

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3540 HRES HB 58 - HB 73

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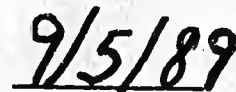


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Signature of Camera Operator

  
Date

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# Alaska State Legislature



## House of Representatives

REPRESENTATIVE  
BETTE CATO  
DISTRICT 6  
BOX 775  
VALDEZ, ALASKA 99686  
(907) 835-4569  
WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4858  
(907) 586-2660

COMMITTEES  
—  
CHAIRMAN  
HOUSE TRANSPORTATION  
—  
MEMBER  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS

### MEMORANDUM

January 16, 1985

TO: Representative Dick Shultz  
Co-Chairman  
House Resources Committee

FROM: Representative Bette Cato *BC*

SUBJECT: House Bill 58

Today I have introduced House Bill 58, "An Act relating to the fisheries business tax" which has been referred to the Resources Committee.

The purpose of this legislation is to provide an incentive to processors to upgrade the quality of their present facilities and equipment in order to enhance the quality or increase the quantity of Alaska's processed seafood. This would be done by directing the Department of Revenue to credit shore-based processors the state's portion (50%) of the fisheries business tax which must be used by the eligible processors for capital improvements.

The Department of Revenue would promulgate regulations for approving applications from the processors detailing their planned uses of the tax credit, which the Department would have 60 days to approve or disapprove. Further, the Department would prepare a report to the Legislature each regular legislative session describing what the credits were used for, and if possible, how employment and the processing capacity of the fisheries were improved.

The history of this bill is detailed in my request to the House Research Agency number 85-039. The members of the Committee would doubtless find this paper helpful in their deliberations.

The Department of Revenue has kindly made available to me mailing labels of all the processors names in the event that the Committee would like to contact them for possible testimony.

#### Attachments:

1. Sectional analysis of HB 58
2. Mailing labels of fisheries businesses
3. List of member organizations and the Board of the United Fishermen of Alaska



Official Business

# Alaska State Legislature

## House of Representatives

### Special Committee on Fisheries

Pouch V  
Juneau, Alaska 99811

Phone:  
(907) 465-4924

January 26, 1985

#### SECTIONAL ANALYSIS OF HB 58

#### "An Act relating to the fisheries business tax"

Section One: Amends existing fisheries business tax statutes to replace the word "cannery" with "fisheries business."

Section Two: Establishes a program allowing a seafood processing company to claim a credit on up to half of its fisheries business tax liability. The 50 percent cap will ensure that revenue sharing to local communities will not be affected by the tax credits. To qualify for a tax credit, a seafood processor must invest in capital expenditures related to a shore-based facility in Alaska. The credits are limited to five consecutive years, and must be initiated within the 1985-1989 tax years. Thus, the tax credit program will sunset by 1994. Credits for capital investments exceeding the 50 percent cap in a single tax year may be carried forward to a subsequent tax year within the five-year limit. Buyer's of seafood facilities for which a tax credit had been claimed will not qualify for credits on those particular capital improvements. The Department of Revenue is given authority to adopt regulations for administering the program and is directed to act on applications within 60 days of receipt.

This section also provides for an annual report to the legislature on the benefits and utilization of the tax credit program.

Section Three: Provides that the tax credits will not affect revenue sharing with local communities.

Section Four: Defines "capital expenditures."

Section Five: Repeals the tax credit program June 30, 1994.

ANALYSIS OF CS FOR HB 58 (Fisheries)

To: House Resources Committee Files  
From: Janet Files, Committee Aide  
Date: (revised) 2/25/85

The differences between House Bill 58 and the Fisheries CS for HB 58 are as follows:

Page 1, Lines 25 and 26

Language has been added which more narrowly defines the scope of eligible capital expenditures under the tax credit program.

Page 2, Lines 15 and 16

Language has been added to prevent a company from receiving a tax credit for property purchased from another company with substantial common ownership. In the event a question arises as to what is "substantial" common ownership, the Department of Revenue will rule on this by regulation.

Page 3, Line 12

Language has been added which gives the Commissioner of Commerce and Economic Development the authority and responsibility of defining what capital expenditures are eligible for tax credits under the program.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 1-28-85

**REQUEST**

Bill/Resolution No: HB 58  
 Title: Fisheries Business Tax Credit  
 Sponsor: Cato & Grussendorf  
 Requestor: Special Committee on Fish.  
 Date of Request: January 18, 1985

**FISCAL DETAIL**

Agency Affected: Department of Revenue  
 Program Category Affected: Collection and Management  
 BRU, Program of Subprogram(s) Affected: Audit Division  
Audit Division

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	2.0	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	3.0	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL OPERATING</b>	-0-	5.0	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	5.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
<b>TOTAL</b>	-0-	5.0	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

**ANALYSIS:** Please see attached.

Prepared By: Martin J. Richard  
 Division: Audit

Phone: 465-2320  
 Date: January 18, 1985

Approved by Commissioner: [Signature]  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Analysis for HB 58

Travel \$2.0 - Passage of HB 58 will require the Audit Division to draft regulations and conduct public hearings throughout the state. Our fare and per diem costs are estimated at \$2,000 for travel to Ketchikan, Anchorage and Kodiak by one Audit Division employee.

Contractual Services \$3.0 - Conducting public hearing requires the presence of a court reporter, and advertising in statewide newspapers. In addition, the bill will make it necessary for the Department to revise its tax forms to request additional information from processors, and prepare annual reports to the legislature. Programming and form design costs are included in this request.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date

**REQUEST**

Bill/Resolution No: HB 58  
 Title: Relating to the Fisheries  
Business Tax  
 Sponsor: Cato and Grussendorf  
 Requestor: House Special Committee  
on Fisheries  
 Date of Request: January 18, 1985

**FISCAL DETAIL**

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	(7000.0)	(7000.0)	-	-	-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

**POSITIONS:**

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

**ANALYSIS:** Attach a separate page for analysis.

Prepared By: Robert W. Elliott  
 Division: Research Section

Phone: 465-2173  
 Date: 1/23/85

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE, HB 58  
Attachment

Analysis for HB 58:

The above estimates are derived from the Revenue Sources January, 1985, projections for fisheries business taxes, and provide for tax credits effective in FY 86. The estimates reflect the maximum revenue loss the State would experience if all shore-based fisheries business tax returns applied for a 50 percent tax credit, and were subsequently approved by the department. It should be noted that although the fish processors would be the primary beneficiaries of the tax credit, there exists the possibility in certain cases where, if the processors are given a 50 percent credit and the remaining 50 percent is refunded to local governments per AS 43.75.130, the State could eventually not receive any revenues from those fisheries business taxes.

Estimates are duplicated for FY 87 and not shown beyond since price/catch projections are unknown.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 2-11-85

REQUEST

Bill/Resolution No: CSHB 58  
Title: Fisheries Business Tax Credit

Sponsor: Cato, Grussendorf & Thompson  
Requestor: Special Committee on Fish.  
Date of Request: February 11, 1985

FISCAL DETAIL

Agency Affected: Department of Revenue  
Program Category Affected: Collection and Management  
BRU, Program of Subprogram(s) Affected: Audit Division  
Audit Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	2.0	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	3.0	-0-	-0-	-0-	-0-
400 SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
800 MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
<u>TOTAL OPERATING</u>	-0-	5.0	-0-	-0-	-0-	-0-
<u>CAPITAL</u>	-0-	-0-	-0-	-0-	-0-	-0-
<u>REVENUE</u>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	5.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
<u>TOTAL</u>	-0-	5.0	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Please see attached.

Prepared By: Martin Richard  
Division: Audit

Phone: 465-2320  
Date: February 11, 1985

Approved by Commissioner: [Signature]  
Agency: \_\_\_\_\_

Date: 2/22/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for CSHB 58

Travel \$2.0 - Passage of SB 11 will require the Audit Division to draft regulations and conduct public hearings throughout the state. Our fare and per diem costs are estimated at \$2,000 for travel to Ketchikan, Anchorage and Kodiak by one Audit Division employee.

Contractual Service: \$3.0 - Conducting public hearing requires the presence of a court reporter, and advertising in statewide newspapers. In addition, the bill will make it necessary for the Department to revise its tax forms to request additional information from processors, and prepare annual reports to the legislature. Programming and forms design costs are included in this request.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date \_\_\_\_\_

**REQUEST**

Bill/Resolution No: CS for HB 58  
 Title: Relating to the Fisheries  
Business tax  
 Sponsor: Cato and Grussendorf  
 Requestor: House Resources Committee  
 Date of Request: February 11, 1985

**FISCAL DETAIL**

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	(7000.0)	(7000.0)	-	-	-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

**POSITIONS:**

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis.

Prepared By: David Tonkovich  
 Division: Research Section

Phone: 465-2173  
 Date: 2/19/85

Approved by Commissioner: *James P. ...*  
 Agency: \_\_\_\_\_

Date: 2/22/85

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

FISCAL NOTE, HB 58  
Attachment

Analysis for HB 58:

The above estimates are derived from the Revenue Sources January, 1985, projections for fisheries business taxes, and provide for tax credits effective in FY 86. The estimates reflect the maximum revenue loss the State would experience if all shore-based fisheries business tax returns applied for a 50 percent tax credit, and were subsequently approved by the department. It should be noted that although the fish processors would be the primary beneficiaries of the tax credit, there exists the possibility in certain cases where, if the processors are given a 50 percent credit and the remaining 50 percent is refunded to local governments per AS 43.75.130, the State could eventually not receive any revenues from those fisheries business taxes.

Estimates are duplicated for FY 87 and not shown beyond since price/catch projections are unknown.

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(File No. 5128), 627 P.2d 205 (1981).

The purpose of excluding "insur-  
ance businesses" from the coverage of  
AS 43.70.030(a) by virtue of the definition  
in paragraph (1) is apparently to avoid  
taxing these businesses twice, since  
insurers are subject to a premiums tax  
imposed by AS 21.09.210. Northern  
Adjusters, Inc. v. Department of Revenue,  
Sup. Ct. Op. No. 2332 (File No. 5128), 627  
P.2d 205 (1981).

The term "insurance businesses"  
does not include adjusters. Northern

Adjusters, Inc. v. Department of Revenue,  
Sup. Ct. Op. No. 2332 (File No. 5128), 627  
P.2d 205 (1981).

Because adjusters are not "insurers"  
subject to the premiums tax, they should  
not be viewed as "insurance businesses"  
exempt from the general license tax.  
Northern Adjusters, Inc. v. Department of  
Revenue, Sup. Ct. Op. No. 2332 (File No.  
5128), 627 P.2d 205 (1981).

Applied in Ketchikan Spruce Mills v.  
Dewey, 17 Alaska 336 (1957).

**Sec. 43.70.120. Short title.** This chapter may be cited as the Alaska  
Business License Act. (§ 1 ch 43 SLA 1949)

## Chapter 75. Fisheries Taxes.

### Article

1. Taxes and Licenses (§§ 43.75.010 — 43.75.055)
2. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction  
(§§ 43.75.100 — 43.75.120)
3. General Provisions (§§ 43.75.130 — 43.75.140)

**Opinions of attorney general.** — A  
native business enterprise incorporated  
under the Indian Reorganization Act of  
1934, 48 Stat. 987, 25 U.S.C.A. § 476 et  
seq., whether it be a cooperative store or a  
cannery, doing business outside of an  
Indian reservation is subject to the Alaska  
Business License Act, AS 43.70, and this

chapter, even though those businesses  
may be operated by Alaska Natives who  
have incorporated under the Indian  
Reorganization Act of 1934. Conversely,  
such native business enterprises doing  
business within a reservation are not sub-  
ject to these state taxes. 1978 Op. Att'y  
Gen., No. 16.

### NOTES TO DECISIONS

Cited in Northern Adjusters, Inc. v. 2332 (File No. 5128), 627 P.2d 205 (1981).  
Department of Revenue, Sup. Ct. Op. No.

## Article 1. Taxes and Licenses.

### Section

11. Fisheries business license
15. Fisheries business tax
17. Exclusion from fisheries business  
tax

### Section

20. Application for license
30. Filing return and payment of tax
55. Security for collection of taxes

## NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska Business License Act. — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No.

1755 (File No. 3365), 585 P.2d 878 (1978).

There is no general prohibition against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

Collateral references. — 35 Am. Jur. 2d, Fish and Game, § 45. 71 Am. Jur. 2d, State and Local Taxation, §§ 392-401.

36A C.J.S., Fish, § 36.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion, 4 ALR2d 744.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 550.

Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 ALR2d 1710.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 ALR3d 7.

Validity and construction of state statute making successor corporation liable for taxes of predecessor, 65 ALR3d 1181.

*Sec. 43.75.010. Fisheries business licenses. [Repealed, § 13 ch 79 SLA 1979. For current law, see AS 43.75.011.]*

## NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska Business License Act. — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No.

1755 (File No. 3365), 585 P.2d 878 (1978).

There is no general prohibition against like municipal and state taxes. *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

**Sec. 43.75.011. Fisheries business license.** A person engaging or attempting to engage in a fisheries business shall first apply for and obtain a license as provided in AS 43.75.020. (§ 3 ch 79 SLA 1979)

Cross references. — For legislative findings and purpose relating to AS 43.75,

see §§ 1 and 2, ch. 79, SLA 1979 in the Temporary and Special Acts.

