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**Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers**

Reviewer Name Jackie Brock Agency or Department DNR/OPMP Phone 465-3177 E-mail Address jaclyn\_brock@dnr.state.ak.us

	<p>recommended by OPMP to bring the use areas into compliance, and therefore are not recommended for approval.</p> <p>The Lower Buckland River Subsistence Use Area designated subsistence area is recommended for approval provided the following changes are made.</p> <ol style="list-style-type: none"><li>1. Remove non-approved subsistence areas from the designated area map.</li></ol>
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<p><b><i>IMPORTANT HABITAT</i></b> <b>Designated Important Habitat Areas</b></p>		
<p>The NAB establishes the following areas as Important Habitat Areas under 11 AAC 114.250(h). These areas are identified in maps identified in the three headings below:</p> <p>1) Sensitive habitats identified in the NOAA Northwest Arctic Alaska Environmentally Sensitivity Index (ESI) Maps 1 -12 (Appendix E) are designated as important habitat for the following species:</p> <ul style="list-style-type: none"> <li>• Terrestrial Mammals               <ul style="list-style-type: none"> <li>• Muskox</li> </ul> </li> <li>• Marine Mammals               <ul style="list-style-type: none"> <li>• Pinnipeds: Bearded seal, ringed seal, spotted seal, Steller sea lion, and walrus.</li> <li>• Whales: Beluga, blue, bowhead, fin, gray, killer, minke and northern right whale.</li> </ul> </li> <li>• Birds               <ul style="list-style-type: none"> <li>• Diving Birds: Cormorant, loons, Pacific loon, pelagic cormorant, red-necked grebe, red-throated loon, yellow-billed loon.</li> <li>• Gulls/Terns: Aleutian tern, Arctic tern, glaucous gull, herring gull, mew gull.</li> <li>• Raptors: American peregrine falcon, Arctic falcon.</li> <li>• Seabirds: Black guillemot, common murre, crested auklet, dovekie, horned puffin, least auklet, murre, parakeet auklet, pigeon guillemot, thick-billed murre, tufted puffin, black-legged kittiwake, pomarine jaeger, seabirds.</li> <li>• Shorebirds: American golden plover, bar-tailed godwit, black-bellied plover, dunlin, Hudsonian godwit, long-billed dowicher, Pacific golden plover, pectoral sandpiper, red phalarope, red-necked phalarope, rock sandpiper, ruddy turnstone, semipalmated sandpiper, sharp-tailed sandpiper, western sandpiper, whimbrel.</li> <li>• Wading birds: Sandhill crane.</li> <li>• Waterfowl: American wigeon, black scoter, brant, Canada goose, common eider, dabbling ducks, emperor goose, geese, greater scaup, greater white-fronted goose, green-winged teal, king eider, long-tailed</li> </ul> </li> </ul>	<p><b><i>Response</i></b></p>	<p><b><i>Comments/Discussion</i></b></p>

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<p>duck, mallard, northern pintail, northern shoveler, red-breasted merganser, scoters, snow goose, spectacled eider, Steller's eider, surf scoter, tundra swan, white-winged scoter.</p> <ul style="list-style-type: none"> <li>• Fish Sheefish, whitefish, Arctic char, Chinook salmon, chum salmon, coho salmon, dolly varden, pink salmon, sockeye salmon, Pacific herring, starry flounder, burbot, northern pike, rainbow smelt, Pacific halibut, saffron cod, capelin.</li> <li>• Invertebrates             <ul style="list-style-type: none"> <li>• Bivalves: Alaska razor clam, butter clam, crenulate astarte, pinkneck clam, Siberia softshell clam, softshell clam.</li> <li>• Crabs: Blue king crab, helmet crab, red king crab</li> </ul> </li> <li>• Vegetation             <ul style="list-style-type: none"> <li>• Eelgrass</li> </ul> </li> </ul> <p>2) Excluding federal lands and waters, all anadromous waters in the coastal zone identified in the 2005 Fish Distribution Database (Appendix F), including a 1000-foot corridor on either side of the streams measured from the mean high water mark are designated as important habitat (ADFG 2005), and</p> <p>3) All nonfederal onshore areas of the coastal zone are designated as important habitat for caribou. The coastal zone boundary maps in Appendix B show the areas within the coastal zone and land ownership.</p> <p>Unless prohibited by an enforceable policy, uses and activities that could be proposed for areas designated for important habitat areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Applicants may determine if the area covered by their project is located in one of these areas by consulting the maps identified above. The coastal zone boundary maps in Appendix B may also be consulted to determine which areas are outside of the designations because they are federal land. Consulting these maps will make it clear which designations apply to the project area.</p>		

## Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

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<p>1. Name of designated area?                  Location of description in plan?                  Location of justification in plan?                  Location of boundaries in plan?</p> <p><i>(OPMP will make this determination)</i></p>		
<p>2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the location?</p> <p><i>(OPMP will make this determination)</i></p>	<input type="checkbox"/> Yes  <input type="checkbox"/> No	
<p>3. Does the designation exclude federal land?</p>	<input type="checkbox"/> Yes  <input type="checkbox"/> No	
<p>4. Is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</p>	<input type="checkbox"/> Yes  <input type="checkbox"/> No	
<p>5. Do uses and activities within the designated areas have a direct and significant impact on coastal water? Does the Resource Inventory and Analysis include documentation to support this criterion?</p>	<input type="checkbox"/> Yes  <input type="checkbox"/> No	
<p>6. Has the designated area been shown by written scientific evidence to be significantly productive habitat?</p>	<input type="checkbox"/> Yes  <input type="checkbox"/> No	
<p>7. <b>OPMP recommendation:</b></p>	<p>OPMP recommends this designated area not be approved.</p> <p>The Northwest Arctic Borough also proposes to designate areas identified in the Coastal Resources Inventory and Environmentally Sensitivity Maps as important habitat areas. After consultation with OHMP and ADFG staff, it was determined that these maps do not meet the requirements of written scientific evidence as defined in 11 AAC 114.990(40). The ESI maps are a general inventory of fish and wildlife populations, but do not specify areas that are biologically and significantly productive and show a direct and significant impact on coastal water, as required at 11 AAC 114.250(h). In addition, Northwest Arctic Borough has not complied with the requirement</p>	

## Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers

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demonstrating such. Therefore, the designated area is not recommended for approval.

The Northwest Arctic Borough proposes to designate all anadromous fish waters identified in the ADFG Fish Distribution Database Atlas as important habitat. The Northwest Arctic Borough has demonstrated compliance with 11 AAC 114.250(h) by including information showing the use of the areas will have a direct and significant impact on coastal water, and the areas are shown to be biologically and significantly productive. However, the proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8). As such, and as required by 11 AAC 114.270(e)(3), a district enforceable policy must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." The ADFG Fish Distribution Database Atlas is a matter authorized by state law, and is the authority under which other state laws are implemented. Northwest Arctic Borough has not demonstrated compliance with that statutes and regulations that require the coastal district to demonstrate that the matter is "not adequately addressed by state or federal law." AS 46.40.070(a)(2)(C). The designation of these streams duplicates existing ADF&G law without demonstrating the matter is not adequately addressed. Therefore the designated area is not recommended for approval.

Part 3 designates all offshore, non-federal areas in the Northwest Arctic Borough Coastal zone for caribou habitat. The designation references the coastal boundary atlas maps which are the appropriate scale and show federal lands. The criteria for designating important habitat at 11 AAC 114.250 (h) are that uses and activities within the designated areas have a direct and significant impact on coastal water and that the designated areas are shown by written scientific evidence to be significantly productive habitat. The discussion in Section 7.6.2 of the Resource Inventory and Analysis in the Northwest Arctic Borough Final Plan amendment (NWAB CMP pg. 111) provides a discussion of how caribou calving grounds are biologically and significantly productive based on scientific evidence. The discussion on page

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	<p>111 references the map in Appendix Q. The caribou calving grounds that are biologically and significantly productive habitats as shown by written scientific evidence in the resource inventory and analysis according to the map in Appendix Q are not located in the areas within the Northwest Arctic Borough coastal zone, nor is a significant portion of the habitats located within the coastal district. These areas are also not directly linked to the discussion of direct and significant impact on coastal water as required by 11 AAC 114.250 (h).</p> <p>The proposed designated important habitat areas do not comply with the regulations or the guidance provided by OPMP, fail to incorporate changes recommended by OPMP to bring the use areas into compliance, and therefore is not recommended for approval.</p>
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**Northwest Arctic Borough Coastal Management Plan: Designated Area Analysis Table for OPMP and Agency Reviewers**

