C. 20235

Ms. Sharon Newsome
AK Trollers Association
Box 5825
Ketchikan, AK 99901

Derek Poon
Box 876
Sitka, AK 99835

Ms. Helen Nienheuser
Div of Land & Resource Planning
Dept. of Nat'l Resources
323 E Fourth Avenue
Anchorage, AK 99501

Bill Ray
165 Behrends Ave.
Juneau, AK 99801

Anne Olsson
General Delivery
Haines, AK 99827

Rick Reed
Supervisor
Fish & Game
Mail Stop 1100

Merrill Palmer
General Delivery
Haines, AK 99827

Lori Roberts
KT00-FM
224 4th Street
Juneau, AK. 99801

Molly Pederson
P.O. Box 184
Barrow, AK 99723

Mr. Gene Sands
Exxon USA
Pouch 6601
Anchorage, AK 99502

Debra Schnabel
General Delivery
Haines, AK 99827

6
Mr. Lance Trasky
ADFG-Marine Coastal Habitat Mgt.
333 Raspberry Road
Anchorage, AK 99502

SEACC
Box 1692
Juneau, AK 99802

Mr. Pat Travers
NOAA
Box 1668
Juneau, AK 99802

Mr. Jeff Smith
Mauneluk, Inc.
Box 257
Kotzebue, AK 99752

Frank Wallace
General Delivery
Haines, AK 99827

Larry Streuber
SE Regional Office DOT/PF
Mail Stop 2506

Steven Waste
Wilderness Research Institute
Box K
Haines, AK 99827

A. N. Tabolini
Atlantic Richfield Company
Box 360
Anchorage, AK 99510

Jim Wiedeman
Dept. of Commerce & Economic Dev.
Pouch EE - MS 0800
Juneau, AK 99811

John Tomkins
General Delivery
Haines, AK 99827

Mr. Gordon Zerbetz
AK Public Utilities Commission
1100 McKay Building
338 Denali
Anchorage, AK 99501

Alaska Alliance
Box 1452
Juneau, AK 99802

Bruce Higgins
National Marine Fisheries
Box 1668
Juneau, AK 99802

Forrest Blau
DF&G
920 W. Diamond Blvd.
Anchorage, AK 99502

Homan-McDowell Associates
326 Fourth Street
#1104
Juneau, AK 99801

Newton Chase
US Dept. of Housing & Urban
Development
334 W Fifth Avenue
Anchorage, AK 99501

Michael Meenan
Planning Director
Municipality of Anchorage
Pouch 6-650
Anchorage, AK 99502

Veronica Clark
Dept of Community & Regional
Affairs
Mail Stop: 2100

John Merrick
BLM-Anchorage District Office
4700 E. 72nd Avenue
Anchorage, AK 99507

Nick Coti
Health & Social Services
Administrative Services
Pouch H-02 - MS 0600
Juneau, AK 99811

R.W. Pavitt, Inc.
130 Seward Street
Juneau, AK 99801

Commercial Fishing Vessel Owners
Box 161
Douglas, AK 99824

Gary Ransom
Community Enterprise Development
1011 E. Tudor Road
Suite 210
Anchorage, AK 99503

ADDITIONS

Pam Rogers
Natural Resources
Minerals & Energy Mgt
703 W. Northern lights Blvd
Anchorage, AK 99501

Jan Wrentmore
Sierra Club
Box 388
Juneau, AK 99802

Anchorage

Mr. Glenn Akins
Dept. of Environmental Conservation
Pouch 0 - MS 1800
Juneau, AK 99811

Mr. Dan Bockhorst
City Administrator
Box 576
Haines, AK 99827

Mr. Larry Albert
BLM/OCS
Box 1159
Anchorage, AK 99510

Mr. Ron Bolton
Asst. Planning Dir.
City & Borough of Juneau
155 S. Seward Street
Juneau, AK 99801

Ms. Marcia Alvar
AK Public Radio Network
400 Gamble St.
Suite 302
Anchorage, AK 99591

The Honorable W. E. Bradley
Drawer 8-Q
Anchorage, AK 99508

Mr. Robert Baldwin
FAA-Dept. of Transportation
623 W Sixth Avenue
RM 804
Anchorage, AK 99501

Mr. Ed Brannon
US Forest Service
Department of Agriculture
Box 1628
Juneau, AK 99802

Ms. Helen D. Beirne
Commissioner
Health & Social Services
Pouch H
Juneau, AK 99811

Mr. Richard Buck
Federal Disaster Assistance
Dept. of Housing & Urban Dev.
1319 Second Avenue, RM M-16
Seattle, WA 98101

*Tony Buzio
Municipality of Anchorage
POUCH 6-650
ANCH. AK. 99503*

Mr. Jay Bergstrand
Dept. of Transportation and
Public Facilities, Div. of Minerals & Energy
703 W Northern Lights Blvd.
Anchorage, AK 99501

Mr. Al Carson
Dept. of Natural Resources
323 E Fourth Avenue
Anchorage, AK 99501

Ms. Kathy Carssow
Associate Planner
344 Front Street
Ketchikan, AK 99901

Mr. Fred Chiei, Jr.
Deputy Regional Administrator
US Department of Energy
605 W Fourth Avenue
RM G-11
Anchorage, AK 99501

R. D. Casad
Regional Administrator
GSA Region 10
Auburn, WA 98002

Veronica Clark
DCRA
Mail Stop #2100

Mr. Chuck Chappell
Division Transportation Planner
FHA - US Dept. of Transportation
Box 1648
Juneau, AK 99802

Ms. Debra Clausen
ADFG-Marine Coastal Habitat
920 W Dimond Blvd.
Anchorage, AK 99502

Mr. Newton Chase
FHA-Dept. of Housing & Urban
Development
334 W Fifth Avenue
Anchorage, AK 99501

Mr. Peter Coffey
OCZM/NOAA
One Page Building
3300 Whitehaven St., NW
Washington, D.C. 20235

Mr. Jim Cheatham
AK Power Administration
Dept. of Energy
Box 50
Juneau, AK 99802

Mr. Bill Coghill
Alaska Railroad
FRA-Dept. of Transportation
Box 7-2111
Anchorage, AK 99510

Mr. Kyle Cherry
Southcentral Regional Office
Dept. of Environmental Conservation
338 Denali Street
Anchorage, AK 99501

The Honorable Mike Colletta
Box 3188
Anchorage, AK 99501

Mr. Nick Coti
Health & Social Services
Div. of Administrative Services
Pouch H-02
Juneau, AK 99811

Mr. Rikki Fowler
ADEC
338 Denali
RM 1206
Anchorage, AK 99501

The Honorable M. E. Dankworth
2425 Hialeah Drive
Anchorage, AK 99503

Ms. Debbie Fullewider
President
Eklutna, Inc.
840 K Street
Suite 202
Anchorage, AK 99501

Mr. Walt Downes
Division of Planning & Research
4111 Aviation Avenue
Anchorage, AK 99502

LCDR Rick Gallien
17th Coast Guard District (dpl)
U.S. Dept. of Transportation
Box 3-5000
Juneau, AK 99802

Mr. Larry Dutton
Manager
AK Div. of Lands SO District
3327 Fairbanks
Anchorage, AK 99503

Mr. Paul Gates
U.S. Dept. of the Interior
Box 120
Anchorage, AK 99510

Mr. John Farnan
Dept. of Commerce & Economic Dev.
Pouch EE - MS 0800
Juneau, AK 99811