**Sec. 43.75.015. Fisheries business tax.** (a) A person engaged in a fisheries business is liable for and shall pay the tax levied by this

P.2d 878 (1978).  
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section on the value of each of the following fisheries resources processed during the year at the rate set out after each:

(1) salmon canned at a shore-based cannery — four and one-half per cent;

(2) salmon processed by a shore-based fisheries business, except salmon for which the tax is due under (1) of this subsection, and all other fisheries resources processed by a shore-based fisheries business — three per cent;

(3) fisheries resources processed by a floating fisheries business — five per cent.

(b) Instead of the taxes levied by (a) of this section, a person who processes a developing commercial fish species is liable for and shall pay a tax equal to

(1) one percent of the value of the developing commercial fish species processed by a shore-based fisheries business during the year; and

(2) three percent of the value of the developing commercial fish species processed by a floating fisheries business during the year.

(c) A person engaging or attempting to engage in a fisheries business who first actually and physically processes the fishery resource, or a person who purchases a fishery resource that is frozen from a person excluded by AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the entire tax imposed by this section. In determining this tax liability, the person may deduct from the value of the fishery resources processed the value of fishery resources that are canned or processed for other fisheries businesses. A person taking the deduction authorized by this subsection shall report all information relating to the deduction in accordance with regulations issued by the department. (§ 3 ch 79 SLA 1979; am §§ 5, 6 ch 117 SLA 1981)

Effect of amendments. — The 1981 amendment, substituted "who processes" for "engaged in a fishery business which includes processing" preceding "a developing commercial fish" in the introductory language of subsection (b), and in subsection (c), added "or a person who purchases a fishery resource that is frozen from a person excluded by AS

43.75.017 from liability for the tax" following "processes the fishery resource" in the first sentence, deleted "not" preceding "deduct" in the second sentence and substituted the present third sentence for "but shall include that value as part of the value of the fishery resources processed."

NOTES TO DECISIONS

A tax on the business of catching and canning salmon is not a property tax. *Pacific Am. Fisheries v. Territory of Alaska*, 2 F.2d 9 (9th Cir. 1924), aff'd, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

"Canning" is activity of salmon cannery which is taxed. — Under former AS 43.75.010, the salmon cannery activity which was taxed is that of "canning."

whether the raw fish were purchased or otherwise obtained. *Arctic Maid v. Territory of Alaska*, 277 F.2d 120 (9th Cir. 1960), rev'd on other grounds, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

No discrimination in favor of local cannery against freezer ships under prior law. — See *Alaska v. Arctic Maid*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961).

**Cold storages and other fish processors.** — For cases construing former law requiring licenses for cold storages and other fish processors, see *Territory of Alaska v. Arctic Maid*, 16 Alaska 126, 140 F. Supp. 190 (D. Alaska 1956), *aff'd*, 366 U.S. 199, 81 S. Ct. 929, 6 L. Ed. 2d 227 (1961); *State v. Wakefield Fisheries, Inc.*, Sup. Ct. Op. No. 779 (File Nos. 1397, 1398), 495 P.2d 166 (1972); *State v. Reefer King Co.*, Sup. Ct. Op. No. 1344 (File Nos. 2605, 2606, 2607), 559 P.2d 56 (1976).

For case discussing priority of claims for license taxes under prior law in a bankruptcy proceeding, see *In re King Salmon Fisheries Co.*, 7 Alaska 97 (1923).

**Constitutionality of former provisions taxing salmon canneries on basis of number of cases packed.** — See *Territory of Alaska v. Pacific Am. Fisheries*, 7 Alaska 160, *aff'd*, 2 F.2d 9 (9th Cir. 1924), *aff'd*, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270 (1925).

**Sec. 43.75.017. Exclusion from fisheries business tax.** A person is not liable for the fisheries business tax under AS 43.75.015 when the fishery resource is frozen aboard a fishing vessel if

- (1) the vessel is operated as a commercial fishing vessel under a valid commercial fishing license;
- (2) the fishery resource is not processed beyond heading, gutting or cleaning, freezing and glazing;
- (3) the fishery resource was caught by the vessel; and
- (4) the fishery resource is sold by the person claiming an exclusion from the tax to a fisheries business licensed under this chapter. (§ 7 ch 117 SLA 1981)

**Sec. 43.75.020. Application for license.** (a) Application for a license shall be filed with the department and accompanied by an initial fee of \$25. A separate initial fee is required for each plant specified in the application covered by the license. The application shall contain the name of the applicant, the line of business to be licensed, place of business, and other facts which the department prescribes. The applicant shall state that the applicant agrees to pay the license tax, and that the applicant will make a return and pay the tax at the time provided by law.

(b) Upon receipt of the application in proper form accompanied by the initial fee the department shall issue the license. (§ 2 ch 82 SLA 1949; am § 93 ch 59 SLA 1982)

**Effect of amendments.** — The 1982 amendment deleted "as of the date the application is filed or mailed, and the applicant may carry on the business from

the date the application was actually mailed" following "the license" in subsection (b), and, made other minor changes.

**Sec. 43.75.030. Filing return and payment of tax.** (a) A person subject to the tax shall file a return stating the value of fisheries resources processed during the license year, computed as required by this chapter, and such other information as the department prescribes by regulation. The return shall show the license number and shall be signed by the taxpayer or an authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or busi-

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under prior law  
see In re King  
ska 97 (1923).  
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l.— See Terri-  
a. Fisheries, 7  
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ness, that person shall file the return for the person. A tax due on the basis of such a return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control.

(b) The return shall be made on the basis of the calendar year to the department in Juneau before April 1 after the close of the calendar year.

(c) The department may adopt regulations for the granting of a reasonable extension of time for filing and may grant an extension of time for filing.

(d) The tax shall be paid before April 1 after the close of the calendar year.

(e) Every person engaging or attempting to engage in a business for which a license is required under this chapter shall keep records, make statements under oath, file returns, and comply with all regulations which the commissioner of revenue may adopt.

(f) When the department considers it is necessary, it may require a person, by notice served upon the person, to file a return, make such statements under oath, or keep and display to it such records as it considers sufficient to show the tax for which the person is liable. If a person fails to file a return as prescribed by law or by regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from the information which it can obtain. A return made by the department is prima facie good and sufficient for all legal purposes. (§ 3 ch 82 SLA 1949; am §§ 2, 3 ch 146 SLA 1962; am §§ 5, 6 ch 79 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "fisheries resources" for "raw fisheries products" in the first sentence of subsection (a), deleted "AS 43.75.010 — 43.75.050 of" preceding "this chapter" in the first sentence of sub- section (a) and in subsection (e), deleted "such" preceding "records," preceding "statements," and preceding "returns" in subsection (e), and substituted "all regulations which" for "such regulations as" in subsection (e).

NOTES TO DECISIONS

Applied in *Schlotham v. Territory of Alaska*, 276 F.2d 806 (9th Cir.), cert. denied, 362 U.S. 990, 80 S. Ct. 1079, 4 L. Ed. 2d 1022 (1960).

*Sec. 43.75.050. Violations and penalties. [Repealed. § 4 ch 94 SLA 1976; § 3 ch 166 SLA 1976; §§ 45, 46 ch 113 SLA 1980. For current law, see AS 43.05.220 and 43.05.290.]*

*Sec. 43.75.055. Security for collection of taxes.* Each applicant for a license under this chapter shall, in or with the application, state under oath the amount of each of the products which the applicant expects to produce during the license year. The applicant shall further state the extent of lienable real property owned by the applicant in the

state against which the tax may be collected and other information with respect to description, location and value of the property which the department prescribes. If the lienable value of the property is not equal to three times the amount of the tax for which the applicant will probably be liable under this section, the department may not issue the license until the applicant files with the department a surety bond approved by the attorney general in a penal sum equal to twice the probable amount of the tax for which the applicant will be liable, conditioned upon payment of the tax in full when due, with interest if not paid before delinquency. However, if the applicant purchases salmon for export from Alaska in the round, the amount of the bond is \$50,000 unless the applicant is the owner of lienable real property in the state of a value of at least \$50,000, and the bond must be conditioned upon payment to the fisherman of the full purchase price for the salmon and the payment of the tax in full when due. The department may waive the bond requirement if the applicant posts other security in the form of collateral acceptable to the department or prepays the estimated tax. (§ 4 ch 84 SLA 1967; am § 8 ch 79 SLA 1979)

**Effect of amendments.** — The 1979 amendment added the present fourth sentence and added "or prepays the estimated tax" to the end of the present fifth sentence.

*Secs. 43.75.060 — 43.75.095. Cold storage and other fish processors [Repealed, § 13 ch 79 SLA 1979.]*

### Article 2. Taking of Fisheries Products Which Are Sold Outside Taxing Jurisdiction.

Section	Section
100. Tax imposed on taking of fishery resource	110. Duty of taxpayer and payment of tax

**Collateral references.** — 35 Am. Jur. 2d. Fish and Game. § 45; 71 Am. Jur. 2d. State and Local Taxation. §§ 392-401.

36A C.J.S., Fish. § 33.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase. 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as interstate commerce as regards local taxation. 10 ALR2d 651.

Property destined for removal from state as subject to taxation therein. 11 ALR2d 938.

**Sec. 43.75.100. Tax imposed on taking of fishery resource. (a)**  
A person taking, purchasing, or otherwise acquiring a fishery resource covered by this chapter which has not been subject to the tax imposed

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in AS 43.75.015 is subject to the tax levied in AS 43.75.015 on the value of the fishery resource if the person

(1) transports the fishery resource to a point outside the taxing jurisdiction of the state for subsequent processing or sale outside the taxing jurisdiction of the state;

(2) sells the fishery resource outside the taxing jurisdiction of the state; or

(3) has the fishery resource processed by a fisheries business in the state.

(b) The rate of tax that shall be paid by a person whose liability for the tax is established by this section is the rate of tax that would have been due under AS 43.75.015 if the fisheries business that first actually and physically processed the fish had been liable to pay the tax. (§ 1 ch 190 SLA 1959; am § 4 ch 79 SLA 1979; am §§ 8, 9 ch 117 SLA 1981)

Effect of amendments. — The 1979 amendment rewrote this section.

The 1981 amendment deleted "sold" following "fishery resource" in the introductory language of subsection (a), deleted "to a fisheries business" in para-

graphs (1) and (2) of subsection (a), deleted "or" at the end of paragraph (1) and added "or" at the end of paragraph (2) of subsection (a) and added paragraph (3) of that subsection. The amendment also rewrote subsection (b).

**Sec. 43.75.110. Duty of taxpayer and payment of tax.** A person subject to taxes under AS 43.75.100 shall make a return stating the value of fisheries resources taken, purchased, or otherwise acquired during the license year for sale to fisheries businesses outside of the taxing jurisdiction of the state computed as required by AS 43.75.100, and other information to carry out the provisions of AS 43.75.100 as may be prescribed by the department. The return shall contain the license number and shall be signed by the taxpayer or an authorized agent, under penalty of perjury. If a receiver, trustee, or assign is operating the property or business, that person shall make the return for the person. A tax due on the basis of such return shall be collected in the same manner as if collected from the person of whose business the receiver, trustee, or assign has custody and control. The requirements for time and place of payment of tax, and the obligation to keep records and make the records available to the commissioner of revenue are the same as those prescribed in AS 43.75.011 — 43.75.050. (§ 2 ch 190 SLA 1959; am § 9 ch 79 SLA 1979)

Effect of amendments. — The 1979 amendment substituted "fisheries resources taken, purchased, or otherwise acquired" for "raw fisheries products taken" and "fisheries businesses" for "freezer ships, floating cold storages, or

floating canneries" in the first sentence and substituted "AS 43.75.011 — 43.75.050" for "the business license tax law for salmon canneries" at the end of the fifth sentence.

**Sec. 43.75.120. Violations and penalties.** [Repealed, § 46 ch 113 SLA 1980.]

### Article 3. General Provisions.

#### Section

130. Refund to local governments

140. Definitions

**Sec. 43.75.130. Refund to local governments.** The commissioner of revenue shall pay

(1) to each municipality unified under AS 29.68.240 — 29.68.440, and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied by this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied by this chapter; and

(3) to each borough

(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied by this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied by this chapter. (§ 6 155 SLA 1962; am § 75 ch 69 SLA 1970; am § 10 ch 218 SLA 1976; am § 11 ch 79 SLA 1979; am § 10 ch 117 SLA 1981)

**Effect of amendments.** — The 1979 amendment rewrote this section.

The 1981 amendment substituted "50 percent" for "20 percent" in paragraphs (1) and (3)(A) and substituted "25 percent" for "10 percent" in paragraphs (2) and (3)(B).

#### NOTES TO DECISIONS

State license tax on salmon canneries with its revenue sharing provision is not different in kind from general gross receipts tax of Alaska

Business License Act. — See *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1755 (File No. 3365), 585 P.2d 878 (1978).

