

12272 HOUSE RES

## Northwest Arctic Borough: OFMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-3: Cape Espenberg/Goodhope River Subsistence Area**

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

- 1) Seal and walrus hunting (May 1 - July 15)
- 2) Moose hunting (September - May)
- 3) Waterfowl hunting (August 1 - October 31)
- 4) Trapping (winter)
- 5) Egg gathering (June 1 - July 31)
- 6) Fishing (year-round)
- 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-4: Kobuk River Delta Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence use activities generally occur during the times indicated in parentheses:

- 1) Waterfowl hunting (July 1 - August 15)
- 2) Fishing (year-round)
- 3) Trapping (April 1 - June 10)
- 4) Berry picking (summer and fall)
- 5) Trapping
- 6) Moose hunting

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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy H-5: Selawik River Delta Subsistence Use Area</b></p> <p>a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:</p> <ol style="list-style-type: none"> <li>1) Waterfowl hunting (April - October)</li> <li>2) Fishing (year-round)</li> <li>3) Trapping (April 1 - June 10)</li> </ol> <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 LNR 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: OPMP District Policy Analysis Table

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

#### **Policy H-6: Manillaq River/Ambler Lowlands Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Caribou hunting (mid-August - mid-October)
- 2) Waterfowl hunting (May 1 - 31 and September 1 - 30)
- 3) Fishing (year-round)
- 4) Berry picking (summer and fall)
- 5) Trapping

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 114.40G, 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-7: Inmachuk River Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Fishing (year-round)
- 2) Moose, caribou, and musk-ox hunting (August - March)
- 3) Beluga whale hunting (June and July)
- 4) Trapping (winter)
- 5) Waterfowl hunting (April-September)
- 6) Egg gathering (May-July)
- 7) Berry picking and herb gathering (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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

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

#### **Policy H-8: Lower Buckland River Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Waterfowl hunting (April 15 - June 15 and August 15 - Sept. 15)
- 2) Seal hunting (April 15 - October 31)
- 3) Other marine mammals
- 4) Moose hunting (September - March)
- 5) Fishing (year-round)
- 6) Berry picking and herb gathering (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 recommended for approval, 11 AAC 114.270 (g) requires that a description or map that is developed with an enforceable policy under 11 AAC 114.270 must be referenced in the enforceable 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. However, the coastal district did not make the recommended changes, thus this policy cannot be approved.

In addition, 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

### **POLICY TEXT:**

#### **Policy H-9: North Fork Squirrel River/Omar River Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Caribou hunting (mid-August - mid-October)
- 2) Fishing (year-round)
- 3) Waterfowl hunting (September - October)
- 4) Trapping (winter)
- 5) Egg gathering (May-July)

b. This policy relates to uses and activities for designated subsistence use areas 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-10: North Kivallina Coast Subsistence Use Area**

a. Project activities are not allowed during periods of subsistence use activities. Subsistence activities generally occur during the times indicated in parentheses:

- 1) Marine mammal hunting (March 15 - July 15)
- 2) Waterfowl hunting (April 1 - May 31 and September 1 - 30)
- 3) Egg gathering (May-July)

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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-11: Onion Portage Subsistence Use Area**

a. Development projects are not allowed in this area during times of subsistence use.

b. The following uses are improper uses and are prohibited in the area at any time due to their impact to subsistence uses:

- 1) Floodplain gravel extraction, and
- 2) The construction of any structure not related to:
  - cultural resource management,
  - fish and wildlife management, or
  - subsistence activities.

c. 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-12: Eschsoltz Bay Subsistence Use Area**

a. Development activities are prohibited during periods of subsistence use activities. The general times of subsistence use is indicated below.

- 1) Beluga Whales (subsistence harvest of beluga whales, which usually takes place in a two-to four-week period between June 1 and July 15)
- 2) Spotted Seals

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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-13: Elephant Point/Choris Peninsula Subsistence Use Area**

a. Project activities are not allowed in this area during times of subsistence use.

b. Priority Uses: The following uses are priority uses in the area and activities shall avoid significant adverse impacts to these uses and resources:

- 1) Subsistence activities,
- 2) Cultural resource management, and
- 3) Fish and wildlife management.

c. Beluga Whales: Activities are not allowed in the area during times when subsistence use is occurring generally during a two-to four-week period between June 1 and July 15.

d. 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, 112.260-287, 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-14: Kobuk River Sheefish/Chum Salmon/Whitefish Subsistence Use Area**

a. All non-subsistence uses within this area are prohibited during times of subsistence use.

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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-15: Wullk River Subsistence Use Habitat Area**

a. Project activities are not allowed in this area during times of subsistence use.

b. This policy relates to uses and activities for designated for this subsistence use area under the authority of 11 AAC 114.250(g). Parts a and c relate to uses and activities for areas designated as important habitat under 11 AAC 114.250(h). 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 those 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

### **POLICY TEXT:**

#### **Policy H-16: Noatak River Subsistence Use Area**

- a. Project activities are not allowed in this area during times of subsistence use.
- b. This policy relates to uses and activities for this designated subsistence use area under the authority of 11 AAC 114.250(g). Parts b, c and d relate to uses and activities for areas designated as important habitat under 11 AAC 114.250(h). 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.