Mr. Howard Goldman
308 G Street
Suite 307
Anchorage, AK 99501

Mr. James Fisher
US Dept. of Agriculture
2221 E Northern Lights Blvd.
Suite 126
Anchorage, AK 99504

The Honorable Tim Kelly
283 Muldoon Road
Sta Box 76
Anchorage, AK 99503

Mr. Larry Kimball
Community & Regional Affairs
225 Cordova St., Bldg. B
Anchorage, AK 99501

Mr. Perry Lovett
City Manager
Box 1210
Cordova, AK 99574

Mr. James Kross
President
Environmental Services, Ltd.
835 West 9th Avenue
Anchorage, AK 99501

Mr. Paul Lowe
Executive Director
AK Center for the Environment
1069 W 6th Avenue
Anchorage, AK 99501

Mr. Hap Leon
President
Pacific Rim Planners, Inc.
5606 14th Avenue NW
Seattle, WA 98107

Mayor Al Macasaet
Box 113
Klawock, AK 99925

Mr. William Lloyd
US Army Corps of Engineers
Box 7002
Anchorage, AK 99510

Ms. Terry McGuire
AK Power Authority
333 W Fourth Ave., Suite 31
Anchorage, AK 99501

Mr. Joe Loescher
Hughes, Thorsness, ~~Gentle~~
Powell & Brundin
509 W 3rd Street
Anchorage, AK 99501

The Honorable Joseph McKinnon
1411 W 32nd Street
Anchorage, AK 99503

Mr. Weymeth Long
Soil Conservation Svc
US Dept. of Agriculture
2221 E Northern Lights Blvd.
Anchorage, AK 99502

Mr. Terry McWilliams
Director
Division of Parks
Dept. of Natural Resources
616 Warehouse Avenue
Anchorage, AK 99501

Mr. Michael Meehan
Planning Director
Pouch 6-650
Anchorage, AK 99502

The Honorable Joe Montgomery
1048 Beech Lane
Anchorage, AK 99501

The Honorable Russ Meekins, Jr.
1526 K Street
Anchorage, AK 99501

The Honorable Joyce Munson
935 East 79th Street
Anchorage, AK 99502

Mr. Marvin Meier
State & Private Forestry
US Forest Service
Pouch 6606
Anchorage, AK 99501

Mr. Nan Nalder
US Dept. of Energy
915 2nd Avenue
Room 1910
Seattle, WA 98174

Mr. John Merrick
Anchorage District Office-BLM
Peninsula Resource Area
4700 East 72nd Avenue
Anchorage, AK 99507

Mr. George Oliver
Anchorage Board of Realtors
1818 Northern Lights Blvd. West
Anchorage, AK 99501

The Honorable Ray Metcalfe
Box 4-2766
Anchorage, AK 99509

Mr. Mike Owen
Kramer, Chin & Mayo, Inc.
1917 First Avenue
Seattle, WA 98101

The Honorable Bill Miles
Box 4-2038
Anchorage, AK 99507

The Honorable Bill Parker
200 Denali Street
Anchorage, AK 99501

Commander Robert Parker
Deputy District Civil Engineer
13th Naval District
7500 Sand Point Way NE
Seattle, WA 98115

Mr. Brent Petrie
Chief
Water Management Section
Dept. of Natural Resources
323 E 4th Avenue
Anchorage, AK 99501

Ms. Ann Pasch
Department of Geology
2533 Providence Dr.
Anchorage, AK 99501

The Honorable Randy Phillips
Box 142
Eagle River, Alaska 99577

Mayor John Patterson
Box 23
Craig, AK 99921

Mr. Wayne Pichon
US Fish & Wildlife Svc
1011 E Tudor Rd.
Anchorage, AK 99503

R. W. Pavitt
R.W. Pavitt & Associates, Inc.
130 Seward St. RM 205
Juneau, AK 99801

Mr. Doug Redburn
Dept. of Environmental Conservation
Pouch 0 - MS 1800
Juneau, AK 99811

Molly Pederson
P.O. Box 184
Barrow, AK 99723

Mr. Fred Reiff
Environmental Health Branch
AK-Area Native Health Svc/USPHS
Box 7-74
Anchorage, AK 99510

Mr. John Pedrick
Office of General Counsel
NOAA
3300 Whitehaven Street NW
Washington, D.C. 20235

Mr. Jack Rederick
FHA/USDA
Palmer Business Plaza
Box 1289
Palmer, AK 99645

The Honorable Patrick Rodey
601 W 5th Avenue
Suite 820
Anchorage, AK 99501

Mr. Mark Stephens
Community & Regional Affairs
Division of Planning
225 Cordova St., Bldg. B
Anchorage, AK 99501

Ms. Pam Rogers
Dept. of Natural Resources
Div. of Minerals & Energy Mgt.
703 W Northern Lights Blvd.
Anchorage, AK 99501

The Honorable Terry Stimson
1610 E Street
Anchorage, AK 99501

Mr. Gene Sands
Exxon USA
Pouch 6601
Anchorage, AK 99502

The Honorable Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99504

Mr. Jeff Smith
Mauneluk, Inc.
Box 257
Kotzebue, AK 99752

The Honorable Bill Sumner
2216 Culver Place
Anchorage, AK 99503

Mr. Ted Smith
Director
Div. of Forest, Land & Water Mgt.
Dept. of Natural Resources
323 E 4th Avenue
Anchorage, AK 99501

A. N. Tabolini
Atlantic Richfield Company
Box 360
Anchorage, AK 99510

Mr. Robert Steele
Environmental Protection Coordinator
US Air Force AAC/DEEV
Elmendorf AFT
Anchorage, AK 99506

Mr. Gordon Thompson
Director
Nat'l Resources Department
Metlakatla Indian Community
Box 8
Metlakatla, AK 99926

Mr. Fred Thorsteinson
National Marine Fisheries Svc.
US Dept. of Commerce
Box 1668
Juneau, AK 99802

8
Jim Wiedeman
Dept. of Commerce & Economic Dev.
Pouch EE - MS 0800
Juneau, AK 99811

Mr. Lance Trasky
ADFG-Marine Coastal Habitat Mgt.
333 Raspberry Road
Anchorage, AK 99502

Mr. Dan Wilkerson
SC AK Water Resources Study
BLM - Dept. of the Interior
Box 3276 DT
Anchorage, AK 99510

Mr. Pat Travers
NOAA
Box 1668
Juneau, AK 99802

Mr. Frank Young
Office of State Programs
Nuclear Regulatory Commission
Washington, DC 20555

Ms. Mary Ann Turner
USGS/Conservation Division
630 National Center
Reston, VA 22092

Mr. Gordon Zerbetz
AK Public Utilities Commission
1100 McKay Building
338 Denali
Anchorage, AK 99501

Mr. Philip Waring
Planning Director
Kenai Peninsula Borough
Box 850
Soldotna, AK 99669

M. P. Wennkens
ACS Upper Cook Inlet Chapter
Box 3724 Downtown Station
Anchorage, AK 99510

ADDITIONS

Ms Lori Roberts
KT00-FM
224 4th Street
Juneau, AK 99801

Donald Montgomery
Box 1287
Juneau, AK 99802



Official Business

Alaska State Legislature

Senate Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

NOTICE

The Senate Community and Regional Affairs Committee will hold a series of three meetings regarding legislative approval of three district coastal management programs--Haines District Coastal Management Program, Annette Islands District Management Program, and Anchorage Municipal District Coastal Management Program.