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<p><b><i>HISTORY OR PREHISTORY</i></b>  <b>Designated Areas for the Understanding of History and Prehistory</b></p> <p>All onshore non-federal lands and waters within the NAB coastal zone and offshore areas within 1,000 feet of the mean high water of the shoreline of coastal waters are designated as important for the study, understanding or illustration of history prehistory (11 AAC 114.250(i)). The location of these designations may be found by consulting the coastal zone boundary maps in Appendix B. These maps identify the boundaries of this area designation, that is, non-federal lands within the coastal zone.</p> <p>Uses and activities that could be proposed for areas designated for historic and prehistoric areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p><b><i>Response</i></b></p>	<p><b><i>Comments/Discussion</i></b></p>
<p>1. Name of designated area?                      Location of description in plan?                      Location of justification in plan?                      Location of boundaries in plan?</p> <p><i>(OPMP will make this determination)</i></p>		
<p>2. Does the district plan list the designated areas within the enforceable policies section of the plan, with appropriate references to the description or map of the location?</p> <p><i>(OPMP will make this determination)</i></p>	<p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No</p>	
<p>3. Does the designation exclude federal land?</p>	<p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No</p>	
<p>4. Is the area described or mapped at a scale sufficient to determine whether a use</p>	<p><input checked="" type="checkbox"/> Yes</p>	

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or activity is located within the area?	<input type="checkbox"/> No	
5. Does the Resource Inventory and Analysis include documentation that the designated area is important to the study, understanding, or illustration of national state or local history or prehistory?	<input checked="" type="checkbox"/> Yes  <input type="checkbox"/> No	
6. <b>OPMP Recommendation:</b>	OPMP recommends this area not be approved.  Although the proposed designated area is justified, the proposed enforceable policies applicable for this Understanding of History and Prehistory area are not approvable (see enforceable policy analysis table for rationale). Since there is no state standard under 11 AAC 112 addressing impacts from proposed projects within designated are Important for Understanding of History and Prehistory a coastal district must have an approvable enforceable policy in order for the designated area to be meaningful and applicable. Without an enforceable policy applicable to the proposed designated recreation area, the designation of the area is meaningless for compliance purposes, and therefore is not recommended for approval.	

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy A-1: Subsistence Use Priority**

- a. Projects that do not give subsistence use the highest priority use of coastal lands and waters are not allowed.
- b. Projects that would deplete subsistence use opportunities, including the availability of subsistence resources, below the level sufficient to support customary and traditional uses as demonstrated in studies cited in the resource inventory and analysis or studies completed by the Alaska Department of Fish and Game, Division of Subsistence are not allowed.
- c. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use prioritization and protection through the application of the avoid or minimize sequence. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy A-2: Subsistence Access**

a. Activities that do not accommodate traditional and customary access to coastal resources used for subsistence are not allowed. Site-specific elements of public access include roads, waterways, trails, campsites, and aircraft landing areas. Traditional and customary means of access include but are not limited to aircraft, off-road vehicles, boat, snow machine, dogsled, and foot.

b. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends the policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 is specific in addressing impacts to subsistence use areas and "subsistence uses of coastal resources." The proposed coastal district policy addresses "access to subsistence resources" rather than the use areas of those resources, and does not address or mention the application of this policy in relation to the designated subsistence use areas. As such, the proposed enforceable policy does not comply with AS 46.40.070(a)(2), 11 AAC 114.270(e), and does not flow from the state standard at 11 AAC 112.270, as required at 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005).

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy A-3: Subsistence Impacts**

a. For projects with potentially conflicting activities with subsistence, the applicant shall include information in the analysis required by 11 AAC 114.270(b) about reasonably foreseeable adverse impacts related to:

- 1) Access to subsistence uses of resources,
- 2) Changes in the amount or availability of plants or animals harvested in the subsistence use area,
- 3) The social welfare of subsistence users from a reduction of subsistence uses, and
- 4) The ability to maintain a subsistence use priority.

b. For a large project, an applicant must include additional information in the analysis required by 11 AAC 112.270(b) about reasonably foreseeable adverse impacts from the project associated with:

- 1) The number of temporary or permanent residents housed at the project site,
- 2) Recreational use of subsistence use areas by project staff,
- 3) Any infrastructure or service improvements required for the project and its workers, and
- 4) Cumulative impacts to subsistence.

c. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b) - (i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### *OPMP's Final Recommendation to the DNR Commissioner:*

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already requires that the applicant submit an analysis of reasonable foreseeable adverse impacts of the project to subsistence uses of the area. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy A-4: Commercial Recreation**

- a. The following commercial recreational uses and facilities are not allowed:
- 1) Activities that would diminish subsistence use by displacing existing fish and wildlife populations, including the location of temporary camps in areas that could affect migration of caribou,
  - 2) Activities that would interference with subsistence harvests, and
  - 3) Activities that would disturb subsistence use including noise from repeated use of flight paths over areas used for subsistence during times of subsistence use.
- b. The unauthorized use of private property including cabins by commercial recreational users is not allowed.
- c. The disposal of trash or human waste is not allowed in subsistence use areas.
- d. Donation of spoiled game to subsistence users by commercial recreation users is not allowed..
- e. Disturbance of caribou by commercial recreation users during the first 24 hours after the first group of caribou travels through an area is not allowed.
- f. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPPM's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Subsection A: The State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection B: AS 11.46.300-350 already addresses unauthorized use of private property. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection C: Solid waste and human waste disposal are matters the Department of Environmental Conservation has authority to regulate.