*Sec. 43.75.135. Additional refund to boroughs and cities. [Repealed, § 13 ch 79 SLA 1979.]*

*Sec. 43.75.136. Appropriations to Commercial Fishing and Agriculture Bank. [Repealed, § 20 ch 117 SLA 1981.]*

**Sec. 43.75.140. Definitions.** In this chapter

(1) "department" means the Department of Revenue;

(2) "developing commercial fish species" means those species of fish and shellfish annually designated by the commissioner of fish and game under AS 16.05.050(12);

(3) "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants;

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(4) "fishery resource" means fin fish, shellfish and fish by-products, including but not limited to salmon, halibut, herring, flounder, crab, clam, cod, shrimp, and pollock;

(5) "floating fisheries business" means a fisheries business which is not a shore-based fisheries business; the term includes, but is not limited to, a shore-based fisheries business as defined in (6)(B) of this section when it is removed from the state;

(6) "shore-based fisheries business" means a fisheries business (A) operated from a facility which is permanently attached to the land; or

(B) operated from a facility which remains in the same location in the state for the entire tax year;

(7) "taking" means pursuing, fishing, capturing, or harvesting a fisheries resource in any manner;

(8) "value" means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the fisheries resource or tendered as a deferred or delayed payment, except that "value" means the market value of the fishery resource if the taking of the fishery resource is done in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats which are operated under lease or other arrangement. (§ 3 ch 75 SLA 1979; am § 46 ch 94 SLA 1980; am § 46 ch 113 SLA 1980; am §§ 11, 12 ch 117 SLA 1981)

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The first and second 1980 amendments both repealed the definition of "year".

The 1981 amendment added "the taking

of" preceding "the fishery resource" and substituted "done" for "procured" preceding "in company-owned" in the definition of "value". The amendment also added the definition of "taking".

### Chapter 76. Salmon Enhancement Tax.

Section	Section
10. Three percent salmon enhancement tax	28. Liability for tax on salmon shipped from state
11. Two percent salmon enhancement tax	30. Accounting of financing received as a result of the salmon enhancement tax
15. Election to approve or terminate salmon enhancement tax	40. Definition
20. Termination of salmon enhancement tax	
25. Collection of tax and disposition of proceeds	

Editor's notes. — For findings and purpose of enacting legislation, see § 1, ch.

154, SLA 1980, in the Temporary and Special Acts.



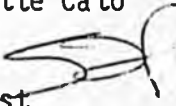
ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

November 15, 1984

MEMORANDUM

TO: Representative Bette Cato

FROM: Sharman Haley  
Legislative Analyst 

RE: Legislative History of the Raw Fish Tax  
Research Request 85-039

The raw fish tax, AS 43.75.010-.140, dates from statehood. The law provides for a tax on raw fish purchases by canneries, cold storages, and other processors. As of 1978, the statute levied a tax of from one to four percent of the purchase price depending on the specific fishery resource and the type of processing facility. Fishermen selling to floating processors outside State jurisdiction were also subject to the tax. Twenty percent of the tax revenues were refunded to the borough and/or first class city in which the facility was located. As you requested, a five-year history of bills affecting the raw fish tax is presented in this memorandum.

1979-1980

Thirteen bills amending the raw fish tax statutes were introduced during the Eleventh Legislature. House Bill 571 and SB 448, identical bills sponsored by Representative Hayes and Senator Kelly respectively, were omnibus tax relief bills suspending the raw fish tax as well as a host of other taxes. These bills saw little legislative action. House Bill 340, introduced by Representative Gardiner, also saw little action. The bill would have tied the reporting and enforcement of regional aquaculture assessments to processor licensing under the raw fish tax statutes. House Bill 227 would have eliminated the distinction between floating and shore-based cold storages, thereby reducing the tax rate on the floating facilities from four percent to one percent. This proposal by Representative Osterback did not move from the House Resources Committee.

House Bill 306, sponsored by the Governor, was a thorough overhaul of the raw fish tax statute. The bill:

- imposed a uniform six percent tax on all processors;
- increased revenue sharing with the local government unit to 33-1/3 percent;

- required that half of the local revenue sharing be spent on docks or other fishery enhancement projects;
- directed an additional 33-1/3 percent of the revenue to the Commercial Fishing and Agriculture Bank; and
- upgraded the bond requirements for salmon exporters.

Bills introduced by Senator Kerttula (SB 132) and Representative Branson (HB 83) also addressed local revenue sharing, raising it to 50 or 60 percent, respectively. The Governor's bill was modified by the Senate Community and Regional Affairs Committee, grafted on to Senator Kerttula's bill number, and enacted into law as Chapter 79 SLA 1979. The legislation deleted all references to "raw fisheries products," replacing the phrase with "fisheries resources." Hence "raw fish tax" is now something of a misnomer; the statutory name is Fisheries Business Tax.

The stated purposes of the act were to:

- 1) insure that the state is able to continue its efforts toward overall fisheries-related development programs by raising additional revenue to pay for its programs;
- 2) make the imposition of the fisheries tax more uniform among fisheries businesses; and
- 3) provide funding for the development of new fisheries.

The tax rates established by Chapter 79 SLA 1979 are as shown in the table below:

	<u>Shore-based Processor</u>	<u>Floating Processor</u>
Canned Salmon	4.5%	5.0%
Developing Commercial Fish Species*	1.0%	3.0%
Other Fisheries Resources	3.0%	5.0%

\*Developing commercial fish species are defined in AS 16.05.050(12) as species in a specific region for which the optimum yield harvest has not been reached, a substantial portion of the harvest has been allocated to foreign fishing, or commercial harvest of the species recently developed.

Representative Cato  
November 15, 1984  
Page Three

Under Chapter 79, a person who transports or sells a fisheries resource outside the jurisdiction of the State is liable for the tax which would otherwise be paid by the processor.

The legislation provided for 20 percent revenue sharing to local government, and 20 percent to the Commercial Fishing and Agriculture Bank. Second class cities were made eligible for revenue sharing as well as first class cities. The new revenue sharing formula was to begin with calendar year 1980 taxes. The legislation also increased the bonding requirements for salmon exporters to \$50,000. The bond covers not only payment of the tax to the State, but also payment to the fishermen for the salmon.

Three pieces of legislation passed in 1980 made corrective amendments to the 1979 enactment. House Bill 192 (enacted as Chapter 155 SLA 1980) corrected the starting date of the new revenue sharing formula to taxes collected for calendar year 1979. The House Judiciary Committee deleted the penalty provisions from the act so as not to duplicate the criminal code. These repealers were offered in CSHB 354, and later incorporated in SB 313 and enacted as Chapter 113 SLA 1980. The House Judiciary Committee also made a corrective amendment suggested by the code revisor deleting the definition of "year". This correction was incorporated into SB 277 and enacted as Chapter 94, SLA 1980.

A bill which was a forerunner of legislation creating the Alaska Seafood Marketing Institute was passed by the legislature in 1980 but vetoed by the governor. The original version of HB 962 provided processors with a tax credit of up to 15 percent of the fisheries business tax liability for donations to a nonprofit corporation organized to improve the quality of and to develop markets for Alaska seafood. The final version, SCSCSHB 962, established a fisheries business tax grant fund financed by appropriations from the legislature. The bill authorized grants to a nonprofit seafood marketing corporation of up to 15 percent of the fisheries business tax paid by members of the corporation in the preceding year. The governor vetoed the bill due to constitutional problems.

#### 1981-1982

Several amendments to the fisheries business tax statutes were made by the Twelfth Legislature. Senator Eliason introduced SB 200, which would have relieved freezer boats from tax liability if the processors to which they sell were regulated by the statute. His proposal was incorporated into HB 460, which was introduced by the House Resources Committee. House Bill 460 also increased revenue sharing to local governments from 20 to 50 percent of tax revenues starting with tax year 1982. As a transitional measure, revenue sharing was pegged

Representative Cato  
November 14, 1984  
Page Four

at 30 percent of 1981 fisheries business taxes. After a complicated passage, SCSCSHB 460 (Fin)am S (efd am H) was enacted as Chapter 117 SLA 1981.

Other fisheries business tax legislation considered but not passed by the Twelfth Legislature included HB 422 by Representative Malone. The bill would have shifted the tax liability from fish processors to fish purchasers. Senator Mulcahy also introduced a bill, SB 523, to clarify the language defining "value" as used in calculating tax liability. Some of this clean-up was accomplished in HB 460.

Representatives Zharoff and Bettisworth proposed in HB 103 to repeal the fisheries business tax entirely. This bill saw no action.

#### 1983-1984

Three pieces of legislation offered in the Thirteenth Legislature would have established a fisheries business tax credit program. None of these proposals were enacted. Senator Ferguson proposed (in SB 191) a rate reduction of one-half percent for businesses that also pay the seafood marketing assessment under AS 16.51.120. Senator Mulcahy proposed (in SB 379) to grant up to a 50 percent credit on tax liability for purchases of equipment used in processing a developing commercial fish species. The Senate Resources Committee Substitute for this bill restricted the credit to equipment for processing bottomfish.

Representative Zharoff also sponsored legislation granting a tax credit of up to 50 percent of the fish tax liability. Under his proposal, credits would have included expenditures for improvement of quality control and upgrading or modernization of processing facilities as well as expenditures for equipment used in processing developing commercial species. The House Special Committee on Fisheries' version of HB 518 generalized the credit to apply to any capital expenditure but restricted its application to shore-based canneries and limited the application of credits to no more than five consecutive years. The bill would have required the Department of Revenue to make an annual report to the legislature describing the expenditures for which the credit was granted and the attendant increases in employment or processing capacity. The bill was in House Rules Committee when the legislature adjourned.

\* \* \* \* \*

I hope that this memorandum has provided you with the information you sought. If you would like more detailed information regarding any of the measures discussed above or if you have any further questions, please don't hesitate to call me.

SH



MARCH 31, 1983

DEAR SIRs,

ENCLOSED, YOU WILL FIND OUR 1982 FISHERIES TAX RETURN AND OUR 1982 SEAFOOD MARKETING ASSESMENT RETURN, ALONG WITH OUR CHECK IN THE AMOUNT OF \$174,392.89 FOR BOTH OF THE RETURNS.

LET US TAKE THIS OPPRITUNITY TO EXPLAIN OUR POSITION AS TO THE CURRENT METHOD OF TAXING THE FISHING INDUSTRY. FIRST, WE ARE A SMALL PROCESSOR AND WE HAD TO BORROW THE MONEy FOR THESE TAXES. WE ARE SURE YOU WILL AGREE OUR \$174,392.89 IS QUITE A TIDY SUM. THIS CAUSES AN EXTREME HARDSHIP ON US ESPECIALLY WITH THE STATE OF THE FISHERIES IN SUCH AN ECONOMIC DEPRESSION.

SECOND, IF THE CURRENT METHOD OF COLLECTING TAXES CONTINUES, AS IT IS, IT MAKES IT VIRTUALLY IMPOSSIBLE FOR US AS A SMALL PROCESSOR TO BE ABLE TO EXPAND INTO THE DEVELOPING FISHERIES THAT THE STATE NEEDS SO BADLY IF THE FISHING INDUSTRY IS TO SURVIVE IN ALASKA.

THIRDLY, BECAUSE OF THE BURDEN CAUSED BY THE CURRENT METHOD OF TAXING THE PROCESSORS, YOU WILL FIND FEWER PROCESSORS TO TAX EACH YEAR. THIS OF COURSE WILL LIMIT YOUR TAX BASE WHICH WILL CAUSE MORE TAXING AND FINIALLY RESULT IN THE STRANGLATION OF THE WHOLE INDUSTRY.

WE WILL OF COURSE, CONTINUE TO PAY OUR TAXES. BUT, WE WOULD LIKE TO STRONGLY RECOMMEND A RE-EVALUATION OF THE ALASKA FISHERIES BUSINESS TAX AND THE FISHERIES MARKETING ASSESMENT. HOPEFULLY, THIS WOULD BE DONE WITH THE IDEA OF LESSENING THE BURDEN ON THE FISHERIES INDUSTRY.

YOURS TRULY,

DAVID M. WOODRUFF  
VICE PRESIDENT,  
ALASKA FRESH SEAFOODS, INC.

CC: GOVERNOR, WILLIAM SHEFFIELD  
HONORABLE BOB MULCHY  
HONORABLE FRED ZAROFF

DW:jg

Mall to:  
 Department of Revenue  
 Audit Division  
 Pouch SA  
 Juneau, Alaska 99811-0400

STATE OF ALASKA  
 DEPARTMENT OF REVENUE  
 ALASKA FISHERIES BUSINESS RETURN  
 AS 43.75.011 - 140.

ONE RETURN PER  
 PLANT OR VESSEL

Name (Person, firm or corporation) <b>ALASKA FRESH SEAFOODS, INC.</b>		E.I.N. or S.S. Number <b>911043499</b>	
Mailing Address <b>BOX 647</b>		Fisheries Business License No. <b>82-046</b>	Tax Year <b>82</b>
City, State, Zip Code <b>KODIAK AK 99615</b>	Daytime Telephone Number <b>(907) 486-5749</b>	Location of Operation <b>KODIAK</b>	

Enter totals from Schedule A and/or Schedule B as indicated below and multiply by the appropriate percentages.

