



FLORIDA NATIONAL COMMISSION, 2005-2006/2

11996 SENATE RESOURCES

**SB**

**102**

Department of Natural Resources – Testimony  
Senate Bill 102  
Resources Committee  
Wednesday, April 6, 2005

Good afternoon Mr. Chair and members of the committee  
I am Randy Bates, Deputy Director of the Office of Project Management and Permitting  
(OPMP), which is within the Department of Natural Resources  
OPMP is the lead agency for the Alaska Coastal Management Program

I appreciate the request to testify on this bill  
I'd like to provide a brief overview of the ACMP and its current approval status with the  
federal oversight agency, particularly in relation to the bill before you

#### OVERVIEW OF THE ACMP

The ACMP is a voluntary State program

The value of the voluntary program, and the primary reason the State chose to participate,  
is that it provides the State with a formal role in the review and approval of federal  
activities and federally permitted activities that may affect coastal uses or resources  
within the State's coastal zone

The State began developing the ACMP in the mid- to late-70's, and deliberately chose a  
program structure that involved a coordinated project review process at the state  
level, comprised of state and local standards

The ACMP has been in place since 1979

The State component of the program includes the enabling statutes and implementing  
regulations that address the consistency review process, the state standards, and the  
guidance for district plan development

The local component includes an opportunity for a coastal district to develop a district  
coastal management plan that addresses specific and local coastal management issues

The local standards are referred to as district enforceable policies, which are included  
within a district plan; these district enforceable policies add specificity to the  
management of local coastal uses and resources

There are currently 35 coastal districts, 33 of which have approved coastal district plans  
The majority of the plans were developed in the 80's - the average age of a district plan is  
14 years

At current levels, the State receives approximately \$2.6 million dollars annually from the  
Office of Ocean and Coastal Resource Management (OCRM), the federal granting  
and approving agency

These monies, in addition to approximately \$2.0 million dollars of State and matching  
monies, are used to implement the ACMP

The State provides the local districts with approximately \$750.0 thousand dollars  
annually to implement their coastal plans

The State also provides additional funds to districts that are working on plan revisions

The ACMP began experiencing significant problems in the early 1990's

Recognizing the need to evaluate the program, an ACMP Steering Committee conducted a formal "assessment" of the ACMP from 1994-1996

The assessment generated various summary reports and resolutions, and identified many needed changes to the ACMP

Progress on the changes recommended by the ACMP Steering Committee and Coastal Policy Council (CPC), the ACMP's governing body at the time, were slow

Consequently, a bill was introduced in 1998 to repeal the Alaska coastal management program

As an alternative to repealing the program, in 2002 the Legislature passed SB 308, which required a district to amend their coastal plan if it incorporated by reference any statute or regulation adopted by a state agency – this particular issue was identified in the Assessment as a significant problem with a reasonably strategic fix

if a district ignored the mandate, the CPC was to strike those policies from the district's plan

This law, mandating coastal plan revisions, was never implemented; it is important to note, however, that HB 191 was introduced in March 2003, which shelved the planning efforts for compliance with SB 308

By 2003, it was obvious that over the last 20 years the ACMP had become a program that was regulatorily redundant with current state and federal laws, that the program was complex in its implementation, and that state and local enforceable policies were vague and subject to drastically inconsistent application on a case-by-case basis

In addition, the coastal management program was used by many coastal districts as a surrogate for implementing what were properly municipal planning functions through Title 29 of the Alaska Statutes

In 2003, HB 191 was introduced to reform and streamline the ACMP  
HB 191 included specific deadlines for achieving ACMP reform

\*\*\* walk through timeline \*\*\*

#### CURRENT STATUS OF THE ACMP

##### District Plan Submission Deadline – SB 102

- We held a meeting with the coastal district representatives last week that was, in my opinion, very productive
- At the meeting, coastal districts confirmed that they would be able to meet the July 1, 2005 plan submission deadline
- DNR has worked with the district staff, consultants, and municipal officials to make sure they were aware of and understood the deadline and the need to be focused and strategic in their efforts to revise their coastal plans to comply with HB 191
- To assist those districts in plan revisions, we made available \$900.0 thousand dollars
- We also provided opportunities for sharing information and prepared various materials for them to succeed in developing and submitting their plan revisions by the deadline; These materials include a dedicated web site for downloading plan revision guidance, written responses to questions, an annotated bibliography,

DNR Testimony – Senate Resources  
April 6, 2005

sample enforceable policies, timelines for plan revisions and completions, model chapters for districts to cut, paste, and tailor to their district, and other such products

- The July 1, 2005 submission deadline gives districts "priority processing" under the regulations such that a revised plan can be reviewed and approved by DNR and OCRM in advance of the sunset deadline in 2006
- A district that fails to meet the submission deadline is not excluded from the ACMP – they can continue to work on plan revisions under the more general regulations at 11 AAC 114
- In addition, once a district has a revised plan in place, they can continue to amend and embellish their policies as they see fit – this is not a one time only planning process
- At the meeting last week, and in the Senate C&RA Committee hearing on SB 102, we did hear that the coastal districts would like more time to evaluate changes and provide more public education and involvement on the plan revisions, but would be able to meet the established deadline
- The CS for SB 102 will result in a fiscal impact – the result of declining and insufficient federal monies needed to keep critical staff on board for the coastal district plan reviews
- With due respect to the sponsor, his initiative, and the coastal districts, we believe the districts can in fact meet the deadline for plan submittals and for all the above reasons
- It is also important for our discussions with OCRM to keep deadlines in place

#### OCRM Approval

- All deadlines are irrelevant if we do not secure federal approval of the amended ACMP
- We have submitted our ACMP program document to OCRM for review and approval
- Our respective agencies have struggled to reconcile some basic philosophical differences regarding the degree to which the federal agency can mandate what Alaska's coastal program should manage and how that management should occur
- We are working with OCRM on the additional information they need in order to offer us preliminary approval
- OCRM's January 28 letter was a 49-page document setting out the changes they wanted as a condition of federal approval
- The Governor responded on February 23, 2005 that the program, as submitted, is approvable with minor, technical changes, and that Alaska would not further change our program
- We met in person with OCRM on March 9, 2005 to reinforce the Governor's message
- On March 25, OCRM responded with four issues that need to be resolved which supports Alaska's position that our program as prescribed by HB 191, and passed by the Legislature in 2003, is approvable

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April 6, 2005

- We are working on a response to OCRM addressing the remaining four approvability issues
- We are expecting that response to go out today or tomorrow, and will be including a firm deadline for OCRM's response - April 14 – that should be the definitive answer on the approval of the amended ACP

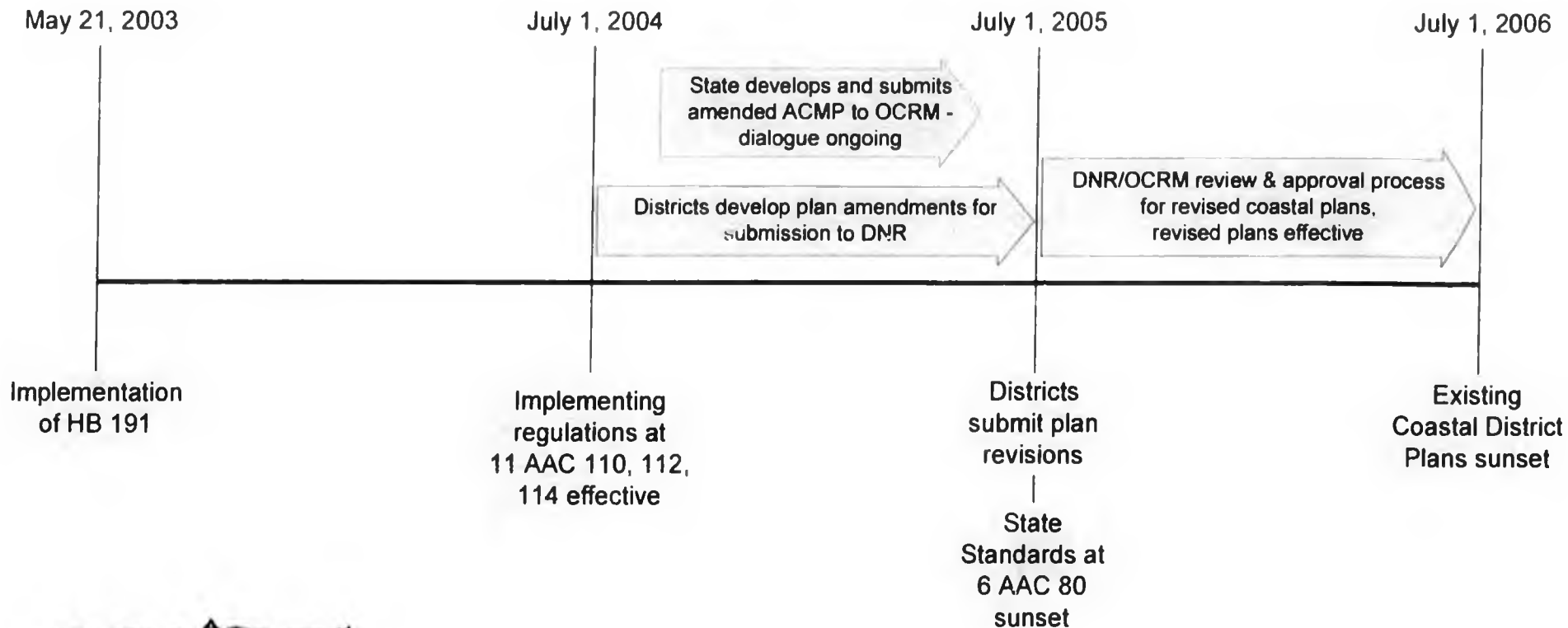
This overview brings you up to date, and provides background for further testimony you may hear

I am available to answer any questions

# Alaska Coastal Management Program

Department of Natural Resources - Office of Project Management and Permitting

Senate Resources Committee Hearing - April 6, 2005



ALASKA COASTAL MANAGEMENT PROGRAM

## SENATE RESOURCES

April 6, 2005

### SB 102 Packet

- Sponsor Statement: 1 page
- Fact Sheet: 1 page
- SB 102: 2 pages
- #1 FN: DNR 3/16/05: 1 page
- #2 FN: DCCED 3/8/05: 1 page
- #3 FN: ADF&G: 3/8/05: 1 page
- #4FN: ADEC: 3/14/05: 1 page
- Background Information
  - March 31, 2005 Letter to Coastal Districts: 2 pages
  - March 3, 2005 Letter to Governor with attachments: 4 pages
  - February 23, 2005 Letter to NOAA: 5 pages
- Letters of Support: 12 groups/individuals – 23 pages
- Miscellaneous information from sponsor: 9 pages

NOTE: Senator Wagoner has limited testimony on this bill.

Testimony is from the sponsor; Randy Bates, CZMP Project Manager;  
and three representatives of Coastal Districts:

Tom Lohman, North Slope Borough  
Gabrielle LaRoche, Aleutians West (contractor)  
Marv Smith, Lake and Penn Borough

**SESSION ADDRESS:**  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4925  
Fax: (907) 465-3517  
Toll Free: 1-800-821-4925

# **Senator Gary Stevens**

## **Alaska State Legislature**

**INTERIM ADDRESS:**  
112 Mill Bay Road  
Kodiak, Alaska 99615  
(907) 486-4925  
Fax: (907) 486-5264



### **SPONSOR STATEMENT**

#### **CS for SB 102, COASTAL MANAGEMENT PROGRAMS (Revised March 16 2005)**

The Alaska Coastal Management Program (ACMP) is a partnership between federal, state, and local governments providing state and local governments a voice in federal decision making. Alaska is one of 34 coastal and Great Lakes states and territories that utilize this program, a program that annually channels millions of dollars in federal grant money to the states. The ACMP has helped guide coastal development in the state since it was enacted in 1977.

Without the program the state and local governments lose their ability to control development on federal land and the Outer Continental Shelf. In addition the state will lose millions in federal coastal management planning money.

In 2003, HB 191 substantially revised the state coastal program. The federal Office of Ocean and Coastal Resource Management (OCRM) must approve the revised program. OCRM has determined that additional revisions are necessary before they can grant approval.

The 2003 legislation included state-imposed deadlines for revisions to local coastal programs. Coastal Districts are attempting to follow the statutory directive to revise their programs to meet the new requirements. However, OCRM has identified problems with the state's guidance to local districts regarding the scope and content of their program. The state will have to revise regulatory guidelines for the local districts before the new program can be approved by OCRM. In turn, the local districts will have to re-revise their programs to meet the new guidelines. It 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.