Subsection D and E: This part of the policy is neither clear nor concise as to the activities and persons affected by the policies and the requirements of the policies and are not written in enforceable language.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy A-5: Mining and Subsistence**

a. Mining activities that are incompatible with subsistence uses are not allowed. Incompatible uses include the following:

- 1) Activities producing mechanical noise that disrupts subsistence use, including the availability of subsistence resources, and
- 2) Transportation routes associated with mines that significantly affect subsistence uses or access to those uses.

b. This policy relates to uses and activities that may occur in subsistence use areas designated under the authority of 11 AAC 114.250(g) as described in Section 4.4.1.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The State Subsistence Standard at 11 AAC 112.270 already addresses the avoidance and minimization of impacts to subsistence uses of coastal resources within designated subsistence use areas, and requires that the applicant submit an analysis of reasonably foreseeable adverse impacts of the project to subsistence uses of the area. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy B-1: Fish Habitat</b></p> <p>a. Project activities that would result in a net decrease to the productivity of fish habitat are not allowed. Productivity is directly related to losses to the following functions: Spawning, migration, rearing, and over-wintering.</p> <p>b. Projects within 100 feet landward of the ordinary high water mark from fish habitat are not allowed. This requirement does not apply to projects that require an over-water or water edge location, nor does it preclude necessary stream, river, or lake crossings.</p> <p>c. Sand and gravel operations that do not consolidate operations to the maximum extent practicable are not allowed.</p> <p>d. Applicants for sand and gravel extraction in or adjacent to fish habitat shall include in the project description measures that will prevent or reduce adverse impacts to fish habitat including berms, settling ponds and measures to prevent fish entrapment.</p> <p>e. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the proposed enforceable policy duplicates AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Also, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy B-2: Mining Operations Near Fish Habitat**

a. Applicant\* for mining projects, other than sand and gravel extraction, in or adjacent to fish habitat that do not incorporate measures into the project description to prevent significant adverse impacts to fish habitat are not allowed. Mining projects that do not include provisions to minimize alteration to streams or channels are not allowed.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 14.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(i)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 provide broad authority to manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

The proposed policy also intends to apply to projects outside of the designated area, which is strictly prohibited. 11 AAC 110.015 addresses the application of enforceable policies to activities outside the designated areas.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy B-3: Offshore Mining</b></p> <p>a. Other than sand and gravel extraction, mining that would significantly affect fish and wildlife habitat is not allowed. Mining and mineral processing operations that are not compatible with the use of adjacent uplands are not allowed.</p> <p>b. Mining operations without conflict avoidance agreements with affected local governments are not allowed.</p> <p>c. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46 40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### *OPMP's Final Recommendation to the DNR Commissioner:*

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the effects of mining and mineral processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy B-6: Water Bird Habitat**

a. Project activities that would result in channelization, diversion, or damming of water bodies that would alter the natural hydrological conditions and have a significant adverse impact on migratory or nesting shorebird, seabird, or waterfowl habitat are not allowed.

b. This policy relates to uses and activities for fish habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by water birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy B-7: Natural Processes**

a. Applicants proposing to conduct an activity on previously undisturbed sites shall address the activity's reasonably foreseeable impacts to habitats in the analysis that accompanies the consistency certification, or for federal activities, in the federal consistency determination.

b. Habitats for which there is scientific evidence of effects from climate change, including rare or endangered plant or animal species that inhabit the project area, the applicant shall include in the analysis that accompanies the consistency certification of federal consistency determination a description of BMPs that minimize project impacts to these resources and help maintain populations of such species.

c. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

### **CRITERIA:**

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 111.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
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- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, the proposed enforceable policy duplicates AS 41.14.870, which requires complete plans and specifications for the proper protection of fish and game. Additionally, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy B-8: Dredging and Filling in Waters</b></p> <p>a. The following dredging or filling activities in streams, rivers, lakes, wetlands, or saltwater areas including tideflats are not allowed:</p> <ol style="list-style-type: none"> <li>1) Activities that do not avoid significant impacts to fish and wildlife habitat;</li> <li>2) Activities that do not avoid significant interference with critical life history phases of wildlife and fish including migration, spawning and calving, and rearing;</li> <li>3) Activities that do not limit areas of direct disturbance to as small an area as practicable; and</li> <li>4) Activities that do not maintain circulation and drainage patterns in the area of the fill.</li> </ol> <p>b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 33 C.F.R. Parts 320-323, and 18 AAC 60 and 70 manage the disposal of dredged materials into wetlands, rivers, lakes and streams and tideflats. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy B-9: Disposal of Dredged Materials**

a. Other than sand and gravel resources, uncontained dredged materials disposed of onshore in riparian areas is not allowed.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(f)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 33 C.F.R. Parts 320-323, and 18 AAC 60 and 70 manage the disposal of dredged materials into riparian areas. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy B-10: Structures Over Waters**

a. Structures in or over streams, lakes, rivers, wetlands, or saltwater including tideflats with the following effects are not allowed:

- 1) Structures that decrease fish and wildlife habitat productivity, including effects to fish and wildlife migration, spawning, and rearing, and
- 2) Structures that reduce opportunities for fish harvesting activities.

b. This policy relates to uses and activities for habitats designated as important habitat under 11 AAC 114.250(h) as described in Section 4.4.4.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Important Habitat designated Area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 manage resident and anadromous fish waters, including the placement and impacts associated with bridges and culverts. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to fish habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy C-1: Cultural, historic and Archeological Surveys**

a. Applicants proposing to conduct activities that would disturb historic or prehistoric resources including activities in historic areas such as fish camps culture camps or Native allotments shall consult with the NAB prior to submission of a consistency certification to determine if a resource survey is necessary. The resource survey will be used by the NAB and appropriate state and federal agencies to determine what alternative measures will be necessary to protect historic or prehistoric resource. The NAB shall require a resource survey if one or more of the following circumstances exist:

- 1) The proposed activity is within one mile of a known historic or prehistoric site catalogued by the State Historic Preservation Office or by the NANA regional Native corporation, or
- 2) The project is a large project.

b. This policy relates to uses and activities for areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 114.250(i) as described in Section 4.4.2.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
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- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The policy is neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. Further language suggestions were made by OPMP on September 19, 2006 which would have made this policy approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy C-2: Cultural Resource Protection</b></p> <p>a. The applicant shall ensure that the following standards are implemented to protect historic and prehistoric resources:</p> <ol style="list-style-type: none"> <li>1) Archaeological, prehistoric and historic resources shall be protected from adverse impacts caused by surrounding project uses and activities.</li> <li>2) Known artifacts of significant historic, prehistoric or archeological importance shall not be disturbed during project development unless the landowner and the NAB approve the action.</li> <li>3) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall notify the landowner and the NAB before continuing work that could damage the artifacts.</li> <li>4) Historical artifacts shall not be removed from lands in the NAB without permission from the landowner and affected communities.</li> </ol> <p>b. This policy relates to uses and activities for areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 114.250(i) as described in Section 4.4.2</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(k)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The policy is neither clear nor concise as to the activities and persons affected by the policy and the requirements of the policy. It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. Further language suggestions were made by OPMP on September 19, 2006 which would have made this policy approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy D-1: Bank Stabilization</b></p> <p>a. All stream or lake bank cuts, fills or exposed earthwork adjacent to water bodies, including streams, wetlands and marine waters, shall be stabilized to prevent erosion into adjoining waters, during operation and following cessation of development activities.</p> <p>b. This policy relates to uses and activities for areas designated as flooding and erosion hazard areas under 11 AAC 114.250(b) as described in Section 4.4.5.</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Stabilizing erosion prone areas is considered an appropriate measure for the known natural hazard of erosion and therefore already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing erosion is not adequately addressed.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the impacts to water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy D-2: Design and Siting Criteria**

- a. Ground disturbing or construction activities in areas vulnerable to erosion, landslides, melting permafrost, and other unstable ground conditions shall not be allowed unless demonstrated in the project description that measures implemented by the applicant will guarantee the ability of the activity or project to withstand naturally-generated forces and protect the viability of biological resources.
- b. Development activities shall minimize removal of existing vegetative cover in erosion prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native species or by other appropriate erosion control measures when re-vegetation alone would not prevent erosion.
- c. The applicant shall use appropriate measures to minimize run-off which might otherwise cause accelerated erosion, and retain natural drainage patterns and natural groundwater recharge areas.
- d. Projects in permafrost areas shall be designed to minimize heat transfer to the ground in order to avoid melting the permafrost and causing slumping, flooding, thermokarst, or draining.
- e. Projects in areas subject to ice hazards shall not be allowed unless the applicant demonstrates in the project description that measures will adequately prevent damage from reasonably foreseeable ice hazards.
- f. Part a of this policy relates to uses and activities for all areas designated as natural hazard areas under 11 AAC 114.250(b). Parts b and c apply to areas designated as flooding and erosion hazard areas. Part d applies to areas designated as susceptible to permafrost hazards. Part e applies to areas designated as ice hazards as described in Section 4.4.5.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Appropriate measures to prevent damage from known natural hazards is already addressed by 11 AAC 112.210. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing identified natural hazards in the Northwest Arctic Borough is not adequately addressed.