2/8/80 8:30-10:00 a.m. Joint House-Senate CRA Committees will hold a work session on the district programs with presentations by the Office of Coastal Management.

HCRA Committee Room, Capitol Building, Rm. 112.

2/21/80 1:00-3:00 p.m. Senate CRA Committee Public Hearing regarding district coastal programs and related policy and implementation issues. A copy of Committee concerns is attached. In advance of this session interested parties are invited to submit written comments on policy and implementation concerns. Public testimony is encouraged on district programs.

2/28/80 1:30 p.m. Senate CRA Additional comments, if any, on the district programs and action meeting.

SCRA Committee, Rm. 207, Capitol Building

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
317 BAWDEN STREET
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811



Senate

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SENATE JUDICIARY COMMITTEE
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LEGISLATIVE COUNCIL
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

February 14, 1980

The Honorable Mayor and Council
Annette Islands Reserve
Hydaburg, Alaska 99922

Gentlemen:

Representative Bill Parker, Chairman of the House Community and Regional Affairs, has scheduled a hearing on the Annette Islands District Management Program. You can call the good Representative's Juneau office at 465-3870 and tell him on which of these two dates you'd like to testify: Wednesday, February 27 or Monday, March 3 at 8:30 a.m. in Room 112, Capital Building. If you decide that there is no need to put testimony on record, you should call Representative Parker's office and let that fact be known. In other words, either way, call Mr. Parker's office as soon as you know which route you are going.

Regards,

BH Ziegler
Robert H. Ziegler, Sr.

RHZ:lk

cc: Representative Parker

Trustees for ALASKA

835 D Street #202, Anchorage, Alaska 99501 (907) 276-4244

CZM
3/12/78

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for the Environment
Anchorage, Alaska

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Anchorage, Alaska

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Anchorage, Alaska

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College, Alaska

Dr. David Klein
Director, Alaska Cooperative
Wildlife Research Unit
University of Alaska
Fairbanks, Alaska

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Alaska Rep.
Friends of the Earth
Fairbanks, Alaska

William K. Reilly
Pres., Conservation Found.
Washington, D. C.

Dr. George W. Rogers
Economist, Institute for Social,
and Econ. Research
University of Alaska
Juneau, Alaska

Dr. Arlon R. Tussing
Economist, Univ. of Alaska,
Senate Interior Committee
Washington, D.C.

Robert B. Weeden
Professor, Wildlife
Management
University of Alaska
Fairbanks, Alaska

Paul N. Yivisaker
Dean, Grad. School of Ed.
Harvard University
Cambridge, Massachusetts

March 10, 1979

Honorable Bill Parker
House Committee on Community & Regional Affairs
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Bill:

Enclosed is a copy of the comments our office recently submitted on the Draft Environmental Impact Statement on the Alaska Coastal Management Program. I don't know if they are relevant to your Committee's immediate agenda, but in any case I hope they will be of some use in its future deliberations on the Alaska Program.

Next time you are back in Anchorage I would very much like to have the chance to talk to you about the whole coastal management issue.

Thank you for your interest.

Sincerely yours,



Robert E. Mintz
Staff Attorney

Trustees for ALASKA

835'D Street #202, Anchorage, Alaska 99501 (907)276-4244

EXPRESS MAIL

Board of Trustees

Chairman:

Margaret B. Tieston
President, Alaska Center
for the Environment
Anchorage, Alaska

Roderick A. Cameron
Attorney
Seattle, Wash.

Robert M. Goldberg
Attorney
Anchorage, Alaska

John S. Hedland
Attorney
Anchorage, Alaska

Celia M. Hunter
Member, Federal-State Land
Use Planning Commission
College, Alaska

Dr. David Klein
Director, Alaska Cooperative
Wildlife Research Unit
University of Alaska
Fairbanks, Alaska

James E. Kowalsky
Alaska Rep.
Friends of the Earth
Fairbanks, Alaska

William K. Reilly
Pres., Conservation Found.
Washington, D. C.

Dr. George W. Rogers
Economist, Institute for Social,
and Econ. Research
University of Alaska
Juneau, Alaska

Dr. Arlon R. Tussing
Economist, Univ. of Alaska,
Senate Interior Committee
Washington, D.C.

Robert B. Weeden
Professor, Wildlife
Management
University of Alaska
Fairbanks, Alaska

Paul N. Ylvisaker
Dean, Grad. School of Ed.
Harvard University
Cambridge, Massachusetts

March 5, 1979

Pacific Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Coffey:

We are pleased to submit our comments on the draft EIS for the Alaska coastal management program. We strongly support the concept of coastal management for Alaska. This letter, with attached comments and recommendations, constitutes our response to this document. The summation of concerns presented in this letter is based on the more detailed analysis and comment supplied in the attachment. We request that your replies to our comments address both the concerns aired in this letter and the issues identified in the attached document.

We support a strong coastal management program for Alaska. We feel that the diverse nature and relatively pristine quality of coastal Alaska warrants special management consideration. Due to the exceptional quality of the Alaskan coast, and the extensive physical, biological, and social resources which depend on the continued integrity of the coastal ecosystem, we cannot afford to follow the previous pattern of reacting to development in a piecemeal manner. An effective management scheme must provide predictable, comprehensive guidance based on sound resource management principles. It is our hope that the Alaska Coastal Management Program can provide such a management program.

The program, as currently approved by the legislature, is unacceptable, and the amendments which attempt to improve deficiencies in the program, have not yet received legislative approval. Consequently, we cannot recommend approval or disapproval of the program at this time. Other program elements, such as uses of state concern, and the manual of standards, have not yet been subjected to public review through the EIS process. We therefore reserve the right to review and comment on the program after legislative action and prior to program certification and approval by the Department of Commerce.

Other weak points in the program, addressed more fully in the attached document, are:

(1) The ACMP does not give adequate consideration to environmental values,

(2) The ACMP inadequately provides for consideration of regional and cumulative impacts,

(3) The ACMP allows overly broad exceptions to its requirements,

(4) The "Uses of State Concern" resolution has not been subjected to public review,

(5) Important provisions regarding district accomodation of Uses of State Concern are unclear,

(6) Required legislative approval of each district program is likely to cause unnecessary delay in implementation of plans,

(7) The AMSA designation process may stifle public participation,

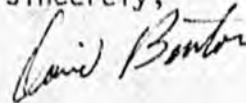
(8) Many of the guidelines and standards need clarification, and exceptions to the guidelines and standards should be more narrowly defined, and,

(9) Some of the guidelines and standards rely on existing state programs which have not been effective in the past.

Because of the tentative nature of portions of the ACMP, the thrust of our comments and recommendations at this time is to air our concerns and seek clarification of issues from both the Office of Coastal Management and the Office of Coastal Zone Management. Once the legislature has acted, we will be more able to assess the acceptability of the program.

We thank you for this opportunity to comment on the DEIS for Alaska's coastal zone management plan, and look forward to working with you in the future.

Sincerely,



David Benton
Nancy Cliff
Suzanne Weller
Robert E. Mintz

Submitted on behalf of:

Trustees for Alaska, an Alaskan non-profit public interest law firm with approximately 1000 members,

Friends of the Earth, an international environmental organization with offices and membership in Alaska,

Greenpeace Alaska, an arm of Greenpeace International, with over 300 members in Alaska, and

Alaska Center for the Environment, an Alaskan non-profit environmental organization with 3000 members.