SB 102 bases the deadline for district coastal program revisions and annulment of the existing program on federal approval of the state's program. This extension will ensure an orderly and efficient transition to the new program.



## Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

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Sponsor: Senator Gary Stevens  
Current Version: SB 102  
Contact: Doug Letch, 465-4925

### Fact Sheet for: Senate Bill 102

**Short Title:** COASTAL MANAGEMENT PROGRAMS

**Summary:**

- Extends the deadline from July 1, 2005 to July 1, 2006 for coastal resource districts to submit revised district coastal management plans to the Department of Natural Resources for approval.

**Benefits:**

- Gives resource districts more time to submit revised coastal zone management plans while state and federal oversight agencies resolve outstanding issues.
- Gives Alaska's coastal districts a reasonable opportunity for meaningful participation in the development of their coastal management plan.

**Background:**

- In 2003 the Legislature passed House Bill 191, which streamlined the Alaska Coastal Management Program (ACMP). The ACMP was first enacted in 1977 to participate in the federal Coastal Zone Management Act of 1972. The federal program encourages states to adopt coastal programs by providing federal funds and the opportunity for federal consistency review, which allows the state to apply its authority to projects located on federal land where otherwise it would be preempted by federal law. HB 191 created a new coastal management program and required resource districts to submit a revised coastal management plan by July 1, 2005. This bill gives districts another year to comply.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: CSSB 102(CRA)  
(S) Publish Date: 3/18/05

Revision Date/Time (Note if correction) 3/16/05 3 20pm Dept. Affected: Natural Resources  
Title: Relating to District Coastal Management RDU: Resource Development  
Programs Component: Alaska Coastal Management  
Sponsor: Senators Gary Stevens, Olson Program:  
Requester: Senate C&RA Component No: 2680

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services		199.1	199.1			
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>199.1</b>	<b>199.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF		199.1	199.1			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>199.1</b>	<b>199.1</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB191 required districts to have plans submitted by 6/30/2005, with the ACMP review process to be complete by 6/30/2006. Implementation of CSSB102(CRA) extends the district deadline to one year after the State's revised program is approved by NOAA. This fiscal note assumes NOAA/CCRM approval by 6/2006, with the ACMP completion by 6/30/2008. Funding is available for existing staff through 6/30/2006, under the original plan. CSSB102(CRA) will require us to retain 2-3 positions for an additional two years, resulting in this fiscal note request.

Prepared by: Randy Bates, Deputy Director Phone: 269-8429  
Division: Office of Project Management & Permitting Date/Time: 3/16/2005  
Approved by: Tom Irwin, Commissioner Date: 3/16/2005  
Agency: Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSSB 102(CRA)  
 (S) Publish Date: 3/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept Affected: Commerce  
 Title: Coastal Management Programs RD: Comm Assist & Ec Dev (405)  
 Component: Community Advocacy  
 Sponsor: Stevens G. Olson  
 Requester: Senate Community & Regional Affairs Component No: 2703

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2005) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would extend the deadline for coastal districts to amend their plans. It would have no fiscal impact on the operations of the division.

Prepared by: Michael Black, Director Phone: 907 269 4580  
 Division: Community Advocacy Date/Time: 3/8/05 2:29 PM  
 Approved by: Edgar Blatchford, Commissioner Date: 3/8/2005  
 Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSSB 102(CRA)  
 (S) Publish Date: 3/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Coastal Management Programs RDU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor: Senator Gary Stevens Component No. \_\_\_\_\_  
 Requester: Senate Community & Regional Affairs

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson  
 Division: Legislative Liaison  
 Approved by: Acting Commissioner Wayne Regelin  
 Agency: Alaska Department of Fish & Game

Phone 465-6137  
 Date/Time 3/8/05 4:49 PM  
 Date 3/8/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
Bill Version: CSSB 102(CRA)  
(S) Publish Date: 3/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept Affected: Environmental Conservation  
Title: Act relating to coastal management programs; and providing for an effective date. RDU: Division of Water  
Sponsor: Senators Gary Stevens and Olson Component: Water Quality  
Requester: Senate Community & Regional Affairs Component No.: 2062

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill extends the deadline for submission of revised district coastal management plans by coastal resource districts pursuant to AS 46.40 as amended by ch. 24, SLA 2003. The department anticipates no fiscal impact.

Prepared by: Dan Easton  
Division: Water  
Approved by: Kurt Fredriksson  
Agency: Department of Environmental Conservation

Phone: 465-5135  
Date/Time: 3/9/05 10:55 AM  
Date: 3/14/2005

**FRANK H. MURKOWSKI**  
Governor



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**STATE OF ALASKA**  
**OFFICE OF THE GOVERNOR**  
**JUNEAU**

March 31, 2005

Coastal District Representatives

RE: Summary and Follow-up to March 30, 2005, ACMP Meeting

Dear Coastal District Representatives:

Thank you for attending the March 30, 2005, meeting held in Anchorage to discuss the Alaska Coastal Management Program (ACMP). That 23 of the 27 coastal districts working on district coastal management plan revisions were represented at the meeting was not only encouraging but demonstrated your commitment to this program.

The meeting provided us a valuable opportunity to receive your input regarding the amended ACMP. The professional and articulate comments were appreciated and are being carefully considered. The general issues of concern are summarized below. Please recognize that this summary is not intended to provide a transcript or exhaustive list of every comment made at the meeting, but rather to recap the general themes and issues that you requested the state consider as it continues its efforts to obtain federal approval of the amended ACMP, and to comprehensively review your revised plans.

Federal Approval of the Amended ACMP

Districts voiced universal support of the state's efforts to pursue federal approval of the amended ACMP. Districts confirmed that continued state participation in the federal coastal program allows the coastal districts "a seat at the table" in participating in federal decision making, keeps federal money flowing to the coastal districts, and brings coastal district expertise and local perspective on important local issues to the decision making process.

Coastal District Plan Revisions

Every district stated that it would be able to submit a revised plan to the Department of Natural Resources (DNR) by the July 1, 2005, deadline. However, districts universally supported receiving additional time to develop those plan revisions. Representatives recalled that their original plans required significant time and effort, often stretching to two or three years. Districts asserted that the additional time would be spent on enhancing public participation and education on their district plans and coastal program revisions, as well as on refining the

Coastal District Representatives  
March 31, 2005  
Page 2

content of the revised plans to make the plans more likely to meet D..R approval criteria. Some districts asserted that an additional six months would make a significant difference.

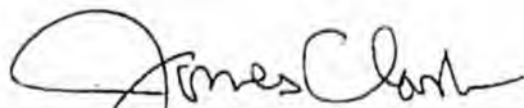
#### Funding


Districts expressed concern over the source and extent of future funding of the ACMP. Issues raised by districts included immediate funding for implementation absent federal approval of the amended ACMP and additional funding for districts to complete and further revise coastal plans submitted by July 1, 2005.

We thank you for providing your input and comments on these important issues, and want to assure you that we have taken them under advisement. We are presently considering how we will address the issues, and will keep you informed on our progress.

We also want to thank you for the opportunity to share the state's position regarding pursuit of a federally approved coastal management program. The state is committed to securing federal approval of an amended ACMP by the Office of Ocean and Coastal Resource Management (OCRM), but only if that program works for Alaska. We simply will not accept mandates by OCRM regarding how our state should manage its coastal uses and resources when that mandate exceeds federal authority. While we are confident that we recently secured OCRM's commitment to maintain their proper role in assisting us, rather than dictating to us, in developing our program, we will continue to defend our state's right to develop a coastal program in accordance with Alaska's priorities and needs. We share your desire for a federally approved coastal management program, and look forward to your support in convincing OCRM that the amended ACMP provides important and comprehensive management of Alaska's coastal uses and resources, and should be approved expeditiously.

Sincerely yours,

  
James Clark  
Chief of Staff  
Office of the Governor

  
Tom Irwin  
Commissioner  
Department of Natural Resources



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
Silver Spring, Maryland 20910

MAR 3 2005

The Honorable Frank H. Murkowski  
Governor of the State of Alaska  
Juneau, Alaska 99811-0001

Dear Governor Murkowski:

Thank you for your recent letter on Alaska's pending efforts to undertake a major restructuring of the Alaska Coastal Management Program (ACMP). The enclosed summary analysis provides responses to the specific issues raised in your correspondence.

We believe the continued viability of the federally approved ACMP is of great importance to Alaska and the Nation. The letter of January 28, 2005, to Alaska's Department of Natural Resources (DNR) Commissioner Irwin was intended neither as a denial nor a decision, but rather as a further, albeit important, informational step in the process.

Our input did not add criteria and was neither a departure from earlier positions nor an effort to impose new national policies. It was a summary of the few remaining issues to meeting the Coastal Zone Management Act (CZMA) requirements necessary for preliminary approval of a revised ACMP. It also included recommendations for resolving these issues as requested by DNR. Our input was intended as part of the continuing coordination and dialogue at the staff level – not as a federal mandate or prescription, and it was not an effort to shift the balance of authority.

As you may know, there are significant benefits from participating in the CZMA program. Since the 1970s, Alaska has been awarded approximately \$130 million in coastal management funds from the National Oceanic and Atmospheric Administration (NOAA). Additionally, NOAA has identified \$2.6 million for Alaska coastal programs in FY 2005. With CZMA federal consistency authority, Alaska has a powerful tool to review and influence federal actions affecting the coastal zone, including offshore aquaculture and energy development. In addition, the collaborative relationships Alaska enjoys with federal agencies are often forged because of federal consistency.

Further, in response to the U.S. Commission on Ocean Policy's final report, President Bush recently released the U.S. Ocean Action Plan, which states that we will continue to work with state, tribal, and local stakeholders to develop comprehensive strategies to protect the Nation's coastal resources and build upon the successes of existing programs, including the CZMA.

As I stated at the outset, the continued viability of the ACMP is of great importance and we urge you to work with us to take action to prevent its expiration this summer. I propose sending a delegation headed by NOAA's National Ocean Service Policy Director, Thomas Kitsos, Ph.D., to Juneau this month to review the few remaining issues and develop a mutually agreeable course of action that would allow for preliminary approval.

Sincerely,

Richard W. Spinrad, Ph.D.  
Assistant Administrator

Enclosure



Printed on Recycled Paper



The Honorable Frank H. Murkowski

Page 2

cc: The Honorable Ted Stevens, United States Senate  
The Honorable Lisa Murkowski, United States Senate  
The Honorable Don Young, United States Congressman  
The Honorable Ben Stevens, President, Alaska State Senate  
The Honorable John Harris, Speaker, Alaska State House of  
Representatives  
The Honorable Gary Stevens, Alaska State Senate  
The Honorable Paul Seaton, Alaska State House of Representatives  
The Honorable Carlos M. Gutierrez, U.S. Secretary of Commerce  
The Honorable Conrad C. Lautenbacher, Jr., VADM, U.S. Navy (Ret.),  
Under Secretary of Commerce for Oceans and Atmosphere  
Mark Rey, U.S. Under Secretary of Agriculture  
Henri Bisson, State Director, Bureau of Land Management  
Forrest Cole, Forest Supervisor, Tongass National Forest  
John Goll, Regional Director, Alaska, Minerals Management Service  
Eldon Hout, Director, Ocean and Coastal Research Management  
Tony MacDonald, Executive Director, Coastal States Organization  
John Katz, Director, State/Federal Relations, Office of the Governor  
Edgar Blatchford, Commissioner, Alaska Department of Commerce,  
Community, and Economic Development  
Kurt Fredriksson, Acting Commissioner, Alaska Department of  
Environmental Conservation  
Tom Irwin, Commissioner, Alaska Department of Natural Resources  
Wayne Regelin, Acting Commissioner, Alaska Department of Fish and  
Game  
Dick LeFebvre, Deputy Commissioner, Alaska Department of Natural  
Resources  
Marty Rutherford, Deputy Commissioner, Alaska Department of  
Natural Resources  
Bill Jeffress, Director, Office of Habitat Management and Permitting,  
Alaska Department of Natural Resources

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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.

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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

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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 191, 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

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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.

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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

**Response to Specific Issues Raised  
In  
State of Alaska's February 23, 2005 Letter**

**1. Page 1, paragraph 1: "OCRM denied preliminary approval"**

The Office of Ocean and Coastal Resource Management's (OCRM's) January 28 letter did not deny preliminary approval. Rather, it indicated OCRM's inability within the legal requirements of the Coastal Zone Management Act (CZMA) to grant preliminary approval until certain CZMA requirements are satisfied. For example, the State's December 17 submission for local district plans did not meet two of the five CZMA requirements that have been in place for thirty years.