## Northwest Arctic Borough: OPMP District Policy Analysis Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy H-17: Upper Kivalina River Subsistence Use Area</b></p> <p>a. Project activities are not allowed in this area during times of subsistence use.</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>• Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.270 (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.

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.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

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PHONE: (907) 269-8431  
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The Commissioner of the Department of Natural Resources finds that the North Slope Borough Coastal Management Plan meets the requirements of AS 46.39, AS 46.40, 11 AAC 112 and 11 AAC 114 for coastal management plans, and pursuant to 11 AAC 114.345(k)(1), approves the plan in part, adopting by reference the findings and conclusions set forth in the October 23, 2007 recommendation of the Office of Project Management and Permitting.

10/31/2007

Date



Thomas E. Irwin  
Commissioner

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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October 31, 2007

The Honorable Edward Itta Sr.  
Mayor of North Slope Borough  
P.O. Box 69  
Barrow, AK 99723

RE: Commissioner Approval of the North Slope Borough's Final Plan Amendment

Dear Mr. Itta:

Thank you for submitting the North Slope Borough's revised coastal management program to the Department of Natural Resources (DNR) for our review. In accordance with 11 AAC 114.345(k), and based on DNR's Office of Project Management and Permitting's (OPMP) recommendations, the Commissioner of DNR approved the North Slope Borough's Final Plan Amendment on October 31, 2007.

While DNR has approved the North Slope Borough's Final Plan Amendment, the plan does not yet take effect. OPMP must submit the approved Final Plan Amendment to the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (OCRM) for their review and approval. OPMP will submit your approved Final Plan Amendment to OCRM by November 30, 2007. In addition, the North Slope Borough must approve or disapprove the approved Final Plan Amendment within 90 days following the DNR Commissioner's approval and generally after the OCRM review and approval. The North Slope Borough has until January 29, 2008, to approve the Final Plan Amendment by ordinance, unless the United States Department of Commerce has not fully approved the plan amendment under 16 U.S.C. 1455.

If you choose to mediate the Commissioner's decision, you have until November 13, 2007 to notify OPMP of your decision to mediate. Otherwise a complete and clean electronic version (i.e., compact disk, 2 copies) of your Final Plan Amendment incorporating all the changes approved by the DNR Commissioner (including deleting all parts of the plan that were not approved) must be submitted within 15 days after approval. This is required before we can send your Final Plan Amendment to the Office of Ocean and Coastal Resource Management (OCRM) for their review and approval.

I recognize that certain portions of your plan amendment weren't approved by the DNR Commissioner, and I understand that this may be a source of frustration and concern for you. There

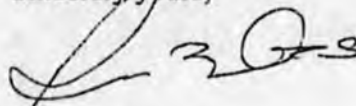
*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

Mr. Itta  
10/31/07  
Page 2

are specific legal reasons for disapproving these sections, most of which are regulatory based. The ACMP regulations limit the topics and opportunities for coastal districts to write enforceable policies. The DNR Commissioner is aware of this limitation, has expressed his desire to revisit that regulatory limitation, and has publicly acknowledged the need to conduct a full evaluation on the ACMP regulations to identify needed revisions. It is our intent to initiate that formal evaluation one year after the ACMP reform efforts (coastal district plan revisions, ABC List revisions, etc.) are fully implemented. We expect the reform efforts to be complete no later than June 30, 2008. It is my hope and desire that you will join us in that evaluation effort, and work with us to make the necessary regulatory revisions that will allow the coastal districts to have a more robust plan.

Again, congratulations on your approved Final Plan Amendment. If you have any questions about the process, please contact David Gann at (907) 465-3529.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Randy Bates", written in a cursive style.

Randy Bates  
Deputy Director

cc: Johnny Aiken, Coastal Coordinator  
cc: Glenn Gray, Coastal Consultant

**Department of Natural Resources  
Office of Project Management and Permitting**

**Final Recommendation on the  
Final Plan Amendment (FPA) of the  
North Slope Borough Coastal District  
Coastal Management Plan**

**October 23, 2007**

**RECOMMENDATION TO THE COMMISSIONER .....3**  
**SUMMARY FINDINGS .....3**  
**PLAN ANALYSIS and FINDINGS .....4**

**ATTACHMENTS:**

- 1. Enforceable Policy Analysis Table**
- 2. Designated Area Analysis Table**

## **INTRODUCTION**

The North Slope Borough coastal district submitted the Final Plan Amendment (FPA) of its Coastal Management Plan on April 12, 2007 per 11 AAC 114.345(g). The Department of Natural Resources, Office of Project Management and Permitting (DNR, OPMP) released the preliminary recommendation for the North Slope Borough final plan amendment on June 12, 2006. OPMP provided a thirty day review and comment period from June 12, 2006 through July 12, 2006. Per 11 AAC 114.345(j), OPMP had thirty days to consider timely comments and negotiate resolution of any issues and to submit a final recommendation to the commissioner. Negotiations continued through 2006 and early 2007 until the North Slope Borough submitted their revised FPA on July 16, 2007. This package of documents represents OPMP's final recommendation to the DNR Commissioner.