Encl.
EXPRESS MAIL

I. The ACMP Does Not Give Adequate Consideration To Environmental Values

The Federal Coastal Zone Management Act ("CZMA") was passed in reaction to the widespread degradation of productive coastal habitats. * Recognizing that development in the coastal zone has always had its champions, Congress sought to protect the long ignored natural values of our coastal areas, and expressed "the urgent need to protect and to give high priority to natural systems in the coastal zone." CZMA of 1972, Sec. 302 (g). The repeated federal stress on protection of coastal systems in a natural state has received less than whole-hearted support from the state of Alaska.

Underlying most of the policies and objectives, standards, and guidelines of the ACMP is the implicit assumption that most of Alaska's coastline will be developed. These regulatory mechanisms have been proposed with an eye toward industrial, recreational and commercial uses of this vast untouched resource. Rarely do they promote the "important ecological, cultural, historic, and esthetic values in the coastal zone;" CZMA of 1972, Sec. 302 (e) nor do they suggest that substantial areas are so valuable and/or fragile that they should not be subjected to any development.

II. The ACMP Inadequately Provides for Consideration of Regional & Cumulative Impacts

We are concerned that the State Act, and the guidelines and standards, inadequately provide for consideration of regional and cumulative impacts of activities in the coastal zone. The CZMA found that "...present state and local institutional arrangements for planning and regulating land and water uses (in the coastal zone) are inadequate," CZMA of 1972, Sec. 302 (g), and encouraged states to develop unified policies and processes for dealing with land and water uses of more than local significance. Sec. 302 (h), CZMA of 1972. Alaska's mechanisms for coping with regional and

* (d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

cumulative impacts in the coastal zone remain inadequate.

* A. Regional planning receives little attention in Alaska's program.

The guidelines and standards attempt to provide for regional planning, 6 AAC 80.030(b) and (c):

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.891(a)(1). Regional programs will

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the Office of Coastal Management. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

However, it is unlikely that thorough regional planning will take place in time to significantly influence the district planning processes.

The original regional planning team was recently disbanded because it was ineffective, and the current regional planning mechanism, described at DEIS 205-208, cannot be expected to produce results sufficiently early to affect the development of local plans. The State Agency Coastal Coordinating Team will also apparently not "provide resource, social, and economic information on a coordinated regional basis" as required by 6 AAC 80.030(b)(2).

B. The ACMP does not consider cumulative impacts of activities in the coastal zone.

Although the ACMP adequately details plans for evaluating the potential of any particular site to withstand a certain activity, there is no specific capacity for cumulative impact review, either within a district, or on a regional or statewide basis. Thus, significant actions in the coastal zone may not be recognized. Needless to say, fragile ecosystems know no superimposed political boundaries. In Alaska attention must even be paid to the international implications of local environmental disruptions. By ignoring cumulatively destructive development, the state not only violates the federal

legislative intent, but also jeopardizes the continuing health of its economy and sociocultural structure. The ACMP should clearly outline a technique for the interaction of coastal districts, stressing the need for review of cumulative impacts of various individual activities and piecemeal permit and license decisions.

- C. The ACMP inadequately provides for participation of citizens outside a district, in the district's planning and implementing process.

While the ACMP has admirably provided for the flow of information between State, Federal, and local agencies, there is only the most meager attention given to the need for affected citizens to stay informed of coastal zone activities to be undertaken in other districts. This oversight might be easily obviated by broadening the A-95 clearing-house distribution scope or by directing the Office of Coastal Management to reinforce the notification process.

A related matter is that of conflict resolution in a district for which a management program has been approved. A citizen outside the district in question does not have standing before the Coastal Policy Council to voice a complaint about implementation of, compliance with, or enforcement of that district's program.

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being implemented, enforced or complied with, the council shall convene a public hearing to consider the matter...

AS 46.40.090(b). This may be easily rectified by conferring such standing and encouraging outside participation.

III. The Alaska Coastal Management Act, and the Guidelines and Standards, allow overly broad exceptions to the requirements of the plan.

The ACMA, and the guidelines and standards, contain a number of loopholes which can subvert the purposes of the CZMA. The most important of these are the broad exceptions contained in the definition of "feasible and prudent," 6 AAC 80.900(9), and in the standards governing Council approval of plans which do not comply

with the guidelines and standards, AS 46.40.070(b)(2).

A. "Feasible and prudent."

The definition of "feasible and prudent" as proposed in the amendments to the guidelines and standards, 6 AAC 80.900(9) is

(9) "feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent"; This definition is a phrase which modifies the proposed energy activities siting guidelines, 6 AAC 80.070(b), the habitat standards, 6 AAC 80.130(d), the proposed transportation and utility standards, 6 AAC 80.080, the coastal development standards, 6 AAC 80.040, and the proposed mining and mineral processing standards, 6 AAC 80.110, provides a loophole which might be used to bypass the already broad requirements of the guidelines and standards. Any flexibility needed can be provided by a narrow definition of feasible and prudent, plus exemptions incorporated in individual standards as appropriate.

The definition of feasible and prudent, as proposed, allows departure from a number of the guideline and standards if the "environmental, social, or economic problems (caused by compliance) outweigh the public benefit to be derived from compliance." This definition would possibly allow non-compliance with the guidelines and standards in order to protect a private interest. The public should only forego a public benefit if the costs to the public outweigh the public benefits to be gained.

The balancing process implicit in the definition gives too much unguided discretion to the districts, and should be replaced with a definition such as,

"consistent with sound engineering practice, and not causing unique problems . . ."

The definition, drawn from Citizens to Preserve Overton Park v. Volpe, 401 U. S. 402, 415-16 (1971), demonstrates a strong commitment to the guidelines and standards, while allowing exceptions in the unusual cases where the guidelines and standards are not appropriate. Since the DEIS states that the "effect of allowing exceptions to the standards will be to cause adverse impacts which the standards seek

to avoid," DEIS at 261, (referring to energy facilities siting standards), exceptions should be carefully circumscribed. An Overton Park standard will carefully limit exceptions; the 6 AAC 80.900(9) definition of "feasible and prudent" may not.

B. The Alaska Coastal Management Act allows overly broad exceptions to the guidelines and standards.

AS 46.35.070(b)(2) allows Council approval or district plans which do not comply with the guidelines and standards so long as "strict adherence (to the guidelines and standards) would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district." This provision contains the same basic flaws as the definition of feasible and prudent. It might not be read as requiring balancing of public risks versus public benefits, and provides flexibility where none is required. Needed flexibility can be incorporated in the guidelines and standards.

IV. The AMSA designation process is likely to hinder public participation.

The AMSA designation process as defined in the draft EIS, could effectively prevent an individual from making an AMSA recommendation, particularly if this person is from rural Alaska where much of the required information would be extremely difficult to obtain. Because of this problem we propose the following two-step process as a method of assuring adequate public participation.

Although we agree that the information required for AMSA nomination is important to the overall process and must be included in any AMSA designation, we feel that the task of researching and compiling much of the required information lies with the governmental bodies involved,

and not with the individual. It should be stressed that this is merely a change in the identification process and not in the designation process. In order to take effect, the AMSA recommendation must still be approved by the district, the Council, and the Legislature, as provided in the ACMP.

