

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11296 SENATE RESOURCES

- 18 AAC 15.300. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

**18 AAC 15.320. CONTEMPT.** The commissioner or hearing officer may use the procedures set forth in AS 44.62.590 to obtain the assistance of the superior court if a person in the proceeding disobeys or resists a lawful order, refuses to respond to a subpoena, refuses to take oath or affirmation as a witness, refuses to be examined, or is guilty of misconduct at the hearing or so near the hearing as to obstruct the proceeding. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

**18 AAC 15.340. SERVICE UNDER 18 AAC 15.185 – 18 AAC 15.340.** (a) Any matter required to be served under 18 AAC 15.185 - 18 AAC 15.340 shall be submitted by personal delivery, or by first-class, priority, or express United States mail to each party and the commissioner or designee along with proof of service. The hearing officer may waive the requirement for submission by personal delivery or mail as described in this subsection, to allow facsimile service or service in an electronic format upon motion of a party. Proof of service must be made by an affidavit of service stating the persons who have been served, and the day and manner of service.

(b) If a pleading or paper filed discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon the requestor's or respondent's attorney.

(c) If mail is used for service, service occurs upon mailing for the purpose of the serving person's obligation. If a party has the right or is required to do some act or take some proceedings within a period prescribed in 18 AAC 15.195 – 18 AAC 15.340 after the service of a notice or other paper upon the party, and if the party is served by mail, three days are added to the prescribed period. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

**ARTICLE 6. GENERAL PROVISIONS.****Section**

900. Time computations  
 910. Service  
 920. Definitions

**18 AAC 15.900. TIME COMPUTATIONS.** Time computations under this chapter will be made in accordance with AS 01.10.080. (Eff. 11/25/77, Register 64)

Authority:	AS 46.03.020(10)	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.100		

**18 AAC 15.910. SERVICE.** (a) Any matter required to be served under 18 AAC 15.020 – 18 AAC 15.080, or before a request for an adjudicatory hearing under 18 AAC 15.200 may be served by first-class mail, facsimile, an electronic format, or personal delivery.

(b) Repealed 7/11/2002.

(c) When a pleading or paper filed in a case discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon his attorney.

(d) When mail is used for service, service occurs upon the date of mailing as indicated by the postmark for the purpose of the serving party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.330	AS 46.04.030
	AS 46.03.100		

**18 AAC 15.920. DEFINITIONS.** As used in this chapter, unless the context otherwise requires

- (1) "appropriate division director" means the director of the department division responsible for the permit, approval, or certification at issue;
- (2) "commissioner" means the commissioner of environmental conservation;
- (3) "decision" means a department decision to issue, deny, condition, suspend, revoke, or amend a permit, or to take another action reviewable under 18 AAC 15.195 - 18 AAC 15.340;
- (4) "department" means the Department of Environmental Conservation;

(5) "EPA" means the United States Environmental Protection Agency;

(6) "hearing officer" means

(A) the commissioner, if the commissioner does not designate or appoint a hearing officer under 18 AAC 15.235(a)(1)(B) or (a)(2); or

(B) an individual designated or appointed under 18 AAC 15.235(a)(1)(B) or (a)(2);

(7) "modification of an NPDES permit" includes an action that, as a practical matter, alters the permittee's obligation under the NPDES permit, whether through a consent decree, stipulated agreement, enforcement compliance schedule letter, or any other means:

(8) "NPDES" means the National Pollutant Discharge Elimination System under 33 U.S.C. 1328, 1342, and 1345;

(9) "party" means the permit applicant, each person whose request for an adjudicatory hearing or intervention has been granted, and the department staff;

(10) "permit" means an approval, permit, certification, variance, exemption, delegation, or other authorization of the department subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(11) "permit applicant" means a person who

(A) submitted an application for a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(B) has been issued a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340; or

(C) is the subject of a departmental action that is subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(12) "regional administrator" means the administrator of Region X of EPA;

(13) "requestor" means a person requesting an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, a person requesting a stay under 18 AAC 15.210, or a person who intervenes in order to challenge all or part of the department's decision; "requestor" does not include a person whose request for an adjudicatory hearing or intervention is denied;

(14) "respondent" means a person defending the department's decision. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150

**SB**

**143**

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSB143(RES) DRAFT  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 4/22/2003 Dept. Affected: Natural Resources  
Title Coastal Management Programs BRU Management and Administration  
Component Office of Alaska Coastal Zone Mgmt  
Sponsor Rules  
Requester (S) RES Component No. 2680

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This fiscal note is based on a WORK DRAFT CS(RES) - Number 03-0069 bil3.doc.

See analysis on page 2.

Prepared by: Nico Bus Phone 465-2406  
Division: Administrative Services Date/Time 4/22/2003  
Approved by: Tom Irwin, Commissioner Date 4/22/2003  
Agency: Natural Resources

## FISCAL NOTE

CSSB143(RES)  
WORKDRAFT

Currently, the federal grant award is distributed to districts (\$1,166,600) for coastal community improvements, and the remaining funds support the efforts of Alaska Coastal Management Program (ACMP) (\$909,700) and state agencies (\$833,700) in the management and development of Alaska's coastal resources. State agencies currently receiving funding through the Coastal Management Program include:

- Department of Community and Economic Development
- Department of Environmental Conservation
- Department of Fish and Game
- Department of Law
- Department of Natural Resources
- Department of Transportation and Public Facilities

Immediate savings based on Executive Order 106 (EO) transferring the function of DGC to the Department of Natural Resources (effective April 15, 2003) were realized in the Alaska Coastal Management Program's FY 04 Operating Budget as a reduction of \$342,400 in state general fund match and a loss of 5 full time positions and 1 temporary position.

In concert with the EO, this legislation addresses the function and intent of the Coastal Management Program and state permit review process. With the restructure of the permitting system and the major revisions of the Coastal Management Program, the climate for resource based development activities and investment will improve.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 143  
 (S) Publish Date: 3/12/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Alaska Coastal Management BRU Habitat and Restoration  
 Component Habitat  
 Sponsor Rules Committee  
 Requester Governor Component No. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

Under this legislation, the coastal program will change. In addition, Executive Order 107 moves most Title 16 coastal related permitting to DNR. With these two changes, the Title 16 authorities, both those that go to DNR (.840 and .870) and those that will remain at DFG (special areas), will constitute compliance with the ACMP. As such, Habitat Biologists will still have a role in the program, and their work could be funded by ACMP dollars that would no longer be needed for district plan development.

Also, while this legislation eliminates the Coastal Policy Council, it also creates an Evaluation Council, of which the DFG Commissioner is a member. As such, staff support that is currently provided to the Commissioner will still be needed to support his or her work on the Council. At the time the Evaluation

Prepared by: Kerry Howard, Acting Director Phone 465-4105  
 Division Habitat and Restoration Date/Time 3/5/03 9:22 AM  
 Approved by: Kevin Duffy, Acting Commissioner Date 3/5/2003  
 Agency Department of Fish and Game

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

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ANALYSIS CONTINUATION

Council disbands, DFG may be able to show a cost savings.

It is assumed that under the implementation of EO 107 the DFG will have General Funds to help match federal dollars.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 143  
 (S) Publish Date: 3/12/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DEC  
 Title Alaska Coastal Management BRU Statewide Public Services  
 Component Statewide Public Services  
 Sponsor Rules Committee  
 Requester Governor Component No. 2058

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The services provided by the Department will change, however the fiscal responsibilities will not.

Prepared by: Mary Siroky - Legislative Liaison Phone 465-5355  
 Division Statewide Public Services Date/Time 3/3/03 2:34 PM  
 Approved by: Kurt Fredriksson - Deputy Commissioner Date 3/3/2003  
 Agency Department of Environmental Conservation

## Changes Incorporated in Resource Committee Substitute Offered 4/23/03

- Sec. 3 adds "maintenance" of an approved district plan as eligible for funding assistance. Requested by AMA and Coastal Districts.
- Sec. 11 includes specific statutory references to what was intended as DEC's air, land and water quality requirements. Requested by Prince William Sound RCAC.
- Sec. 12 extends the required renewal period of district plans from five to ten years. Requested by AMA and Coastal Districts.
- Sec. 13 removes addition of term "unduly" in the type of restrictions a district plan can impose on a use of state concern. Requested by Chairman Fate.
- Sec. 14 amends AS 46.40.070 which sets out the requirement for department review and approval of district plans. Changes the introduction from "the department may approve" a district plan meeting the requirements of (a)(1) & (2) to "the department shall approve" a district plan if the commissioner finds it meets the requirements. Removes (a)(2)(B) as duplicative. Changes "geographic area within the coastal zone" in (a)(2)(D) to "a defined portion of a district's coastal zone." Changes "identified" to "demonstrated" in (a)(2)(D)(i). Deletes the phrase "or contemplated" from (a)(2)(D)(ii) as redundant. Requested by AMA, Coastal Districts, and AOGA.
- Sec. 14. Adds "local" after usage to clarify that a matter of local concern must, among other requirements, involve "local usage or scientific evidence." Requested by Chairman Fate.
- Sec. 19. Changes "interested parties" to "affected parties" in list of persons from whom DNR requests consistency review comments. Requested by Chairman Fate.
- Sec. 21. Revises lead-ins to (1)(A) and (B) and revised (B) to reflect the listings of statutes instead of the term "air, land, and water quality" in AS 46.40.040(b).
- Sec. 22. Amends new subsection (k) governing the scope of a consistency reviews to add "that are located". New subsection (n) adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. Adds new subsections (n) and (o) which establishes a 90 day deadline for completing consistency reviews. Adds new subsection (p), which expressly states that a final consistency determination need not be held up by a DEC or other permit excluded under AS 46.40.096(g).
- Sec. 43 adds a definition of project from 6 AAC 50.
- Sec. 46(b) adds clarifying language that the former CPC's regulations implementing the ACMP remain in effect until DNR adopts new regulations or they are annulled under section 45 whichever occurs first.

- Sec. 47, the transition provision requiring revised district coastal management plans, now gives all coastal resource district one year after DNR adopts new regulations, or until July 1, 2005, whichever is later, to submit revised district plans. Requested by AMA and Coastal Districts.

Moved by Stewers  
object for discussion Dyson  
adopted U.C.

AMENDMENT #1

OFFERED IN THE SENATE RESOURCES  
COMMITTEE

BY B. Stewers

TO: SB 143(RES) 03-0069 bil2.doc. 4/22/2003 1:30 pm

1 Page 8, line 10:

2 Delete "a new subsection"

3 Insert "new subsections"

4 Page 8, line 13 following "purposes." through line 22:

5 Delete all material and insert:

6 "For those purposes only,

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

11 (2) for a consistency review of an activity that does not require a  
12 Department of Environmental Conservation permit, certification, approval, or  
13 authorization because the activity is a federal activity or the activity is located on federal  
14 lands or the federal outer continental shelf, consistency with AS 46.03, AS 46.04,  
15 AS 46.09, and AS 46.14 and the regulations adopted under those statutes shall be  
16 established on the basis of whether the Department of Environmental Conservation finds  
17 that the activity satisfies the requirements of those statutes and regulations.

18 (c) For a consistency review described in (b)(2) of this section, the department, in  
19 addition to its review under AS 46.40.096 of all other enforceable policies applicable to  
20 the project, shall coordinate with the Department of Environmental Conservation and  
21 issue the Department of Environmental Conservation's finding of whether the activity

1 satisfies the requirements of the statutes and regulations described in (b)(2) of this  
2 section.”

Amendment #2

*Offered  
but not  
adopted*

OFFERED IN THE SENATE BY: Senator Tom Wagoner

To: CSSB 143 - COASTAL MANAGEMENT PROGRAMS

- 1 Page 15, line 1, following "review" delete
- 2 "or"
- 3 Page 15, line 2,
- 4 delete "."
- 5 Insert "; or"
- 6 Page 15, line 3, Insert a new bill subsection to read:
- 7 "(4) If the applicant fails to respond in writing to a written request
- 8 for additional information within 14 days of receipt of such
- 9 request."

*adopted  
4-25-03*

**CS FOR SENATE BILL NO. 143(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Introduced:**

**Referred:**

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Alaska coastal management program and to policies and  
2 procedures for consistency reviews and the rendering of consistency determinations  
3 under that program; eliminating the Alaska Coastal Policy Council; annulling certain  
4 regulations relating to the Alaska coastal management program; and providing for an  
5 effective date."

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

7 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
8 to read:

9 **FINDINGS.** The legislature finds that

10 (1) the Alaska coastal management program (ACMP) is intended to function  
11 with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty  
12 regarding the feasibility of new investment;

13 (2) there is a need to update and reform the existing statewide standards of the

1 ACMP so that they are clear and concise and provide needed predictability as to the  
2 applicability, scope, and timing of the consistency review process under the program;

3 (3) there is a need to update and reform the district coastal management plans  
4 under the ACMP so that the local enforceable policies within those plans are clear and  
5 concise, provide greater uniformity in coastal management throughout the state, relate to  
6 matters of local concern, and do not duplicate state and federal requirements;

7 (4) the state has chosen not to enact legislation similar to 42 U.S.C. 4321 -  
8 4370f (National Environmental Policy Act of 1969, as amended) and, in furtherance of the  
9 legislative findings expressed in sec. 1(7), ch. 38, SLA 1994, the ACMP is not intended to  
10 take the place of such a program;

11 (5) to achieve these goals, statutory reform is needed; and

12 (6) to implement these needed reforms at the administrative level, it is in the  
13 best interest of the state for the development and implementation of the ACMP to be  
14 transferred from the Alaska Coastal Policy Council to the Department of Natural Resources.

15 \* Sec. 2. AS 38.05.825(a) is amended to read:

16 (a) Unless the commissioner finds that the public interest in retaining state  
17 ownership of the land clearly outweighs the municipality's interest in obtaining the  
18 land, the commissioner shall convey to a municipality tide or submerged land  
19 requested by the municipality that is occupied or suitable for occupation and  
20 development if the

21 (1) land is within or contiguous to the boundaries of the municipality;

22 (2) use of the land would not unreasonably interfere with navigation or  
23 public access;

24 (3) municipality has applied to the commissioner for conveyance of the  
25 land under this section;

26 (4) land is not subject to a shore fisheries lease under AS 38.05.082,  
27 or, if the land is subject to a shore fisheries lease, the commissioner determines it is in  
28 the best interests of the state to convey the land;

29 (5) land is classified for waterfront development or for another use that  
30 is consistent or compatible with the use proposed by the municipality, or the proposed  
31 use of the land is consistent or compatible with a land use plan adopted by the

1 municipality or [,] the department [, OR THE ALASKA COASTAL POLICY  
2 COUNCIL]; and

3 (6) land

4 (A) is required for the accomplishment of a public or private  
5 development approved by the municipality;

6 (B) is the subject of a lease from the state to the municipality;

7 or

8 (C) has been approved for lease to the municipality.

9 \* Sec. 3. AS 44.33.781 is amended to read:

10 **Sec. 44.33.781. Planning assistance for development and maintenance of**  
11 **district coastal management plans [PROGRAMS].** The department shall conduct a  
12 program of research, training, and technical assistance to coastal resource districts  
13 necessary for the development, [AND] implementation, and maintenance of district  
14 coastal management plans [PROGRAMS] under AS 46.40. The technical assistance  
15 shall include the direct granting to the coastal resource districts of a portion of any  
16 funds received by the state from the federal coastal zone management program, in  
17 amounts to be individually determined for each coastal resource district by the  
18 commissioner of community and economic development. State agencies shall assist  
19 the department in carrying out the purposes of this section.

20 \* Sec. 4. AS 44.62.800(1) is amended to read:

21 (1) "agency" means a department, an institution, or a division or other  
22 administrative unit of the executive branch of state government authorized or required  
23 by law to make regulations, except that "agency" does not include

24 (A) a board, [,] a commission, [,] a council, [EXCEPT THE  
25 ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN  
26 AS 46.39.020;] an authority, [,] or a public corporation of the executive branch  
27 of state government authorized or required by law to make regulations; or

28 (B) the Department of Corrections;

29 \* Sec. 5. AS 46.39.010 is amended by adding a new subsection to read:

30 (c) The department may adopt regulations necessary to implement this  
31 chapter.

1 \* Sec. 6. AS 46.39.030 is amended to read:

2           Sec. 46.39.030. Powers of the department [COUNCIL]. The department  
3 [COUNCIL] may

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

7           (2) contract for necessary services;

8           (3) consult and cooperate with

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

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

15           (4) take any reasonable action necessary to carry out the provisions of  
16 this chapter or AS 46.40 [AS 46.39.020 - 46.39.050].