**2. Page 2, paragraph 2: "...denial decision retreated from program approval decisions conveyed to state staff...added entirely new criteria and rationale..."**

Throughout the review and coordination process, OCRM has consistently used provisions of the CZMA as the basis for its opinions and feedback on State of Alaska input. The January 28 letter provided feedback on new information submitted in the State of Alaska's December 17 Submission. For example, NOAA's guidance to the State regarding the scope of the federal consistency effects test and application of the state's subsistence use policy is based on long-standing CZMA requirements.

**3. Page 2, paragraph 3: "OCRM's denial decision adopts a highly prescriptive interpretation of the Coastal Zone Management Act (CZMA)"**

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements.

**4. Page 3, 1<sup>st</sup> bullet: "[OCRM] Mandated direct-control ACMP regulatory standards"**

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements.

**5. Page 3, 2<sup>nd</sup> bullet: "[OCRM] Mandated expanded role of coastal districts...balance of authority directed by OCRM is inappropriately addressed as a program approval issue"**

The feedback provided in OCRM's January 28 letter was intended as recommendations to meet CZMA requirements for State of Alaska consideration in developing the ACMP. The recommendations were not a mandate and NOAA will consider other State options that are responsive to the CZMA requirements. Further, none of the OCRM feedback should be interpreted as attempting to "shift the balance of authority."

6. Page 4, 1<sup>st</sup> bullet: “ ‘Geographic Location Description’ (GLD) requirement...impose[s] an ‘effects test’ requirement well beyond what OCRM had previously required...effectively withdrew OCRM’s agreement on how to capture the federal effects test in regulations”

There was no intent in OCRM's January 28 letter to expand the scope of the federal consistency effects test or to establish “new national policy.” OCRM's description of federal consistency and the use of “geographic location descriptions” in Enclosure III of its January 28 letter applies long-standing statutory and regulatory requirements. The description is not a departure from previous discussions with Alaska DNR staff. The information provided was in response to an Alaska DNR staff request for a detailed description of how the geographic location provision could apply in all circumstances, using the subsistence use policy as an example; and, that is what was provided. In addition, as stated in OCRM's January 28 letter, it is up to the State of Alaska to decide whether to describe geographic locations outside its coastal zone. This provides Alaska with substantial control over what federal license or permit activities it will review for federal consistency and the extent to which it will exert states' rights over federal actions affecting Alaska's coastal uses or resources.

7. Page 4, final paragraph: “ACMP will expire by operation of law in the summer of 2005”

The “summer of 2005” expiration is the result of Alaska HB 191, and not any CZMA or federally imposed deadline.

## Douglas Letch

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**From:** tidepoolak@ak.net  
**Sent:** Wednesday, March 02, 2005 12:03 PM  
**To:** Sen. Gary Stevens  
**Subject:** Protect Local Control in Coastal Decision Making!



Dear Senator Stevens,

The Alaska Coastal Management Program has promoted balanced development throughout Alaska's coastal zone for over 20 years. Since the passage of HB 191, however, it has become increasingly clear this Administration does not value the role local citizens and coastal citizens play in Alaska coastal planning and management. Yet the Alaska Coastal Management Program affords Alaska a bundle of states rights that would disappear without the ACMP. For example, without the ACMP, the state would have little influence over offshore federal decisions, such as current proposals to promote fish farming in federal waters.

Therefore, I am writing now to urge you in the strongest possible terms to:

1. Support passage of HB 146 and SB 102 to extend the timeline for ACMP revisions;
2. Revise the current draft ACMP proposal to meaningfully involve coastal Alaskans and coastal districts in planning and management decisions affecting local coastal communities and resources.

Local control over local decisions has long been a hallmark of the ACMP specifically, and Alaska government generally. Please do not disenfranchise local citizens and communities by casting away these sensible long-standing policies.

Stacy Studebaker  
4288 Cliffside Rd.  
P.O. Box 970  
Kodiak, AK 99615



# *Kodiak Island Borough*

## *OFFICE of the MAYOR*

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

January 14, 2005

The Honorable Gary Stevens  
State Capitol, Room 417  
Juneau, AK 99801-1182

The Honorable Gabrielle LeDoux  
State Capitol, Room 409  
Juneau, AK 99801-1182

Dear Gary and Gabrielle:

This letter is to provide you with information about recent developments regarding the Alaska Coastal Management Program (ACMP) and to request your support in extending the July 1, 2005 deadline for submitting revised coastal district plans. Historically the ACMP has been an important tool for the Kodiak Island Borough to promote development while at the same time mitigating adverse effects to important resources and uses.

An extension to the legislatively mandated deadline for submittal of the revised coastal management plans, including that of the Kodiak Island Borough, is necessary for three reasons:

First, requirements for revisions to district plans are ambiguous despite numerous attempts by Alaska's local coastal districts to seek clarification. During a recent teleconference sponsored by the Alaska Department of Natural Resources, coastal district representatives and their consultants expressed frustration over unclear guidance, especially in regard to development of "enforceable policies." Enforceable policies are the local criteria required for approval of development projects.

Second, an extension to plan submission deadline is necessary because the federal Office of Ocean and Coastal Resource Management is currently reviewing the statutory and regulatory changes to the ACMP. Until the federal government finishes its environmental impact statement on the ACMP changes, coastal districts will not know the final criteria for development of their plans.

Third, a number of outstanding problems resulting from the July 2004 ACMP regulations need to be resolved. For example, revisions to the regulations remove the ability of both the state and the coastal districts from influencing important aspects of development projects on federal land such as subsistence. One of the primary reasons for the initial ACMP was to influence projects on federal land including waters of the Outer Continental Shelf.

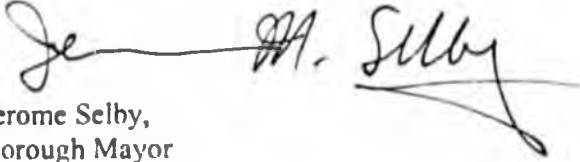
I understand there will be legislative hearings later this month to investigate some of the problems with the ACMP. The Kodiak Island Borough looks forward to participating in these hearings.

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In closing, the borough continues to support opportunities provided by the ACMP to participate in state and federal reviews of development projects. Uncertainty regarding recent changes to the ACMP regulations, however, has the potential to make the project consistency review process unpredictable. We urge your support in extending the deadlines for district plan revisions so that we can work together to resolve outstanding issues.

Sincerely,

OFFICE OF THE BOROUGH MAYOR

A handwritten signature in cursive script, appearing to read "Jerome Selby". The signature is written in dark ink and is positioned to the right of the printed name.

Jerome Selby,  
Borough Mayor

March 14, 2005

Karol Kolehmainen, Program Director  
Aleutians West Coastal Resource Service Area

Thank you for the opportunity to speak to you today. I have faxed a copy of a letter signed by my Board Chairman for your consideration that was previously sent to Senator Hoffman in support of a deadline extension.

As my testimony today I would like to read a portion of a letter sent on March 4, 2005 written by the Alaska Coastal District Association to Mr. Jeffress on the Status of District Plan Revisions.

We are writing this letter out of great concern regarding the status of the Alaska Coastal Management Program. The coastal districts have worked diligently to meet the requirements of the revised ACMP and have always supported a viable state program with a meaningful role for local districts. We feel that preserving our opportunity for continued participation through the ACMP in state and federal decision-making is of paramount importance. In view of the recent exchange of letters between OCRM and the state, many districts are confused regarding how best to proceed in the revisions of our local plans. While we have many questions regarding recent events, we have narrowed them down to a basic few that need to be addressed. We trust that you will take the time to do so. Our questions are as follows:

1. Will the Department of Natural Resources continue to assist the districts in completing their plan revisions?
2. What does Governor Murkowski mean when stating in his February 23 letter to NOAA that the ACMP could "expire by operation of law in the summer of 2005"?
3. If the statewide standards expire this summer (without any legislative action) does the state agree that consistency reviews could continue using district policies?
4. If the Legislature approves a bill extending the time periods for amendment of the state Coastal Management Program and for districts to submit new revised plans, will the Administration support the extension?

If the Administration will not support an extension, we have the following additional questions:

1. If the state program is eliminated will all the implementing Alaska Statutes and regulations previously adopted also go away?
2. How will the federal program be implemented in Alaska if the state program is eliminated?
3. Will the state or districts have the opportunity to comment on or otherwise directly influence federal projects within our jurisdiction?

4. Will federal grants and assistance still be available to Alaska Coastal Districts from the federal government for the operation of our local coastal management plans?

We asked for a written response to our questions as soon as possible, but no later than March 18, 2005 as time is running short for districts to complete their plans. Because, if it is anticipated that the ACMP will terminate on July 1, 2005 the coastal districts will need to develop a course of action as soon as possible.

And then we said, in summary, we are very concerned for the future of the coastal management program and desire continued participation in the management of our coastline.

I have chosen to read you this correspondence because I feel it is typical of the interactions we have had with DNR and is reflective of the sincerity of the coastal districts. There is a lot of confusion regarding where the program is heading and questions that need to be answered. Many questions were raised by OCRM and are legitimate. The program as originally created relied heavily on local policies for implementation. The amended program has greatly reduced opportunity for local policies and relies more on state standards and existing regulations. Whether we agree that this is right or wrong, we need to acknowledge that this type of major restructuring will raise questions that demand to be answered if federal funds are going to be provided and spent. I can use the analogy of a three-legged stool. If significant changes are made in one of the supports then it needs to be apparent how balance will be achieved with what is remaining. And the coastal program is all about balance.

It makes an incredible amount of sense to pass SB 102 and allow the time necessary to make an orderly and efficient transition to the new program. It is of paramount importance that the Alaska Coastal Management Program continues to exist, especially in the unorganized parts of the state such as the Aleutians West Coastal Resource Service Area where the citizens came together and elected to participate in this form of governing.

We and the other coastal districts have been working diligently to complete their plan revisions. Please pass SB 102 and provide the support all this effort deserves.

# ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

December 30, 2004

Senator Lyman Hoffman  
State Capital, Room 514  
Juneau, AK 99801-1182

Subject: Deadline Extension to Continue the Alaska Coastal Management Program (ACMP)

Dear Senator Hoffman:

I am compelled to write this letter as Chairman of the Aleutians West Coastal Resource Service Area (AWCRSA) Board out of grave concern for the future of the ACMP and to request an extension to the legislative deadlines imposed by House Bill 191. In 2003, the legislature passed HB 191, substantially revising the state's coastal management program and including several mandatory deadlines. We understand the program changes were to accomplish the following:

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

The AWCRSA had spent the previous four years updating our coastal management program and were asked "to shelve" the work pending the revision of the program regulations. The regulations were revised to meet the July 2004 deadline and the next phase of the process began with the revision of local coastal district plans while simultaneously submitting the program amendment to the federal Office of Ocean and Coastal Resource Management (OCRM) for approval. Since July of this year our district has been working with the state to amend our program and craft acceptable policies. However, while we have been working diligently at our program revision, we have found the process complicated by regulations that are not clear and concise but rather inadequate, conflicting, and unclear. This is evidenced by the state's initial submission for preliminary approval of the amended program to the OCRM and their finding of insufficiency. Several areas within the newly crafted program do not provide uniformity and cannot be easily explained. On December 16 the state resubmitted the program amendment and are now very concerned about the OCRM approval given that there are only 6 months remaining to allow full public process and obtain approval to meet the legislative deadline of July 2005. We share their concern.

We must submit our revised plan to the Department of Natural Resources (DNR) within one year after DNR adopted regulations implementing the changes to the coastal program (by July of 2005). Our task is complicated in that recent guidance published by DNR exceeds the legislative requirements of HB 191 and has effectively eliminated the coastal district's ability to craft enforceable policies that will enable a district to

meaningfully participate in state consistency reviews. The AWCRSA has completely revised their coastal policies based on initial guidance only to find, in mid-December, that recent DNR guidance mandates a choice between further revisions or to choose to submit a potentially unacceptable document. DNR's latest interpretation has left little room for local district enforceable policies. We are deeply concerned and very frustrated that we may not be able to complete an approvable document given the July 2005 deadline and the required public process. The legislative testimony during consideration of HB191 assured local officials that they would have future ability to influence state and federal permitting actions within their coastal zones. Recent departmental guidance has made this doubtful.