	TOTAL VALUE		TAX DUE		OFFICE USE ONLY
1. Canned Salmon - Shore-Based Business Schedule A; line 9, column (9A) .....	\$ 0	Multiply by 4½% (.045)	1	\$	
2. Other Shore-Based-Established Species Schedule A; line 9, column (9B) .....	\$5 164 037	Multiply by 3% (.03)	2	\$154,942.97	
3. Floating Business-Established Species Schedule A; line 9, column (9C) .....	\$ 0	Multiply by 5% (.05)	3	\$	
4. Shore-Based - Developing Species Schedule B; line 7, column (7A) .....	\$760 037	Multiply by 1% (.01)	4	\$ 7,600.37	
5. Floating Business-Developing Species Schedule B, line 7, column (7B) .....	\$ 0	Multiply by 3% (.03)	5	\$	
6. TOTAL TAX (Add Tax Due column, lines 1 through 5) .....			6	\$162,543.29	
7. Enter amount of any prepayments of estimated tax (\$25.00 license fee is not a prepayment) .....			7	\$ 0	
8. Balance due or (overpayment) (Subtract line 7 from line 6) .....			8	\$	
9. Penalty for late filing (5% per 30 day period not to exceed 25%) .....			9	\$	
10. Interest (12% a year) .....			10	\$	
11. TOTAL DUE WITH THIS RETURN (Add lines 8 through 10) .....			11	\$162,543.29	

NOTICE: If the fisheries business covered by this return is a shore-based fisheries business which floats, from 04-575 Vessel Itinerary must be completed and attached to this return.

ALLOCATION OF REVENUE. Please provide the information requested below to allow for allocation of revenue to local governments. If the return is for a vessel, complete the schedule on the right, showing the amount of the taxes allocated to each location. Please see the general instructions for further information.	Vessel Location	A, B or C	% of Tax Due Allocated					Dollar Amount Allocated Per Location
			Line 1	Line 2	Line 3	Line 4	Line 5	
Name of Cannery, Plant, Vessel or Business								
Physical Location of Cannery, Plant or Business								
Check A. <input type="checkbox"/> Within incorporated city limits only B. <input type="checkbox"/> Outside city but within organized borough one: C. <input type="checkbox"/> Outside all cities or boroughs								
I declare under penalty of perjury that this return (including all accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return.			This return must be filed with your payment on or before March 31, 1983. Make your remittance payable to the: <b>DEPARTMENT OF REVENUE</b> Audit Division Pouch SA Juneau, Alaska 99811-0400					
Signature of Taxpayer <i>X [Signature]</i>	Date <b>3-31-83</b>							
Signature of Agent	Date							

Please attach as appropriate to this return, Schedules A - G and form 04-575 Vessel Itinerary.

Office Use Only

**ALASKA FISHERIES BUSINESS RETURN**  
**SCHEDULE B. DEVELOPING COMMERCIAL FISH SPECIES**

Fisheries Bus. Lic. No. 82-046

Developing commercial fish species are taxed at a lower rate than established species. Use this schedule only to report fish and shellfish species that have been designated as "developing" by the Alaska Department of Fish and Game. A list of these species is printed on the back of this schedule. To report fish species that do not appear on the list of developing species, use Schedule A.

Please read the instructions and definitions on the back before completing this schedule.

DO NOT INCLUDE ESTABLISHED COMMERCIAL FISH SPECIES SEE SCHEDULE A	A. SHORE-BASED FISHERIES BUSINESS		B. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value
1. Fisheries resources processed that were taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats operated under lease or other arrangement. Complete a Schedule C for each column entry.		(1A) \$		(1B) \$
2. Fisheries resources processed that were purchased by your company from fishermen qualifying for exclusion from payment of the tax. Enter Total Pounds and Total Value from Schedule D in the appropriate column.		(2A) \$		(2B) \$
3. Fisheries resources processed that were purchased by your company except those resources included on line 2. Complete a Schedule C for each column entry.	261,935	(3A) \$ 760,037		(3B) \$
4. Fisheries resources that your company custom processed for someone other than a licensed fisheries business. List the name of the person/company owning the product which was custom processed. Attach Schedule E, Owner's Statement of Value, for each person/company you list.				
(a)		\$		\$
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				
(h)				
(i)				
5. Fisheries resources that were custom processed for your company. List the name of the company that processed the resource. Complete a Schedule C for each column entry.				
(a)		\$		\$
(b)				
(c)				
(d)				
(e)				
(f)				
(g)				
(h)				
(i)				
6. Other fisheries resources transported outside the taxing jurisdiction of Alaska for subsequent processing or sale, or sold outside the taxing jurisdiction of Alaska. List the name of the person/company that purchased the product. Complete a Schedule C for each column entry.				
(a)		\$		\$
(b)				
(c)				
(d)				
(e)				
(f)				
7. TOTALS. Add categories 1-6. Enter (7A) on page 1 of the Return, line 4. Enter (7B) on page 1, line 5.		(7A) \$ 760,037		(7B) \$

**ALASKA FISHERIES BUSINESS RETURN**  
**SCHEDULE A. ESTABLISHED COMMERCIAL FISH SPECIES**

**IMPORTANT.** Before completing this schedule, please read the list of Developing Commercial Fish Species printed on the back of Schedule B. Any fishery resource processed that is included on this list is taxed at a lower rate and must be reported on Schedule B.

**CUSTOM PROCESSORS.** Use Schedule A only to report those established commercial fish species which you custom processed for someone other than a licensed fisheries business. You are not liable for the tax on fisheries resources you custom processed for another licensed fisheries business. You must, however, report on Schedule F those resources that you custom processed for another licensed fisheries business.

**GENERAL INSTRUCTIONS**

Before completing this form, please read carefully each category as described on lines 1-7. This will help you determine which categories apply to your fisheries business.

Make your entries in column A only for salmon canned at a shore-based cannery. For fisheries resources other than canned salmon which were processed at a shore-based fisheries business, make your entries in column B. For fisheries resources processed on a floating fisheries business, make your entries in column C.

If this return is for a shore-based fisheries business which floats, form 04-575 Vessel Itinerary must be completed. Make your entries as a shore-based business only if the vessel was anchored in one spot and did not move from that anchorage for any reason during the entire calendar year.

**DEFINITIONS OF VALUE - 15 AAC 75.300**

VALUE means the actual price paid for the fisheries resource by the fisheries business, including indirect consideration such as fuel, supplies, or gear, whether paid at the time of purchase of the

fisheries resource or tendered as a deferred, delayed, or advance payment, except that VALUE means the market value of the fisheries resource if the fisheries resource is taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats which are operated under lease or other arrangement.

MARKET VALUE means the prevailing value paid for fisheries resources of like kind and quality by fisheries businesses in the same market area to fishermen who own their vessels.

If you CUSTOM PROCESSED a fisheries resource for someone other than a licensed fisheries business, you are liable for payment of the tax. List the VALUE of the resource as reported to you on the Owner's Statement of Value, Schedule E.

NOTE: Each entry you make in a Total Value column must be supported by a schedule C, D or E as appropriate that shows, in addition to other items, the species that are included in that entry. For lines 1, 3, 5, 6 and 7, complete a Schedule C for each entry. For line 2, attach a Schedule D for each entry. For line 4, attach a Schedule E for each entry.

DO NOT INCLUDE DEVELOPING COMMERCIAL FISH SPECIES SEE SCHEDULE B	A. SALMON CANNED AT A SHORE-BASED CANNERY		B. SHORE-BASED FISHERIES BUSINESS (DO NOT INCLUDE SALMON CANNED AT A SHORE-BASED CANNERY)		C. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value	Pounds	Total Value
1. Fisheries resources processed that were taken in company-owned or company-subsidized boats operated by employees of the fisheries business or in boats operated under lease or other arrangement. Complete a Schedule C for each column entry.		(1A) \$		(1B) \$		(1C) \$
2. Fisheries resources processed that were purchased by your company from fishermen qualifying for exclusion from payment of the tax. Enter Total Pounds and Total Value from Schedule D in the appropriate column(s).		(2A) \$		(2B) \$		(2C) \$
3. Fisheries resources processed that were purchased by your company except those resources included on line 2. Complete a Schedule C for each column entry.		(3A) \$	3,437,088	(3B) \$5,164,764		(3C) \$
SUBTOTALS. Add lines 1-3 in each column. Enter sub-totals on the back of this Schedule A, line 8.		(A) \$		(B) \$5,164,764		(C) \$

ASKA FISHERIES BUSINESS RETURN, SCHEDULE A (CONTINUED)

DO NOT INCLUDE DEVELOPING COMMERCIAL FISH SPECIES SEE SCHEDULE B	A. SALMON CANNED AT A SHORE- BASED CANNERY		B. SHORE-BASED FISHERIES BUSINESS (DO NOT INCLUDE SALMON CANNED AT A SHORE-BASED CANNERY)		C. FLOATING FISHERIES BUSINESS	
	Pounds	Total Value	Pounds	Total Value	Pounds	Total Value
1. Fisheries resources that your company custom processed for someone other than a licensed fisheries business. List the name of the person/company owning the product which was custom processed. Attach Schedule E, Owner's Statement of Value, for each person/company you list.						
		\$		\$		\$
2. Fisheries resources that were custom processed for our company. List the name of the company that processed the resource. Complete a Schedule C for each column entry.						
a)		\$		\$		\$
b)						
c)						
d)						
3. Salmon exported in the round. List the name of the person/company that purchased the salmon. Complete a Schedule C for each column entry.						
a)		\$		\$		\$
b)						
c)						
d)						
7. Other fisheries resources transported outside the taxing jurisdiction of Alaska for subsequent processing or sale, or sold outside the taxing jurisdiction of Alaska. List the name of the person/company that purchased the resource. Complete a Schedule C for each column entry.						
(a)		\$		\$		\$
(b)						
(c)						
(d)						
8. Enter amounts from Schedule A, Subtotals (from other side) in the appropriate columns.		(A) \$		(B) \$		(C) \$
9. TOTALS. Add categories 4-6. Enter (9A) on page 1 of this Return, line 1. Enter (9B) on page 1, line 2. Enter (9C) on page 1, line 3.		(9A) \$		(9B) \$ 5,164,764		(9C) \$

ALASKA FISHERIES BUSINESS RETURN  
 SCHEDULE C. FISHERIES RESOURCES PROCESSED  
 BY SPECIES

Complete as many Schedules C as necessary to support the appropriate Total Value column entries made on Schedules A and B. For Schedule A, separate Schedules C are required for lines 1, 3, 5, 6 and 7. For Schedule B, separate Schedules C are required for lines 1, 3, 5 and 6.

For example, if you canned King, Coho and Chum Salmon as a shore-based cannery, and all of the salmon were purchased fresh at the dock, you correctly made an entry on Schedule A at line 3, column A. That entry would be supported by this Schedule, showing detailed information about each of the three species of salmon you processed.

For line category entries made on Schedule A, line 5, or Schedule B, line 5, you must provide a separate Schedule C for each person or company that custom processed for your company.

For line category entries made on Schedule A, lines 6 and 7, or Schedule B, line 6, you must provide a separate Schedule C for each person or

company that purchased the resource which was transported unprocessed out of Alaska's taxing jurisdiction.

For example, if you transported unprocessed fisheries resources out of Alaska's taxing jurisdiction and sold them to companies A and B, company A's name would appear in the box requesting "Name of Person or Company" in the first schedule below. The information for the species which were purchased by company A would then appear in the corresponding spaces. The next schedule would then be completed for the resources sold to company B.

NOTE FOR SCHEDULE B ENTRIES: Herring, shrimp, and certain species of crab are considered to be developing species only in certain areas. Additionally, shrimp are "developing species" in some areas only when caught with pot gear. For these species only, you must list the area where caught. For shrimp, you must also list the type of gear used.

THIS FORM CONTAINS FIVE SCHEDULES C. USE ADDITIONAL PAGES AS NECESSARY.

First complete the boxes immediately below by transferring information directly from Schedule A or Schedule B. For each species included in the totals you enter below, provide the information requested in the boxes to the right.

This Schedule supports the entry made at:		
SCHEDULE	LINE	COLUMN
A	3	B
Name of Person or Company (for Schedule A, lines 5, 6 or 7 only, and Schedule B, lines 5 or 6 only)		
TOTAL POUNDS (From Schedule A or B entry)		
3,437,088 lbs		
TOTAL VALUE (From Schedule A or B entry)		
\$5,164,764		

SPECIES OF FISHERIES RESOURCE	AREA WHERE CAUGHT AND TYPE OF GEAR AS APPLICABLE TO SCHEDULE B	TOTAL POUNDS OF THAT SPECIES	AVERAGE VALUE PER POUND	TOTAL VALUE FOR THAT SPECIES
KING CRAB		811,979	3.504	2,845,520
DUNGENESS CRAB		732,377	.749	547,791
CANNER CRAB		716,915	1.62	1,161,540
KING SALMON		476	.666	317
RED SALMON		202,492	.938	189,987
PINK SALMON		191,300	.259	49,500
CHUM SALMON		578,024	.438	253,020
COHO SALMON		195,841	.559	109,458
HALIBUT		7,684	.99	7,631

First complete the boxes immediately below by transferring information directly from Schedule A or Schedule B. For each species included in the totals you enter below, provide the information requested in the boxes to the right.