It is important to note that certain suggestions were made in the OPMP Preliminary Recommendations of June 6, 2006 that would have allowed this policy to be approvable. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy E-1: Coastal Facilities</b></p> <p>a. In planning for and approving major waterfront facilities, docks, piers, cargo handling and storage areas, commercial fishing support facilities, marinas, and other structures placed in coastal waters, priority will be given to facilities that do not duplicate other coastal facilities and to facilities that optimize the use of coastal land and water.</p> <p>b. This policy applies to uses and activities in and adjacent to coastal waters, and it applies to the statewide Coastal Development standard subject use (11 AAC 112.200(c)).</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

This policy is neither clear nor concise as to the activities and persons affected by the policies and requirements of the policies.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy F-1: Utility Corridors</b></p> <p>a. Utility corridors, including pipelines and transmission lines, that do not minimize adverse impacts to fish and wildlife populations and habitat are not allowed. Projects that do not use existing corridors capable of accommodating the purposes of the project are not allowed.</p> <p>b. Above-ground utility lines and pipelines in caribou habitat shall be buried wherever geographical conditions permit. Utility lines and pipelines in these areas that cannot be buried due to soil or geographical conditions that do not significantly reduce the productivity of moose or caribou habitat are allowed.</p> <p>c. This policy is established under the statewide Utility Routes and Facilities standard subject use (11 AAC 112.240) and it applies throughout the coastal area.</p>	<ul style="list-style-type: none"> <li>• Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</li> <li>• Is this a matter that the Department of Environmental Conservation has the authority to regulate?</li> <li>• Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</li> <li>• Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</li> <li>• Does the policy use precise, prescriptive and enforceable language?</li> <li>• Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</li> <li>• Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</li> <li>• Are the criteria to establish that the policy addresses a matter of local concern (above) documented?             <ul style="list-style-type: none"> <li>○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</li> <li>○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</li> <li>○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</li> <li>○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</li> </ul> </li> <li>• Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?             <ul style="list-style-type: none"> <li>○ If yes, is the description or map of the designated area referenced in the enforceable policy?</li> <li>○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Pipelines are included in the definition of "utilities routes or facilities" at 11 AAC 112.990(30), and are therefore addressed specifically within the State Utility Routes and Facilities Standard at 11 AAC 112.240(b)(2). The proposed policy is also addressed within the State Habitat Standard at 11 AAC 112.300. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy F-2: Transportation Corridors**

a. The following activities are not allowed:

- 1) Transportation corridors that do not minimize or prevent adverse impacts to fish and wildlife populations and habitat and prevent the loss of fish and wildlife habitat and loss or displacement of fish and wildlife populations.
- 2) Transportation corridors that do not minimize the number of river, stream, and lake crossings to the extent practicable,
- 3) Transportation corridors that do not maintain bank stability and prevent erosion, and
- 4) Transportation corridors that do not use existing corridors when traffic can be accommodated on the existing corridors.

b. Transportation corridors that significantly reduce the productivity of caribou habitat are not allowed.

c. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Transportation corridors are included in the definition of "transportation routes or facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The proposed policy is also addressed within the State Habitat Standard at 11 AAC 112.300. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy F-3: Off-Road Access**

- a. Off-road tundra travel associated with a project that destroys tundra vegetation, fragile soils, permafrost, or wetlands is not allowed.
- b. Operations in caribou calving areas that involve repeated off-road vehicle are not allowed during the calving period.
- c. Operations in moose over-wintering areas during sensitive periods when significant populations of moose are present are not allowed.
- d. Project-related off-road vehicle use that interferes with subsistence uses or caribou migration are not allowed.
- e. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Roads are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy F-4: New Airstrips**

- a. Activities related to new airstrips that disturb fish and wildlife populations through physical, visual, and acoustical disturbances are not allowed.
- b. Projects for new airstrips that do not involve consultation with affected communities and the NAB are not allowed. Projects that limit options for future community growth by splitting the village in two parts are not allowed.
- c. This policy is established under the statewide Transportation Routes and Facilities subject use (11 AAC 112.280) and it applies throughout the coastal areas.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### *OPMP's Final Recommendation to the DNR Commissioner:*

OPMP recommends this policy not be approved.