The complete revision of the ACMP requires a thorough, accurate, and complete review to adequately understand the significance of the changes. OCRM is in the process of conducting their review and has found several areas needing further clarification. In the six months that we have been once again revising our local plan we have received mixed signals to the point that we are uncertain how to proceed. The State has tasked coastal districts to revise their coastal management plans based on regulations and procedures that the Federal Government has yet to approve. Most of the plan revision monies are federal dollars passed through to the state. We are obligated to spend those funds wisely. We question the wisdom of rewriting our plan when the regulatory guidance to accomplish that task has yet to be approved by the federal government. We do not think this is being fiscally responsible.

The AWCRSA Board consists of elected officials who volunteer their time to define the coastal program for the entire western Aleutian area from Unalaska Island west to Attu Island, an area that is 20 to 60 miles in width and roughly 1000 miles long. It is an area with a wealth of natural resources including some of the richest fishing grounds in the state and the nation. The residents of our coastal district want to continue to have a voice in the management of these vital resources and have been acting with good faith in the revision of their program. The AWCRSA desires a working partnership with state and federal agencies and meaningful participation in the consistency review process.

We urgently request your support of an extension to the deadlines within HB 191. Thank you for your attention to our concerns.

Sincerely,



Frank Kelly Chairman  
Aleutians West Coastal Resource Service Area

CC: Aleutian West CRSA Board Members  
Karol Kolehmainen, AWCRSA Program Director

March 10, 2005,

Senator Gary Stevens

Subject: Testimony Regarding SB 102

Senator Stevens:

The Bristol Bay Coastal Resource Service Area, based in Dillingham and covering an area of 25,000 square miles, including close to 500 miles of coastline and hundreds of miles of anadromous fish streams, supports SB 102 at the least, but prefers HB 146 as best.

When HB 191 passed the legislature two years ago, we were optimistic that we would be able to update our plan in a way that would more meaningfully fulfill a local role in coastal management. We were not so optimistic that the unreasonably short deadline would allow for a thorough and quality job, but we prepared to make the most of it.

However, as revisions to three sets of state regulations pertaining to the Alaska Coastal Management Program dragged on beyond the deadline for that work, and then as interpretations and clarifications consumed more weeks, we saw our effective window for updating our plans shrink from one year, to six months, to, now, about four months. And still uncertainty hovers over the entire enterprise.

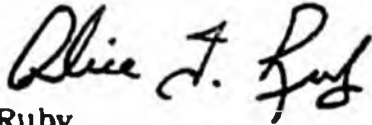
We embarked on our plan updates in good faith. Through no fault of the hard work of a dedicated staff at the Office of Project Management and Permitting, we believe seeking an extension to the deadlines imposed by HB 191 is the best course of action at this point.

We continue to work on our plan update, and we will submit something if need be, but we believe that the citizens of the State of Alaska are entitled to thorough and considered work on their behalf, and HB 191 does not allow that as it is written today.

There are a number of reasons why the state should not allow the ACMP to disappear, not least of which is the looming battle over offshore finfish farming in federal waters.

Thank you for your attention to this matter so very important to your local coastal districts and to the State of Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Alice J. Ruby". The signature is written in dark ink and is positioned above the typed name.

Alice Ruby  
Chair, Bristol Bay CRSA



## Lake and Peninsula Borough

P.O. Box 495  
King Salmon, Alaska 99613

Telephone: (907) 246-3421  
Fax: (907) 246-6602



November 29, 2004

Representative Gabrielle Ledoux  
1414 Koustov Street  
Kodiak, AK 99615-6557

Subject: Alaska Coastal Management Program (ACMP)

Dear Representative Ledoux:

This letter is to bring you up to date on Lake and Peninsula Borough's current re-write of its Coastal Management Plan. The re-write is a huge task however the Borough is committed to the management plan revision. We have hired a contractor to assist our Community Development Coordinator accomplish the re-write.

We understand we must revise our plan to comply with House Bill 191 (chapter 14 SLA 2003), which the Alaska Legislature passed in May 2003. Apparently House Bill 191 was passed because many district plans needed to be updated/revise to make coastal management within the state more streamlined and to make it simpler for industry. We understand the regulation changes were to accomplish the following:

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

Borough staff attended the DNR/OPMP and DCCED workshop on October 20-22 in hopes of receiving some clear and concise guidance on how to accomplish the revision of our Coastal Management Plan. However, it is disappointing to state, many district coordinators as well as plan revision contractors came away from that workshop without the clear and concise information required to revise our district plans.

It is very difficult to adequately accomplish the revisions when the regulations, written as our guidance, confused even a representative from the state attorney's office who was only willing to provide answers in writing to questions written down during the conference. **We are tasked to write clear and concise policies that relate to matters of local concern with regulations that, to date, have completely eliminated that possibility.**

As previously stated, during the conference several questions were written down by the state with a promise of answers. To date no answers have been provided. According to HB 191 district plans must be revised and submitted to DNR/OPMP no later than June 30, 2004. We are finding this deadline to be a very difficult to meet, due to the lack of adequate, clear and concise direction. Huge time lags by DNR for information requested have not helped either. We are committed to our plan revision. We agree with the State that many plans need to be revised, but we do not agree with the deadlines imposed upon us, deadlines made unrealistic by the State's methodology to date.

The State of Alaska submitted an application to NOAA, the Office of Coastal Resource Management (OCRM), for an amendment. The State's request was turned down and they have been asked for additional information by OCRM. (See Attachment from CCRM)

Even though somewhat unbelievable perhaps, the State has tasked Coastal Districts to revise their coastal management plans based on regulations and procedures that the Federal Government has yet to approve, and in fact, the federal government has identified significant problems within those proposed regulations and procedures (see the attached letter from OCRM). We compare writing plans before OCRM has approved the state's program amendment, to building a project and then asking for a consistency review or then starting Environment Impact Statement (EIS) after the fact. The horse is in front of the cart.

The Lake and Peninsula Borough received a grant from ACMP to (partially) fund our plan revision. We understand some of these monies are federal dollars passed through to the state. We are obligated to spend those funds wisely. We question hiring a contractor to re-write our plan when the guidance to accomplish that task has yet to be approved by the federal government. We believe this to be fiscally irresponsible.

How can this be resolved?

1. Pass legislation that puts the following into law; Local coastal management plans will not be approved or rewritten until the State of Alaska gets approval from OCRM and the full EIS has been required is complete. Specifically, extend the deadline for plans to sunset to three years after OCRM approves the state amendment.

As it is now, we are writing plans using guidance from the state yet the federal government has significant problems with that information. We think the legislature needs to direct DNR to use a phased approach to approve district plans. We suggest a three year process for approving plans, approving one third of the district plans each year. This will preclude all district plans from coming due at the same time, say 10 years from now. This would be good long range planning for the state and districts too. It would spread DNRs present work load out over a manageable time period and will assist DNR and its limited staff in their plan review, and further, would promote the approval of the plans that have been well reviewed. 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 currently raise significant questions within most districts and within OCRM.

2. Provide the districts with additional funds for planning as the under-defined policy writing we have been tasked with to date, is not the proper way to plan, but is rather, planning in reverse order. With the time extension suggested in Point # 1 more funds might be allocated each year and could accommodate the three year, phased planning concept while allowing pursuit of additional federal funding.
3. Reinstate local control such as the Coastal Policy Council. As it is now DNR has total control over every district plan and its contents. We (the districts) have no say, nor is there any local input as to how plans are written as was the case when there was a Coastal Policy Council.
4. Reinstate Air, Land and Water Quality into the program. It is impossible to manage a coastal program without having to interact with Air, Land and water quality.
5. Rewrite the regulations to allow districts to have enforceable policies that have a direct management affect on their anadromous lakes and streams. The current habitat standards do not accomplish that! The Lake and Peninsula Borough can write policies on Lake Iliamna, however because Lake Iliamna is in an area not directly affected by sea water, the policy would have no "due deference". Rewrite the regulations governing habitat standards and specifically allow our lakes to be within the Coastal Boundaries of the Lake and Peninsula Borough where policies may be written that have due deference during coastal consistency reviews. Why is Lake Iliamna so special? There are several reasons. Lake Iliamna is the largest fresh water lake in Alaska, the largest natural red salmon hatchery in the world and one of two lakes in the world that has a native population of fresh water seals. All other large lakes within the Borough are within National Parks or National Wildlife refuges. There is no such protection for Lake Iliamna. Over 80 percent of the shore line is privately held. The potential for uncontrolled development in future years is very high without adequate guidance and oversight.
6. Rewrite the regulations to allow districts to write enforceable policies on subsistence. At the conference in October we were informed by OPMP that districts could not write policies on subsistence. This is in direct conflict with testimony given by legislators and DNR staff during the passing of House Bill 191.

The suggested regulation "rewrites" can be accomplished within DNR/OPMP and would not require additional legislative approval.

We understand the state and the districts have to revise their plans and we are committed to that task. However, we think the State legislators need to reconsider the manner in which we are tasked to accomplish this enormous project. The steps suggested above

will make the process "flow" more efficiently and will get the rewrite accomplished with the support of local districts and citizens.

Your support in considering legislation during the upcoming session to implement the above suggestions would be appreciated by the Lake and Peninsula Borough and the coastal districts, and, it will relieve the intense pressure on the DNR/OPMP to accomplish tasks difficult to complete within the mandated deadlines of July 1, 2005 and July 1, 2006.

If you have questions or wish to discuss this in more detail please contact Marv Smith at 907-246-3421.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glen Alsworth, Sr.", with a large, stylized initial "G" and "A".

Glen Alsworth, Sr.  
Mayor

CC:

Senator Lyman Hoffman  
716 West 4<sup>th</sup> Avenue, Suite 360  
Anchorage, AK 99501-2133

Senator Gary Stevens  
112 Mill Bay Road  
Kodiak, Alaska 99615

Representative Carl Moses  
716 West 4<sup>th</sup> Avenue, Suite 470  
Anchorage, AK 99501-2133

CITY OF DILLINGHAM  
Dillingham, Alaska

RESOLUTION NO. 2005-10  
Support Alaska Coastal Management Program

A RESOLUTION OF THE COUNCIL OF THE CITY OF DILLINGHAM, ALASKA, CALLING FOR THE CONTINUATION THE ALASKA COASTAL MANAGEMENT PROGRAM AND AN EXTENSION OF THE DEADLINE FOR SUBMISSION OF COASTAL DISTRICT MANAGEMENT PLANS.

WHEREAS, the Twenty-Third Alaska State Legislature passed House Bill 191, which, in part, imposes a deadline of July 1, 2005 for coastal districts chartered under the Alaska Coastal Management Plan (ACMP) to submit updated coast district plans to the Alaska Department of Natural Resources (DNR), and

WHEREAS, in the past, coastal districts have needed at least two years to complete coastal district plan updates, and

WHEREAS, DNR has issued unclear regulations that have served to confuse and delay the updating of such plans, and

WHEREAS, the federal Office of Coastal and Resource Management (OCRM), which has to approve the state's revisions to the ACMP, has not been satisfied with information provided to date and may require an Environmental Impact Statement process before such approval is forthcoming, now

THEREFORE, BE IT RESOLVED that the Dillingham City Council urges the Twenty-Fourth Alaska State Legislature to:

Section 1. extend the deadline for submission of coastal district management plans to no later than June 30, 2006, and

Section 2. seek a final and definitive clarification on the ACMP regulatory framework so that coastal districts can take action within the requirements of that framework; and

Section 3. urge the Department of Natural Resources to work closely with the Office of Coastal and Resource Management to ensure the proper alignment of the state and federal regulatory frameworks.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2005.

SEAL:

\_\_\_\_\_  
Chris Napoli, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

A resolution of the Nushagak-Mulchatna Watershed Council calling for the continuation the Alaska Coastal Management Program and an extension of the deadline for submission of coastal district management plans.

Whereas, the Twenty-Third Alaska State Legislature passed House Bill 191, which, in part, imposes a deadline of July 1, 2005 for coastal districts chartered under the Alaska Coastal Management Plan (ACMP), to submit updated coast district plans to the Alaska Department of Natural Resources (DNR); and

Whereas, in the past, coastal districts have needed at least two years to complete coastal district plan updates; and

Whereas, DNR has issued unclear regulations that have served to confuse and delay the updating of such plans; and

Whereas, the federal Office of Coastal and Resource Management (OCRM), which has to approve the state's revisions to the ACMP, has not been satisfied with information provided to date and may require an Environmental Impact Statement process before such approval is forthcoming,

**Now Therefore Be It Resolved** that the members of the Nushagak-Mulchatna Watershed Council urge the Twenty-Fourth Alaska State Legislature to

Section 1. extend the deadline for submission of coastal district management plans to no later than June 30, 2006, and

Section 2. seek a final and definitive clarification on the ACMP regulatory framework so that coastal districts can take action within the requirements of that framework; and

Coastal District Management Plans

2/2

Section 3. urge the Department of Natural Resources to work closely with the Office of Coastal and Resource Management to ensure the proper alignment of the state and federal regulatory frameworks; and

**PASSED AND ADOPTED** by a duly constituted quorum of the Nushagak-Mulchatna Watershed Council this day of March 2, 2005.