### **Office of Project Management and Permitting Review**

The Alaska Coastal Management Program provides standards and regulations that guide or direct development of a district coastal management plan at 11 AAC 112 and 11 AAC 114. The Final Plan Amendment for the North Slope Borough Coastal Management Plan is analyzed against these regulations in these final comments to the commissioner. In accordance with 11 AAC 114.345(k), the commissioner will either (1) approve the request in whole or in part, (2) approve the request if the district makes each change that OPMP requires, (3) identify that the request is outside the scope of the amendments under this section, or (4) disapprove the request in whole or in part.

OPMP's final recommendations for the approvability of each district enforceable policy and each designated area are found in the respective attached tables and summarized on the next page.

## FINAL RECOMMENDATION TO THE COMMISSIONER

Per 11 AAC 114.345 (j) OPMP recommends that the DNR Commissioner approve sections of the North Slope Borough's final plan amendment in part.

OPMP recommends **approval** for the following district enforceable policies **in part**: B-1, B-2, B-3, F-3, and D-3.

OPMP **does not recommend approval** for district enforceable policies A-1, A-2, A-3, A-4, A-5, A-6, A-7, C-1, C-2, C-4, C-5, C-6, C-7, C-8, C-9, C-10, D-1, D-2, D-4, E-1, E-2, E-3, F-1, F-2, H-1, and H-2.

OPMP recommends **approval** for the following designated areas **in part**: Natural Hazards and Subsistence Use.

OPMP recommends **approval** for the following designated areas **in whole**: Sites Suitable for the Development of Major Energy Facilities and Areas Important to the Study, Understanding or Illustration of History, Pre-history and Archeology.

OPMP **does not recommend approval** for the following designated areas: Important Habitat.

In addition, OPMP finds that the North Slope Borough Coastal Management Plan includes all of the sections as required in 11 AAC 114.345 and as listed below.

		<u>Location in Plan</u>
11 AAC 114.200	Issues, Goals and Objectives	Chapter 2
11 AAC 114.210	Organization	Chapter 5
11 AAC 114.220	Coastal Zone Boundaries	Chapter 4
11 AAC 114.230	Resource Inventory	Chapter 7
11 AAC 114.240	Resource Analysis	Chapter 7
11 AAC 114.250	Subject Uses, Activities, and Designations	Chapters 3, 5
11 AAC 114.260	Proper and Improper Uses and Activities	Chapter 5
11 AAC 114.270	District Enforceable Policies	Chapter 3
11 AAC 114.280	Implementation	Chapter 5
11 AAC 114.290	Public Participation	Chapter 6

OPMP recommends approval of these sections as meeting the requirements of 11 AAC 114.200 -114.290.

## **PLAN ANALYSIS AND FINDINGS**

### ***State Regulation*** **11 AAC 114.200 ISSUES, GOALS, AND OBJECTIVES**

#### **FINDING:**

OPMP finds that the Issues, Goals, and Objectives section of the FPA meets the requirements of the regulations and recommends approval with the following exceptions:

- References to policies and designated areas which are not recommended for approval are not approvable and must be removed.

The Issues, Goals and Objectives represent the district's concerns and ways for the district to address their concerns. The state does not assume responsibility for implementation of the objectives or strategies. OPMP recommends approval of the Issues, Goals and Objectives with this understanding by the district.

### ***State Regulation*** **11 AAC 114.210 ORGANIZATION**

#### **FINDING:**

OPMP finds that the section of the FPA is approved based on the requirements of the regulations.

### ***State Regulation*** **11 AAC 114.220 COASTAL ZONE BOUNDARIES**

#### **FINDING:**

OPMP finds that the Coastal Zone Boundaries section of the FPA is approved based on the requirements of the regulations.

### ***State Regulation*** **11 AAC 114.230 RESOURCE INVENTORY**

#### **FINDING:**

OPMP finds that the Resource Inventory and Analysis section of the FPA meets the requirements of the regulations and supports those enforceable policies and designated areas which are recommended for approval. OPMP recommends that the following components of the Resource Inventory not be approved:

- All references to the designation of the following designated areas which are not recommended for approval:
  - Subsistence Use Areas for Fish and Gathering

- Natural Hazard Areas for Permafrost: All coastal waters south of Point Hope
  - Natural Hazard Areas for Erosion: Areas within 20 feet of the mean high water mark of rivers
  - Important Habitat
- All references to proposed enforceable policies which are not recommended for approval

***State Regulation***  
**11 AAC 114.240 RESOURCE ANALYSIS**

**FINDING:**

OPMP finds that sections of the Resource Analysis chapter of the FPA is approved based on the requirements of the regulations for specific policies.