Air terminals and facilities are included in the definition of "transportation routes and facilities" at 11 AAC 112.990(28), and are therefore addressed specifically within the State Transportation Routes and Facilities Standard at 11 AAC 112.280. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy G-1: Land-Based Seismic Surveys**

a. Seismic surveys occurring on land will be located, designed, and conducted in a manner that avoids significant disturbances to fish and wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife. Depending on site-specific concerns, seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation used may be required by the coordinating agency after consultation with the NAB.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230)

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed coastal district policy addresses land-based seismic surveys which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005). "Land-based seismic surveys" are not considered development as a "major energy facility," as defined at 11 AAC 112.990(14).

In addition, certain habitats and aspects of the proposed policy are already addressed by the State Energy Facilities Standard at 11 AAC 112.230, the State Habitat Standard at 11 AAC 112.300, and the State's authority at AS 41.14.840 and AS 41.14.870. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy G-2: Water-Based Seismic Surveys**

a. Seismic surveys sited in fresh and marine waters shall minimize adverse effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques, other than explosives, that do not significantly affect fish and wildlife. Seismic surveys shall be timed to avoid impacts to commercial and subsistence fishing and migrating smolts.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed coastal district policy addresses water-based seismic surveys which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005). "Water-based seismic surveys" are not considered development as a "major energy facility," as defined at 11 AAC 112.990(14).

In addition, certain habitats and aspects of the proposed policy are already addressed by the State Energy Facilities Standard at 11 AAC 112.230, the State Habitat Standard at 11 AAC 112.300, and the State's authority at AS 41.14.840 and AS 41.14.870. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter addressing impacts to habitat is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy G-3: Oil and Gas Leasing**

a. Oil and gas lease sales that would result in significant adverse effects to fish and wildlife populations or their habitat and to commercial fishing and subsistence uses are not allowed.

b. This policy relates to uses and activities for areas designated as important habitat under 11 AAC 112.250(h) as described in Section 4.4.4.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### *OPMP's Final Recommendation to the DNR Commission:*

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area was not recommended for approval (see designated area analysis table for justification). Without an approved important habitat designated area, this policy will not be applicable, nor permissible.

In addition, oil and gas leasing is considered a "use of state concern" as defined at AS 46.40.210. Under AS 46.40.060, the district has not demonstrated that this policy does not arbitrarily or unreasonably restrict a use of state concern.

In addition, various State and federal agency laws, including AS 41.14.840, AS 41.14.870, 18 AAC 60 and 70 manage the effects of oil and gas processing on water quality and habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy G-4: Siting of Energy Facilities</b></p> <p>a. Permanent energy facilities in the following areas are not allowed:</p> <ol style="list-style-type: none"> <li>1) Designated important habitat areas, and</li> <li>2) Areas where there would be significant adverse impacts to subsistence uses or commercial fishing.</li> </ol> <p>b. The applicant shall submit an analysis with the consistency certification or federal consistency determination that describes measures that will be implemented to prevent or reduce conflicts with fish and wildlife and their habitat, subsistence uses and commercial fishing.</p> <p>c. Applicants shall demonstrate in the project application packet that it has consulted with the borough and affected communities regarding measures to minimize the probability of spills or other forms of contamination and dispersal of emissions for activities that are not regulated under AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and the regulations developed under these statutes. The coordinating agency shall provide an opportunity for public comments for these matters during the consistency review.</p> <p>d. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).</p>	<ul style="list-style-type: none"> <li>• Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</li> <li>• Is this a matter that the Department of Environmental Conservation has the authority to regulate?</li> <li>• Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</li> <li>• Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</li> <li>• Does the policy use precise, prescriptive and enforceable language?</li> <li>• Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</li> <li>• Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</li> <li>• Are the criteria to establish that the policy addresses a matter of local concern (above) documented?             <ul style="list-style-type: none"> <li>○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</li> <li>○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</li> <li>○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</li> <li>○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</li> </ul> </li> <li>• Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?             <ul style="list-style-type: none"> <li>○ If yes, is the description or map of the designated area referenced in the enforceable policy?</li> <li>○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

Subsection (a)(1) of the proposed policy are already addressed by 11 AAC 112.230 (1), (11)-(14) and 11 AAC 112.300. In addition, the proposed Important Habitat designated Area was not recommended for approval (see the designated area analysis table for justification). Without an approved important habitat designated area, subsection (a)(1) of the proposed policy will not be applicable, nor permissible.

Subsection (a)(2) of the proposed policy is already addressed by 11 AAC 112.230 (1) and (13).