Signed:

Attest:

Luigi Akellok, Sr.

\_\_\_\_\_

**CITY OF ALEKNAGIK**

P.O. BOX 33, MAIN STREET  
ALEKNAGIK, ALASKA 99555-0033  
PHONE: 907/842-5953 OR 842-2528  
FAX: 907/842-2107  
E-MAIL: [city@aleknagik.com](mailto:city@aleknagik.com)

February 25, 2005

To the Honorable Representative Carl Moses  
State Capital Building #500  
Juneau, AK 99801-1182

RE: Alaska Coastal Management Program (ACMP)

To the Honorable Representative Carl Moses,

The City Council of the City of Aleknagik would like for you to support an extension of time to revise the Alaska Coastal Management Program Plans. The Plans are to be revised by July 1, 2005, but there is not enough time remaining to do a proper job.

The City received notification of the revision in July 2004, but there has been no process for communities and interested people to provide input. We would like to see a concerted effort to gather information from all interested parties on a local level, with public review comment periods at each step of the way, before the Bristol Bay Coastal Resource Plan is rewritten. This should not be an administrative exercise without public input.

Thank you for your time, and any help you can provide toward extending the deadline for the ACMP Plan Revisions is greatly appreciated. Please contact me if you have any questions or concerns.

Sincerely,



Bema Andrews  
Mayor

cc: Bobby Andrew, President, Aleknagik Natives Limited  
Gusty Clythlook, President, Aleknagik Traditional Council  
Andrew deValpine, Director, Bristol Bay CRSA



## **Cenaliulriit Coastal Resource Service Area**

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PO Box 69, Mekoryuk, AK 99630 / Phone: 907-827-8748 / Fax: 827-8749 / E-Mail: [cenaliulriit2@starband.net](mailto:cenaliulriit2@starband.net)

**Toll Free: 1-877-827-8747**

**TESTIMONY  
HOUSE STATE AFFAIRS COMMITTEE  
State Capital, Room 102  
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.<sup>1</sup> 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

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<sup>1</sup> 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 between 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 knowle 'ge. 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."

**adn.com**

Anchorage Daily News

**Murkowski challenges regulators****COASTAL ZONE: State threatens to stop participating in protection program.**By PAULA DOBBYN  
Anchorage Daily News*(Published: February 25, 2005)*

A program intended to balance development with environmental and subsistence protection along Alaska's vast coastline may end this summer because of a growing dispute between the Murkowski administration and the federal government.

Alaska's coastal management program, in effect for the past 25 years, gives local governments authority to weigh in on federal projects near their communities. It will cease to exist on July 1 unless federal ocean regulators "immediately abandon" their objections to the administration's overhaul of the program, Gov. Frank Murkowski wrote in a letter this week.

He sent it to a top official with the National Oceanic and Atmospheric Administration, a federal agency that in late January formally objected to the governor's efforts to streamline the program. NOAA officials have cited concerns, including doubts that the new program could adequately protect subsistence and natural habitats.

Eldon Hout, director of the agency's office of ocean and coastal resource management, said in written testimony to the state Legislature on Thursday that Alaska's efforts at streamlining have resulted in "gaps" that must be filled before the revamped program could meet the minimum federal standards. He described what Alaska is proposing as the most significant change that any state has ever undertaken to the federally approved program, which dozens of states follow.

Critics say anti-development zealots use the shoreline program to block projects such as oil and gas leasing, logging, dredging, shellfish farming and construction in environmentally sensitive places, such as wetlands. But city planners, hunters, birders, fishermen, whalers and environmental advocates tend to say that the coastal zone program ensures that other interests, besides those of developers, get heard.

Soon after taking office, Murkowski issued two executive orders. One abolished the habitat division of the Department of Fish and Game and moved the biologists to the pro-development Department of Natural Resources. The other dismantled the division of governmental coordination, which ran the coastal zone program, and shifted the program to Natural Resources.

The governor later introduced legislation, House Bill 191, that ordered major changes in the coastal program by July 1.

Supporters of the legislation say the changes were needed to streamline a policy that, as Murkowski said in his letter, "evolved into a complex, confusing set of requirements which unnecessarily delayed projects in Alaska without corresponding environmental benefits."

Critics said there is no proof the coastal zone program has held up projects.

Bob Shavelson, executive director with Cook Inlet Keeper, said Thursday that he thinks the

administration wants to get rid of the coastal program for philosophical and practical reasons.

"They want to strip away any meaningful oversight so that the executive branch can dictate the development policies in local districts around the state," he said.

Bill Jeffress, director of the Natural Resource Department's office of habitat management and permitting, which oversees the coastal program, disagreed. He said Alaska has many laws and regulations that protect fish, wildlife and coastal resources and that the shoreline program's requirements are often redundant. Simplifying the process makes sense, he said.

Alaska participates voluntarily in the program and will receive \$2.6 million in federal money this year to run it, said NOAA spokesman Ben Sherman.

Tom Lohman, environmental specialist with the North Slope Borough, said the giant Arctic borough has used the coastal zone program to negotiate changes to oil and gas projects that might have harmed subsistence resources, including bowhead whales, a mainstay of Inupiaq culture.

Oil companies have listened to local leaders in North Slope communities because of the authority granted to them under the coastal program, Lohman said. In some cases, they changed oil projects to address concerns over noise, potential spills and monitoring, he said.

Jeffress said he and other Alaska officials plan to travel to Washington, D.C., soon to talk to NOAA regulators.

"The game isn't over yet," he said.

But he also acknowledged that the way the administration sees things, if the coastal zone program ends in July, it won't be a catastrophe.

"We feel the coastal and inland resources are protected by existing laws and regulations."

Daily News reporter Paula Dobbyn can be reached at [pdobbyn@adn.com](mailto:pdobbyn@adn.com) or 257-4317.

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## GOVERNOR SEEKS TO DEMOLISH SUBSISTENCE

Subsistence. It is a stumbling block to Governor Murkowski's recent decree to remove the Alaska Coastal Management Program (ACMP), which has a direct tie to protecting renewable resources on which many people in Alaska depend. Subsistence is perceived as a burden on development.

The ACMP was designed to enable the little guys to participate in the permitting process, and the means to express their concerns. Subsistence is under attack by the state in the way it has left the door open for applicants who wish to acquire permits for development. Subsistence is an essential element of the people. It is history, culture, and tradition, which are deep-rooted to daily family living. It prevents dire poverty and hunger in the remotest places of Alaska, for it sustains life.

The current administration has thrown smoke bombs to deceive the general public into thinking that the ACMP is a failure and slows development. The governor grew up in an era where mining had great power to influence the decision makers, a time when stumbling blocks were nonexistent, and Natives were completely out of the picture. This is a professional way for the government to do away with opposition and a way to pursue the almighty dollar.

Governor Murkowski in 2003 promoted the passage of House Bill 191 that revamped the ACMP in an effort to "streamline" the process, provide "predictability" and prevent "duplication." This bill was in search of a problem that was not there. The ACMP has provided an efficient balance between development and protection of our natural resources and uses, including subsistence.

The Governor recently stated that he would let the ACMP expire on July 1, 2005 unless the federal government backs off from its requirements that the state amend the 2004 ACMP regulations to ensure there is adequate protection of habitats and subsistence. The Alaska Department of Natural Resources (DNR) is blaming the federal government, and the state appears to be using the ACMP as an excuse to wash its hands from the issue of subsistence. The federal requirements are minimal and would not even afford the same protection of the original language, however the state is unwilling to provide language that assures protection of renewable resources.

Local coastal districts can no longer use land, air and water quality standards, or the habitat standards to develop policies to be applied to development. One could comment toward a project, but cannot address issues managed by the Department of Environmental Conservation. Other restrictions by the new regulations will not allow coastal districts to develop any meaningful policies to protect local resources and uses.

"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."

A commitment from a bureaucrat, who served from afar, with many ties to big pockets, from hungry friends to reap and harvest the resources of Alaska. The question is, does it make sense to remove a system that protects the civil right to harvest and gather for ones family?

Without the coastal management program, what guarantee do people have, when decisions are being made for them behind a desk in Anchorage, Fairbanks or Juneau? Bureaucrats are concerned about the forests in South America, and other parts of the world, but

not those in Alaska's backyard. If the ACMP was eliminated, what protection would Alaskans have from decisions that would be made in Washington D.C. on federal lands and waters?

Oscar Usugan of Tununak, 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."

The issue is clear, the leadership of Alaska must recognize that subsistence is what makes this great state unique from all others. It is our heritage, our culture, and a tradition to guarantee the beauty of our renewable resources for future generations, and understand that subsistence is much a part of everyone in Alaska. Join now and express your concerns to our leadership.

Web posted Monday, February 28, 2005

## **Governor's coastal management stance erodes Alaska's rights**

Frank Murkowski came into office and immediately set out to remove Alaskans from decisions affecting coastal communities. Now, after bungling the process to revise the Alaska Coastal Management Program, he's blaming the federal government and claiming he's defending "states rights." But once again, Frank misses the mark. The federal coastal zone management law actually grants states more rights than they otherwise have without it. How? First, it provides money to state and local communities to implement their own local standards. By attacking this program, Frank is attacking decisions made by Alaskans, for Alaskans — not decisions made by faceless bureaucrats in D.C. or Juneau. Second, the federal law provides a powerful appeal process where states can challenge federal decisions affecting state and local interests. California used these very provisions last year to protect its coastal communities from federal intrusion.

Why is this relevant for Alaska? Among other reasons, there are efforts underway in Congress to allow fish farming in waters 3 to 200 miles offshore. But if Frank has his way, the state won't have a meaningful say in how the federal government manages our offshore waters. If you care about states' rights and local decision making, let the Governor and the Legislature know now. It's not too late to demand local control over coastal decision making in Alaska.

**Bob Shavelson, Executive director, Cook Inlet Keeper, Homer**



[Click here to return to the original story](#)

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## Communities ask Legislature for delay on coastal program overhaul

**Representatives of coastal districts say they don't have time to revamp local plans**

Communities across the state are asking the Alaska Legislature to put the brakes on a plan to restructure environmental oversight of coastal areas.

The Alaska Coastal Management Program has been in place since 1979 and gives state and local governments a role in reviewing and approving federal projects in coastal areas. Thirty-three of Alaska's 35 coastal zone districts have set policies to address local coastal management issues under the existing program.

The Legislature shifted regulatory control on environmental effects from communities to the state and federal government in 2003, arguing the coastal zone program had become redundant with state and federal laws.

The overhaul of the program is set to take place July 2006. Local districts now must submit their revised local policies to the state Department of Natural Resources by July to come into compliance with the new state program. But representatives of the coastal districts say they do not have enough time or the resources necessary to revamp their local plans.

Three separate proposals in the Legislature would push the deadline back by at least a year. A plan by Sen. Gary Stevens, R-Kodiak, would delay the deadline a year from the time federal government approves the state's revised program.

The coastal management plans can take much longer than that to create. For the North Slope Borough, it took five years before its plan was finalized in 1988. North Slope Borough environmental specialist Tom Lohman told the Senate Community and Regional Affairs Committee Monday it took so long because of input from oil companies.

"They are not a passive stakeholder when it comes to something as important as a coastal management program," Lohman said.

Now, he said, the borough is waiting for direction from the Department of

Natural Resources on issues such as subsistence whaling by Inupiat Eskimos in the Beaufort and Chukchi Seas and management of wildlife refuges.

"We have not had final guidance from DNR as to whether we can craft meaningful policies dealing with subsistence on federal lands or waters or habitat protection on federal lands or waters on the North Slope," he said.

Lohman and other coastal districts argued that the state's proposed overhaul of the program has not been approved by the federal government's Office of Ocean and Coastal Resource Management. They questioned the logic of spending time and money to submit plans this summer if the federal government rejects the program.

Randy Bates, Alaska's Project Management and Permitting director, said the plans due in July are not necessarily the final product.

"When they get their plans in they can continue to refine them," he told the committee. "Our goal is to massage them into compliance."

Gov. Frank Murkowski, though, has threatened to eliminate the coastal management program entirely if the federal government does not abandon its objections to parts of the state's proposal.