Our proposed AMSA designation process would consist of two parts. Part one, the recommendation stage, would identify a particular area as a potential AMSA. This recommendation could be made by any government agency, local government, private group, or citizen, and could be presented to either the district or the Council as provided in the Council-proposed amendments to 6 AAC 80.160(a). If the recommendation is made by a governmental body, all information required by 6 AAC 80.160 (a)(1-7) would be provided, and the process would remain as currently proposed. If the recommendation is made by a private group or citizen, only more limited information would have to be provided at the recommendation stage. Information which would be required of private parties would include:

- (1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;
- (2) a map showing the approximate geographical location and proposed boundaries of the AMSA;
- (3) a description of the area which includes dominant physical and biological features and their significance;
- (4) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and
- (5) a summary or statement of policies which would be applied in managing the area, including a description of allowable and incompatible uses and activities.

Provision should be made for accepting or rejecting a recommendation based on its suitability and reasonableness. We do not want to bury either the districts or the Council with AMSA designations. However, it should be noted that AMSA's are the only truly protective provisions in the ACMP. Public participation must be insured, through the Guidelines and Standards, in this important component of the program.

Upon finding that the recommendation warrants further action, the district (or Council) would prepare a "hearing document" on the proposal.* This document would include the following information (as provided for in 6 AAC 80.160(a)):

- (1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;
- (2) a map showing the geographical location, surface areas, and, where appropriate, bathymetry of the area;
- (3) a description of the area which includes dominant physical and biological features;
- (4) the existing ownership, jurisdiction and management status of the area, including existing uses and activities;
- (5) the existing ownership, jurisdiction and management status of adjacent shoreland and seas areas, including existing uses and activities;
- (6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and
- (7) a proposed management scheme, consisting of the following:
 - (A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area,
 - (B) a summary or statement of the policies which will be applied in managing the area, and
 - (C) identification of the authority which will be used to implement the proposed management scheme.

It should be noted that much of this information will be supplied in the initial recommendation. The more detailed land status and status and statutory information will be provided by the planning body involved. This would result in a more equitable distribution of effort and responsibilities in the AMSA designation process.

This "hearing document" would be widely circulated to the affected local governments, appropriate state agencies, and interested public groups or individuals for review and comment. The review period would

* The information submitted by Federal and State agencies, or local governments, under 6 AAC 80.160(a) would constitute a "hearing document" and would be subject to public review and comment.

be 60 days and at least one public hearing would be held in the local area.

Following the public review and comment period, a "designation document" would be prepared, consisting of the information contained in the hearing document, all public comment on the proposal, and either the district's or the Council's response (whichever is appropriate) to these comments. The designation document is the hearing document adjusted to respond to government and public comments and concerns. It is this document which would be used in the designation and approval process outlined in the DEIS at 113-115.

V. No clear remedy exists if districts do not submit programs within the allotted time.

The Coastal Zone Management Act of 1972 requires that adequate enforcement mechanisms be established to ensure that state and local policies regarding use of the coastal zone are carried out. The current Alaska plan, as described in the draft EIS, needs to clarify the remedy if a district does not submit any program within the 30 month period specified.

AS 46.40.050 states that a district shall complete its plan within 30 months, and AS 46.40.060 sets forth a procedure for Council approval or disapproval of a district program, once it is submitted. However, if no district program is submitted, no obvious provision currently exists to allow the Council to force preparation of a plan, or to allow another body to prepare the plan instead of the district. We suggest that a provision similar to AS 46.40.170(b) be added at AS 46.35.055, so that an area which does not submit a district program or have one near completion can be subjected to a program prepared by the Department of Community and Regional Affairs, or another appropriate body.

VI. The requirement that all district programs be approved by the legislature is likely to lead to unnecessary delay.

Under the system set up by the ACMA, district plans are (a) approved at the district level, (b) approved by the Council, and then (c) approved or disapproved by the legislature. We believe that legislative approval is an unnecessary step which will delay, and possibly confuse the process.

The Alaska Coastal Management Act provides for district approval, Council approval, and legislative approval before a plan becomes part of the Alaska Coastal Management Program (at which point federal and state consistency provisions apply.) Alaska legislature meets approximately 5 months a year, and popular pressure is building to limit the length of the session. Since the legislature meets from approximately January through April or May, a plan which is submitted in December may not wait long for approval, but a plan approved by the Council in May must wait for 7 months before even being considered. If the legislature wants to retain power over the program, a legislative veto (rather than an affirmative approval requirement) might be appropriate. As the DEIS stresses, Alaska has an immediate need for a coastal zone management program, and a legislative approval requirement will delay implementation of the program, without significantly contributing to the overall management scheme.

VII. Uses of State Concern

Because Coastal Policy Council Resolution 13, dealing with the subject of "uses of state concern," has not been addressed in the DEIS, it is not possible now for us to comment adequately on this subject. There is, however, some language in the state Coastal Management Act which should be considered. Section 46.40.070(c) establishes three criteria for evaluating district restrictions on uses of state concern. In principle these criteria are proper, but there may be room for misinterpretation of the second criterion, "availability of reasonable alternative sites." What this appears to mean is that districts should consider the issue of alternative sites in deciding on possible restrictions or exclusions of uses in question. However, one might conceivably read the provision as requiring that any time a particular instance of a use of state concern is proposed, the district must allow it where proposed, unless there is an alternative site available. This construction would of course go far beyond the requirements of the Federal Act, Sec. 306(c)(8) which mandates that certain types of uses be given adequate consideration, not that they ride roughshod over all competing uses and values. * It is inconceivable that, in enacting a program which so greatly encourages local decision-making in coastal management, the legislature would have intended the criterion to have the latter effect. If there is any question about the meaning of this provision, it may be desirable to clarify the subject in the final EIS.

* Some areas, regardless of development potential, and of the availability or non-availability of alternative sites, should not be developed because they are fragile, or because the naturally-functioning habitat is too valuable to be disturbed.

VIII. Comments on Specific Guideline and Standards.

A. Coastal Development-6 AAC 80.040

6 AAC 80.040. COASTAL DEVELOPMENT. (a) *In planning for and approving development in coastal areas, districts and state agencies shall give, in the following order, priority to:*

- (1) *Water-dependent uses and activities;*
- (2) *Water-related uses and activities; and*
- (3) *Uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.*

(b) *The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with (the standards contained in) Parts 320-323, Title 33, Code of Federal Regulations, (Vol. 42 of the Federal Register, pp. 37133-47) (July 19, 1977).*

Pressure to develop much of Alaska's coastline can only increase over time. Indeed, much of the coast is slated for development in the not-too-distant future. It is also true that only a limited amount of the available coastal area is suitable for development. The ACMP recognizes this fact and the coastal development standard is an attempt to address this issue. The standard does set priorities for uses, giving preference to water-dependent activities over uses which do not require a coastal location.

However, the standard fails to address the issue of limiting development to suitable areas. The question here centers on the carrying capacity of a particular area to sustain development. With limited shorefront space, will a district elect to dredge and fill an area (estuary, salt marsh, etc.) to accommodate new development? The standard needs to address this issue in terms of limiting development to those areas in which it is suitable, and by promoting use of already developed areas as much as possible prior to expansion into new, less acceptable areas ("in-filling").

The standard also fails to supply a concise mechanism for resolving conflicts between two or more water-dependent uses competing for the same space. A clarification of these two issues is needed, providing:

- a clear mechanism for arbitrating the use of limited waterfront space between two or more competing water-dependent uses, and
- a statement of policy explicitly promoting in-filling within already developed areas, and declaring if, when, and under what conditions development can proceed in unacceptable areas (such as geophysical hazard

areas, wetlands, estuaries, etc.) once all other available areas suitable for development are used within a district.