This Schedule supports the entry made at:		
SCHEDULE	LINE	COLUMN
B	3	A
Name of Person or Company (for Schedule A, lines 5, 6 or 7 only, and Schedule B, lines 5 or 6 only)		
TOTAL POUNDS (From Schedule A or B entry)		
261,935 lbs		
TOTAL VALUE (From Schedule A or B entry)		
\$760,037		

SPECIES OF FISHERIES RESOURCE	AREA WHERE CAUGHT AND TYPE OF GEAR AS APPLICABLE TO SCHEDULE B	TOTAL POUNDS OF THAT SPECIES	AVERAGE VALUE PER POUND	TOTAL VALUE FOR THAT SPECIES
SCALLOPS		237,922	3.147	748,741
BLACK COD		1,900	.95	1,805
PACIFIC COD		18,400	.304	5,592
CLAMS		3,713	1.05	3,899



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LONGSHOREMEN'S & WAREHOUSEMEN'S UNION

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LARRY COTTER  
President

JAY BROWNE  
Vice President

MIKE ELLERS  
Secretary-Treasurer

January 23, 1985

The Honorable Peter Goll  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska

Re: HB 58

Dear Representative:

Following discussions with Representative Cato and members of the fishing community I have decided that I am in full support of HB 58.

In an earlier letter to you I espoused a view that Alaska would be better off with a revamped fisheries business tax based upon a graduated scale than a tax credit approach as outlined in HB 58. However, I am now of the opinion the tax credit approach is a critical ingredient in providing Alaskan seafood processing companies a means through which their facilities can be modernized. And of course, modernization will play a crucial role in the development of a domestic bottom fish industry.

At the same time, I continue to believe a graduated fisheries business tax would provide added stimulus to seafood processing companies to engage in the processing of underutilized species. And I would strongly urge legislation along these lines be implemented.

In summation, I view these two approaches -- the tax credit for investment approach and the graduated tax approach -- as a meaningful combination of positive taxation which will yield a significant benefit to all Alaskans.

I look forward to speaking further with you on this in the future.

Very truly yours,

Larry Cotter  
President

cc: The Honorable Ben Grusserdorf  
The Honorable Betty Cato  
The Honorable Fred Zharoff

Ms. Sandi Cesarini, Sea hawk Seafoods, Valdez telephoned my office and wished the following information and comments dealing with issues raised at the Special Committee on Fisheries teleconference to be given to committee members:

1. Several floating processors have expressed concerns that HB 58 only provides a tax credit for shore based processors, however floating processors presently have advantages and credits not available to shore based processors.

- a. Under the Federal Income Tax system floating processors are eligible to defer 50% of their tax liability. They must provide a plan for capital improvement expenditures to the Department of Internal Revenue to enable them to deduct this tax deferrment off their income for the year. In other words they may take the credit up front which provides them with a real capital advantage over shore based processors. This tax deferred money is also eligible for a partial investment credit.

- b. The fact that floating processors are able to move their processing plant provides them with a definite advantage over shore based processors. With fish runs varying each year the floating processors are almost assured of continual "good" catches as they are able to move to where the fish are being caught. A shore based processor on the other hand is limited to one area, if there is a poor catch in that area the shore based processor suffers.

- c. While shore based processors remain on land in one area they also contribute to the local economy through payment of property taxes, municipal rates (water & sewer), electricity and they also provide a great deal of the employment in the community.

2. In answer to the suggestion of eliminating the raw fish tax completely Ms. Cesarini feels:

a. This would severely hurt the cities in which the shore based processors live. Ms. Cesarini states that the shore based processors do not wish to gain at the expenses of the communities in which they live.

b. If the raw fish tax was eliminated the end result would be that the shore based processors would have this extra money. HOWEVER, this additional money would now be taxable by the federal government as income received. The tax rate for many shore based processors is high and this additional income would be taxed at this rate (estimated 42%)

Ms. Cesarini feels that the processors would benefit more by being eligible to receive a tax credit up to 50% of their business tax liability for capital improvement expenditures. As HB 58 allows processors to carry this tax credit forward within the five year period this would benefit shore based processors considerably more than the elimination of the fish tax.

3. In answer to the suggestion of a 25% tax credit.

Several shore based processors have expressed their feelings of this idea. They believed the intent of HB 58 was to introduce a bill that would relieve the pressure on the fish processing industry. A 25% tax credit would not be sufficient to make any measurable impacts on the already suffering industry. HB 58 proposes to offer assistance to shore based processors for the next 5 years to enable them to improve and expand their operations. Due to the pressures the industry is currently experiencing many processors cannot make the improvements necessary to upgrade their facilities which is necessary if they are to survive and the pressures on the industry are to be relieved.

Processors feel if this was the intent and purpose of the bill, why start to put limits on it.

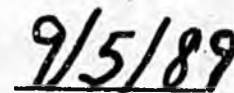


# RECORDS CERTIFICATION



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Date

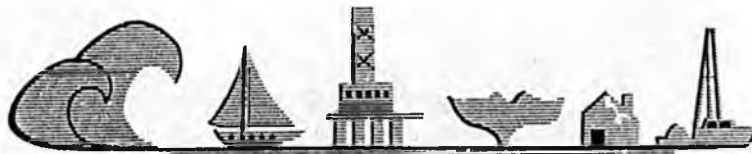
HB

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# *Statutes and Regulations*

*January 1985*



*Compiled by: The Division of Governmental Coordination  
Office of Management and Budget  
Pouch AW  
Juneau, Alaska 99811  
(907) 465-3562*

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# Introduction

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This document contains the Alaska statutes and regulations governing the Alaska Coastal Management Program (ACMP) and the federal regulations relating to federal consistency with approved State coastal management programs.

The ACMP was established by the Alaska Legislature in 1977. The Alaska Coastal Management Act (AS 46.40) provides the legislative authority for the program. In addition, certain sections of AS 44.19 provide authority for the program.

Two sets of State regulations have been adopted for the program. The Alaska Administrative Code, 6 AAC 50, contains regulations governing how the state reviews projects for consistency with the ACMP. These regulations were adopted in 1984. Also, the Coastal Policy Council promulgated regulations governing the ACMP based on AS 46.40 as 6 AAC 80 and 6 AAC 85. These include substantive standards for coastal development and guidelines for the development of detailed coastal management programs by local coastal resource districts. These regulations were adopted in 1979 and subsequently amended several times.

One set of federal regulations, 15 CFR 930, provides direction for federal agencies conducting or supporting activities directly affecting the coastal zone, issuing permits for coastal projects and approving Outer Continental Shelf (OCS) plans. These regulations mandate consultation and concurrence by the State that a proposal is consistent with an approved State management program prior to federal action.

This document includes the pertinent sections of the Alaska Statutes, and the federal regulations relating to federal consistency. The document is presented in a format suitable for placement in a three-ring binder. Whenever State statutes or regulations are revised, corrected pages or an updated set of the statutes and regulations will be distributed. The date of each version will be shown on the title page. Earlier copies of the regulations should be replaced with the more recent copies.

The purpose of this document is to serve as a reference. Explanatory material is kept to a minimum. For further information on the Alaska Coastal Management Program please contact:

Division of Governmental Coordination  
Pouch AW  
Juneau, Alaska 99811  
(907) 465-3562

## Title 44

### Chapter 19. Office of the Governor.

#### Article 12. Office of Management and Budget.

##### Section

- |   |   |
|---|---|
| 141. Alaska office of management and budget | 144. Powers and duties of the director  |
| 142. Director                               | 145. Functions and duties of the office |
| 143. Personnel                              | 152. Definitions                        |

NOTE: Only those sections of Article 12 related to the Alaska Coastal Management Program are reprinted here.

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**Sec. 44.19.145. Functions and duties of the office.** (a) The office shall

(1) provide technical assistance to the governor and the legislature in identifying long range goals and objectives for the state and its political subdivisions;

(2) prepare and maintain a state comprehensive development plan;

(3) provide information and assistance to state agencies to aid in governmental coordination and unity in the preparation of agency plans and programs;

(4) review planning within state government as may be necessary for receipt of federal, state or other funds;

(5) participate with other countries, provinces, states or subdivisions of them in international or interstate planning, and assist Alaska's local governments, governmental conferences and councils, in planning and coordinating their activities;

(6) encourage educational and research programs that further state planning and development, and provide administrative and technical services for them;

(7) publish such statistical information or other documentary material as will further the provisions and intent of AS 44.19.141 — 44.19.152;

(8) assist the governor and the Department of Community and Regional Affairs in coordinating the activities of state agencies which have an impact on the solution of local and regional development problems;

(9) serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to federal, state or local governmental agencies in discharging their respective responsibilities or in obtaining federal or state financial or technical assistance;

(10) review all proposals for the location of capital improvements by any state agency and advise and make recommendations concerning location of these capital improvements;

**Consistency Reviews**

(11) render, on behalf of the state, all federal consistency determinations and certifications authorized by 16 U.S.C. 1456 (§ 307, Coastal Zone Management Act of 1972), and a conclusive state consistency determination when a project requires two or more state or federal permits, leases, or authorizations.

(b) The office shall, in carrying out its functions, consult with local, regional, state and federal officials, private groups and individuals, and with officials of other countries, provinces and states, and may hold public hearings to obtain information for the purpose of carrying out the provisions of AS 44.19.141 — 44.19.152.

(c) The governor may establish coordinating or advisory planning groups.

(d) The office shall

(1) coordinate its services and activities with those of other state departments and agencies to the fullest extent possible to avoid duplication;

(2) prepare an integrated annual report on the long-range development program of the state and submit it to the governor for incorporation into the governor's report to the legislature;

(3) cooperate with the University of Alaska and other appropriate public and private institutions in research and investigations. (§ 2 ch 103 SLA 1966; am § 2 ch 219 SLA 1970; am § 2 ch 60 SLA 1972; am §§ 8, 10 ch 200 SLA 1972; am § 5 ch 207 SLA 1975; am § 20 ch 63 SLA 1983)

**Effect of amendments.** — The 1983 amendment, effective July 15, 1983, substituted "office" for "division" throughout the section, made other minor word

changes, and in subsection (a) revised the paragraph numbering and added paragraph (11).

**Sec. 44.19.152. Definitions.** In AS 44.19.141 — 44.19.152,

(1) "director" means the director of the office of management and budget;

(2) "office" means the Alaska office of management and budget. (§ 1 ch 219 SLA 1970; am § 13 ch 207 SLA 1975; am § 21 ch 63 SLA 1983)

**Effect of amendments.** — The 1983 amendment, effective July 15, 1983, repealed a former definition of "division," in the definition of "director" substituted

"office of management and budget" for "division of policy development and planning", added the definition of "office," and ordered the definitions alphabetically.

**Article 13. Alaska Coastal Policy Council.**

**Section**

- 155. Alaska Coastal Policy Council
- 160. Powers of the council

**Section**

- 161. Duties of the council
- 162. Council staff

**Sec. 44.19.155. Alaska Coastal Policy Council.** (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality; one public member shall be appointed from each of the following general regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic regional educational attendance area;

(B) Bering Straits, including, generally, the area of the Bering Straits regional educational attendance area;

(C) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, Southwest, and Lake-Peninsula regional educational attendance areas and the Bristol Bay Borough;

(D) Kodiak-Aleutians, including the area of the Kodiak Island Borough and the Aleutian, Adak and Pribilof regional educational attendance areas;

(E) Upper Cook Inlet, including the Municipality of Anchorage and the Matanuska-Susitna Borough;

(F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula Borough;

(G) Prince William Sound, including, generally, the area east of the Kenai Peninsula Borough to 141° W. longitude;

(H) northern Southeast Alaska, including the area southeast of 141° W. longitude and north of 57° N. latitude, including the entirety of the City and Borough of Sitka; and

(I) southern Southeast Alaska, including that portion of southeastern Alaska not contained within the area described in (H) of this paragraph;

(2) each of the following:

(A) the director of the office of management and budget;

(B) the commissioner of the Department of Commerce and Economic Development;

(C) the commissioner of the Department of Community and Regional Affairs;

(D) the commissioner of the Department of Environmental Conservation;

(E) the commissioner of the Department of Fish and Game;

(F) the commissioner of the Department of Natural Resources; and

(G) the commissioner of the Department of Transportation and Public Facilities.

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until his successor is appointed and qualified, except that the term of office of a public mem-

## Public Members

## State Members

## Term of Office

ber first appointed under (a)(1)(A), (a)(1)(C), (a)(1)(E) and (a)(1)(G) of this section shall be one year. A public member may be reappointed.

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

**Alternates**

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, the member shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed after July 9, 1978 under (a)(1) of this section shall, at the time of the alternate's designation and throughout the period of service as a permanent alternate, be the mayor or member of the assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for the director of the office of management and budget, serving under (a)(2)(A) of this section, shall be the director's designee within that office. The alternate for a designated member serving under (a)(2)(B) — (G) of this section shall be a deputy commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

**Quorum**

(e) Four public members and three designated members of the council constitute a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the members present and voting.

(f) Members of the council or their alternates are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

**Appointment of Unexpired Terms**

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a)(1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term. (§ 3 ch 84 SLA 1977; am Executive Order No. 39, § 11 (1977); am §§ 4, 5 ch 129 SLA 1978; am §§ 22, 23 ch 63 SLA 1983)

**Effect of amendments.** — The 1977 amendment substituted "Department of Transportation and Public Facilities" for "Department of Public Works" in (a)(2)(G).

The 1983 amendment, effective July 15, 1983, in (a)(2)(A) substituted "office of management and budget" for "division of policy development and planning", and in subsection (d) added the sentence beginning "The alternate for the director" and made other minor word changes.