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[http://www.juneauempire.com/stories/031505/sta\\_20050315008.shtml](http://www.juneauempire.com/stories/031505/sta_20050315008.shtml)

# Digest -

- Alaska Economic Report  
- Alaska Legislative Digest

# Special Commentary

February 25, 2005  
With Digest #07/05

SB 102 - CZM  
Local officials from Juneau to Barrow fire volley of complaints:

## Coastal zone management a major "headache"

Local officials from Juneau to Barrow complained at a Feb. 24 legislative review that the Murkowski administration has made it impossible for them to meet a July 1 deadline to complete revisions of their coastal zone management programs required by the governor's CZMP reorganization bill passed in 2003. Administration officials, in turn, blamed the federal agency that oversees the program, claiming that the Office of Oceans and Coastal Resource Management is attempting to steal state control and impose new burdens on development projects. In a Feb. 23 letter to the National Oceanic and Atmospheric Administration, OCRM's parent agency, the governor threatened to let the state coastal zone program expire this summer unless OCRM "immediately abandon the new requirements."

### *Development of regulations for HB-191 are slow, uncertain*

House State Affairs Committee Chairman Paul Seaton (R-Homer) convened the hearing to check on the implementation of regulations flowing from HB-191, the bill changing the program. As introduced in 2003, the proposal restricted local control on development outside municipal boundaries and restricted influence over projects on federal land. The final version of HB-191 retained a degree of local control, but the development of regulations to implement the measure has been an 18-month headache for local officials managing their coastal zone programs, they said.

Seven representatives of coastal districts, including municipal officials and managers from districts in the unorganized borough complained that the administration was slow to issue draft regulations, then continually changed its interpretation of its own proposals. "We go to the state. We ask them questions. We get guidance. The guidance is then reinterpreted. Then we get additional guidance. Then that is reinterpreted. Then (the federal) OCRM lobs something over the wall causing the state to rethink their interpretation," said Tom Lohman, the

- Continued on next page

## Revised ACMP more clear? Ludicrous, say critics

*-Continued from preceding page*

North Slope Borough's coastal zone program manager. "The idea that HB-191 was passed to provide clarity and simplicity is sort of ludicrous at this point," he added. Several speakers said the coastal zone program's ability to bring federal, state and local governments to a central point where developers could efficiently address their concerns is being replaced by a system that will force project proponents to deal with separate local and state review processes. They also emphasized that the powerful tool local governments had to influence development on federal lands is being lost.

Bill Jeffress, director of the state's project management office, said a six month delay in issuing proposed regulations following passage of HB-191 was the result of multiple vacancies created by the administration's Executive Order 106 transferring the coastal zone program from the governor's office to the Department of Natural Resources.

Lawmakers concerned with the programmatic changes caused by HB-191 had warned it could prompt a major federal review, and Jeffress claimed that federal authorities were providing their own moving target for state compliance. "This is a state's rights issue," Jeffress said. "This is really ironic," said Rep. Beth Kerttula (D-Juneau), a consistent critic of HB-191. "One of our strongest tools to promote states' rights in Alaska has been the coastal zone management program. It's our hook into federal activities and federal lands. Getting rid of it is like cutting off our nose to spite our face. We give up a huge amount of authority that we have over the federal government."

### *Coastal districts ask for an extension of their deadlines*

The coastal districts are asking for at least a one-year extension from the state July 1 deadline. The preference is for a deadline a year after the federal agency approves the state's revised program, in order to avoid the possibility that their complex revisions to meet state requirements would have to be changed again if the state program is ultimately rejected by the federal agency.

This year's SB-102, sponsored by Sen. Gary Stevens (R-Kodiak) gives the simple one year extension while HB-146, introduced by Kerttula, sets the deadline 18 months after the federal approval. Both bills were introduced on Feb. 14. Rep. Seaton said he will consult with State Affairs Committee members and may draft a third proposal. "It appeared to me that we have pretty uniform consensus that the changing landscape of regulation and interpretation means that for effective and efficient writing of those plans we're going to have to give an extension," Seaton said.

24-LS04911Y  
Bullock  
4/20/05

**CS FOR SENATE BILL NO. 102(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RESOURCES COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATORS GARY STEVENS, Olson**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to an extension for review and approval of revisions to the Alaska  
2 coastal management program; providing for an effective date by amending the effective  
3 date of sec. 45, ch. 24, SLA 2003; and providing for an effective date."

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

5 \* **Section 1.** The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA  
6 2003, is amended to read:

7 (c) Notwithstanding any contrary provision of ch. 24, SLA 2003 [THIS ACT],  
8 the repeal of the Alaska Coastal Policy Council enacted by sec. 44, ch. 24, SLA 2003  
9 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in  
10 AS 46.40.040, as amended by sec. 10, ch. 24, SLA 2003 [OF THIS ACT], a district  
11 coastal management program, including its enforceable policies, approved by the  
12 former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and  
13 AS 46.40 until the revised district coastal management plan is approved by [JULY  
14 1, 2006, UNLESS] the Department of Natural Resources [DISAPPROVES OR

1 MODIFIES ALL OR PART OF THE PROGRAM BEFORE JULY 1, 2006].

2 \* Sec. 2. The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA 2003,  
3 is amended to read:

4 (a) Within six months [ONE YEAR] after review and approval of the  
5 state's revised coastal management program by the National Oceanic and  
6 Atmospheric Administration, Office of Ocean and Coastal Resource  
7 Management, United States Department of Commerce, under 16 U.S.C. 1455 and  
8 1457 (Coastal Zone Management Act of 1972) [THE EFFECTIVE DATE OF  
9 REGULATIONS ADOPTED BY THE DEPARTMENT OF NATURAL  
10 RESOURCES IMPLEMENTING CHANGES TO AS 46.40.010 - 46.40.090,  
11 ENACTED BY SECS. 8 - 15 AND 44 OF THIS ACT, OR BY JULY 1, 2005,  
12 WHICHEVER IS LATER], coastal resource districts shall review their existing  
13 district coastal management program and submit to the Department of Natural  
14 Resources for review and approval a revised district coastal management plan meeting  
15 the requirements of AS 46.40 [, AS AMENDED BY THIS ACT,] and the  
16 implementing regulations.

17 \* Sec. 3. The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003, is  
18 repealed and reenacted to read:

19 Sec. 49. Section 45, ch. 24, SLA 2003, takes effect on the date that the  
20 commissioner of natural resources certifies to the lieutenant governor that the National  
21 Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource  
22 Management, United States Department of Commerce, under 16 U.S.C. 1455(e), has  
23 approved the revised coastal management program.

24 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).



# Municipality of Anchorage

P.O. Box 198650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-7900 • Fax: (907) 343-7927  
Physical Address: 4700 Brngaw Street • Anchorage, Alaska 99507 • [www.muni.org/planning](http://www.muni.org/planning)

Mayor Mark Begich

Planning Department

April 5, 2005

Honorable Senator Gary Stevens  
State Capitol, Room 103  
Juneau, AK 99801-1182

Subject: Senate Bill 102 w/Committee Substitutes On-Basis

Senator Stevens and Subcommittee Members:

My name is Thede Tobish, and I am a Senior Planner and Coastal District Coordinator for the Municipality of Anchorage. On behalf of the Municipality, please accept this letter as testimony for your committee hearing of:

**SENATE BILL 102.** *"An Act relating to district coastal management programs; and providing for an effective date."*

I want to thank you and the Committee members for this opportunity to testify and comment on the proposal to extend the schedule for Alaska's Coastal Districts to submit Coastal Management Plan revisions, as mandated by HB 191. Please understand that the Anchorage Coastal District has been a consistent advocate for any length of time extension to the original July 1, 2005 deadline. We laud your efforts to find a compromise schedule that meets the needs of the varied Coastal Districts and the original timeline of HB 191.

If it will assist you in deciding this new schedule, please understand the following issues as they relate to Anchorage's specific needs for a delay and adjustment to the plan submission deadline.

Anchorage does need to revise its Coastal Management Plan, since it was one of the original district plans adopted in 1980. It is out-of-date, and requires better specificity. But because of its age and context from the early years of coastal management in Alaska, it served as the basis for many of the Municipality's subsequent regulations and plans. Anchorage's environmental regulations evolved under the guidance of our Coastal Management Plan. HB 191 and the State's proposed new regulations will require a radically different approach to Anchorage's coastal management policies and guidelines. This is even more significant since we will have only had approximately 7 months to complete a new plan in order to meet the deadline. We need more time to address and finalize this new approach.

The Municipal Planning Department is in the midst of creating new or pursuing for significant revisions to six major planning documents, including our Coastal Management Plan. Seven months from initiation to concept approval, given our public outreach and hearing requirements, is never adequate. While we are working hard with consultants to meet the schedule, even a few months extra would provide great relief.

*Community, Security, Prosperity*

Senate Bill 102

April 5, 2005

Page 2

Several of Anchorage's major plan projects require interface with elements of what will be in our revised Coastal Management Plan, for instance, how to weave new enforceable policies and their implementation into our Title 29 land use code revisions. Without taking your time to give details of this meshing, suffice it to say that this merging of policies and land use code take time and finessing, public outreach, and review for community consensus.

In addition many of the essential elements of our original Coastal Management Plan, namely some 200 wetlands policies, are no longer eligible for inclusion in our new plan. We are exploring new avenues of how to keep these policies active thru other means, mainly with negotiations with the Corps of Engineers. But additional time would greatly benefit this effort, and better provide Anchorage with the certainty that these management tools will be retained in some manor.

As with many other Coastal Districts, Anchorage was encouraged with the announcement and the results of our March 30, 2005 meeting with the Governor's Office and Department of Natural Resources (DNR) representatives. Chief among the highlights of that meeting was assurance from the Governor's Office and the Commissioner of DNR that continuance of a federally-backed program remains a commitment of the State. In a summary letter of March 31, 2005, both Mr. Clark and Mr. Irwin noted that Coastal Districts stated that they would be able to submit a revised plan by the July 1, 2005 deadline. While that may be true, the content of these plans, including Anchorage's, could be incomplete and may not be consistent with any federal changes to the State's draft regulations. To produce a plan as a placeholder to meet a deadline is anathema to Anchorage's approach to plan productions. It could actually make our additional amendments and public reviews even longer and more involved and take time and funds we may not have.

While the Anchorage District does not question the State's need to maintain its July 1, 2005 deadline for preliminary federal approval of the draft coastal zone regulations, the Coastal Districts continue to have a significant need for relief with their same deadline of July 1. At a minimum, an additional six months time extension on this plan schedule would provide substantial benefit to Anchorage's plan revision program. That time would allow us to address all avenues of new coastal management implementation actions that HB 191 and the proposed regulations have mandated.

Thank you very much for this opportunity.

Sincerely,



Thede Tobish

Senior Planner/Coastal District Coordinator



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

**OFFICE OF THE MANAGER**

Telephone: (907) 586-5240, Fax: (907) 586-5385  
[Rod\\_Swope@ci.juneau.ak.us](mailto:Rod_Swope@ci.juneau.ak.us)

April 5, 2005

The Honorable Gary Stevens  
Alaska State Senator  
Alaska State Capitol, Room 103  
Juneau, AK 99801-1182

Dear Senator Stevens:

I am writing with regard to the Alaska Coastal Management Program (ACMP) revision process, and SB 102 extending 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, 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 Cenaiulriit 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.

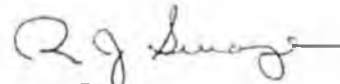
In closing, I would observe that Juneau is one of the premier cruise ship destinations in the world, and has averaged almost 10% growth in cruise visitors annually. It is one of the hard-rock mining centers of the state, home to the largest silver mine in North America, and has recently issued a permit 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

Senator Gary Stevens  
April 5, 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,



Rod Swope  
City & Borough Manager

cc: Senator Kim Elton  
Representative Beth Kerttula  
Representative Bruce Weyhrauch  
Mayor Bruce Botelho  
Clark Gruening, CBJ Lobbyist



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL OCEAN SERVICE  
Silver Spring, Maryland 20910

APR 14 2005

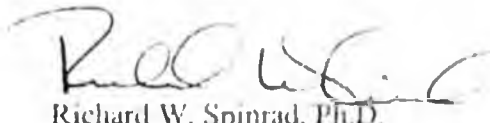
Mr. Thomas E. Irwin, Commissioner  
Alaska Department of Natural Resources  
550 West 7<sup>th</sup> Avenue, Suite 1400  
Anchorage, Alaska 99501-3650

Dear Commissioner Irwin:

Thank you for your April 7, 2005, letter furthering our discussions on the National Oceanic and Atmospheric Administration's (NOAA's) review of the amendment to the Alaska Coastal Management Program. I am pleased to say that after many discussions this week between our staffs we have agreed on the steps necessary for NOAA to make a preliminary approval decision prior to July 1, 2005. These steps are set forth in the enclosure entitled, Remaining Steps for ACMP Preliminary Approval.