Subsection (b) of the proposed policy is addressed by 11 AAC 112.230(1), (11)-(14), and 11 AAC 112.300

Subsection (c) is already addressed by 11 AAC 110.215, the requirements in the consistency review packet. This subsection of the policy also does not flow from 11 AAC 112.230 Energy Facilities state standard. Further, this subsection addresses matters regulated by the Department of Environmental Conservation. Finally, this subsection is also already addressed by 11 AAC 110.245 comment deadlines.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy G-5: Dismantlement, Restoration and Rehabilitation**

a. Applicants shall include alternative measures in the project description that is submitted with the consistency certification that outline plans for the dismantlement of oil and gas facilities and restoration and rehabilitation of the project area at the end of the useful life of the facilities. This plan shall include measures to return the area to pre-project conditions, to the extent practicable, describe when these measures will be implemented, and document expected costs and resources available to implement the measures.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### *OPMP's Final Recommendation to the DNR Commissioner:*

OPMP recommends that the enforceable policy not be approved.

The proposed coastal district policy addresses dismantlement, restoration, and rehabilitation of oil and gas facilities which does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i), and does not comply with 11 AAC 114.270(a) and *The Alaska Coastal Management Program, As Amended June 2, 2005* (approved by OCRM December 29, 2005).

11 AAC 112.230 addresses where new energy facilities are located, while the proposed district policy addresses dismantlement, restoration, and rehabilitation at the completion of the facilities usefulness.

Habitats are adequately addressed by the avoid, minimize, mitigate sequence at 11 AAC 112.300

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***POLICY TEXT:***

#### **Policy G-6: Hydroelectric Projects**

a. An applicant proposing to site a hydroelectric project in an area that will result in a decrease in fish production in the affected water body shall include an analysis with the consistency certification or federal consistency determination that describes measures that will be implemented to maintain or enhance stocks of commercial or subsistence fish species.

b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
- *Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?*
- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?*
- *Are the criteria to establish that the policy addresses a matter of local concern (above) documented?*
  - *Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].*
  - *Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].*
  - *Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].*
  - *Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].*
- *Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?*
  - *If yes, is the description or map of the Designated area referenced in the enforceable policy?*
  - *If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?*

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this enforceable policy not be approved.

Various State and federal agency laws, including AS 41.14.840, AS 41.14.870, and 33 C.F.R. Parts 320-323 manage impacts from energy facilities on fish and wildlife habitat. The State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately address

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy G-7: Wind Generation</b></p> <p>a. Wind generation projects shall be sited to minimize mortality to birds.</p> <p>b. This policy applies to uses and activities related to the statewide Energy Facilities standard (11 AAC 112.230).</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### ***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy be approved in whole.

This enforceable policy flows from the Energy Facilities State Standard; is not a matter regulated by DEC; doesn't adopt, duplicate, repeat, restate, paraphrase, or incorporate by reference a state standard or other state or federal law; is clear and concise as to the activities and persons affected by the policies and requirements of the policies; uses precise, prescriptive, and enforceable language; and does not arbitrarily or unreasonable restrict or exclude uses of state concern.

The policy addresses a matter regulated by state law, namely 11 AAC 112.230. The district documents that the matter is of local concern as shown in the above table and in the Resource Inventory and Analysis.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy H-1: Sisoalk Spit Subsistence Area</b></p> <p>a. Project activities are not allowed during periods of subsistence use for trapping, sheep hunting, moose hunting, egg gathering, waterfowl hunting, marine mammal hunting, and fishing that usually occur in this area between June 1 and September 30.</p> <p>b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters..</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200, 112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## Northwest Arctic Borough: OPMP District Policy Analysis Table

***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.

## Northwest Arctic Borough: OPMF District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-2: Kobuk-Selawik Lakes Subsistence Area**

a. Project activities are not allowed during periods of subsistence use activities. The approximate times of use are indicated in parentheses when known:

- 1) Seal hunting (September - October)
- 2) Herring spawning (May - June)
- 3) Waterfowl hunting (April 15 - October)
- 4) Fishing (year-round)
- 5) Egg gathering (June 1 - July 31)
- 6) Trapping
- 7) Berry picking (summer and fall)

b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). This designated area includes the lands and waters depicted on the maps in Appendix H that are not federal lands or waters.

### **CRITERIA:**

- Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?
- Is this a matter that the Department of Environmental Conservation has the authority to regulate?
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?
- Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?
- Are the criteria to establish that the policy addresses a matter of local concern (above) documented?
  - Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].
  - Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].
  - Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].
  - Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].
- Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?
  - If yes, is the description or map of the designated area referenced in the enforceable policy?
  - If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?

## Northwest Arctic Borough: OPMP District Policy Analysis Table

***OPMP's Final Recommendation to the DNR Commissioner:***

OPMP recommends this policy not be approved.

The proposed Subsistence Use designated area was not recommended for approval (see the designated area analysis table for justification). Without an approved subsistence use designated area, this policy will not be applicable, nor permissible.