***State Regulation***  
**11 AAC 114.250 SUBJECT USES, ACTIVITIES, AND DESIGNATIONS**

**FINDING:**

OPMP finds that the Subject Uses and Activities section of the FPA meets the requirements of the regulations. Designated areas are addressed in Chapter 3 Enforceable Policies, Chapter 7 Resource Inventory and Analysis, Appendix D: Designated Area and Enforceable Policy Designation, Appendix H: Areas Designated as Suitable for Energy Facilities, Appendix K: Enforceable Policy Cross Reference Table and the Designated Area Cross Reference Table, Appendix L: Designated Area Cross Reference Table, and Appendix O: Subsistence Use Areas and Designations. OPMP finds that some of the designated areas and enforceable policies are approvable, while others are not approvable. The attached **Designated Area Analysis Table and Enforceable Policy Table** analyzes the proposed designated areas and policies for compliance with the regulations and identifies those designated areas and enforceable policies that are approvable and those that are not approvable. All references throughout the coastal management plan to designated areas and enforceable policies which are not recommended for approval are also not recommended for approval.

***State Regulation***  
**11 AAC 114.260 PROPER AND IMPROPER USES**

**FINDING:**

OPMP finds that the Proper and Improper Uses section of the FPA is approved based on the requirements of the regulations.

**State Regulation**  
**11 AAC 114.270 DISTRICT ENFORCEABLE POLICIES**

**FINDING:**

OPMP finds that only part of the proposed enforceable policies in the District Enforceable Policy section of the FPA meet the requirements of the regulations. The attached **Enforceable Policy Analysis Table** analyzes the proposed policies for compliance with the regulations and identifies those policies, or parts of policies that are recommended for approval. All references throughout the coastal management plan and its appendices to enforceable policies or parts of enforceable policies which are not recommended for approval are also not recommended for approval.

**State Regulation**  
**11 AAC 114.280 IMPLEMENTATION**

**FINDING:**

OPMP finds that the Implementation chapter of the FPA is approved based on the requirements of the regulations.

**State Regulation**  
**11 AAC 114.290 PUBLIC PARTICIPATION**

**FINDINGS:**

OPMP finds that the Public Participation chapter of the FPA is approved based on the requirements of the regulations.

## **REQUIRED TEXTUAL CHANGES:**

Once the coastal management plan is approved by the DNR Commissioner and the Office of Ocean and Coastal Resource and Management (OCRM), it carries the weight of law. Therefore, the plan must contain factual information and be free of editorial opinions. In this regard, the following text must be deleted.

P. 3: "The regulations deemphasized the role of coastal districts and narrowed their ability to develop enforceable policies." This is an editorial opinion.

P.20: In the second paragraph "These policies give the NSB "a seat at the table"...", change the term "These policies" to "An approved coastal management plan".

P. 21: Footnote 2 at the bottom of the page is incorrect. The statewide standards at 11 AAC 112 went into effect on January 1, 2006.

P. 22: Table 3-1 incorrectly cites the source in 11 AAC 114.250. The regulations referred to in 11 AAC 114.250 are 11 AAC 112.200- 11 AAC 112.240, 11 AAC 112.260- 11 AAC 112.280 and 11 AAC 114.250 (b)-(i).

P. 22: Footnote 4 is incorrect. Districts can write an enforceable policy that applies to Energy Facilities without designating an area.

P. 41: Several definitions duplicate definitions in state statutes and regulations and must be deleted. The following terms are duplicative: avoid; federal consistency determination; habitat; important habitat; major facility or major project; minimize, minimizing, and minimized; mitigate; natural hazards; offshore; ordinary high water; and significant adverse impacts.

P. 47: "Previously, a consistency review was conducted for any activity that would affect coastal resources or uses." This statement is incorrect. Consistency reviews have always only been conducted when there is a state or federal permit triggered by the project or activity.

P. 51: "...but this will no longer be the case because of new restrictions to the district's ability to develop meaningful enforceable policies." This is an editorial opinion. Plus it has nothing to do with the first part of the sentence, which states "The NSB historically incorporated its coastal management program enforceable policies into Title 19..." The revised regulations do not restrict the NSB Assembly's authority to enact ordinances.

P. 74: The new ACMP regulations don't define the term "subsistence uses." The ACMP regulations use the Department of Fish and Game definition of "subsistence uses."

## North Slope Borough District Enforceable Policy Table

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

#### **Policy H-1: Protection of Coastal Resources and Uses**

- a. Transportation corridors are not allowed when the anticipated use can be accommodated by existing corridors.
- b. Major transportation corridors along the coast aligned north to south are not allowed.
- c. Major pipelines along the coast aligned east to west are not allowed.
- d. Inland pipelines that would corral caribou, including pipelines aligned east to west, are not allowed.
- e. Above-ground pipelines are not allowed in areas known as thaw bulbs where the ground cannot safely support the pipeline.
- f. Above ground pipelines located within 500 feet of roads are not allowed. Buried pipelines in roads are allowed.
- g. Pipelines that cannot withstand the impact of a 338 caliber rifle are not allowed.
- h. Pipelines shall maintain an elevation of at least 7 feet, unless the pipeline is buried, or the applicant has demonstrated in the project description that there will be no significant adverse impacts to wildlife passage.
- i. Subsection "a" of this policy is established pursuant to the statewide Transportation Routes and Facilities standard subject use (11 AAC 112.280), and it applies to uses and activities associated with transportation routes and facilities. Subsection "b" of this policy is established pursuant to the statewide Utility Routes and Facilities standard subject use (11 AAC 112.240), and it applies to uses and activities associated with utility routes and facilities.

