

ALASKA LEGISLATURE, 2005-2006
7/98

HOUSE STAFF

11632

A major problem we are experiencing with the revision process is exactly what HB 191 set out to resolve. An objective of House Bill 191 was to provide clear and concise guidance. To date we have not received either clear or concise guidance from DNR and the Office of Project Management and Permitting. The Bill also directed to provide uniformity in coastal management throughout the state. However, the new regulations and the new statutes have created uniform confusion through out all the coastal districts. The bill further directed that the ACMP should relate to matters of local concern. We live in these affected coastal districts and we have expressed dire concern over how this program is being changed at the local level and how we will no longer have the voice our current plan provides us over projects within our borough boundaries.

Guidance for revising the district coastal management plans has been confusing, imprecise, and subject to regular changes by DNR staff. New ACMP regulations were adopted in July 2004, revised in August 2004 and will likely be revised again this spring.

During the House Resources Committee testimony on 4/28/03, DNR provided nine "model enforceable policies that addressed specific locations within particular districts and generally defined portions. DNR stated that these policies allow "for quite a lot of breadth in local enforceable policies . . . They allow a great deal of flexibility within local enforceable policies. They just simply require that they be more concise." Since that time DNR has removed the sample enforceable policies provided to the legislature in 2003 from its website, but has yet to explain why the policies are no longer applicable.

Again during testimony on HB 191 on 4/23/03 House Resources Committee, Marty Rutherford stated "HB191 does not eliminate the district's place at the table. They will be at the table. They will have due deference on their enforceable policies, and that is something that the districts need to hear again, because it's important to them and we recognize it".

Another example: Senate Resources Committee, April 28, 2003:

[MARTY RUTHERFORD] ... he Murkowski administration feels, after looking at these district enforceable policies [nine examples provided by DNR], that the districts put a great deal of effort into establishing them. The Administration's strategy is to have the resource agencies review all of the local enforceable policies as they are being rewritten to be more concise and non-duplicative, as well as to see if they should be developed into statewide standards. She said the policies demonstrate that districts have a great deal of room to develop policies that address issues of local concern.

However, guidance from the DNR staff has truly indicated the opposite because the state OPMP continues to address any policy with the term "the field is covered" meaning we cannot write a policy on that subject or issue and in turn because the field is covered we have no due deference on that subject. Simply put we've lost our voice!

Regulations Conflict with Intent of HB 191: *The new regulations contradict testimony by the Administration on HB 191. In contrast to what was promised to the Legislature, interpretation of the new regulations by DNR impose extreme limitations on enforceable policies, remove the ability for districts to address air and water quality matters not addressed by DEC, diminish the effectiveness of statewide standards, remove the ability for district policies to apply to federal land and waters, and add to regulatory confusion. It appears that DNR will be revising the ACMP regulations, but the agency has not explained to the districts exactly what it intends to address in the new revisions.*

Wasted Time & Money: *The state Coastal Management Program must be approved by the federal Office of Ocean and Coastal Resource Management (OCRM). Based on the recent letter from OCRM dated January 28, 2005 it is very likely that state program changes will need to be made for federal approval. These changes will directly impact requirements for local district plans. The federal process will not be completed before district plan revisions must be submitted to DNR. In that same letter OCRM stated the environmental Impact Statement is not expected to be completed until December 2005. In our opinion this is a waste of time, money and effort for districts to revise their plans before the state's program is federally approved and any necessary changes have been*

made. Simply put, we think the State has put the cart in front of the horse by requiring the Districts to complete their plans before the State has an approved amendment from the Federal Government. [This is not good long range planning.] The state has not even developed final guidance on the existing regulations, and may still develop new regulations. The EIS cannot even be started until OCRM approves the State's program.

Changes Will Stop or Delay Development: According to DNR, certain district policies may only "disallow" uses. This will force districts to prohibit certain kinds of development rather than establish criteria to allow it.

Insufficient Time: The timeline for coastal districts revising their plans began July 2004 when DNR first adopted regulations implementing the coastal program changes; district plans must be submitted for review by July 1, 2005. Due to the confusing regulations and varying interpretations by DNR, most districts are still unclear how to proceed with plan revisions. Once the direction is made clear, there appears to be insufficient time for districts to meet the regulatory process requirements for district plan revisions, i.e. July 1, 2005. Extending the time period for plan approval would spread DNR's present work load out over a more manageable time period, which will assist DNR in their plan review. The current DNR staff cannot possibly adequately review and approve 26 district plans in 12 months. Look how long it has taken them to write the regulations, regulations that to date, raise significant questions within most districts and within OCRM.

4. How has removal of air and water quality issues affected the ability of your district to manage coastal resources and uses?

DNR has said that districts cannot develop any air or water quality policies even for matters not addressed by DEC. Under this interpretation, there will be gaps that the districts cannot address. Specifically the removal of mining from the enforceable policies directly affects our ability to be at the table in regards to air and water quality issues related to mining as related to our current coastal management plan. By removing Air, Land and Water Quality the process to approve, consistency reviews will follow a double track. The most direct impact on our districts ability to manage coastal resources is we

will not even be able to commit or even review many projects thus eliminating our seat at the table. The opportunity to be at the table was repeatedly promised in public testimony during the passing of HB 191. For Example: Marty Rutherford to the 4/28/03 House Resources Committee. Because the DEC "air and water quality standards do not address some things, in those areas, the local communities would be able to develop their own local policy . . ."

Another example: Pat Galvin told the House Finance Committee that "[t]he language was changed to make specific references to statutory provisions so not to presume that air, land and water quality are the exclusive product of that Department." He said that Section 11 is specifically designed to reference only statutes that DEC is actually regulating. (5/3/03)

However based on the new regulations and interpretation of the new regulations by DNR staff we cannot write any such policy on any Air, Land and Water Quality issues thus removing our seat at the table on that issue.

5. What kinds of policies are you able to develop under the current regulations?

Answer:

The ability to write effective enforceable policies is very difficult if not impossible if we follow the guidance we have been given from the DNR staff. Through January 2005, DNR has unofficially provided ever-changing interpretations of the regulations; interpretations we think conflict with the legislative intent of HB 191. If followed, DNR's directives would reduce local communities' role in coastal development. For example when the first draft of the regulations was presented to the districts in February of 2004 the draft regulations stated that a district may develop an enforceable policy that addresses a matter of local concern, including:

- (1) setbacks and siting criteria;*
- (2) wetlands management; and*
- (3) nonpoint source pollution controls.*

This has since been removed from the final version of the regulations.

Another example, during the October 2004 workshop in Anchorage the guidance for writing a policy was that it could be written only if there was not a State or Federal law that covered the subject. Now the most recent guidance from DNR is that a policy must now flow from State law. Moving targets are hard to hit. Additional time for this process would allow the legislature to review the progress of this issue and hopefully make some adjustments. We strongly encourage the legislature to reevaluate HB 191. Many promises were made during the passage of that bill. Promises were made for instance, that subsistence would not be affected when in fact, we are now told by DNR, and that no policies may be written on subsistence because of the language in the regulations. We have deep concerns that the new regulations affectively eliminated input into development of mines, oil and gas resources and the opportunity for locals to weigh in on Air, Land and Water quality issues on projects in their own backyards.

6. What do you foresee as the impact to your coastal district if the ACMP disappears?

Answer:

The elimination of the local voice. Uncontrolled and unmonitored development of the salt and freshwater coastlines within our Borough. Loss of funding for coastal planning. No local government likes to see the loss of funding. Our Borough has been very productive with the funds we have received from coastal management and combined them with other grants to accomplish a very large and productive mapping and GIS project that will benefit local government, the Borough, State and the Federal Government for many years to come. Now due to the proposed changes we fear the increased possibility of impure water in our fresh water, lakes, rivers and streams. Freshwater and salt water are directly related to each other. Both tie directly back into the ecosystem of our region, our State and the world. We think the dilution or elimination of the coastal management program is a very poor decision by the State. We strongly urge this committee to consider rethinking what HB 191 has done to the program and how opposed the coastal districts of Alaska are to there resulting program revisions and most especially to the perceived "Heavy Handed" manner of DNR.

I kindly thank this committee for the opportunity to testify on behalf of Lake and Peninsula Borough.

Thank You!

Glen Alsworth

Mayor

ALEUTIANS WEST**T**
COASTAL RESOURCE SERVICE AREA

February 24, 2005

**TO: Representative Paul Seaton
State Capitol
Juneau, AK 99801
1-907-465-3472**

**FROM: Karol Kolehmainen
1-907-745-6700/6711(fax)**

NUMBER OF PAGES (including cover): 5

COMMENTS:

**Thank you for the opportunity to comment and for your
consideration of an extension.**



Cenaliulriit Coastal Resource Service Area

PO Box 69, Mekoryuk, AK 99630 / Phone: 907-827-8748 / Fax: 827-8749 / E-Mail: Cenaliulriit2@starband.net
Toll Free: 1-877-827-8747

February 16, 2005

Honorable Donald Olson
State Capitol, Room 510
Juneau, AK 99801-1182

Subject: Request for Alaska Coastal Management Program
Extension for the Rewrite of the District Plan Amendments

Dear Senator Donald Olson:

Cenaliulriit Coastal Resource Service Area serves 38 Yup'ik villages. The legislature has placed an undue hardship, both financially and the time constraint to complete well thought plan amendments to conform to the requirements of House Bill 191.

The Alaska Department of Natural Resources (ADNR) completed and submitted its regulations without an adequate opportunity for input from the coastal districts and the federal Office of Ocean and Coastal Resource Management (OCRM). The ADNR gave us no opportunity to understand how the regulations would affect our plans.

There are many grave issues the coastal districts are concerned about, mainly our timing, with a deadline of July 1st, 2005. This timing does not give me time to explain this whole process, especially to residents of the district who speak Yup'ik Eskimo. The regulations are not perceived as conforming to federal coastal zone requirements. This is a definite conflict for our district.

Cenaliulriit CRSA at their board meeting on January 13th supported an extension of the deadline to July 1, 2006. In fact, OCRM also recommends an extension to the state's plan amendment.

If you have any questions, contact me at the above number.

Sincerely,

John Oscar
Program Director

Coastal District correspondence

cc: Cenaliulriit Board of Directors
Senator Gary Stevens
Senator Paul Seaton, Chair, House State Affairs Committee



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TESTIMONY
FEBRUARY 24, 2005
8:00AM

Alaska Coastal Management Program Oversight Hearing

Thank you Chairman Paul Seaton and the Honorable Committee Members:

I'm John Oscar, Program Director for the Cenaliulriit Coastal Resource Service Area. On behalf of my board members we serve 38 villages in the Yukon-Kuskokwim delta.¹ We have approximately 21,000 residents in this area. Cenaliulriit district has one of largest number of dependents to renewable resources than any other part of the whole United States. Subsistence is an essential component of the Yup'ik people. Subsistence is history, culture, tradition, and it is deeply rooted to daily family living, it prevents dire poverty from hunger in the remotest places of Alaska, it sustains life.

The people of the Yukon-Kuskokwim Coastal Resource Management Area (CRSA) fervently believe in the wise use and management of their resources for future sustainability. But it is uncertain with the current requirements. One example I wish to share is a project that was only 200 feet above the village of Pilot Station. This airport project was only a few feet outside our coastal zone, and our policies could not apply in this case, even if the activity affected berry-picking sites around and near the project. The only time we were made aware of this was when the portion of this project was in question of being inside Cenaliulriit zone. The mining policies were taken out in the current regulations. We have mining projects as we speak in the Marshall District, Goodnews Bay District, Nyac District, and now including Red Devil and Donlin Creek Districts. What does this mean to the potential impact of mining, or large sand and gravel extractions near subsistence resource sites, wetlands and waterways, a few feet to a few miles above a village? Where is the due deference? How much influence do the current regulations provide those most affected in the decision making process? The rewritten regulations leave an unpredictable future for the people in the process, or at least a death in the public process. The ability of folks to comment or apply policies on mining under House B191 has been taken away, and is no longer our concern.

Cenaliulriit has only 1-first class city, which is St. Mary's, 25-second class cities, and 12 tribally run communities. These communities utilize the policies that address resource protection with subsistence as a primary part of their decision making process under Cenaliulriit. They do not have

¹ The district includes **one** first class city (Saint Mary's), **25** second class cities (Akiak, Alakanuk, Aniak, Cheformak, Chevak, Eek, Emmonak, Goodnews Bay, Hooper Bay, Kotlik, Kwethluk, Marshall, Mekoryuk, Mountain Village, Napakiak, Napaskiak, Newtok, Nightmute, Nunam Iqua, Nunapitchuk, Pilot Station, Platinum, Quinhagak, Russian Mission, Scammon Bay, and Toksook Bay) and **12** unincorporated cities (Akiachak, Atmautluak, Kasigluk, Kipnuk, Kongiganak, Kwigillingok, Oscarville, Pitka's Point, Tuluksak, Tuntutuliak, and Tununak).

ordinances to land, air and water quality standards, or policies relating to resource protection. So this program is the only avenue they have to address those issues.

The main problem we are faced with is the weakened or in some cases eliminated, our ability to successfully share comments that require careful planning. We cannot address issues relating to land, air and water quality standards, and we cannot share our concerns to habitat standards. It is like saying "You may comment toward this project, but you cannot say anything about the impacts it will have to your resources and its relationship to land, air, water quality and the habitat areas."

The other problem we are faced with is the uncertainty of the new regulations that have been evolving since the inception of House Bill 191, with very little influence or input from the districts toward that plan. I have to explain these regulations to my 38 villages in Yup'ik Eskimo, or in other words a third language that meshes English and Yup'ik in plain language. To do this would require time and funds to meet with the leadership, which is must happen now and late April, before everyone gets busy with renewable resource activity. I have no solid base to which to share them, as those regulations are not written in stone.

In most cases, scientific evidence in the western world has more bearing than traditional knowledge. We must provide the evidence of usage and documentation to prove those resources would be affected by development. We are also concerned about decisions that will be based on bias behind desks that are hundreds of miles away. Where is it that we can apply land, air and water quality standards? Where is it that we can apply habitat standards? Are we not speaking of the same animal?

We are working with villages to improve solid waste sites and meeting and conferring with updating these sites. In cooperation with other entities, we are also in process of implementing to help villages to develop policies relating to infrastructure development and future planning for future sites. With the current regulations, we are not able to provide policies that would otherwise protect them when a project is outside their immediate vicinity or town site. There is no protection.

With inadequate resources, I would have to meet with leadership during times when they are not hunting or fishing, and the spring-summer would be impossible. I calculated I would have to travel over 5,000 air miles in my district to explain the project and acquire support to the new regulations that may not set well with them.

We have a deadline of July 1, 2005 to complete this project, but in my district we are guaranteed to fail because of the vastness of the region and its people. Without the coastal management program, what guarantee do these people have, when decisions are being made for them in Anchorage or Juneau? We are concerned about the forests in South America, and other parts of the world, but not our backyard. We are concerned, if the Alaska Coastal Management Program was removed from the state, and then what protection do we have from decisions that would be made in D.C.?

In closing, my Uncle, Oscar Usugan, who has long passed away, said, "My learning and knowledge was handed down by your ancient's ancients, where the whole group was as important as one person's fate, your children's children preservation for the long term. Yet, today, we're threatened by the pervasiveness of the human nature. We live in a hurried world of technology, the clock, and the Western thought for self-gain, and forget who holds our lives. We are faced with written laws and regulations that change instantly the next day. From a far off land, from a few who offer promises and good words, but in the end you are forgotten, when the true face of hidden misdeeds and false words is revealed in their crafty laws."



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If you have any questions, contact me at the above number.

Sincerely,

John Oscar
Program Director

Coastal District correspondence

cc: Cenaliulriit Board of Directors
Senator Gary Stevens
Senator Paul Seaton, Chair, House State Affairs Committee

Coastal Project Review

1. What is the Alaska Coastal Management Program?

In 1972 Congress passed the Coastal Zone Management Act (CZMA) to promote the orderly development and protection of the country's coastal resources. The CZMA resulted from concern spurred by the increasing demands for development of the nation's coastal areas, population increases near the coast, and declining productivity of the coastal environment. The CZMA established a voluntary partnership among the federal government, coastal states, and local governments to develop individual state programs for managing coastal resources.

The Alaska Coastal Management Program (ACMP) implements legislation passed by the State of Alaska in 1977. With this legislation, called the Alaska Coastal Management Act, Alaska joins the partnership envisioned by the CZMA. The ACMP improves stewardship of Alaska's coastal land and water uses, and natural resources, by creating a network of local, state, federal, and applicant interests in the project approval process. The networking provided by the ACMP helps to ensure that all aspects of a project are considered during a single review and approval process. This integrated approach promotes both economic and environmental productivity of Alaska's rich and diverse coastal resources.

The ACMP requires that projects in Alaska's coastal zone be reviewed by coastal resource management professionals and found consistent with the statewide standards of the ACMP. These standards and the enforceable policies of an affected coastal district ensure that development interests observe the vision set out for the future by the state and coastal communities. It is called the consistency review process. A finding of consistency with the ACMP must be obtained before permits can be issued for the project.

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and water quality identified in AS 46.40.040(b) are incorporated into the program and, as administered by that department, constitute the exclusive components of the program with respect to those purposes.

For example, DEC has set an incinerator particulate matter emissions threshold in 18 AAC 50.050 at 1000 pounds of exhaust gasses per hour. Thus, an incinerator facility may legally operate at 999 pounds per hour of emissions. A coastal district may not write a policy regulating incinerators operating at 500 pounds of gasses per hour, nor may they redefine the term "incinerator" to include a class of facilities that DEC could regulate if it so chose. Thus, it would be improper to say that DEC "occupies the field" with regard to incinerator particulate matter – rather, the proper term would be that incinerator standards are "a matter regulated or authorized by state or federal law."

4. Question – What does "adequately addressed" mean? What are the criteria used for determining adequacy? Who determines adequacy?

Answer – The term "adequately addressed" is used within the context of defining when a matter is one of local concern under AS 46.40.070(a)(2)(C) and 11 AAC 114.270. For a district to develop an enforceable policy on a matter already regulated or authorized by state or federal law, the district must demonstrate that the matter is not adequately addressed by that state or federal law. As discussed in the previous response, within the context of "adequately addressed" is an agency's authority to regulate a matter, as well as its authority to require a permit for conducting an activity – specific to the body of law that empowers an agency to regulate and authorize matters and activities. It does not, however, apply to an agency's (state or federal) discretionary enforcement of their existing laws/authorities.

The criterion for determining adequacy is whether the matter is already addressed by state or federal law. Going back to the previous response, even if there is no regulation on a given matter, that the resource agency has the authority to regulate that matter makes the matter one that is "regulated or authorized by state or federal law." The same analysis is true with respect to whether the matter is "adequately addressed." As discussed in a later response, a district may not write a policy more stringent than the state or federal standard, arguing that the matter has been "inadequately addressed."

As an example of where an area is legitimately "inadequately addressed" such that a district may write a policy on the matter, the definition of natural hazard does not include wind tunnels or wind shears as natural hazards. If no other state or federal law addresses the development of activities within these wind tunnel or shear zones, then a district would be able to demonstrate the state or federal law, including the natural hazard standard, does not adequately address the matter, and develop an enforceable policy to manage such activities within the wind tunnel or wind shear zones.

In response to the question, "who determines adequacy," the answer is that the district first determines whether it feels that a matter is inadequately addressed, and may develop a policy addressing it. However, ultimately, OPMP, in consultation with resource agencies with appropriate expertise in the matter, will decide whether the policy is approvable under 11 AAC 114.270(h).

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT/PERMITTING ALASKA COASTAL MANAGEMENT PROGRAM

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October 4, 2004

The Honorable Dennis Michels
City of Nome
PO Box 281
Nome, AK 99762

Dear Mayor Michels:

This October, the Department of Natural Resources (DNR), Office of Project Management and Permitting (OPMP) and the Department of Commerce, Community and Economic Development (DCCED) are rolling up our sleeves at a coastal district workshop, along with coastal communities throughout Alaska, to learn how to renovate all of the Alaska Coastal Management Program (ACMP) district coastal management plans.

