

12273

HOUSE RES

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy C-6: Marine Mammal Haul-outs and Seabird Colonies</b></p> <p>a. Project activities that adversely impact marine mammals at haul-outs or rookeries or seabirds at seabird colonies are not allowed, including effects that would result in displacement, injury or mortality.</p> <p>b. Travel is not allowed within the distances from marine mammal haul-outs and seabird colonies outlined in this policy unless the travel is essential and the distances cannot be met for health or safety considerations.</p> <ol style="list-style-type: none"> <li>1) Fixed-wing and helicopter aircraft travel must maintain a minimum altitude of 1,500 feet.</li> <li>2) Marine watercraft and other activities producing levels of noise that would affect behavior of marine mammals shall maintain the following horizontal distances while species are present:             <ol style="list-style-type: none"> <li>i. A 1.5-mile horizontal distance from important seabird colonies and rookeries (generally between April 15 and September 30),</li> <li>ii. A 0.5-mile horizontal distance from marine mammal haul-out sites (generally between May 1 and December 31), and</li> <li>iii. A 0.5-mile horizontal distance from identified haul-out sites for seals (generally between March 1 and September 30).</li> </ol> </li> </ol> <p>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.</p>	<ul style="list-style-type: none"> <li>• Does the policy address or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</li> <li>• Is this a matter that the Department of Environmental Conservation has the authority to regulate?</li> <li>• Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</li> <li>• Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</li> <li>• Does the policy use precise, prescriptive and enforceable language?</li> <li>• Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</li> <li>• Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</li> <li>• Are the criteria to establish that the policy addresses a matter of local concern (above) documented?             <ul style="list-style-type: none"> <li>○ Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</li> <li>○ Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</li> <li>○ Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</li> <li>○ Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</li> </ul> </li> <li>• Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?             <ul style="list-style-type: none"> <li>○ If yes, is the description or map of the designated area referenced in the enforceable policy?</li> <li>○ If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</li> </ul> </li> </ul>

## 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 parts a and b of the policy contains criteria. The State Habitat Standard at 11 AAC 112.300 requires that the eight listed habitat types be manage 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, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bird populations. Specifically, barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by nesting birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## North Slope Borough District Enforceable Policy Table

### **POLICY TEXT:**

#### **Policy C-7: Bird Nesting and Molting Areas**

- a. Project activities that would significantly disturb nesting, brooding or molting birds are not allowed, including activities that would force birds away from nests or chicks or cause molting birds to exhibit stress behavior.
- b. The applicant shall include measures in the project description to meet this policy, including avoidance of nesting and brooding sites, avoidance of areas with molting birds, or timing of activities outside the nesting and molting period.
- 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.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by bird populations. Specifically, barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by nesting birds. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy C-8: Caribou Calving Areas</b></p> <p>a. Project activities that would result in significant adverse impacts to caribou in calving areas during periods of calving are not allowed.</p> <p>b. The applicant shall include measures in the project description to meet this policy that include one or more of the following:</p> <ol style="list-style-type: none"> <li>1) Timing of activities outside of calving periods (generally between the end of May and the third week of June),</li> <li>2) Location of activities one mile from calving areas,</li> <li>3) No permanent facilities in calving areas,</li> <li>4) Use of convoys during calving periods where this technique is expected to be effective, or</li> <li>5) Other technologies where the applicant provides convincing information about their effectiveness.</li> </ol> <p>b. This policy applies to uses and activities in caribou calving areas included in important habitat areas designated under 11 AAC 114.250(h) as described in Section 3.5.2.</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>

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## North Slope Borough District Enforceable Policy Table

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

#### **Policy C-9: Bear Dens and Seal Lairs**

a. Applicants for projects in polar bear and seal habitat shall conduct a pre-activity survey for bear dens or seal lairs.

b. With the exception of essential travel during poor weather conditions where it would be unsafe to meet this policy, fixed-wing and helicopter aircraft shall maintain a minimum altitude of 1,500 feet and aircraft, marine watercraft and other activities producing high levels of noise shall maintain a one-mile horizontal distance for polar bear dens and a 0.5-mile distance from brown bear dens.

c. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) 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, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
- *Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?*
- *Does the policy use precise, prescriptive and enforceable language?*
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- *Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(3)(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?*
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Barrier islands and lagoons at 11 AAC 112.300 9(b) (6) (C) already are managed to avoid, minimize or mitigate significant adverse impacts from activities that would decrease their use by polar bears. 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 C-10: Kasegaluk Lagoon**

a. Project activities occurring on the barrier islands or in the marine and estuarine waters of the Kasegaluk Lagoon that would interfere with the annual harvest of beluga whales, displace them or reduce the availability of whales for harvest are not allowed. Subsistence hunting of beluga whales usually begins in mid-June, but it may begin earlier or later than this date.

b. This policy applies to uses and activities that affect important habitat areas in Kasegaluk Lagoon designated under 11 AAC 114.250(h) 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, 112.260-287, 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)?*
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- *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?*

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### ***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.

In addition, the State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat used by Beluga 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

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

#### **Policy D-1: Project Applications for Hazard Areas**

a. Applicants for projects located in areas subject to ice hazards during times when such hazards are reasonably foreseeable shall:

- 1) Prepare an ice management plan, reviewed and approved by an engineer experienced in ice hazards and consistent with local knowledge, that describes systems that will be used for surveillance and detection of ice hazard events and for reporting such hazards to the NSB, and
- 2) Incorporate measures into the project description that demonstrate facilities will be adequately protected from ice hazards. Applicants shall demonstrate in their project description that local knowledge about ice hazards has been considered when developing these measures.

b. Applicants shall provide an analysis in their project application packet about potential hazards and measures to avoid or minimize adverse effects to habitat and subsistence uses from project activities that could be affected by natural hazards. The analysis shall include conservative estimates of hazard potentials.

c. Subsection "a" of this policy applies to uses and activities in areas designated for ice hazards under 11 AAC 114.250(b) as described in Section 3.5.4. Subsection "b" applies to uses and activities in all areas designated as natural hazard areas under 11 AAC 114.250(b) as described in Section 3.5.4.

### ***CRITERIA:***

- *Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?*
- *Is this a matter that the Department of Environmental Conservation has the authority to regulate?*
- *Does the policy adopt, duplicate, repeal, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?*
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- *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 State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards and the involvement of approved engineers. 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 State Habitat Standard at 11 AAC 112.300 already addresses certain aspects of some of the coastal habitat that could be affected by natural hazards. 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 D-2: Ice Hazards</b></p> <p>a. Project facilities and activities shall not be located in areas subject to ice hazards unless there is a significant public need for the facility, and measures are included in the project description to avoid adverse effects to subsistence use and habitat from ice override, ridging, pack ice movement, ice gouging, strudel scour, and the active shear zone.</p> <p>b. In cases where an approval by an engineer under provisions in 11 AAC 112.200(d)(2)(A) conflicts with local knowledge or scientific information about ice hazards in the project area, the coordinating agency shall consult with an independent third-party, funded by the applicant, to resolve the dispute.</p> <p>c. This policy applies to uses and activities in areas designated for ice hazards under 11 AAC 114.250(b) as described in Section 3.5.4.</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 this policy not be approved.

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards and the involvement of approved engineers. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that the matter is not adequately addressed.

Subsection b is not approvable because it dictates action by a State agency.

## North Slope Borough District Enforceable Policy Table

<b><i>POLICY TEXT:</i></b>	<b><i>CRITERIA:</i></b>
<p><b>Policy D-3: Flooding and Erosion Hazards</b></p> <p>a. Applicants shall minimize excessive runoff which will cause accelerated hydraulic or thermal erosion and to retain natural drainage patterns and natural groundwater recharge areas. Methods to control erosion include:</p> <ol style="list-style-type: none"> <li>1) Minimizing and limiting areas of ground disturbance near waterbodies,</li> <li>2) Siting facilities away from areas subject to erosion,</li> <li>3) Stabilizing disturbed areas as soon as possible after disturbance,</li> <li>4) Scheduling activities to avoid high winds, waves, and seasonal flooding, and</li> <li>5) Best available technology proven to control erosion.</li> </ol> <p>b. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plants or by other appropriate erosion control measures.</p> <p>c. All stream or lake bank cuts, fills or exposed earthwork adjacent to streams, wetlands or marine waters shall be stabilized to prevent erosion of soil into adjoining waters during construction, operation and following abandonment of development activities.</p> <p>d. In areas where the coast is actively eroding, specifically in those areas not protected by barrier islands, the applicant shall conduct a survey to determine recent and long-term erosion rates.</p> <p>e. This policy applies to uses and activities in areas designated as flooding and erosion natural hazards pursuant 11 AAC 114.250(b) as described in Section 3.5.4.</p>	<ul style="list-style-type: none"> <li>• <i>Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)?</i></li> <li>• <i>Is this a matter that the Department of Environmental Conservation has the authority to regulate?</i></li> <li>• <i>Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)?</i></li> <li>• <i>Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</i></li> <li>• <i>Does the policy use precise, prescriptive and enforceable language?</i></li> <li>• <i>Does the policy not arbitrarily or unreasonably restrict or exclude uses of state concern?</i></li> <li>• <i>Does the policy address a matter regulated by state or federal law? If Yes, does the district demonstrate that the matter is of local concern as defined in AS 46.40.070(a)(2)(C)?</i></li> <li>• <i>Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</i> <ul style="list-style-type: none"> <li>○ <i>Within a defined portion of the district's coastal zone [11 AAC 114.270(h)(1)(A)].</i></li> <li>○ <i>Demonstrated as sensitive to development in the Resource Analysis [11 AAC 114.270(h)(1)(B)].</i></li> <li>○ <i>Not adequately addressed by state or federal law [11 AAC 114.270(h)(1)(C)].</i></li> <li>○ <i>Of unique concern to the district as demonstrated by local usage or scientific evidence [11 AAC 114.270(h)(1)(D)].</i></li> </ul> </li> <li>• <i>Is the policy for an area designated by a district under 11 AAC 114.250(b)-(i), for a special area management plan developed under 11 AAC 114.400, or for an area which merits special attention inside a district developed under 11 AAC 114.420?</i> <ul style="list-style-type: none"> <li>○ <i>If yes, is the description or map of the designated area referenced in the enforceable policy?</i></li> <li>○ <i>If yes, is the area described or mapped at a scale sufficient to determine whether a use or activity is located within the area?</i></li> </ul> </li> </ul>

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy be approved in part. OPMP recommends the following part of the policy be approved.

*b. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plants or by other appropriate erosion control measures.*

OPMP recommends the following parts of this policy not be approved.

b. the phrase "or areas subject to mass wasting" refers to a natural hazard designation that has not been proposed by the district, and has not been approved by OPMP.

Parts a, c and d for the following reasons:

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards. 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 D-4: Permafrost Hazards**

a. Applicants shall incorporate the best available technologies into project descriptions to prevent disturbance to permafrost that would result in danger to human health or safety or habitat damage. Where disturbance to the organic mat is unavoidable, the disrupted area shall be stabilized to avoid disturbance to the permafrost layer.

b. Applicants for tundra travel activities shall include measures in the project description to monitor effects of tundra travel and to avoid damage to permafrost soils including one or more of the following activities:

- 1) Timing of activities to occur when the ground is adequately frozen or has adequate snow cover so there will be no habitat damage.
- 2) Developing a schedule for use of different types of vehicles depending on snow cover and depth of frozen soil layer using the best available information, or
- 3) Use of vehicles that will not result in damage to the tundra.

c. This policy applies to uses and activities in areas designated as a permafrost natural hazard under 11 AAC 114.250(b) as described in Section 3.5.4.

### ***CRITERIA:***

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

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends this policy not be approved.

The State Natural Hazards Standard at 11 AAC 112.210 already addresses appropriate measures in the siting, design, construction and operation in areas of known natural hazards. 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 E-1: Oil and Gas Activities and Facilities</b></p> <p>a. Applicants shall demonstrate in the project description how they have worked with local communities and the NSB to site oil and gas activities in a manner that avoids or minimizes adverse environmental and social impacts.</p> <p>b. When project activities have a potential to result in cumulative impacts, applicants shall include an analysis of cumulative impacts in the consistency evaluation required by 11 AAC 110.215(a)(1)(C) or 11 AAC 110.410(c)(1)(B).</p> <p>c. The State of Alaska shall provide an opportunity for the NSB to comment on the siting of energy facilities with respect to the effects to air and water quality for projects not regulated by Alaska Department of Environmental Conservation (DEC) under AS 46.03, AS 46.04, AS 46.14 and the regulations adopted under those statutes.</p> <p>d. Subsection "a" applies to uses and activities in areas designated as suitable for energy facilities under 11 AAC 114.250(e) as described in Section 3.5.5. Subsections "b" and "c" apply to the energy facilities subject use under 11 AAC 112.230 including offshore uses and activities not regulated by DEC.</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 State Energy Facilities Standard at 11 AAC 112.230 already addresses appropriate measures in the siting of energy facilities with consideration of social and environmental impacts. 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, AS 46.40.040(b), AS 46.03, AS 46.04, AS 46.09, and AS 46.14 and the regulations adopted under those statutes are the exclusive enforceable policies of the ACMP. Therefore, a district enforceable policy can not address a matter covered by these statutes and regulations.