17 \* Sec. 7. AS 46.39.040 is amended to read:

18           Sec. 46.39.040. Duties of the department [COUNCIL]. In conformity with  
19 16 U.S.C. 1451-1464 (Coastal Zone Management Act of 1972), as amended, the  
20 department [COUNCIL] shall

21           (1) [THROUGH THE PUBLIC HEARING PROCESS AND THE  
22 RECORDING OF THE MINUTES OF THE HEARINGS,] develop statewide  
23 [GUIDELINES AND] standards for the Alaska coastal management program, and  
24 criteria for the preparation [OF,] and approval of district coastal management  
25 plans [APPROVE,] in accordance with AS 46.40 [, THE ALASKA COASTAL  
26 MANAGEMENT PROGRAM];

27           (2) establish continuing coordination among state agencies to facilitate  
28 the development and implementation of the Alaska coastal management program; in  
29 carrying out its duties under this paragraph, the department [COUNCIL] shall initiate  
30 an interagency program of comprehensive coastal resource planning for each  
31 geographic region of the state [DESCRIBED IN AS 46.39.020(a)(1)];

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

4 \* Sec. 8. AS 46.40.010 is amended to read:

5 Sec. 46.40.010. Development of Alaska coastal management program. (a)  
6 The department [ALASKA COASTAL POLICY COUNCIL ESTABLISHED IN  
7 AS 46.39.020] shall approve, in accordance with this chapter, the Alaska coastal  
8 management program.

9 (b) The department [COUNCIL] may approve the Alaska coastal  
10 management program for a portion or portions of the coastal area before approving the  
11 complete program under (a) of this section. Portions of the program approved under  
12 this subsection shall be incorporated into the Alaska coastal management program.

13 (c) The Alaska coastal management program shall be reviewed by the  
14 department [COUNCIL] and, when appropriate, revised to

15 (1) add newly approved district coastal management plans  
16 [PROGRAMS], or revisions and amendments to the Alaska coastal management  
17 program;

18 (2) integrate newly approved district coastal management plans  
19 [PROGRAMS], or revisions and amendments of district coastal management plans  
20 [PROGRAMS], with existing approved plans [PROGRAMS] and with plans  
21 developed by state agencies;

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

24 (4) review the effectiveness of implementation of district coastal  
25 management plans [PROGRAMS]; and

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

28 (d) All reviews and revisions shall be in accordance with the statewide  
29 [GUIDELINES AND] standards and district plan criteria adopted [BY THE  
30 COUNCIL] under AS 46.40.040.

31 \* Sec. 9. AS 46.40.030 is amended to read:

1           **Sec. 46.40.030. Development of district coastal management plans**  
2           **[PROGRAMS].** (a) Coastal resource districts shall develop and adopt district coastal  
3           management plans [PROGRAMS] in accordance with the provisions of this chapter.  
4           The plan [PROGRAM] adopted by a coastal resource district shall be based upon a  
5           municipality's existing comprehensive plan or a new comprehensive resource use plan  
6           or comprehensive statement of needs, policies, objectives, and standards governing the  
7           use of resources within the coastal area of the district. The plan [PROGRAM] must  
8           meet [BE CONSISTENT WITH] the statewide [GUIDELINES AND] standards and  
9           district plan criteria adopted [BY THE COUNCIL] under AS 46.40.040 and must  
10          include

11                       (1) a delineation within the district of the boundaries of the coastal area  
12          subject to the district coastal management plan [PROGRAM];

13                       (2) a statement, list, or definition of the land and water uses and  
14          activities subject to the district coastal management plan [PROGRAM];

15                       (3) a statement of policies to be applied to the land and water uses  
16          subject to the district coastal management plan [PROGRAM];

17                       (4) [REGULATIONS, AS APPROPRIATE, TO BE APPLIED TO  
18          THE LAND AND WATER USES SUBJECT TO THE DISTRICT COASTAL  
19          MANAGEMENT PROGRAM;

20                       (5)] a description of the uses and activities which will be considered  
21          proper and the uses and activities which will be considered improper with respect to  
22          the land and water within the coastal area;

23                       [(6) A SUMMARY OR STATEMENT OF THE POLICIES WHICH  
24          WILL BE APPLIED AND THE PROCEDURES WHICH WILL BE USED TO  
25          DETERMINE WHETHER SPECIFIC PROPOSALS FOR LAND OR WATER USES  
26          OR ACTIVITIES SHALL BE ALLOWED;] and

27                       (5) [(7)] a designation of, and the policies which will be applied to the  
28          use of, areas within the coastal resource district which merit special attention.

29                       (b) In developing enforceable policies in its coastal management plan  
30          [STATEMENTS OF POLICIES AND REGULATIONS] under (a) of this section, a  
31          coastal resource district shall meet the requirements of AS 46.40.070, and may not

1 duplicate, restate, or incorporate by reference statutes and administrative regulations  
2 adopted by state or federal agencies.

3 \* Sec. 10. AS 46.40.040 is amended to read:

4 Sec. 46.40.040. Statewide standards and district plan criteria [DUTIES  
5 OF THE ALASKA COASTAL POLICY COUNCIL]. Except as provided in (b)  
6 of this section and AS 41.17, the department [THROUGH THE PUBLIC  
7 HEARING PROCESS AND THE RECORDING OF THE MINUTES OF THE  
8 HEARINGS, THE ALASKA COASTAL POLICY COUNCIL] shall

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

14 (A) identifying the boundaries of the coastal area subject to the  
15 Alaska [DISTRICT] coastal management program;

16 (B) determining the land and water uses and activities subject  
17 to the Alaska [DISTRICT] coastal management program;

18 (C) developing policies applicable to the land and water uses  
19 subject to the Alaska [DISTRICT] coastal management program;

20 (D) developing regulations applicable to the land and water  
21 uses subject to the Alaska [DISTRICT] coastal management program;

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

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

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

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

1 (3) undertake review and approval of district coastal management  
2 plans [PROGRAMS] in accordance with this chapter;

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

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

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

10 \* Sec. 11. AS 46.40.040 is amended by adding a new subsection to read:

11 (b) AS 46.03, AS 46.04, AS 46.09, AS 46.14, and the regulations adopted  
12 under those statutes constitute the exclusive enforceable policies of the Alaska coastal  
13 management program for those purposes. The issuance of permits, certifications,  
14 approvals, and authorizations by the Department of Environmental Conservation  
15 constitutes a determination of consistency with the Alaska coastal management  
16 program for those purposes for those activities of a proposed project subject to those  
17 permits, certifications, approvals, and authorizations. For a consistency review  
18 involving federal activities, or activities on federal lands or the federal outer  
19 continental shelf, consistency with AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and  
20 the regulations adopted under those statutes shall be determined by the Department of  
21 Environmental Conservation on the basis of whether the activity satisfies the  
22 requirements of those statutes and regulations.

23 \* Sec. 12. AS 46.40.050 is repealed and reenacted to read:

24 **Sec. 46.40.050. Submission of district plans by coastal resource districts.**

25 (a) A coastal resource district must review and resubmit its coastal management plan  
26 for reapproval every 10 years after its approval by the department under  
27 AS 46.40.060.

28 (b) Within 30 months after certification of the organization of a new coastal  
29 resource district, the coastal resource district shall complete and submit to the  
30 department a proposed district coastal management plan. If, after receipt of a written  
31 request for extension from the coastal resource district, the department considers an

1 extension proper, the department may grant an extension to a date that is within 54  
2 months after certification of the results of the coastal resource district's organization.  
3 A request under this subsection must include the reasons for the extension.

4 \* Sec. 13. AS 46.40.060 is amended to read:

5 Sec. 46.40.060. Review and approval by the department [COUNCIL]. (a)  
6 If, upon submission of a district coastal management plan [PROGRAM] for approval,  
7 the department [COUNCIL] finds that the plan [PROGRAM] meets [IS  
8 SUBSTANTIALLY CONSISTENT WITH] the provisions of this chapter and the  
9 statewide [GUIDELINES AND] standards and district plan criteria adopted by the  
10 department [COUNCIL] and does not arbitrarily or unreasonably restrict or exclude  
11 uses of state concern, the department [COUNCIL] may approve [GRANT  
12 SUMMARY APPROVAL OF] the district coastal management plan [PROGRAM], or  
13 may approve portions of the district plan that meet those requirements [PROGRAM  
14 WHICH ARE CONSISTENT].

15 (b) If the department [COUNCIL] finds that a district coastal management  
16 plan [PROGRAM] is not approvable or is approvable only in part under (a) of this  
17 section, it shall direct that deficiencies in the plan [PROGRAM] submitted by the  
18 coastal resource district be mediated. In mediating the deficiencies, the department  
19 [COUNCIL] may call for one or more public hearings in the district. The department  
20 [COUNCIL] shall meet with officials of the coastal resource district in order to resolve  
21 differences.

22 (c) If, after mediation, the differences have not been resolved [TO THE  
23 MUTUAL AGREEMENT OF THE COASTAL RESOURCE DISTRICT AND THE  
24 COUNCIL, THE COUNCIL SHALL CALL FOR A PUBLIC HEARING AND  
25 SHALL RESOLVE THE DIFFERENCES IN ACCORDANCE WITH AS 44.62  
26 (ADMINISTRATIVE PROCEDURE ACT). AFTER A PUBLIC HEARING HELD  
27 UNDER THIS SUBSECTION], the department [COUNCIL] shall enter findings  
28 and, by order, may require

29 (1) that the district coastal management plan [PROGRAM] be  
30 amended to satisfy [MAKE IT CONSISTENT WITH] the provisions of this chapter  
31 or meet the statewide [GUIDELINES AND] standards and district plan criteria

1 adopted by the department [COUNCIL];

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

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

6 (d) The superior courts of the state have jurisdiction to enforce orders of the  
7 department [COUNCIL] entered under (c) of this section.

8 \* Sec. 14. AS 46.40.070 is repealed and reenacted to read:

9 **Sec. 46.40.070. Requirements for department review and approval (a)**

10 The department shall approve a district coastal management plan submitted for review  
11 and approval if

12 (1) the district coastal management plan meets the requirements of this  
13 chapter and the statewide standards and district plan criteria adopted by the  
14 department; and

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

16 (A) are clear and concise as to the activities and persons  
17 affected by the policies, and the requirements of the policies;

18 (B) use precise, prescriptive, and enforceable language; and

19 (C) do not address a matter regulated or authorized by state or  
20 federal law unless the enforceable policies relate specifically to a matter of  
21 local concern; for purposes of this subparagraph, "matter of local concern"  
22 means a specific coastal use or resource within a defined portion of the  
23 district's coastal zone, that is

24 (i) demonstrated as sensitive to development;

25 (ii) not adequately addressed by state or federal law;

26 and

27 (iii) of unique concern to the coastal resource district as  
28 demonstrated by local usage or scientific evidence.

29 (b) A decision by the department under this section shall be given within 90  
30 days after submission of the district coastal management plan to the department.

31 \* Sec. 15. AS 46.40.090 is amended to read:

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1           **Sec. 46.40.090. Implementation of district coastal management plans**  
2           **[PROGRAMS]. (a) A district coastal management plan [PROGRAM] approved**  
3           **under this chapter [BY THE COUNCIL AND THE LEGISLATURE] for a coastal**  
4           **resource district that [WHICH] does not have and exercise zoning or other controls on**  
5           **the use of resources within the coastal area shall be implemented by appropriate state**  
6           **agencies as provided in AS 46.40.096. Implementation shall be in accordance with**  
7           **the comprehensive use plan or the statement of needs, policies, objectives, and**  
8           **standards adopted by the district.**

9           (b) A coastal resource district that [WHICH] has and exercises zoning or  
10           other controls on the use of resources within the coastal area shall implement its  
11           district coastal management plan [PROGRAM]. Implementation shall be in  
12           accordance with the comprehensive use plan or the statement of needs, policies,  
13           objectives, and standards adopted by the district.

14       \* Sec. 16. AS 46.40.094(a) is amended to read:

15           (a) The provisions of this section apply to a use or activity for which a  
16           consistency determination is required if

17                   (1) at the time the proposed use or activity is initiated, there is  
18                   insufficient information to evaluate and render a consistency determination for the  
19                   entirety of the proposed use or activity;

20                   (2) the proposed use or activity is capable of proceeding in discrete  
21                   phases based upon developing information that was not available to the project  
22                   applicant at the time of the previous [OBTAINED IN THE COURSE OF A] phase;  
23                   and

24                   (3) each subsequent phase of the proposed use or activity is subject to  
25                   discretion to implement alternative decisions based upon the developing information.

26       \* Sec. 17. AS 46.40.096(a) is amended to read:

27           (a) The department [COUNCIL] shall, by regulation, establish a consistency  
28           review and determination process that conforms to the requirements of this section.

29       \* Sec. 18. AS 46.40.096(b) is amended to read:

30           (b) If a consistency review is not subject to AS 46.39.010 because the project  
31           for which a consistency review is made requires a permit, lease, or authorization from

1 only one state resource agency, that state resource agency shall coordinate the  
2 consistency review of the project. The state resource agency shall coordinate the  
3 consistency review according to the requirements of the regulations adopted by the  
4 department [COUNCIL] under this section.

5 \* Sec. 19. AS 46.40.096(c) is amended to read:

6 (c) The regulations adopted by the department [COUNCIL] under this  
7 section must include provisions for public notice and provide the opportunity for  
8 public comment. The regulations adopted under this subsection may make  
9 distinctions relating to notice based upon differences in project type, anticipated effect  
10 of the project on coastal resources and uses, other state or federal notice requirements,  
11 and time constraints. However, a notice given under this subsection must contain  
12 sufficient information, expressed in commonly understood terms, to inform the public  
13 of the nature of the proposed project for which a consistency determination is sought,  
14 and must explain how the public may comment on the proposed project.

15 \* Sec. 20. AS 46.40.096(d) is amended to read:

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

18 (1) request consistency review comments for the proposed project  
19 from state resource agencies, affected coastal resource districts, and other affected  
20 [INTERESTED] parties as determined by regulation adopted by the department  
21 [COUNCIL];

22 (2) prepare proposed consistency determinations;

23 (3) coordinate subsequent reviews of proposed consistency  
24 determinations prepared under (2) of this subsection; a subsequent review of a  
25 proposed consistency determination under this paragraph

26 (A) is limited to a review by the department [STATE  
27 RESOURCE AGENCIES]; [AND]

28 (B) may occur only if requested by

29 (i) the project applicant;

30 (ii) a state resource agency; or

31 (iii) an affected coastal resource district; and

1 (C) shall be completed by the department within 45 days  
 2 after the initial request for subsequent review under this paragraph;

3 (4) render the final consistency determination and certification.

4 \* Sec. 21. AS 46.40.096(g) is amended to read:

5 (g) The reviewing entity shall [MAY] exclude from the consistency review  
 6 and determination process for a project

7 (1) an activity that

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

11 (B) is subject to authorization by the Department of  
 12 Environmental Conservation under the requirements described in  
 13 AS 46.40.040(b):

14 (2) activities excluded from a consistency review under AS 41.17;

15 and

16 (3) the issuance of an authorization or permit issued by the Alaska Oil  
 17 and Gas Conservation Commission.

18 \* Sec. 22. AS 46.40.096 is amended by adding new subsections to read:

19 (i) For purposes of those activities of a proposed project that are subject to  
 20 (g)(1)(B) of this section, the consistency of those activities is determined by the  
 21 issuance of the applicable permits, certifications, approvals, and authorizations by the  
 22 Department of Environmental Conservation.

23 (j) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b),  
 24 16 U.S.C. 1456, and 15 C.F.R. Part 930, a consistency review of a project under this  
 25 section is triggered by an activity within the areas described in (l) of this section that is  
 26 subject to a state resource agency permit, lease, authorization, approval, or  
 27 certification.

28 (k) Except as provided in (g) of this section, AS 41.17, AS 46.40.040(b), and  
 29 AS 46.40.094, the scope of a consistency review of a project, once triggered under (j)  
 30 of this section, is limited to activities that are located within the areas described in (l)  
 31 of this section and that either are subject to a state resource agency permit, lease,

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1 authorization, approval, or certification or are the subject of a coastal resource district  
2 enforceable policy approved by the department under this chapter. The scope of a  
3 consistency review subject to 16 U.S.C. 1456 is determined under 16 U.S.C. 1456 and  
4 15 C.F.R. Part 930.