### ***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?*

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

Parts a, d, g and h of this policy are not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

In addition for parts a and b, 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.

Furthermore for parts c, f, e, g and h, 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.

## North Slope Borough District Enforceable Policy Table

### **POLICY TEXT:**

#### **Policy H-2: Water Crossings**

a. Transportation routes and facilities shall avoid crossing waterbodies unless the crossing is necessary to the purpose and function of the route or facility. When it is necessary to cross water, the applicant shall:

- 1) Consolidate crossings at a single location unless consolidation will cause more adverse effects than separate crossings,
- 2) Conduct construction activities during times when significant numbers of fish and wildlife are not present, especially during critical life stages,
- 3) Use elevated, open pile or pier structures when practicable and otherwise use culverts placed to accommodate the high water mark of record, or
- 4) Site, construct and maintain ice bridges to allow free passage of over-wintering fish by locating crossings in areas where the river freezes to the bottom. Where it is not possible to site an ice bridge in an area that freezes to the bottom, the applicant shall include a monitoring provision in the project description to ensure the ice bridge does not obstruct fish passage.

b. River crossings that restrict free passage of fish are not allowed.

c. This policy is established pursuant to the statewide Transportation Routes and Facilities standard subject use (11 AAC 112.280), and it applies to uses and activities associated with transportation routes and facilities.

### **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?

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

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.

In addition, the proposed enforceable policy duplicates the authority of 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.

## North Slope Borough District Enforceable Policy Table

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

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

a. When there are potentially conflicting uses, subsistence use of plants, fish and wildlife, including marine mammals, shall be the highest priority use of the lands and waters in the coastal area.

b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence in Section 3.5.1.

### ***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?*

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

This policy is not clear and concise and is not enforceable.

The justification in Appendix D of the NSB plan refers to language that does not exist in the policy:

“Subsection a) requires that subsistence use be given a priority by state agencies during the consistency review process. Subsection b) specifies that projects shall not deplete subsistence use activities below the level of customary and traditional use as indicated in studies. The policy uses precise, prescriptive and enforceable language.”

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.

## North Slope Borough District Enforceable Policy Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy A-2: Subsistence Access</b></p> <p>a. Project activities shall not interfere with customary and traditional access to subsistence resources unless the applicant demonstrates in the project description that similar alternative access will be provided that is acceptable to the borough without reducing overall access to subsistence resources.</p> <p>b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence under Section 3.5.1.</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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the policy not be approved.

This policy is not clear and concise and is subjective, and is therefore not enforceable.

Part a is not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that projects within subsistence use areas must avoid or minimize impacts to subsistence uses of coastal resources. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore not permissible.

The State Subsistence Standard at 11 AAC 112.270 already addresses subsistence use protection through the application of the avoid or minimize sequence. Subsistence use includes access to the resource. 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 by 112.270.

## North Slope Borough District Enforceable Policy Table

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

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

a. The subsistence effects analysis required by 11 AAC 112.270(b) shall:

- 1) Be based on, or be consistent with, scientific and/or local knowledge,
- 2) Include a discussion of reasonably foreseeable adverse project effects to the availability of subsistence resources for taking for subsistence use, including project-related events or activities with the potential to affect subsistence use by causing subsistence resources to abandon or avoid hunting areas, to directly displace subsistence users, to place physical barriers between subsistence resources and subsistence users, or to cause subsistence resources to become unfit for human consumption, and
- 3) Include a discussion of whether effects of the project can reasonably be expected to reduce subsistence uses by an affected community below levels of customary and traditional use, either annually or seasonally. Customary and traditional use shall be determined on the basis of information in studies cited in the resource inventory and analysis, by studies completed by the Alaska Department of Fish and Game, Division of Subsistence, or by other peer-reviewed studies related to North Slope subsistence.

b. For major projects with reasonably foreseeable adverse impacts to the availability of subsistence resources for taking for subsistence use, the subsistence effects analysis required by 11 AAC 112.270(b) shall not be deemed complete until the applicant:

- 1) Submits the subsistence effects analysis to the NSB to verify conclusions and identify potential mitigation measures no later than 30 days prior to submission to the coordinating agency under 11 AAC 112.270(b),
- 2) Demonstrates that traditional knowledge about subsistence uses and effects has been incorporated into the analysis from available literature and from village or tribal entities closest to the project site,
- 3) Include measures for monitoring effects to subsistence uses, and
- 4) Include a provision in the project description for annual review by the NSB of monitoring data related to subsistence uses and the resources on which they depend, to ensure that measures to counter adverse impacts to the availability of subsistence resources to meet subsistence needs are effective.

c. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

### ***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?

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the policy not be approved.