Furthermore, uses or permits for mineral or petroleum resource extraction are uses of state concern under 11 AAC 112.230 (b).

## North Slope Borough District Enforceable Policy Table

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

#### **Policy E-2: Geophysical Surveys**

a. Geophysical surveys occurring on land shall be located, designed, and conducted in a manner so as to prevent significant adverse effects to wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife. The applicant shall include in the project description site-specific measures to prevent adverse effects including seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation and equipment used.

b. Geophysical surveys in fresh waters and coastal waters, including on- or under-water ice surveys, shall prevent effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques that do not significantly effect fish and wildlife. Use of explosives, other than from air guns, in these waters for geophysical surveys is not allowed. Geophysical surveys shall be timed to avoid impacts to subsistence hunting and fishing, marine mammal migrations, and migrating fish smolts.

c. All geophysical activities taking place offshore during the open water season shall be coordinated with the Alaska Eskimo Whaling Commission and tribes and shall be scheduled so that such work occurs well outside the time and area of the bowhead whale migration. Applicants shall include measures in the project description to coordinate their operations with other seismic surveys occurring during the same period to address the cumulative effects of seismic operations on bowhead whales. To the extent practicable, geophysical operators shall conduct operations so that no more than one seismic vessel is operating in the Beaufort Sea or the nearshore Chukchi Sea at any given time as the bowhead migration approaches these areas. No geophysical surveys of any kind will be permitted in the spring lead systems.

d. This policy applies to uses and activities covered by the statewide energy facilities standard (11 AAC 112.230), and it applies to all uses and activities associated with siting of energy facilities, including exploration activities.

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

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

## North Slope Borough District Enforceable Policy Table

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

#### **Policy E-3: Dismantlement, Restoration and Rehabilitation**

- a. Applicants shall include a plan for the dismantlement, restoration and rehabilitation (DRR) of oil and gas facilities with the consistency certification. This plan shall include DRR measures, identify at what point in the project development the measures will be implemented, and identify resources available to fund the DRR.
- b. To the maximum extent practicable and to the satisfaction of the borough, the measures shall be designed to return the project area to pre-project conditions, especially in regard to habitat functions and visual impacts to the landscape.
- c. DRR measures shall be implemented when a facility is no longer being used and there are no specific plans for future use, unless the NSB agrees that an alternate plan or site treatment is preferable to the one describe in the DRR plan.
- d. Upon abandonment, project completion or expiration of permit authorizations, whichever occurs first, permitting agencies may amend required measures identified in the original plan if the NSB agrees:
- 1) There is a demonstrated future use for the site, or
  - 2) The original measures would cause greater adverse effects.
- e. This policy applies to areas uses and activities in areas designated as suitable for energy facilities under 11 AAC 114.250(e) as described in Section 3.5.5.

### ***CRITERIA:***

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

## North Slope Borough District Enforceable Policy Table

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

OPMP recommends that the enforceable policy not be approved.

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

## North Slope Borough District Enforceable Policy Table

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

#### **Policy F-1: Effects of Mining and Mineral Processing**

a. For mining and mineral processing activities, the applicant shall incorporate measures into the project description measures to prevent or reduce adverse impacts to important habitat. These measures shall address effects from noise, dust, operations, construction in wetlands or permafrost, habitat alteration, water diversion or reservation, and disposal of mine tailings to habitat functions related to the support of fish and wildlife. Measures shall include restrictions to timing of operations, noise control, setbacks and buffers, or erosion control.

b. To the extent practicable, mining facilities shall be sited to avoid conflict with competing uses.

c. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) 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, 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 114.400?*
  - *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.

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

## North Slope Borough District Enforceable Policy Table

<b>POLICY TEXT:</b>	<b>CRITERIA:</b>
<p><b>Policy F-2: Disposal of Excavation Spoils</b></p> <p>a. Disposal of mine tailings and excavation spoils in lakes, ponds, and wetlands is not allowed unless the applicant demonstrates in the project description that there are no other alternatives.</p> <p>b. This policy applies to uses and activities that affect important habitat areas designated under 11 AAC 114.250(h) 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.

Uses or permits for mineral or petroleum resource extraction are uses of state concern under 11 AAC 112.230 (b).

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

## North Slope Borough District Enforceable Policy Table

### **POLICY TEXT:**

#### **Policy F-3: Sand and Gravel Extraction**

a. After an applicant demonstrates that upland alternatives are not practicable, sand and gravel projects in from barrier islands, spits and coastal waters, including intertidal areas shall meet the following criteria.

- 1) For the portions of rivers and streams considered coastal waters:
  - i) Larger rivers and streams shall be used before siting operations in smaller rivers and streams,
  - ii) Braided river systems shall be used before siting operations in other river systems,
  - iii) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology,
  - iv) Skimming of gravel bars in streambeds shall be allowed only when other alternatives are not practicable; use of gravel bars shall occur during periods of low flow and from areas above the low-flow water level, and
  - v) When practicable, operations shall avoid removal of large rocks or natural debris from streambeds; when it is not practicable to leave such material in the streambed, comparable materials shall be replaced by an applicant.
- 2) Applicants shall include in the project description measures to monitor the adverse impacts of gravel operations.

b. Review and approval of sand and gravel extraction in areas other than coastal waters, shall use the following criteria.

- 1) Upland areas shall be used first to the maximum extent practicable. 2) Inactive stream channels shall be used before siting operations in active channels and deltas.
- 3) Larger rivers and streams shall be used before siting operations in smaller rivers and streams.
- 4) Braided river systems shall be used before siting operations in other river systems.
- 5) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology and anadromous fish habitat.
- 6) Skimming of gravel bars in streambeds shall be allowed when other alternatives are not practicable. Use of gravel bars shall occur during periods of low flow and from areas above the low-flow water level.

### **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 F source 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

### **POLICY TEXT continued:**

- 7) Pit excavations from areas adjacent to rivers shall be separated from the active channel by a buffer designed to maintain the separation for two or more decades.
- 8) When practicable, operations shall avoid removal of large, woody debris from streambeds. When it is not practicable to leave such material in the streambed, comparable materials shall be replaced by an applicant.
- 9) Applicants shall include in the project description measures to monitor the adverse impacts of gravel operations on anadromous fish habitat to determine if actual impacts exceed those predicted.

c. Subsection "a" relates to uses and activities covered by the statewide sand and gravel extraction policy (11 AAC 112.260), and it applies throughout the coastal area to the types of areas mentioned in the policy. Subsection "b" relates to uses and activities affecting areas designated as important habitat (11 AAC 112.250(h)) 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, 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. After applicant demonstrates that upland alternatives are not practicable, sand and gravel projects in from barrier islands, spits and coastal waters, including intertidal areas shall meet the following criteria.*

- 1) For the portions of rivers and streams considered coastal waters:
  - i) Larger rivers and streams shall be used before siting operations in smaller rivers and streams,*
  - ii) Braided river systems shall be used before siting operations in other river systems, and*
  - iii) The quantity of gravel removed shall be limited to ensure gravel recruitment and accumulation rates are sufficient to avoid extended impacts on channel morphology.**

*b. Review and approval of sand and gravel extraction in areas other than coastal waters, shall use the following criteria.*

- 1) Upland areas shall be used first to the maximum extent practicable.*
- 2) Inactive stream channels shall be used before siting operations in active channels and deltas.*
- 3) Larger rivers and streams shall be used before siting operations in smaller rivers and streams.*
- 4) Braided river systems shall be used before siting operations in other river systems.*

Part a 2) is not approvable because the state retains authority to monitor consistency under 46.40.070(a)(2)(A).

Part b 5), 6), 7), 8), and 9) is not approvable because the State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that these matters are not adequately addressed.

Part c is not approvable because policies written under the Sand and Gravel State Standard at 11 AAC 112.260 are limited to coastal water. In addition, the State Habitat Standard at 11 AAC 112.300 also already addresses certain aspects of impacts to habitat. The coastal district has not demonstrated, pursuant to AS 46.40.070(a)(2)(C) and 11 AAC 114.270(e), that these matters are not adequately addressed.

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

### ***NATURAL HAZARDS***

#### **3.5.4 Natural Hazard Area**

The North Slope Borough designates three types of natural hazard areas pursuant to 11 AAC 114.250(b). These designated areas are located in the coastal zone and exclude federal lands and waters. The statewide standard at 11 AAC 112.210 and enforceable policies D1 – D4 apply to these designations.

- 1) **Permafrost:** The NSB designates the entire coastal zone as a permafrost hazard area.
- 2) **Ice Hazards:** The NSB designates the following areas as ice hazard areas: All coastal waters; onshore areas adjacent to the Beaufort Sea located within 450 feet of the mean high water mark, and onshore areas adjacent to the Chukchi Sea within 850 feet of the mean high water mark. Ice hazards include ice ridging, shear zones, ice break-off, strudel scour, ice gouging, ice override and ice pileup. Maps 6 and 7 in Appendix B illustrate certain types of ice hazards, however, these maps are not meant to replace the description of ice hazards area in the preceding sentence.
- 3) **Flooding and Erosion:** All onshore areas within a 10-foot contour measured from mean high water of rivers and streams and areas within the 10-foot contour of coastal waters measured from the mean high water mark are designated as flooding hazard areas. Areas within 20 feet of the mean high water mark of rivers and within 50 feet from the mean high water mark of coastal waters are designated as erosion hazard areas.

Uses and activities that could be proposed for areas designated for natural hazards include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.

### ***Comments/Discussion***

In accordance with 11 AAC 114.250(b), a district shall consider the likelihood of occurrence of natural hazards and may designate an areas for natural hazards. In the resource inventory and analysis, the NSB discusses the likelihood of occurrence of permafrost, ice hazards, and flooding and erosion; however, the likelihood of occurrence was not discussed for subsea permafrost south of Point Hope and for erosion in rivers.

**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

<p><b>OPMP recommendation to the DNR Commissioner:</b></p>	<p>OPMP recommends that the following natural hazard designations be approved:</p> <ol style="list-style-type: none"><li>1. <b>Permafrost:</b> the entire onshore area of the coastal zone, and all coastal waters from Point Hope north and eastward to the border of Canada as a permafrost natural hazard area.</li><li>2. <b>Ice Hazards:</b> approved in whole</li><li>3. <b>Flooding and Erosion:</b> All onshore areas within a 10-foot contour measured from mean high water of rivers and streams and areas within the 10-foot contour of coastal waters measured from the mean high water mark are designated as flooding hazard areas. Areas within 50 feet from the mean high water mark of coastal waters are designated as erosion hazard areas.</li></ol> <p>OPMP recommends that the following natural hazard designations not be approved:</p> <ol style="list-style-type: none"><li>1. <b>Permafrost:</b> All coastal waters south of Point Hope.</li><li>2. <b>Erosion:</b> Areas within 20 feet of the mean high water mark of rivers.</li></ol>
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**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

<p><b><i>SITES SUITABLE FOR THE DEVELOPMENT OF MAJOR ENERGY FACILITIES</i></b></p> <p><b>3.5.5 Energy Facility Areas</b></p> <p>The NSB designates areas identified in the map in Appendix H as Suitable for Major Energy Facilities pursuant to 11 AAC 114.250(e). These areas include lands zoned by the NSB as Development Districts within the coastal zone. Federal lands are excluded from these designations.</p> <p>Uses and activities that could be proposed for areas designated for Energy Facilities include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p align="center"><b><i>Comments/Discussion</i></b></p> <p>In accordance with 11 AAC 114.250(e), a district shall consider and may designate, in cooperation with the state, sites suitable for the development of major energy facilities. The District documents consultation with the state in Appendix I.</p>
<p><b>OPMP's Recommendation to the DNR Commissioner:</b></p>	<p>OPMP recommends the Sites Suitable for the Development of Major Energy Facilities designation be approved in whole.</p>

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

### ***SUBSISTENCE USE***

#### **3.5.1 Subsistence Areas**

The NSB designates the following types of subsistence use areas within its coastal zone under authority of 11 AAC 114.250(g): 1) Marine mammals, 2) land mammals, 3) fish, 4) waterfowl, 5) furbearers, and 6) gathering (vegetation, berries, wood, and invertebrates). The designated subsistence use areas include the areas within the coastal zone identified as subsistence use areas on the maps in Appendix O, excluding federal land. Each type of subsistence use includes the following species:

- **Marine Mammals:** Polar bear, bearded seal, harbor or spotted seal, ribbon seal, ringed seal, walrus, beluga whale, and gray whale. Bowhead whale subsistence use areas are described below.
- **Land Mammals:** Black bear, grizzly bear, caribou, moose, and Dall sheep.
- **Fish:** Blackfish, capelin, Arctic Char, Arctic cod, ling cod, Arctic flounder, grayling, northern pike, chum salmon, humpback salmon, sculpin, rainbow smelt, sucker, lake trout, Arctic cisco, broad whitefish, humpback whitefish, least cisco, and round whitefish.
- **Waterfowl:** Eggs, lesser brant, sandhill crane, common eider, king eider, spectacled eider, Stellar's eider, Canada goose, lesser snow goose, white-fronted goose, Arctic loon, common loon, red throated loon, common murre, thickbilled murre, oldsquaw, snowy owl, pintail, rock ptarmigan, and willow ptarmigan.
- **Furbearers:** Arctic fox, red fox, snowshoe hare, lynx, hoary marmot, mink, porcupine, Arctic ground squirrel, weasel, wolf, and wolverine.
- **Gathering:** Clams, king crab, tanner crab, shrimp, blueberry, cloudberry, cranberry, crowberry, grass roots, Hudson's Bay tea, sourdock, swamp grass, wild celery, wild chives, wild potato, wild rhubarb, wild spinach, willow leaves, alder bark, birch trees, willow brush, driftwood, sod, spruce trees, and timber logs.