To complete the Coastal Zone Management Act amendment process and comply with the National Environmental Policy Act over the coming months will involve substantial staff time for both of our offices. We look forward to working with Alaska in a coordinated and collaborative fashion to complete the amendment to the Alaska Coastal Management Program.

Sincerely,

  
Richard W. Spinrad, Ph.D.  
Assistant Administrator

Enclosure

Cc: Honorable Senator Ted Stevens  
Honorable Senator Lisa Murkowski  
Honorable Congressman Don Young  
Ben Stevens, President of the Alaska State Senate  
John Harris, Speaker of the Alaska State House of Representatives  
Eldon Fout, Director OCRM  
Henri Bisson, State Director BLM  
John Goll, Regional Director MMS  
Forrest Cole, Supervisor Tongass National Forest  
John Katz, Office of the Governor  
Dick LeFebvre, Deputy Commissioner DNR  
Marty Rutherford, Deputy Commissioner DNR  
McKie Campbell, Commissioner DF&G  
Kurt Fredriksson, Commissioner DEC  
Edgar Blatchford, Commissioner DCCED  
Bill Jeffress, Director DNR, OPMP  
Tony MacDonald, Executive Director CSO



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## ENCLOSURE – REMAINING STEPS FOR ACMP PRELIMINARY APPROVAL

### GENERAL COMMENT

The changes proposed by Alaska, with further modification as described below, should meet Coastal Zone Management Act (CZMA) preliminary approval requirements. Once these changes are submitted to and reviewed by NOAA, NOAA will be able to make a preliminary approval decision. Changes submitted to NOAA for preliminary approval consideration should be, for any regulatory changes, a final rule by Alaska submitted to the Alaska Lieutenant Governor prior to publishing the final rule, and a revised Alaska Coastal Management Program (ACMP) document for the non-regulatory changes. As stated in our March 25, 2005, letter, the remainder of the items described in the January 28, 2005, letter and enclosures do not need to be made at this time for preliminary approval. Those items will need to be made to the ACMP document before final approval and NOAA believes that some of the items may be eliminated.

### PUBLIC HEARING

A public hearing on the submission of the amendment must be held before NOAA can make a preliminary approval decision. This requirement is derived from CZMA section 306(d)(4) stating that for program approval that the "State" as held public hearings in the development of the management program." This requirement is also applied to amendment requests because of the substantial change to a state's management program, under 15 CFR § 923.81(a). This requirement is for public hearings on the submission of a state's amendment request to NOAA; it does not refer to public hearings a state may have held during the development of the amendment at the state level. See 15 CFR § 923.81(b)(5) (describing documentation of public input during a state's development of an amendment).

The public hearing requirement for the submission of amendments to NOAA is tied to preliminary approval by 15 CFR § 923.82(a) and (c). These sections provide that NOAA cannot make a preliminary approval determination on a state's proposed amendment until the state has satisfied the applicable program approvability requirements and the procedural requirements of CZMA section 306(d), which include the public hearing requirement in section 306(d)(4) that is applied through 15 CFR § 923.81(a). The public notices and summaries for the public hearing, described in 15 CFR § 923.81(b)(3) and (4) relate to the section 306(d)(4) hearing.

The provisions in 15 CFR § 923.81(b)(3) and (4) regarding hearing summaries and concurrent Federal agency review provide that a state can submit hearing summaries 60 days after the hearing. This does not alter the requirement for a state's section 306(d)(4) hearing to be held before a preliminary approval determination is made.

Alaska is required to have at least one section 306(d)(4) hearing on the amendment submission. See 15 CFR § 923.81(a). Additional hearings are at the State's discretion. Alaska's responsibilities for the public hearing are to provide a public notice of the hearing 30 days in advance, note the time and location of the hearing and make available for public review at the time of the public notice, all agency materials pertinent to the hearings. The latter requirement could be satisfied by directing the public to the ACMP website and identifying the ACMP

amendment documents subject to the public hearing. At the hearing the State should make an opening statement about the purpose of the hearing (to provide the public an opportunity to comment on the State's ACMP submission to NOAA), and inviting any public comment. The State is not required to respond to comments. After the hearing, the State must submit to NOAA, within 30 days of the hearing, a transcript or summary of the hearing. 15 CFR § 923.58(d).

#### APPLICATION OF ENFORCEABLE POLICIES TO FEDERAL LANDS AND GEOGRAPHIC LOCATION DESCRIPTIONS (GLDS).

Paragraphs (a), (b) and (d) are satisfactory.

Paragraph (c) is satisfactory with the exception that the parenthetical "(occurring within the coastal zone)" is incorrect. A federal agency must provide a consistency determination for an activity, regardless of location, if the federal agency determines there will be effects to coastal uses or resources. This includes effects to uses or resources *of* the coastal zone (not *in* the coastal zone) where the use or resource affected is inland or seaward of the coastal zone. A state may, of course use the various provisions in NOAA's regulations to reach agreements with federal agencies regarding when and how federal consistency will apply to federal agency activities under 15 CFR part 930, subpart C (e.g., general concurrences, de minimis activities, beneficial activities).

The first sentence in paragraph (c) should be amended to read:

Federal agency activities that occur inland of the coastal zone boundary are only subject to ACMP consistency review process if the federal agency determines that effects to any land or water use or natural resource of the coastal zone ~~coastal uses or resources (occurring within the coastal zone)~~ are reasonably foreseeable and the State has an enforceable policy addressing the use or resource.

#### APPLICATION OF DISTRICT POLICIES AND DESIGNATED AREAS

The language is not clear regarding the scope of district policies and designated areas. The proposed language merely says that CZMA and NOAA regulations apply for the State standards and District policies. Because the other State standards would still have the language limiting review to projects occurring within a designated area, the following language needs to be added after the term "projects" (additional language is underlined):

Notwithstanding any other provision, for the purposes of federal consistency reviews conducted under 16 USC 1456, projects, within or affecting land or water uses or natural resources of the coastal zone, will be subject to the state standards at 11 AAC 112.200 – 11 AAC 112.900 and the coastal district enforceable policies approved under 11 AAC 114 in accordance with the requirements of the applicable subparts of 15 C.F.R. part 930 and other relevant parts of Alaska's federally approved coastal management program.

The ACMP document or preamble to the rule change should discuss this change in the context of the CZMA "effects test" for federal consistency purposes. In particular, the discussion should note that for purposes of federal consistency reviews, projects within or affecting a district's designated area would be subject to the applicable state and district enforceable policies.

#### TECHNIQUE A

Alaska proposes to amend the subsistence use standard at 11 AAC 112.270(a) to read, "A project within a subsistence use area designated by the State or under 11 AAC 114.250(g) must . . ."

Technique A is meant to apply state enforceability to entire local government plan. While Alaska still has Technique A components, NOAA now recognizes that the ACMP is relying primarily on Technique B for implementation of State standards and that the only State standard presently reliant on District policies is the subsistence use policy. All other District policies are at the choice of the Districts and are not required for ACMP approval or to implement State standards. Therefore, Alaska's proposed change to its regulation is sufficient for NOAA to make a preliminary approval decision, because it would give the State the ability to designate subsistence use areas and enforce the subsistence use standard during District plan development, pursuant to 15 CFR § 923.42(b)(2), and would use 15 CFR § 923.42(b)(3)(i) for direct State enforcement of the subsistence use standard if a District failed to adopt a plan.

#### SCOPE AND CONTENT OF DISTRICT PLANS

NOAA looks forward to reviewing the revised/combined District guidance, which must satisfy the need for clarity pursuant to 15 CFR § 923.3(e)(1) and (2), prior to making a preliminary approval decision.

#### HABITATS POLICY

1. Comprehensive Habitat Management. The CZMA requires state programs to develop and maintain a management program sufficient to carry out the protection of coastal resources such as shorelands, wetlands, estuaries, floodplains, fish and wildlife and their habitat and to use the land and water resources of the coastal zone giving full consideration to the ecological values of those resources as well as need for compatible economic development. Further, the CZMA requires the management program to contain specific, comprehensive and enforceable policies to provide that protection and overarching management scheme. State coastal programs need to manage and protect those significant resources and areas that make a state's coastal zone a unique, vulnerable or valuable area, particularly wetlands, estuaries, tidelands and offshore areas. 16 USC § 1455(d)(1); 15 CFR §§ 923.1, 923.3., 923.10 and 923.11. NOAA finds that Alaska's habitat management components are sufficient for purposes of our preliminary approval decision.

2. **Written Scientific Evidence.** NOAA believes that 11 AAC 114.900(40) provides a sufficient definition of this phrase for purposes of our preliminary approval decision.
3. **Significantly More Productive.** Alaska now proposes to replace this phrase with "biologically and significantly productive" in asking the districts to designate significant habitats. NOAA appreciates this change as it removes the comparison of habitats by deleting the term "more." While the State believes that the term is commonly understood and applied, and requires no additional explanation, we continue to believe that "significantly productive" is not a term generally accepted in the scientific community. NOAA did not recommend "biological productivity" as a preferable term; rather we asked the State to provide a definition so that users, districts, and other affected interests would be on notice as to how "productivity" is being measured so they would know what to provide data on. However, NOAA finds that defining the term is not needed for preliminary approval.
4. **Adjacent Habitat.** To address NOAA's concerns regarding the "adjacency" requirement, Alaska proposes to revise 11 AAC 112.300(c)(1)(B)(ii) and 11 AAC 114.250(h)(2) to read "that is shown by written scientific evidence to be biologically and significantly productive." This language is an improvement over the "adjacency" requirement previously proposed by Alaska. NOAA finds that Alaska's change is adequate for our preliminary approval decision. Please see, however, our comments under No. 3, above, regarding the definition of "biologically and significantly productive."

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



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April 18, 2005

Coastal District Representatives

Re: Update to the Coastal Districts Following Receipt of Office of Coastal and Resource Management's (OCRM) Letter Addressing Preliminary Approval of the Amended Alaska Coastal Management Program (ACMP)

Dear Coastal District Representatives:

I am pleased to share with you a landmark letter issued by OCRM on April 14, 2005. That letter responds favorably to the State of Alaska's December 16, 2004, submission of *The Alaska Coastal Management Program, As Amended*, and concludes an arduous, detailed, comprehensive, and collaborative effort by the State of Alaska and OCRM on the approvability of the state's coastal program.

On February 23, 2005, I wrote OCRM a letter that took a firm position regarding our state's right to manage our coastal uses and resources in a manner consistent with our best judgment. OCRM took a hard look at the issues I identified and re-evaluated their position, as characterized in their January 28, 2005, letter. I appreciate OCRM's flexibility in reviewing the Coastal Zone Management Act (CZMA) and other approval criteria that resulted in a significantly modified list of requirements for Alaska's amended ACMP to be federally approved. OCRM's modified position truly assists our state in developing a coastal program that appropriately addresses the management and protection of Alaska's coastal uses and resources, balances the rights of stakeholders, and does so in a manner fully compliant with the CZMA and its implementing regulations.

Our discussions have culminated with OCRM's April 14, 2005, letter, which identifies the few remaining technical regulatory amendments necessary for the amended ACMP to meet the requirements of the CZMA. The state has agreed to make those revisions identified in the letter as required by law, but will not make further changes which OCRM sought as a policy directive but which had no legal basis.

Once the amended regulations have been adopted in accordance with Alaska's Administrative Procedures Act, OCRM will issue preliminary approval

= SB 102 =

Coastal District Representatives

April 18, 2005

Page 2

of the amended ACMP. The revisions are discussed in detail in the OCRM letter and are briefly summarized below.

1. Pursuant to 16 U.S.C. 1455(d)(4) and 15 C.F.R. 923.82(a), the state must hold a public hearing on the amended ACMP before OCRM can make a preliminary approval decision. This public hearing is an opportunity for interested persons to provide oral and/or written testimony on the state's amended ACMP.
2. The Department of Natural Resources (DNR) will make regulatory revisions to the ACMP's state standards at 11 AAC 112 to accommodate the CZMA "effects test" for federal consistency reviews which is required by federal regulation. As described in DNR Commissioner Tom Irwin's April 7, 2005, letter to OCRM, this "effects test" applies to (a) federal agency activities if the federal agency determines that effects to any land or water use or natural resource of the coastal zone are reasonably foreseeable and the state has an enforceable policy addressing the use or resource; and (b) federal license or permit activities that are located within the state's defined coastal area or on the outer continental shelf.
3. The state will make regulatory revisions to the subsistence use standard to allow the state to designate subsistence use areas. This revision will address the potential gap between the effective date of the new state standards at 11 AAC 112 and the implementation of the revised coastal district plans.
4. The state will update the ACMP program description by incorporating into that document all of DNR's existing published guidance pertaining to district planning and implementation.