This letter provides a brief overview of why your district plan has to be revised now, and how OPMP and DCCED staff can support your community through the process to amend your local district coastal management plan by July 1, 2005.

Background

The Alaska State Legislature passed House Bill 191 (chapter 14 SLA 2003) in May 2003 finding that "there is a need to update and reform the district coastal management plans under the ACMP so that the local enforceable policies within those plans

- are clear and concise,
- provide greater uniformity in coastal management throughout the state,
- relate to matters of local concern, and
- do not duplicate state and federal legislation".

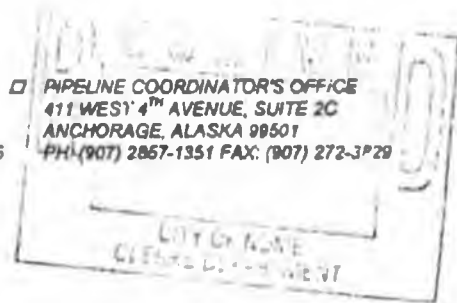
The legislation requires the coastal districts to complete the plan revision and submit the amended plan to DNR for approval by July 1, 2005. During 2005-2006, DNR will be coordinating the state and federal review and approval of all of the revised district plans. District plans that are not revised, approved and in effect by July 1, 2006, sunset on that date.

While the district coastal management plans must be revised to comply with HB 191, AS 46.40 and the implementing regulations, **it is important to realize that a full comprehensive update is not required.** We acknowledge that there is limited time and funding available and that a comprehensive plan update may not be feasible. If you find that you are unable to do a comprehensive revision, we encourage you to limit the scope of your update. Consider developing a limited number of enforceable policies to address your priority areas or subjects only. Another option would be to delete those policies that do not meet the regulations, but retain those that do.

"Develop, Conserve, and **General Coastal District Management Plan drafting
Requirements Oct. 4th, 2004**

FRANK H. MURKOWSKI, GOVERNOR

UNPC 10/13
Jim Dorn
file
MOR



Even if this option leaves you with just one policy, it will still allow you to participate in coastal management. Appropriate revisions to the resource inventory and analysis and any necessary maps or narrative descriptions to support the enforceable policies (see 11 AAC 114.250-270) must still be included. Additional policies could be added in subsequent years through additional plan amendments. It is up to each coastal district to decide how extensive a revision to do, dependant on the resources (time and money) each chooses to commit. A coastal district may amend its plan in the future when more resources are available either from the ACMP or other local, state or federal sources

DNR and DCCED have provided \$900,000 in grants to the 26 coastal districts that applied for ACMP funds for the plan amendments. Recognizing the real constraints of time and money, we developed a two step process for communities to evaluate their plans, and for the coastal coordinator to work with their assembly or board to decide the extent of the plan amendment you want to take on. We provided information on this preliminary plan evaluation step at the February 2003 ACMP Conference, developed materials with step by step instructions, and hosted several teleconferences to discuss the plan evaluation and grant application requirements.

To further assist the coastal districts and planning consultants with the plan amendments, OPMP and DCCED staff have prepared guidance materials and templates, are developing model enforceable policies, model implementation chapters, have hosted several teleconferences to explain the plan amendment requirements and created a website that hosts several of these tools. The website is on the Alaska Coastal Management Program website at:
<http://www.alaskacoast.state.ak.us/Plans/intro.htm>.

October Workshop

DNR and DCCED are hosting the October 20-22 ACMP workshop in Anchorage to work closely with the coastal districts and consultants on the plan amendments. State and federal agencies will also participate specifically to provide information about their laws that govern the management of coastal resources and where to locate resource inventory information, an essential ingredient of the district plans.

Please let us know if there is anything else we can do to assist your communities. Funds are available for ACMP staff to travel to each coastal district at a critical juncture in the plan amendment process. You can contact me at 907 269-8431 or Randy Bates at (907) 465-3562 if you have questions. I look forward to hearing from you, and to meeting your coastal coordinator at the October workshop.

Sincerely,



Bill Jeffress
Director

Cc: *Jim Oerly*
Mike Black, DCCED
Kevin Ritchie, AML
Randy Bates, OPMP

NORTHWEST ARCTIC BOROUGH

P.O. BOX 1110

KOTZEBUE, ALASKA 99752

(907) 442-2500 / FAX (907) 442-2930

January 18, 2005

Representative Reggie Joule
State Capitol, Room 405
Juneau, AK 99801-1182

Dear Representative Joule:

The Northwest Arctic Borough is currently rewriting its coastal management plan to comply with recent statutory and regulatory changes to the Alaska Coastal Management Program (ACMP). Due to a number of reasons, however, it will be difficult to complete the plan revisions by the July 1, 2005 deadline. The borough requests your support in extending this deadline.

The primary reason for an extension relates to unclear and changing guidance, especially in regard to the establishment of enforceable policies. It is necessary to have clear and understandable guidance for the enforceable policies because these policies are used to determine whether a development project is consistent with the borough's coastal management program. The Department of Natural Resources (DNR) issued the first written guidance interpreting the July 2004 regulations in December 2004. Unfortunately, this guidance is not clear to the coastal districts and their consultants, and the DNR is currently amending it.

A second reason for the extension is to provide more time for the legislature to review current problems resulting from the July 2004 ACMP regulations. Recent interpretations of these regulations are in direct conflict with testimony provided to the legislature by the Administration during committee meetings on HB 191 in 2003. For example, although many assurances were made that there would be adequate opportunities for coastal districts to develop local enforceable policies, this is no longer the case. At this time, it is not clear whether the districts can develop any meaningful policies.

During testimony on HB 191, the Administration developed sample district policies that would be acceptable under the new legislation. It appears, however, that these policies would no longer be approvable. Over the past four months, DNR has repeatedly promised to revise these sample policies to clarify how they would be approvable, but it has not done so to date.

An apparent unintended consequence of the new regulations is the inability for most district policies and many statewide standards to apply to federal land and the Outer

Coastal District correspondence

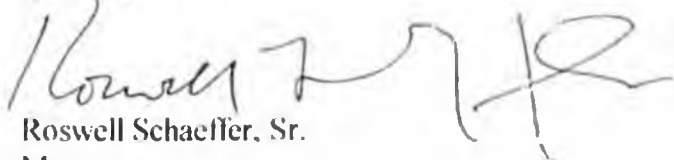
Ambler · Buckland · Candle · Deering · Kiana

Continental Shelf. One of the primary reasons for the original ACMP was to provide the state and local governments the ability to influence federal decisions. DNR has told the districts on several occasions that it does not intend to revise its regulations to fix this problem.

I understand there will be a hearing on the effects of the changes to the ACMP sponsored by the House State Affairs Committee on January 25, 2005. This hearing will be an excellent opportunity for the coastal districts to provide further justification for an extension to the July 1, 2005 plan revision deadline and the July 2006 "sunset" date.

In closing, we are continuing to revise our coastal district plan, but we do not have the information we need to complete the process. I look forward to working with you to resolve these outstanding issues.

Sincerely,

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

Roswell Schaeffer, Sr.
Mayor

cc: Representative Seaton, Chair of the House State Affairs Committee



District Enforceable Policy Decision Tree

1/10/2005

1. Does the matter to be addressed in a district enforceable policy flow from the State Standards or designated areas as listed at 11 AAC 114.250 (a) or (b)-(i)
If no, **stop**. You may not write an enforceable policy to address this matter. Go to 12.
If yes, go to 2
2. Is this a matter Department of Environmental Conservation (DEC) has the authority to regulate?
If yes, **stop**. You may not write an enforceable policy to address this matter. Go to 12.
If no, go to 3
3. Does the enforceable policy apply within a designated area, Area Which Merits Special Attention (AMSA) or Special Area Management Plan (SAMP)?
If yes, you may write an enforceable policy including those that specify whether a use or activity is allowed or not. Go to 4
If no, you may write enforceable policies except for those that specifically allow or disallow a use or activity. Go to 4
4. Does the enforceable policy, which was permitted under 3, flow from the following State Standards: Coastal Development, Coastal Access, Energy Facilities, Utility Routes and Facilities, Sand and Gravel Extraction, or Transportation Routes and Facilities?
If yes, review the State Standard then go to 5
If no, review the appropriate designation under 11 AAC 114.250 (b)-(i). Go to 8
5. Can you write a policy that flows from, or fits within the limits of the language or specific requirements in the State Standard?
If yes, go to 6
If no, you can't write the enforceable policy. Go to 12
6. Does the enforceable policy address a matter of local concern? *[Yes, if you can meet the requirements AS 45.40.070(a)(2)(C)(i), (ii) and (iii). (If you are within an existing AMSA or SAMP approved prior to 5/21/03, you do not have to meet parts i and iii of the requirements) (i): demonstrate the coastal use or resource is sensitive to development, (ii): show the matter is not adequately addressed by state or federal law (including the state standard); and (iii): show the matter is of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence.]*
If yes, go to 7
If no, you can't write an enforceable policy. Go to 12
7. Can you show the matter is not adequately addressed by state or federal law (including the statewide standards)? *[This means the state or federal agency either a) doesn't have the authority to regulate the matter, or b) does have the statutory authority to regulate the*

Coastal District Enforceable Policy drafting
requirements Jan. 10th, 2005

matter, but either doesn't have implementing regulations or the statute or implementing regulations either don't address the matter or are too general or vague.]

If yes, you can write an enforceable policy. Go to 11

If no, you can't write an enforceable policy. Go to 12

8. Is the matter related to a subject use listed under 11 AAC 114.250(b) natural hazards, (g) subsistence, or (h) important habitats?

If yes, you may designate the area, but do not have to write an enforceable policy. The state standard applies to the designated area. The designated area must be described or mapped at a scale sufficient to determine whether a use or activity is located within the area. If you want to write an enforceable policy, go to 5.

If no, go to 9.

9. Is the matter related to a subject use listed under 11 AAC 114.250 (c) recreational use, (d) tourism use, (e) major energy facilities sites, (f) commercial fishing and seafood processing facilities sites or (i) historic or prehistoric sites?

If yes, go to 10

If no, you can't write an enforceable policy. Go to 12

10. Is the matter regulated by state or federal law?

If yes, go to 6.

If no, go to 11.

11. Is the enforceable policy clear, concise, as to the activities and persons affected by the policy and the requirements of the policy?

Does it use precise, prescriptive and enforceable language?

Does it NOT arbitrarily or unreasonably restrict or exclude uses of state concern?

Does the enforceable policy NOT repeat, restate, or incorporate by reference a state or federal law? Is the enforceable policy more specific than a state or federal law, but not more stringent?

Does the enforceable policy NOT address a matter regulated by DEC?

If the policy applies to a specific location or designated area, is the description or map developed at a scale sufficient to determine whether a use or activity is located within the area?

Does the district plan document by local usage or scientific evidence a use or resource of unique concern that is the subject of an enforceable policy?

If yes to all of the above, the enforceable policy is likely to be approved by DNR.

If no to any of the above, DNR can not approve the proposed language.

12. Even though you can't write an enforceable policy, you can and should comment on an activity subject to ACMP consistency review per 11 AAC 110 if you are an affected coastal district. You can review the activity against the State Standards, consider the resource inventory and analysis information included in the district plan, and propose alternative measures as appropriate. You may also consider information from other sources, such as scientific evidence or local knowledge, when writing your consistency comments. When considering consistency comments and affording due deference, the coordinating agency considers the commentator's expertise or area of responsibility and all the evidence available to support any factual assertions of the commentator.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

February 23, 2005

Dear Alaskan:

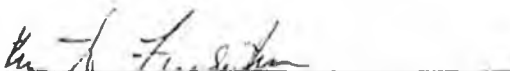
The State of Alaska is committed to ensuring that resources of the state are adequately managed and protected. As part of that commitment, the State has been implementing the Alaska Coastal Management Program (ACMP) since 1979. The ACMP, a voluntary program funded and authorized in part by the National Oceanic and Atmospheric Administration (NOAA), had broad authority to address a variety of resource management issues. While the ACMP served an important purpose when it was created, it has languished in the past several years without the needed updates to its purpose and policies. This resulted in the ACMP becoming fragmented in its implementation, subjective in its application, and an additional regulatory burden within an already comprehensive resource management system. As a result, projects have been unnecessarily delayed without a corresponding environmental benefit.

To modernize the ACMP, the Alaska State Legislature and Administration passed House Bill 191 in 2003. This directed State agencies to amend the ACMP in a manner that simplified and clarified the 25-year old program. The State agencies have worked hard toward developing a program that meets the priorities and needs of Alaska while still comprehensively and responsibly managing Alaska's coastal uses and resources. Unfortunately, NOAA, the federal approving agency, has in their January 28, 2005 letter, mandated that the ACMP expand its broad regulatory authority, regardless of its duplication and increased complexity, and refuses to acknowledge the State's rights in developing a program that works for Alaska. NOAA's mandate and attempt to further expand federal control over Alaska through coastal management is not acceptable. Without a change in NOAA's current position, the ACMP will expire in the summer of 2005 by operation of law.

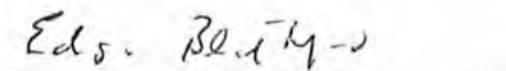
State agencies have worked hard to forge relationships with other federal resource agencies operating in Alaska. In addition, we actively participate in federal decision-making processes independent of ACMP requirements. Thus, we are confident that Alaska will continue to be involved and our voice heard in federal activity and authorization processes, even without the formality of the voluntary ACMP consistency tools.

Alaskans can be assured that we will continue to aggressively and comprehensively manage Alaska's coastal and inland natural resources.


Commissioner
Department of Natural Resources


Commissioner
Department of Environmental Conservation


Commissioner
Department of Fish and Game


Commissioner
Department of Commerce, Community,
and Economic Development



HOUSE STATE AFFAIRS COMMITTEE

STATE CAPITOL, ROOM 102
465-4963

MEMORANDUM

Committee Members

Rep. Paul Seaton
Chairman
Room 102
465-2689

Rep. Carl Gatto
Room 411
465-3743

Rep. Max Gruenberg
Room 112
465-4940

Rep. Jim Elkins
Room 416
465-3424

Rep. Bob Lynn
Room 405
465-4931

Rep. Berta Gardner
Room 422
465-4930

Rep. Jay Ramras
Room 104
465-3004

Date: February 16, 2005

To: Coastal District Testifiers

From: Representative Paul Seaton, Chairman
House State Affairs Committee

Re: Questions for ACMP oversight hearing

1. Please provide an example for the committee of an enforceable policy that was utilized in your coastal district prior to the revision process, and how the revision will affect the activity that the policy was used to enforce.
2. Why is the program important to your district and how has it been used to address specific issues. For programs managed by a municipality with planning powers, what does the ACMP give you above what you can do in your municipal code under Title 29 powers? For programs in the unorganized borough, Coastal Resource Service Areas (CRSA), how is this program useful considering the CRSA does not have planning and zoning powers?
3. What are the main problems that you are experiencing with the enforceable policy revision process mandated by HB 191 and associated regulations?
4. How has removal of air and water quality issues affected the ability of your district to manage coastal resources and uses?
5. What kinds of policies are you able to develop under the current regulations?
6. What do you foresee as the impact to your coastal district if the ACMP disappears?

State of Alaska
OFFICE OF THE GOVERNOR

Frank H. Murkowski
Governor
P.O. Box 110001
Juneau, Alaska 99811-0001
NEWS RELEASE



Becky Kultberg
Press Spokeswoman
907-465-3500
FAX: 907-465-3532
www.gov.state.ak.us

FOR IMMEDIATE RELEASE: February 23, 2005

No. 05-030

Governor Rejects New NOAA Mandates
Asserts state's rights to manage coastal resources

(Juneau) – Citing the need for the state to manage its coastal resources without excessive federal intervention, Governor Frank H. Murkowski sent a letter to the National Oceanic and Atmospheric Administration Wednesday asking NOAA to abandon new requirements for the Alaska Coastal Management Program. If NOAA does not reject the new requirements, the ACMP will expire in the summer of 2005.

"Alaskans deserve a coastal management program that works for Alaska," said the governor. "This is another example of the federal government dictating from afar program requirements that don't make sense in Alaska. I promised to stand up to the federal government when they overreach their authority -- and through this action I am upholding that commitment."

Alaska voluntarily implemented the ACMP program in 1979. After 25 years, the program had evolved into a complex, confusing set of requirements that delayed projects in Alaska without corresponding environmental benefits. Discontent grew with the program, until in 1997 a bill was introduced to repeal it.

In 2003, the state Legislature passed HB 191 mandating a simplified program that responsibly managed Alaska's coastal resource while eliminating duplication. After the bill's passage, the state worked with NOAA to develop and describe an amended program that met Alaska's needs. Talks proceeded constructively until January 2005, with NOAA identifying minor changes to the ACMP regulations.

On January 28, 2005, NOAA denied Alaska's amended ACMP. NOAA's denial is contrary to federal regulations that allow for state management of coastal resources through an existing network of state and federal regulatory agencies. NOAA also refuses to abide by the intent of federal law to "assist the states" in managing their coastal resources. Instead, NOAA seeks to impose duplicative, complex, and burdensome requirements that do not increase environmental protection.