**Sec. 44.19.160. Powers of the council.** The council may

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

(2) contract for necessary services;

(3) consult and cooperate with

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

(B) agents and officials of the coastal resource districts of the state, and federal and state agencies concerned with or having jurisdiction over coastal planning and management;

(4) take any reasonable action necessary to carry out the provisions of AS 44.19.155 — 44.19.162. (§ 3 ch 84 SLA 1977)

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**Sec. 44.19.161. Duties of the council.** In conformity with the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.40, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each geographic region described in AS 44.19.155(a)(1);

(3) assure continued provision of data and information to coastal resource districts to carry out their planning and management functions under the program;

(4) submit annually to the legislature, no later than the 10th day of each regular session, the portion of the coastal management program approved or amended by the council during the preceding year. (§ 3 ch 84 SLA 1977)

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**Sec. 44.19.162. Council staff.** The council shall use the staff of the office of coastal management within the office of management and budget in discharging its powers and duties. The coordinator of the office of coastal management, under the direction of the council co-chair who is selected from among the members designated in AS 44.19.155(a)(2), may contract with or employ personnel or consultants the coordinator considers necessary to carry out the powers and duties of the council. (§ 3 ch 84 SLA 1977; am § 24 ch 63 SLA 1983)

**Effect of amendments.** — The 1983 amendment, effective July 15, 1983, in the first sentence substituted "use" for "utilize" and substituted "office of management and budget" for "division of policy development and planning," and in the second sentence substituted "of coastal management . . . in AS 44.19.155(a)(2)" for ", with the concurrence of the council" and substituted "the coordinator" for "he."

## Title 46

### Chapter 40. The Alaska Coastal Management Program.

#### Article

1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
2. Coastal Management Programs in the Unorganized Borough (§§ 46.40.110 — 46.40.180)
3. General Provisions (§§ 46.40.190 — 46.40.210)

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**Opinions of attorney general.** — The activities of lessees, permittees and other private persons on nonexclusive federal coastal lands remain subject to state regulatory authority — including the coastal management program — unless the particular state regulation is preempted by, irreconcilably conflicts with or frustrates the purpose of another federal law. February 3, 1978. Op. Att'y Gen.

While federal land use decisions will not be governed or controlled by the state's coastal management program, they must, to the degree that they directly affect nonfederal coastal resources, conform to the state program to the maximum extent practicable. February 3, 1978. Op. Att'y Gen.

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#### Article 1. Development of Alaska Coastal Management Program.

Section	Section
10. Development of Alaska coastal management program	60. Review and approval by council
20. Objectives	70. Standards for council review and approval
30. Development of district coastal management programs	80. Effective date of Alaska coastal management program
40. Duties of the Alaska Coastal Policy Council	90. Implementation of district coastal management programs
50. Action and submission by coastal resource districts	100. Compliance and enforcement

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**Collateral references.** — 78 Am. Jur. 2d, Waters, §§ 59-116, 375-438.

65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

**Sec. 46.40.010. Development of Alaska coastal management program.** (a) The Alaska Coastal Policy Council established in AS 44.19.155 shall approve, in accordance with this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under AS 46.40.010. (§ 4 ch 84 SLA 1977)

**Revisor's notes.** — AS 44.19.155 was substituted for AS 44.19.891 in subsection (a) to conform to the renumbering of that section by the revisor of statutes pursuant to AS 01.05.031.

**Opinions of attorney general.** — The doctrine of federal preemption, derived from the supremacy clause of the United States Constitution, Article VI, clause 2, would not apply to state regulation of outer continental shelf activities in the coastal zone. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

Municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal preemption may prohibit

local coastal zone ordinances from affecting any measure of control. In the case of the latter, local coastal management programs which are approved by the Alaska Coastal Policy Council and thus part of the Alaska Coastal Management Program will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

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**Sec. 46.40.020. Objectives.** 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 which 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 a 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; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (§ 4 ch 84 SLA 1977)

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

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**Sec. 46.40.030. Development of district coastal management programs.** Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under AS 46.40.040 and shall include:

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

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

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

- (4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;
- (5) 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 the land and water within the coastal area;
- (6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and
- (7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

*Opinions of attorney general.* — The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 85 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981, Op. Att'y Gen.

The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it seems appropriate for resolution by the

adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981, Op. Att'y Gen.

Stated in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 5550, 5558), 645 P.2d 750 (1982).

**Sec. 46.40.040. Duties of the Alaska Coastal Policy Council.** Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

- (1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62) not later than April 15, 1978, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter; guidelines and standards for
  - (A) identifying the boundaries of the coastal area subject to the district coastal management program;
  - (B) determining the land and water uses and activities subject to the district coastal management program;
  - (C) developing policies applicable to the land and water uses subject to the district coastal management program;
  - (D) developing regulations applicable to the land and water uses subject to the district coastal management program;
  - (E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;
  - (F) designating and developing policies for the use of areas of the coast which 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 programs;
- (3) undertake review and approval of district coastal management programs in accordance with this chapter;
- (4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;
- (5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. (§ 4 ch 84 SLA 1977; am § 1 ch 129 SLA 1978)

**Effect of amendments.** — The 1978 amendment substituted "not later than April 15, 1978" for "within six months of the effective date of this act" in the introductory language of paragraph (1).

**Editor's notes.** — The regulations referred to in this section went into effect on July 18, 1978 and may be found at 6 AAC 80 and 6 AAC 85.

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**Sec. 46.40.050. Action and submission by coastal resource districts.** Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. If, in the opinion of the council, after receipt of a written request for extension from the district which includes the reasons for the extension, an extension is considered proper, the council may grant an extension to a date which is not later than December 4, 1981, or to a date which is within 54 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977; am § 1 ch 66 SLA 1979)

**Effect of amendments.** — The 1979 amendment added the second sentence.

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**Sec. 46.40.060. Review and approval by council.** (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section. (§ 4 ch 84 SLA 1977)

**Opinions of attorney general.** — The invalid provisions of AS 46.40.080 are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations and this section. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final coun-

cil disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c). May 12, 1980, Op. Att'y Gen.

**Sec. 46.40.070. Standards for council review and approval.** (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

**Opinions of attorney general.** — Reading subsection (b) as vesting local officials with complete control over policy formulation would probably render the Alaska Coastal Management Act unconstitutional under Alaska Const., art. VIII, § 2. May 12, 1980, Op. Att'y Gen.

Reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the Alaska Coastal Management Program, would be enforceable against off-shore federal lessees. May 12, 1980, Op. Att'y Gen.

A municipality enacting a local district coastal management program may restrict

or exclude a use of state concern without falling afoul of the constitutional limitations in Alaska Const., art. X, § 11 on the exclusion of municipal authority if that restriction or exclusion is reasonable, within the meaning of subsection (c). May 12, 1980, Op. Att'y Gen.

The Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the Alaska Coastal Management Program. May 12, 1980, Op. Att'y Gen.

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**Sec. 46.40.080. Effective date of Alaska coastal management program.** The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor. (§ 4 ch. 84 SLA 1977)

**Opinions of attorney general.** — Under the decision in *State v. A.L.I.V.E. Voluntary*, Sup. Ct. Op. No. 2022 (File No. 3670), 606 P.2d 769 (1980), that the use of legislative resolutions as a veto over regulations, programs or other actions or proposed actions is constitutionally impermissible except as expressly provided by the constitution, this section is invalid. March 6, 1980, Op. Att'y Gen.

The invalid provisions of section are severable from the remainder of the Coastal Management Act. Thus, council guidelines take effect when adopted in accordance with the Administrative Procedure Act, AS 44.62. The effective date of council action on district programs is governed by the council's regulations, and AS 46.40.060. April 29, 1980, Op. Att'y Gen.

Council action on a district coastal management plan takes effect upon final council disposition of the plan under 6 AAC 85.150 or AS 44.62.520. April 29, 1980, Op. Att'y Gen.

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**Sec. 46.40.090. Implementation of district coastal management programs.** (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation

shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.100. Compliance and enforcement.** (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(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. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to implement, enforce or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council and subsequently approved by the legislature have been followed and considered.

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council. (§ 4 ch 84 SLA 1977)

## Appeal to Council

**Opinions of attorney general.** — As to effective date of coastal management programs, see notes under this heading following AS 46.40.080.

**Article 2. Coastal Management Programs in the Unorganized Borough.**

Section	Section
110. Authority in the unorganized borough	160. Organization at the direction of the council
120. Coastal resource service areas	170. Preparation of district coastal management program by the Department of Community and Regional Affairs
130. Organization of coastal resource service area	180. Approval of programs in coastal resource service areas
140. Coastal resource service area boards	
150. Elections in coastal resource service areas	

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**Collateral references.** — 78 Am. Jur. 65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.  
2d, Waters, §§ 59-116, 375-438.

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**Sec. 46.40.110. Authority in the unorganized borough.** Under AS 29.03.020 and 46.40.110 — 46.40.180, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.120. Coastal resource service areas.** (a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area.

(d) For purposes of coastal zone management only, the commissioner of the Department of Community and Regional Affairs may, after pub-

**Consolidation of REAA's**

**Division of REAA's**

lic hearings held in the regional educational attendance area affected, divide an existing regional educational attendance area into no more than three coastal resource service areas according to geographic, cultural, economic, environmental, or other features relevant to coastal management planning. However

(1) each coastal resource service area formed by dividing an existing regional educational attendance area must contain at least one first class city or home rule city;

(2) a city within a coastal resource service area formed by dividing an existing regional educational attendance area may not elect to exclude itself from the coastal resource service area; and

(3) a coastal resource service area formed before June 1, 1980 may not be divided for coastal management planning purposes.

(§ 4 ch 84 SLA 1977; am § 2 ch 129 SLA 1978; am §§ 1, 2 ch 48 SLA 1980)

**Effect of amendments.** — The 1978 amendment deleted "and no later than six months from the effective date of this act" from the end of subsection (c).

The 1980 amendment inserted "otherwise" and deleted "(b) of" following "provided in" in subsection (a), and added subsection (d).

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**Sec. 46.40.130. Organization of coastal resource service area.**

(a) Organization of a coastal resource service area may be initiated

(1) by submission to the council of a petition signed by a number of registered voters equal to 15 percent of the number of votes cast within the coastal resource service area at the last state general election;

(2) by submission to the council of a resolution approved by the city council or traditional village council of not less than 25 percent of the number of cities and villages within the coastal service area; or

(3) at the direction of a majority of the members of the council in the manner set out in AS 46.40.160.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area. (§ 4 ch 84 SLA 1977)

**Revisor's notes.** — The word "by" was added preceding "submission" in paragraphs (1) and (2) of subsection (a) and deleted following "may be initiated" in the

introductory language of that subsection by the revisor of statutes under AS 01.05.031.

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**Sec. 46.40.140. Coastal resource service area boards.** (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

## Sectional CRSA Elections

(b) A coastal resource service area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under AS 46.40.130(a)(1), in the resolution submitted under AS 46.40.130(a)(2), at the direction of the council under AS 46.40.130(a)(3) or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

## Term of Office

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under AS 46.40.130(b) in which a majority of votes cast favors organization of the coastal resource service area.

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b).

(g) A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.08.041(a) for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.28.130 — 29.28.250. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.150. Elections in coastal resource service areas.** Organization elections under AS 46.40.130 and other elections, including recall elections conducted under AS 46.40.140, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs. (§ 4 ch 84 SLA 1977)

**Editor's notes.** — The director of elections has succeeded to most of the administrative duties of the lieutenant governor under AS 15.10.105.

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**Sec. 46.40.160. Organization at the direction of the council** (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in waters adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) For purposes of this section, "major economic development activity" includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in waters of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal waters of the state. (§ 4 ch 84 SLA 1977)

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**Sec. 46.40.170. Preparation of district coastal management program by the Department of Community and Regional Affairs.**

(a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a pro-

gram within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.180. Approval of programs in coastal resource service areas.** (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under AS 46.40.170, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management program prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and standards adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs. (§ 4 ch 84 SLA 1977)

## Village Veto

### Article 3. General Provisions.

#### Section

- 190. Cooperative administration
- 200. State agencies
- 210. Definitions

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Collateral references. — 78 Am. Jur. 2d. Waters, §§ 59-116, 375-438. 65 C.J.S., Navigable Waters, §§ 10-18, 20-132; 93 C.J.S., Waters, §§ 71-85.

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**Sec. 46.40.190. Cooperative administration.** (a) A city within the coastal area which is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of the Department of Community and Regional Affairs.

(b) Nothing in this chapter restricts or prohibits cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. A city which elects to be excluded from an adjacent coastal resource service area under (a) of this section shall enter into a mutual agreement for cooperative or joint administration of functions with the coastal resource service area board from the adjacent coastal resource service area. (§ 4 ch 84 SLA 1977; am § 3 ch 43 SLA 1980)

**Effect of amendments.** — The 1980 amendment, substituted "a" for "an adjacent" preceding "coastal resource", "shall be included" for "may include itself", "unless" for "if", "chooses to exclude" for "consents to the inclusion of", inserted "from an adjacent coastal resource service area", all in subsection (a); and added the second sentence of subsection (b).