5 (l) The regulations adopted under (a) of this section apply, as authorized by 16  
6 U.S.C. 1456(c), to

7 (1) activities within the coastal zone; and

8 (2) activities on federal lands, including the federal outer continental  
9 shelf, that would affect any land or water use or natural resource of the state's coastal  
10 zone; for purposes of this paragraph those activities consist of any activity on the  
11 federal outer continental shelf and any activity on federal lands that are within the  
12 geographic boundaries of the state's coastal zone notwithstanding the exclusion of  
13 federal lands in 16 U.S.C. 1453(l).

14 (m) As part of the regulations adopted under (a) of this section, the department  
15 shall establish a list of permits, certifications, leases, approvals, and authorizations  
16 issued by a state resource or federal agency that will trigger a consistency review  
17 under (j) of this section. In addition, the department shall establish in regulation  
18 categories and descriptions of uses and activities that, for purposes of evaluating  
19 consistency with the Alaska coastal management program, are determined to be  
20 categorically consistent or generally consistent after the inclusion of standard  
21 alternative measures. These categories of uses and activities must be as broad as  
22 possible so as to minimize the number of projects that must undergo an individualized  
23 consistency review under this section.

24 (n) Except as provided in (o) of this section, a consistency review under this  
25 section shall be completed within 90 days after the receipt of a complete application  
26 by the state. If a consistency review is not completed by the time specified in this  
27 subsection, the activity subject to review is conclusively presumed consistent.

28 (o) The time limitations in (n) of this section do not apply to a consistency  
29 review

30 (1) involving the disposal of an interest in state land or resources;

31 (2) if the applicant has requested additional time to complete the

1 review; or

2 (3) that undergoes a subsequent review under (d)(3) of this section.

3 (p) A consistency review and determination for those activities of a project not  
4 excluded under (g) of this section may not be delayed or withheld pending issuance of  
5 the permits, certifications, approvals, and authorizations referred to in (g) of this  
6 section but shall proceed regardless of the status of those permits, certifications,  
7 approvals, and authorizations.

8 \* Sec. 23. AS 46.40.100(a) is amended to read:

9 (a) As provided in AS 46.40.090 and 46.40.096, municipalities  
10 [MUNICIPALITIES] and state resource agencies shall administer land and water use  
11 regulations or controls in conformity with district coastal management plans  
12 [PROGRAMS] approved under this chapter [BY THE COUNCIL] and in effect.

13 \* Sec. 24. AS 46.40.100(b) is amended to read:

14 (b) A party that is authorized under (g) of this section may file a petition  
15 showing that a district coastal management plan [PROGRAM] is not being  
16 implemented. A petition filed under this subsection may not seek review of a  
17 proposed or final consistency determination regarding a specific project. On receipt of  
18 a petition, the department [COUNCIL], after giving public notice in the manner  
19 required by (f) of this section, shall convene a hearing to consider the matter. A  
20 hearing called under this subsection shall be held in accordance with regulations  
21 adopted under this chapter [BY THE COUNCIL]. After hearing, the department  
22 [COUNCIL] may order that the coastal resource district or a state resource agency  
23 take any action with respect to future implementation of the district coastal  
24 management plan [PROGRAM] that the department [COUNCIL] considers  
25 necessary, except that the department [COUNCIL] may not order that the coastal  
26 resource district or a state agency take any action with respect to a proposed or final  
27 consistency determination that has been issued.

28 \* Sec. 25. AS 46.40.100(c) is amended to read:

29 (c) In determining whether an approved district coastal management plan  
30 [PROGRAM] is being implemented by a coastal resource district that exercises zoning  
31 authority or controls on the use of resources within the coastal area or by a state

1 resource agency, the department [COUNCIL] shall find in favor of the district or the  
2 state resource agency, unless the department [COUNCIL] finds a pattern of  
3 nonimplementation.

4 \* Sec. 26. AS 46.40.100(e) is amended to read:

5 (e) The superior courts of the state have jurisdiction to enforce lawful orders  
6 of the department [COUNCIL].

7 \* Sec. 27. AS 46.40.100(f) is amended to read:

8 (f) Upon receipt of a petition under (b) of this section, the department  
9 [COUNCIL] shall give notice of the hearing at least 10 days before the scheduled date  
10 of the hearing. The notice must

11 (1) contain sufficient information in commonly understood terms to  
12 inform the public of the nature of the petition; and

13 (2) indicate the manner in which the public may comment on the  
14 petition.

15 \* Sec. 28. AS 46.40.100(h) is amended to read:

16 (h) If the department [COUNCIL] finds a pattern of nonimplementation  
17 under (c) of this section, the department [COUNCIL] may order a coastal resource  
18 district or a state resource agency to take action with respect to future implementation  
19 of the district coastal management plan [PROGRAM] that the department  
20 [COUNCIL] considers necessary to implement the district coastal management plan  
21 [PROGRAM]. The department's [COUNCIL'S] determination under (c) of this  
22 section and any order issued under this subsection shall be considered a final  
23 administrative order for purposes of judicial review under AS 44.62.560.

24 \* Sec. 29. AS 46.40.110 is repealed and reenacted to read:

25 **Sec. 46.40.110. Authority in the unorganized borough.** A coastal resource  
26 service area in the unorganized borough organized under AS 29.03.020 and  
27 AS 46.40.110 - 46.40.180 before the effective date of this bill section shall exercise  
28 those authorities and perform those duties required under this chapter.

29 \* Sec. 30. AS 46.40.140(a) is amended to read:

30 (a) Each coastal resource service area [, UPON ORGANIZATION,] shall have  
31 an elected board representing the population of the service area. The board shall have

1 the powers and duties and perform the functions prescribed for or required of coastal  
2 resource districts.

3 \* Sec. 31. AS 46.40.140(d) is amended to read:

4 (d) The term of office of a member of a coastal resource service area board is  
5 three years [, EXCEPT THAT THE TERMS OF THE MEMBERS OF THE FIRST  
6 BOARD ELECTED AFTER ORGANIZATION OF A COASTAL RESOURCE  
7 SERVICE AREA SHALL BE DETERMINED BY LOT, WITH TWO MEMBERS  
8 SERVING ONE-YEAR TERMS, TWO MEMBERS SERVING TWO-YEAR  
9 TERMS, AND THREE MEMBERS SERVING THREE-YEAR TERMS]. Members  
10 serve until their successors are elected and have qualified. This section does not  
11 prohibit the reelection of a board member.

12 \* Sec. 32. AS 46.40.140(e) is amended to read:

13 (e) The lieutenant governor shall provide for the election of the members of  
14 coastal resource service area boards. [THE FIRST ELECTION OF BOARD  
15 MEMBERS SHALL OCCUR AT THE SAME TIME AS THE ORGANIZATION  
16 ELECTION UNDER AS 46.40.130(b)].

17 \* Sec. 33. AS 46.40.140(f) is amended to read:

18 (f) Election [EXCEPT FOR THE FIRST ELECTION] of members of coastal  
19 resource service area boards [, ELECTIONS] shall be held annually on the date of  
20 election of members of regional educational attendance area boards under  
21 AS 14.08.071(b). [FOR AN ELECTION UNDER THIS SUBSECTION OR UNDER  
22 (e) OF THIS SECTION, A NEWLY ELECTED BOARD MEMBER TAKES  
23 OFFICE AT THE FIRST COASTAL RESOURCE SERVICE AREA BOARD  
24 MEETING AFTER CERTIFICATION OF THE ELECTION.] If no candidate files  
25 for election to a seat on the coastal resource service area board, the seat is considered  
26 vacant at the time a newly elected member would have taken office.

27 \* Sec. 34. AS 46.40.150 is amended to read:

28 Sec. 46.40.150. Elections in coastal resource service areas. Elections  
29 [ORGANIZATION ELECTIONS] under AS 46.40.110 - 46.40.180 [AS 46.40.130  
30 AND OTHER ELECTIONS, INCLUDING RECALL ELECTIONS CONDUCTED  
31 UNDER AS 46.40.140,] shall be administered by the lieutenant governor in the

1 general manner provided in AS 15 (Election Code). In addition, the lieutenant  
2 governor may adopt regulations necessary to the conduct of coastal resource service  
3 area board elections. The state shall pay all election costs.

4 \* Sec. 35. AS 46.40.180(a) is amended to read:

5 (a) Before adoption by a coastal resource service area board, [OR BY THE  
6 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT UNDER  
7 AS 46.40.170,] a district coastal management plan [PROGRAM] shall be submitted  
8 for review to each city or village within the coastal resource service area. The council  
9 of a city or traditional village council shall consider the plan [PROGRAM] submitted  
10 for review. Within 60 days of submission, the council of a city or traditional village  
11 council shall either approve the plan [PROGRAM] or enter objections to all or any  
12 portion of the plan [PROGRAM].

13 \* Sec. 36. AS 46.40.180(b) is amended to read:

14 (b) If a city or village within a coastal resource service area fails to approve a  
15 portion of the district coastal management plan [PROGRAM] prepared and submitted  
16 for approval under (a) of this section, the governing body shall advise the coastal  
17 resource service area board [OR THE DEPARTMENT, AS APPLICABLE,] of its  
18 objections to the proposed plan [PROGRAM] and suggest alternative elements or  
19 components for inclusion in the district coastal management plan [PROGRAM]. New  
20 matter submitted by a city or village which meets [IS SUBSTANTIALLY  
21 CONSISTENT WITH] the statewide [GUIDELINES AND] standards and district  
22 plan criteria adopted under this chapter [BY THE COUNCIL] shall be accepted  
23 and the district coastal management plan [PROGRAM] modified accordingly. If a  
24 city or village fails to provide objections and suggested alternatives within the time  
25 limits established in this section, the coastal resource service area board [OR THE  
26 DEPARTMENT, AS APPLICABLE,] may adopt the district coastal management  
27 plan [PROGRAM] as initially offered.

28 \* Sec. 37. AS 46.40.180(c) is amended to read:

29 (c) Objection by a city council under (b) of this section is limited to objection  
30 to elements of the plan [PROGRAM] affecting resources or the use of resources  
31 within the corporate limits of the city. Objection by a traditional village council under

1 (b) of this section is limited to objection to elements of the plan [PROGRAM]  
2 affecting resources or the use of resources within the village or within two miles of the  
3 village.

4 \* Sec. 38. AS 46.40 is amended by adding a new section to read:

5 **Sec. 46.40.195. Construction with other laws.** Nothing in this chapter shall  
6 be construed to

7 (1) diminish state jurisdiction, responsibility, or rights in the field of  
8 planning, development, or control of land or water resources, submerged lands, or  
9 navigable waters;

10 (2) affect in any way any state requirement imposed under a federal  
11 authorization or federal waiver of sovereign immunity, or

12 (3) diminish the zoning or planning authority of municipalities under  
13 AS 29.

14 \* Sec. 39. AS 46.40.210(2) is amended to read:

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

17 (A) unified municipalities;

18 (B) organized boroughs of any class that exercise planning and  
19 zoning authority;

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

22 (D) second class cities of the unorganized borough, or within  
23 boroughs that do not exercise planning and zoning authority, that have  
24 established a planning commission, and that, in the opinion of the  
25 commissioner of community and economic development, have the capability  
26 of preparing and implementing a comprehensive district coastal management  
27 plan [PROGRAM] under AS 46.40.030;

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

30 \* Sec. 40. AS 46.40.210(3) is amended to read:

31 (3) "consistency review" means the evaluation of a proposed project,

1 the scope of which is determined under AS 46.40.094 and 46.40.096, against the  
2 statewide standards adopted [BY THE COUNCIL] under AS 46.40.040 for those  
3 evaluations and the enforceable policies in an applicable [A] district coastal  
4 management plan [PROGRAM] approved [BY THE COUNCIL] under  
5 AS 46.40.060;

6 \* Sec. 41. AS 46.40.210(5) is amended to read:

7 (5) "department" means the Department of Natural Resources  
8 [COMMUNITY AND ECONOMIC DEVELOPMENT];

9 \* Sec. 42. AS 46.40.210(8) is amended to read:

10 (8) "uses of state concern" means those land and water uses that  
11 [WHICH] would significantly affect the long-term public interest; "uses of state  
12 concern" [THESE USES, SUBJECT TO COUNCIL DEFINITION OF THEIR  
13 EXTENT,] include

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

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

22 (C) the siting of major energy facilities, activities pursuant to a  
23 state or federal oil and gas lease, or large-scale industrial or commercial  
24 development activities that [WHICH] are dependent on a coastal location and  
25 that [WHICH], because of their magnitude or the magnitude of their effect on  
26 the economy of the state or the surrounding area, are reasonably likely to  
27 present issues of more than local significance;

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

30 (E) uses in areas established as state parks or recreational areas  
31 under AS 41.21 or as state game refuges, game sanctuaries, or critical habitat

1 areas under AS 16.20;

2 \* Sec. 43. AS 46.40.210 is amended by adding new paragraphs to read:

3 (10) "coastal use or resource" means a land or water use or natural  
4 resource of the coastal zone; "coastal use or resource" includes subsistence, recreation,  
5 public access, fishing, historic or archaeological resources, geophysical resources, and  
6 biological or physical resources found in the coastal zone on a regular or cyclical  
7 basis;

8 (11) "coastal zone" means the coastal waters including lands within  
9 and under those waters, and adjacent shorelands, including the waters within and  
10 under those shorelands, within the boundaries approved by the former Alaska Coastal  
11 Policy Council and by the United States Secretary of Commerce under 16 U.S.C.  
12 1451 - 1465 (Coastal Zone Management Act of 1972, as amended); "coastal zone"  
13 includes areas added as a result of any boundary changes approved by the department  
14 and by the United States Secretary of Commerce under 16 U.S.C. 1451 - 1465;  
15 "coastal zone" does not include

16 (A) those lands excluded under 16 U.S.C. 1453(1); or

17 (B) areas deleted as a result of any boundary changes by the  
18 department in conformance with 16 U.S.C. 1451 - 1465;

19 (12) "district coastal management plan" means a plan developed by a  
20 coastal resource district, including enforceable policies of that plan, setting out  
21 policies and standards to guide public and private uses of land and waters within that  
22 district and approved by the department as meeting the requirements of this chapter  
23 and the regulations adopted under this chapter;

24 (13) "enforceable policy" means a policy established by this chapter or  
25 approved by the department as a legally binding policy of the Alaska coastal  
26 management program applicable to public and private activities;

27 (14) "project" means all activities that will be part of a proposed  
28 development.

29 \* Sec. 44. AS 38.05.037(b)(2); AS 39.50.200(b)(38); AS 44.62.800(2)(B); AS 46.39.020,  
30 46.39.050; AS 46.40.080, 46.40.120, 46.40.130, 46.40.140(c), 46.40.160, 46.40.170,  
31 46.40.200, and 46.40.210(4) are repealed.

1 \* Sec. 45. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 ANNULMENT OF CERTAIN REGULATIONS. The following regulations are  
4 annulled:

5 (1) 6 AAC 80.010 - 6 AAC 80.900;

6 (2) 6 AAC 85.020 - 6 AAC 85.900.

7 \* Sec. 46. The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 TRANSITION: GENERAL PROVISIONS. (a) The Department of Natural  
10 Resources shall adopt regulations under AS 44.62 (Administrative Procedure Act)  
11 implementing this Act in order that the regulations are effective no later than July 1, 2004.

12 (b) Until sec. 45 of this Act takes effect or the regulations attorney removes the  
13 regulations under sec. 48(c) of this Act, whichever occurs first, regulations adopted to  
14 implement the Alaska Coastal Management Program at 6 AAC 80 and 6 AAC 85 remain in  
15 effect and, to the extent the regulations are not inconsistent with this Act, the Department of  
16 Natural Resources may implement and enforce the regulations.

17 (c) Notwithstanding the repeal of the Alaska Coastal Policy Council enacted by  
18 sec. 44 of this Act, and the repeal of the Alaska Coastal Policy Council's duties in  
19 AS 46.40.040, enacted in sec. 10 of this Act, a district coastal management program,  
20 including its enforceable policies, approved by the former Alaska Coastal Policy Council that  
21 is not otherwise inconsistent with this Act or AS 46.40 as amended by this Act, remains in  
22 effect for purposes of AS 46.39 and AS 46.40 until July 1, 2006, unless the Department of  
23 Natural Resources disapproves or modifies all or part of the program before July 1, 2006.