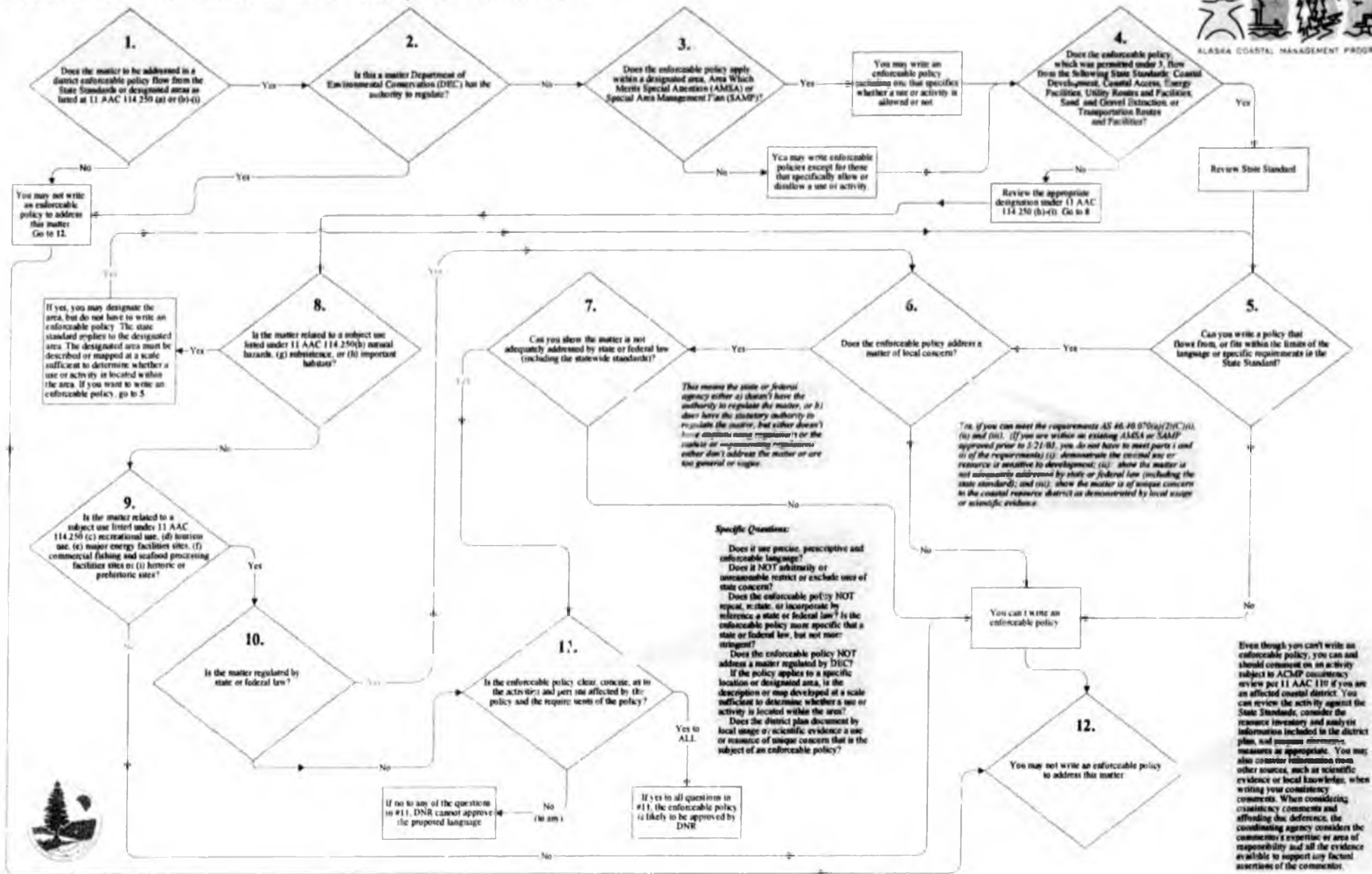
For a copy of the governor's letter and a letter to Alaskans from the commissioners of four state departments: <http://www.alaskacoast.state.ak.us/>

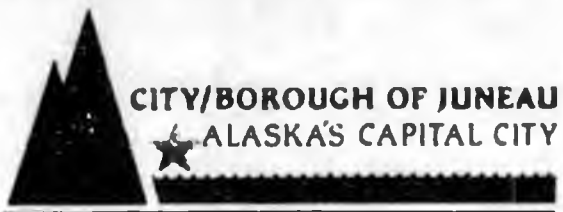
**Alaska Defends State's Right to Develop Voluntary Coastal Management Program by
Rejecting Expanded and Prescriptive Federal Mandates**

- The State of Alaska has voluntarily implemented the Alaska Coastal Management Program (ACMP) since the National Oceanic and Atmospheric Administration (NOAA) approved the program in 1979.
- After 15 years of changing circumstances and application, the ACMP had evolved into a complex, confusing set of requirements that unnecessarily delayed projects in Alaska without corresponding environmental benefit. By late 1995, the ACMP faced growing discontent from program administrators and stakeholders, and in 1996, an ACMP Steering Committee found the ACMP "duplicative and sometimes in conflict with other regulatory responsibilities." In 1997, discontent with the fragmented state of the program reached a point where a bill was introduced to simply repeal the ACMP.
- In 2003, the Alaska State Legislature and Administration passed HB 191, which mandated a simplified program that meets the priorities and needs of Alaska while still comprehensively and responsibly managing Alaska's coastal uses and resources.
- Following passage of HB 191, the State and NOAA partnered to forge an amended program that best managed the competing uses and demands placed upon Alaska's coastal resources. Discussions between the State and NOAA to reach this goal were proceeding constructively into January 2005, with NOAA identifying minor modifications to the ACMP regulations and program description as appropriate for program approval.
- On January 28, 2005, NOAA by letter denied Alaska's amended ACMP. NOAA's denial decision rescinded promises made during the past two years, and refused to acknowledge Alaska's rights in developing a program that works best for the State.
- NOAA has adopted a new, prescriptive interpretation of federal law that extends beyond Congress' mandate to NOAA to "assist the states" in managing their respective coastal uses and resources. Among other erosions of Alaska's control over its program, NOAA now refuses to honor its federal regulations that allow for a State's comprehensive management of its resources through a network of existing state and federal regulatory authorities. NOAA also seeks to impose duplicative, onerous, and complex new standards beyond what the State feels is necessary and appropriate. Representatives from other federal agencies have also expressed concern with OCRM's new requirements.
- On February 23, 2005, Governor Murkowski informed NOAA by letter that unless NOAA immediately abandons its new requirements, the ACMP will expire by operation of law in the summer of 2005.

- Also on February 23, 2005, the four Commissioners of the Departments of Natural Resources, Environmental Conservation, Fish and Game, and Commerce, Community, and Economic Development, jointly wrote a "Letter to Alaskans," in which the Commissioners assured Alaskans, "we are confident that Alaska will continue to be involved and our voice heard in federal activity and authorization processes, even without the formality of the voluntary ACMP," and that "we will continue to aggressively and comprehensively manage Alaska's coastal and inland natural resources."

ACMP District Enforceable Policy Decision Tree





CITY/BOROUGH OF JUNEAU
★ ALASKA'S CAPITAL CITY

RECEIVED

JAN 25 2005

PERMIT CENTER / CDC

OFFICE OF THE MANAGER
Telephone: (907) 586-5240; Fax: (907) 586-5385
Rod.Swope@ci.juneau.ak.us

January 25, 2005

The Honorable Beth Kerttula
Alaska State Representative
Alaska State Capitol, Room 430
Juneau, AK 99801-1182

Dear Representative Kerttula:

I am writing with regard to the Alaska Coastal Management Program (ACMP) revision process, and to urge your support for an extension to the June 30, 2005, deadline for a mandatory rewrite of the Juneau Coastal Management Program (JCMP). As former Commissioner of the Department of Natural Resources (DNR) and a former appointee to the Alaska Coastal Policy Council, I am very familiar with the Coastal Management Program and the benefits and importance it affords to communities.

The JCMP was prepared over a several-year period during the 1980s, with extensive public and agency involvement and included enforceable policies in areas such as coastal development, habitat, transportation and utilities, recreation, energy facilities, mining, fish and seafood processing, timber harvesting, and the unique Juneau Wetlands Management Plan. The Juneau Wetlands Management Plan was added as a tool to provide a specific and predictable review process for applicants. At this point, it is unclear whether communities may have enforceable policies of any kind. The role of communities in the statewide program has been significantly reduced, and the "due deference" granted to communities through enforceable policies may be virtually eliminated. The only option left would be to attempt to assert deference on a case-by-case basis using state standards. Success in this effort would be highly unlikely.

Even at this stage, with a Public Review Draft of the plan due by March 1, DNR still has not provided final guidance on the regulations. DNR's occasional teleconferences with communities have given different, and often contradictory, guidance on the regulations. At this late date it is still unclear how, or if, a community can write policies that may be approved by DNR. In fact, DNR staff has suggested that communities should prepare plans that do not have policies at all, but expanded resource inventories and analyses instead. Without a policy basis, however, the plans would lack specific guidance and be impossible to implement.

As a home rule government, Juneau has broad powers, and is one of a handful of Alaska municipalities with a sophisticated and well-developed planning authority. We can use this authority in lieu of the ACMP, but would exercise it without the benefits of the ACMP, including one-stop permit shopping for the applicant; institutional coordination that, in effect, makes partners out of the different levels of government; ongoing, programmatic communication; pooling of agency knowledge and expertise; joint problem-solving; and due deference to local enforceable policies. Separating local standards from the state program means that an applicant must go through two separate, uncoordinated permit review processes, with the potential for conflicting permit conditions. Specifically, if the current Juneau Coastal Management Program must be removed from the statewide program (because none of its policies meet the new regulatory requirements), and remains only in the local land use code, the applicant will have one coastal management review at the state level, and a second review at the local level under local code. The stated goal of the coastal management program changes was a simplified, streamlined, and predictable review process for applicant.

The state's active coastal districts, including Anchorage, the North Slope Borough, the Kenai Peninsula Borough, the Lake and Peninsula Borough, and the Aleutians West and Cenaliulriit Coastal Resource Service Areas are unanimous in seeking an extension. The June 30, 2005 deadline is unrealistic and ill timed. We simply do not have enough time to complete this work satisfactorily, much less have any hope of a meaningful process for public involvement. The statutory deadline for plan completion has always been short, but has been compounded by continually evolving guidance from DNR, particularly with regard to policy development. I believe that completing plans under these circumstances is premature and wasteful, particularly since the federal Office of Ocean and Coastal Resource Management (OCRM) appears unlikely to approve the state program revisions in their current iteration, leaving the door open for yet another round of plan revisions in six months or a year. Rather than struggle under an unrealistic deadline to prepare a plan that could become quickly outdated, we believe the deadline for plan revision should be 18 months, following final federal approval of the state's ACMP revisions.

Without an extension, the program will either lapse or suffer a significant gap in implementation and funding. The federal OCRM has stated that the changes are a significant amendment, and thus require preparation of an Environmental Impact Statement (EIS). DNR must present OCRM with a complete program amendment document, which it has not yet done. After OCRM officially accepts this package, an EIS must be completed. Then OCRM must review and approve the EIS and make a decision on the program. All of this has to be completed by July 1, 2005, a clearly impossible deadline. If the State of Alaska wants to have a coastal management program, in any form, the deadline must be extended.

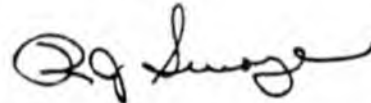
In closing, I would observe that Juneau is one of the premier cruise ship destinations in the world, and has averaged almost 10% growth in cruise visitors annually. It is one of the hard-rock mining centers of the state, home to the largest silver mine in North America, and has recently issued a permit for development of the Kensington gold mine. It has extensive port and industrial development within waterfront areas designated in the JCMP for water-dependent industry. It is homeport to a large commercial fishing fleet and has an expanding seafood processing sector. All of this development has occurred under the auspices of the Juneau Coastal

Representative Beth Kerttula
January 25, 2005
Page 3

Management Program, a program that promoted a local voice and a local role in coastal economic development.

Thank you for your time and attention. Please feel free to contact me or Peter Freer, Community Development Planning Supervisor, should you have any questions or desire any follow-up to this correspondence.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rod Swope".

Rod Swope
City & Borough Manager

cc: Mayor Bruce Botelho
Assemblymember Randy Wanamaker
Clark Gruening, CBJ Lobbyist

ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE

February 24, 2005

8:03 a.m.

DRAFT

MEMBERS PRESENT

Representative Paul Seaton, Chair
Representative Carl Gatto, Vice Chair
Representative Jim Elkins
Representative Jay Ramras
Representative Berta Gardner
Representative Max Gruenberg

MEMBERS ABSENT

Representative Bob Lynn

OTHER LEGISLATORS PRESENT

Representative Beth Kerttula
Senator Kim Elton

COMMITTEE CALENDAR

PREVIOUS COMMITTEE ACTION

WITNESS REGISTER

ACTION NARRATIVE

CHAIR PAUL SEATON called the House State Affairs Standing Committee meeting to order at 8:03:05 AM. Present at the call to order were Representatives Gatto, Elkins, Gardner, and Seaton. Representatives Ramras and Gruenberg arrived as the meeting was in progress.

DRAFT

8:04:00 AM

CHAIR SEATON announced that the only order of business was the oversight hearing on the Alaska Coastal Management Plan (ACMP).

CHAIR SEATON 2003 amendment House Bill 191 was signed into law. Looking at it to see if adequately addressed. Not rehashing the bill, but looking at its implementation. There are a couple of bills currently being addressed to consider this matter.

CHAIR SEATON called forward witnesses from the administration.

8:07:00 AM

[REDACTED], Director, Office of Management, ... Governor's letter. Office of Ocean and Coastal Resource Management (OCRM). Read his testimony. Stressed that OCRM contends that no longer... and also other fed reg agencies don't have to ... OCRM. Jan 28, 2005 letter req DNR add... without This is a state's rights issue. Haven't had chance to review doc. This is indicative of our relationship with NOA. Feb 3, 2005 letter deferred to Commissioner Irwin, then he will present an overview, and Randy Bates districts...

8:10:54 AM

CHAIR SEATON joint responsibility between House State Affairs Standing Committee and House Resources Standing Committee and HSTA took it.

8:11:23 AM

[REDACTED] RE: LETTER to two

8:13:31 AM

COMM IRWIN said DNR understands... Comment. Back to letter. Mandate the AFCH ... and refuses to ...Will expire 2005.

8:15:33 AM

COMM IRWIN concluded wrong message. We're working hard to do it right.

8:16:26 AM

MR. JEFFERS EO 106 HB 191 introduction. OCRM reviewed HB 191 and ... April 15, 2003 EO 106 transferred the office of ... to DNR.

8:18:02 AM

MR. JEFFERS Oct 2003 start because of staffing shortfalls 680C....., and... OCRM staff participated in work group, were asked to provide review. Held two coastal work groups in Dec 03. Anc and JUn. Funding was avail in coastal dist for their reps to participate.

8:19:23 AM

MR. JEFFERS 10/03 3 step process. Submit EO 106, HB 191, HB 86 and 69 had impacts and were to be submitted. Second phase, oncoce regs revised... Third once revised plans would go to OCRM for additional approval. Staffing shortfalls and workload-didn't get that done until Jan 04. 2/04 realized regs went out to public notice. OCRM made decision to wait and hold off until regs implemented to go through regs and legislation together. We didn't want that. May 1 to guv, July 1 became effective.

8:21:53 AM

CHAIR SEATON was that comm. from fed gov?

8:22:06 AM

MR. JEFFERS answered yes with the two combined. Admin chose to revise one section 112 of revised rate and went out to notice to comment Aug 9, Sept 29 to guv and eff Oct 29. During this period preparing amendment packets. Submitted those ... Had to provide adequate description of program so OCRM could... EIA or EIS not decided.

8:24:12 AM

MR. JEFFERS since ... went through two revisions. Continued up until a week before the January 28 letter. WE thought we had made substantial progress. OCRM rescinded ... and extended program beyond.... Still working to keep communication with

OCRM. Surprised by OCRM's sending letter to committee and not CCing us.

8:25:56 AM

MR. JEFFERS hb 191 did not req comprehensive rewrite of.... We sent a letter to ask they submit plan. Trying to supply all possible alternative ... so they could meet their timeline.

8:27:06 AM

CHAIR SEATON committee is not here to say the department has not worked hard. Changing landscape and nonfirm principles and adequate timelines is what the committee is reviewing.

8:28:37 AM

[REDACTED], Alaska State Legislature, re: saying the districts could submit something to meet deadlines - could you flush that out. If list or just stop gap measure, people getting permits, isn't that confusing?

8:29:47 AM

MR. JEFFERS SAID THERE HAVE BEEN NUMEROUS AMENDMENTS OVER THE YEARS. HB 191 called for no dup or redundancy in existing laws. Since 1979 many laws regarding resources. If question of resource not being protected. SB 308 in 2002. Pick the areas most vital and later, after July 1, 2005 mandated time, can go back. Make sure there's not already law that addresses people's concern.

8:33:35 AM

REPRESENTATIVE KERTTULA asked how many districts have done this?

8:33:48 AM

MR. JEFFERS said Randy Bates can provide details.

8:34:06 AM

REPRESENTATIVE GATTO asked feds to reg area where we lacked ...?

8:34:29 AM

MR. JEFFERS clarified that we asked districts not to duplicate. In response to question from CG wouldn't it have been easier to ..., he indicated that it's easy. Staff is always available to take questions and assist people in writing their enforceable policies. ACMP seems to be used as the shield.

8:36:59 AM

CHAIR SEATON 3-page handout District enforceable policies from 05. Number 7 show that ... by state or fed law. Always state or fed authority that regulates our lives.

8:38:36 A.1

[REDACTED], acmp SINCE 1997. Deputy Director Office of ... Permitting, touched on process reviews post implementation of HB 191. 10/03 hired the Campbell grp to draft regs. Regulations review team: state agencies, coastal dist 6, reps from industry, and from community. Used the review weekly mtgs 10/03-12/03. Limitations, where regs should go, and.... Held 2 conferences in 12/03 Jun and Anch to engage i dialogue with coast districts. Following confs prepared a draft for disc purp only 2/03??? Took a substantial number of comments. Went back and, within 2 weeks, formal packet late 2/04 Five day public comment period- lots of comments. Revised draft 5/04, signed by liet guv 5/26/04 eff date 7/1/04.

8:43:22 AM

MR. BATES 3-day conf in Anch to go over regs and 8 teleconfs since July to offer assistance in writing policy.

8:44:14 AM

CHAIR SEATON asked focus to be on where comm. with district changed-problems districts are finding, we have no issue with how much effort you have made.

8:45:30 AM

MR. BATES highlighted whatwe're facing. OF 33 districts, 27 have... 25 havehired consultants. Listed districts that admin has visited. Drafted .. Ketchikan, Craig, and Valdez. 4 of the27 expected tocome in.

8:47:38 AM

[REDACTED], representing the North Slope Borough, folks working hard. Saddled with some timelines. Anyone knew that process of changing regs would be longer than ... HB 191. 6-month delay alone should have raised red flags. 1988, began 1983. Exist on North slope primary concerns in oil. Expect public review draft will have pressure. Give and take between OCRM and DNR. Borough got one of bigger grants, but it's not enough. Have hired consultant, but we spend resources on our own. Focus on things not clear.

8:50:44 AM

MR. LOMAN reason we exist is subsistence, protection of environment, archeological resources. WE want to know.... NPRA, Arctic National Wildlife Refuge. Guidance and legislature talked about in HB 191. Admin's bill. 191 put back ability of some of the districts to ... Answer was yes, you can craft policies.... Web site, NSB's policy was on there, but is no longer, with nuclear explanation.

8:52:44 AM

MR. LOMAN regarding the OCS issue wrinkle in process having to do with lands. Need to designate area. OCRM says you cannot do water. A good chunk of lands... Cannot ... can do... Bowhead whaling. No clarity in districts. Have had teleconferences, guidance of implementation. We need more time to deal with the regs. AS far back as 10/04. In order to you have to back up to ... NSB is not going to meet its deadline.

8:56:28 AM

MR. LOMAN not give and take that would have liked.. "Cannot address that-no time." If there is clarity today - and I don't think there is - we've got 4 months. Don't think NSB can meet its timeline. THE oil industry runs this state; want it to do its job so that the NSB people maintain its subsistence.

8:57:53 AM

MR. LOMAN remarked on gov's letter saying people manage, but it stops in Juneau. Subsistence and OCS activities most important.

8:59:02 AM

CHAIR SEATON asked if borough is sure or unsure about writing policy

8:59:25 AM

MR. LOMAN said unsure regarding land and water. In re: unsure, national petroleum reserve. Stated point that he will argue with. Title 29.

9:00:17 AM

CHAIR SEATON allows you to comment and put forth policies.

9:00:37 AM

MR. LOMAN said his program is not perfect, but vagaries turned out to be strengths. Testimony during 191 NS prog used as delay...not true. Was a problem... but leg took care of that in '02. Not in the business of being an impediment to oil, we like it.

9:01:56 AM

REPRESENTATIVE GARDNER how much time would be adequate?

9:02:05 AM

MR. LOMAN answered an issue of clarity. Would like not to have to begin our program until have clarity. Absent that, would like to see a year delay. Does nobody good to threaten getting rid of program.

9:03:38 AM

██████████ Finance Super, City and Borough of Juneau, don't work directly with program, but will comment as manager. Juneau prog adopted in 87? 97? wanted it to accurately reflect areas that should be protected. One of things: identify water districts: Douglas and Juneau docks and ferry terminal. Map of valuable. . .

9:05:34 AM

MR. FREER said concern in restrictions. Current plan has about 80 enforceable policies, most important habitat and coastal development. Committee sent q's and test based on that. Local control issue, gives districts a seat at the table. Value the coordinating element of the prog.

9:07:27 AM

MR. FREER said "We don't want to do this twice." Whole component is circumscribed. Agree with Mr. Loman regarding a date one year from current date would be good. Juneau has had coastal mgt in place since 1987. Cruise ship; largest silver mine; ... mine; large commercial fish fleet; seafood processing plant.

9:09:19 AM

CHAIR SEATON re coordinating element. Expressed concern with disruption of coordinating elements. Q

9:09:53 AM

MR. FREER answered yes. To f/u answered to his knowledge, yes.

9:10:14 AM

CHAIR SEATON currently.... If not under ACMP, would you have to have someone separately?

9:10:36 AM

MR. FREER yes.

9:10:50 AM

REPRESENTATIVE KERTTULA has OCRM been changing its guidance to districts? Want to understand if it has been

9:11:23 AM

MR. FREER said he has observed from the district level that the guidance from DNR has been evolving. The time in which to prepare a plan has collapsed. Impression that 1/28 letter from OCRM Haven't been involved at that level.