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**Sec. 46.40.200. State agencies.** Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

**Sec. 46.40.210. Definitions.** In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities established under AS 29.68.240 — 29.68.440;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of the Department of Community and Regional Affairs, have the capability of preparing and implementing a comprehensive district coastal management program under AS 46.40.030;

(E) coastal resource service areas established and organized under AS 29.03.020 and 46.40.110 — 46.40.180;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs;

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material

change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.21 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (§ 4 ch 84 SLA 1977; am § 3 ch 129 SLA 1978)

**Effect of amendments.** — The 1978 amendment inserted "activities pursuant to a state oil and gas lease" in subparagraph (C) of paragraph (6).

**Revisor's notes.** — Internal reference in paragraph (6)(E) was revised in 1983.

**PART 2B.  
OFFICE OF MANAGEMENT AND  
BUDGET-DIVISION OF GOVERNMENTAL  
COORDINATION**

**Chapter**

- 50. Project Consistency With the Alaska Coastal Management Program  
(6 AAC 50.010-6 AAC 50.190)**

**CHAPTER 50.  
PROJECT CONSISTENCY WITH THE  
ALASKA COASTAL MANAGEMENT  
PROGRAM**

**Section**

- 10. Purpose of regulations
- 20. Federal consistency determinations
- 30. State permit consistency determinations
- 40. Preapplication assistance
- 50. Expedited review by categorical approval and general concurrence determinations
- 60. Scope of project to be reviewed
- 70. Consistency review process
- 80. Confidential information and fees
- 90. Emergency expedited review
- 100. Public participation
- 110. Review period deadlines and extensions
- 120. Conclusive consistency determination
- 130. Issuance of project permits
- 190. Definitions

**6 AAC 50.010. PURPOSE OF REGULATIONS.** The regulations in this chapter are intended to implement, interpret, and make specific

(1) the responsibility of the office of management and budget (OMB) to implement the Alaska Coastal Management Program (ACMP) by rendering on behalf of the state

(A) all responses concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1456, (CZMA), and

(B) all conclusive consistency determinations for any project requiring two or more state agency or federal permits as required by AS 44.19.145(a)(11); and

(2) the responsibility of resource agencies to implement the ACMP by making conclusive consistency determinations for projects requiring the permit of a single state agency and no federal permit, and to expedite their permit review procedures, to the extent permitted by law, by coordinating their own procedures with the consistency review of a project. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)  
AS 46.40.100(a)

**6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS.** The division of governmental coordination (DGC) of the office of management and budget will coordinate a consistency review and render a response concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the CZMA. DGC will coordinate the review in the manner provided in this chapter and will render a response in the time and manner prescribed in the CZMA or in the regulations implementing that Act. (Eff. 3/11/84, Reg. 89)

Authority: AS 44.19.145(a)(11)

**6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS.** (a) DGC will coordinate the review and render a determination for a project which requires the permits of two or more state agencies or a federal permit, in the manner provided in this chapter.

(b) A resource agency shall coordinate the consistency review and render a conclusive consistency determination for a project which requires only the permits of a single state agency and no federal permit. The agency shall coordinate the review and render its determination in the manner provided in this chapter.

(c) DGC will participate in a single-agency consistency review in the same manner as the other resource agencies participate. DGC will also, on request of the coordinating agency, act as a facilitator to attempt to resolve any disputed issues. If the project includes a disposal of interest in state land, DGC will either concur in the determination or require modifications necessary for its concurrence.

(d) DGC will, in its discretion, at any time, with reasonable notice, review the consistency review procedures, files, or decisions of a coordinating agency. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)  
AS 46.40.100(a)

**6 AAC 50.040. PREAPPLICATION ASSISTANCE.** DGC will, on request, assist a potential applicant for a state permit for a project by providing and explaining the coastal project questionnaire and the consistency review process as described in 6 AAC 50.070, identifying persons to contact in other state or federal agencies, determining the scope of activities which comprise the project, and providing any other assistance or information at its disposal to facilitate review and approval of the applicant's proposed project. A resource agency shall, on request, provide similar assistance and shall also provide application forms for its own permits. DGC and all resource agencies will attempt to regularly inform each coastal resource district of proposed projects which may have significant and direct impacts on that district. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)  
AS 46.40.100(a)

**6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS.** (a) The consistency review of a project will be expedited as provided in (b) or (c) of this section if the project meets the requirements of one of those subsections.

(b) A project which requires one or more state or federal permits, each of which appears on the list published under (e) of this section listing permits which have been categorically approved by DGC as being consistent with the ACMP, is considered to have been conclusively determined by DGC to be consistent with the ACMP. A permit will be categorically approved if DGC determines that the activity authorized by the permit will have no significant impact in the coastal zone.

(c) A project which requires one or more state or federal permits not categorically approved as

provided in (b) of this section will be considered consistent without further review, if it meets the requirements of a general concurrence determination contained on the list published under (e) of this section. A "general concurrence determination" is a consistency determination for a type of project which includes only routine activities, and which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit. If a subsequent project of any applicant fits the description in a general concurrence determination, the project will be considered consistent with the ACMP if it complies with the stated standard stipulations.

(d) A project which requires one or more state or federal permits, and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED.** The scope of activities which are to be reviewed for consistency with the ACMP as part of a project will be determined based on statements of the applicant, the information provided in the coastal project questionnaire, and any additional information which DGC or a resource agency finds necessary to request. If there is disagreement among the agencies, DGC will make the final decision. If DGC determines that a project under review by a resource agency is one requiring a federal permit, or the permits

of two or more state agencies. DGC will immediately notify the applicant and the resource agency that the consistency review will be coordinated by DGC, and will commence as provided in 6 AAC 50.070 when DGC has received completed applications for all necessary permits and a completed coastal-project questionnaire. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.070. CONSISTENCY REVIEW PROCESS.** (a) Except as provided in 6 AAC 50.050(e) or in (b) of this section, DGC on request, or a resource agency which receives an application for a permit for a coastal project, shall give the applicant a project questionnaire provided by DGC. Based on the information provided by the applicant in response to the questionnaire, the agency shall identify all state resource agencies which the applicant must contact regarding the project before submitting an application for a permit.

(b) A project questionnaire is not required for placer mining activity which is authorized by an annual application known as the "tri-agency placer mining application." These applications must be submitted to the Department of Natural Resources (DNR). DNR will distribute these applications to initiate the consistency review of the projects as provided in this chapter.

(c) For a project requiring a federal permit or the permits of two or more state agencies, the applicant shall submit a packet including all necessary state permit applications, copies of all necessary federal permit applications, and the project questionnaire to DGC, except that confidential information or fees must be handled as provided in 6 AAC 50.080. The coordinating agency may require the applicant to provide additional copies of maps or other documents which may not be conveniently duplicated.

(d) For a project requiring only the permits of a single state agency, the applicant shall submit a packet including all necessary applications and the project questionnaire to the agency.

(e) Immediately upon receipt, the coordinating agency shall review the packet and shall inform the applicant if it appears to be incomplete. If the packet appears to be complete, and the project does not include a disposal of interest in state land, the coordinating agency shall immediately assign a project number, and note the date as Day 1 of the consistency review process. For a project which includes a disposal of interest in state land, the consistency review will begin at a date which DGC and DNR agree will most effectively allow for both the consistency review and DNR's own statutory responsibilities. Acceptance of the packet does not preclude an agency from requesting additional information or applications from the applicant as necessary for its consistency review or its own statutory responsibilities. On or before Day 2, the coordinating agency will distribute copies of the packet to all resource agencies, other state agencies on request, all affected coastal resource districts, and other interested parties. For a 30-day review, the distribution may be limited in the discretion of the coordinating agency but must, if requested in writing, include any affected coastal district with an approved program. Along with the packet, the coordinating agency will distribute a notice establishing a comment deadline at Day 34, or at Day 17 in a 30-day review period, or later if the review period is extended as provided in 6 AAC 50.100. The notice will also state the applicable time limit, if any, imposed by the federal law or regulation.

(f) If the coordinating agency determines that the public notice, if any, provided by the resource agencies as part of their review of a permit is not adequate to inform the public about the project and the consistency review process, the coordinating agency shall, as soon as possible, publish a public notice in a newspaper or on radio or television in the affected areas, describing the project and the consistency review process. In evaluating the need for public notice of a project, the coordinating agency shall consider the magnitude of likely impacts, including cumulative impacts on the affected area, but may not unreasonably require public notice for a project for which notice is not statutorily required. DGC will encourage the joint public notice of project reviews when a permit from more than one agency is required.

(g) The coordinating agency, on its own initiative or at the request of a resource agency or of an affected coastal district with an approved program, may request from the applicant by Day 25, or Day 15 of a 30-day review period, additional information relevant to the proposed project, which is necessary for its consistency review or its own statutory responsibilities.

(h) Comments must be received by the coordinating agency on or before the comment deadline established by the coordinating agency. Each commenter shall also send copies of its comments to the resource agencies. Verbal comments must be confirmed by written comments postmarked within five working days after the verbal comments. If the commenter recommends stipulations on the consistency determination, a brief written justification must be provided by the commenter for each stipulation. Upon request, the coordinating agency shall send copies of comments to other interested parties.

(i) The coordinating agency shall encourage and facilitate consideration of comments received and discussion among the resource agencies. The coordinating agency shall determine whether there is a consensus among the resource agencies regarding a proposed consistency determination. The coordinating agency shall notify the affected coastal resource district with an approved program and the applicant on or before Day 44, or Day 24 in a 30-day review period, of the proposed determination or the issues to be resolved.

(j) If a resource agency, an affected coastal resource district with an approved program, or the applicant does not concur with the proposed consistency determination, it may request elevation of the review by submitting a written statement which describes its concerns and includes a proposed alternative consistency determination which would meet its concerns. That party shall distribute this statement so that all resource agencies, affected coastal resource districts, the applicant, and DGC will receive a copy on or before Day 49, or Day 29 in a 30-day review period, or within five days after receiving notice of the proposed determination, whichever is later. This requirement may be satisfied by transmitting the substance of the

statement to the coordinating agency by telephone or other telecommunication device and sending written confirmation to all parties by mail or courier on or before the deadline under this subsection.

(k) The coordinating agency shall issue a conclusive consistency determination on or before Day 50, or Day 30 in a 30-day review period, if it has not received a request to elevate the review. If the coordinating agency receives a request, the agency shall elevate the review as necessary to the division directors, and then commissioners of the resource agencies, and may extend the decision deadline in accordance with 6 AAC 50.110(b)(7). If the review is elevated, the coordinating agency, or DGC on request, shall arrange meetings and shall mediate among the resource agencies, the affected coastal resource districts with approved programs, and the applicant, for the purpose of attempting to resolve any disputed issues and to formulate a mutually acceptable consistency determination. If no consensus is reached, the coordinating agency shall render a determination consistent with any policy direction given by the commissioners or the governor. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES.** An application for a state permit requiring information which must by law be held in confidence, and any fee associated with a state permit, must be submitted by the applicant directly to the agency with responsibility for issuing the permit. The agency shall delete the confidential information from any copy of the application which is distributed for a consistency review under this chapter. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.090. EMERGENCY EXPEDITED REVIEW.** If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited agency permit or consistency review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare,

the head of the coordinating agency may modify the review process established in this chapter as necessary to meet the emergency. Any modifications in the review process made under this section must be made in writing by the head of the coordinating agency, based upon clear and convincing evidence of a need for the modification. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.100. PUBLIC PARTICIPATION.**

(a) Any person may comment on a proposed project by submitting written comments to the coordinating agency on or before the comment deadline. The coordinating agency shall provide a copy of the project packet to any person on request.

(b) If the coordinating agency receives a request for public hearing regarding a project by Day 34, or Day 17 of a 30-day review period, and finds that the request is based on concerns not already adequately addressed in the review, the coordinating agency shall schedule and hold a hearing in the area affected by the project.

(c) Within seven days after receiving a request under (b) of this section, the coordinating agency shall decide whether or not to hold a public hearing.

(d) At least 15 but no more than 30 days before the date of a public hearing, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper which is circulated in the area to be affected by the project;

(2) by written notice to the governing body of an affected coastal resource district; and

(3) if the project is to be located in the unorganized borough, by radio or television announcements.

(e) If new information or issues are presented at a public hearing that have not been considered or resolved by project reviewers, the coordinating agency shall summarize those portions of the hearing testimony and distribute the

summary to other resource agencies, affected coastal resource districts, and the applicant, within five days following the hearing. Recommendations for a proposed determination based on the summary may be submitted to the coordinating agency in writing within seven days after receipt of the summary. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.110. REVIEW PERIOD DEADLINES AND EXTENSIONS.** (a) The coordinating agency shall complete a review by either Day 30 or Day 50 unless it extends the applicable decision deadline as provided in (b) or (c) of this section. Each resource agency shall, after consultation with DGC, establish standards for determining whether a 30-day or 50-day decision deadline will apply. DGC will complete a review by Day 30 only if all required permits must by statute or regulation be issued within 30 days.