The data for the subsistence use maps were obtained from two studies.

### ***Comments/Discussion***

In accordance with 11 AAC 114.250(g), a district may, after consultation with the appropriate state agencies, federally recognized Indian tribes, Native corporations, and other appropriate persons or groups, designate areas in which "a subsistence use" is an important use of coastal resources. OPMP provided guidance that the subsistence use has to be resource specific in order to provide an applicant enough information ahead of time so as to be able to complete the analysis or evaluation of reasonably foreseeable adverse impacts of the project on subsistence use.

In order to facilitate manageable subsistence use designations for both the district and applicant, OPMP decided to allow districts to group together similar species with similar lifecycles. Because of the varying lifecycles of fish, fish is too broad of a category to be acceptable for a subsistence use designation. Similarly, gathering is also too broad of a category since it encompasses gathering both on land and in the marine environment. Therefore, both the fish and the gathering categories cannot be approved as written.

In addition, the bowhead whale subsistence use for Wainwright fall, Point Hope fall, and Point Lay cannot be approved because the district has not shown as per 11 AAC 114.990 (23) that bowhead whale subsistence use in these areas at these times is a current and actual use. In addition, these designations were added after the preliminary review and recommendation and were not a part of the OPMP public review process.

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

Pedersen, S. 1979. *Regional Subsistence Land Use: North Slope Borough, Alaska. Occasional Paper No. 21*, Conservation and Environmental Protection, North Slope Borough and Anthropology and Historic Preservation, Cooperative Park Studies Unit, Univ. of Alaska, Fairbanks, Alaska.

Pedersen, Sverre. 1986. *Nuiqsut Subsistence Land Use Mapping: 1986 Update of Selected Land Use Categories. North Slope Subsistence Data Atlas*. Open File Report #86-01. Division of Subsistence, Alaska Department of Fish and Game, Fairbanks, Alaska.

The NSB designates the following subsistence use areas for bowhead whales.

**Kaktovik:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from August to October: The area circumscribed from Anderson Point in Camden Bay due north to the coastal zone boundary, to Humphrey Point due north to the coastal zone boundary.

**Nuiqsut:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from August to October: The area circumscribed from the Nechelik Channel of the Colville River due north to the coastal zone boundary, to the eastern point of Flaxman Island due north to the coastal zone boundary and due south to the shore.

**Barrow Fall Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from the mouth of Tuapaktushak Creek due north to the coastal zone boundary, to Cape Halkett due east to the coastal zone boundary.

**Barrow Spring Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from the mouth of Tuapaktushak Creek due west to the coastal zone boundary, to Scott Point due north to the coastal

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

zone boundary.

**Wainwright Spring Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from Point Franklin due north to coastal zone boundary, to the Kuk River mouth due west to the coastal zone boundary.

**Wainwright Fall Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from Point Franklin due north to coastal zone boundary, to the Kuk River mouth due west to the coastal zone boundary.

**Point Hope Spring Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from March to June: The area circumscribed from Cape Lisburne due north to the coastal zone boundary, to Cape Thompson due south to the coastal zone boundary.

**Point Hope Fall Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from September to October: The area circumscribed from Cape Lisburne due north to the coastal zone boundary, to Cape Thompson due south to the coastal zone boundary.

**Point Lay Spring Subsistence Use Area:** Excluding federal waters, all state coastal waters within the following areas are designated for subsistence use of bowhead whales from April to June: The area circumscribed from Cape Beaufort due west to the coastal zone boundary, to Icy Cape due west to the coastal zone boundary.

The subsistence use designations are necessary to support the enforceable policies on subsistence. In compliance with 11 AAC 114.270(a), these policies address only uses and activities identified in 11 AAC 114.250(g) (i.e., subsistence uses and activities).

Although federal land is not included in these designations because

**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

<p>it is technically not part of the NSB's coastal zone, activities on federal land and waters are reviewed for consistency with the enforceable policies written for subsistence designations if activities would affect coastal resources or uses.</p> <p>Uses and activities that could be proposed for areas designated for subsistence include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Studies and local knowledge that support the designations may be found below in the resource inventory and analysis, in the justification for the designation (Appendix D) and in the Annotated Subsistence Bibliography (Appendix J).</p>	
<p><b>OPMP's Recommendation to the DNR Commissioner:</b></p>	<p>OPMP recommends that the following subsistence use designated areas be approved:</p> <ol style="list-style-type: none"> <li>1. Marine mammals</li> <li>2. Land mammals</li> <li>3. Waterfowl</li> <li>4. Furbearers</li> <li>5. Kaktovik bowhead whale</li> <li>6. Nuiqsut bowhead whale</li> <li>7. Barrow fall bowhead</li> <li>8. Barrow spring bowhead</li> <li>9. Wainwright spring bowhead</li> <li>10. Point Hope spring bowhead</li> </ol> <p>OPMP recommends that the following subsistence use areas not be approved:</p> <ol style="list-style-type: none"> <li>1. Fish</li> <li>2. Gathering</li> <li>3. Wainwright fall bowhead</li> <li>4. Point Hope fall bowhead</li> <li>5. Point Lay spring bowhead</li> </ol>

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<b><i>IMPORTANT HABITAT</i></b>	<b><i>Comments/Discussion</i></b>
<p><b>3.5.2 Important Habitat Areas</b></p> <p>The NSB designates the following areas as important Habitat Areas under 11 AAC 114.250(h).</p> <ul style="list-style-type: none"> <li>• <b>Bowhead Whales:</b> All marine waters within the NSB are designated as important habitat for the productivity of bowhead whales. These waters are used for migration, feeding, mating, and calving.</li> <li>• <b>Beluga Whales:</b> All marine waters within the NSB are designated as important habitat for the productivity of beluga whales. These waters are used for migration, feeding and calving.</li> <li>• <b>Most Environmentally Sensitive Areas:</b> The following habitats identified in Maps 1-4 and 6-7 in Appendix G are designated as important habitat: Seabird colonies, kelp/benthic invertebrates, eider nesting concentrations, snow geese nesting concentrations, waterfowl nesting concentrations, waterfowl molting areas, waterfowl concentrations (including fall and spring), black brant nesting concentrations, polar bear confirmed coastal denning areas, spotted seal haul-out concentrations, anadromous waters, ringed seal breeding and pupping along shore/ast ice, beluhka wale concentration areas, and walrus haul-out concentrations. These habitats have been identified by the Office of Project Management and Permitting as meeting the scientific criteria for important habitat through the process that lead to the creation of the Most Environmentally Sensitive Areas (MESA) in Appendix G-1.</li> <li>• <b>Environmental Sensitivity Index Maps:</b> Areas with sensitive biological resources identified in the 23 Environmental Sensitivity Index (ESI) maps including sensitive habitats for marine mammals, terrestrial mammals, birds, fish, kelp, and multi-group areas (Appendix G-2).</li> <li>• <b>Anadromous Waters:</b> All anadromous waters identified in the Fish Distribution Database are designated as important habitat, including a 1000-foot corridor on either side of the streams as measured from the mean high water mark (Appendix G-3).</li> <li>• <b>Kasegaluk Lagoon:</b> Kasegaluk Lagoon is designated as important habitat including the barrier islands, passes between the islands, mudflats and coastal waters shoreward of the barrier islands and a 100-foot area landward of coastal waters. Kasegaluk Lagoon is</li> </ul>	<p>In accordance with 11 AAC 114.250(h), a district shall consider and may designate areas as important habitat if</p> <ol style="list-style-type: none"> <li>1. the use of the designated area has a direct and significant impact on coastal water</li> <li>2. the designated area is shown by written scientific evidence to be biologically and significantly productive.</li> </ol> <p>Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8).</p> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)."</p> <p>State and Federal regulations collectively and comprehensively address the protection of bowhead and beluga whale habitats. NSB's designated important habitat areas for bowhead and beluga whales duplicate existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> <li>• <b>Most Environmentally Sensitive Areas:</b> The MESA maps do not meet the OPMP mapping requirements. The designated areas are not defined as such on the maps, the applicable enforceable policies are not listed, the appropriate logos are not used, and the name of the district is not included in the title. In addition, these designated area requests duplicate state and federal law. Therefore, these maps cannot be approved.</li> <li>• <b>Environmental Sensitivity Index Maps:</b> After consultation with Alaska Department of Fish and Game, and the Office of Habitat Management and Permitting, it</li> </ul>

## North Slope Borough Coastal Management Plan: Designated Area Analysis Table

<p>located at 70 28' N, 160 29' W (NE end); 69 16' N, 163 18' W (SW end).</p> <ul style="list-style-type: none"> <li>• <b>Caribou Calving Area:</b> Major caribou calving areas depicted on the map in Appendix G-4 titled <i>Central Arctic Herd Caribou Calving Areas and Seasonal Ranges</i>, which includes the area depicted as concentrated areas, are designated important habitat.</li> <li>• <b>Seals:</b> All non-federal coastal waters in the NSB are designated as important habitat for ringed, spotted and bearded seals.</li> <li>• <b>Polar Bear:</b> The NSB designates the following area as important habitat for polar bear denning: All coastal waters and barrier islands within the NSB coastal zone and lands within 25 kilometers of the mean high water mark of coastal waters between 151° longitude and the border of the Alaska National Wildlife Refuge. No federal lands are included in this designation.</li> <li>• <b>Bird Nesting and Molting Areas:</b> All barrier islands in the NSB and Kasegaluk, Elson and Simpson lagoons are designated important habitat because they provide critical habitat for nesting and molting birds.</li> </ul> <p>Uses and activities that could be proposed for areas designated for important habitat include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p> <p>Applicants can determine whether their project is located in one of these areas by referencing the maps. Federal lands are excluded from these designations.</p>	<p>was determined that the ESI maps do not fulfill the criterion of "written scientific evidence" as per 11 AAC 112.300 (c)(1)(B)(ii), and cannot be approved.</p> <p>The maps do not meet the OPMP mapping requirements. The designated areas are not defined as such on the maps, the applicable enforceable policies are not listed, the appropriate logos are not used, and the name of the district is not included in the title. In addition, these designated area requests duplicate state and federal law. Therefore, these maps cannot be approved.</p> <ul style="list-style-type: none"> <li>• <b>Anadromous Waters:</b> The proposed designated important habitat area is considered an "enforceable policy" under the definition at AS 46.40.210(8).</li> </ul> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." The ADFG Fish Distribution Database Atlas is a matter authorized by state law, and serves as the authority under which other state laws are implemented. NSB's designation for anadromous waters duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> <li>• <b>Kasegaluk Lagoon:</b> Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8).</li> </ul> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." 11 AAC 112.300(b) already addresses the substance of this designation. NSB's designation for seals duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p>
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**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

	<ul style="list-style-type: none"><li>• <b>Caribou:</b> 11 AAC 114.250 (h) (1) states that a district shall consider and may designate portions of habitat areas listed in 11 AAC 112.300(a)(1) – (8) and other habitats in the coastal area as important habitat if the use of those designated portions have a direct and significant impact on coastal water.</li></ul> <p>11 AAC 114.990 (13) “direct and significant impact” means an effect of a use, or an activity associated with the use, that will proximately contribute to a material change or alteration of the coastal waters...”</p> <p>NSB has not demonstrated in Appendix D that an immediate, or proximate, direct and significant impact exists from all NSB caribou habitat designations.</p> <p>In addition, the maps from Appendix G-4 do not meet OPMP’s mapping requirements. These maps need to state in the legend the applicable enforceable policies.</p> <ul style="list-style-type: none"><li>• <b>Seals:</b> Proposed designated areas are considered to be an “enforceable policy” under the definition at AS 46.40.210(8).</li></ul> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must “not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C).” 11 AAC 112.300(b) already addresses the substance of this designation. NSB’s designation for seals duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"><li>• <b>Polar Bear:</b> Proposed designated areas are considered to be an “enforceable policy” under the definition at AS 46.40.210(8).</li></ul> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must “not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C).” 11 AAC 112.300(b) already</p>
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**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