24 (d) Consistency reviews pending on the day before the effective date of secs. 17 - 22  
25 of this Act and initiated under the provisions of AS 46.40.096, as that section existed before  
26 the changes made by secs. 17 - 22 of this Act, may, at the applicant's option exercised no  
27 more than 60 days after the effective date of secs. 17 - 22 of this Act, be continued and  
28 completed under the procedures and enforceable policies under the provisions of AS 46.39  
29 and AS 46.40 as they existed before the changes made by this Act.

30 (e) Except as provided in (d) of this section, contracts, rights, liabilities, and  
31 obligations created by or under a law repealed by this Act remain in effect notwithstanding

1 this Act's taking effect.

2 \* Sec. 47. The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 TRANSITION AND APPLICABILITY OF CERTAIN PROVISIONS:  
5 SUBMISSION OF DISTRICT PLANS BY COASTAL RESOURCE DISTRICTS FOR  
6 INITIAL IMPLEMENTATION OF THIS ACT. (a) Within one year after the effective date  
7 of regulations adopted by the Department of Natural Resources implementing changes to  
8 AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 of this Act, or by July 1, 2005, whichever is  
9 later, coastal resource districts shall review their existing district coastal management program  
10 and submit to the Department of Natural Resources for review and approval a revised district  
11 coastal management plan meeting the requirements of AS 46.40, as amended by this Act, and  
12 the implementing regulations.

13 (b) AS 46.40.070(b), enacted by sec. 14 of this Act, does not apply to a revised  
14 district coastal management plan submitted under (a) of this section.

15 \* Sec. 48. The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to

18 (1) change the heading of

19 (A) AS 46.39 from "Coastal Management Administration; Alaska  
20 Coastal Policy Council" to "Coastal Management Administration";

21 (B) article 2 of AS 46.40 from "Coastal Management Programs in the  
22 Unorganized Borough" to "Coastal Management Plans in the Unorganized Borough";

23 (C) AS 46.40.180 from "Approval of programs in coastal resource  
24 service areas" to "Approval of plans in coastal resource service areas";

25 (2) delete the heading of article 2 of AS 46.39 and renumber article 3 of  
26 AS 46.39 as article 2.

27 (b) Wherever in the Alaska Administrative Code the terms "Alaska Coastal Policy  
28 Council" or "Coastal Policy Council" are used, or the term "council" is used to refer to the  
29 Alaska Coastal Policy Council, the regulations attorney is instructed to change those terms to  
30 read as "Department of Natural Resources," "DNR," "department" or "commissioner of  
31 natural resources" when to do so would be consistent with AS 44.62.125(b)(6) and the

1 changes made by this Act.

2 (c) If regulations adopted by the Department of Natural Resources under sec. 46 of  
3 this Act take effect before the effective date of sec. 45 of this Act, the regulations attorney is  
4 instructed to remove from the Alaska Administrative Code the regulations listed in sec. 45 of  
5 this Act, as being obsolete. The lieutenant governor shall notify the regulations attorney of  
6 the effective date of the regulations adopted by the Department of Natural Resources under  
7 sec. 46 of this Act.

8 \* Sec. 49. Section 45 of this Act takes effect July 1, 2005.

9 \* Sec. 50. Except as provided in sec. 49 of this Act, this Act takes effect immediately under  
10 AS 01.10.070(c).

**Sectional Analysis of April 23, 2003**  
**Resource Committee**  
**CS For HB 191/SB 143**

This legislation is premised upon the statutory changes contained in Executive Order 106 introduced by the Governor on February 12, 2003. Executive Order 106 transfers responsibility for the Alaska Coastal Management Program (ACMP) from the Division of Governmental Coordination to the Department of Natural Resources. The EO does not make substantive changes in the law. Rather it repeals existing statutes in AS 44.19 and readopts them in a new title AS 46.39. ✓

**Overview: The bill:**

- clarifies the scope, applicability and requirements of the existing Coastal Management Program in AS 46.40;
- retains coastal resource districts and the current structure of how they operate under the ACMP.
- retains existing Coastal Resource Services Areas (CRSAs) in the unorganized borough but eliminate the creation of any new CRSAs.
- eliminates the Alaska Coastal Policy Council (CPC) and transfers its authority for the development of statewide standards of the ACMP and the approval of district coastal management plans to the Department of Natural Resources (DNR).
- requires DNR to adopt regulations within one year establishing clear and enforceable statewide standards of the ACMP and criteria for the approval of new district coastal management plans.
- requires coastal resource districts to submit new coastal management plans to DNR for approval. The plans must have enforceable policies that are clear, concise, provide greater uniformity throughout the state and do not duplicate state and federal requirements. The districts are required to submit these new plans within one-year of the effective date of DNR's new regulations, or July 1, 2005, whichever is later.
- streamlines the ACMP by relying on the Department of Environmental Conservation's requirements at AS 46.03, AS 46.04, AS 46.09, AS 46.14 and their implementing regulations as the enforceable policies of the ACMP for those purposes and relying on DEC's implementation of those requirements in order to determine consistency for those parts of a development project. ✓

**Section 1** contains legislative findings on the need for reform of the ACMP.

**Sections 2, 4-6** make conforming amendments to existing statutes reflecting the elimination

of the Alaska Coastal Policy Council and the transfer of the CPC's functions to DNR.

**Section 3** reflects a change in terminology when referring to district coastal management programs. The CS refers to new district plans to distinguish them from the existing district programs and the statewide ACMP Program.

**Sections 7 and 8** transfer from the CPC to DNR the authority to develop statewide standards and the criteria for adoption of district coastal management plans.

**Section 9** directs coastal resource districts to develop and adopt coastal management plans and set forth the required contents of the plans. AS 46.40.030(b) states that enforceable policies of those plans must meet the requirements of AS 46.40.070 and may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. The term "enforceable policy" is defined in section 43 of the bill.

**Section 10** directs DNR to establish statewide standards for the ACMP and district coastal management plan criteria.

**Section 11** establishes the Department of Environmental Conservation's statutes at AS 46.03, AS 46.04, AS 46.09, AS 46.14 and the regulations adopted thereunder as the exclusive policies of the ACMP of those purposes. This provision provides that the issuance of permits, certifications, approvals and authorizations by DEC constitute a determination of consistency with the ACMP for those purposes for those activities of a proposed project subject to those permits and other authorizations. This language ensures that the ACMP consistency review process does not duplicate DEC's permitting process. This provision conforms with the provisions of the existing program at 6 AAC 80.140 and the federal Coastal Zone Management Act's requirement that these environmental standards be included in the state's coastal program.

**Section 12** repeals and readopts AS 46.40.050 concerning submission of district plans by coastal resource districts. The section removes obsolete language from the initial creation of the program in 1977 and adds a new requirement that a coastal resource district must review and resubmit its plan for approval every ten years. This is to ensure that the district plans are regularly updated.

**Section 13** amends the district plan review and approval provision at AS 46.40.060. It provides that the department may approve a district coastal management plan provided it meets the requirements of AS 46.40, the statewide standards adopted by DNR, and the district plan criteria adopted by the department. A district plan may not arbitrarily, unreasonably, or unduly restrict or exclude uses of state concern. Uses of state concern are defined in AS 46.40.210(8) at section 42 of the bill.

**Section 14** establishes specific requirements for department review and approval of district coastal management plans in AS 46.40.070. The department may approve a district plan under AS 46.40.060, if it meets the requirements of AS 46.40, AS 46.40.060 and the enforceable policies

of the plan meet the requirements of .070(a)(2). 070(a)(2) requires that the enforceable policies be clear and concise, and use precise, prescriptive, and enforceable language. In addition, the enforceable policy may not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern. "Matter of local concern" is specifically defined in the bill.

Section 15 makes conforming changes to AS 46.40.090 concerning how local district plans are implemented in the unorganized borough.

Section 16 amends existing AS 46.40.094 that describes how a project may be reviewed for consistency with the ACMP in "phases." This amendment would broaden the phasing statute to allow projects other than traditional oil and gas leasing projects to be reviewed in phases. The phasing test is changed from whether future information is "obtained in the course of a phase" to whether the information "was not available to the project applicant at the time of the previous phase." This change makes the language consistent with the federal coastal management regulations allowing for phasing of federal activities subject to a consistency review in 15 C.F.R. 930.36(d).

Sections 17-22 amend the existing statute providing for consistency reviews of development projects in the coastal zone.

Section 17 provides that DNR is to establish by regulation a consistency review process conforming to AS 46.40.096.

Section 18 clarifies that consistency reviews are triggered by state resource agency authorizations.

Section 19 provides that DNR's consistency review regulations must provide for public notice, which is a requirement of the federal coastal zone management act.

Section 20 provides that "subsequent reviews" also known as "elevations" during the consistency review project are decided by DNR and that they are to be completed within 45 days after the initial request for review.

Section 21 amends AS 46.40.096(g) to exclude certain activities and permits from the consistency review process in AS 46.40.096. Consistent with federal law, an activity that is authorized under a general or nationwide permits previously determined to be consistent with the ACMP is not required to be reviewed a second time. As provided in section 11, DEC's review of an activity under AS 46.03, AS 46.04, AS 46.09, AS 46.14 and its implementing regulations is not included in the consistency review process in AS 46.40.096. Activities excluded from a consistency review under the existing provisions of the Forest Practices Act in AS 41.17 are excluded from a consistency review under AS 46.40.096.

Section 22 adds eight new subsections to AS 46.40.096 to clarify what activities trigger a consistency review, the scope of the review once triggered and the geographic scope of the activities

subject to a review.

New subsection (i) references DEC's separate consistency determination under AS 46.40.040(b).

New subsection (j) clarifies that, except as provided in the Forest Practices Act, the exclusions in .096(g), and for federal consistency reviews and certifications subject to federal law, a consistency review is triggered by an activity that is subject to a state resource agency permit, lease, authorization, approval or certification.

New subsection (k) provides that except as provided in the phasing statute (AS 46.40.096) and the exceptions above, the scope of a consistency review is limited to activities that either are subject to a state resource agency permit or authorization or the subject of a coastal resource district enforceable policy approved by the department.

New subsection (l) defines the geographic area where an activity triggers a consistency review and the geographic scope of the review once triggered. The consistency review process is to apply to activities within the coastal zone of the state (defined in AS 46.40.210), activities on the federal outer continental shelf or on federal lands that are the within the geographical boundaries of the state's coastal zone.

New subsection (m) adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. The subsection also directs DNR to establish by regulation categories and descriptions of uses and activities that are determined to be consistent with the ACMP or that would be made consistent with the inclusion of standard alternative measures. The existing list of such activities is known as the "A, B, C" list. The new legislation directs that these categories and descriptions of uses and activities be reviewed by DNR and made as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review.

New subsections (n) and (o) establish a 90-day deadline for completing consistency reviews.

New subsection (p) expressly states that a consistency review under AS 46.40.096 will proceed independent of a DEC or other permit excluded under AS 46.40.096(g).

Section 23 includes cross-references to existing requirements in the enforcement section of the State Coastal Zone Act.

Sections 24-28 are conforming amendments transferring authority from the CPC to DNR.

Sections 29-37 are amendments to the statutory provisions governing the creation and operation of coastal resource service areas (CRSAs) in the unorganized borough. These sections are amended to retain existing CRSAs but to preclude the creation of new CRSAs.

Section 38 is a new savings clause clarifying that nothing in AS 46.40 diminishes state jurisdiction or affects state requirements as they apply to the federal government under a federal authorization or federal waiver of sovereign immunity. The savings clause also makes clear that the coastal zone act does not diminish the zoning or planning authority of municipalities under AS 29.

Section 39 is a conforming amendment concerning the use of the term district coastal management plan.

Section 40 amends the existing definition of consistency review to track the scope and applicability clarifications in the other sections of AS 46.40.

Section 41 defines department as the department of natural resources.

Section 42 amends the existing definition of "uses of state concern."

Section 43 adds new definitions of the terms "coastal use or resource," "coastal zone," "district management plan," and "enforceable policy."

Section 44 repeals statutory references to the CPC and obsolete provisions of AS 46.40.

Section 45 annuls the existing statewide standards and district program guidelines in 6 AAC 80 and 6 AAC 85. This annulment takes effect on July 1, 2005 (see section 49).

Section 46 is a transition provision. First it directs DNR to adopt regulations implementing this Act no later than July 1, 2004.

Second, until the statewide standards and district program guidelines are annulled under section 45 or DNR adopts new regulations, the existing regulations remain in effect and DNR can implement and enforce the statewide standards and guidelines to the extent not inconsistent with this Act.

Third, district coastal management programs approved by the CPC stay in effect until July 1, 2006, unless DNR disapproves or modifies all or part of the program before July 1, 2006.

Fourth, consistency reviews pending on the day before the effective date of this Act may continue and be completed under the prior rules, at the applicants option exercised no later than 60 days after the effective date of the act.

Section 47 is a transition provision directing the submission of new district plans by coastal resource districts for initial implementation of this Act. All coastal resource district must submit revised district plans to DNR within one year after DNR adopts new regulations, or until July 1, 2005, whichever is later. Subsection (b) provides that the 90-day review time in AS 46.40.070 does not apply to the submissions under (a) of the transition provision.

Section 48 contains revisor's instructions making changes in article headings and Alaska Administrative Code changes reflecting the transfer of the coastal management program from the CPC to DNR. Subsection (c) provides that if DNR's regulations are adopted before old CPC regulations are annulled, the old CPC regulations at 6 AAC 80 and 6 AAC 85 will be removed by the regulations attorney as obsolete.

Section 49 is the delayed effect date of section 45's annulment of 6 AAC 80 and 6 AAC 85 on July 1, 2005.

Section 50 provides that with the exception of section 49, the Act takes effect immediately under AS 01.10.070(c).

SR 143

FRANK H. MURKOWSKI  
GOVERNOR

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March 11, 2003

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to reform and streamline the Alaska Coastal Management Program (ACMP). This legislation is premised upon the statutory changes contained in Executive Order 106, which I presented to you on February 12, 2003. Executive Order 106 would transfer responsibility for the ACMP program from the division of governmental coordination in the office of management and budget to the Department of Natural Resources.

The Alaska Coastal Management Program was first enacted in 1977 in order to participate in the federal Coastal Zone Management Act of 1972. The federal program is voluntary, and encourages states to adopt coastal programs by providing federal funds and the opportunity for federal consistency review. Federal consistency review enables the state to apply its authorities to projects located on federal land and the federal outer continental shelf where otherwise it would be preempted by federal law.

The goal of this legislation is to create a new coastal management program that retains the benefits of the federal act but eliminates the duplication and complexity built into the present ACMP. This bill would achieve this goal by choosing the simplest of the three management techniques allowed by the federal act. The bill provides certainty and predictability to the ACMP process by clarifying the standards and responsibilities for program implementation.

The central streamlining concept of the bill is the reliance on existing state statutes and regulations as the enforceable policies of the ACMP. The current duplicative consistency review process in AS 46.40.096 and

The Honorable Pete Butt  
March 11, 2003  
Page 2

6 AAC 50 is eliminated by simply relying on the issuance of current state permits by the resource agencies as the means of determining whether an activity is consistent with the ACMP.

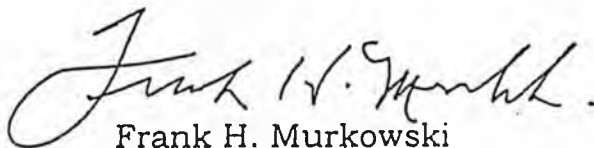
The bill would eliminate district coastal management enforceable policies but retains a local role in three ways. First, AS 29 municipalities would retain their existing land use authorities to regulate private activity within their jurisdiction. Second, the bill authorizes the Department of Natural Resources (DNR), as the implementing agency, to adopt local ordinances as enforceable policies to be applied in consistency reviews of federal projects and Outer Continental Shelf (OCS) development. The DNR would consult with the local government when interpreting and applying the local ordinance as part of a consistency review. Third, the bill would specifically adopt certain existing coastal district policies for federal OCS development as state enforceable policies.

Coastal resource service areas in the unorganized borough would no longer exist. However, municipalities within the unorganized borough could participate in both the funding and regulatory aspects of the program. Because the bill would affect the way coastal communities participate in the program, I have consulted with communities across the state and incorporated their suggestions into the legislation.

The bill would also eliminate the Coastal Policy Council, but would create a Coastal Program Evaluation Council to submit a report to the Governor on the implementation of these reforms. The council would sunset July 1, 2005.

I urge your prompt and favorable action on this measure.