9:12:20 AM

[REDACTED], Mayor Lincoln Peninsula Borough. Disposable dredge spoil. Read existing policy and revised policy and explained the effect of the change. New policy looks like it wouldn't have power and detail of old and would not have local control. Our borough 18 communities on lake and salt water

coast line. Navigation obstructions, another example. Borough finding commission used this policy recently; because of it were able to require... to be modified.

9:16:37 AM

MR. ALLSWORTH re: importance of program. ACMP has been very helpful to borough. Grant directly to ACMP. However, coastal management prog ... Listed lakes in borough, one of which is largest in state, one of largest red salmon hatcheries in the world. Fresh water harbor seal. Spent five years writing last program and held meetings in all 18 communities. Public process is important. Removal of fresh water is same as removing the Great Lakes. Young borough-since 89. Database together GPS. Many policies are interwoven.

9:20:13 AM

CHAIR SEATON Q

9:20:28 AM

MR. ALLSWORTH...


9:20:55 AM

CHAIR SEATON clarified Mr. Allsworth's concern.

9:21:18 AM

MR. ALLSWORTH said gives feds.... the right to be here. Agree with timeline of a year from current date.

9:22:21 AM

 Former Coastal dist coord for Kenai Pen Borough. Example of enforceable policy that has been affected by admin: ... Ensure a more comprehensive ... and review. Revision that policy has eliminated which is unfortunate. Reflects the management intent of the state's changes, that they want to limit districts to have that proactive involvement.

9:24:47 AM

MR. BEVINGTON re why prog important. Active prog since 1991, since 77 supported state program. Implemented prog to ensure that the local perspective.... Rock removal example. Boulder

Point, concern of coast line changing habitat and heavy equipment use. Lease sale people management according to their view, but did not have comprehensive view.

9:26:44 AM

MR. BEVINGTON main problem is confusion and it's been disheartening to hear from admin to do it our way or get out. Districts have been faithful to the state and they are being painted as holding up the bus. Mean no disrespect to admin. Timeline was not provided with much forththought of reality of situation. Agree with [Mr. Loman] to have deadline that extends beyond... district's approval.

9:29:19 AM

CHAIR SEATON guidelines for next witnesses.

9:29:36 AM

[REDACTED], Program Director for ... resource area. Yukon/Kuskokwim. Project example airport project, few feet above zone, but affected the area. Mining projects in several districts. Questioned what it means. Ability to ... under HB 191 has been taken away and is no longer our concern. Do not have

9:32:44 AM

MR. OSCAR little influence... must convey to people in diff languages, takes time. Must provide the evidence of usage would affect development. Travel over 4,000 air miltes to explain new policies. Guaranteed to fail because of vastness of region. Concerned about other parts of world, but not our back yard.

9:35:12 AM

MR. OSCAR from past uncle, a quote, read.

9:36:12 AM

CHAIR SETAON noted letter to Don Olson and REggie Joule in packet. Asked Mr. Oscar to send email of testimony.

9:36:43 AM

[REDACTED], Senior ... and district coordinator. Support much of what has been said. RE: Anch, optimistic when HB 191 passed,

because its plan was written and adopted in 1980 and was used as example of plan that needed work and clarity. Appreciate efforts of DNR. Wetlands management plan for approximately 200 wetland areas. Now include this plans in policy and revision. Land use code, effective inforcement and... through the policy state carries out. Willing and ready to use Title 29 authorities, but must is unclear that we can sort that out in the remaining time. Nuance is play between Title 29 and state's new program are complex. Moving target of state's reg. Three major plans, effort req todo revisions is vast. On record request more time and want the deadline to be triggered by state's final adoption of regs, guess a year.

9:41:23 AM

CHAIR SEATON re comment about Title 29 and coastal management. If ... you would still be able to ... but a developer would have to come to separate approval process, is that complexity?

9:42:12 AM

MR. TOBISH answered yes.

9:42:21 AM

[REDACTED] (ph), Aluetians West Coastal Resource area, stated that they will be distributing their palm today and are beginning review. ... Of the 41 policies remaining from original, ... had to be deleted, leaving 19. PRIor to Oct workshop. Several policies though were done, were in fact not done.

9:44:43 AM

MS. KOLMANIN regarding importance of Aleutian Pribiloff Island Association example. CRSA is vaiable part of state network.

9:45:50 AM

MS. KOLMANIN said inconsistency is biggest issue. Read state's comments regarding threshold. REally wasno area that the state could not potentially regulate. Diff than lead to believe during HB 191 testimony. Seven months ago DNR response read. PRevious argument eliminated to....

9:48:06 AM

MS. KOLMANIN important that OCR spoke to that well. Designation is problematic in a district as big as ours without Title 29 authority.

9:48:43 AM

MS. KOLMANIN uncertainty for developers issue. Completed plan eval in June, public work session in Sept, following workshop, faced with confusion. Struggled with policy development. Of 41, 19 remain. Serious doubts that policies will survive upcoming review. Loose status as local experts. Concluded that revision of ACMP needs to occur in partnership with Mixed signals as to how to proceed but have moved ahead and acted in good faith.

9:52:00 AM

CHAIR SEATON asked for draft policy from Ms. Kolmanin to be sent for the committee to review. Stated his understanding that her area does not have Title 29 authority and thus has no alternative way to have policy adopted.

9:52:43 AM

MS. KOLMANIN answered that's correct. Re f/u q, said City of Unalaska has city code, but has not incorporated it, relies on REGARDING whether cities feel enough impact... will be enforcing..., she said she can't answer that for the city. Unalaska is small part of Aleutian area.

9:54:32 AM

CHAIR SEATON called state back up. Told state reps that districts seem to be expressing confusion and diff interp of how to proceed.

9:55:12 AM

MR. JEFFERS responded subsistence issue will not be resolved through ACMP. Cannot even get OCRM to acknowledge that ... has role. ... don't think that's original intent. This is area that remains extremely vague to us. DEC or EPA regulated... guidance that ... could write policy, and time... then

9:57:38 AM

CHAIR SEATON surmised state's frustrations are similar to those of the districts.

9:58:22 AM

REPRESENTATIVE GATTO re: guv letter 2/05 bottom, read. Summer 2005, are we on track to do that?

9:58:56 AM

MR. JEFFERS part of standards... don't have fed standards that can be implemented with any ... Consistency reviews would sunset. 1/28 letter dictated how state should... beyond where we fellthey ...

10:00:27 AM

CHAIR SEATON termination of ACMP as matter of law, asked admin to get back to committee as to whether the coastal law will go away or ... and if legislature would be involved in that.

10:01:40 AM

REPRESENTATIVE GATTO \$2 million fed money towards \$4.5 million program. What happens if we don't make that up.

10:02:06 AM

MR. JEFFERS said one of points in letter signed by 4commissioners is that resources be adequately addressed.

10:02:29 AM

CHAIR SEATON

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:02:36 AM.

DRAFT

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February 23, 2005

Richard W. Spinrad, Ph.D.
Assistant Administrator
National Ocean Services
National Oceanic and Atmospheric
Administration (NOAA)
SSMC4, Room 13632
1305 East-West Hwy
Silver Spring, MD 20910

Subject: State of Alaska's Response to the Office of Ocean and Coastal
Resource Management's January 28, 2005, Letter and Enclosures
Relating to Alaska Coastal Management Program Amendment
Approval Issues

Dear Dr. Spinrad:

I have reviewed the letter and attachments from the Office of Ocean and Coastal Resource Management (OCRM), dated January 28, 2005. In that decisional document, OCRM denied preliminary approval of Alaska's amendment, and explained why it would not initiate the NEPA process required for later approval of a revised amendment. After careful study of the issues, I have concluded that the Alaska Coastal Management Program (ACMP) as envisioned and mandated by OCRM differs from the ACMP that I believe will best manage the competing uses and demands placed upon Alaska's coastal resources.

The original ACMP, approved by OCRM in 1979, provided the standards and protections necessary and appropriate at that time to manage effectively the uses, areas, and resources of the state's coastal zone. Over the next 25 years, the program evolved, into a complex, confusing set of requirements which unnecessarily delayed projects in Alaska without corresponding environmental benefits. Therefore, on May 21, 2003, I signed into law House Bill (HB) 191 (chapter 24 SLA 2003) which amended the ACMP in a manner that simplified and clarified the fragmented and defective 25 year old program, while still comprehensively and responsibly managing Alaska's coastal uses and resources.

**The state's response to U.S. Department of
Commerce Feb. 23rd, 2005**

Richard W. Spinrad, Ph.D.

February 23, 2005

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During the development of the statutory amendments included within HB 191, as well as the development of the regulations implementing HB 191, the state invited OCRM's participation and review of the amendments, requesting guidance and recommendations to ensure ultimate and timely program approval by OCRM. The state thought it had received that guidance, as well as a commitment from OCRM to work jointly to resolve program approval issues at the earliest juncture. The state then worked long and hard to develop a comprehensive program description of the amended ACMP that satisfied the federal approval criteria, while still fulfilling the mandates of HB 191. I am advised that discussions between the state and OCRM to reach this goal were proceeding constructively into January 2005, with OCRM identifying minor modifications to the ACMP regulations and program description as appropriate for program approval.

Considering this history, and OCRM's intimate involvement with the amended program from its legislative inception, I was dismayed to review OCRM's January 28, 2005, denial decision wherein OCRM not only retreated from program approval positions conveyed to state staff during prior discussions, but failed to adequately evaluate the state's prior submissions against the federal rules, and added entirely new criteria and rationale to justify its denial decision.

OCRM's denial decision adopts a highly prescriptive interpretation of the Coastal Zone Management Act (CZMA), extending, well beyond Congress' mandate when enacting the CZMA "to encourage and assist the states to exercise effectively their responsibilities in the coastal zone" 16 U.S.C. 1452.

It is instructive to review the Congressional Commerce Committee's 1971 findings (Calendar No. 510, Report No. 92-526, p. 15-16) that led to the creation of the CZMA, which legislation clearly intended that each state, and not the federal government, manage its coastal uses and resources as that state saw fit:

It is the Committee's intent to recognize the need for expanded state participation in the control of land and water use decisions involving important state or regional interests.... In adopting the states as the focal points for development of comprehensive plans and implementation of management programs for the coastal and estuarine zone, the

Richard W. Spinrad, Ph.D.

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Committee has concluded that the states have, in varying degrees, the resources, administrative machinery, enforcement powers, and constitutional authority on which to build a sound coastal management program.... The principles on which state authority with respect to water regimes are based date back at least to Magna Carta....

We do not believe that the positions OCRM asserts in its January 28, 2005, decision "assists" Alaska in developing our program. Rather, OCRM has now conditioned approval of our program upon OCRM's interpretation of what is best for our state. Under this administration Alaskans decide what is best for Alaska.

I will not detail all of OCRM's unacceptable new mandates to obtain approval of our program, but will list the most significant:

- Mandated direct-control ACMP regulatory standards. OCRM calls for amended ACMP state standards that independently and comprehensively manage the coastal resources. To the contrary, the federal regulations implementing the CZMA allow for comprehensive management of those resources through a network of existing state and federal regulatory authorities. We believe that existing state and federal authorities aggressively manage Alaska's natural resources, coastal and inland. Considering the adequacy of the existing networked structure, we are unwilling to assent to a federal agency dictating duplicative or additional standards along our coasts that confuse stakeholders, unnecessarily delay projects and erode Alaska's sovereignty.
- Mandated expanded role of coastal districts. Consistent with the spirit of HB 171, the state's amended ACMP regulations limited the subject and scope of coastal district enforceable policies. OCRM now asserts that this limitation on coastal district policies raises program approval concerns. The state disagrees with OCRM's position. The ACMP is a networked program, relying on implementation techniques "A" and "B" under 15 C.F.R. 923.42 and 15 C.F.R. 923.43, respectively. State agencies are to implement their existing authorities as well as the standards and policies of the ACMP. Additionally, municipal coastal districts share in the responsibility of implementing their coastal district plan policies through municipal code or ordinance. I would like to emphasize that few other states have coastal districts or their equivalent and there is no requirement that Alaska include

Richard W. Spinrad, Ph.D.

February 23, 2005

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coastal districts as part of our coastal management program. However, we included districts to supplement existing state and federal authorities where the matter is of local concern. The balance of authority between the state and the coastal districts is a matter within the discretion granted a state in the CZMA, and therefore any specific balance of authority directed by OCRM is inappropriately addressed as a program approval issue. Again, this is a simple matter of state's rights.

- Expanded and unpredictable federal "effects" test. OCRM's decision contained an expansive "Geographic Location Description" (GLD) requirement that would impose an "effects test" requirement well beyond what OCRM had previously required, and beyond what the state feels is necessary to adequately protect coastal uses and resources. Representatives from other federal agencies have also expressed concern with OCRM's federal effects test and the GLD as a "new national policy" with additional burdens never previously considered. This requirement is particularly disappointing considering recent positive communications between the state and OCRM wherein OCRM suggested reasonable amendments to the ACMP regulations. The amended language would have ensured that enforceable policies would be applicable to federal lands to address any activity (regardless of location) that may affect any coastal use or resource located within the state's coastal zone. The state agreed with OCRM's interpretation of the federal regulations on this issue and began preparing, verbatim, the regulatory fix that OCRM had recommended. Unfortunately, the expanded GLD concept contained in the January 28, 2005, documents effectively withdrew OCRM's agreement on how to capture the federal effects test in the regulations, and is unacceptable.


Back in 1971, Congress saw the wisdom of leaving the development of an appropriate coastal management program within the broad framework of the CZMA to each state's judgment of its special priorities and needs. I regret that OCRM has departed from its original legislative mandate and has not allowed Alaska to implement our amended program utilizing existing regulatory tools and in accordance with Alaska's priorities and needs.

Therefore, if OCRM does not immediately abandon the new requirements and broken promises contained in its January 28, 2005, decision, the ACMP will expire by operation of law in the summer of 2005.

Richard W. Spinrud, Ph.D.
February 23, 2005
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We have worked hard to forge relationships with federal agencies and participate in federal decision-making processes independent of ACMP requirements, so we are confident that Alaska's voice will be heard in federal activity and authorization processes even without the formality of the CZMA's federal consistency tools. Still, we acknowledge that a streamlined ACMP would serve a valuable purpose in effectively managing Alaska's coastal uses and resources. This is the reason that my staff has been working for two years to amend the program to provide a fair, predictable, and protective networked management scheme. Unfortunately, OCRM will not allow Alaska to implement that program at this time. The State of Alaska will continue to ensure that resources, coastal and inland, are adequately managed and protected with or without federal participation.

Sincerely yours,


Frank H. Murkowski
Governor

ALASKA OIL AND GAS LEGISLATIVE REPORT™

February 28, 2005

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ALASKA OIL AND GAS LEGISLATIVE REPORT

February 28, 2005

OVERVIEW

"Patience and sunshine"

In a House Majority press briefing on February 22, Speaker John Harris said he doesn't expect to see a Stranded Gas Development Act contract this session. "I think we will be back here in special session sometime in the middle or latter part of the summer or early fall to deal with something." Harris said this is just a gut feeling. "I don't have any evidence to prove it." He said the Legislature would have to receive a contract very soon to have adequate time to address it this session.

Resource Co-chair Jay Ramras said the public wants to weigh in and comment on big proposals such as the gas line and University lands bill. He said the Stranded Gas Development Act requires the Legislative Budget and Audit Committee to give the public a minimum of 30 days to comment on the proposed contract. But Ramras said he expects the public will want more than 30 days to consider a contract that could impact generations of Alaskans for years to come. It is unlikely there would be adequate time this session to hold a longer public review process and consider the contract before adjournment, he said. "I think time-wise, patience and sunshine are going to be the two hallmarks of this first year for me in the Legislature."

House Minority comments on ACMP

In a press briefing on February 24, Rep. Beth Kerttula advised reporters that Governor Murkowski sent a letter to the National Oceanic and Atmospheric Administration (NOAA) on Feb. 23, threatening to get rid of the Alaska Coastal Management Program (ACMP) if NOAA does not accept the state's revised program. "In the letter he says this is a state sovereignty issue." Kerttula called that ironic, noting that coastal zone management is the state's hook into federal lands and waters. "It is the only hook for the Outer Continental Shelf (OCS), which is critical for the North Slope Borough and the maintenance of the bowhead whale hunting and that culture and subsistence surviving."

She said the future of the ACMP is a huge issue. "If [we] dump the coastal management program [we] are going to set back developers in Alaska for decades." Kerttula said this action would not be good for developers, communities or Alaska: "We have a constitutional mandate to do as much for local communities and local say as we can. This would set us way back."

Kerttula said the Dept. of Natural Resources (DNR) was given an impossible task two years ago to meet an impossible deadline. The Legislature passed HB 191 in 2003, in an effort to streamline the ACMP. DNR was required to revise the ACMP regulations to conform with the revised program and seek approval from NOAA for those changes. The bill also required coastal districts to rewrite their plans to conform to the new regulations. The new program and plans are to take effect on July 1, 2005. Kerttula said good hardworking people in coastal districts have been put through a horrible experience trying to rewrite their coastal district plans. "We knew at the time, we said it at the time and it is really frustrating to be sitting here and seeing the implosion that many of us in the Legislature said would happen, happening."

"I think we've got to extend the deadline." Kerttula said the state should next pull back and decide how to structure this program so it works for Alaska and involve the development community in this effort. "Anecdotally, I have heard permits are being delayed because we have such confusion and a lack of coordination [now]."

Kerttula said she and Rep. Berkowitz introduced legislation last session proposing a one-permit system. She said it would require everyone to work together. "It's a real sad thing to see the state getting up in arms about something that we told them was going to happen." Kerttula said the state should start over and treat the districts decently in this process.

A reporter asked Kerttula about the one-permit system.

Kerttula said it would provide true streamlining permitting. She noted the Rep. Berkowitz continue to work on that language toward that goal. Kerttula said one of the biggest problems in permitting has always been sending permittees to too many different agencies with turf battles, both state and federal. "If you took coastal zone out of the picture then you would have the municipalities struggling with how they implement their programs through their borough authorities." She said this would create another layer for developers.

"I think one of the ways to solve this by one central permit," Kerttula said. Permittees would go to one central agency. She said it would require the agencies to work together and with the communities and the federal government on one timeline. Kerttula said this would be a much better system for the state: "But we've got to involve the communities. If we don't, we are going to see nothing but problems on the local level." She said local people understand the true problems on the ground. "We have to create a system that is easy for developers to work with the communities and state and federal governments."

"The problem with Frank Murkowski's let's take our toys and go home philosophy on coastal zone management, is sometimes they are not our toys," Rep. Eric Croft said. "This process is the way we have influence over federal jurisdiction." He said the state has less influence over what happens on federal lands if it doesn't have a coastal zone program: "This is a way to implement sovereignty by staying here and staying involved. We do ourselves a lot of harm by this kind of childish act."

Minority Leader Ethan Berkowitz said: "I've got to hand it to the governor. He is doing a remarkable job of finding new people to antagonize." Berkowitz said this week it was the coastal management and federal program and the Ad Hoc group with workers' compensation: "It's pretty remarkable. Just when you thought things were calming down there's new people out there. It's remarkable energy for a man of his years."

NEW INTRODUCTIONS

HB 180, Workers' Compensation Amendments

Sponsor: (H) RLS by request of the governor

Referral: (H) L&C, JUD, FIN

Governor Murkowski introduced his workers' compensation legislation in the House of Representatives on February 25. The 37-page bill has a title that spans nearly two pages. In his transmittal letter, Governor Murkowski writes that this bill proposes "discrete" improvements to the current workers' compensation system. "The goal of these changes is to increase the efficiency and flexibility of the current system,

and significantly reduce some of its costs, in order to ensure that benefits will continue to be available in substantially the same form they are today without stifling employment opportunities.”

Murkowski writes that the current workers' compensation system has not kept pace with the pressures caused by a growing, ever-changing workforce and rising medical costs. He said this legislation would address complaints about delays in the resolution of claims and the increasing costs of maintaining the current system.