	<p>addresses the substance of this designation. NSB's designation for Polar Bears duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p> <ul style="list-style-type: none"> <li>• <b>Bird Nesting and Molting Areas:</b> Proposed designated areas are considered to be an "enforceable policy" under the definition at AS 46.40.210(8).</li> </ul> <p>11 AAC 114.270(e)(3) requires that district enforceable policies must "not address a matter regulated or authorized by state or federal law unless the enforceable policy relates to a matter of local concern as defined at AS 46.40.070(a)(2)(C)." 11 AAC 112.300(b) already addresses the substance of this designation. NSB's designation for Bird Nesting and Molting Areas duplicates existing state and federal authority without demonstrating the matter is not adequately addressed.</p>
	<p>OPMP recommends that the Important Habitat designation not be approved.</p>

**North Slope Borough Coastal Management Plan: Designated Area Analysis Table**

<p><b><i>HISTORY OR PREHISTORY</i></b></p> <p><b>3.5.3 Historic and Archaeological Areas</b></p> <p>The North Slope Borough designates the following areas important for the study, understanding and illustration of historic, prehistoric, and archaeological resources (11 AAC 114.250(i)): 1) the entire onshore area, and 2) offshore areas within 1,000 feet of the mean high water mark. Federal lands are excluded from these designations. Enforceable policies B-1 – B-3 apply to this designation.</p> <p>Uses and activities that could be proposed for Historic and Prehistoric areas include: Subsistence harvests, hunting and fishing, fish and wildlife enhancement, cultural uses, commercial fishing, independent backcountry recreation, commercial recreation, tourism, development of transportation and utility routes and facilities, sand and gravel extraction, onshore and offshore mining, onshore and offshore oil and gas exploration and development, housing and subdivisions, remote camps, and off-road travel.</p>	<p align="center"><b><i>Comments/Discussion</i></b></p> <p>In accordance with 11 AAC 114.250(i), A district shall consider and may designate areas of the coast that are important to the study, understanding, or illustration of national, state, or local history or prehistory.</p>
<p><b>OPMP's Recommendation to the DNR Commissioner:</b></p>	<p>OPMP recommends that the History and Preshistory designations be approved in whole.</p>

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB243(CRA)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB243CSCRA-DNR-DCOM-03-20-2008 Dept. Affected: Natural Resources  
 Title: An Act Relating to the Alaska Coastal Management Program RDU: Resource Development  
 Component: Coastal & Ocean Mgmt  
 Sponsor: Rep. Joule, Edgmon  
 Requester: H CRA Component Number: 2680

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

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel	284.0		284.0	284.0	284.0	284.0	284.0
Contractual	890.0		10.0	10.0	10.0	10.0	10.0
Supplies	10.0		10.0	10.0	10.0	10.0	10.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>1,184.0</b>	<b>0.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>

<b>CAPITAL EXPENDITURES</b>							
-----------------------------	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>							
-------------------------------	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	1,184.0		304.0	304.0	304.0	304.0	304.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>1,184.0</b>	<b>0.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

This following issues contained within CSHB243 (CRA) will have the following fiscal impact.

Travel & Supplies - Based on the level of state agency authority transferred to the Coastal Policy Board, it's expected that the Board will need to meet at least twice a month to fulfill the obligations and provide the services outlined in the proposed legislation.

Prepared by: Randy Bates, Director  
 Division: Coastal & Ocean Management  
 Approved by: Tom Irwin, Commissioner  
Natural Resources

Phone 907-465-8797  
 Date/Time March 20, 2008  
 Date March 20, 2008

**FISCAL NOTE**

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

**BILL NO. CSHB243(CRA)**

**ANALYSIS CONTINUATION**

In order to re-write the guiding regulations, the Division of Coastal & Ocean Management (DCOM) will need to secure contractual services for the promulgation and final Department of Law review of the regulations (\$50.0 in the first year). Additional legal advice to support the board's required actions is expected to cost \$10.0 annually.

In order to revise, amend and approve the district coastal management plans, additional funds will be required. These funds are granted to the individual districts to make their plan updates. Based on past requests for funding the district plan amendments and the anticipated level of revision, an estimated additional \$840.0 will be required.

# FISCAL NOTE

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS HB 243 (CRA)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): P:3243CS(CRA)-DEC-CO-03-20-08 Dept. Affected: Environmental Conservation  
 Title: An Act relating to the Alaska coastal management program RDU: Administration  
 Component: Office of the Commissioner  
 Sponsor: Representative Joule  
 Requester: Community & Regional Affairs Component Number: 633

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

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual	10.0		10.0	10.0	10.0	10.0	10.0	10.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>10.0</b>	<b>0.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
-------------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF	10.0		10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>10.0</b>	<b>0.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

This legislation amends Alaska statutes pertaining to the Alaska Coastal Management Program (ACMP). One amendment requires that the Department provide public notice and opportunity for public comment for certain ACMP findings. A total of \$10.0 in contractual funding will be needed to pay for additional advertising and other costs associated with the new public notice requirement.

Prepared by: Mike Maher, Director  
 Division: Information and Administrative Services  
 Approved by: Dan Easton, Deputy Commissioner  
Department of Environmental Conservation

Phone 465-5256  
 Date/Time 3/20/08 12:05 PM  
 Date 465-5066

**Jeanne Ostnes**

**From:** Marlene Campbell [campbell@cityofsitka.com]  
**Sent:** Monday, April 07, 2008 10:36 AM  
**To:** Rep. Craig Johnson  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* FW: Testimony on HB 243 in House Resources Committee

Apparently you did not receive my e-mail due to my mis-typing the address. Sorry! Here is another attempt. – Marlene Campbell

**From:** Marlene Campbell [mailto:campbell@cityofsitka.com]  
**Sent:** Friday, April 04, 2008 5:36 PM  
**To:** 'House Resources Committee'; 'Representative.Craig\_Johnson@legis.state.ak.us'; 'Representative\_Anna\_Fairclough@legis.state.ak.us'; 'Representative\_Paul\_Seaton@legis.state.ak.us'; 'Representative\_Bob\_Roses@legis.state.ak.us'; 'Representative\_Peggy\_Wilson@legis.state.ak.us'; 'Representative\_Bryce\_Edggmon@legis.state.ak.us'; 'Representative\_David\_Guttenberg@legis.state.ak.us'; 'Representative\_Scott\_Kawasaki@legis.state.ak.us'; 'Representative\_Reggie\_Joule@legis.state.ak.us'  
**Cc:** 'marie\_murray@legis.state.ak.us'  
**Subject:** Testimony on HB 243 in House Resources Committee

Please accept my profound apology for signing up to testify and not being able to do so today. I was in the Sitka LIO at 12:45PM and waited until 2:00, when I had to leave for an important pre-scheduled meeting. I told the LIO director I would submit abbreviated comments in writing. This is a summary of my comments.

Mr. Chairman and members of the House Resources Committee:

I am Marlene Campbell, Government Relations Director for the City and Borough of Sitka, where I have served as Coastal Management Coordinator since 1987. I am grateful to Representative Joule for introducing this legislation and to your committee for discussing it. This legislation is very important to coastal communities throughout Alaska. I realize it is probably too late to comment, but if the bill has not yet passed out of House Resources, I would very much appreciate your considering my comments.

House Bill 191, and the State's "streamlining the coastal management program" that followed, resulted in Alaska's Coastal Management Program, and the coastal districts' "seat at the table" in coastal consistency review of major issues in their local coastal zone, virtually being extinguished. The few Sitka Coastal Program enforceable policies not eliminated are now so restricted that they no longer give Sitka any voice in the management decision making on permits for use of the 300 miles of coastline within the City and Borough of Sitka. Without any meaningful ability to appeal the DNR agency decisions on how extreme the reduction in local control should be, Sitka's "standing" to participate in the review process was virtually terminated. Sitka has not been able to take over Coastal Management by putting enforceable policies in City code, because with the very small staff, management of coastal policies would be impossible. Coastal communities have been virtually eliminated from the ACMP process, and we have no advocates or standing with the bureaucratic agency review process now in place despite platitudes to the contrary.

HB 243 would help restore some of the balance between agency external decision-making and the ability of coastal communities to meaningfully comment on permits for development of their area's lands and/or waters. It would enable coastal districts to at least learn what the Department of Environmental Conservation is reviewing and issuing permits on in the "DEC Carve-Out" currently "off limits" to coastal reviewers or the local community. It would restore a "seat at the table" for coastal districts by empowering a coastal policy board including representatives from coastal communities, and limit the vast "over-reaching" control of the Office of Project Management and Permitting (now Office of Ocean and Coastal Management).

Alaska's coastal communities should have a right to formulate reasonable local enforceable coastal policies which protect our environment while permitting responsible development. Our citizens should have a right to comment on permit requests that could either cause real harm or perhaps great benefit to our coastal communities. Some

local control, or at least involvement, of the coastal districts and our coastal residents needs to be restored. This legislation will help achieve that important goal.

I am also very pleased to see Subsistence included in areas of the legislation that can be addressed as part of our coastal programs. Most coastal districts have not been able to get any Subsistence or Habitat enforceable policies approved, and Subsistence and habitat protection are a vital part of our Coastal Management efforts at the local level. Sitka is a Rural community for Subsistence, and more than 90 percent of Sitka households regularly engage in Subsistence activities. Subsistence and Habitats are vital components of Sitka's coastal zone.

HB 293 is a great start to re-energize the Alaska Coastal Management Program to make it meaningful again to Alaska's many coastal communities. Your support for this bill will be greatly appreciated. Thank you for the opportunity to comment.

Marlene Campbell, Government Relations Director  
City and Borough of Sitka  
907-747-1855 phone  
907-747-1856 fax  
[campbell@cityofsitka.com](mailto:campbell@cityofsitka.com) e-mail

**Testimony by Edward Itta, Mayor  
North Slope Borough  
House Resources Committee  
*House Bill 243 - Coastal Management*  
Friday, April 4, 2008**

Thank you, Mister Chairman and members of the Committee. My name is Edward Itta, Mayor of the North Slope Borough.

I appreciate this opportunity to speak with the committee today, and I thank you for considering HB 243, which deals with what used to be one of Alaska's most successful examples of federal, state and local co-management – the Alaska Coastal Management Program. The previous administration pushed for wholesale changes in the ACMP, and while I believe their intentions were honorable, the effect was to strip meaningful local involvement out of the process. The original ACMP was brilliantly conceived, in that it brought together the interests of developers with the concerns of local residents, resulting in development that had local buy-in. Using the original ACMP, on the North Slope, the overwhelming majority of projects went through without a hitch, and they had the local seal of approval when they went forward. It was a recipe for stability in the development process.

This version of House Bill 243 helps to recapture parts of the original program's success, so I want to express our support for the bill before you today. It would solve many of the problems we have faced under current ACMP regulations. I recognize that it may be tough to get all the way back

to the original program, but this bill does fix some of the most troublesome aspects of the current law.

The Borough supports responsible resource development, and for over 20 years the ACMP was an important way to find a balance between development and protection of coastal resources and uses. But as changes have been implemented in recent years, that balance has been lost. Almost all of our proposed enforceable policies have been denied by the State, so we have had to rely on our Title 29 planning and zoning process for local input. While the permit process is an effective tool, we miss the opportunities provided by the former coastal management program to work cooperatively with state and federal agencies in developing compatible permit stipulations.

The bill before you would help restore a meaningful ACMP. Most importantly, it would make it clear that coastal districts may establish meaningful enforceable policies. We believe HB 191, passed in 2003, would have allowed us to do this, but the regulations adopted by the last administration have eliminated this possibility. 26 of the 31 policies we proposed for our coastal plan revision were denied, including all important habitat designations and some of the important subsistence use areas, and we have been informed that the 5 remaining policies must be changed significantly before they will be approved.

The bill also puts air and water quality permits back into the ACMP process. Since the Alaska Department of Environmental Conservation permits have been removed from the consistency review process, there has been a lot of

confusion. For example, we have been told that we can no longer comment on the effects of a potential oil spill on habitat or subsistence.

The Borough also supports the provision in the bill to reestablish the Coastal Policy Council. The former council was effective in approving coastal district plans and establishing policy because it was composed of both state government staff and locally elected officials.