Sincerely,



Frank H. Murkowski  
Governor

Reasons for Coastal Management in Alaska:

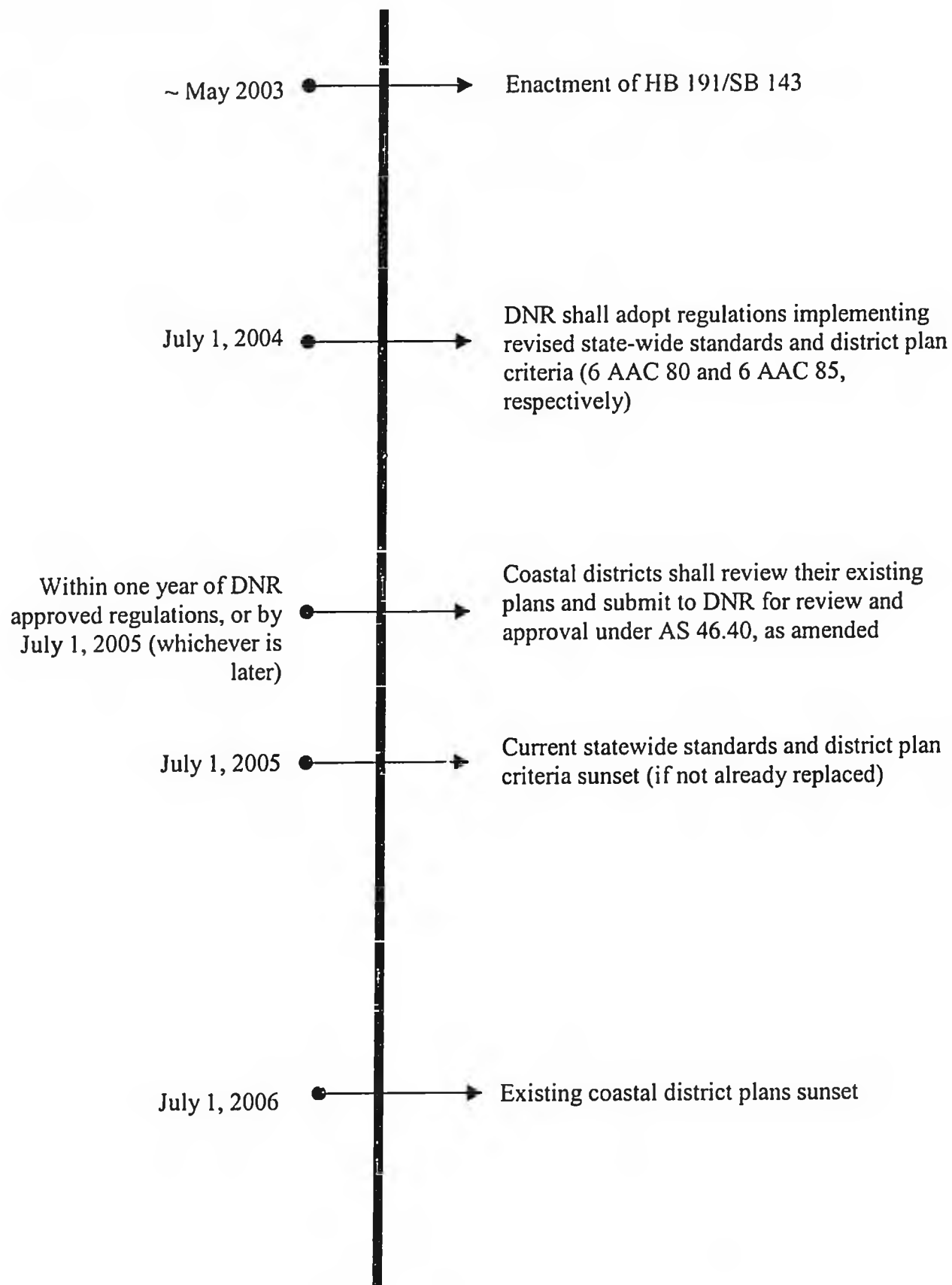
- (1) State and local control on projects requiring a federal authorization
- (2) State and local influence on direct federal activities
- (3) Federal financial assistance ~ \$2,835,000

Problems Identified With the Current Coastal Management Program

- o The consistency review process is unpredictable, it is overly broad in scope, can take too much time, and delays the issuance of permits.
- o The statewide standards and local enforceable policies are vague, subject to multiple interpretations, and often duplicate or restate other state or federal requirements.
- o Because of the unpredictable timelines and standards, developers lack the certainty needed to make capital commitments on future projects.

Key Components of the Committee Substitute

- o Eliminates the Coastal Policy Council and transfers its duties to the Alaska Department of Natural Resources.
- o Places a sunset on the current statewide standards and coastal district plans.
- o Mandates the replacement of all current statewide standards and coastal district plans to ensure that all standards and local enforceable policies are clear, concise, not susceptible to subjective interpretation, and not duplicative of otherwise existing requirements.
- o Clarifies that local enforceable policies may not address a matter regulated or authorized by state or federal law, unless the policy relates specifically to a matter of local concern.
- o Provides important clarifications on the consistency review process to provide more predictable timelines and standards, including scope of the project that is subject to review, when a project can proceed in phases, and encourages expanding the use of general permits.
- o Clarifies that the Alaska Department of Environmental Conservation permits and authorizations constitute the consistency determination for Air, Land, and Water quality and insulates the ACMP consistency review from delays associated with these permits and authorizations.
- o Coastal Resource Service Areas remain intact.
- o All coastal districts retain the same authorities and responsibilities as under the current program, including the same seat at the table for consistency reviews.
- o District enforceable policies remain applicable to all projects subject to a consistency review, not just OCS and federal activities.



Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
ACMP Administration	<ul style="list-style-type: none"> <li>• Department of Natural Resources, as staff to the Alaska Coastal Policy Council (as of April 15, 2003)</li> </ul>	<ul style="list-style-type: none"> <li>• DNR</li> </ul>
Funding	<ul style="list-style-type: none"> <li>• ~ \$5,130,000 (federal funds with state/local match)</li> <li>• Distributed to/for:               <ol style="list-style-type: none"> <li>1. State agencies – consistency reviews, coastal program plan review</li> <li>2. Coastal districts – consistency review/plan development</li> <li>3. Special projects (i.e . ACMP information system, regulatory revisions)</li> <li>4. Coastal Non-Point Source program (6217)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Same</li> </ul>
Coastal Districts	<ul style="list-style-type: none"> <li>• 35 approved districts               <ol style="list-style-type: none"> <li>1. 33 approved district plans</li> <li>2. includes 4 coastal resource service areas (CRSA's) serving the unorganized areas</li> </ol> </li> <li>• Have a seat at the table during consistency review</li> <li>• Receive funding to participate in consistency reviews, develop &amp; implement district plans</li> </ul>	<ul style="list-style-type: none"> <li>• Same</li> </ul>
Coastal Zone Boundaries	<ul style="list-style-type: none"> <li>• Established in <i>Biophysical Boundaries for Alaska's Coastal Zone</i> (1978)</li> <li>• Modified by coastal resource districts during plan development and approved by the Alaska Coastal Policy Council</li> </ul>	<ul style="list-style-type: none"> <li>• Same</li> </ul>

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
Application of ACMP and Consistency	<ul style="list-style-type: none"> <li>• Consistency review for               <ol style="list-style-type: none"> <li>1. Federal activities</li> <li>2. Activities in the outer continental shelf</li> <li>3. Activities that require a listed federal authorization</li> <li>4. Activities that require a listed state authorization</li> </ol> </li> <li>• Consistency is determined by reviewing activities against the enforceable policies (see above)</li> </ul>	<ul style="list-style-type: none"> <li>• Same</li> </ul>
Enforceable Policies	<ul style="list-style-type: none"> <li>• Statewide standards – 6 AAC 80</li> <li>• Coastal district program enforceable policies               <ol style="list-style-type: none"> <li>1) Do not duplicate state law</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Statewide standards at 6 AAC 80 to be rewritten by July 1, 2004</li> <li>• Coastal district plan policies to be rewritten and submitted to DNR for review and approval within one year after the effective date of the DNR regulations or July 1, 2005, whichever is later</li> <li>• Coastal district plan policies               <ol style="list-style-type: none"> <li>1. Are clear and concise as to the activities and persons affected by the policies and the requirements of the policies</li> <li>2. Use precise, prescriptive, and enforceable language</li> <li>3. Do not address a matter regulated or authorized by state or federal law, unless a matter of local concern</li> <li>4. Do not arbitrarily, unreasonably or unduly restrict or exclude a use of state concern</li> </ol> </li> </ul>

Topic	Current Coastal Management Program	Proposed Program – CS for HB 191 / SB 143
Review Process Specifics	<ul style="list-style-type: none"> <li>• New regulations effective January 21, 2003, to address consistency review issues</li> </ul>	<ul style="list-style-type: none"> <li>• Regulations to remain in effect, with amendments to address requirements in CS legislation</li> <li>• Specific consistency issues addressed:               <ol style="list-style-type: none"> <li>1. Trigger point for consistency review</li> <li>2. Scope of review</li> <li>3. Phasing</li> <li>4. Elevation</li> <li>5. Exclusion of ADEC permits and authorizations</li> <li>6. Time limitations and certainty for consistency reviews</li> <li>7. ABC List, general permits</li> <li>8. Definition of project</li> </ol> </li> </ul>

**Sectional Analysis of April 23, 2003  
Resource Committee  
CS For HB 191/SB 143**

This legislation is premised upon the statutory changes contained in Executive Order 106 introduced by the Governor on February 12, 2003. Executive Order 106 transfers responsibility for the Alaska Coastal Management Program (ACMP) from the Division of Governmental Coordination to the Department of Natural Resources. The EO does not make substantive changes in the law. Rather it repeals existing statutes in AS 44.19 and readopts them in a new title AS 46.39.

**Overview:** The bill:

- clarifies the scope, applicability and requirements of the existing Coastal Management Program in AS 46.40;
- retains coastal resource districts and the current structure of how they operate under the ACMP.
- retains existing Coastal Resource Services Areas (CRSAs) in the unorganized borough but eliminate the creation of any new CRSAs.
- eliminates the Alaska Coastal Policy Council (CPC) and transfers its authority for the development of statewide standards of the ACMP and the approval of district coastal management plans to the Department of Natural Resources (DNR).
- requires DNR to adopt regulations within one year establishing clear and enforceable statewide standards of the ACMP and criteria for the approval of new district coastal management plans.
- requires coastal resource districts to submit new coastal management plans to DNR for approval. The plans must have enforceable policies that are clear, concise, provide greater uniformity throughout the state and do not duplicate state and federal requirements. The districts are required to submit these new plans within one-year of the effective date of DNR's new regulations, or July 1, 2005, whichever is later.
- streamlines the ACMP by relying on the Department of Environmental Conservation's requirements at AS 46.03, AS 46.04, AS 46.09, AS 46.14 and their implementing regulations as the enforceable policies of the ACMP for those purposes and relying on DEC's implementation of those requirements in order to determine consistency for those parts of a development project.

**Section 1** contains legislative findings on the need for reform of the ACMP.

**Sections 2, 4-6** make conforming amendments to existing statutes reflecting the elimination

of the Alaska Coastal Policy Council and the transfer of the CPC's functions to DNR.

**Section 3** reflects a change in terminology when referring to district coastal management programs. The CS refers to new district plans to distinguish them from the existing district programs and the statewide ACMP Program.

**Sections 7 and 8** transfer from the CPC to DNR the authority to develop statewide standards and the criteria for adoption of district coastal management plans.

**Section 9** directs coastal resource districts to develop and adopt coastal management plans and set forth the required contents of the plans. AS 46.40.030(b) states that enforceable policies of those plans must meet the requirements of AS 46.40.070 and may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. The term "enforceable policy" is defined in section 43 of the bill.

**Section 10** directs DNR to establish statewide standards for the ACMP and district coastal management plan criteria.

**Section 11** establishes the Department of Environmental Conservation's statutes at AS 46.03, AS 46.04, AS 46.09, AS 46.14 and the regulations adopted thereunder as the exclusive policies of the ACMP of those purposes. This provision provides that the issuance of permits, certifications, approvals and authorizations by DEC constitute a determination of consistency with the ACMP for those purposes for those activities of a proposed project subject to those permits and other authorizations. This language ensures that the ACMP consistency review process does not duplicate DEC's permitting process. This provision conforms with the provisions of the existing program at 6 AAC 80.140 and the federal Coastal Zone Management Act's requirement that these environmental standards be included in the state's coastal program.

**Section 12** repeals and readopts AS 46.40.050 concerning submission of district plans by coastal resource districts. The section removes obsolete language from the initial creation of the program in 1977 and adds a new requirement that a coastal resource district must review and resubmit its plan for approval every ten years. This is to ensure that the district plans are regularly updated.

**Section 13** amends the district plan review and approval provision at AS 46.40.060. It provides that the department may approve a district coastal management plan provided it meets the requirements of AS 46.40, the statewide standards adopted by DNR, and the district plan criteria adopted by the department. A district plan may not arbitrarily, unreasonably, or unduly restrict or exclude uses of state concern. Uses of state concern are defined in AS 46.40.210(8) at section 42 of the bill.

**Section 14** establishes specific requirements for department review and approval of district coastal management plans in AS 46.40.070. The department may approve a district plan under AS 46.40.060, if it meets the requirements of AS 46.40, AS 46.40.060 and the enforceable policies

of the plan meet the requirements of .070(a)(2). 070(a)(2) requires that the enforceable policies be clear and concise, and use precise, prescriptive, and enforceable language. In addition, the enforceable policy may not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern. "Matter of local concern" is specifically defined in the bill.

**Section 15** makes conforming changes to AS 46.40.090 concerning how local district plans are implemented in the unorganized borough.

**Section 16** amends existing AS 46.40.094 that describes how a project may be reviewed for consistency with the ACMP in "phases." This amendment would broaden the phasing statute to allow projects other than traditional oil and gas leasing projects to be reviewed in phases. The phasing test is changed from whether future information is "obtained in the course of a phase" to whether the information "was not available to the project applicant at the time of the previous phase." This change makes the language consistent with the federal coastal management regulations allowing for phasing of federal activities subject to a consistency review in 15 C.F.R. 930.36(d).

**Sections 17-22** amend the existing statute providing for consistency reviews of development projects in the coastal zone.

**Section 17** provides that DNR is to establish by regulation a consistency review process conforming to AS 46.40.096.

**Section 18** clarifies that consistency reviews are triggered by state resource agency authorizations.

**Section 19** provides that DNR's consistency review regulations must provide for public notice, which is a requirement of the federal coastal zone management act.

**Section 20** provides that "subsequent reviews" also known as "elevations" during the consistency review project are decided by DNR and that they are to be completed within 45 days after the initial request for review.

**Section 21** amends AS 46.40.096(g) to exclude certain activities and permits from the consistency review process in AS 46.40.096. Consistent with federal law, an activity that is authorized under a general or nationwide permits previously determined to be consistent with the ACMP is not required to be reviewed a second time. As provided in section 11, DEC's review of an activity under AS 46.03, AS 46.04, AS 46.09, AS 46.14 and its implementing regulations is not included in the consistency review process in AS 46.40.096. Activities excluded from a consistency review under the existing provisions of the Forest Practices Act in AS 41.17 are excluded from a consistency review under AS 46.40.096.

**Section 22** adds eight new subsections to AS 46.40.096 to clarify what activities trigger a consistency review, the scope of the review once triggered and the geographic scope of the activities

subject to a review.

New subsection (i) references DEC's separate consistency determination under AS 46.40.040(b).

New subsection (j) clarifies that, except as provided in the Forest Practices Act, the exclusions in .096(g), and for federal consistency reviews and certifications subject to federal law, a consistency review is triggered by an activity that is subject to a state resource agency permit, lease, authorization, approval or certification.

New subsection (k) provides that except as provided in the phasing statute (AS 46.40.096) and the exceptions above, the scope of a consistency review is limited to activities that either are subject to a state resource agency permit or authorization or the subject of a coastal resource district enforceable policy approved by the department.

New subsection (l) defines the geographic area where an activity triggers a consistency review and the geographic scope of the review once triggered. The consistency review process is to apply to activities within the coastal zone of the state (defined in AS 46.40.210), activities on the federal outer continental shelf or on federal lands that are the within the geographical boundaries of the state's coastal zone.