The term "major projects" is vague and not enforceable language.

- b. 1): This statement is not enforceable, as the policy states that it occurs before the consistency review. In addition, there is no mitigation sequence in the State subsistence standard.
- b. 2) This action already occurs during a consistency review.
- b. 3) This statement is vague and the policy does not state who monitors.
- b. 4) This statement is not enforceable, as it occurs after the consistency review.

## North Slope Borough District Enforceable Policy Table

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

#### **Policy A-4: Project Disturbance to Subsistence**

a. The following project activities are not allowed, with the exception of activities that are necessary to protect human health and safety:

- 1) Aircraft flying below 1500 feet over subsistence use areas for bowhead whales, other marine mammals and caribou when subsistence use is occurring, and
- 2) Aircraft flying below 1,500 feet over concentrations of 50 or more caribou during critical periods including spring migration (generally between April and May), calving (generally between the end of May and the 3<sup>rd</sup> week of June), insect relief (generally between July and August), and rutting (generally late September through the first week of November).

b. Activities that displace subsistence uses or subsistence resources during times of subsistence use are not allowed unless the applicant has reached an agreement with the NSB Department of Planning and Community Services that there are no reasonable alternatives to activities. Such activities include vessel, land or air traffic; drilling; and geophysical surveys.

c. For activities with a potential to significantly affect subsistence uses, applicants shall include measures in the project description to coordinate activities with communities to avoid disturbance to subsistence uses to the maximum extent practicable.

d. Applicants shall contact the NSB Department of Planning and Community Services to determine when subsistence use is occurring before conducting activities that would displace subsistence uses or subsistence resources during times of subsistence use.

e. Non-subsistence uses are not allowed between August 1 and October 31 in all nonfederal lands and waters within the coastal zone of the following areas: Anaktuvuk River, Kanayut River, Nanushuk River, May Creek, and Itkillik River.

f. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

### ***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?*

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the policy not be approved.

The policy language is not clear and concise, nor is it enforceable.

In addition, 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.

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy A-5: Visual Compatibility with Subsistence</b></p> <p>a. The applicant shall include measures in the project description demonstrating that, to the extent practicable, facilities and structures are designed or sited to blend in with the surrounding landscape unless the applicant demonstrates that such measures would propose threats to wildlife. Measures shall include one or more of the following: Use of colors similar to the surrounding environment, use of non-reflective surfaces, facility design that uses similar shapes or lines as the surrounding environment, or placement of facilities so they are screened from coastal waters or navigable aquatic water bodies.</p> <p>b. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence use in areas designated for subsistence use in Section 3.5.1.</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>

## North Slope Borough District Enforceable Policy 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 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.

# North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy A-6: Subsistence Whaling and Harvest of Marine Mammals</b></p> <p>a. Offshore activities are not allowed if they would reduce the availability of marine mammals for taking for subsistence use below the level of customary and traditional use, as determined by the Borough based on studies referenced in the resource inventory and analysis, studies completed by the Alaska Department of Fish and Game, Division of Subsistence, or other relevant studies.</p> <p>b. Project activities that would reduce the availability of bowhead whales for taking for subsistence use, seasonally or annually, below the level of the subsistence quota set by International Whaling Commission (IWC) are not allowed.</p> <p>c. Offshore activities are not allowed if they would affect subsistence harvest of bowhead whales by changing behavior or distribution in such a way that the whales are:</p> <ol style="list-style-type: none"> <li>1) Not available in areas where they may be harvested, or</li> <li>2) Are in areas where they may be harvested but subsistence users face more danger or there is a greater risk that the harvest product will spoil during transport.</li> </ol> <p>d. Noise-producing activities that result in received sound levels of 120 decibels where whales are located during times of subsistence whaling are not allowed.</p> <p>e. Applicants proposing to conduct activities that reasonably may be expected to alter the availability of marine mammals for subsistence use shall include at least one or more of the following measures in the project description:</p> <ol style="list-style-type: none"> <li>1) Use of bottom-founded drilling structures,</li> <li>2) Use of temporary facilities,</li> <li>3) Use of low-noise producing equipment, or</li> <li>4) Timing activities to occur outside of the subsistence hunting periods.</li> </ol> <p>f. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for bowhead whaling subsistence use in Section 3.5.1.</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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the policy not be approved.

Sections a-c of this policy are not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that the designated area be manage to avoid or minimize significant adverse impacts. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.

Subsection d is not enforceable.

In addition, 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.