Finally, HB 243 makes it clear that all Outer Continental Shelf activities affecting coastal resources or uses would be considered in ACMP reviews. Currently, as a result of changes to the program, certain effects from offshore oil and gas activities are no longer considered.

I want you to know that I have the greatest respect for Tom Irwin and have appreciated his willingness to work with us on a number of other issues.

About Coastal Zone Management, however, I am very encouraged by this bill, and I hope the committee will approve it.

Again, thank you for your time.

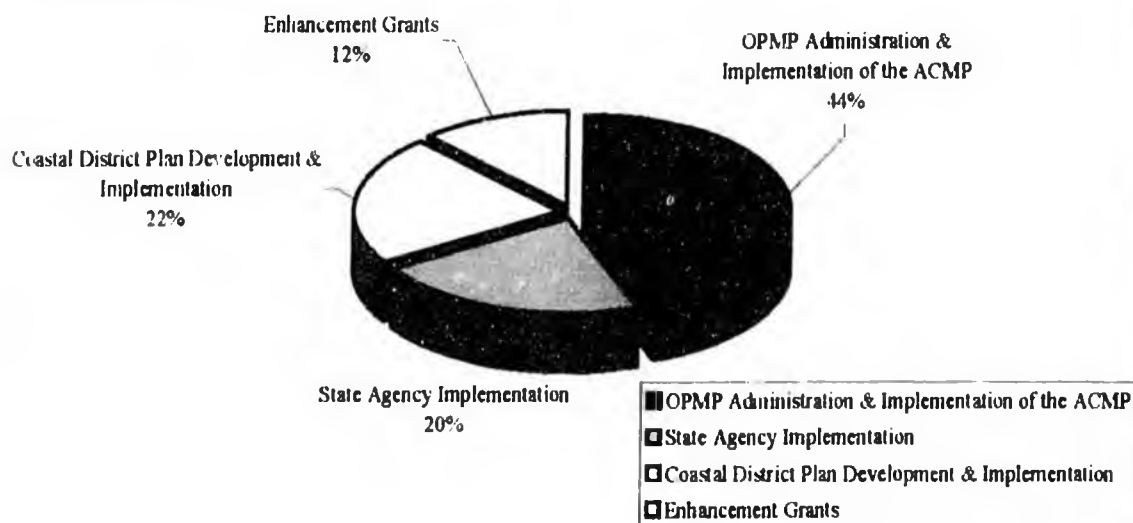
# Alaska Coastal Management Program



## Key Fiscal Year 2007 Accomplishments

- Continue to establish the Alaska Coastal Management Program (ACMP) within the Department of Natural Resources (DNR). This office leads on all issues and matters relating to the state's coastal zone, waters, uses, and resource, and administers and implements the ACMP
- Secured federal approval of reform changes to ACMP
- Coordinated or expedited approximately 215 consistency reviews for resource development projects within the coastal zone
- Provided coordinated and consolidated State response on all National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management proposed rules, regulations, and initiatives
- Worked with Minerals Management Service, Forest Service, US Army Corps of Engineers, Bureau of Land Management, Federal Aviation Administration, and the Departments of Environmental Conservation and Transportation and Public Facilities to identify coastal consistency issues that would be resolved through the application of MOU's or other effective coordination and cooperation means

## ACMP Funding



## ACMP State Contact

Randy Bates, Director - DCOM, T: 907.465.8797, F: 907.465.3075

E-mail: [randy.bates@alaska.gov](mailto:randy.bates@alaska.gov)

ACMP Originally Approved:  
1979

Coastal Population in 1979:  
330,960

Coastal Population in 2004:  
538,332

Miles of Coastline:  
44,500

CZMA Funds:  
\$2,503,000

State and Other  
Matching Funds:  
\$1,967,000

Total:  
\$4,470,000



# Alaska Coastal Management Program



## Program Goals and Objectives

The Alaska Coastal Management Program (ACMP) oversees the responsible development of coastal uses and resources, federal activities within the coastal zone, and activities on the Outer Continental Shelf.

## ACMP Structure and Organization

The ACMP is a voluntary State program, authorized by the Coastal Zone Management Act of 1972, as amended. The Division of Coastal and Ocean Management (DCOM), within the Department of Natural Resources, is the lead agency for the ACMP. Previously the ACMP was located within the Office of Project Management and Permitting (OPMP), but was split from OPMP and housed within the newly formed DCOM. Several state agencies participate in the implementation of the ACMP. In addition, several coastal municipalities and service areas (collectively known as coastal districts) voluntarily participate in the implementation of the ACMP. This structure and organization of state agencies and coastal districts provides for a networked implementation scheme designed to comprehensively manage coastal uses and resources.

The primary tool used to implement the ACMP is the consistency review process at 11 AAC 110. Through this process, proposed resource development activities are reviewed for consistency and compliance with the State's coastal management program which includes State laws, State standards, and district enforceable policies.

## Value of ACMP

Having a federally approved coastal management program allows the State the opportunity to:

- Balance the need for economic investment and development in the coastal areas with the need to protect and manage the uses and resources of the coastal areas
- Act as State's liaison to federal agencies (1) conducting/permitting activities within the State's coastal area and the Outer Continental Shelf; (2) involving federal laws/initiatives that effect development of the coastal zone, waters, uses or resources of the State
- Act as the department's lead on issues affecting or addressing the coastal waters affecting the State
- Apply State ACMP enforceable policies to federal agency activities
- Provide project applicants with a single point of contact for the State's review of resource development permit applications
- Incorporate coastal district input and knowledge for reasoned decisions

## Key Fiscal Years 2008 and 2009 Priorities and Needs

- Finalize coastal district plan amendments review and approval
- Educate and train participants on implementation of ACMP
- Evaluate the ACMP implementing regulations and determine whether amendments are necessary
- Develop and seek approval for State Coastal Impact Assistance Program and for the Coastal and Estuarine Land Conservation Program

A Program of the  
Division of Coastal and  
Ocean Management



"The Alaska Coastal Management Program provides stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity."



## District Plan Status

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### Amended Plans Now In Effect:

1. AW CRSA
2. Anchorage
3. Bethel
4. Bristol Bay Borough
5. Craig
6. Haines
7. Hoonah
8. Ketchikan
9. Lake & Peninsula (effective 4/6/03)
10. Mat-Su
11. Nome
12. Pelican
13. Sitka
14. Skagway
15. Thorne Bay
16. Valdez
17. Whittier
18. Yakutat

### Amended Plans Sent to OCRM

1. Aleutians East
2. Bristol Bay CRSA
3. Cordova
4. Juneau

### Amended Plans Waiting To Be Sent to OCRM

1. Cenaliuriiit CRSA- We are working in-house to removed portion of the plan not approved by the DNR Commissioner.

### Mediation

1. Bering Straits CRSA- Requested mediation.
2. North Slope Borough- Requested mediation.
3. Northwest Arctic Borough- Requested mediation.

### Amended Plans Approved & Waiting for Local Adoption:

1. Kenai Peninsula
2. Kodiak Island

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

**DEPARTMENT OF NATURAL RESOURCES**  
**DIVISION OF COASTAL AND OCEAN MANAGEMENT**  
<http://www.alaskacoast.state.ak.us>

□ **SOUTHCENTRAL REGIONAL OFFICE**  
550 W 7<sup>th</sup> AVENUE SUITE 705  
ANCHORAGE, ALASKA 99501  
PH: (907) 269-7470 FAX: (907) 269-3891

X **CENTRAL OFFICE**  
302 GOLD STREET, SUITE 202  
P.O. Box 111030  
JUNEAU, ALASKA 99811-1030  
PH: (907) 465-3562 FAX: (907) 465-3075

February 22, 2008

ACMP Participant

RE: Re-evaluation of ACMP

Dear ACMP Participant:

As you know, in 2003 the Alaska State Legislature mandated the reform of the ACMP that included revised statutes, regulations, district coastal management plans, and other ACMP processes, and included deadlines for those revision efforts. Though the reform effort is nearing its completion, it has not been without its difficulties. The Department of Natural Resources (DNR) has had a challenging time managing and implementing the change process and the reform efforts. During the process, DNR has heard from the various participants on the successes and failures of the changes, and on the efforts to implement those changes, most recently during public testimony on Senate Bill (SB) 161.

Although the State opposes SB 161 for a variety of reasons, DNR does support the concept of re-evaluating certain changes that were made to the ACMP. Specifically, DNR recognizes the need and is interested in re-evaluating the following statutory and regulatory provisions of the ACMP:

- Revisit the DEC carveout (i.e., coordination of review involving DEC authorizations, application of other ACMP enforceable policies to DEC authorized activities, etc.)
- Revisit the coastal district's authority and ability to write enforceable policies, revisit the requirements for designated areas to address certain coastal uses and resources
- Address the consistency review scope of the project (i.e., aspects of the project that are subject to review)
- Make other necessary clarifying and technical edits to the regulations

At the 2007 ACMP conference in Juneau, DNR Commissioner Tom Irwin announced DNR's intention to re-evaluate the ACMP changes. I re-affirmed DNR's commitment to evaluating these changes in my testimony on SB 161 on January 29, 2008. While we previously established an informal timeframe for this re-evaluation to begin in July 2009, it is obvious, based on the input that DNR has heard, that we need to begin the program re-evaluation sooner than originally identified. With this in mind, it is my intention to formally and openly re-evaluate the ACMP changes identified above by inviting input from the networked participants (coastal districts, state agencies, industry, and members of the public). Based on that input, DNR will prepare a responsive statutory

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

ACMP Participants – ACMP Re-evaluation  
February 22, 2008  
Page 2

proposal for consideration during the 2009 legislative session, and a subsequent regulatory package for implementing the changes. The proposed schedule for this re-evaluation and development of proposed changes to the ACMP laws is as follows:

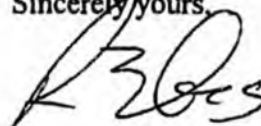
- June 2008 – Complete the review of the *List of Expedited Consistency Reviews and State Authorizations Subject to the ACMP* (i.e., the “ABC List”)
- July 2008 – Initiate a 30-day comment period to solicit input and suggested statutory and regulatory revisions
- August-October 2008 – Develop proposed statutory revisions
- November 2008 – Hold workshops to go over proposed statutory revisions; initiate a comment period to solicit input
- December 2008 – Finalize proposed statutory revisions
- January 2009 – Introduce bill addressing proposed statutory revisions.
- March through August 2009 – Promulgate and finalize regulatory revisions implementing the revised statutes (as appropriate) and addressing other identified regulatory revisions.

The DCOM has identified this re-evaluation of the ACMP within the *2006 Enhancement Grants Program Assessment and Strategy*, meaning DCOM has prioritized this initiative and identified it as eligible for federal funding under the ACMP. This effort is important to the success of the ACMP, and will be completed within the timeframes described above.

This re-evaluation is intended to identify and develop additional changes to the ACMP that will strengthen the ACMP as a State program, that will benefit applicants and the public in the coordination of projects, and that will enhance the coastal district participation and input into State decision-making regarding activities occurring in the coastal area and on the outer continental shelf.

I look forward to initiating the re-evaluation of the ACMP. Your participation in this effort is important to the future and success of the program.

Sincerely yours,



Randy Bates  
Director

cc: DCOM Staff  
Legislators  
Coastal Districts  
Coastal Currents “e-list”

## Alaska Oil and Gas Association

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121 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907)272-1481 Fax: (907)279-8114  
Email: crockett@aoga.org  
*Marilyn Crockett, Executive Director*

April 4, 2008

TO: House Resources Committee

Re: CSHB 243(CRA) – Alaska Coastal Management Program

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 17 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA and its members have been actively engaged in the Alaska Coastal Management Program since the program was first established some 30 years ago. We were engaged with the state and local districts in the development of their respective plans at that initial stage, and have continued to be involved in subsequent revisions to the program over the last three decades.

Perhaps no other industry in Alaska has had more experience with the program than the oil and gas industry. It is for that reason that we have remained engaged throughout the comprehensive statutory and regulatory revisions of the program that began in 2003 with passage of HB 191 and continue today.

As you know, the Department of Natural Resources had planned to begin a re-evaluation of the program in July, 2009. This timeframe would have provided a year-long period of time to gain experience operating under the new program to identify whether additional changes were warranted.

On February 22, 2008, the Department of Natural Resources announced it will initiate this review process one year earlier than planned. While we continue to believe that the full year of implementation and experience would have been valuable to assess future program revisions, the DNR review process now before us should be allowed to be completed.

The Alaska Coastal Management Program along with other local, state, and federal permitting and regulatory programs that guide planning and development in the State of Alaska's coastal zone are comprehensive and expansive. It will take time and considerable resources to conduct a program review with the objective of "getting it right". We encourage your Committee and the rest of the Alaska Legislature to, at a minimum, allow the Department of Natural Resources process to be carried out prior to moving forward with statutory changes to the Program.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Crockett".