The governor points out that a significant change proposed in HB 180 is the creation of a workers' compensation appeals commission. The bill proposes to have appeals heard by a five-member commission consisting of both lay members representing workers and employers and a chair with legal training and workers' compensation experience. “Appeals would be heard by a panel both knowledgeable in workers' compensation matters and available to produce consistent, legally precedential decisions in an expeditious manner.”

Murkowski said the bill also places increased responsibility for oversight of the workers' compensation system in the hands of the Division of Workers' Compensation. HB 180 would increase the division's ability to investigate fraudulent claims, to pursue employers who fail to provide workers' compensation coverage for their employees and to oversee medical costs. The governor said the bill would allow the division to investigate and quickly close down employers who attempt to operate without workers' compensation coverage. The board is then empowered to assess fines for failure to insure. HB 180 creates a fund to receive those fines and use them to pay benefits to uninsured injured workers.

The governor added that the bill gives the division authority to address medical costs that are now approaching 60 percent of every workers' compensation benefit dollar paid in Alaska. HB 180 authorizes the commissioner of labor and workforce development to empanel a medical services committee to review the medical benefit delivery system in Alaska, including current charges and the reasons they have sharply increased. Murkowski said the committee is charged in the legislation with reporting its findings and recommendations for appropriate improvements by March 1, 2007.

Murkowski said the bill rolls back maximum payments to medical providers based on the medical fee schedule in effect on December 15, 1999. The governor said this is an effort to address “the immediate impacts of the recent premium increases and rising direct costs to self-insured businesses.” HB 180 also authorizes the division to develop a preferred drug list and establishes a statutory preference for generic drugs unless a worker's physician specifies a name brand drug for medical reasons.

The governor said the division would be assisted in its efforts by input from employers, insurers, and providers and through the use of national, peer-reviewed medical treatment guidelines. HB 180 would allow for employers, insurers and providers to agree on “preferred provider lists,” whereby provider rates would be established in contract with the insurer or employer. Workers would have no obligation to select a physician from that list.

Murkowski said the bill provides the division with guidance in overseeing the efficacy of the medical benefits system by adopting the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines as a benchmark for medical treatment. “The guidelines provide for quality care while promoting some standardization of medical services.” He added, however, that physicians would have the opportunity to justify medical treatment outside of the guidelines for alternative treatments or conditions not addressed by the guidelines.

The governor said HB 180 provides workers and employers greater flexibility over certain portions of a worker's claim. The bill would allow parties represented by legal counsel to more quickly settle a claim without board approval. It would also allow the parties to stipulate to a worker's eligibility for reemployment benefits without a reemployment eligibility evaluation and allow a worker to take a limited cash benefit in exchange for unwanted reemployment benefits.

Murkowski said the bill expands workers access to legal counsel. HB 180 allows the division to contract with nonprofit organizations to provide legal services to injured workers unable to obtain private legal counsel. The governor said the bill also provides a limited medical release for medical records to reduce unnecessary delays in payment resulting from a lack of supporting medical documentation for an injured worker's claim.

HB 180 reduces insurers' costs by phasing out contributions to the Second Injury Fund, Murkowski said. The fund provides a limited mechanism to reduce hiring impediments for workers with certain listed physical limitations. The governor said this fund is outmoded due to developments in contemporary employment standards such as the Americans with Disabilities Act. The Second Injury Fund will not accept new claims and will be phased out as currently accepted claims are paid.

The governor said the bill is aimed at increasing the coordination of benefits between the workers' compensation system and other disability systems. "This would minimize the instances where double compensation results in a worker receiving combined disability benefits that exceed their take-home pay." Murkowski said HB 180 would also cap compensation rates for workers residing outside of Alaska, bringing those rates in line with what Alaska resident workers receive.

Murkowski said the changes in HB 180 are vital to the continuing survival of Alaska's workers' compensation system and the availability of a full range of benefits for injured workers in the future.

COMMITTEE HEARINGS

HCR 2, Encourage Study of In-State Gas Needs

Sponsor: Rep. Ralph Samuels

Current Status: Sent to Senate

The House Resources Committee heard HCR 2 on February 23, and moved the resolution to Rules without amendment.

HCR 2 urges Governor Murkowski to take quick action to conduct, approve or sanction a study of in-state natural gas needs and take-off points for intrastate use of gas transported in a North Slope natural gas pipeline. The resolution calls for completion of the study before the Federal Energy Regulatory Commission's (FERC) final rules related to an Alaska natural gas pipeline take effect.

FERC, in Order No. 2005, issued final rules on February 9, 2005, requiring that sponsors of an Alaska gas pipeline rely on a study of Alaska in-state needs and take-off points as a part of the initial open season process. The commission required that the study be conducted, approved or otherwise sanctioned by the state. These rules will take effect 90 days after publication in the Federal Register.

Samuels' aide Henry Webb said this resolution is a result of the FERC ruling issued on February 9, which requires a study of in-state needs of gas to be conducted by an agency of a state. He said this study

must be completed before an open season can take place. "The resolution simply urges the support of the governor to do this in a timely fashion."

Lisa Parker with Agrium said she testified before a joint meeting of the Senate and House Resources Committees in Kenai on February 11, and urged the committees to look at the use and importance of value-added industries in Alaska. Parker said Agrium has urged the state to issue an expression of interest regarding the purchase of North Slope natural gas. "I think it is important for us as a state to consider value-added industries if we want to continue to sustain our economy in the borough."

The resolution was on the House floor on February 25, and passed unanimously. Rep. Samuels moved that all members present be shown as co-sponsors of the resolution. There was no objection. HCR 2 was sent to the Senate.

HB 135, Fast Track Supplemental

Sponsor: (H) RLS by Request of the governor

Current Status: (H) FIN

The House Finance Committee held two days of hearings last week on HB 135, the governor's FY 05 "fast-track" supplemental funding bill. HB 135 calls for \$213.3 million in supplemental funding for FY 05.

On Friday, February 25, the committee took up the governor's \$28.3 million proposal for continued work on gas line issues. Appropriations are proposed for the departments of administration, law, natural resources and revenue.

Dept. of Revenue Deputy Commissioner Steve Porter on teleconference read the same testimony he gave to Senate Finance the week before on SB 98, the Senate companion bill.

House Finance members asked several questions about the individual appropriations in the gas line package.

AOGCC: Alaska Oil and Gas Conservation Commissioner John Norman said the AOGCC has requested \$1.2 million in the fast track supplemental to study the Prudhoe Bay reservoir. He said this would allow the commission to complete its work in a timely manner so it won't delay other parts of the gas pipeline project. Norman said Conservation Order 341 now in effect establishes an off-take rate of 2.7 Bcf/d of gas per day from the Prudhoe Bay reservoir. "This is based upon science and studies that were done in 1977." He said the state spent \$4 to \$5 million on those studies.

Norman said the report that accompanies the conservation order states that the numbers in the report "should be considered relative rather than absolute." Since 1977, the AOGCC has diligently monitored and regulated primarily oil production and the reinjection of gas to maximize oil production from the reservoir. "We have not undertaken to update that order because that would not have been a good expenditure of funds until ... the prospect of major gas sales from that reservoir might be imminent."

He said the AOGCC believes it is now necessary to bring the conservation issues current and update them based on the 28 years of production history and the better ability to predict the behavior of the reservoir. Norman said publicly reported estimates show numbers that exceed an off-take rate of 2.7 Bcf/d. He said the commission has a responsibility to have sound science as the underpinning when an allowable off-take rate is established. "Failure to do so risks leaving substantial amounts of oil in the ground as gas is drawn off." Norman said hundreds of barrels of oil would forever be lost. "We feel the need to begin right away so we can move forward at the same pace as other state agencies that are studying this."

Norman said the AOGCC has significant responsibility to the citizens of Alaska and the nation to make sure the Prudhoe Bay reservoir is developed in a responsible manner that will no cause waste.

Dept. of Law: Assistant Attorney General Phillip Reeves read the same testimony he provided the week before to Senate Finance on the department's \$9 million request. Reeves said the department is requesting the supplemental funds to contract for legal services through June 30, 2006. "While the department prefers to receive the full \$9 million amount in this supplemental appropriation, since this is all related to ... the North Slope gas pipeline negotiations, it would be possible to split the appropriation between FY 05 and FY 06, with \$5 million in the fast track supplemental available for expenditure in FY 05."

Rep. Bruce Weyhrauch asked if the law firms are being hired on a flat-fee or an hourly basis.

Reeves said he believes it is mostly on an hourly basis.

"How much does it [cost] for lobbying activities in Washington?" Weyhrauch asked.

Reeves said this is all to be spent on contracts for legal services for the gas pipeline contract negotiations and preparation and for matters before the Federal Energy Regulatory Commission (FERC) and the Regulatory Commission of Alaska (RCA).

Weyhrauch asked how many Alaska firms are being hired and how many are from out of state.

Reeves said there is one Alaska firm and two outside firms. "I don't have all that information or specifics here."

"So three firms are getting the \$9 million?" Weyhrauch asked.

Reeves said at this point there are three firms under contract. He said as additional work comes forward consideration would certainly be given to additional firms.

Weyhrauch asked if these contracts are competitively bid.

"I don't believe there is a bidding process as such," Reeves responded.

Rep. Mike Hawker said one of the activities listed in the department's request is for negotiating the provisions of the limited liability company that will participate in and own the state's interest. "Have we made those decisions?"

Reeves said, "The idea is that there would be some type of a partnership, which is expected at this time to be a limited liability company, which the state would be a partner in ... and the other entity, whichever entity was approved by the Legislature, would also share in that business."

Hawker asked if this funding is strictly limited to Stranded Gas Act applications, meaning the state is discounting the possibility of any other projects.

Reeves said at this time there are two parallel negotiations ongoing. "This fund source would be available for additional applicants if additional projects were considered."

Rep. Eric Croft said he was glad to hear the discussion about the distinction between the FY 05 and FY 06. "It surprised me to see money destined for the FY 06 budget in an FY 05 supplemental." He asked if Reeves is suggested that \$5 million of the \$9 million appropriation is truly a supplemental request for FY 05, and \$4 million is for activities in FY 06.

Reeves said the focus of the Stranded Gas Act working group is a project focus. "Certainly we are aware that the appropriations from the Legislature go on a fiscal-year basis but this project clearly is not tracking directly with the fiscal year." He said the governor is seeking to bring one or more Stranded Gas agreements to the Legislature this session. "Of that \$9 million, it is anticipated that the majority will be expended during ... this fiscal year, however, how optimistic we are that we can complete this process in that time is another question." Reeves said it is not anticipated that all the contracts will be completed this year. He said the Dept. of Law believes \$5 million is the minimum amount needed to not delay the process.

Croft asked if any of these funds are for tariff negotiations or for other oil and gas issues.

Reeves said there are other projects, some of which are tariff matters, before regulatory bodies that were funded by the Legislature in the FY 05 budget. "Those [contract services] monies have been ... moved over to North Slope gas pipeline negotiations at this time." He said those funds need to be replenished out of this supplemental.

"Now I am more confused," Croft said. He asked how much of this appropriation is for the gas pipeline project and how much is for tariff negotiations. "On the tariff, it seems like we rapidly came to the conclusion that it would be better to wait for the reopener rather than challenging it. So I'm not sure how much money we need for legal matters regarding the tariff." Croft said he is surprised the state needs \$9 million of legal assistance for the gas pipeline. He asked Reeves how much of this supplemental will replenish non-gas pipeline related expenditures and how much is gas pipeline related.

Reeves said he couldn't provide specific numbers, but said it is his understanding that there is no intent to expend any of this money beyond the amounts that were earmarked for particular matters in the FY 05 budget process.

"This is \$9 million more than we anticipated," Croft said. "It's the very nature of a supplemental."

DOR Administrative Services Director Susan Taylor said the funding for the non-gas line matters is \$350,000. She said she would get back to the committee on the exact breakdown of that funding.

Steve Porter said there are a number of different elements being negotiated simultaneously in the Stranded Gas Act negotiations: "You are not talking about loading up a single room full of lawyers. You are doing is spinning off issues that teams of lawyers are researching and then bringing that information back to the table. So you can actually spend a substantial amount of money in a short period of time if your negotiations are going well [because] you are addressing a number of issues on the table."

Croft asked how much of this \$5 million has been obligated or expended. "That's what I would like to pay for in a supplemental." He said expenditures anticipated after June 30 should be in the FY 06 budget. "I want to pay for those appropriate legal fees we had to use in FY 05 in a supplemental, particularly a fast track supplemental, and get to the other stuff later."

Reeves said he did not know the specific number. "My understanding is a large part of this money ... is not for work that has already been completed." He said it is for work to be completed between now and June 30. "At this point in time, we have large bills accumulated because these are ongoing negotiations in development of each of these contracts."

Kathryn Daughhete, administrative services director for the Dept. of Law, said the department anticipates it will soon be unable to pay the bills from its contract attorneys. "With the March bills payable in April we will be out of money." Daughhete said significant amounts of money are being paid under

contract to legal firms and experts. "We don't want the state to be in a position to not be able to pay its bills and that's why we are in the fast track."

Croft asked if the department will pay \$5 million in attorney fees over the next four months.

"That's correct," Daughhete said. "It's between \$4 and \$5 million for March, April, May and June."

"That's not the answer I wanted, but it's an answer," Croft said.

"Don't you wish you were a lawyer," House Finance Co-chair Mike Chenault said with a chuckle.

"Yea," responded Croft.

Chenault asked if this money is being spent on duplicative services. "Are we duplicating a lot of services ... just because we have two negotiations going on?" He noted that there are a lot of similarities in the application process.

Steve Porter said there are duplicative issues and the state has used the expertise it has received from contract attorneys in both negotiations. "There is very little duplication because the Stranded Gas team is very small and is very familiar with the needs of both groups." He said there is a lot of coordination between the two negotiations.

Rep. Mike Kelly commented on the number of lawyers involved in these projects. "With lawyers, if you leave the food dish out it gets empty pretty fast." He asked how the department is scoping, scheduling, budgeting and controlling invoices with all the lawyers. "Are they self-directed or is someone working hard to control costs?" He asked about the department's effort to control costs.

Daughhete said the Dept. of Law has entered into contracts with legal firms of Preston Gates, Hosie, Frost and Large, and Morrison & Forrester for negotiated and agreed upon hourly rates based on seniority or the expertise of their staff members. She said Wilson Condon, chief of the department's oil and gas section, reviews the contractors' bills for the reasonableness of hours billed and signs off on them. Daughhete then reviews bills for adherence to the contract before they are paid. "Occasionally we go back and ask them to reduce billings." She said this is the typical project-management process the department employs for any legal services contract.

"We are just ticking along at about \$1 million a month with those three contracts and that is the source of the \$9 million that we are requesting," Daughhete said.

"So there is no legal team that has the hill-top view and is controlling the scope, schedule, budget and invoicing?" Kelly asked.

Daughhete said there are a number of other attorneys in the department that may have responsibility to review these billings. "But I believe with respect to the gas line contracts, Mr. Condon is taking it upon himself to review each invoice." She said Condon has paraprofessional staff that helps manage the finances and keeps track of the expenditures.

Kelly said, "This is a tall task when you have so many at the trough." He said it is very hard to control spending when there is not a bid on the number of hours and it takes a tremendous effort to ensure the state is getting value from these contracts. "It takes a mean SOB to do that and I sure hope that is what we have."

Porter said at the end of negotiations each day the state asks an attorney or attorney group for specific deliverables and a timeframe to provide them. "There is actually specific work product coming from them." He said this is costing the state about \$1 million at month. "It isn't that we have a number of attorneys in the room volunteering their services to help us out." Porter said attorneys are in the negotiations for a purpose and a deliverable. "If there is a control factor it is related to the work product."

Dept. of Natural Resources: DNR Administrative Service Acting Director Nico Bus presented the department's five supplemental requests that total \$10.6 million. DNR's requests are for capital budget, not operating budget money.

He said the first request for \$2.5 million is for gas pipeline risk analysis and royalty issues. Bus said \$1 million would be used to contract with consultants to assist the department in commercial marketing issues and mitigation of ownership risk. Bus said the remaining \$1.5 million would be used for additional work on royalty issues, such as on the conversion of net profit shares and fixed or sliding scale royalties. "That all would be going to contractors to assist our commercial team." He said the money is needed in the fast track supplemental so the work can be ongoing between now and June 30.

Bus said the department is requesting a \$2 million in general funds to get people in the field right away to assess the geologic hazards in the pipeline corridor from Delta Junction to the Canadian border. He said the Division of Geological and Geophysical Surveys (DGGs) would assess the hazards, the mineral potential and the construction material resources along the proposed natural gas line corridor. "This is very important for both the pipeline and for future developments such as the proposed Alaska Railroad extension and other public and private development that would occur along this corridor."

He said the projects would be peer reviewed. Geologic reports and maps would be developed for a 10-mile corridor and a detailed airborne geophysical survey would be made of a wider corridor. "We are asking for this in the fast track supplemental so we can get ... the contracts in place so we can take full advantage of this summer's field season."

Chenault asked if the department would extend this funding into FY 06.

Bus said the first \$2 million would pay for contractors to fly the corridor. He said it would take two more field seasons to complete the project so the department will request an additional \$4 million in subsequent capital budgets.

Croft asked if it would take \$2 million just to fly the corridor.

Bus said yes. "Helicopter and contracting time is pretty expensive." He said the corridor runs from Delta Junction to the Canadian border.

Chenault asked if any work would be done on other proposed routes.

Bus said this funding is strictly for the gas pipeline corridor from Delta Junction to the Canadian border.

He said the next appropriation of \$2.5 million is for the Bullen Point right of way. It would pay for the evaluation of a 15-mile corridor from Prudhoe Bay to Point Thomson for a gas pipeline and pump stations. Bus said the department has issued a request for proposals (RFP) for this project and cannot issue the contract until the appropriation is approved. "In the end we will have a complete inventory ... and any supporting documentation for the right of way from Prudhoe Bay to Point Thomson."

"If we appropriated less do you think we could get it done for less?" Chenault asked.

Bus said the department could report on the bids it has received on the RFP.

"I'm always concerned when we put out a price of what we are willing to pay for a project before we go to RFP to determine what that project cost is," Chenault said. "It just amazes me that the cost will more than likely be more than the dollar amount we tell them we are willing to pay."

Croft asked, "How long a right of way for \$3.2 million?"

Bus said the right of way is 50 miles long.

Croft said he wasn't aware that Point Thomson was near production. "Is this vital for the gas line itself or only if we end up hitting those Point Thomson benchmarks?"

Division of Oil and Gas Deputy Director Sean Parnell said he would get an answer to this question from DNR Deputy Commissioner Dick LeFebvre and provide it to the committee.

Bus said the division is requesting \$2.7 million to pay for the increased workload in the Division of Oil and Gas.

Parnell said, "This appropriation is near and dear to my heart." He said the Division of Oil and Gas has about 70 employees and every day 11 to 14 of them are working on gas pipeline issues. Parnell noted that in the recent past these employees were working on oil issues. "The strain on the division is heavy." He said two companies recently asked the division to conduct a royalty analysis. Parnell said if the division could complete that work in a timely fashion it would provide an incentive for further drilling. "Because of the efforts being made on the gas line right now we cannot do that analysis for months."

He said this funding is also needed now because of staff burnout and the potential for turnover. Parnell said the money would be used to hire new people, primarily commercial analysts and "geo types." It would be used for reservoir evaluation and modeling and for commercial and regulatory work necessary to assure the movement of the state's royalty-in-kind gas and other gas in the gas pipeline. "Between the gas pipeline and the regular oil work of the division, this money or as much of it as we can obtain in the short term is essential to keep revenues flowing to the state and resource development occurring in a timely fashion."

Hawker noted that the department's back-up information on this request states the funds will be used to hire three commercial analysts, a petroleum reserve engineer, two petroleum geologists, a petroleum geophysicist, two natural resource specialists, a petroleum land manager, a programmer analysis, a geologist and a publications specialist. "Are these sorts of people in the market in Alaska today or are we going to have to go national on this?"