New subsection (m) adds the requirement that DNR establish in regulation the state resource agency permits and federal permits that trigger a consistency review. The subsection also directs DNR to establish by regulation categories and descriptions of uses and activities that are determined to be consistent with the ACMP or that would be made consistent with the inclusion of standard alternative measures. The existing list of such activities is known as the "A, B, C" list. The new legislation directs that these categories and descriptions of uses and activities be reviewed by DNR and made as broad as possible so as to minimize the number of projects that must undergo an individualized consistency review.

New subsections (n) and (o) establish a 90-day deadline for completing consistency reviews.

New subsection (p) expressly states that a consistency review under AS 46.40.096 will proceed independent of a DEC or other permit excluded under AS 46.40.096(g).

**Section 23** includes cross-references to existing requirements in the enforcement section of the State Coastal Zone Act.

**Sections 24-28** are conforming amendments transferring authority from the CPC to DNR.

**Sections 29-37** are amendments to the statutory provisions governing the creation and operation of coastal resource service areas (CRSAs) in the unorganized borough. These sections are amended to retain existing CRSAs but to preclude the creation of new CRSAs.

**Section 38** is a new savings clause clarifying that nothing in AS 46.40 diminishes state jurisdiction or affects state requirements as they apply to the federal government under a federal authorization or federal waiver of sovereign immunity. The savings clause also makes clear that the coastal zone act does not diminish the zoning or planning authority of municipalities under AS 29.

**Section 39** is a conforming amendment concerning the use of the term district coastal management plan.

**Section 40** amends the existing definition of consistency review to track the scope and applicability clarifications in the other sections of AS 46.40.

**Section 41** defines department as the department of natural resources.

**Section 42** amends the existing definition of "uses of state concern."

**Section 43** adds new definitions of the terms "coastal use or resource," "coastal zone," "district management plan," and "enforceable policy."

**Section 44** repeals statutory references to the CPC and obsolete provisions of AS 46.40.

**Section 45** annuls the existing statewide standards and district program guidelines in 6 AAC 80 and 6 AAC 85. This annulment takes effect on July 1, 2005 (see section 49).

**Section 46** is a transition provision. First it directs DNR to adopt regulations implementing this Act no later than July 1, 2004.

Second, until the statewide standards and district program guidelines are annulled under section 45 or DNR adopts new regulations, the existing regulations remain in effect and DNR can implement and enforce the statewide standards and guidelines to the extent not inconsistent with this Act.

Third, district coastal management programs approved by the CPC stay in effect until July 1, 2006, unless DNR disapproves or modifies all or part of the program before July 1, 2006.

Fourth, consistency reviews pending on the day before the effective date of this Act may continue and be completed under the prior rules, at the applicants option exercised no later than 60 days after the effective date of the act.

**Section 47** is a transition provision directing the submission of new district plans by coastal resource districts for initial implementation of this Act. All coastal resource district must submit revised district plans to DNR within one year after DNR adopts new regulations, or until July 1, 2005, whichever is later. Subsection (b) provides that the 90-day review time in AS 46.40.070 does not apply to the submissions under (a) of the transition provision.

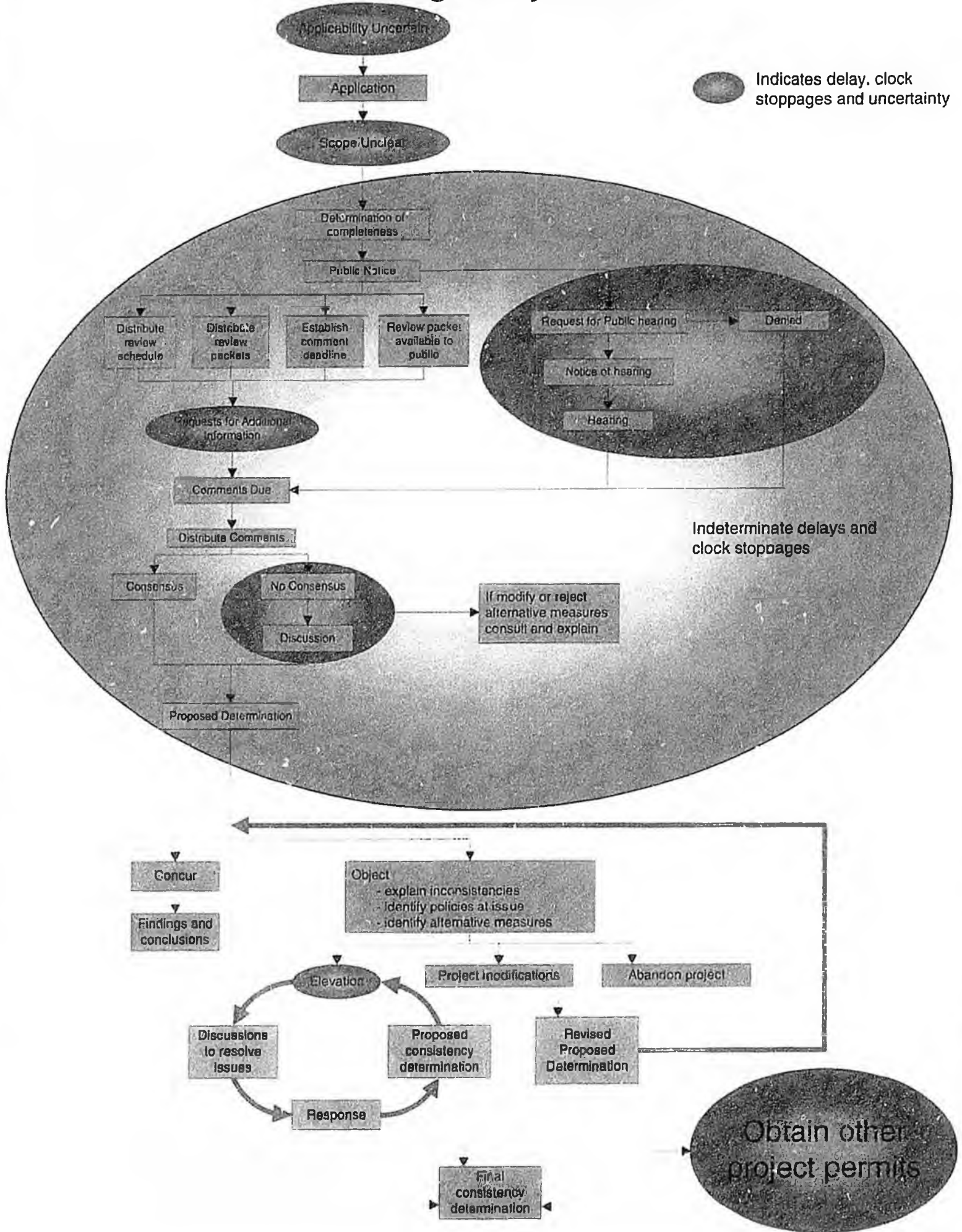
**Section 48** contains revisor's instructions making changes in article headings and Alaska Administrative Code changes reflecting the transfer of the coastal management program from the CPC to DNR. Subsection (c) provides that if DNR's regulations are adopted before old CPC regulations are annulled, the old CPC regulations at 6 AAC 80 and 6 AAC 85 will be removed by the regulations attorney as obsolete.

**Section 49** is the delayed effect date of section 45's annulment of 6 AAC 80 and 6 AAC 85 on July 1, 2005.

**Section 50** provides that with the exception of section 49, the Act takes effect immediately under AS 01.10.070(c).

# ACMP Regulatory Process

● Indicates delay, clock stoppages and uncertainty





## KENAI PENINSULA BOROUGH

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BUSINESS (907) 262-4441 FAX (907) 262-1892

DALE BAGLEY  
MAYOR

April 22, 2003

State of Alaska  
Senate Resources Committee  
Alaska State Capitol  
Juneau, AK 99811-0001

RE: Proposed legislation; Senate Bill 143

Dear Senator Wagoner,

The proposed legislation presented by the Governor's office represented in Senate Bill (SB) 143 follows Executive Order (EO) 106 introduced by the Governor on February 12, 2003. This EO transfers responsibility of the Alaska Coastal Management Program (ACMP) from the Division of Governmental Coordination to the Department of Natural Resources.

This bill would repeal the Alaska Coastal Management Program and create a new program. In brief, the bill declares intent for reforming and streamlining the ACMP, providing powers to the DNR to respond on behalf of the State regarding consistency certifications on federally administered permits, consistency with the ACMP would be based solely upon state law, local district policies would lose authority, the Coastal Policy Council is presumably eliminated as in the House version of the bill.

### Support Information

The Alaska Coastal Management Program and federal Coastal Zone Management Program are state and federal programs that provide standards and guidelines for state and federal decisions about development in coastal areas. These programs also provide funding and authority to local governments who want to participate in managing resources related the land and water in their area of concern.

The Federal Coastal Zone Management Act of 1972 states in it's Congressional Findings, Section 302(a): The Congress finds that there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone. Congressional Declaration of Policy, Section 303 states:

The Congress finds and declares that it is the national policy-

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations:

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and aesthetic values as well as the needs for economic development

The Kenai Peninsula Borough Coastal Management Program was developed to provide local information and policies that contribute to the objectives of the Alaska Coastal Management Program.

The Kenai Peninsula Borough Coastal Management Program was developed in accordance with the provisions of the ACMP in compliance with state and federal requirements and includes:

- 1) delineation within the Kenai Peninsula Borough of the coastal area subject to the district coastal management program;
- 2) statement of the land and water uses and activities subject to the district coastal management program;
- 3) statement of policies to be applied to the land and water uses subject to the district coastal management program;
- 4) 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;
- 5) summary 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;
- 6) designation and policies which will be applied to areas within the district which merit special attention

The Kenai Peninsula Borough Coastal Management Program has been authorized by the Kenai Peninsula Borough Assembly and annually supported by borough match funding to the federal pass through grants. It provides local input and guidance to state and federal agencies involved in developing projects, issuing permits or managing land within the coastal area or resources of the Borough. The program also provides an information base and policies to assist the Borough in managing Borough land and making local decisions affecting coastal resources.

Contrary to insinuations contained within the bill, the Borough Coastal Management Program does not duplicate or assume management or permitting authority for resources and activities that are managed by State and Federal agencies. Rather, it is intended to provide background information and a system for contributing to coordinated federal, state and local processes to help insure timely, responsible decision-making in resource management. The Kenai Peninsula Borough has consistently performed within the guidelines and timelines of the ACMP.

The Kenai Peninsula Borough is bounded on the east by the Gulf of Alaska and Prince William Sound and on the north by Turnagain Arm, upper Cook Inlet and the divide of the Susitna watershed; on the west side it generally follows the major divide of the Alaska range and the Aleutian range and thus is bordered by the Bristol Bay watershed to the west. On the south it follows the Naknek river drainage and then out to Point Douglas and across the north end of Shelikof Straits to our beginning point north of the Barren Islands.

Within that area, the Kenai Peninsula Borough encourages new development, with consideration of local policies regarding resources within the region. The Kenai Peninsula Borough Coastal Management Program Enforceable Policies provide a tool for addressing proposed developments requiring state and federal permitting. Through the program, the borough may also identify issues and concerns regarding planning activities conducted within the local government.

### Findings

Due deference, that deference which is appropriate in the context of the local governing body's expertise and area of responsibility, and all the evidence available to support any factual assertions, applies during a consistency determination made by the state agency to a coastal district or state review agency consistency recommendation and the supporting evidence they provide with their recommendation. This appears to be lost as a result of the proposed legislation.

While the proposed legislation asserts that the local government may exert this level of control through planning and zoning powers, this would add unnecessary complexity and duplication which will ultimately slow valuable economic development opportunities within the borough. Otherwise, without the meaningful involvement of the local government, feasible and prudent means for sound practices which assure minimal effects on critical environmental, social, or economic issues, would not be assured our constituent population.

Not only are there area-wide concerns, but also there are many important habitat areas within the coastal district boundaries of the Kenai Peninsula Borough. It is our perspective that the local district is the best source of information for state and federal resource managers who are likely stationed in other parts of the state or country. The local communities are an important source of information regarding areas that support

essential life history requirements of fish or wildlife species are crucial for system-wide health of our biota. We have found that coordinated agency review and permitting of projects under the ACMP has not only helped manage important resources, but also expedited the development of projects in a way that benefits the applicant, our communities, and environment.

The likely result of the proposed legislation will be significant impacts to our resources that will ultimately negatively impact our ability to sustain a diversified, vibrant economy that is so vital to our people. It is the concern of the Kenai Peninsula Borough Coastal Management Program to participate in alternatives planning for uses, or activities associated with the use(s), which might have a net adverse effect on the quality of the resources of the coastal area; b) might limit the range of alternative uses of the resources of the coastal area; or c) might constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would adversely effect community well being.

The proposed legislation replaces the Alaska Coastal Policy Council with the Alaska Department of Natural Resources, with no associated oversight. While it is true that the Kenai Peninsula Borough supports responsible development of its resources, a summary discharge of the Alaska Coastal Policy Council, without developing a similar governing body within DNR, is a drastic and inappropriate response to desires for streamlining permitting processes. Furthermore, the proposed legislation will grant the DNR the right to determine what "local concerns" matter. While it is true that the DNR has the capability of adhering to approved administrative procedures and legal formality, it provides only a single perspective on resource management that would benefit from the cooperative assistance of other agencies, and the public. This will also help assure that the integrity of the local programs is not lost in the midst of state and federal bureaucracies.

This issue of promoting economic development while balancing development interests with long-term community interests is a complex subject which deservedly must be accompanied by meaningful involvement of communities across the state of Alaska, including the local district coastal program (as we have discussed in our April 09 letter). The oversight of a decision-making body that is representative of the agencies and of public interests will aid in assuring that concern is met.

We greatly appreciate the effort of the Alaska Administration to present a bill proposal in response to local concerns. Recognizing that this is a challenging and difficult task, we have offered our analysis of the proposed bill in order that it may be further revised in response to the real concerns of the local communities that have an interest in the Alaska Coastal Management Program.

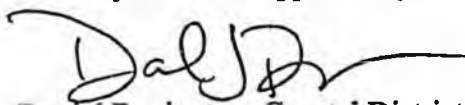
The Kenai Peninsula Borough has a long history of support for its own program that dates back more than two decades (since 1977). This statement is based on the facts of that history that reveal KPB Assembly passage of 34 Ordinances, and 7 Resolutions that directly or indirectly support the coastal management program. By and large they have passed by unanimous consent.

There are many specific areas of the bill that are either vague, poorly defined, overly restrictive, or difficult to achieve. Given that there has been very little coordination between the State of Alaska and the local governing bodies/communities concerning the details of the proposal, the Kenai Peninsula Borough Coastal District recommends that it is difficult to ascertain whether or not the proposed legislation is consistent with the interests and concerns of Kenai Peninsula Borough Coastal Management Program as written.

As such, the proposed legislation should be tabled in order to allow the representative involvement of the decision-making bodies of local governments throughout the coastal regions of Alaska.

At a minimum, any bill presented for consideration at legislature must: provide timely opportunity for community involvement; retain some fashion of a representative oversight body in program structure; permit opportunity for defense of any policies in a local plan; provide a means of timely, meaningful interaction with districts (which allows for local public hearings) when the state proposes to discharge any policies from an approved plan, especially non-duplicative policies which are more far reaching than state or federal requirements, as in (but not limited to) ADEC or EPA permitting requirements (other than for activities covered under general permits, nationwide permits, etc.); require the DNR to identify specific areas within existing district plans that are in conflict with the goals and intent of the state program; provide a clear, concise, achievable timeline for compliance at the district/CRSA level; require a periodicity for district/CRSA plan renewal which is no less than 10 years; assure that the State of Alaska will provide effective and timely assistance to the districts to assure that the districts are on schedule for any required changes; state that the DNR will give the local district "due deference" in interpretation of what matters are of "local concern" including but not limited to the policies within a plan, and the district coastal management plan itself.

Thank-you for the opportunity to comment,



Daniel Bevington, Coastal District Coordinator

CC: (email)  
Senate Resources Committee  
Dale Bagley, KPB -Mayor  
Max Best, KPB -Planning Director  
Jack Brown, KPB -Community and Economic Development Director  
Pete Sprague, KPB -Assembly President  
Coastal Districts



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

In Anchorage: 3709 Spenard Road / Anchorage, Alaska 99503 / (907) 277-7222 / FAX (907) 277-4523  
In Valdez: P.O. Box 3089 / 339 Hazelet Avenue / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

April 22, 2003

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Sen. Scott Ogan, Chairman, Senate Resources Committee  
Alaska State Legislature  
State Capitol, Room 103  
Juneau, AK 99801-1182

**Subject: Senate Bill 143 – Alaska Coastal Management Program (ACMP)**

Dear Senator Ogan:

We have reviewed various versions of this legislation, as originally introduced and as revised during deliberations in the House Resources Committee. We appreciate the Administration's efforts to accommodate concerns raised by coastal Alaskans regarding the legislation.