Part (b) of the coastal development standard requires compliance with the standards contained in the Code of Federal Regulations, Title 33, parts 320-323. The standard fails to identify the agency responsible for administering these regulations, particularly in the Unorganized Borough. Currently, these regulations are administered by the Corps of Engineers. In the past the Corps has shown reluctance to actively regulate and manage activities taking place in these areas. We are concerned that this not remain the case. Two issues come to mind:

(1) Does the State, through its Dept. of Environmental Conservation or other agencies, have a wetlands management program? If it does, this should be clearly described in the DEIS.

(2) If, as we believe, the State does not have a wetlands management program, then the following must appear in the FEIS:

(a) a clear identification of which agency or agencies will be responsible for wetlands management under ACMP in both the districts and the Unorganized Borough,

(b) an explicit description of the regulatory powers of this agency (agencies) to administer this aspect of wetlands management and the relationship this will have to districts and state agency activities under ACMP, and

(c) a description of responsibilities among districts and agencies for monitoring enforcement and compliance with these regulations.

B. Geophysical Hazards - 6 AAC 80.050

6 AAC 80.050. GEOPHYSICAL HAZARD AREAS. (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.

Clearly the intent of this standard is to identify hazard areas and to prevent, limit, or modify development in these areas in order to minimize damage and loss of life. Section (b) of this standard reads:

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.

It is unclear whether this means that development in areas which have been identified in (a) shall not proceed, or that development is at the discretion of the district.

C. Coastal Access - 6 AAC 80.060 (b)

(b) (Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal waters.)

The proposed addition to 6 AAC 80.060 of subsection (b), giving high priority to maintaining public access, is of course necessary and desirable. However, there is a serious question whether the description of the "Shorefront Access and Protection Planning Process" actually refers to an effective process as distinguished from a collection of potential tools which might or might not be used in an organized fashion. Where in the ACMP is a mechanism which ensures that possible threats to access be anticipated, evaluated and managed with respect to present and future access needs and opportunities and specifically how will these issues be addressed from a statewide perspective?

D. Energy Facilities - 6 AAC 80.070

The standards provided in the Council's proposed amendments for siting of energy facilities generally appear helpful and reasonable. However, as in a number of other instances, their effectiveness is likely to be significantly impaired by the qualifier "to the extent feasible and prudent," as that phrase is defined in 6 AAC 80.900(9) (proposed amendment). Another concern is the possibility that subsection (a) of the energy facilities standard might be misinterpreted as implying that each and every district necessarily contains sites suitable for the development of major energy facilities, a proposition which may or may

not be true. Some districts may have no sites suitable for such facilities, while others have many such sites. Indeed, it is possible that there is no location in the entire state suitable for certain facilities, e.g. "uranium enrichment or nuclear fuel processing facilities." DESI, p. 63. The Federal Act, of course, does not require states to provide sites for all such facilities, but only to ensure adequate consideration of the national interest when determining if, when, and under what conditions such facilities should be sited.

More generally, the proper evaluation of optimal siting of energy facilities in Alaska requires a statewide perspective in order to take account of the differences among districts and not just the differences within each district. While the language of subsection (a) does refer to the State as well as the districts, it is unclear how such evaluation will be carried out and used.

Presumably, the "energy facility planning process" required by Section 305(b)(8) of the Federal Act should perform this coordinating function, but the DEIS's description on this score (Appendix 7) is far from reassuring. Despite an impressive array of authorities which could be used and of occasions where planning has been attempted, we question whether the state has demonstrated the existence of any coherent process "for anticipating and managing the impacts from" energy facilities. We also take specific exception to the DEIS's inclusion, on p. 397, of the Agency Advisory Committee on leasing as a coordination mechanism. While the Alaska Dept. of Natural Resources some time ago proposed pre-leasing regulations which would have officially established such a planning and advisory committee and related planning tools, including social, economic, and environmental analyses of proposed leasing actions, issuance of these regulations has been inexplicably withheld. In the meantime, it is our understanding that a previous ad hoc version of this committee (since formalized through an executive order) has ceased to function meaningfully in the current planning stages of the proposed joint Federal-State Beaufort Sea lease sale.

The energy facilities planning process, as described in the DEIS, has other important implications and limitations. Of primary concern

is the reliance on the process on the current State oil and gas leasing program. Significant problems with this programs include:

- no current provision for analysis of the social or environmental costs associated with the State's oil and gas leasing program,

- no requirment for analysis of the long-term effects and/ or goals of the State's oil and gas leasing program, and

- no provision for public review and comment on the State's program. This is exemplified by the fact that comment on the recently released state five-year leasing program was solicited from the industry only. To our knowledge no other interest groups (Native, environmental, consumer advocacy groups, etc.) were contacted concerning this matter. Public participation is a key requirment in both the state and federal coastal management acts. We assume that this applies to the energy siting process and are curious how this requirement will be met by the state oil and gas leasing program.

E. Transportation and Utilities - 6 AAC 80.080

6 AAC 80.080. TRANSPORTATION AND UTILITIES. (a) *Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with local community goals and desires as expressed in district programs and local comprehensive plans.*

(b) *Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility.*

There is no mention in this standard of minimizing adverse environmental impacts when a coastal route or site is selected as provided under part (b). We recommend that language be added to this standard, providing that transportation and utility routes and facilities which are sited along the coast as provided by part (b) should be designed and sited in order to minimize impacts on wetlands, estuaries and other productive or vulnerable habitats.

F. Fish and Seafood Processing - 6 AAC 80.090

6 AAC 80.090. FISH AND SEAFOOD PROCESSING. *Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing.*

This standard needs to address the issue of seafood plant waste disposal. There are areas within coastal Alaska which presently have quite a water pollution problem arising from the dumping of wastes from seafood processing plants. The standard should, at a minimum, require plants to be sited and designed to minimize this problem.

G. Timber Harvest and Processing - 6 AAC 80.100

We are concerned that the timber harvest standards of the ACMP are to be preempted by as yet unknown regulations promulgated under the state Forest Practices Act. ("FPA") While the timber harvest and processing standards provide for special consideration of coastal values as required by the Federal CZMA of 1972, Sec. 305(2), we have no assurance that the FPA regulations will provide such treatment. We recommend that the FPA regulations be required to be consistent with the coastal zone timber harvest and processing standards. This will assure that coastal values will be given specific attention within an overall state timber harvest and processing program.

If the FPA regulations preempt the current timber harvest and processing

standards, they will amend the Alaska Coastal Zone Management Program and will require public review prior to adoption.

H. Mining and Mineral Processing - 6 AAC 80.110

6 AAC 80.110. MINING AND MINERAL PROCESSING. (a) Mining and mineral processing in the coastal area must be permitted, (regulated) designed and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, regional programs, statewide and national needs, (and) district programs, and local comprehensive plans.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel.

Part (b) of this standard makes explicit provision for the extraction of sand and gravel from "coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. While there may be cases where the exception cited under (b) will be necessary to promote the public good, we do not want this to become license for indiscriminate industrial or private utilization of these fragile habitats. We feel that sand and gravel must not be allowed to be extracted from these areas unless there is no possible alternative which will meet the public good. Part (b), as now written, is unclear. It should explicitly state that this exception is to be allowed only in unusual, narrowly-defined cases.