Parnell said he believes the division will be able to fill a significant percentage of these positions from the private sector in Alaska. "I think we have the talent in Alaska and can hire from within the private sector here."

Hawker said these are specialized positions. He asked if the state would be better off contracting with the private sector for this work rather than adding to the number of state employees.

Parnell said the division needs these skills on a day-to-day basis for many company projects. "I think it would be very difficult to find this talent in the contracting community without ... conflicts because they are already doing business with the industry." He said the division needs these employees.

Bus said the last request is for \$200,000 to fund two project assistants to support gas pipeline negotiations: one for planning and one for logistical support in the negotiations. He said the commissioner's of-

office is tasked with gas pipeline negotiations. Bus said the funds would pay for these positions through the balance of FY 05 and extend into FY 06. He said securing the funding through the end of FY 06 would help the department attract applicants for these positions.

Rep. Mike Kelly said his DNR subcommittee just completed its proposed FY 06 budget recommendations. He asked if these positions are in the FY 06 budget.

Bus said no. He said the department wants to keep all the gas line appropriations "in one pot," so somehow if the project disappears and all the money would disappear, the tasks that go with it would also disappear. "We don't want to mix our operating budget regular staff with this request."

Kelly asked whether these new positions will be funded in an FY 06 supplemental request.

Bus said the department requested funding in the FY 06 operating budget for additional positions in the Division of Oil and Gas to manage the day-to-day work in the division for a variety of issues. "These are specific positions to assist in the gas line negotiations in the commissioner's office."

Dept. of Revenue: DOR Administrative Services Director Susan Taylor said the department is requesting a total of \$5.3 million for the commissioner's office; \$1.5 million to set up the Alaska Natural Gas Entity that will look after the state's interests and \$3.8 million for contractual services.

Croft asked if these funds would be used to set up a state corporation that will own an equity interest in the pipeline.

Porter said part of the discussion in the gas line negotiations is related to an Alaska gas entity. "We need a team of individuals to participate in the evaluation of how to develop an Alaska state entity if, in fact, it is developed." He said the department needs personnel now to participate in those negotiations and be prepared to move forward with an Alaska state entity if the state is successful in negotiating a Stranded Gas Act contract. "If this contract is approved by the Legislature in early summer we would want to fully staff this organization on the day it was ratified." In advance of that, Porter said the department needs a limited team in place to negotiate the contract elements. "They will participate as part of the team in negotiating that."

He said the department estimates it will need 12 positions. "All 12 would be fully funded prior to the end of this fiscal year if in fact we present a Stranded Gas contract to the Legislature." Porter noted that a portion of the team would be brought on for negotiations support in developing the Alaska state entity.

Croft said 12 positions couldn't cost \$5.3 million.

Porter said the cost for the positions is \$1.5 million. He said the remainder of the funding, \$3.8 million, would be used for contractors to assist the state in its Stranded Gas Act negotiations with the producers' group and TransCanada and in its evaluation of other projects that the state might want to encourage to move forward. He said there are funds in the appropriation to continue work on intergovernmental relationships, to address Canadian pipeline issues, including state ownership in that portion of the pipeline, and to continue to work on the fiscal terms necessary to resolve the upstream and midstream property tax, corporate income tax and production tax issues in the negotiations. "Part of this funding is also to look at the scope and structure of financing [state] participation in a gas pipeline."

"None of that is paid for with the \$9 million in lawyers we just discussed or the \$10 million that is going to DNR?" Croft asked.

Porter said there is a legal side and a technical side to the negotiations. He said lawyers are drafting the specific contract terms and advising the state on legal principals associated with the contracts. He said

the lawyers are not participating in the modeling and economics projects. Porter said DOR's consultants help the gas group understand the nuances of changes in the negotiations. "There is a substantial amount of money that changes hands with [changes in] each one of the [contract] elements ... and they all interact."

Taylor said the Alaska Natural Gas Development Authority (ANGDA) is requesting \$2 million for contractual funding and \$170,000 for two project positions. She said the \$2 million for contractual costs will fund engineering, financing, permitting and regulatory work on a spur line from Glennallen to Palmer. Taylor said it would also provide funding to demonstrate the feasibility of LNG operations in Cook Inlet. She said the \$170,000 would fund a project engineer and a financial officer.

Chenault said it's not reasonable to spend money on LNG development in Cook Inlet because it exists there today. "You could probably call ConocoPhillips and they can probably tell you what they were looking at and what the costs were to expand their current facility."

Porter said ANGDA is looking into the expansion or revitalization of that plant after 2009. "For every increment of gas that you can bring into Cook Inlet that exceeds the residential and local industrial use, if you can export that gas you actually create a benefit for the local users because it will bring the overall tariff down and the overall cost of gas to Cook Inlet." He said this research would look into the possibility of a new, green field LNG plant in Cook Inlet, revitalization of the current plant and the LNG markets in the Pacific Rim.

Governor's Office: John Katz, director of state/federal relations and special counsel to the governor, testified by teleconference from Washington, D.C. on the \$500,000 request from the governor's office to support efforts to open the Arctic National Wildlife Refuge (ANWR).

Katz said this is the best opportunity to open ANWR to responsible development since President Clinton vetoed the budget reconciliation bill in 1995, but he added that passage of ANWR authorization legislation is by no means a foregone conclusion. He described the two legislative vehicles for obtaining the opening of ANWR, the budget reconciliation process and comprehensive energy legislation, reiterating much of the testimony he provided to the Senate Finance Committee on February 16.

"Our preferred alternative is budget reconciliation, which is hopefully a sprint not a marathon," Katz said. He noted that this process is leadership driven and is not subject to a filibuster in the Senate.

He said the governor's office favors the continuation of Arctic Power. "If we did not have an entity like Arctic Power we would have to create one." He said it is the only entity that is charged with thinking about opening ANWR 24-7.

Katz said Arctic Power should have the flexibility, which government sometimes doesn't have, to implement a multi-faceted public policy advocacy position.

He said beginning in August, the governor's office took direct control of ANWR funding, as the previous grant format was changed into an appropriation. Katz said that led to a contract between the state and Arctic Power.

Katz said several weeks ago the governor's office began talking with Arctic Power about necessary changes. He said the changes fit into three major categories. Katz said the governor's office believes that the "principal capacity" of Arctic Power needs to be centered in Washington, D.C. "There was too large

a presence in Anchorage for the necessary purposes, and the resources and staffing for the most part should be transferred to where the action is in Washington, D.C." He said this would not be to the detriment of certain activities the governor's office believes Arctic Power needs to perform in Alaska, including disseminating of objective information to Alaskans, accounting for expenditures and coordinating private fundraising.

He said the second area where Arctic Power was asked to make changes was in staffing and professional services. "We felt we needed some new blood, new creativity and new energy in the process."

Katz said the third area was better coordination and communication with Alaska's congressional delegation. He said the congressional delegation creates the strategy on ANWR. "So we wanted that coordination to be good."

He said Arctic Power has made significant strides towards improving its efforts. "There are still a few areas we are working on with them but they are in the process of transferring more of their capacity to D.C." Katz said recently Arctic Power has hired some very capable new professionals and they are consulting much better now with the congressional delegation and the governor's office.

Katz recommended a two-step approach to funding the ANWR effort. The first step would appropriate \$500,000 in the supplemental to implement the budget reconciliation effort. "That funding together with previous funding provided and Arctic Power's private sector fundraising efforts should be more than sufficient to carry the effort through either the July 4 recess, when hopefully budget reconciliation will pass, or the August recess, which has often been a key point in the budget reconciliation process.

He said the governor's office and Legislature would have better idea later in the session of how to proceed with funding for Arctic Power. He said the administration is aware of the legislation that has been introduced to provide Arctic Power with \$1.1 and \$1.3 million in funding. "Later in your session we will be able to determine with greater accuracy what the situation is with Congress and what that situation demands, and secondly, we will have all had an opportunity to observe Arctic Power's performance to see whether they measure up to what is required."

Rep. Bruce Weyhrauch noted that he had visited recently with Katz in Washington, D.C. to talk about Arctic Power. "I agree with the general strategic approach you want to take with the use of the funds." He asked Katz to be more specific about how the money will be used.

Katz said the governor's office maintains vote counts, as does Arctic Power. "Our concentration is on undecided members, both Democrats and Republicans." He said the congressional delegation at the moment wants advocacy activities in the Senate to be limited and for Arctic Power to concentrate on the U.S. House. Katz said most of the advocacy effort is in D.C. but Arctic Power maintains some capacity to reach out beyond the capitol beltway to deal in home states and districts through a number of groups and organizations that support the ANWR effort and have a presence in so-called target states.

Weyhrauch asked if the administration intends to use these funds in Washington, D.C. and eliminate Arctic Power's executive director, accounting position and office space in Anchorage.

Katz said the governor's office is still in discussions with Arctic Power's board of directors about that. "The governor's view is we have to have some limited presence in Anchorage to perform information dissemination, fundraising and to do the accounting." He said the current presence is too large and the staff positions and funding should be shifted to Washington, D.C. where those resources will do the most good. "I would say that is the last large remaining issue in our work with Arctic Power, to try to reform the previous effort."

"That was a yes," Weyhrauch advised committee members.

ACMP Overview Hearing

Background information on HB 191:

The House State Affairs Committee held an overview hearing on February 24, to seek input from state agencies and coastal districts on implementation of legislation passed in 2003 that substantially revised the Alaska Coastal Management Program (ACMP). Committee staff provided the following overview of HB 191:

In 2003, the Legislature passed HB 191 that substantially revised the state's coastal management program. Under the prior and current program, coastal communities may adopt enforceable policies that are applied to all coastal development activities in their region to ensure local issues and concerns are addressed.

HB 191 imposed limits on local enforceable policies. Most notably, enforceable policies may not "address a matter regulated or authorized by state or federal law." An exemption to this prohibition is when the policy relates to "a matter of local concern." A local concern is a coastal use or resource within a defined portion of the coastal district's coastal zone that is

- (1) demonstrated as sensitive to development;
- (2) not adequately addressed by state or federal law; and
- (3) of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence.

Coastal districts must rewrite their local plans to include only policies that meet this criterion. Revisions must also be made to conform to other requirements imposed by HB 191 and regulations passed by the Department of Natural Resources. The deadline for submission of revised plans is July 1, 2005. At the same time that coastal districts are revising their plans, the state is seeking federal approval for the changes made to the coastal program.

January 28, 2005 letter from OCRM to DNR Commissioner Irwin:

Eldon Hout, director of the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Resource Management (OCRM) wrote to DNR Commissioner Irwin on January 28, commenting on the state's most recent submittal (December 16, 2004), Coastal Zone Management Act (CZMA) approval and scheduling and timing issues. "OCRM is committed to working with the state to meet the objectives of Alaska HB 191 and the CZMA."

Hout said the OCRM has been working diligently to collect information and data necessary to comply with the National Environmental Protection Act (NEPA). "After the state submits to OCRM an ACMP document that resolves the issues identified in this letter, OCRM will be able to begin the NEPA scoping process."

Attached to the letter were enclosures with detailed explanations of the remaining approval issues. The issues are application of district policies and designated areas; compliance with local government implementation requirements; scope and content of district plans; and habitats policy. "OCRM must be

satisfied that the state has addressed these issues before OCRM can initiate the NEPA process or make a preliminary approval decision.

Hout said OCRM believes that the Alaska Coastal Management Program (ACMP) could continue to receive CZMA grants, fund efforts to revise the ACMP and district plans, and use the districts' enforceable policies for state and federal consistency reviews after the July 1, 2005 deadline established in HB 191 for approval of the state's revised program. He said despite its best efforts OCRM would not be able to complete its review and NEPA analysis by July 1, 2005. "The magnitude of the changes proposed for the ACMP regulations, the necessity to develop a revised program document, and the absence of complete district plan guidance raise significant CZMA approvability and NEPA issues. Hout said OCRM has not been able to issue preliminary approval or initiate the NEPA process because the proposed ACMP revisions and explanations are still in a state of flux. He said assuming DNR submits the proposed regulatory changes and revised ACMP document in February, OCRM anticipates a program amendment decision around December 31, 2005.

Hout urged the state to take necessary action to address the July 1, 2005 deadline, in order to both ensure continuity of Alaska's existing program and sufficient time to carefully and comprehensively review the state's program amendment submission.

Governor Murkowski responds to NOAA on February 23:

Murkowski sent a letter to NOAA Assistant Administrator Richard Spinrad on February 23, asking the agency to abandon its new requirements for the ACMP. The governor said OCRM's new mandates are unacceptable. "We do not believe that the positions OCRM asserts in its January 28, 2005 decision 'assists' Alaska is developing our program." Murkowski said OCRM has conditioned approval of Alaska's program on OCRM's interpretation of what is best for the state. "Under this administration Alaskans decide what is best for Alaska."

The governor said if OCRM does not immediately abandon the new requirements and "broken promises" contained in its January 28, 2005 decision, the ACMP will expire by operation of law in the summer of 2005.

Murkowski said the state has worked hard to forge relationships with federal agencies and to participate in federal decision-making processes independent of ACMP requirements. "So we are confident that Alaska's voice will be heard in federal activity and authorization processes even without the formality of the CZMA's federal consistency tools." He acknowledged, however, that a streamlined ACMP would serve a valuable purpose in effectively managing Alaska's coastal uses and resources.

The governor said his staff has been working for two years to amend the ACMP to provide a fair, predictable and protective networked management scheme. "Unfortunately, the OCRM will not allow Alaska to implement that program at this time." Murkowski said the state will continue to ensure that resources, coastal and inland, are adequately managed and protected with or without federal participation.

Hout submits written testimony to House State Affairs: In his February 24 written testimony, OCRM director Eldon Hout said NOAA supports Alaska's efforts to streamline and clarify the ACMP. "Unfortunately, streamlining efforts have resulted in gaps that must be addressed to meet minimum Coastal Zone Management Act (CZMA) requirements." Hout said the changes mandated by HB 191 and the ensuing regulations effectively constitute the most significant change to any federally approved state coastal management program.

He said NOAA and Alaska DNR staff has worked together and have made significant progress on many of the issues regarding approval of the ACMP amendments. "NOAA's January 28 letter continues this process by providing a definitive response to the state's most recent proposal." He said the letter provides the state with specific recommendations on meeting the remaining CZMA requirements.

Hout recommended the state's July 1, 2005 deadline for plan approval be removed or extended until at least December 31, 2005, so Alaska has sufficient time to meet CZMA requirements.

He said NOAA would respond to the governor's February 23 letter, after it had sufficient time to analyze it. "NOAA can state at this time that we have not set aside previous positions or agreements, and have not adopted new CZMA criteria or mandates."

In closing, Hout said he believes that the few remaining obstacles toward approval of the new ACMP can be resolved through further discussion and negotiation.

House State Affairs Hearing

State Affairs Chair Paul Seaton said the purpose of the February 24 meeting was to hear an overview on the implementation of HB 191. Committee members Reps. Ramras, Gruenberg, Elkin, Gatto and Gardner were in attendance as was Rep. Kerttula. Seaton said the State Affairs and Resources Committee have joint responsibility for oversight of the Alaska Coastal Management program (ACMP). He said the chairs of House Resources and State Affairs decided the State Affairs Committee would hold this overview, rather than having duplicative hearings in both committees.

Seaton said he had received correspondence implying there might be problems with implementation of the law. He said the purpose of the meeting was to see how the statute is working, not to rehash whether HB 191 was a good or bad idea. He noted that legislation has been introduced in both bodies to modify the timeline for coastal districts to submit their revised plans. "We in the committee and throughout the Legislature need the background to know if those bills are necessary or would even be a good idea."

He called on administration officials to testify. Seaton advised them they could brief the committee on the interaction between the state and federal governments but asked they focus most of their attention on implementation of HB 191.

First to testify was Bill Jeffress, director of DNR's Division of Project Management and Permitting. With Jeffress was Deputy Director Randy Bates. Jeffress discussed Governor Murkowski's January 23 letter to NOAA's Office of Ocean and Coastal Resource Management (OCRM) responding to OCRM's January 28, 2005 letter to DNR Commissioner Tom Irwin. Jeffress said the governor's letter highlights the frustration that DNR and the administration have encountered in their negotiations with OCRM seeking approval for Alaska's amended ACMP program. "After months of negotiations at a continuously moving target presented by OCRM, we have unfortunately reached the point where the state of Alaska can no longer subrogate state sovereignty and the ability to manage our natural resources to a federal agency such as OCRM for a voluntary program."

Jeffress said he would not reiterate the principal points of disagreement with OCRM. He referred lawmakers to the correspondence between OCRM and the state. "OCRM contends that not only are the state of Alaska's environmental laws and regulations inadequate to protect coastal resources but ... other existing federal resource agencies laws and regulations do not meet the standards mandated by OCRM."

Jeffress said OCRM's position goes far beyond the authority granted by the federal Coastal Zone Management Act or the associated federal regulations.

He said the program approval stipulations as stated in OCRM's January 28 letter will require DNR to add an additional layer of redundant regulations and complexity to the state's coastal program without a corresponding environmental benefit. "This is a state's rights issue."

Jeffress pointed out state officials have not had a chance to review OCRM Director Hout's February 24 statement to the committee. He said OCRM did not even copy the administration with this document, an action Jeffress said is indicative of the relationship between the state and the federal agency.

He said OCRM's opinion on the ability of the state and federal agencies to adequately manage and protect resources is neither valid nor supported by the federal enabling legislation.

DNR Commissioner Tom Irwin read from the February 23, 2005 letter addressed to Alaskans and signed by all four resource commissioners.

The state of Alaska is committed to ensuring that resources of the state are adequately managed and protected. As part of that commitment, the state has been implementing the Alaska Coastal Management Program (ACMP) since 1979. The ACMP, a voluntary program funded and authorized in part by the National Oceanic and Atmospheric Administration (NOAA), had broad authority to address a variety of resource management issues. While the ACMP served an important purpose when it created, it has languished in the past several years without the needed updates to its purpose and policies. This resulted in the ACMP becoming fragmented in its implementation, subjective in its applications, and an additional regulatory burden within an already comprehensive resource management system. As a result, projects have been unnecessarily delayed without a corresponding environmental benefit.

To modernize the ACMP, the Alaska State Legislature and administration passed HB 191 in 2003. This directed state agencies to amend the ACMP in a manner that simplified and clarifies the 25-year old program. The state agencies have worked hard toward developing a program that meets the priorities and needs of Alaska while still comprehensively and responsibly managing Alaska's coastal uses and resources. Unfortunately, NOAA, the federal approving agency, has in their January 28, 2005 letter, mandated that the ACMP expand its broad regulatory authority, regardless of its duplication and increased complexity, and refuses to acknowledge the state's rights in developing a program that works for Alaska. NOAA's mandate and attempt to further expand federal control over Alaska through coastal management is not acceptable. Without a change in NOAA's current position, the ACMP will expire in the summer of 2005 by operation of law.

Irwin said DNR clearly understands that it is accountable to the Legislature, and had a clear directive to proceed with a revised program when HB 191 became law. "Our folks have worked hard in that direction." He said DNR employees have spent nights and weekends responding to letters and jumping through hoops to meet timelines so the department could meet the Legislature's and administration's wishes.

"The four commissioners feel strongly that Alaska is protected," Irwin said. "We can and do protect the resources of this state and certainly the environment." He said DNR is a business accountable to the Legislature. Irwin said duplicating existing state laws and regulations as NOAA is asking the state to do is contrary to the Legislature's intent when it passed HB 191: "We are working hard to do it right. I

would ask that you keep in mind through the proceedings and days ahead of what real message we are sending.”

Jeffress said the implementation of HB 191 must undergo a federal approval process through OCRM. He said DNR and OCRM have maintained an open and continuous dialog since the introduction of HB 191 and executive order 106. EO 106, effective April 15, 2003, transferred the coastal program and its staff from the governor’s office to DNR. Jeffress said communication with OCRM continued through May 2003. OCRM reviewed HB 191 and provided the state with edits related to ACMP approvability. “They have been part of this process from day one.”