MARILYN CROCKETT  
Executive Director

TO: Representative Johnson and Representative Gatto and members of the House Resources Committee

FROM: Thede Tobish, Senior Planner & Coastal District Coordinator, Planning Department, Municipality of Anchorage

SUBJECT: **CS FOR HOUSE BILL NO. 243 (CRA) // "An Act relating to the Alaska coastal management program and establishing the Alaska Coastal Policy Board."**

Committee Members, my name is Thede Tobish. I am a senior planner and I have been the Municipality of Anchorage's coastal district coordinator since 1990. The Anchorage Coastal District supports this bill because it addresses and fixes both major and minor conflicts and shortcomings promulgated by HB 191 and SB 102. It also goes a long way to meeting the collective needs and concerns of coastal districts, as outlined in the Alaska Coastal District Association's letters and recent testimony. I had the fortune to work with the original coastal policy council as it had originally functioned. That system worked very well and went a long way to accurately and fairly representing coastal districts, state agencies, the public, and regulated private interests. SB 102 inappropriately dismissed this effective system, so this bill before you resurrects a similar system.

Without going into details, SB 102 and the state's interpretation and implementation of its regulations and guidelines weakened Anchorage's coastal management plan. Our plan had included dozens of carefully crafted enforceable policies. We now have five with very limited application. Anchorage was one of the country's first local governments to construct a wetlands management plan, which was originally an element of and enforced by our local coastal management plan. With the new regulations, the policies from that plan were left out of our new coastal plan.

This is one of many ways in which the state's changes effectively reduced or eliminated a district's ability to shape or participate in decisions. Our local plan went from being a fine example of how coastal districts craft customized policies to reflect local issues, needs, concerns, and long term goals to essentially a shell document with limited information or direction. We complied with the new regulations as best we could and followed the state's confusing interpretations of the new regulations because we really had no choice. HB 243 offers coastal districts a foundation to fix shortcomings of the revised program and resurrect local control in the way envisioned by the original coastal program. Our main issues are twofold, first that the statute get reworked to provide clear direction to both the state and coastal districts on how local plans and especially enforceable policies can be crafted to provide due deference, and two, that an appropriate adjudicatory authority is reestablished to fairly handle conflicts in the program. We encourage your support of this bill.

Sincerely Yours,

Thede Tobish  
April 3, 2008



# Alaska Conservation Alliance

*Uniting for Alaska's Future*

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April 4, 2008

The Honorable Representative Reggie Joule  
State Capitol  
Juneau, Alaska 99801

**Re: HB 243 – Coastal Management Program**

Dear Representative Joule,

On behalf of the Alaska Conservation Alliance (ACA), a consortium of 40 Alaska-based conservation groups, I would like to express our support for HB 243. As you know this act revises the Alaska Coastal Management Program (ACMP)

HB 243 is an important chance to revise the Coastal Zone Management Program in a way to restore local buy-in for management decisions made by the program. This bill accomplishes this by clarifying the existing statute, creating a policy board and bringing water and air quality concerns back into the discussion. Most importantly, this bill gives local communities greater input into the decision-making process; something that the original ACMP was built around. By allowing more community input, the ACMP will benefit not only from the local knowledge of these communities but will also make resource development decisions easier and less controversial by including more stakeholders in the decision-making process.

I strongly encourage the Alaska Legislature to pass HB 243. Thank you for your time and consideration.

Sincerely,

Kate Troll  
Executive Director

CC: House Resources Committee Members

During Session:  
Alaska State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-4833  
Fax (907) 465-4586  
1-800-782-4833

Representative\_Reggie\_Joule@legis.state.ak.us



During Interim:  
P.O. Box 673  
Kotzebue, Alaska 99752  
(907) 442-3880  
Fax (907) 442-3022

**Alaska State Legislature**  
**REPRESENTATIVE REGGIE JOULE**

**Sponsor Statement**

**CS HB 243 Coastal Management Plan**

**"An Act relating to the Alaska coastal management program; and establishing the Alaska Coastal Policy Board"**

CS HB 243 is an effort to improve the partnership between the State of Alaska and coastal communities under the Coastal Zone Management Program. This legislation will give coastal districts a seat at the table in the review of proposed state and federal resource development actions. An effective review process that accounts for local concerns will encourage local support for important responsible development projects in our coastal communities.

The bill focuses on three primary areas:

- 1) It provides clarification that districts may develop meaningful policies.
- 2) It establishes a Coastal Policy Board made up of resource agencies and coastal districts to agree on policy issues, approve regulations, and district management plans.
- 3) It brings water and air quality concerns of the Department of Environmental Conservation back to the table during consistency reviews.

This bill attempts to correct problems brought about by the enactment of HB 191. I support responsible development of our coastal resources. I believe that this can best and most expeditiously be accomplished through restoring some meaningful involvement of coastal communities in development decisions that directly affect them.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB243(CRA)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB243CSCRA-DNR-DCOM-03-20-2008 Dept. Affected: Natural Resources  
 Title An Act Relating to the Alaska Coastal Management Program RDU Resource Development  
 Component Coastal & Ocean Mgmt  
 Sponsor Rep. Joule, Edgmon  
 Requester H. CRA Component Number 2680

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

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel	284.0		284.0	284.0	284.0	284.0	284.0	284.0
Contractual	890.0		10.0	10.0	10.0	10.0	10.0	10.0
Supplies	10.0		10.0	10.0	10.0	10.0	10.0	10.0
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>1,184.0</b>	<b>0.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>

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

1002 Federal Receipts								
1003 GF Match								
1004 GF	1,184.0		304.0	304.0	304.0	304.0	304.0	304.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>1,184.0</b>	<b>0.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>	<b>304.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This following issues contained within CSHB243 (CRA) will have the following fiscal impact.

Travel & Supplies - Based on the level of state agency authority transferred to the Coastal Policy Board, it's expected that the Board will need to meet at least twice a month to fulfill the obligations and provide the services outlined in the proposed legislation.

Prepared by: Randy Bates, Director  
 Division Coastal & Ocean Management  
 Approved by: Tom Irwin, Commissioner  
Natural Resources

Phone 907-465-8797  
 Date/Time March 20, 2008  
 Date March 20, 2008

**FISCAL NOTE**

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

**BILL NO. CSHB243(CRA)**

**ANALYSIS CONTINUATION**

In order to re-write the guiding regulations, the Division of Coastal & Ocean Management (DCOM) will need to secure contractual services for the promulgation and final Department of Law review of the regulations (\$50.0 in the first year). Additional legal advice to support the board's required actions is expected to cost \$10.0 annually.

In order to revise, amend and approve the district coastal management plans, additional funds will be required. These funds are granted to the individual districts to make their plan updates. Based on past requests for funding the district plan amendments and the anticipated level of revision, an estimated additional \$840.0 will be required.

# FISCAL NOTE

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS HB 243 (CRA)  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB243CS(CRA)-DEC-CO-03-20-08 Dept. Affected: Environmental Conservation  
 Title: An Act relating to the Alaska coastal management program RDU: Administration  
 Component: Office of the Commissioner  
 Sponsor: Representative Joule  
 Requester: Community & Regional Affairs Component Number: 633

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

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual	10.0		10.0	10.0	10.0	10.0	10.0	10.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>10.0</b>	<b>0.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

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

1002 Federal Receipts								
1003 GF Match								
1004 GF	10.0		10.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>10.0</b>	<b>0.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>	<b>10.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

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

This legislation amends Alaska statutes pertaining to the Alaska Coastal Management Program (ACMP). One amendment requires that the Department provide public notice and opportunity for public comment for certain ACMP findings. A total of \$10.0 in contractual funding will be needed to pay for additional advertising and other costs associated with the new public notice requirement.

Prepared by: Mike Maher, Director  
 Division: Information and Administrative Services  
 Approved by: Dan Easton, Deputy Commissioner  
Department of Environmental Conservation

Phone 465-5256  
 Date/Time 3/20/08 12:05 PM  
 Date 465-5066

**CS House Bill 243 Coastal Management**  
**Version 25-LS0896\E**  
**Sectional Analysis**

**Sec. 1:**

**What It Does:**

- Establishes a 7-person Alaska Coastal Policy Board to include the 3 resource agency commissioners (Department of Natural resources – DNR, Environmental Conservation – DEC and Fish and Game- ADFG) and a coastal district representative from each of 4 regions. The Board addresses policy issues including:
  - Developing coastal policy,
    - Approving ACMP regulations and
    - Approving coastal district management plans.
  - Creates an efficient body to make major policy decisions
    - Board is half the size of the original Coastal Policy Council
  - Governor appoints public members because board approves regulations

**Why Needed:**

- Since many coastal management issues affect all 3 resource agencies and coastal districts, it is appropriate to create a board to address policy issues.
- Coastal districts have reported that concentration of all the decision-making power in one agency has resulted in a lack of balance for decisions on coastal management issues.

**What It Does Not Do:**

- Unlike the former Coastal Policy Council, DNR retains the authority to make consistency determinations for proposed development projects.

**Sec. 2:**

**What It Does:**

- Requires Board approval of ACMP regulation changes before adopted by DNR
  - DNR retains the authority to develop the regulations for review by the Board.

**Why Needed:**

- The current system is flawed.
  - In its testimony to the Senate CR&A Committee, DNR stated that the current ACMP regulations it adopted are more stringent than what was intended by the Legislature.
  - Approval by the Coastal Policy Board will provide a “check and balance” to the rule-making process.

**Sec. 3:**

**What It Does:**

- Gives authority to the board to take reasonable actions to implement ACMP statutes (AS 46.39 -Coastal Management Administration and AS 46.40 - The Alaska Coastal Management Program.
  - **Grants:** Gives districts representation in the grant process.
  - **Contract Authority:** Gives the Board authority to contract for services.
  - **Consultation:** Gives the board authority to consult with other agencies and organizations.

**Why Needed:** Coastal districts have indicated that a local-state board would provide more balance for coastal management decisions.

**Sec. 4:**

**What It Does:**

- **Standards:** Gives authority for the Board to approve ACMP statewide standards (requirements for development projects).
- **Plan Approval Criteria:** Gives Board the authority to approve standards and criteria for preparation and approval of coastal district plans.
- **Removes Ineffective Requirement:** Adds more efficiency to coastal management by removing a provision to develop regional coastal plans, a provision that was never implemented.

**Why Needed:** This provision sets out duties of the board. It provides more balance in coastal management by ensuring there will be district and state agency participation in developing development standards and plan approval criteria.

**Sec. 5:**

**What It Does:** Makes the Board subject to the Administrative Procedures Act in AS 46.39.900.

**Why Needed:** Since the Board establishes coastal policy and approves regulations, it appropriate that it be subject to the Administrative Procedures Act.

- Sec. 6:**        **What It Does:** Establishes authority for the Board to:
- Approve ACMP program changes
    - **Why Needed:** Ensures that there will be district and state agency participation in approval of ACMP changes
  - The effectiveness of coastal district plans will be evaluated.
    - **Why Needed:** Ensures that there will be district and state agency participation in approval of ACMP changes.
- Sec. 7:**        **What It Does:** Adds "subsistence" to the list of values included in the ACMP objectives.
- **Why Needed:** The previous administration made it difficult for coastal districts to address effects to subsistence uses and resources in their coastal management plans.
- Sec. 8:**        **What It Does:**
- Makes a conforming amendment requiring approval of ACMP regulations adopted by the Department.
  - Deleted language relating to the duties of the Board has been moved to AS 46.40.040(d) (See Section 10).
- Why Needed:**
- Needed for conformity.
  - Needed to distinguish duties of DNR and the Board.
- Sec. 9:**        **What It Does:**
- Retains DEC's authority for determining consistency of matters it regulates.
    - **Why Needed:** DEC retains authority to make findings of consistency with the ACMP for matters it regulates.
      - It would not be appropriate for DEC's decision-making authority to be second guessed during ACMP consistency reviews.
  - Requires public notice for DEC consistency findings for projects located on federal lands and waters when there are no DEC authorizations.
    - **Why Needed:** The public notice requirement is needed because when DEC does not have a permit, there are not opportunities in statute for public comment on air and water quality issues.
      - This provision is especially important for reviews of Outer Continental Shelf activities because DEC does not issue permits for federal waters.
- Sec. 10:**       **What It Does:**
- Subsection (d) Moves language deleted from AS 46.40.040(a) to a new section outlining responsibilities of the Board.
    - **Why Needed:** Necessary to establish duties of the Board.
  - Subsection (e) clarifies that aspects of air and water discharges not covered by DEC laws or regulations shall be reviewed for consistency with the statewide standards and district enforceable policies. DEC retains authority to determine a project's consistency with its laws.
    - **Why Needed:** Necessary because some project activities affect aspects of air or water quality effects that are not regulated by DEC. Such activities would be reviewed for consistency with the statewide ACMP standards in 11 AAC 112 and the coastal district enforceable policies.
      - For example, DEC regulates activities that could lead to an oil spill. It would determine consistency of those activities with its statutes and regulations. Since DEC does not have any laws about effects to subsistence, those activities would also be reviewed for consistency with the statewide subsistence standard and coastal district policies that relate to subsistence.