To secure timely preliminary approval of the amended ACMP, and to assure continued federal funding of the ACMP in state fiscal year 2006, DNR intends to expeditiously revise the regulations to satisfy these procedural requirements. The proposed schedule for accomplishing the above listed tasks and securing preliminary approval from OCRM is as follows:

- April 20, 2005 - DNR releases all proposed regulatory revisions for public review and comment, and provides public notice of the hearing on the amended ACMP;

Coastal District Representatives

April 18, 2005

Page 3

- May 20, 2005 - DNR conducts a public hearing on the amended ACMP in Anchorage;
- May 23, 2005 - DNR closes the public review and comment period on all proposed regulations;
- May 25, 2005 - Having considered all comments on the regulations and incorporated appropriate changes, DNR finalizes and adopts the revised regulations, and submits them to the Department of Law (DOL) for legal review;
- May 31, 2005 - DOL transmits regulations to the Lieutenant Governor for filing, establishing an effective date of July 1, 2005;
- June 1, 2005 - DNR submits to OCRM: (1) the adopted revised regulations, (2) the summary of the public hearing on amended ACMP, and (3) the revised program description;
- July 1, 2005 - OCRM responds to the state, preliminarily approving the amended ACMP; OCRM initiates the NEPA process; and
- December 31, 2005 - OCRM completes the NEPA process and approves amended ACMP, such that the state standards at 11 AAC 112 become effective on January 1, 2006.

Over the past several months, coastal district representatives have told us that while all districts will be able to submit a revised district coastal management plan by the July 1, 2005, deadline, additional time would improve the quality of those plans and the public outreach process. Three bills currently before the Legislature have requested various formulations of the request for additional time and the districts have recently indicated that an additional six months would be invaluable to their efforts. I agree.

Therefore, I am announcing that DNR will work with the Alaska State Legislature on Senate Bill 102 and House Bill (HB) 186 to effect three deadline extensions within HB 191 (Chapter 24, SLA 2003). These three deadline extensions will:

- Amend Section 46(c) of HB 191 to extend by six months the district program sunset date;

Coastal District Representatives

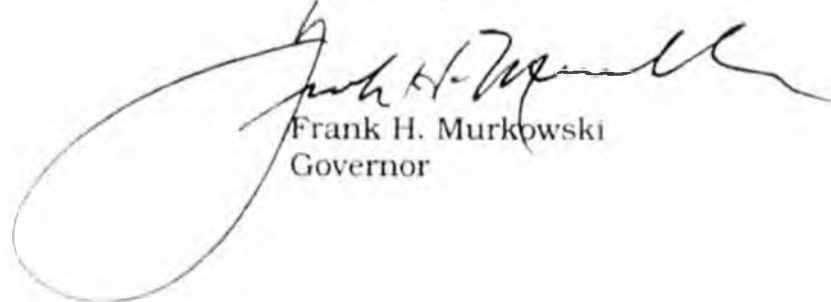
April 18, 2005

Page 4

- Amend Section 47(a) of HB 191 to extend by six months the revised district plan submission deadline; and
- Amend Section 49 of HB 191 to extend by six months the sunset date of the state standards at 6 AAC 80.010 - 6 AAC 80.90.

I hope you will join me in considering these developments a significant victory for all stakeholders in the ACMP process, and, most importantly for the coastal resources that we all work so hard to effectively manage. I am counting on your assistance and support as we complete the preliminary approval requirements and work through the deadline extension legislation you have requested, which will allow you to produce the best revised district plans possible.

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read "Frank H. Murkowski". The signature is written over the printed name and title.

Frank H. Murkowski  
Governor

Enclosure

**SB**

**103**

SB/03

# Alaska UIC Issues

What we do.

What are the challenges?

What are the options?



# AOGCC – EPA UIC Situation

- Introduction
- UIC and other USDW Responsibilities
- Senate Bill 103
- The Problem to Solve
  - UIC Well Classes
  - Alaska UIC Situation- redundancy, confusion, Time, \$\$\$
- Options/Solutions

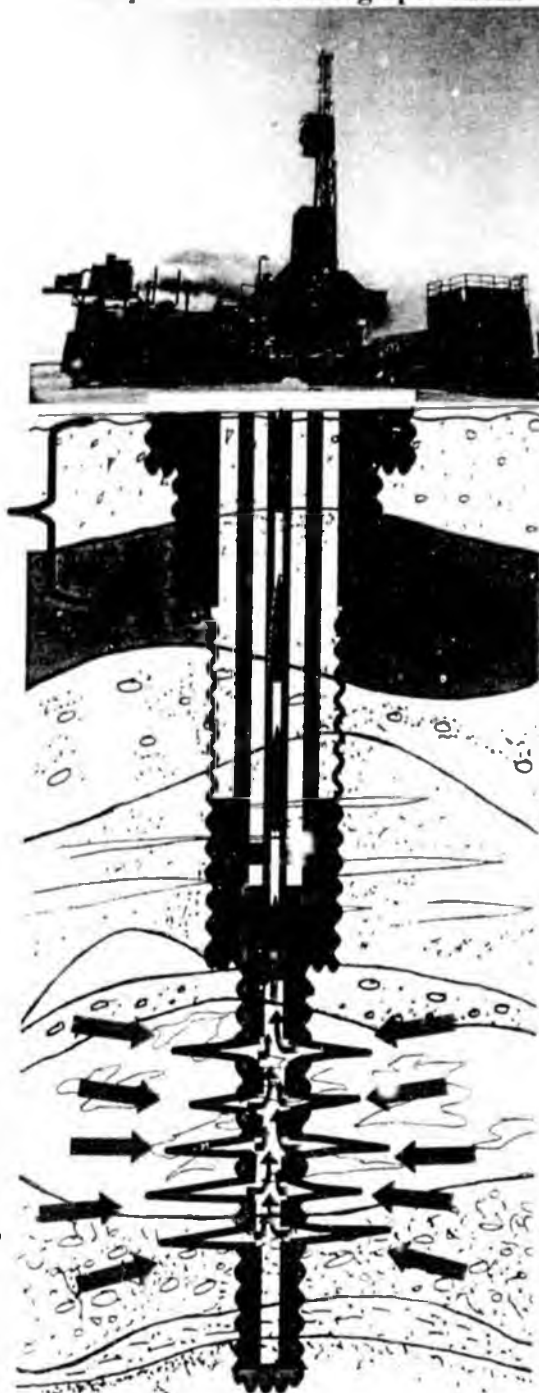


2 5:59 AM

Meter proving on pipelines

**AOGCC regulates operations affecting subsurface oil & gas resources, ensures the reliability of oil & gas flow measurements, and ensures that underground sources of drinking water are protected.**

Inspection of drilling operations



Protect Fresh Water

Regulate oil & gas fields operations

Regulate wells constructed

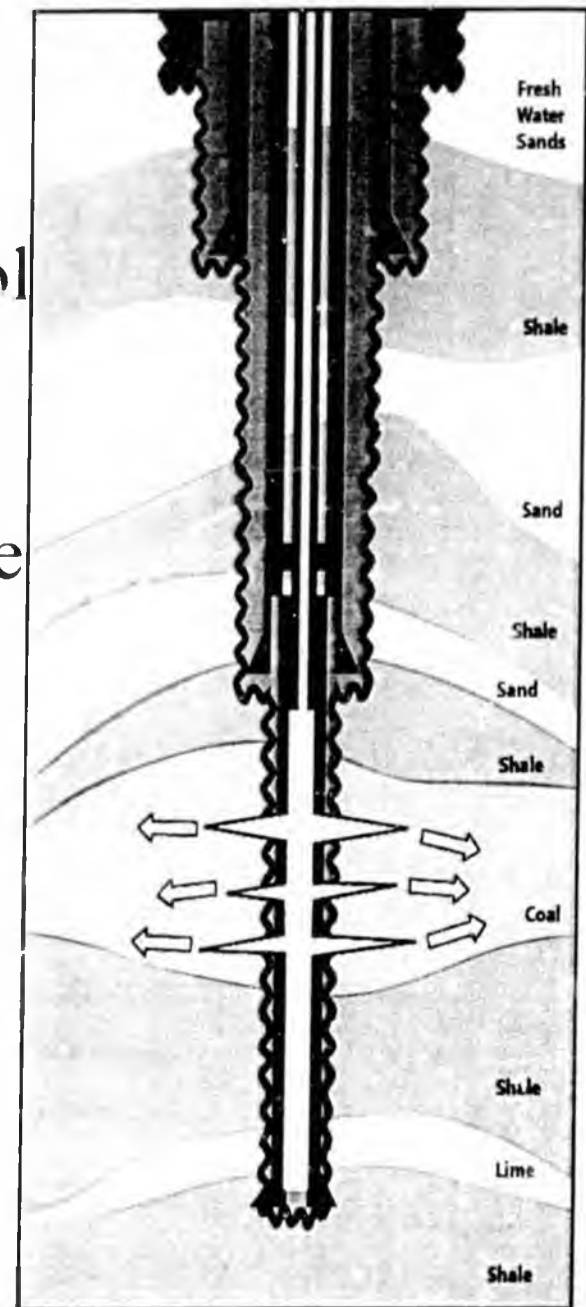
# UNDERGROUND INJECTION PROGRAM (Class II)

AOGCC has primacy for implementing the federal Underground Injection Control (UIC) Program relating to regulation of underground injection activities for the purposes of enhanced oil recovery and the most environmentally sound disposal of oil field waste.

The proper underground injection of material to enhance oil recovery has resulted in billions of \$\$\$ in revenue to the State of Alaska

And

The best place to put oilfield waste is deep underground.



**Sec. 31.05.030. Powers and duties of commission.**

**(d) The commission may require**

**(3) the drilling, casing and plugging of wells in a manner that will prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and prevent blowouts, cavings, seepages and fires;**

**(e) The commission may regulate**

**(1) for conservation purposes**

**(D) the disposal of salt water, nonpotable water, and oil field wastes;**

**(E) the contamination or waste of underground water;**

**(h) The commission may take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j), for the control of underground injection related to the recovery and production of oil and natural gas.**

## Senate Bill 103

“An Act relating to regulation of underground injection under the Safe Drinking Water Act and providing for an immediate effective date.”

\* **Section 1.** AS 31.05.030(h) is amended to read:

(h) The commission may take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-1 and 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f - 300j-26), for the control of underground injection related to the recovery and production of oil and natural gas and the control of underground injection in Class I wells as defined in 40 C.F.R. 144.6, as amended.

\* **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

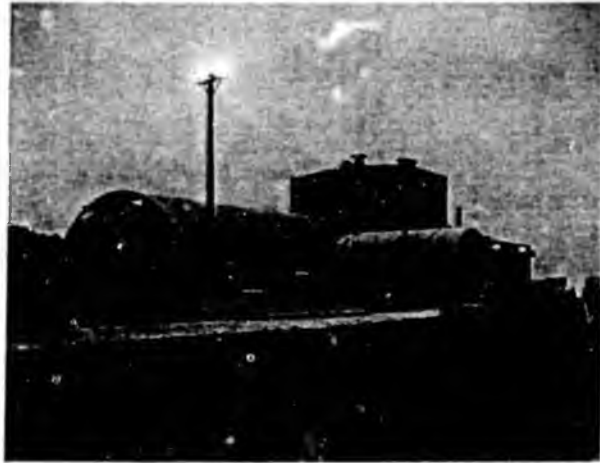
## UIC Situation

Two agencies performing same job, one protecting a non-existent resource resulting in onerous and costly requirements on industry and Alaska.

### Common Sense Solutions?

AOGCC control through primacy or single disposal class by eliminating redundancy through statute change (new bill) and positive EPA interpretation and ruling (EPA doesn't think this is possible)

# Underground Injection Control



- Program under Safe Drinking Water Act
  - Protect underground drinking water sources
- 5 classes of wells
  - Class I: industrial, hazardous and non-hazardous; municipal waste
  - Class II: oil and gas
  - Class III: mining
  - Class IV: shallow hazardous and radioactive waste injection
  - Class V: whatever doesn't fit in I-IV (into H<sub>2</sub>O table->20 people domestic, industrial, ?)