## **POLICY TEXT:**

### **Policy A-7: Compatibility of Commercial Recreation with Subsistence**

a. Commercial recreation activities and facilities, including temporary facilities, shall be located, designed, and conducted to prevent or reduce adverse impacts to subsistence from:

- 1) The loss or displacement of fish and wildlife populations,
- 2) Interference with subsistence use, and
- 3) Noise from flights over villages, cabins or other traditional locations used for subsistence.

b. Commercial recreation activities that disrupt subsistence uses or the availability of subsistence resources are not allowed.

c. During the first 24 hours after the first group of caribou travels through an area, commercial recreation users shall not disturb caribou in such a way alters migration patterns.

d. This policy is established under the authority of 11 AAC 114.250(g), and it applies to uses and activities that affect subsistence uses in areas designated for subsistence use in Section 3.5.1.

## **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?

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the policy not be approved.

Subsection b of this policy is not approvable because the policy contains criteria. The State Subsistence Standard at 11 AAC 112.270 requires that the designated area be managed to avoid or minimize significant adverse impacts. The avoid or minimize sequence is defined at 11 AAC 112.990. Since the avoid or minimize sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid or minimize sequence, and is therefore, not permissible.

Subsection c of this policy is not enforceable.

In addition, 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.

## North Slope Borough District Enforceable Policy Table

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

#### **Policy B-1: Consultation and Surveys**

a. Applicants shall contact the NSB Department of Planning and Community Services, the Inupiat Community of the Arctic Slope (ICAS), and all affected tribes in the NSB to determine whether a resource survey shall be submitted with the consistency review packet. A resource survey shall be required by the NSB, ICAS or the affected tribe 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 Alaska Office of History and Archeology or the NSB Inupiaq History Language and Culture Commission,
- 2) The project is a large project, or
- 3) The project involves an onshore seismic survey.

b. The resource survey shall provide the basis for alternative measures proposed by review participants.

c. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important to the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.

### ***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?*

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the following part of this policy be approved.

*a. Applicants shall contact the NSB Department of Planning and Community Services, and the Inupiat Community of the Arctic Slope (ICAS) to determine whether a resource survey shall be submitted with the consistency review packet. A resource survey shall be required by the NSB, ICAS or the affected tribe 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 Alaska Office of History and Archeology or the NSB Iñupiaq History Language and Culture Commission,*
- 2) The project involves an onshore seismic survey.*

*b. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important to the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.*

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not 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; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

The following parts of the policy are not recommended for approval:

- a. "and all affected tribes in the NSB" is not clear and concise and is not enforceable.
- a. 2): "large project" the definition of the term is vague.
- b: This activity already occurs during a consistency review.

## North Slope Borough District Enforceable Policy Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy B-2: Cultural Resource Protection</b></p> <p>a. Uses and activities shall comply with the following standards:</p> <ol style="list-style-type: none"> <li>1) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall immediately notify the landowner and the NSB, and</li> <li>2) Project activities shall not interfere with noncommercial use of historic or prehistoric sites.</li> </ol> <p>b. This policy applies to uses and activities that may affect historic or prehistoric resources in areas designated as for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.</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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends the following part of this policy be approved.

*a. Uses and activities shall comply with the following standards:*

- 1) If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall immediately notify the landowner and the NSB*

*b. This policy applies to uses and activities that may affect historic or prehistoric resources in areas designated as for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.*

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not 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; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

Subsection a.2) of this policy is not recommended for approval. The term "interfere" is vague and is not enforceable.

## North Slope Borough District Enforceable Policy Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy B-3: Graves</b></p> <p>a. Applicants are not allowed to disturb obvious graves.</p> <p>b. In the case of an inadvertent discovery of skeletal remains, work that would further disturb the remains shall cease immediately. The discoverer shall then contact the landowner and the NSB to be advised how to proceed.</p> <p>c. This policy relates to uses and activities that may affect historic or prehistoric resources in areas designated as important for the study, understanding or illustration of history and prehistory under 11 AAC 112.250(i). These areas are described in Section 3.5.3.</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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends part a. and part c. of this policy be approved.

This part of the policy flows from 11 AAC 114.250 (i); is not a matter regulated by DEC; does not 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; does not arbitrarily or unreasonably restrict or exclude uses of state concern, and addresses a matter regulated by state law, namely 11 AAC 112.320. The district has documented that the matter is of local concern.

Part b. of this policy restates policy B-2 (a), and is not recommended for approval.

## North Slope Borough District Enforceable Policy Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy C-1: Bowhead Whale Habitat</b></p> <p>a. The following project activities that would adversely affect bowhead whale migration, feeding, mating, and calving areas are not allowed:</p> <ol style="list-style-type: none"> <li>1) Noise-producing activities that result in levels of industrial sound above 120 decibels where bowhead whales are located during times of subsistence whaling,</li> <li>2) Shipping activities within 10 miles of bowhead whales without a conflict avoidance agreement with the Alaska Eskimo Whaling Commission,</li> <li>3) Activities that would disturb migrating bowhead whale mothers with calves (May 10 – July 1 and August 1 – October 15),</li> <li>4) Seismic survey activities occurring within 12 miles of migrating bowhead whales, and</li> <li>5) Multiple seismic surveys occurring less than 50 miles apart.</li> </ol> <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat for bowhead whales as described in Section 3.5.2.</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(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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy 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 or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

The protection of the bowhead whale is addressed under the Marine Mammal Protection Act and the Endangered Species Act. In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bowhead whales. 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.