**Sec. 11: What It Does:**

- Establishes authority for the Board to approve coastal district plans. Plans are required to be reviewed every 10 years.
  - **Why Needed:** Board approval of district plans is appropriate because the board represents the resource agencies and coastal districts. Currently, only one agency approves plans, and many meaningful enforceable policies have been disapproved.

**Sec. 12: What It Does:**

- Establishes authority for the Board to approve coastal district plans if it finds the plans meet the district plan criteria.
  - **Why Needed:** Board approval of district plans is needed to ensure representation of resource agencies and coastal districts.
- Establishes the Board's role in mediation of decisions on the approval of district plans and requires use of the Administrative Procedures Act if mediation does not lead to an agreement.
  - **Why Needed:** Since the Board approves coastal management plans, it is appropriate that the Board oversees the mediation process. The Administrative Procedures Act includes procedures to resolve disputes.
    - **Note:** Previous to the changes to the ACMP in 2003, no coastal districts requested mediation in the 30-year history of the ACMP.

**Sec. 13: What It Does:** Outlines requirements for Board approval of district plans. Amends three criteria for approval of enforceable policies to clarify what policies may address.

- Changes to AS 46.40.070(a)(1) require district plan approval criteria to be specified in regulation.
  - **Why Needed:** Necessary to reduce confusion and make it clear what criteria will be used to approve plans.
    - During recent approvals of district plans, coastal districts report that DNR added many new approval criteria after the regulations were adopted. Some of the criteria were issued in emails or verbally and went beyond a common sense interpretation of the regulations.
- Changes to AS 46.40.070(2)(B) allow district enforceable policies to be performance based.
  - **Why Needed:** Industry prefers performance-based policies because it gives them the flexibility to find new solutions that will address concerns.
- The change to AS 46.40.070(2)(C)(ii) adds the word "specific" to clarify that a statute or regulation must address a specific matter for that matter to be considered adequately addressed.
  - **Why Needed:** Provision needed because coastal districts have reported that DNR has denied proposed enforceable policies, even when no statute or regulation addresses the matter. DNR has stated that because an agency could address the matter, a district may not address the matter in its enforceable policies.
    - This interpretation by DNR, if taken to the extreme, would eliminate the ability for districts to have any enforceable policies because federal and state agencies have broad authority.
    - The legislative intent of HB 191 (2003) was to allow districts to establish enforceable policies for matters not addressed in state or federal law.
- The change to AS 46.40.070(2)(C)(iii) replaces the word "unique" with the word "special."
  - **Why Needed:** The purpose of this requirement is to limit district policies to matters of local concern (as opposed to matters of state or federal concern). A matter of special concern to a district may also be a concern of another district, so the term "special" is more appropriate.
    - For example, a subsistence use of special concern to one district may also be of concern to another district, but it is not necessarily a state or federal concern.

**Sec. 14: What It Does:** Clarifies legislative intent of Chapter 24 SLA 03 (HB 191) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.

- **Why Needed:** This change is needed because the ACMP regulations added complex requirements for districts to designate areas before certain types of policies could be written (e.g., subsistence, habitat, recreation, historic resources, or natural hazards).
  - DNR has denied many designated areas proposed by districts.
    - By denying subsistence use areas proposed by the districts, subsistence uses can no longer be addressed during an ACMP consistency review.
  - Federal lands cannot be designated, so the requirement for designations diminishes state's rights.
    - For example, since federal lands cannot be designated, it is not clear whether certain statewide standards, such as the subsistence standard, apply to federal lands and waters.

**Secs. 15, 16 and 17:** Make conforming amendments regarding approval of ACMP regulations by the Board.

- **Why Needed:** Necessary to establish that the Board approves ACMP regulations.

**Sec. 18:** **What It Does:**

- Makes a conforming amendment regarding approval of ACMP regulations by the Board.
  - **Why Needed:** This is necessary to establish that the Board approves ACMP regulations.
- Replaces the term "subsequent review" with the commonly used term "elevation."
  - **Why Needed:** This change makes statutes easier to understand because pre-decision appeals of the proposed consistency determination are called "elevations."
- Requires concurrence of resource agencies for resolution of elevations of a proposed consistency determination.
  - **Why Needed:** Currently the Alaska Department of Natural Resources makes the final decision on elevations even though issues may relate to responsibilities of other resource agencies.
    - This change will ensure a balanced decision by bringing all the resource agencies to the table to resolve elevation issues.
    - Prior to 2003, all resource agencies participated in elevations.

**Sec. 19:** **What It Does:**

- Adds the word "aspect" to AS 46.40.096(g)(1) regarding removal from individual consistency reviews aspects of activities that are covered by a general or nationwide permits.
  - **Why Needed:** Because more than one agency may permit an activity, this change is needed to ensure there is an individual ACMP review of aspects of activities not covered by the general or nationwide permits.
- Eliminates exemption of air and water quality permits from the coordinated ACMP review process. DEC retains the authority to find consistency of air and water quality activities with its statutes and regulations, but with this change, DEC will participate in the coordinated ACMP review process.
  - **Why Needed:**
    - This provision is needed to coordinate the DEC review with other aspects of the ACMP review. Coordination of the review will ensure that an applicant receives a timely and coordinated response.
    - The intent of this provision is to coordinate the DEC proposed decision with the request for additional information deadline and the comment deadline for the ACMP review.

**Sec. 20:** **What It Does:** Makes a conforming amendment regarding Board approval of coastal district plans.

- **Why Needed:** This is necessary to establish that the Board approves ACMP regulations.

**Sec. 21:** **What It Does:**

- Clarifies that the ACMP regulations shall address activities on federal lands and waters.
  - **Why Needed:** During recent reviews of activities on federal Outer Continental Shelf (OCS) reviews, the Department of Natural Resources has excluded certain activities from the ACMP review.

- This exclusion of activities appears to conflict with the intent of the Legislature because it diminishes the state's right to review activities on the OCS that affect coastal resources or uses.
- Clarifies that seismic surveys in federal OCS waters are subject to ACMP reviews.
  - **Why Needed:** This provision is needed because seismic surveys have been demonstrated to affect coastal resources including marine mammals. DNR has not responded to repeated requests by coastal districts to include seismic survey activities for OCS ACMP reviews.

**Sec. 22:** **What It Does:** Makes a conforming amendment regarding approval of ACMP regulations by the Board, including regulations listing which authorizations trigger a consistency review and the list of activities that are categorically or generally consistent (i.e., activities that do not require an individual ACMP review).

- **Why Needed:** Approval of regulations by the Board is appropriate because it includes representatives of resource agencies and districts.

**Sec. 23:** **What It Does:**

- Exempts federal activities and federally-permitted activities from the 90-day review schedule.
  - **Why Needed:**
    - Federal activities and federally permitted activities often include complex issues that require more than a 90-day review.
    - This is a states' rights issue because forcing reviews to be completed within 90 days can force the state to comment on a review before pertinent information is available from the federal review.
- Requires suspension of the 90-day time frame when an applicant is required to provide additional information. Currently, the review can only be extended when it has been determined that the applicant has not adequately responded.
  - **Why Needed:** Extension of the review when the information is requested will encourage applicants to provide a timely response because the 90-day timeline is extended when the request occurs.

**Sec. 24:** **What It Does:** Establishes the Board's role in reviewing a petition regarding non-implementation of a coastal district program.

- **Why Needed:** A petition asserting that a coastal program is not being implemented properly is a policy issue that is best addressed by the Board which has agency and district representation.
  - A petition regarding non-implementation is extremely rare.

**Sec. 25, 27 and 28:** **What It Does:** Make conforming amendments to Board action on a petition.

- **Why Needed:** A petition is a policy issue best addressed by the Board [See Sec. 24]

**Sec. 26:** **What It Does:** Clarifies that Board orders are subject to enforcement by superior courts.

- **Why Needed:** Necessary to specify that Board orders are subject to superior courts.

**Sec. 29:** **What It Does:** Makes a conforming amendment to Board approval of district plans including areas meriting special attention.

- **Why Needed:** Areas meriting special attention are part of coastal district plans, and it is appropriate that the board approves criteria for these designations.

**Sec. 30:** **What It Does:** Makes a conforming amendment to the definition of "coastal zone" regarding Board's role in approving coastal boundary changes.

- **Why Needed:** Boundaries are part of coastal district plans, and it is appropriate for the Board to approve changes to district boundaries.

**Sec. 31:** **What It Does:** Makes a conforming amendment to the definition of "district coastal management plan" regarding Board's role in approving district plans.

- **Why Needed:** It is appropriate for the Board to approve coastal district plans because the Board represents resource agencies and coastal districts.

**Sec. 32:** **What It Does:** Makes a conforming amendment to the definition of "enforceable policy" regarding Board's role in approving policies included in district plans.

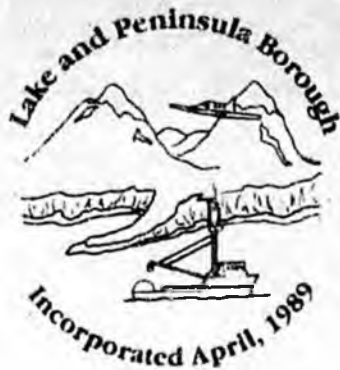
- **Why Needed:** District enforceable policies are parts district coastal management plans, and it is appropriate for the Board to approve changes to district plans.

**Sec. 33:** **What It Does:** Defines "Board" in the definitions section.

- **Why Needed:** It is important to include a reference to the definition of the Board.

**Sec. 34:** **What It Does:** Repeals AS 46.40.096(i) which relates to activities reviewed by DEC.

- **Why Needed:**
  - This provision must be repealed because it references AS 46.40.096(g)(1) which is eliminated in Section 19 of this bill,
  - This provision is not needed because it is redundant of AS 46.40.040(b).



## *Lake and Peninsula Borough*

*P.O. Box 495  
King Salmon, Alaska 99613*

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



March 18, 2008

The Honorable Representative Reggie Joule  
State Capitol, Room 421  
Juneau, Alaska 99801-1182

Subject: HB 243, an Act relating to the Alaska Coastal Management Program; and establishing the Alaska Coastal Policy Board

Dear Representative Joule,

The Lake and Peninsula Borough would like to provide the following comment regarding the proposed HB 243, an Act relating to the Alaska Coastal Management Program (ACMP); and establishing the Alaska Coastal Policy Board that is currently in committee in the Alaska Legislature.

The Lake and Peninsula Borough supports HB 243 because it requires the Alaska Department of Environmental Conservation (ADEC) to participate in consistency reviews that affect air, land and water quality, clarifies the criteria for the approval of district enforceable policies, establishes the Coastal Policy Board, eliminates the requirement for designated areas, and reestablishes the protection of subsistence as an objective of the Alaska Coastal Management Program as well as the recognition of subsistence values concerning land usage adjacent to the water. I will try to address each issue below and how these topics have affected the program since the passage of HB 191 in 2003.

### **AIR AND WATER QUALITY**

1. **Background:** The ACMP statutes were amended by HB 191 (Chapter 24 SLA 03) to remove Alaska Department of Environmental Conservation (ADEC) authorizations from individual ACMP reviews. Removal of ADEC authorizations from ACMP reviews has resulted in a number of unanticipated problems:

- a. Confusion about what specific activities are included in the scope of review. This lack of clarity occurs when a project requires an ADEC authorization or an Environmental Protection Agency authorization or when it involves Outer Continental Shelf (OCS) activities.

b. The Alaska Department of Natural Resources (ADNR) is not following guidance it issued regarding its review of activities not regulated by federal NPDES or 404 permits (i.e., the guidance states that such activities not addressed by the ADEC or Army Corps of Engineers must be part of coordinated ACMP review).

c. As a result of this change districts can no longer comment on activities regulated by ADEC that affect other coastal uses and resources. For example, effects from an oil spill or other discharges on subsistence uses and resources can no longer be considered because this activity is excluded from the coordinated ACMP review, and the agency has no regulations or statutes that address effects of discharges on subsistence.

## **2. CLARIFIES CRITERIA FOR ENFORCEABLE POLICIES**

This bill better clarifies the intent in Section 19, which addresses AS 46.40.070 in several paragraphs by being more specific on policy approval. This is critical to the coastal districts as it will allow the districts to establish local control through policies that were previously denied by DNR Staff when plans were reviewed. It amends three criteria for approval of enforceable policies to better clarify what policies may address. It clarifies the legislative intent of Chapter 24 SLA 03 (HB 191) to allow districts to establish enforceable policies for activities that may affect a coastal use or resource.