I. Habitats - 6 AAC 80.130

In reviewing the habitat standards, several weaknesses became apparent. Some of the more important general concerns include:

(1) Several coastal habitat types are not distinguished in the standards. These include floodplains, coastal forests, tide-water glacier and glacial moraine areas, and the distinction between Arctic high energy coasts and subarctic high energy coasts. These latter two areas need to be separate because of the extreme differences between them as to coastal processes such as erosion and deposition.

(2) The general breadth of the standards is needed to allow a certain latitude in management decisions. To further weaken the standard with the provisions in part "d" is unnecessary. A strict interpretation of these provisions is required to insure that the protective intent of the standards is fulfilled.

(3) The approach of the habitat standards is not comprehensive enough. There are no provisions made to relate activities in one

area to impacts in another area. An example would be activities in the upland habitat area which would affect estuaries or wetlands downstream.

(4) In addition, there are no provisions for maintaining scenic quality in habitats such as rocky islands and seacliffs, high energy coasts, forested areas, etc. While this is not a direct function of habitat management, it should be included in sections which deal with areas of exceptional scenic value.

The habitat standards are central to a system of coastal resource management. By identifying and defining these major habitat types the ACMP focuses attention on their unique qualities. Through provision of broad management goals for these areas, the ACMP helps to insure the protection and continued quality of Alaska's coastal resources. The following recommendations are intended to further these goals by identifying particular deficiencies in each standard. We recognize that the legislature cannot change the present language found in the Guidelines and Standards. However, by proposing specific language we feel that the office of Coastal Zone Management and the Coastal Policy Council can best visualize what our concerns are.

Offshore - 6 AAC 80.130(1)

Offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial and subsistence fishery.

The standards for local program development state that "offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial and subsistence fishery." No mention is made of the need to preserve adequate stocks of marine birds, mammals and non-commercial fish. The introduction to the standard describes the offshore area as a vital feeding area for marine mammals and fish, pelagic seabirds and invertebrate fauna. It states that offshore ice is used for hauling-out by walrus and seals, that polar bears den on stable landfast ice, and that offshore areas are used as corridors by whales, fish, and seabirds. The standard must

be amended so that the productivity of non-commercial fish and wildlife populations is protected by district policies.

We recommend that the standard be changed to read:

"Offshore areas must be managed as a living resource conservation zone so as to maintain, enhance, and protect important biological resources of this region including marine mammals, birds, commercial and non-commercial fish stocks and invertebrate fauna."

Estuaries - 6 AAC 80.130(2)

Estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients and oxygen levels, and avoid the discharge of toxic wastes, silts, and destruction of productive habitat.

Estuarine habitats are extremely important ecological units within the coastal environment. They are vital areas for fish, marine animals, birds, and other biota. These areas are also highly sensitive to disturbance and disruption. Conservation of these areas is necessary to protect many of the renewable and natural resources of coastal Alaska. In order to promote this protection, we would recommend that the standard be modified to read:

"Estuaries must be managed so as to minimize dredge and fill activities and to assure adequate water flow, natural circulation patterns, nutrients and oxygen levels, and avoid the discharge of toxic wastes, silts, and destruction of productive habitat."

Wetlands - 6 AAC 80.130(3)

Wetlands and tideflats must be managed so as 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.

Wetlands are vital habitat areas for waterfowl, shorebirds, moose and other mammals. They are also critical links in the overall water cycle and are an important source of nutrients for coastal waters. Our recommendation for the wetlands standard is a change to read: "Wetlands and tideflats must be managed so as to minimize dredge and fill activities and 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."

Rocky Islands and Seacliffs - 6 AAC 80.130 (4)

Rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators.

These areas are important breeding and rearing areas for many species of seabirds, raptors, fur seals, sea lions and harbor seals. They also serve as important roosting or hauling out areas for marine birds or mammals. Many such species are highly dependent on these habitats and are extremely sensitive to disturbance while using these areas. Rocky islands and seacliffs are also some of the most majestic features of the Alaskan coasts, possessing a scenic quality of national significance.

Our recommendation for the Rocky Island and Seacliff standard is

"Rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, the introduction of competing or destructive species, and in such a manner as to protect the scenic quality of the area."

Barrier Islands and Lagoons - 6 AAC 80.130 (5)

Barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds.

Barrier island/lagoon systems are extremely important marine environments, particularly in the Beaufort and Chukchi Seas. They are some of the most productive areas in these regions and are highly sensitive to disruption. Of particular concern is the alteration of the characteristic water flow and/or the attendant erosion/deposition patterns. We recommend that these areas be managed as a system, and offer the following change in the standard:

"Barrier island/lagoon systems must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, protect the quality of important fish and wildlife habitat and discourage activities which would decrease the use of barrier islands by coastal species such as polar bears, seals, and nesting birds."

High Energy Coasts - 6 AAC 80.130 (6)

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

Although high energy coasts are described as "featureless" in the DEIS, it should not be assumed that such shorelines lack important values. Some of these areas are in the wildest regions of the state and provide one with a feeling of solitude and a quality of wildness hard to find along much of the nation's coastline today. We would therefore offer the following change to this standard:

High energy coasts must be managed in such a manner as to assure the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy, and to minimize the disruption of the scenic quality of the area.

Alaska
MUNICIPAL
League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

February 27, 1980

To: House CRA Committee
From: Ginny Chitwood, Executive Director
Re: Amendment to Coastal Policy Act

At the annual meeting of the Alaska Municipal League, held last fall in Sitka, the members adopted the following paragraph as part of the 1980 policy statement:

The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

The enclosed bill, which is a starting point for implementing this section, and the memo from the Ketchikan Gateway Borough were endorsed by the AML Legislative Committee in December.

We believe it is very important that the concerns of adjacent areas be addressed in each coastal management plan that is approved. An amendment to the act, along the lines of this proposal, will help to achieve that goal.

The enclosed material has been submitted to the Alaska Coastal Policy Council and will be considered at its next meeting scheduled for mid-March.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to filing of notice of interest by adjoining cities or boroughs regarding proposed district coastal management plan in unorganized boroughs and providing opportunity to be heard prior to approval of district coastal management plan by Alaska Coastal Policy Council; and providing for an effective date.

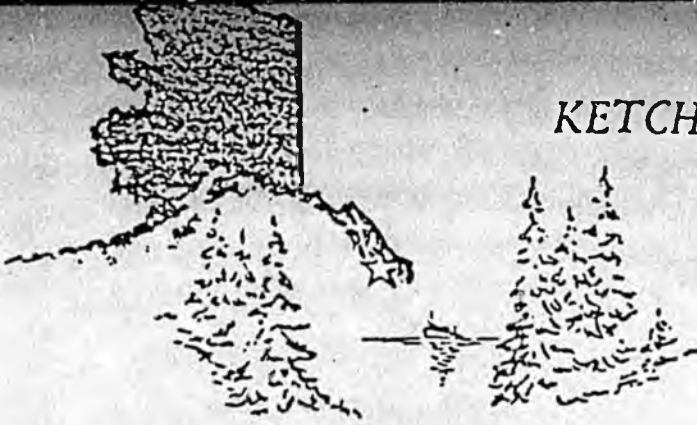
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1: AS 46.40.180 is amended by adding new subsections thereto to read:

(e) Any organized city or borough which claims to have an interest in the manner in which resources, or the use of resources, in any unorganized borough adjacent to its boundaries are developed shall notify the Department of Community and Regional Affairs of the nature and extent of such interest. Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under Section 170 of this chapter, a district coastal management program shall be submitted to each organized city or borough which has filed a notice of interest with the Department of Community and Regional Affairs.