(b) An associate director within OMB or a division director within the coordinating agency may grant an extension of a consistency review as long as the consistency determination is made within any time limit imposed by federal law or regulation. An extension and the reasons for it must be stated in writing and, except for an extension granted under (1) of this subsection, must be based on clear and convincing evidence of the need for the extension. The coordinating agency will notify the resource agencies, applicant, and affected coastal resource districts of the terms of an extension. The limits on extensions are

(1) for a project located in the unorganized borough, the coordinating agency may, without a request, extend both the comment and decision deadlines by 10 days;

(2) if a commenting agency requests time to perform a field review, the coordinating agency may extend the remaining deadlines by up to 10 days;

(3) if the project involves a disposal of interest in state land or resources and DGC is the coordinating agency, it will, on DNR's request, extend both the comment and decision

deadlines for a period necessary to most efficiently coordinate the consistency review and the DNR disposal process;

(4) for a project which is subject to the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445 (1977), 30 U.S.C. § 1201 et seq., the consistency review deadlines will be extended as necessary to conform to the requirements of that Act and of the Alaska Surface Mining Control and Reclamation Act, AS 27.21;

(5) if a public hearing is held as part of the consistency review process, or as part of a resource-agency review of a necessary permit, the coordinating agency may extend both the comment and decision deadlines as necessary;

(6) if the coordinating agency requests additional information from the applicant as provided in 6 AAC 50.070, the agency may extend the remaining deadlines for a period equal to the time elapsed between the request and receipt of the information;

(7) if the coordinating agency determines that a consensus among the resource agencies, any affected coastal resource district, and the applicant cannot be reached within a 50-day review period, it shall state in writing the issues or conditions which require additional time for review, and may extend the remaining deadlines for up to 15 days for each higher level of review provided in 6 AAC 50.070(k);

(8) if the applicant requests an extension, the coordinating agency may extend the remaining deadlines as requested;

(9) if the coordinating agency determines that the project involves unusually complex issues, it may extend the deadlines as necessary; if the deadline is extended under this paragraph, the agency shall by Day 50, or Day 30 of a 30-day review period, distribute to the resource agencies, the affected coastal resource districts, and the applicant, a written statement of the issues which remain to be resolved; the coordinating agency shall notify all interested parties promptly as issues are resolved.

(c) All time periods in this chapter must be calculated using calendar days. An action

required to be taken on a Saturday, Sunday, or state or federal holiday must be taken on or before the next working day. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.120. CONCLUSIVE CONSISTENCY DETERMINATION.** (a) In rendering a conclusive consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give due deference to the comments of resource agencies and affected coastal districts with approved programs. "Due deference" means that deference which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to support any factual assertions. A coastal resource district whose district program has been incorporated into the ACMP is considered to have expertise in the interpretation and application of its program. If the coordinating agency rejects a stipulation or recommendation requested by a commenting resource agency or affected coastal resource district with an approved program, within its respective area of expertise, the coordinating agency shall make a written finding stating the reasons for rejecting the stipulation.

(b) The coordinating agency shall render a written conclusive consistency determination before the decision deadline under 6 AAC 50.070 or 6 AAC 50.110. The agency shall distribute its determination to the applicants and to all resource agencies, all other agencies which commented on the project, and all affected coastal resource districts. The determination must describe the scope of the project which was reviewed. If the project is determined to be consistent with the ACMP, the determination must state any conditions or stipulations and must identify the state or federal permits in which each stipulation must be included to ensure that the project is consistent with the ACMP. If a resource agency is the coordinating agency, it may include the determination in its approval or denial of each permit required for the project. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.130. ISSUANCE OF PROJECT PERMITS.** A resource agency shall issue a permit which is necessary for a project, except a lease, within five days after it issues or receives the conclusive consistency determination for that project, unless the commissioner of that agency finds that additional review is necessary to fulfill statutory responsibilities. A resource agency shall issue a lease at the time and in the manner provided by applicable law, regulation, and agency procedure, but not before it issues or receives a conclusive consistency determination for the appropriate project. For a project which is deemed consistent, by either categorical approval of all necessary permits or a general concurrence determination, an agency shall issue a required permit as soon as possible in the time and manner prescribed by applicable statutes or regulations. A project permit must contain any applicable conditions or stipulations required by the conclusive consistency determination, and may not contain any additional condition or stipulation for the sole purpose of ensuring consistency. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**6 AAC 50.190. DEFINITIONS.** In this chapter and in AS 44.19.145(a)(11)

(1) "ACMP" means the Alaska Coastal Management Program, as amended, which was developed as provided in AS 46.40, 6 AAC 80, and 6 AAC 85, and approved by the Secretary of the United States Department of Commerce under authority of sec. 305 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1454;

(2) "affected coastal resource district" means a coastal resource district as defined in AS 46.40.210(2) in which a project is proposed to be located, or which may experience a direct and significant impact from a proposed project;

(3) "approved program" means a coastal resource district program that has been approved by the Alaska Coastal Policy Council and filed by the lieutenant governor's office;

(4) "consistency" means compliance with the

standards of the ACMP, including the enforceable policies of an approved coastal resource district program;

(5) "coordinating agency" means the agency responsible for coordinating and facilitating the review and rendering the determination;

(6) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. § 1451 et seq.;

(7) "DGC" means division of governmental coordination within the office of management and budget in the Office of the Governor;

(8) "DNR" means the Department of Natural Resources;

(9) "determination" or "consistency determination" or "conclusive consistency determination" means

(A) a document issued by the coordinating agency containing a brief description of the project, and the findings of the consistency review together with any stipulations, conditions, or modifications to the project which must be attached to the applicable permits, and a brief justification for those necessary modifications, conditions, or stipulations, and includes

(B) a response to a consistency certification or determination required or authorized under the CZMA;

(10) "direct and significant impact" means an effect of a project which will likely contribute or lead to a significant change in or alteration of the natural, social, cultural, or economic characteristics of a coastal resource district;

(11) "disposal of interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by the Department of Natural Resources;

(12) "OMB" means the office of management and budget in the Office of the Governor;

(13) "permit" means a permit, lease, authorization, license or any other determina-

tion necessary for completion of a project or a discrete phase of a project;

(14) "project" means an activity or use which will be located in or may affect the coastal zone of Alaska and which is subject to consistency review under sec. 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456), or which requires the issuance of one or more state permits: when a land or water activity is developed or authorized in discrete phases, and each phase requires agency decisions regarding permits, each phase is considered a "project";

(15) "resource agency" means the Alaska Department of Environmental Conservation, or the Alaska Department of Fish and Game, or the Alaska Department of Natural Resources;

(16) "review" or "consistency review" means the evaluation of a project against the ACMP standards. (Eff. 3/11/84, Reg. 89)

Authority: Art. III, Secs. 1, 16 and 24,  
Alaska Const.  
AS 44.19.145(a)(11)

**PART 6.  
ALASKA COASTAL POLICY COUNCIL**

**Chapter**

- 80. Standards of the Alaska Coastal Management Program (6 AAC 80.010-6 AAC 80.900)
- 85. Guidelines for District Coastal Management Programs (6 AAC 85.010-6 AAC 85.900)

**CHAPTER 80.  
STANDARDS OF THE ALASKA  
COASTAL MANAGEMENT PROGRAM**

**Article**

- 1. Government Process (6 AAC 80.010-6 AAC 80.030)
- 2. Uses and Activities (6 AAC 80.040-6 AAC 80.120)
- 3. Resources and Habitats (6 AAC 80.130-6 AAC 80.150)
- 4. Areas Which Merit Special Attention (6 AAC 80.160)
- 5. General Provisions (6 AAC 80.900)

**ARTICLE 1.  
GOVERNMENT PROCESS**

**Section**

- 10. Coverage of chapter
- 20. Public participation and information
- 30. Program management and coordination

**6 AAC 80.010. COVERAGE OF CHAPTER.**  
(a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19.891 - 44.19.894).

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that

the use or activity is consistent with the applicable district program and the standards contained in this chapter. However, if the district program and the standards in this chapter both address the same operational subject or issue, the provisions of the district program are controlling.

(c) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67; am 9/9/81, Reg. 79)

Authority: AS 44.19.160  
AS 46.40.040  
AS 46.40.100

**6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION.** (a) The council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska coastal management program. The council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska coastal management program.

(b) The council will not approve a district program or significant amendment of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The council will make available to the public information and educational materials concerning coastal management, in understandable form, including

(1) a guide for the development of district programs;

(2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;

(3) areas recommended for council designation as areas which merit special attention;

(4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;

(5) an identification of major data and information sources concerning coastal management;

(6) a summary of information regarding coastal regions;

(7) summaries of public hearings and workshops;

(8) films and slide programs;

(9) written material summarizing or explaining the Alaska coastal management program; and

(10) the council's annual report to the legislature.

(d) At public meetings concerning the Alaska coastal management program, the council will ensure that, when requested and reasonably necessary, translation into the appropriate Native language is provided. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION.** (a) The Office of Coastal Management is the designated lead agency for the Alaska coastal management program. The Office of Coastal Management shall

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of state agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, subject to council review.

(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.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.49.040

NOTE: The Council has Amended 6 AAC 80.030. The Amended language is reprinted on the following page. The new language went into effect in October 1984.

6 AAC 80.030 is amended to read:

6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION.

(a) The division of governmental coordination of the Office of Management and Budget is the designated lead agency for the Alaska coastal management program. The division of governmental coordination of the Office of Management and Budget shall

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of State agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, as provided in 6 AAC 50.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.155. 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 division of governmental coordination. 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.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/79, Reg. 67; am / / , Reg. )

Authority: AS 44.19.145 (a) (11)  
AS 44.19.161  
AS 46.40.040

ARTICLE 2.  
USES AND ACTIVITIES

Section

- 40. Coastal development
- 50. Geophysical hazard areas
- 60. Recreation
- 70. Energy facilities
- 80. Transportation and utilities
- 90. Fish and seafood processing
- 100. Timber harvest and processing
- 110. Mining and mineral processing
- 120. Subsistence

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)). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

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. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

6 AAC 80.060. RECREATION. (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

6 AAC 80.070. ENERGY FACILITIES. (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

**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 district programs.

(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. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

**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. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.100. TIMBER HARVEST AND PROCESSING.** AS 41.17, Forest Resources and Practices, and the regulations and procedures adopted under that chapter with respect to the harvest and processing of timber, are incorporated into the Alaska coastal management program and constitute the components of

the coastal management program with respect to those purposes. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71; am 3/30/84, Reg. 89)

Authority: AS 44.19.161  
AS 46.40.040

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

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

(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. (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.120. SUBSISTENCE.** (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

**ARTICLE 3.  
RESOURCES AND HABITATS**

**Section**

- 130. Habitats
- 140. Air, land, and water quality
- 150. Historic, prehistoric, and archaeological resources

**6 AAC 80.130. HABITATS.** (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;

- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;
- (7) rivers, streams, and lakes; and
- (8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(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;

(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, silt, and destruction of productive habitat;

(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;

(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;

(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:

(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

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.140. AIR, LAND, AND WATER QUALITY.** Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

**6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES.** Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.161  
AS 46.40.040

**ARTICLE 4.  
AREAS WHICH MERIT  
SPECIAL ATTENTION**

**Section**

**160. Areas which merit special attention**

**6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION.** (a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information:

(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 area 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 sea 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) an identification of the authority which will be used to implement the proposed management scheme.

(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention may include the following:

(1) areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) potential estuarine or marine sanctuaries.

(c) Management schemes for areas which merit special attention must preserve, protect, enhance, or restore the value or values for which the area was designated.

(d) As used in this section, "areas which merit special attention" has the same meaning as in AS 46.40.210(1). (Eff. 7/18/78, Reg. 67; am 8/18/79, Reg. 71)

Authority: AS 44.19.161  
AS 46.40.040

**NOTE:**

The Coastal Policy Council is considering the amendment of section 6 AAC 80.160 and the adoption of a new section, 6 AAC 80.161. The language that is being considered is represented as follows:

## ARTICLE 4

## Areas Which Merit Special Attention

Article 4, 6 AAC 80.160, is amended as follows:

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION INSIDE DISTRICTS. (a) Any person may recommend to a district areas inside the district to be nominated to the Council as areas which merit special attention. Districts shall nominate in district programs or as significant amendments to their programs areas which merit special attention. Council designation of areas which merit special attention inside districts shall be in accordance with the procedures for approval of district programs or significant amendments to district programs as described in 6 AAC 85. Nominations of areas which merit special attention must include the following information:

(1) The basis or bases for designation under 46.40.210(1) or (b) of this section;

(2) A map showing the geographical location, surface area 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 sea 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 statement of the specific, enforceable policies which will be applied in managing the area; and

(C) An identification of the authority which will be used to implement the proposed management scheme.

(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention inside districts may include the following:

(1) Areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) Areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) Potential estuarine or marine sanctuaries.

(c) Management schemes for areas which merit special attention inside districts must preserve, protect, enhance, or restore the value or values for which the area was designated.

Authority: AS 44.19.161  
AS 46.40.040

Section 6 AAC 80 is amended by adding a new section, 6 AAC 80.161.

6 AAC 80.161. AREAS WHICH MERIT SPECIAL ATTENTION OUTSIDE DISTRICTS. (a) Any person may recommend to the Council an area which is within the coastal area but outside a coastal resource district to be designated as an area which merits special attention. A recommendation to the Council of an area which merits special attention outside a district must include the following information:

(1) A map showing the geographical location of the area, as well as a legal and narrative description of the boundaries and a justification of the size of the area which merits special attention.

(2) A summary of the resource values and use conflicts, if any, in the area;

(3) A statement of the purpose and objectives to be met through area which merits special attention planning;

(4) A tentative schedule outlining timeframes for completion of planning tasks and reviews;