## **3. ESTABLISHES THE COASTAL POLICY BOARD**

The establishment of the Coastal Policy Board is the key to the success of this bill as it returns control of the approval of district coastal management plans back to the districts. This will happen because the members of the Coastal Policy Board will be appointed from the coastal districts of Alaska who are much closer to local issues and will more closely understand and relate to the unique issues districts face when writing policies for plan approval. This bill also establishes the Board's role in the mediation of decisions on the approval of district plans as well as gives the Board approval authority for plans mentioning areas meriting special attention.

## **4. SUBSISTENCE IS NOW INCLUDED IN THE ACMP**

Subsistence is very important to the culture of the citizens within the Lake & Peninsula Borough. This bill adds subsistence to the values included in the Alaska Coastal Management Plan objectives.

In summary the Lake and Peninsula Borough is in support of HB 243 as it requires the Alaska Department of Environmental Conservation (ADEC) to participate in consistency reviews that affect air, land and water quality, clarifies the criteria for the approval of district enforceable policies, establishes the Coastal Policy Board, eliminates the

requirement for designated areas, and reestablishes the protection of subsistence as an objective of the Alaska Coastal Management Program. We encourage all committees to please hear this bill and move it along as soon as possible.

Finally the Lake and Peninsula Borough does not support any recommendations that suggest a working group or committee be formed to resolve the problems created by HB191 from 2003. This move is simply a stall tactic by those making that recommendation. However, we encourage the legislators to act on this bill as it will not require districts to re-write their plans but specifically require DNR/DCOM to make the regulations more specific and puts local control back where it belongs.

We thank you for the opportunity to comment on this very important bill. If you have questions please contact Marv Smith at 907-246-3421.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Alsworth". The signature is stylized and cursive.

Glen Alsworth  
Mayor/Lake and Peninsula Borough

# Which Coastal District is Your Community In?

CITY	DISTRICT	CITY	DISTRICT
Adak .....	Aleutians West CRSA	Chignik Lagoon ...	Lake and Peninsula Borough
Akhiok .....	Kodiak	Chignik Lake.....	Lake and Peninsula Borough
Akiachak .....	Ceñaliulriit CRSA	Chugiak .....	Anchorage
Akiak .....	Ceñaliulriit CRSA	Clam Gulch.....	Kenai Peninsula
Akutan .....	Aleutians East	Clark's Point .....	Bristol Bay CRSA
Alakanuk .....	Ceñaliulriit CRSA	Coffman Cove.....	None*
Aleknagik .....	Bristol Bay CRSA	Cohoe .....	Kenai Peninsula
Alexander Creek.....	Mat-Su Borough	Cold Bay .....	Aleutians East
Ambler .....	Northwest Arctic	Cooper Landing.....	Kenai Peninsula
Amchitka .....	Aleutians West CRSA	Cordova .....	Cordova
Anaktuvuk Pass.....	North Slope Borough	Council .....	Bering Straits CRSA
Anchor Point .....	Kenai Peninsula	Craig .....	Craig
Anchorage .....	Anchorage	Cube Cove .....	None*
Angoon .....	Angoon	Deadhorse .....	North Slope Borough
Aniak .....	Ceñaliulriit CRSA	Deering .....	Northwest Arctic
Atka .....	Aleutians West CRSA	Dillingham.....	Bristol Bay CRSA
Atmautluak .....	Ceñaliulriit CRSA	Diomedes .....	Bering Straits CRSA
Atkasuk .....	North Slope Borough	Dora Bay .....	None*
Attu .....	Aleutians West CRSA	Douglas .....	Juneau
Barrow .....	North Slope Borough	Dutch Harbor .....	Aleutians West CRSA
Bethel .....	Bethel	Eagle River .....	Anchorage
Big Lake .....	Mat-Su Borough	Edna Bay .....	None*
Bird Creek .....	Anchorage	Eek .....	Ceñaliulriit CRSA
Brevig Mission .....	Bering Straits CRSA	Egegik .....	Lake and Peninsula Borough
Buckland .....	Northwest Arctic	Ekuk .....	Bristol Bay CRSA
Candle .....	Northwest Arctic	Ekwok .....	Bristol Bay CRSA
Cape Chiniak .....	None*	Elfin Cove .....	None*
Cape Pole .....	None*	Elim.....	Bering Straits CRSA
Cape Yakataga .....	None*	Elmendorf AFB .....	Anchorage
Chefornak .....	Ceñaliulriit CRSA	Emmonak .....	Ceñaliulriit CRSA
Chenega Bay.....	None*	English Bay .....	Kenai Peninsula
Chevak .....	Ceñaliulriit CRSA	Excursion Inlet.....	None*
Chickaloon.....	Mat-Su Borough	Eyak .....	Cordova
Chignik .....	Lake and Peninsula Borough	False Pass.....	Aleutians East
Chignik Bay .....	Lake and Peninsula Borough	Fortuna Ledge .....	Ceñaliulriit CRSA

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CITY	DISTRICT	CITY	DISTRICT
Fl. Richardson	Anchorage	Kipnuk	Ceñaliulriit CRSA
Funter Bay	None*	Kivalina	Northwest Arctic
Gambell	Bering Straits CRSA	Klawock	Klawock
Girdwood	Anchorage	Klukwan	None*
Golovin	Bering Straits CRSA	Kobuk	Northwest Arctic
Goodnews Bay	Ceñaliulriit CRSA	Kodiak	Kodiak
Gravina Island	Ketchikan	Kokhanok	Lake and Peninsula
Gustavus	None*	Kokhanok Bay	Lake and Peninsula
Haines	Haines	Koliganek	Ceñaliulriit CRSA
Halibut Cove	Kenai Peninsula	Kongiganak	Ceñaliulriit CRSA
Happy Valley	Kenai Peninsula	Kotlik	Ceñaliulriit CRSA
Hawkins Island	None*	Kotzebue	Northwest Arctic
Hinchinbrook Island	None*	Koyuk	Bering Straits CRSA
Hobart Bay	None*	Kuiu Island	None*
Hollis	None*	Kupreanof	None*
Homer	Kenai Peninsula	Kwethluk	Ceñaliulriit CRSA
Hoonah	Hoonah	Kwigillingok	Ceñaliulriit CRSA
Hooper Bay	Ceñaliulriit CRSA	Labouchere Bay	None*
Hope	Kenai Peninsula	Lake Louise	Mat-Su Borough
Houston	Mat-Su Borough	Larsen Bay	Kodiak
Hydaburg	Hydaburg	Levelock	Lake and Peninsula
Igiugig	Lake and Peninsula Borough	Long Island	None*
Iliamna	Lake and Peninsula Borough	Lower Kalskag	Ceñaliulriit CRSA
Indian	Anchorage	Manokotak	Bristol Bay CRSA
Ivanof Bay	Lake and Peninsula Borough	Marshall	Ceñaliulriit CRSA
Juneau	Juneau	Mekoryuk	Ceñaliulriit CRSA
Kachemak	Kenai Peninsula	Metlakatla	None*
Kake	Kake	Meyers Chuck	None*
Kaktovik	North Slope Borough	Moose Pass	Kenai Peninsula
Kalgin Island	Kenai Peninsula	Mountain Village	Ceñaliulriit CRSA
Karluk	Kodiak	Mt. Edgecumbe	Sitka
Kasaan	None*	Naknek	Bristol Bay Borough
Kasiqluk	Ceñaliulriit CRSA	Nanwalek	Kenai Peninsula
Kasilof	Kenai Peninsula	Napakiak	Ceñaliulriit CRSA
Kenai	Kenai Peninsula	Napaskiak	Ceñaliulriit CRSA
Ketchikan	Ketchikan	Naukali	None*
Kiana	Northwest Arctic	Nelson Lagoon	Aleutians East
King Cove	Aleutians East	New Stuyahok	Bristol Bay CRSA
King Salmon	Bristol Bay Borough	Newhalen	Lake and Peninsula

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CITY	DISTRICT	CITY	DISTRICT
Newtok .....	Ceñaliulriit CRSA	Prudhoe Bay .....	North Slope Borough
Nightmute .....	Ceñaliulriit CRSA	Quinhagak .....	Ceñaliulriit CRSA
Nikiski .....	Kenai Peninsula	Red Mountain .....	Kenai Peninsula
Nikolski .....	Aleutians West CRSA	Ridgeway .....	Kenai Peninsula
Ninilchik .....	Kenai Peninsula	Rowan Bay .....	None*
Noatak .....	Northwest Arctic	Russian Mission .....	Ceñaliulriit CRSA
Nome .....	Nome	Sand Point .....	Aleutians East
Nondalton .....	Lake and Peninsula	Savoonga .....	Bering Straits CRSA
Noorvik .....	Northwest Arctic	Sawmill Bay .....	None*
Nuiqsut .....	North Slope Borough	Saxman .....	Ketchikan
Nunapitchuk .....	Ceñaliulriit CRSA	Scammon Bay .....	Ceñaliulriit CRSA
Old Harbor .....	Kodiak	Security Bay .....	None*
Oscarville .....	Ceñaliulriit CRSA	Selawik .....	Northwest Arctic
Ouzinkie .....	Kodiak	Seldovia .....	Kenai Peninsula
Palmer .....	Mat-Su Borough	Seward .....	Kenai Peninsula
Pedro Bay .....	Lake and Peninsula Borough	Shaktoolik .....	Bering Straits CRSA
Pelican .....	Pelican	Sheep Mountain .....	Mat-Su Borough
Pennock Island .....	Ketchikan	Sheldon Point .....	Ceñaliulriit CRSA
Perryville .....	Lake and Peninsula Borough	Shemya AFS .....	Aleutians West CRSA
Petersburg .....	Petersburg	Shishmaref .....	Bering Straits CRSA
Pilot Point .....	Lake and Peninsula Borough	Shungnak .....	Northwest Arctic
Pilot Station .....	Ceñaliulriit CRSA	Sitka .....	Sitka
Pitkas Point .....	Ceñaliulriit CRSA	Skagway .....	Skagway
Platinum .....	Ceñaliulriit CRSA	Skwentna .....	Mat-Su Borough
Point Baker .....	None*	Soldotna .....	Kenai Peninsula
Point Hope .....	North Slope Borough	South Naknek .....	Bristol Bay Borough
Point Lay .....	North Slope Borough	Squaw Harbor .....	Aleutians East
Polk Inlet .....	None*	St. George Island .....	None*
Port Alexander .....	None*	St. Mary's .....	Ceñaliulriit CRSA
Port Alsworth .....	Lake and Peninsula	St. Michael .....	Bering Straits CRSA
Port Armstrong .....	None*	St. Paul .....	St. Paul
Port Clarence .....	Bering Straits CRSA	Stebbins .....	Bering Straits CRSA
Port Graham .....	Kenai Peninsula	Sterling .....	Kenai Peninsula
Port Heiden .....	Lake and Peninsula Borough	Sunrise .....	None*
Port Lions .....	Kodiak	Sutton .....	Mat-Su Borough
Port Moller .....	Aleutians East	Talkeetna .....	Mat-Su Borough
Port Protection .....	None*	Tatitlek .....	None*
Portage .....	Anchorage	Tazlina .....	None*
Post Lake .....	Mat-Au Borough	Teller .....	Bering Straits CRSA

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CITY	DISTRICT	CITY	DISTRICT
Tenakee Springs.....	None*	Valdez.....	Valdez
Thorne Bay.....	Thorne Bay	Wainwright.....	North Slope Borough
Tin City.....	Bering Straits CRSA	Wales.....	Bering Straits CRSA
Togiak.....	Bristol Bay CRSA	Wasilla.....	Mat-Su Borough
Toksook Bay.....	Ceñaliulriit CRSA	Whale Pass.....	None*
Tolstoi Bay.....	None*	White Mountain.....	Bering Straits CRSA
Trapper Creek.....	Mat-Su Borough	Whittier.....	Whittier
Tuluksak.....	Ceñaliulriit CRSA	Willow.....	Mat-Su Borough
Tuntutuliak.....	Ceñaliulriit CRSA	Wrangell.....	Wrangell
Tununak.....	Ceñaliulriit CRSA	Yakutat.....	Yakutat
Tutka Bay.....	Kenai Peninsula		
Twin Hills.....	Bristol Bay CRSA		
Two Moon Bay.....	None*		
Tyonek.....	Kenai Peninsula		
Ugashik.....	Lake and Peninsula		
Umiat.....	North Slope Borough		
Unakwik Inlet.....	None*		
Unalakleet.....	Bering Straits CRSA		
Unalaska.....	Aleutians West CRSA		
Ungalik.....	Bering Straits CRSA		

For more information contact:

The Alaska Coastal Management Program  
Juneau — 907- 465-3075  
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