He said the employees in the coastal program were exempt employees in the governor’s office. When the positions moved to DNR they became classified. New position descriptions were written and the employees had to reapply for their positions. Jeffress said the new Division of Project Management and Permitting in DNR experienced a 47 percent vacancy rate through attrition and cuts the department experienced with the transfer. He said it took quite a lot of time to get the division staffed. Despite these problems, the division has maintained its workload and very few project timelines have been missed.

Jeffress said staffing shortfalls prohibited the division from starting the regulation revision process as mandated by HB 191, until October 2003. The division hired a contractor at that time to revise 6 AAC 50, 6 AAC 80 and 6 AAC 85, and established a workgroup consisting of representatives of the coastal districts and agencies with coastal district responsibilities to work with the contractor.

He said OCRM staff participated in the workgroup and in development and promulgation of the ACMP regulations. DNR asked OCRM to provide a comprehensive review of the revised regulations and OCRM committed staff to that effort.

Jeffress said the division held two coastal workshops in December 2003, one in Anchorage and the second in Juneau, to discuss revisions to the proposed regulations. He said funding was available to help coastal district representatives attend.

He said the division and OCRM met in October 2003, and laid out a three-step process for program approval. Jeffress said the first phase required DNR to submit to OCRM EO 106, HB 191 and HB 86 and HB 69, bills that impacted the coastal program. He said OCRM agreed to look at this legislation as a routine program change. The second phase was submittal of the revised regulations. Jeffress said the third phase was submission of the revised coastal district plans to for OCRM approval, following approval by DNR.

Jeffress said the division did not get the phase 1 materials to the OCRM for a routine program change review until January 2004, because the division had limited staff and a large workload. In February 2004, the revised regulations went out for public notice. Jeffress explained that OCRM made the decision to hold off on its review of the legislation until the regulations were implemented and then review both the legislation and regulations simultaneously. “This was a decision that we disagreed with.”

Seaton asked if this was OCRM determination that HB 191 was not a minor amendment to the state’s coastal program.

Jeffress said OCRM considered the legislation combined with the revised regulations a major amendment. “Previously they had said if we submitted them in the three steps they would be reviewed and approved as routine program changes.”

He said the revised regulations had a 45-day comment period, and took effect on July 1, 2004. Jeffress said after the regulations were implemented the state found several areas that needed clarification. He said the administration put revisions to section 112 of the revised regulations out for public comment on August 9, 2004. The revised regulations took effect on October 29, 2004: "During this period we were preparing the amendment package for submittal to OCRM. They told us not to submit it until the final revisions to the reg. package were complete and adopted." Jeffress said this delayed the submission to September 30, 2004.

He said the division submitted a description of the revised program to OCRM so it could meet the mandates of the National Environmental Policy Act (NEPA) and could move forward with scoping and the NEPA process. Jeffress said it was still unknown whether OCRM would require an environmental assessment (EA) or environmental impact statement (EIS) process. "That was a decision the federal agencies were going to make."

Since September 30, the state has gone through another revision of the amendment package to meet mandates established by OCRM. Jeffress said these negotiations continued until one week before OCRM's January 28 letter. "We were really surprised with [that] letter because as of a week before that date we thought we had made substantial progress and had agreement on a number of issues." With the letter came the surprise that OCRM had rescinded some of its past agreements with the state. "We actually lost ground and they are expanding the program beyond where it was even prior to [passage] of HB 191." Jeffress said the state is still working to keep the lines of communication open with OCRM.

He said HB 191 did not require a comprehensive and extensive rewrite of the coastal district plans. Jeffress said the division sent a letter to the coastal districts on October 4, 2004, advising them that if they didn't have the time or resources to do a comprehensive rewrite of their plans they could simply address issues and areas of local concern and submit their plans for DNR approval. "There is nothing within our regulations or HB 191 that would prevent them in the future, when they had additional resources and time, to revise or amend their plans to include additional enforceable policies." Jeffress said the division tried to provide alternatives so the districts could meet the timeline. "One of our frustrations in giving guidance to the districts has been the ever-changing landscape that OCRM has provided us that we need to pass on to the districts to assist them in writing some aspects of their plans."

Seaton said no one is implying the department has not worked hard and put in numerous hours on this program. He said the committee is trying to determine whether the requirements HB 191 placed on coastal districts for the rewrite of their plans can be accomplished in the statutory timeframe, given the changing landscape DNR has been faced with and the non-firm negotiations and principals.

Rep. Beth Kerttula asked what a district could enforce if it just submitted an inventory list or submitted a stopgap plan. "Doesn't that leave the district in a difficult situation and permittees in a confusing state?"

Jeffress said when the coastal program was instituted in 1979, the coastal districts were allowed a period of time to develop enforceable policies, do their resource inventories and put their plans together. He said there have been numerous amendments to the coastal district plans over the years through the Coastal Policy Council. Jeffress said HB 191 mandated that enforceable policies not be duplicative of existing laws. "Since 1979, there has been a huge increase in the number of environmental regulations both at the federal and state levels." He said a lot of areas that were not adequately covered in 1979 that are now. Jeffress said state and federal laws and regulations adequately protect the state's resources today.

He said the division asked the districts to focus first on the areas that they could demonstrate, under the criteria set out in HB 191, needed additional protection through an enforceable policy. Jeffress said the coastal districts enforceable policies cannot duplicate or restate a state or federal law or regulation. He pointed out that the Legislature passed SB 308 in 2002, which mandated the districts revise their plans so they did not duplicate or restate state or federal policies.

"We've directed the districts to ... do a comprehensive rewrite or just pick the areas that are most vital to their specific coastal district and address those issues and at a later date ... go back and take another look at some of their areas that need additional coverage." He said the division has asked that the districts demonstrate that there isn't an existing state or federal regulation that adequately addresses their areas of concern. Jeffress said coastal districts have the opportunity to comment during federal and state permitting processes. He said the state also gives deference to coastal districts on certain aspects of projects that impact their areas even if they don't have enforceable policies that directly relate to those impacts.

Kerttula asked how many districts have submitted these stopgap plans.

Jeffress said the division has received a lot of draft plans and some are close to being approved.

Rep. Carl Gatto asked if it wouldn't have been easier to have coastal districts point to or reference the law or regulation that exists rather than try to find an area where there isn't a law or regulation.

Jeffress said the division asked its contractor, the Campbell Group, to put together a matrix of state and federal laws and regulations and the agency that oversees them. He said there are many broad-based laws with huge coverage but there may be a specific point of local concern that is not addressed in them. "We leave it up to the districts because they know their situation and the specifics of their area and can identify that." In its plan reviews, the division will assist districts in determining whether there is a duplicative law or regulation. "It's not like they are doing this in the dark and working on their own." He said the division is always available to give the districts the assistance they need to write the enforceable policies."

"I'm quite surprised there is a lack of understanding of what the federal and state regulations cover," Jeffress said. "ACMP seems to be used as the shield, instead of looking beyond ACMP at what other state and federal laws are there that actually protect the resources." He said the division is trying to help the districts use the resources provided by other state and federal agencies to help them understand whether the area they are concerned about is adequately addressed.

Seaton said the districts are confused about what enforceable policies they can write because there is a state or federal agency with authority to regulate just about everything. He pointed to DNR's January 10, 2005 document entitled "District Enforceable Policy Decision Tree." Seaton said part of the confusion comes from the following statement intended to advise a coastal district on whether it can show that state or federal law does not adequately address a matter, including statewide standards.

This means the state or federal agency either a) does not have the authority to regulate the matter, or b) does have the statutory authority to regulate the matter, but either doesn't have the implementing regulations or the statute or implementing regulations either don't address the matter or are too general or vague.

Division of Project Management and Permitting Deputy Director Randy Bates provided an overview of the division's efforts to help the coastal districts meet the mandates of HB 191. Bates said he has been

working with the ACMP since 1997. He reviewed the process the division used to develop the regulations following the implementation of HB 191, noting the division has taken steps to involve the coastal districts, general public, industry and environmental groups in this process.

Bates said the division hired the Campbell Group in October 2003 to develop draft regulations. The division also put together a Regulations Review Team, consisting of representatives from participating state agencies, coastal districts, the development industry and the environmental community, to evaluate the requirements and limitations of HB 191 and provide ideas for the regulations to implement the Act. The team met weekly between October and the end of December 2003.

He said the division held two in-person district conferences in December 2003, to review some of the concepts proposed for the regulations. "Before we put them in draft form we wanted to engage in a dialog with the coastal districts and anyone else ... to help us decide ... how we should be managing coastal resources with the regulations."

Bates said the regulations were then drafted. The division released a draft for discussion purposes at an in-person conference of all the coastal districts in February 2004. "We shared the draft concept, talked through the regulations, and gave them ideas on where we were coming from and what we were trying to accomplish ... in coastal management."

The division received extensive comments on the draft regulations, he said, and redrafted the regulations, put them in a formal package and released them for 45-day public comment period in late February 2004. Bates said the division again received numerous comments. It evaluated all of the comments and revised the regulations as appropriate. The revised draft was completed in May 2004 and took effect in July 2, 2004.

The division began holding teleconferences with the coastal districts after the regulations took effect to advise them on their district plan revisions, knowing that their district enforceable policies would flow from the state's new standards, Bates said. The division held a three-day conference with all 35 coastal districts and their consultants in Anchorage to review the regulations and to provide the districts with guidance on writing enforceable policies. He said the division has held eight teleconferences since July to give coastal districts the opportunity to ask specific questions of division staff.

Seaton said he understands there has been a lot of communication between the department and the district. "Part of the problem has been that as your landscape changed in negotiations with the federal government ... the interpretations to the districts changed." He said the committee wants to focus on the problems the districts are experiencing.

Bates said the division has tried to be very responsive to the coastal districts' questions and to provide them with answers. He said 33 of the 35 coastal districts have coastal district plans currently in effect. Twenty-seven of those have committed to revising their plans to comply with HB 191. Bates said 25 of the 27 have hired consultants to write their plans. He said the division has visited several coastal districts to evaluate their plans, talked to them about their planning processes and help them gauge what they need to accomplish under HB 191. Bates said the division has reviewed draft plans for the Aleutians West Coastal Resource Service Area, Ketchikan Gateway Borough, the City of Craig and the City of Valdez. He said the division has at all stages been open, willing and available to engage in any discussion with the coastal districts that wanted to share their plans.

Tom Lohman, representing the North Slope Borough, said he has been with the borough for close to 18 years. He said the ACMP is tremendously important to the borough.

Lohman responded to some of the statements of administration officials. He said DNR has worked extraordinarily hard on this matter for a long time. Lohman said Jeffress has used the analogy with the districts that everyone should get in the boat and row together. "And some of us feel that maybe the administration shot a hole in the bottom of the boat and then said let's all get in the boat and row together."

He said DNR was saddled with timelines that the districts believed were unreasonable from the start. Lohman pointed out that it was the state was pushing the amendments to the program as a routine program change and on its face it was clearly something more than that. He said anyone who read the federal regulations knew from the start that the federal approval process would take longer than envisioned in HB 191. Lohman said the division's six-month delay to get its consultant on board should have raised a red flag on the timelines. He noted the districts first meeting with the Campbell Group was not until December 2003.

Lohman said the North Slope Borough's (NSB) coastal management program was approved in May 1988, but the borough began putting the program together in 1983. "It is not an insignificant internal process to get a coastal management program approved." Lohman said the borough's primary concern is oil and gas activity. "The oil industry does not tend to sit on the sidelines when we put together programs like a coastal management program." He said this is not an easy process, especially given that the borough has eight villages.

He said there has been a lot of talk about the finality or the issue of certainty before districts can move forward with their revised plans. Lohman said there has been a lot of give and take between OCRM and DNR on that point, and a lot of the districts believe they have been left out of that process. "Our voice has been consistent from the get go that we don't have good guidance and have limited resources." Lohman said the NSB got one of the bigger grants to revise its program but it is not enough if most of the funds are spent on teleconferences and doing things other than revising the program. He said the borough has hired a consultant and despite the grant will need to expend its own resources on the plan revision.

Lohman said there was a lot of discussion today about the clarity of the regulations. He said focused on issues the borough believes are still not clear. Lohman said the NSB exists for subsistence and the Inupiat culture. He said some visionary North Slope Natives and their non-Native allies pushed hard to get the borough formed to protect subsistence. Lohman said all of the borough's policies deal with subsistence and protection of the environmental and archaeological, historical and cultural resources. "We at this point want to know whether we can craft policies dealing with subsistence and the lands and waters upon which subsistence occurs."

He said much of the North Slope is federal land, as are the waters beyond three miles, the federal OCS. Lohman said the administration's original drafts of HB 191 did away with the coastal programs and the ability of local communities to craft any policies at all. "It was through legislative hearings like this that the evolution of HB 191 put back some ability of the districts to craft policies." He said direct questions were asked of the administration during that process about the coastal districts ability to craft enforceable policies on subsistence and on the OCS. "The answers came back yes."

Lohman said DNR initially had some examples of draft enforceable policies on the state's web site to give districts an idea about the types of policies that were approvable under HB 191. He said one of the

borough's policies was on the website. "It's no longer there." Lohman said those policies disappeared without any clear explanation from the state as to why they were no longer approvable.

He said the issue of federal lands and waters involves a wrinkle the regulations put into the process that deals with the designation of lands. In order to apply a state policy and standard and write policies that flow from those standards a coastal district needs to have designated an area as a subsistence or special habitat area, Lohman said, but OCRM has said that coastal districts cannot designate federal lands or waters. He said this means the borough cannot designate the NPRA, ANWR and the OCS as subsistence or special habitat area. Lohman said it is problematic for the borough to write policies on the remaining lands, after Prudhoe Bay and Kuparuk are removed because no one hunts there anymore.

Lohman said it has been and is the law that the borough cannot write a prescriptive policy that specifically deals with the OCS. He said the borough can, however, deal with activities on the OCS. Lohman said bowhead whaling is the heart of the Inupiat culture. "It is unclear to me today exactly what kind of policy we could write." Lohman said despite the state's claim that the regulations are clear, the districts do not believe there is clarity.

He said the districts have summaries of the teleconferences with the division that summarize guidance memos that summarize decision trees that summarize the lengthy list of questions raised at the October 2004 meeting: "You have guidance of implementation trees. You are way out there in terms of common usage of English language."

Lohman said the coastal districts need more time to deal with the regulations. He said it will take some districts four-to-six months to have any plan in place. "If we don't have a public draft out by next month the North Slope Borough is not going to meet its deadline."

He explained that the borough likes to sit and discuss issues with its villages. "We don't want a consultant drafting something and putting it in front of our planning commission because we need to and then getting it on the next assembly agenda and submitting it." Lohman said this is not the way the borough likes to do business. "That's the way we are going to have to do business because we don't have time to do the normal internal process that would lead to approval of something as important as a coastal management program." Lohman noted that some of the districts have many more than eight villages.

"Particularly in the areas where there are translation issues ... these regulations don't work." He said it is difficult to understand concepts such as "flow from" and "adequately address." Lohman said: "The idea that HB 191 was passed to provide clarity and simplicity is ludicrous at this point. It is no slam on DNR for trying their best on what they have been instructed to do from folks higher up."

Lohman said the three consultants from the Campbell Group were under significant time constraints to complete their work, and it didn't allow for the give and take with the consultants that the districts would have liked. He said in teleconference with the Campbell Group districts were told there wasn't enough time to address several of their issues. "I can't count the number of times we heard 'cannot address that, no time.'" Lohman said that allowed this lack of clarity to persist.

He said if there is clarity today, and he doesn't believe there is, the districts have four months to complete their plans by the July 1, 2005 deadline. "I'm not sure the North Slope Borough can meet its deadline, particularly if you have the kind of consultation we hope to have with our communities and the oil industry." Lohman said the oil industry is the economic engine for the state and the borough: "We love the oil industry. We just want to make sure they do their job in a way that allows the subsistence culture of the Inupiat people to be preserved." He said the borough hopes to consult with the industry as it crafts

its program, which is not a quick process. "They will have strong opinions when they see our draft plan as we try to craft policies in the remaining little areas where we can on issues as important as subsistence and activities on the OCS."

Lohman said he found it interesting that Governor Murkowski said in his letter to OCRM that his administration believes Alaskans should make these decisions for Alaskans. "It's curious to us that that kind of philosophy stops in Juneau and doesn't move out to the districts which is the hallmark of the coastal program."

He said the coastal program can be a partnership between the local districts, the state and the federal government. From the moment the administration first introduced HB 191 there was an attempt to try to get back something that appeared to be lost, he said. The NSB believed, based on testimony on HB 191, that it would be able to at least do the things that were most important to it, subsistence and OCS activities. "With this added hurdle of having to designate an area, which we can't do on federal lands and waters, in order to apply the state's subsistence standard and write policies on subsistence, we're not sure what's left."

Seaton asked whether the borough knows whether it can write enforceable policies dealing with subsistence and habitat.

"I am unsure about being able to do that on federal lands and waters," Lohman said.

Seaton asked if the borough has adopted its current enforceable policies in ordinance. He said if it had the borough could continue to assert those through Title 29 powers.

Lohman said it is arguable whether the borough could assert those on federal lands or waters. He said the borough just received the final EIS on the northeast corner of the NPRA. On the question of borough authority there the EIS reads: "The North Slope Borough's authority to exercise its land management regulations on federal lands within the NPRA is subject to significant legal constraints." Lohman said the borough is arguing that point with the director of the Bureau of Land Management (BLM) and the state. "But there are folks out there who believe we cannot extend our Title 29 land management regulations to federal lands and waters."

Seaton asked if the ACMP allows the borough to comment and put enforceable policies in place for federal lands and waters.

Lohman said yes. He said the borough's program is by no means perfect, but the vagaries of the program have turned out to be one of its strengths. Lohman said it brings the industry to the table very early in the process. They want to know how the borough is going to interpret proposals during its review, he said, noting it has been a great tool for working out problems early in the development process with the oil industry. Lohman said testimony during the HB 191 debate that the NSB program has been used as a delay to the oil industry is not true. He said there was a problem with third parties using the NSB program to delay North Slope projects but the Legislature resolved that issue in 2002, when the ability to appeal individual projects was limited to the CPC. "I don't think you will find anyone ... that will say the NBS coastal management program is an impediment to the oil industry on the North Slope." Lohman said the borough needs the oil and gas industry and is not in the business of being an impediment to its activities.

Rep. Berta Gardner asked how much time would be adequate for the borough to meet its obligations under the law.

Lohman said it makes no sense for the coastal districts to spend the little money they have to craft their programs until there is finality and clarity in the regulations. He said the NBS still needs clarity on the issue of subsistence, federal lands and the OCS. Lohman said the borough would like to begin its approval process after there is clarity: "Absent that, if we are forced to go ahead and do our program, I would love to see a year delay. But I would also love to see a delay tied to the OCRM approval." Lohman suggested a year from the date the OCRM issues its approval for the state program.

He said it does no one any good to threaten to get rid of the ACMP, as the governor did in his letter to OCRM. "This program has been a benefit to the state and if there is a problem with OCRM we can work that out." Lohman said the districts should be at the table when the state is talking to OCRM.

Peter Freer, planning supervisor for the City and Borough of Juneau (CBJ), said he doesn't work directly in the borough's coastal program but supervises staff that do. He said his comments would be more from those of a manager.

Freer said Juneau adopted its coastal management program in 1987, after several years of development. He said CBJ took the program seriously and wanted to make sure that it accurately reflected the views of local residents with regard to areas that should be protected or developed. Freer said the borough's coastal program identified special waterfront districts that received preapproval for development from state and federal agencies. He said these districts include the area where the Auke Bay ferry terminal is located, the downtown cruise ship wharfs, Douglas and other areas in the borough. "That was an important feature of our plan."

He said the CBJ also adopted the Juneau wetlands management program into its coastal plan. Freer said this was an expensive, multi-year effort to identify and map valuable wetlands within the borough. He said it is the borough's understanding that its wetlands management program is no longer eligible to be part of its coastal management program because of the way the definitions and other features of the program have been promulgated in the statute and the revised regulations.