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy C-2: Specific Habitat Protection</b></p> <p>a. For projects with the potential for significant adverse impacts to the following habitats, applicants shall include measures in the project description to avoid, minimize or mitigate the habitat functions that relate to the special productivity of the habitat:</p> <ol style="list-style-type: none"> <li>1) Offshore areas, including sea ice (for species dependent on offshore habitats including bowhead whales, other marine mammals, seabirds and fish),</li> <li>2) Estuaries including nutrients and freshwater supplied by aquatic systems (for species that depend on estuaries during an important life stage),</li> <li>3) Wetlands, including nutrients and the destruction of habitat (for migratory birds and other fish and wildlife that depend on wetlands during important life stages),</li> <li>4) Tidel flats including nutrients (for species dependent on tidel flats habitats),</li> <li>5) Exposed high-energy coasts including coastal erosion (for species dependent on this habitat type),</li> <li>6) Rivers, streams and lakes, including maintenance of instream flow in quantities needed to maintain productivity of species that use this habitat (for anadromous and resident fish and other species dependent on this habitat type), and</li> <li>7) Upland habitat including natural drainage patterns, natural groundwater recharge, and habitat characteristics important for coastal species (for caribou, moose, muskox, bear, and other species dependent on upland habitat).</li> </ol> <p>b. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.</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, 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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy 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 or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

The State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat: offshore areas, estuaries, wetlands, tideflats, rivers, streams and lakes. 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. Upland habitats are not identified in the important habitat designation and therefore do not flow from 11 AAC 114.250 (h).

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy C-4: Freshwater and Coastal Waters</b></p> <p>a. Unless a project meets the criteria in subsection "b," facilities shall not be allowed within:</p> <ol style="list-style-type: none"> <li>1) 500-feet from anadromous water bodies,</li> <li>2) 250-feet from headwater streams creeks and tributaries, and</li> <li>3) 100-feet from all other water bodies.</li> </ol> <p>b. The setbacks in subsection "a" of this policy may be adjusted by the coordinating agency if the NSB determines that the facility will not significantly affect the function of the habitat including consideration of existing instream and riparian vegetation, slope, soil type, potential for erosion and other natural hazards, and other potential adverse effects of the project on the physical, biological and chemical characteristics of the habitat and the project activities meet one or more of the following criteria:</p> <ol style="list-style-type: none"> <li>1) Existence of a significant public need for the project activity,</li> <li>2) The facility is a temporary structure located during a time when anadromous fish are not present,</li> <li>3) The facility is a bridge, or</li> <li>4) The facility must be located nearer to the waterbody for health and safety concerns.</li> </ol> <p>c. Project activities, including bridges, culverts, docks, pipelines, causeways and ice road crossings shall not:</p> <ol style="list-style-type: none"> <li>1) Block winter fish passage or displace overwintering fish in pools, and</li> <li>2) Adversely affect habitat functions, including the capability for spawning, feeding, rearing, and overwintering unless the applicant restores the habitat to support these functions after project disturbance.</li> </ol> <p>d. Culverts shall not be used in areas where they repeatedly wash out during flood events.</p> <p>e. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.</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, 114.260-280, 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>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy 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 or permissible.

State and federal agency authorities, including AS 41.14.840, AS 41.14.870, AS 46.03, and 18 AAC 70 provide broad authority to 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 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.

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

#### **Policy C-5: Displacement from Habitat**

a. Projects activities and facilities shall not reduce the special productivity of the habitat by displacing fish or wildlife in the following habitats, including displacement from noise, project activities or barriers to migration:

- 1) Arctic cisco along their nearshore easterly spring migration from the McKenzie River.
- 2) Caribou calving and insect relief areas,
- 3) Areas used by bird populations for molting, and
- 4) Marine mammal haul-out and rookeries.

b. Applicants for projects with a reasonable likelihood to adversely affect coastal species shall adopt one or more of the following measures into the project description:

- 1) Locating activities outside of major migration routes or areas of concentration,
- 2) Scheduling activities during times when migrations are not occurring,
- 3) Halting operations when concentrations of species would be deflected or disturbed, or
- 3) Reducing noise from activities.

c. This policy is established pursuant to 11 AAC 114.250(h), and it applies to uses and activities in designated important habitat areas as described in Section 3.5.2.

### ***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, 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?*

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

The proposed Important Habitat designated area that pertains to this policy 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 or permissible.

This policy is not approvable because the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be managed to avoid, minimize, or mitigate significant adverse impacts. The avoid, minimize, or mitigate sequence is defined at 11 AAC 112.900. Since the avoid, minimize, mitigate sequence is defined, it can not be redefined by a coastal district. By adding criteria to a district enforceable policy, the policy is redefining the avoid, minimize, or avoid sequence, and is therefore, not permissible.

b. This part of the policy is vague and not enforceable.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by cisco, bird populations and marine mammals. 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.