However, we continue to believe that the legislation, in all versions developed to date, would weaken, if not eliminate, the vital role of local communities in reviewing projects with local impacts.

Our main concern is that the legislation leaves unanswered the question of to what extent, if any, a local entity may create enforceable standards on matters of local concern if they relate to air, land, water quality, or to a subject addressed in a state permit. It appears the communities would be largely eliminated from any significant role in the early stages of the permitting process, and might be able to participate only after the decision was made and the permit was out for public comment.

Specifically:

1. Section 11 states that Alaska Department of Environmental Conservation (ADEC) statutes and regulations regarding "protection of air, land, and water quality" are the "exclusive enforceable policies of the Alaska Coastal Management Program . . ." If so, what subjects would be left for local enforceable policies? The quoted language can be interpreted so broadly that nothing is left for local Coastal Resource Service Areas (CRSAs) to address. Would all current enforceable policies be valid, or would there be a winnowing process to eliminate all those which relate to "protection of air, land, and water quality"? May a CRSA create an enforceable policy in the area of air, land, or water quality that differs from state regulations because of a local need for stricter standards? The section also states that issuance of an ADEC permit constitutes a determination of consistency. Does this mean that there is no consistency review by other entities such as local CRSAs of topics covered by the ADEC permit, or merely that the reviewing entity may not simply duplicate the considerations by ADEC and second-guess that agency on

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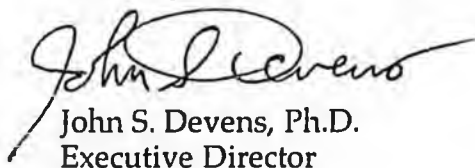
those topics, but that a consistency review would still continue as to other matters?

2. Section 21 states that the reviewing entity shall exclude from its consistency review and determination an activity "authorized" by ADEC under its air, land, and water quality requirements. This appears to be a "shield" protecting a project with an ADEC permit from locally generated objections. Does a local reviewing entity have the authority to enforce requirements - i.e., to find a project inconsistent with its coastal management plan - if the local requirements in any way relate to air, land, or water quality? Does it have such authority if, pursuant to section 14, the local enforceable policy relates specifically to a "matter of local concern" which arguably involves some aspect of air, land, or water quality? To put it another way, may local CRSAs create enforceable policies that relate to air, land, or water quality if the policies relate to matters of local concern rather than state or national concern? Or is anything that in any way relates to air, land, water quality or with the subject of an ADEC permit strictly off-limits to CRSAs?

We are also concerned that the tight deadlines for having coastal communities rewrite their plans into compliance with the new standards would place an undue burden on those communities, many of whom have already spent considerable amounts of time and money constructing their existing plans. It would seem more efficient to have all existing plans reviewed at the state level, presumably by a qualified contractor. Local communities would then be advised of specific problems and deficiencies that would need to be addressed in their rewrites. This would bring a consistency and efficiency to the rewriting process that would in all probability reduce both the time and the total cost of completing it.

We believe the best way address these concerns, and to achieve a bill that meets the needs of the administration, the regulated community and coastal communities, is to form a broad-based task force to work on the measure over the legislative interim this year, then bring it back for action in the 2004 legislative session.

Sincerely,



John S. Devens, Ph.D.  
Executive Director

cc: Senate Resources Committee:

Senator Thomas Wagoner  
Senator Fred Dyson  
Senator Ben Stevens

Senator Ralph Seekins  
Senator Kim Elton  
Senator Georgianna Lincoln

Richard Ranger, Alyeska Pipeline Service Company



**CITY/BOROUGH OF JUNEAU  
ALASKA'S CAPITAL CITY**

April 22, 2003

The Honorable Scott Ogan  
Chair, Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: City and Borough of Juneau Comments on SB 143  
Coastal Management Legislation

Dear Senator Ogan,

The City of Borough of Juneau, Juneau Coastal District, has a number of comments and concerns about proposed changes to the Alaska Coastal Management Program, as described in SB 143. Our comments include review of the latest version released on 4/22/03. I would appreciate it if you would distribute these comments to other members of your committee. Though this legislation has been presented as containing significant improvements and modifications from the original bill proposed in the house, we believe it still presents some serious obstacles to local participation in coastal management. Coastal management is a complex issue. I know that committee members have made great efforts to understand this program. With that understanding, I will proceed directly with our primary concerns on this legislation.

**Elimination of the Coastal Policy Council**

CS HB 191 takes participation and authority away from municipalities because it disbands the Coastal Policy Council (CPC). The CPC is a representative body of local governments that includes nine public members, which are either mayors or city council members, and six state agency representatives. Under the proposed legislation, DNR, rather than the representative body of the Coastal Policy Council, would have sole authority over the Alaska coastal program, including the approval of local district policies and plans. This would clearly diminish the authority and participation of our local coastal districts.

The Legislature created the CPC in 1977 to balance local, state, and federal interests. Governor Hammond withdrew the original coastal management bill in 1976 because of opposition by Alaska's communities. The final Alaska Coastal Management Program (ACMP) received wide approval because the districts were given a majority of seats on the CPC and the program provided a strong role for coastal districts in local resource

development. Consolidation of this authority into a single agency, which alone has the authority to accept or reject local plans and policies, and diminishes the benefit of the knowledgeable and diverse interests represented by the CPC. The CPC must be retained to provide community representation when approving changes to coastal program enforceable policies.

#### **Elimination of local participation in DEC reviews**

The legislation excludes CBJ coastal plan and all local district participation on DEC permits. For projects that require DEC permits, the DEC permit would be the consistency review, without local participation and due deference to local plans. We do not understand the rationale of excluding this agency from consistency reviews. Consideration of local policies is important on all state permits. Removal of review by this agency also eliminates the ability to look at a project in its entirety, which could be creating phasing issues.

Furthermore, DEC's budget and personnel have been severely cut in recent years. As a consequence, there have been numerous CBJ permit reviews in which this agency could not respond to requests for analysis. To further defer to DEC and remove local input on DEC permits under these circumstances does not seem logical.

#### **Revision of local plans and policies**

The legislation requires that all districts revise their enforceable policies within six months, and update them every five years. There is no guarantee, however, that districts will be funded to accomplish this task, which will be daunting even if timelines are lengthened. The issue of timelines has been highlighted by coastal districts in recent hearings, and we appreciate the changes made to lengthen these timelines. However there are other, more pressing concerns associated with this legislation.

Juneau's coastal management program received final state and federal approval in 1986, after a very long and extensive public and agency review process. Our coastal plan is well-regarded and includes detailed criteria that promote and expedite development as well as safeguard sensitive habitat. Though no plan is perfect, embarking on a long revision, review, and approval process is unnecessary and untimely. In addition, the legislation requires revisions to all enforceable policies without presenting a convincing argument that there is a problem. This amounts to an unfunded mandate and will place an excessive time and financial burden on Juneau and other communities. Rather than putting the burden on communities, the state should establish a working group of districts, agencies, and industry to determine whether local policies need revision, and if so, the most effective way to accomplish this task. A working group is the ideal tool to assess the coastal program and propose thoughtful revisions that meet concerns while preserving a meaningful local role.

**In addition, the criteria that district policies have to meet under this legislation could potentially eliminate most if not all of our local plan. Section 14 states the**

requirements for department (DNR) approval of revised local district plans. I am listing these requirements word by word from the bill text to fully illustrate their potential effect.

Section 46.50.070. *Requirements for department review and approval. (a) The department may approve a district coastal management plan submitted for review and approval if*

- (1) the district coastal management plan meets the requirements of this chapter and the statewide standards and district plan criteria adopted by this department; and*
- (2) the enforceable policies of the district coastal management plan*
  - (A) are clear and concise as to the activities and persons affected by the policies, and the requirement of the policies;*
  - (B) are not susceptible to inconsistent application to different projects or regulated persons;*
  - (C) use precise, prescriptive, enforceable language; and*
  - (D) do not address a matter regulated or authorized by state or federal law unless the enforceable policies relate specifically to a matter of local concern; for purposes of this subparagraph, "matter of local concern" means a specific coastal use or resource, or geographical area within the coastal zone that is*
    - (i) identified as sensitive to development;*
    - (ii) not adequately addressed or contemplated by state or federal law; and*
    - (iii) of unique concern to the coastal resource district as demonstrated by usage or scientific evidence.*

It is hard to imagine any set of policies or regulations, even the long-established regulations in the CBJ land use code, which could meet all of these criteria. In addition, this bill attempts to eliminate subjective decision-making by standardizing local policies across the broad spectrum of coastal districts that have widely diverse needs and interests.

Flexibility is necessary to protect the interests of individual communities. It is also necessary for reasonable decision-making and development. For example, there is a CBJ ordinance, which is part of the coastal plan, which prohibits development within 50 feet of a salmon stream. Yet this ordinance also provides flexibility for staff to approve minor developments that do not impact the stream. Not only do the criteria in this legislation appear difficult or impossible to meet, but the inflexibility in the policies which they will create is likely to backfire and inhibit, rather than promote, responsible development.

Of all of these criteria, we are most concerned with subsection D, which states that local policies cannot address issues covered by state and federal permits, and by inference cannot be more stringent than state or federal permits. Because state and federal permits directly or indirectly affect almost every issue, this criterion in itself, with broad interpretation, could eliminate most or all of the Juneau Coastal Plan. Returning to the streamside setback example, the argument could be made that this issue is covered by ADFG and DEC, under fish habitat and water quality. Whether we would meet the

subcriterion for exception to this is uncertain. Furthermore, the exception subcriterion *ii, not adequately addressed or contemplated by state or federal law*, states the same thing as the main criteria D, yet in even broader terms. This is a circular argument that seems to ensure that the exception could never be used.

As a second example, these criteria could eliminate our Juneau Wetlands Management Plan, which is an officially adopted element of our coastal plan that took approximately 10 years to develop. This plan ranks wetlands into four categories, with specific management criteria for each category. Under the legislative criteria, the argument could be made that wetland management is adequately addressed by the U.S. Army Corps of Engineers. Under the subcriterion to qualify for the exception with an issue of local concern, wetland management is again addressed and certainly contemplated by the Corps of Engineers; this is a circular argument that eliminates application of the exception. With the final caveat that the decision on whether to approve local policies would be made solely by DNR, not the CPC, and without a public hearing, the prospects for plan approval would appear dismal. Lastly, if local policies are indeed eliminated, the legislation could backfire against development by slowing down permitting.

In a letter dated 4/17/03, CBJ presented these two examples to the administration and asked how these policies would be interpreted under the criteria in this legislation. Staff replied in part that, "In part, it will be the district's responsibility to review their enforceable policies against the statutes and implementing regulations to determine whether they comply, to justify their compliance, and whether DNR can approve them." This response does not answer our questions and does not tell us whether these important local policies would be retained under the legislation. This is a critical question that must be addressed.

The legislation has recently been changed to indicate that DNR "shall" approve plans if they meet the criteria, but this does not change the fact that the criteria are subjective. DNR is requesting that local districts remove subjectivity in their plans, yet DNR would have subjective discretion in their decision as to whether the plans meet the criteria. The policy criteria need to be revised in a way that preserves local authority. Again we recommend that this issue be addressed through a representative working group.

### **Summary**

This legislation takes away local control through elimination of the CPC; elimination of local participation in DEC reviews; and through impossible revision standards that could eliminate important local policies entirely. CS HB 191 is in many ways worse than the first version of the bill. We are opposed to this legislation and request the establishment of a representative working group to address concerns with the coastal program in a way that preserves local authority.

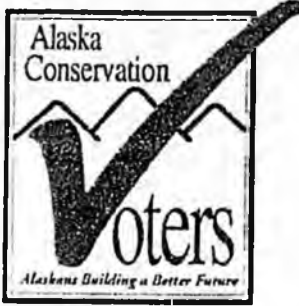
We appreciate the opportunity to comment, and thank you for your thoughtful consideration.

Sincerely,



Teri Camery, Planner  
Coastal District Coordinator

cc: Senate Resources Committee  
Rod Swope, City Manager  
Dale Pernula, Director, Community Development Department  
Sarah Gilbertson, Kevin Ritchie, Alaska Municipal League  
Representative Beth Kerttula  
Representative Bruce Weyrauch  
Senator Kim Elton  
Coastal Districts



## Senate Bill 143 ACMP Reorganization

810 N St, Ste 203, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177  
PO Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / [www.acvoters.org](http://www.acvoters.org)

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To: Senate Resources Committee  
Date: April 23, 2003

Dear Senator,

The mission of the Alaska Coastal Management Act in 1977 was to assure effective participation by the public, developers, municipalities, and state and federal agencies, in the coastal resource decision-making process. CSHB 191 shatters this idea, as it negates what the ACMP has set out to do; it strips the local districts of their participation in the protection of their natural resources.

Local knowledge is essential for maintaining subsistence resources and habitat standards, while allowing for development in specific areas of Alaska's coastal zone. With the passage of CSHB 191, the essential protection of Alaska's diverse coastal resources will be lost as only one general statewide standard is created.

Although in this new version of HB 191, the districts retain their seat at the decision-making table, CSHB 191 places a gag in their mouths by giving sole authority of the program to DNR. All decisions will be made solely by the agency focused on developing resources, leaving no voice of the public or districts for the protection of subsistence resources and habitat standards.

### Complications with CSHB 191

1. **Guts the ability for local communities to develop and implement local enforceable policies.** Overly broad language in the bill hides the unreasonable criteria for enforceable policies to be accepted by DNR. Many, if not most, of the pertinent district enforceable policies will be removed from the program without the input of the public or the districts.
  - DNR will develop statewide standards and criteria for the approval of district programs with no input from other agencies, the districts or the public process.
  - DNR may approve districts plans, but is not required to do so. After a timely and expensive process to create their policies, districts may have their plans rejected.
  - Districts may not create policies over a matter regulated by State or Federal law. Therefore, areas that may need more or less protection than state or federal standards will no longer be able to receive it.
  - DEC air, water and land quality requirements will be established as the exclusive policies for those purposes. The DEC permits would then be the consistency review without necessary local participation and due deference.
  - Criteria for acceptance of an enforceable policy in section 14, is overly broad, vague and could lead to the elimination of important policies in district plans.

Alaskans building a better future.

2. **Eliminates the Coastal Policy Council leaving no vessel for public and district voice.** Mentioned numerous times in public testimony, the removal of the council results in the abolition of the public process.

- The decision making process made with the expertise and diversity of the Council will be replaced by the sole discretion of the DNR Commissioner.
- The public process granted with the Council will not be replaced with a public hearing in DNR. The public will no longer be able to participate in the ACMP program.

This legislation was created without the participation of those who know the program best: district planners. CSHB 191 streamlines the permit process irresponsibly. Public and local participation is restricted to a bare minimum, if even given at all. We ask you to protect and develop our coastal resources in a responsible manner and oppose CSHB 191.

Sincerely,



Colleen Norman

**To: Senate Resources Committee Chair Scott Ogan**

**Re: SB 143 (Governor Murkowski's initiative to "streamline" the Alaska Coastal Management Program)**

To: Alaska House Special Fisheries Committee hearing regarding SB 143

From: Doug Hill of Anchorage, Alaska (I am testifying on behalf of myself).

APR - 7 2003

I am not against development.

I support development that considers the stewardship of wildlife, water, land, and the social and economic well-being of all Alaskans.

**I strongly urge you to reject SB 143.**

SB 143:

- 1) Wipes out locally enacted concerns and policies (policies and concerns created by those individuals with the most intimate knowledge of the situation and local resources);
- 2) Strips away the due deference currently afforded to local residents in order to allow ADNR to make faster resource decisions;
- 3) Effectively cuts the public out of the decision making process;
- 4) Provides local governments an inconsistent basis on which to comment on projects – coastal uses that require only a state permit will not require an ACMP consistency review;
- 5) Removes the requirement for public notice;
- 6) Removes the balance between fish protection and coastal development – Alaska's constitution mandates a balanced approach for the benefit of all Alaskan's;
- 7) Guts the Habitat Standard, which has been used by Fish and Game and Coastal Districts to protect fisheries from salmon stream impacts "outside" the stream; Title 16 only authorized ADF&G to manage "instream" impacts. This pending legislation will take away state and local authority to manage polluted runoff and other riparian impact around salmon streams.