(f) The council shall not approve a district coastal management program unless it finds that each organized city or borough that has filed a notice of interest under (e) above has received notice and an opportunity to present its concerns regarding such plan at a public hearing before the coastal service area board or the Department of Community and Regional Affairs which concerns shall become part of the record regarding such plan.

* Section 2: This Act takes effect immediately in accordance with AS 01.10.070(c).



KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Legislative Committee of
Alaska Municipal League

THRU: Judith A. Slajer
Borough Manager

FROM: Marvin Yoder *my*
Economic Development Specialist

SUBJECT: Extraterritorial jurisdiction in Coastal
Management district

Working with our municipal attorney, Mr. Walker, we decided that the basic need of organized districts was to be able to have input into plans being compiled in adjacent resource service areas.

The two options available are for the organized municipalities to use its resources to physically inventory and plan for those areas that have direct influence on the municipality or to simply state that the impact exists and then request an opportunity to determine the extent of the impact when the resource service area begins to formulate its plan. After discussing these concepts with individuals involved in Coastal Management programs, we chose the latter option.

The second decision was whether the proposed new language should be added to the State statutes or to the regulations. In the statutes AS 46.40.180 describes the requirements necessary for a resource district to have its plan approved. The proposed addition stipulated that concerns expressed by adjacent districts must be addressed by public hearings and records of these hearings are to be documented in the permanent record of the district.

The second approach would be to amend the regulations. This would be done by the Alaska Coastal Policy Council with the legislative concurrence. Section 6 AAC 85.140 provides opportunities for other government agencies to coordinate and review coastal plans and specifically mentions adjacent districts.

Our recommendation is to attempt to change the statutes and assume that the regulations will be changed to conform to the intent of the act.

Legislative Committee of
Alaska Municipal League

December 10, 1979

Page two

On November 30, 1979 the proposed amendment was placed before the Policy Council and received favorable comments; however no formal action was taken. It is my opinion as a member of the Council that if there is a statute change, the Policy Council will change the regulations to reflect that change.

MLY:jw

attachment

Let's go to Taylor

CZM Joint ^(Friday)
2/8/80

Metcalf	Brunson	Stinson
Parr	Parker	Sturges
O'Connell		Metcalf

Tony Burns - Arch. (Planning Director)

CZM as a ongoing process

ec, nat'l resource base, environmentally
geographic segmentation - functional units
(preservation & c) (manage resources)
Preservation, conservation, utilization
land & sustainability

Recommend. instead ordinances

Holland's geophysical hazard area is problem
potential impacts - adjacent areas need to be considered as well

Conflicting definitions "inlands" - Dev (developable?)

Parr - why not conservation / preservation prioritization?

John Halliwell - Harris Mayor

1 1/2 yr effort. Recognizes local out. outg.

Harris potential ex what community 18, 20, 22

feels can lose x (25 27)

Approval w/ ... City etc

Coordination of CZM ^{Harris} Highway land 5 done for State
Dev. Funds

Statement re
policy - leg.
Get
making lists
Murray

Walden

State has no statutory authority - Annette Island
No state authority - Reverse re resource S x
Seeking endorsement - Council action

Mary Jo Hartt -

Annette Island voluntarily prepared plan.

Life style 'economy dependent' coast.

Addressed particular issues - 3 main areas

Issues identified
fisheries, forestry, land & water etc.

Goals

Policies - Objectives

Specific actions - implement policies

Info lockery - timber resources -

multiple & sustained yield

Computer based storage - retrieval process

AMSH's

Allowable I outlined

Discussion - concept approval / interpretation of same.

Role - leg. if modifications are made by municipality

Walden } Major amendments would & to come back to
Council. New directions would come back - Council

Leg.

Amend. -
Used existing ordinances

STATE OF ALASKA

COASTAL POLICY COUNCIL

LOCAL MEMBERS:

Donald Gilman,
Lower Cook Inlet,
Co-Chairman
Stanley Anderson,
Bering Straits
Jon Halliwell,
Northern Southeast
Eben Hopson,
Northwest
Malcolm "Pete" Isleib,
Prince William Sound
John Nicori,
Southwest
Robert Sanderson,
Southern Southeast
Lidia Selkregg,
Upper Cook Inlet
Betty Wallin,
Kodiak-Aleutians

December 11, 1979

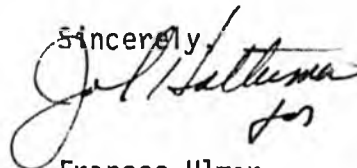
The Honorable Bill Parker
Chairman, House Community &
Regional Affairs Committee
200 Denali Street
Anchorage, Alaska 99501

Dear Representative Parker:


The attached draft amendment to the Alaska Coastal Management Act was prepared by the Coastal Policy Council staff in response to a request presented by representatives of Nunam Kitlusiisti at the Council meeting in Sitka on November 7. It is anticipated that the Council will vote on the amendment at our next meeting on January 16. We would appreciate it if you would review the draft and provide us with your comments in time for that meeting.

Thank you in advance for your help.

Sincerely,



Frances Ulmer
Co-chairman



Donald Gilman
Co-chairman

STATE MEMBERS:

Frances Ulmer,
Director of Policy
Development &
Planning,
Co-chairman
Robert Ward,
Commissioner of
Transportation &
Public Facilities
Charles Webber,
Commissioner of
Commerce &
Economic
Development
Robert LeRiche,
Commissioner of
Natural Resources
Lee McArerney,
Commissioner of
Community &
Regional Affairs
Ernst Mueller,
Commissioner of
Environmental
Conservation
Ronald Skoog,
Commissioner of
Fish & Game

Attachments

RECEIVED
DEC 14 1979

POLICY DEVELOPMENT
& PLANNING



DRAFT AMENDMENT OF THE ALASKA COASTAL MANAGEMENT ACT

(This amendment has been proposed as a result of a request by Nunam Kitlusisti made to the Alaska Coastal Policy Council. At issue is the role of coastal resource service area planning boards after the coastal programs for the districts have been approved. As written, the Alaska Coastal Management Act does not specify what the role of such boards would be after approval of the programs, or even if they would continue to exist. The proposed amendment would provide for continued existence and a review and comment role for pending state and federal agency actions.)

The Alaska Coastal Management Act is amended by adding the following new section:

Sec. 46.40.185. COASTAL RESOURCE SERVICE AREA BOARDS AFTER APPROVAL OF DISTRICT PROGRAMS FOR THE SERVICE AREAS. (a) Coastal resource service area boards will participate in the implementation of their districts' coastal management program by reviewing and commenting on the actions and pending actions of the state agencies as those agencies carry out their responsibilities under section 46.40.090. (a) of this chapter.

(b) All state agencies shall inform the coastal resource service area boards of actions which would significantly affect the coastal resources of their respective districts and shall provide reasonable amounts of time for the boards review and recommendations on the proposed actions. When a state agency's decision differs from the recommendation of a coastal resource service board, the coastal resource service area board recommendation and the basis for the differences will be included in the decision.

(c) The coastal resource service area board may act on behalf of the coastal resource district for the purpose of implementing, enforcing or complying with the district coastal management program as provided in

sec. 46.50.100(b) of this chapter.

(d) Should the area, or a portion thereof, included in a district coastal management program developed by a resource service area board become organized to assume planning powers provided in AS 29.33.070-29.33.245 the district coastal management program may by ordinance be adopted by the organized municipality.