Freer said the borough's is primarily concerned with the constriction of its program and the kinds of enforceable policies it would be allowed to develop in its new plan. "As we view the regulations there is a pretty severe curtailment on the kinds of enforceable policies that would go into a plan and these are really the heart and soul of a plan." He said everyone looks at the enforceable policies when making permit decisions.

He said the CBJ's current plan has about 80 enforceable policies in a variety of areas from habitat to coastal development to transportation, energy and so on. Freer said most important are the borough's policies on habitat and coastal development, which he believes would be severely cut back.

Freer said CBJ has found its coastal program useful. He said it is a local control issue that gives the CBJ and other coastal districts a seat at the table. "It seems to us that it is really consistent with the constitutional mandate for maximum local self government." Freer said the borough also values the coordinating element of the program, which the borough adopted from the statewide program. He said this has allowed the CBJ to do a lot of coordination with outside agencies on permitting decisions. "As enforceable policies are curtailed that ability is also curtailed."

He said the coastal districts don't want to do this twice. "Right now we are hurrying to prepare a plan under a very short timeline, very different from the first time we prepared our coastal management program." Freer said the CBJ is under a short timeframe to prepare the plan and the public participation program is quite circumscribed compared to what it was previously. He concurred with Lohman that a

deadline one year after OCRM approval of the state plan revisions would be a sensible date at which to require submission of coastal district plans. "It would mean we would only do this once and we would know what the rules are when we did it, as opposed to having to perhaps do this twice."

Freer said since Juneau's plan was put in place in 1987, the borough has become one of the premier cruise ship destinations in the world, is the home of the largest operating silver mine in North America and the Kensington mine north of Juneau has received all of its local permits and has been found consistent under Juneau's coastal management program. He said Juneau is home to a large commercial fishing fleet and has an expanding seafood processing center. "We think [our coastal plan] has done a good job of allowing us to accommodate development while promoting a local voice in areas that we also think are important to preserve."

Seaton said lawmakers are concerned about disruption of the consistency review process. He asked if the CBJ has adopted its enforceable policies into ordinance and if so, if it is planning to keep those in place.

Freer said yes, but said he suspects at some point the CBJ will revisit this to determine what it wants to do with these local provisions.

Seaton said the CBJ currently enforces its policies through a consistency review. He asked if a developer would have to come and talk to the borough separately if this consistency review process is no longer in the borough's coastal plan.

Freer said that is correct.

Kerttula commented that the rewriting of a coastal program is a difficult task. She asked if OCRM has been changing its guidance directly to the districts or whether the January 28 letter was the OCRM's first guidance to the state. "I just want to understand whether OCRM has been changing its information to the districts."

Freer said it has been his observation that the time the borough has to prepare its plan has collapsed as the DNR's guidance has evolved and changed. He said he hasn't interacted directly with OCRM, but it is his impression that the January 28 letter was simply its estimation of the state of the DNR's submittal, rather than a change in guidance on its part.

Glen Alsworth, mayor of the Lake and Peninsula Borough (L&P), provided an example of an enforceable policy in the borough's coastal district plan that will be affected by the state's revised program. He read the borough's policy on the disposal of dredged spoil and how that policy would be changed under the new program. Alsworth noted that the revised policy would not have the power, detail or exact identification as the old policy. He said there would be no local control over offshore disposal of dredged material. Alsworth said the borough consists of 18 communities that are either located on the shoreline of one of the five largest freshwater lakes in Alaska or on coast. "So this is a very critical issue we have to deal with."

He gave another example of the borough's current policy on navigation and how it would be revised. Alsworth said the borough's planning commission has used this policy on several occasions in the last five years to enforce safety issues, recently for projects in Lake Clark and the Ugashik River. He said in both those cases this policy allowed the borough to require the projects be modified and in one case required the applicant to remove the structure because it was a navigational hazard. "If this policy is lost the borough will have to depend on other state and federal agencies to police local safety issues."

Alsworth said state and federal agencies have limited resources and, with less knowledge of local navigation hazards, would be at a loss to respond and react in a timely manner to address these situations.

Alsworth said the ACMP has been very helpful to the L&P Borough. He said the borough recently got a grant from the Coastal Impact Assistance Program (CIAP) that was instrumental in helping the borough complete community profile mapping of its 18 communities. Alsworth said the ACMP is most important to the borough because it allows local input on important development matters. He said a critical concern for the borough under the state's revised regulations is that Lake Iliamna would not longer be considered a coastal zone, because it is not saltwater affected. Alsworth noted that the L&P Borough has the five largest fresh water lakes in Alaska within its boundaries. "The coastline whether it is salt or freshwater is very vital to our citizens' subsistence life style." He said the residents of the borough depend on the ocean and fresh water lakes for a large portion of their food.

A lot of work went into the borough's existing coastal plan, Alsworth said. "We spent five years writing our last coastal management plan and we held public meetings in all 18 of our communities to get buy in by the local citizens."

He said the borough believes the removal of Lake Iliamna from the coastal management program would be comparable to removing the Great Lakes from lower-48 programs. Alsworth said with the removal of all five fresh water lakes from the revised coastal zone the borough would have no say on development on their shorelines.

Alsworth said the borough has only been in place since 1989, and its Title 29 powers are still in the development stage. "This current coastal management plan has provided a vital tool for managing our coastal resources." He said many of the coastal management policies are interwoven throughout the borough's ordinances. "It would be pretty challenging to sort them out and effectively change them."

He said the borough is affected by activities on surrounding federal lands within its boundaries but there is doubt whether the enforceable policies would apply to those under the revised program. He said the existing policies have allowed the borough to comment on federal projects. Alsworth said the ACMP mandates that the federal agencies consult with the local coastal district about projects on federal lands: "This requirement gets us together. It's critical." He said he agrees that one year after OCRM approval would be more desirable timeline.

Dan Bevington, former coastal district coordinator for the Kenai Peninsula Borough (KPB), said the borough has long supported the state coastal program. He said the borough has been very proactive in terms of sustainable development and has been very concerned about bringing economic activities to its area.

Bevington said one of the borough's significant enforceable policies that is affected by the state's revised plan and regulations is its mitigation policy. He said it is his view that state and federal authorities generally tend to compartmentalize their management authority into a very limited scope. Bevington said the way the KPB has used that policy to make sure a more comprehensive view and perspective was accommodated in resource management decisions. He said that policy is eliminated under the state's revised program. "In my view that is unfortunate and really reflects the management intent of the state's changes, that they really want to limit the districts from having that proactive involvement."

He said the KPB has had an active program since 1991, and implemented the program to insure the local prospective was accommodated in state management decisions. Bevington said in 2002, a contractor was removing rock from a very unique part of the coastline. He said fishermen used the rocks for anchors and were concerned about that and the impact on fish habitat. Bevington said sensitive areas of the coastline

were changing due to the heavy equipment on the beach. He said DNR was managing this project according to its intent but did not have the comprehensive view of the project's impacts. "Utilizing the ACMP, the Kenai Peninsula Borough was able to bring in that comprehensive view and really have an effective result which supported the ... the really explicitly stated local concerns."

Bevington said contrary to DNR's assertions, the revision process has been confusing and disheartening. "Basically, it has been 'you do it our way or get out.'" He said the districts have always been faithful to the state in participating in this process. "Yet, consistently the districts have been painted as trying to hold up the bus."

He said the timeline is not realistic. Bevington said the best solution would be to have a deadline that extends beyond OCRM approval. "Then we know exactly what the process is going to entail."

John Oscar, program director for the Cenaliulriit Coastal Resources Service Area, said his board services 38 villages in the Yukon-Kuskokwim delta with about 21,000 residents. He said Cenaliulriit has one of the largest numbers heavy users of renewable resources than any other part of the United States. Oscar said subsistence is an essential component of the Yup'ik people: "Subsistence is history, culture, tradition and it is deeply rooted to daily family living. It prevents dire poverty from hunger in the remotest places of Alaska and sustains life."

Oscar said the people of the Yukon-Kuskokwim Coastal Resources Management Area (CRSA) fervently believe in the wise use and management of their resources for future sustainability. He said it is uncertain whether this will occur under the current requirements. He said the rewritten regulations leave an unpredictable future for the people in the process, or may result in the death of the public process. "The ability of folks to comment or apply policies on mining under HB 191 has been taken away and is no longer our concern."

He said Cenaliulriit has one first class city (St. Mary's), 25-second class cities and 12 tribally run communities. Oscar said these communities utilize the policies that address resource protection, with subsistence at a primary part of the decision-making process: "They do not have ordinances for land, air and water quality standards or policies relating to resource protection. So this program is the only avenue they have to address those issues."

Oscar said the main problem Cenaliulriit is faced with is the weakened, or in some cases eliminated, ability for the CRSA to successfully share comments on projects. He said the CRSA cannot address issues relating to land, air and water quality standards and cannot share its concerns on habitat standards. "It is like saying you may comment on this project but you cannot say anything about the impacts it will have to your resources and its relationship to land, air, water quality and habitat areas."

He said another problem facing the CRSA is the uncertainty of the new regulations that have been evolving since passage of HB 191, with very little influence or input from the districts. "I have to explain these regulations to my 39 villages in Yup'ik Eskimo, or in other words a third language that meshes English and Yup'ik." Oscar said this will require time and funds to meet with the leadership in the communities and must occur between now and April, when everyone gets busy with renewable resource activities. "I have no solid base to share with them as those regulations are not written in stone."

Oscar said in most cases scientific evidence in the western world has more bearing than traditional knowledge. "We must provide the evidence of usage and documentation to prove those resources would

be affected by development." He said the CRSA is concerned about decisions that will be based on bias behind desks that are hundreds of miles away in Alaska.

He said the CRSA is working with villages to improve solid waste sites. It is also in the process of helping villages develop policies on infrastructure development and planning: "With the current regulations we are not able to provide policies that would otherwise protect them when a project is outside their immediate vicinity or town site. There is no protection."

Oscar discussed the July 1, 2005 deadline to complete the CRSA's revised coastal plan. "In my district we are guaranteed to fail because of the vastness of the region and its people." He questioned how the resources his district depends on can be protected when decisions about development are being made in Anchorage and Juneau. "If the Alaska Coastal Management Program is removed from the state, what protection do we have from decisions that would be made in D.C.?"

Thede Tobish, senior environmental planner and coastal district coordinator for the Municipality of Anchorage, said he has worked as a CZM planner since the mid-1980s and has been in his current position since 1990.

Tobish said he supports much of what has been said. He said Anchorage was optimistic when HB 191 passed because its plan was written and adopted in 1980, and it needed a lot of work and more clarity. He said the municipality has continued to work with DNR on the revision process.

He said the best example of an enforceable policy in the municipality's current plan that will be damaged, lost or compromised by the new regulations is in the municipality's wetlands management plan. Tobish said the municipality has enforceable policies or management strategies for 200 individual wetlands areas. "We have been told off and on over the past year that we can or cannot include these policies." Tobish said it is clear to him now that the regulations preclude the incorporation of these policies in the municipality's plan revision. "While those policies and our coastal plan are adopted in our land use code, the effective enforcement and application of these policies has always been through the consistency process that the state carries out."

Tobish said the municipality's wetlands enforceable policies evolved through the consistency review process with the Corps. of Engineers and led Anchorage to obtain general permits from the Corps that allowed it to issue wetlands permits: "At this point it is unclear to us, and we are scrambling to try to clarify, what the loss of these policies and their application through the consistency review process will mean to Anchorage. We are pursuing that with the Corps. of Engineers and hope to resolve it."

He said Anchorage is willing and ready to use its Title 29 authorities to implement elements of its existing and new plan. "But the municipality is unclear whether we can sort that out in a systematic way in a six-month timeframe or whatever time is left with the current timeline."

Tobish said the municipality wants to get this correct once, but doubts it can under the current timeframe: "The nuances in the play between Title 29 and enforceable policies and the state's new program are pretty widespread and complex. To try to understand these with what is essentially a moving target with the state's regulations is taking more time and effort than we anticipated." He said the municipality has three major plans under the approval process in various stages. Tobish said the effort required to do the simple revision as suggested by the Division of Project Management and Permitting is vast.

He said the municipality is on record requesting more time for this process. Tobish said Anchorage would like the deadline to be triggered by the final federal adoption of the state's new regulations. He suggested a year after that approval.

Seaton said if the municipality has adopted its enforceable policies in ordinance it would still be able to enforce him. "But that would mean that a developer would have to go through a separate approval process with the municipality under Title 29, if there was no longer a consistency review." Is that where the complexity comes? Seaton asked.

Tobish said yes.

Karol Kolehmainen, program director of the Aleutians West Coastal Resource Service Area (AWCRSA), said the AWCRSA will distribute its amended plan today and will begin the 30-day review the first of March. Just before the revision, the AWCRSA had just finished a substantial revision to its coastal program, as part of its 10-year review cycle. "That's part of the reason we could attempt to complete this task."

Kolehmainen said many of the policies in the AWCRSA's plan have been reworded, changed to administrative policies or deleted as part of the first revision. "Of the 41 policies remaining from the previous revision, 22 additional policies had to be deleted due to the current program changes, leaving us a mere 19 under our current amendment." She said the 19 that remained required documentation and rewording before submission to the October ACMP workshop. At that meeting, Kolehmainen said, AWCRSA found that many of the policies they thought were complete were not.

She said AWCRSA is an active political subdivision of the state. Kolehmainen said last year the AWCRSA recorded over 118 coordination and assistance events. Those included regular board meetings, providing copies of documents and information to state agencies and potential applicants, participating in ACMP teleconferences, and updating and maintaining a state-of-the-art web page. She said a major project this year will be participation with the Aleutian Pribilof's Island Association and the Dept. of Commerce and Community Development to complete a mapping project for the communities of Atka and Nikolski. Kolehmainen said state agencies and applicants will use those maps to reduce costs when designing and planning projects in these remote communities. "I think in light of the governor's letter that the program would go away, it is particularly significant to recognize that the CRSA is a viable part of the state network."

Kolehmainen said the main problem the AWCRSA has experienced is inconsistency. She said the AWCRSA had a different interpretation of where it was headed before the October workshop than it did after conclusion of the workshop and in the months that have followed. "We feel the state has created an impossible threshold for local coastal districts to raise a matter of local concern and write local policies."

She said in the division's December response to questions posed at the October workshop, DNR stated: "That threshold for determining whether a matter is regulated or authorized by state or federal law and therefore triggering the local concern test is whether an agency has the authority to regulate a matter, regardless of whether the agency has developed regulations on that matter." Kolehmainen said it became apparent there is really no area the state could not potentially regulate, leaving no area for local coastal district policies. "This was a contradiction to our previous guidance and much different that we were led to believe during HB 191 testimony."

Kolehmainen said there are other disconnects in determining when state or federal law does not adequately address a resource. She said seven months ago it was understood that districts could develop policies where it could be demonstrated that state authority either did not address an area, there was a gap, or it could be shown that laws were not adequate to meet local needs. Kolehmainen read DNR's recent response to this question.

"The criterion for determining adequacy is whether the matter is already addressed by state or federal law ... even if there is no regulation on a given matter, that resource agency has the authority to regulate that matter makes the matter one that is 'regulated or authorized by state or federal law.' The same analysis is true with respect to whether the matter is 'adequately addressed.' As discussed in a later response, the district may not write a policy more stringent than the state or federal standard, arguing that the matter has been 'inadequately addressed.'"

She said the AWCRSA believes the previous argument has been expanded to eliminate local discretion.

Kolehmainen said it is important that coastal policies apply to effects and pertain to the resources, not just a designated area. "Designation is problematic when you are in an area and district the size of ours without Title 29 authority."

She said the AWCRSA also has grave concerns about the loss of its due deference in the decision-making process. In the case of subsistence policies, Kolehmainen said districts have been told that the mere existence of designated areas will guarantee involvement in the decision-making process and assure the district a seat at the table. "If there are no written policies the districts will need to craft development rules ad hoc and then proceed to try to convince the state through presenting compelling evidence that something should be done a particular way." Kolehmainen said this would result in uncertainty for developers.

Kolehmainen said the AWCRSA has struggled with policy development and has only 19 remaining policies: "The 19 that remain do so in a large part due to our reluctance to continue to whittle away without receiving a formal written response from the state. We harbor serious doubts that the remaining policies will survive the upcoming state review."

She said this will result in little notice to citizens in the AWCRSA of projects occurring in their area, the inability to provide a coordinated response and no due deference to any response provided. "We will lose our status as local experts and the state will lose its ability to call upon local expertise to understand local desires." Kolehmainen said beneficial projects, such as community mapping, might not proceed.

"We feel the revision of the ACMP requires a thorough and accurate evaluation to completely understand the significance of the changes and to implement the new requirements." Kolehmainen said this process must occur in partnership with all stakeholders to retain the important elements of the coastal program. "In the seven months that we have been revising our local plan we have received mixed signals to the point that we were uncertain how to proceed, but we made the decision to proceed anyway."

Kolehmainen said the AWCRSA has acted in good faith and is sending its plan out today. "However, we are reluctant to continue to invest our time and resources in an effort that may not result in a viable program." She said the changes most recently described by DNR would greatly affect the AWCRSA's ability to include meaningful local policies and comment on state and federal permit reviews. "The AWCRSA wants its seat at the table and to continue to be of benefit to the citizens of the region. It makes sense to take the time necessary to get it right."

Seaton asked if the cities within the AWCRSA have adopted the enforceable policies in their city codes so they will remain enforceable.

Kolehmainen said the City of Unalaska has a city code but it has relied upon the coastal management program to address those areas. She could not say whether the city would adopt the enforceable policies into its code. Kolehmainen noted that the City of Unalaska is a very small piece of the entire Aleutians West CRSA, which extends approximately 1,000 miles.

Seaton asked Jeffress and Bates to come back to the witness table. He said the coastal districts have a different interpretation on how to proceed in the rewrite of their plans and are asking for additional time.

Jeffress said he heard the districts request additional time. He noted that the department has not had clear guidance from the OCRM to pass onto the districts on many of the issues raised in testimony, with subsistence the biggest issue. Jeffress said subsistence is a statewide issue, not just a coastal issue. He said there is a federal subsistence board and regional boards: "Subsistence is a huge issue that the Legislature has tackled over the years. We are not going to resolve subsistence through ACMP."

He said the state couldn't get OCRM to recognize that there are other federal and state agencies that have a hand and play a major role in the allocation of subsistence resources both inside and outside the coastal areas. "This is one we have requested guidance on and ... they have given us some responses that could allow consistency reviews that would extend all the way interior to the Canadian border on projects that could have a federal activity or some type of authorization in Eagle, Alaska." Jeffress said he doesn't believe that was the original intent of the coastal management program or Alaska's understanding of the voluntary program it signed up for.

Jeffress said this is an area that remains extremely vague to the department. He again expressed frustration that OCRM will not acknowledge there are other federal agencies addressing the subsistence issue.

He said aside from subsistence and thresholds of policies regulated by DEC and EPA, there are a number of other areas where the division has provided guidance to the districts on enforceable policies and their plans. "When this becomes clear to us through additional guidance or a policy we can agree to with OCRM, they can address these others issues of concern."

Seaton said, "The frustration the state is feeling about writing its plan and having to rewrite the regulations [for OCRM approval] is the same frustration that the districts are feeling with their direction from the state." He said the districts don't want to have to rewrite their plans every time there is a new interpretation.

Rep. Carl Gatto referred to the governor's February 23, 2005 letter. He pointed to the governor's threat to let the ACMP expire by operation of law in summer 2005 if the OCRM does not immediately abandon the new requirements in the January 28 letter. "It that what we are on track to do?" Gatto asked what the consequences would be of this action.

Jeffress said the state has always made its July 1, 2005 timeline known in its dealings with the OCRM. He said a portion of the state's old standards, in 6 ACC 80, was extended until the federal approval of the state's program. "Without those new standards being approved, 11 AAC 112, we don't have federally approved standards that can be implemented in federal consistency." Jeffress noted that 85 to 90 percent of the consistency reviews concern a federal activity or authorization. "This is where we have a problem." He said a major portion of the state's program, the consistency reviews, would sunset.