As with numerous other Murkowski administration initiatives (EO 107 for one) there is no legitimate evidence that the process is broken. There is no evidence that the ACMP consistency review process unnecessarily delays important development projects.

As with numerous other Murkowski administration initiatives (EO 107 for one) SB 143 clearly places permit efficiency and expediency above wildlife and habitat resources protection. Like EO 107, SB 143 is an initiative that will isolate a process - that is currently public - within the realm of ADNR and industry.

Time after time the Murkowski administration has expected us to believe them when they tell us that their "streamlining" initiatives can provide fish and wildlife and habitat protection (which directly includes subsistence and personal use protection). Yet, on numerous occasions the Murkowski administration cannot, or will not, provide the intimate details/mechanics of what it is they are promoting. My impression is that the only thing that Murkowski Administration staff truly understands is that, what they are promoting is increased profitability. This profitability will be at the expense of Alaskan's (especially rural subsistence Alaskans) quality of life. The only streamlining that will occur is the streamlining of businesses that do not want to spend dollars (what for them is pocket change) on wildlife and land stewardship. Stewardship in the present is cheaper than restoration in the future.

I strongly urge the legislature to take action to ensure that Alaskans (especially rural subsistence Alaskans) have a firm understanding of SB 143, as well as SB 142, SB 119 and Executive Orders 106 and 107. All of these initiatives are designed to decrease industry and government accountability and prohibit public participation in decisions that will affect Alaska citizens and Alaska visitors.

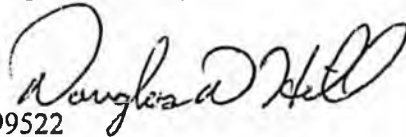
Under Governor Murkowski's plan resource extraction will occur out of the public's view in terms of management and politics. In addition some of this resource extraction will occur off the road system and thereby out of view of the majority of Alaskans.

Lots of small cuts will result in long-term fish, game, and habitat hemorrhaging that will directly affect Alaskans socially and economically. Look around, read your history books, there are plenty of examples. Remember the term "robber barons"?

Don't isolate this process within one agency (i.e., ADNR). Work to improve the current Alaska Coastal Management Program and retain local participation. Reject SB 143.

Thank you for allowing me to testify,

Doug Hill  
P. O. Box 220236  
Anchorage, Alaska 99522  
348-8519



I am an Alaska resident.

I am 44 and have been in Alaska since my teens.

I have lived on and off the road system – most of my life in Alaska has been spent in rural areas.

I am currently an employee of the ADF&G – Habitat Division Biologist

MY POSITION IS SLATED FOR TRANSFER TO ADNR IF EO 107 IS NOT DISAPPROVED.

I assist the permitting biologist (permit scoping comments, field inspections); work in the schools on restoration projects, and watershed awareness curricula.

I work part time for Wildlife Conservation Division/Waterfowl Section.

I also supervise the ADF&G camp at Redoubt Bay Critical Habitat Area (joint Habitat/Wildlife Conservation bear/angler project).

I also have extensive field experience with Alaska's inshore and inland fisheries while working for the Alaska Department of Fish and Game's Habitat, Wildlife, Sportfish and Commercial fisheries Division. I have a degree in biology from UAF and I have approximately 14 years of combined technician and biologist experience with ADF&G.

I have worked as a building construction carpenter

I have worked for Alaska Packers unloading fish and as a carpenter.

I have been a village maintenance worker for the catholic diocese

I have extensive experience with Alaska's inshore and inland fisheries as a commercial fisherman, a personal use fisherman, a sport fisherman, and a subsistence fisherman.

While living in the Yukon River village of St Marys I spent summers with Yupik friends gillnetting (commercial/subsistence) and putting fish up for the winter at their fish camp on Manning Island near the mouth of the Yukon River.

In the winters I worked blackfish traps and gillnets with friends from the village,

as well as ice fishing I spend a lot of personal time fishing, hunting, and paddling on the inshore and inland waterways of Alaska.

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**NORTHWEST ARCTIC BOROUGH****P.O. BOX 1110****KOTZEBUE, ALASKA 99752****(907) 442-2500 / FAX (907) 442-2930**

April 23, 2003

Governor Frank Murkowski  
State of Alaska, Office of the Governor  
P.O. Box 110001  
Juneau, Alaska  
99811-0001

RE: Committee Substitute for House Bill 191 &amp; Senate Bill 143

Dear Governor Murkowski:

The Northwest Arctic Borough (NAB) is concerned with the proposed changes to the Alaska Coastal Management Program in CS HB 191 and SB 143. Before any changes are made to this very important development tool, please consider meeting with our Assembly to review the goals of CS HB 191 and SB 143 and our concerns regarding the changes.

The NAB was incorporated as a home rule borough of the State of Alaska on June 2, 1986. Our borough is located in northwestern Alaska, and has a land area of about 39,000 square miles. The NAB has a coastline of greater than 300 miles in length, with the Kotzebue Sound, Hotham Inlet and Chukchi Sea of the Arctic Ocean comprising the major adjacent marine waters. The land area of the NAB encompasses most of the drainage of the Noatak, Kobuk, Selawik, Kivalina, Wulik, Inmachuk and Buckland Rivers, and extends approximately 175 miles north to south and 250 miles east to west. The coastline contains numerous lagoon systems and small islands which are important to the people and wildlife of the area. The eleven different communities in the region are home to approximately 7,000 residents. The eleven communities include:

- Ambler
- Buckland
- Deering
- Kiana
- Kivalina
- Kobuk
- Kotzebue
- Noatak
- Noorvik
- Selawik
- Shungnak

Ambler · Buckland · Candle · Deering · Kiana · Kivalina · Kobuk · Kotzebue · Noatak · Noorvik · Selawik · Shungnak

On April 3, 1979, the region's voters approved the organization of the then NANA Coastal Resource Service Area (CSRA.) The Concept Approved Draft NANA Coastal Management Plan (CMP) was published in 1985. In 1986, following the formation of the NAB, the NAB Planning Commission assumed the duties of the NANA CSRA Board. The NAB CMP Plan policies were approved, with amendments resulting from public input, by the Alaska Coastal Policy Council on May 22, 1986 and by the federal Office of Ocean and Coastal Resource Management on December 1, 1989. The NAB CMP Plan policies were filed with the Lieutenant Governors office on December 22, 1989, and took effect on that date.

The NAB CMP is intended to provide for use and activities which can be conducted in a manner to prevent disturbance of the existing balance between our people, our subsistence economy, and our natural and physical environment, which we must view as an integrated whole to the maximum extent possible. The NAB CMP thus takes into account federal lands that would not otherwise be included in the NAB coastal area to insure that uses and activities generally outside of the control of the NAB are compatible and consistent with NAB CMP goals and objectives.

The elimination of the current Alaska Coastal Management Program was derived based on concerns over uncertainty for developers and the idea that the program provided a road block for development. The NAB uses the NAB CMP as a development tool to allow for major economic development and for the protection of our natural resources. Our district plans coupled with the our title 29 planning authority, allowed the leverage needed to promote and mitigate for responsible economic development. Furthermore, evidence has yet to be presented that would result in the gutting of the current coastal management program for the revised program provided in CS HB 191 and SB 143.

The current bill considers providing developers a set of policies that allows for predictability in the permitting process, yet it provides an uncertainty to the coastal districts on the authority provided to us. Additionally our authority, derived in part, from our local district plans, will be questioned and revised every five years regardless of the effectiveness of the local district plan.

The passage of CS HB 191 and SB 143 will result in the loss of many federal, state, and NAB invested resources, time, and expertise in developing and implementing our NAB CMP. Time and resources expended since the regional vote to approve the organization of the NANA CSRA in 1979. Additionally, it will not provide the financial assistance needed to start from scratch, much less the assistance needed every five years for the mandated review. Our current local enforceable policies provides very specific guidelines for evaluating if a project is determined consistent and is much to valuable to just throw away.

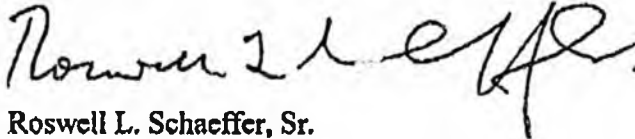
The CS of HB 191 and 143 offers to retain local community authorities but it makes the process so rigorous and complex, the result will be that few, if any, localities will have meaningful enforceable policies. The power of the State to amend any district plan to satisfy the provisions of the new bill held by the Department of Natural Resources is much to overwhelming.

Committee Substitute HB 191 and SB 143, if approved will take away a very strong tool provided to us in our district plan; the ability for local due deference, expertise, experience and control. The passage of CS HB 191 and 143 will in effect eliminate all rights of local residents

to do more than just comment on projects. We recommend that the current system of local review of projects for consistency with the existing regulations and policies be retained.

We are opposed, and will continue to show opposition to any bill that will remove the balance of the current partnership provided by the current program. Before any action is taken on CS HB 191 and SB 143, we request that a representative of the State of Alaska meet with our Assembly to discuss the changes to this very important program.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roswell L. Schaeffer, Sr.", written in dark ink.

Roswell L. Schaeffer, Sr.  
Mayor

# Northwest Arctic Borough

# FAX

<b>To:</b> Senator Scott Ogan	<b>From:</b> Roswell L. Schaeffer, Mayor
<b>Fax:</b> 907-465-3882 3265	<b>Pages:</b> 4
<b>Phone:</b> 907-465-3878	<b>Date:</b> 4/23/2003
<b>Re:</b> SB 143	<b>CC:</b>
<input checked="" type="checkbox"/> <b>Urgent</b> <input type="checkbox"/> <b>For Review</b> <input type="checkbox"/> <b>Please Comment</b> <input type="checkbox"/> <b>Please Reply</b> <input type="checkbox"/> <b>Please Recycle</b>	

Please include the following letter as my testimony for SB 143

Northwest Arctic Borough, P.O. Box 1110, Kotzebue, Ak 99752  
Phone: 1-800-478-1110 Fax: 1-907-442-2930  
E-mail: mayor@northwestarcticborough.org

(907) 586-4004

**Douglas Kemp Mertz**

Attorney at Law  
319 Seward Street  
Juneau, Alaska 99801  
e-mail: [dkmertz@ak.net](mailto:dkmertz@ak.net)

fax (907) 586-4141

April 28, 2003

Hon. Scott Ogan, Chair  
Senate Resources Committee  
State Capitol  
Juneau, Alaska 99811

Re: SB 143, regarding the Alaska Coastal Management Plan

Dear Senator Ogan:

As you requested, this is a summary of the testimony I gave on April 25<sup>th</sup>, regarding SB 143, on the Alaska Coastal Management Program, on behalf of the Prince William Sound Regional Citizens Advisory

1. The communities which form PWS RCAC are cities and villages affected by the Exxon Valdez oil spill. The communities know first hand how events outside their control can affect a community's life – its subsistence activities, its commercial fishing, its economy, its culture. It is for that reason that the citizens of these communities believe strongly that they should be allowed to keep the measure of control they now have under the ACMP regarding projects in their areas.

2. We see a disconnect between what we are told by the administration – that both the structure and substance of local participation in the ACMP will be retained – and what we see in the actual words of the latest version of the bill. Specifically, while the bill appears to retain the structure – local community resource service areas (CRSAs) continue to exist -- their actual powers are almost entirely stripped away. The ability of CRSAs to have some local authority over projects stems from their ability to write and require consistency with local enforceable policies (LEPs). *Yet most of the existing CRSAs would be prohibited by the language of the bill.*

3. Specifically, a local CRSA may no longer maintain an enforceable policy which

\*\* involves subjects which are or could be regulated by the Department of Environmental Conservation, including virtually all types of pollution of land, air, and water, as well as oil spill contingency planning [Sec. 11 and 21];

\*\* involves matters which are “adequately addressed by state or federal law “[Sec. 14];

\*\* matters falling within the jurisdiction of the Forest Practices Act [Sec. 21]; and

\*\* involves matters of “statewide concern or national concern” rather than local concern, including [Sec. 14 and 42]:

- any concern which affects more than one CRSA;
- transportation systems (e.g., roads and marine terminals);
- ports and major facilities for national energy needs;
- "resource development of federal land";
- siting of major energy facilities;
- activities pursuant to a state or federal oil and gas lease or large-scale industrial or commercial development activities that are dependent on a coastal location and are of a magnitude to "present issues of more than local significance;"
- resource extraction facilities (i.e., all oil, gas, and mineral exploration and production facilities);
- projects on state parkland, recreational areas, game sanctuaries, and critical habitat areas.

4. We compared these prohibitions on local enforceable policies with the existing local enforceable policies, and found that *nearly all existing LEPs would arguably fall within one or another of the prohibited categories*. The LEPs which are most important to local communities—those which have to do with the effect of projects on local subsistence resources, commercial fishing, and the protection of important and productive local resource areas, would almost certainly be prohibited by the restrictions listed above.

5. The fact that the actual language of the statute is at odds with the way some administration testifiers have characterized the bill gives us considerable concern. When the drafters of a bill from the administration speak to certain intentions but the words of the bill fail to embody those intentions, the intentions are meaningless. At the very least, the likely result is years of litigation to determine whether the bill's language can be stretched to meet the drafters' intention. We urge the committee to redraft the bill so as to state, clearly and unequivocally, its own intentions. *Specifically, we ask the committee to make the policy call of whether local communities should be allowed to continue their local enforceable policies as they are now; should be allowed to continue them with some modifications; or should be prohibited from meaningful local enforceable policies altogether, as in the current bill*. Once the committee has made that choice, it should have the bill redrafted by Legislative Affairs to embody, unambiguously, that policy choice.

Thank you for the opportunity to make these comments.

Sincerely,



Douglas K. Mertz



217 Second Street, Suite 200 • Juneau, Alaska 99801  
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

April 23, 2003

Senator Scott Ogan  
Chair, Senate Resources Committee  
Room 103  
Juneau, AK 99801

**Re: S RES S.B. 143 – Alaska Coastal Management Program**

Dear Senator Ogan,

I am writing on behalf of the Alaska Municipal League (AML) to express the AML's concerns regarding S (Res) for S.B. 143.

But I would be remiss if I did not first recognize the Administration's hard work over the last three weeks in reaching out to coastal communities, soliciting local government input, and in reworking this bill. The AML worked closely with the Governor's office, DGC, and DNR to ensure that the concerns of Alaska's communities were heard.

The AML believes that streamlined, coordinated, and timely regulatory review processes are critical to effective economic development in Alaska. AML members support "clear and streamlined state and federal permitting systems based on sound science and economic feasibility." However, AML members remain concerned that the S (Res) for S.B. 143 (1) does not provide adequate funding for the rewriting of plans and (2) limits local government authority/participation.

Thank you for the opportunity to comment on this important legislation.

Sincerely,

Sarah A. Gilbertson  
Policy and Program Coordinator

TESTIMONY  
JUDY BRADY  
ALASKA OIL AND GAS ASSOCIATION  
BEFORE  
SENATE RESOURCES COMMITTEE  
RE: CSSB 143, COASTAL MANAGEMENT PROGRAMS  
April 25, 2003

My name is Judy Brady. I am the Executive Director of the Alaska Oil and Gas Association (AOGA), a non profit trade association representing oil and gas companies investing in and operating in Alaska.

We want to thank the Administration and the Legislature for their commitment to reform the Alaska Coastal Management Program (ACMP). AOGA shares that commitment.

At the Wednesday Senate Resources hearing on the CS for SB 143 three very basic questions were asked:

What are the problems with ACMP?

How serious are these problems?

Are they serious enough to warrant the time, effort and uncertainties associated with changing a complex program?

AOGA's member companies asked themselves these questions last year, after spending 3 years in an exhaustive attempt to accomplish ACMP reform through a regulatory process. At the end of that reform attempt we looked at the problems still on the table and asked:

- Is it a problem that it is not possible to develop a reliable timeline for the existing ACMP permitting process?
- Is it a problem that it is not possible for state agencies to tell a company how long it will take to get permits for a proposed project?
- Is it a problem that the ACMP standards are so vague that a company has virtually no certainty as to whether a proposed project is going to be in or out of the lengthy consistency review?
- Is it a problem that ACMP does not require schedule discipline, and in practice, has been a major source of delay?
- Is it a problem that every major oil and gas development project on the North Slope and in Cook Inlet has been, at some time, in schedule limbo due to ACMP?
- Is it a problem that there are numerous AG opinions, many of them contradictory, attempting to interpret the ACMP?