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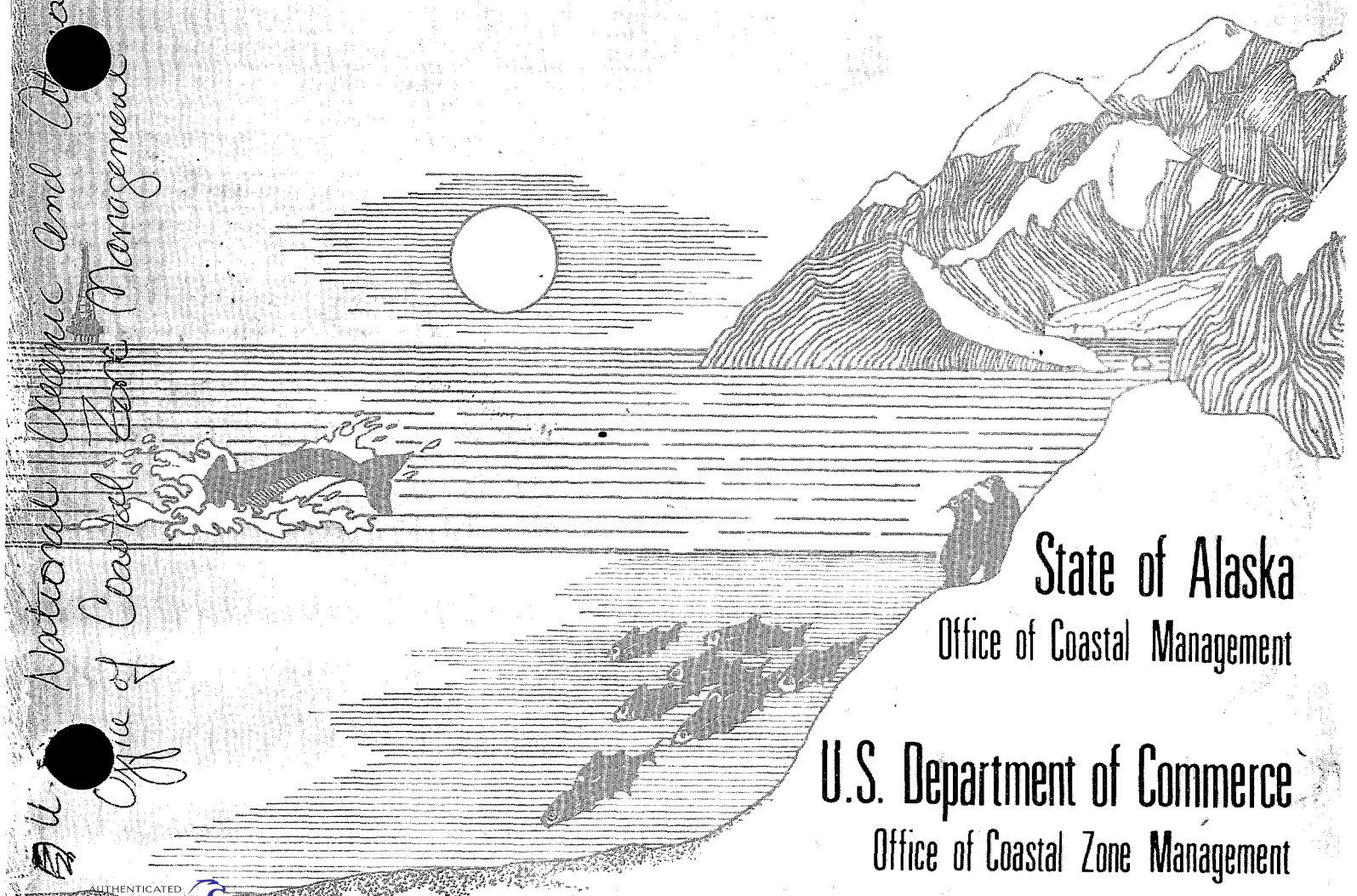
State of Alaska Coastal Management Program and Final Environmental Impact Statement

U.S. National Oceanic and Atmospheric Administration
Office of Coastal Zone Management



State of Alaska
Office of Coastal Management

U.S. Department of Commerce
Office of Coastal Zone Management

AUTHENTICATED

The preparation of the Alaska Coastal Management Program was financed in part by a coastal program development grant from the National Oceanic and Atmospheric Administration, under the provisions of the Coastal Zone Management Act of 1972 as amended (P.L. 92-583).

GSA Juneau 1243

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U.S. National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Science and Technology
Washington, D.C. 20230

May 30, 1979

In accordance with the provisions of Section 102(2)(C) of the National Environmental Policy Act of 1969, we are enclosing for your review and consideration the final environmental impact statement prepared by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce, on the Proposed Alaska Coastal Management Program.

Any written comments or questions you may have should be submitted to the contact person identified below by June 29, 1979. Also, one copy of your comments should be sent to me in Room 3425, U.S. Department of Commerce, Washington, D.C. 20230.

CONTACT PERSON

Regional Manager, Pacific Region
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D. C. 20235
Telephone: 202/254-7100

Thank you for your cooperation in this matter.

Sincerely,

Sidney R. Galler

Sidney R. Galler
Deputy Assistant Secretary
for Environmental Affairs

Enclosures

Errata Sheet

Alaska Coastal Management Program

Final Environmental Impact Statement

The following corrections and clarifications should be noted:

1. Due to printing delays the date as indicated on page 11, item 6 should be May 30, 1979, as indicated in the letter from Sidney Galler.

United States Department of Commerce

Final Environmental Impact Statement and Proposed Coastal Management Program for the State of Alaska

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Juneau, Alaska 99811

TC224.A4 F5 1979

FEB 25 1998

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NOTE TO READERS

The National Environmental Policy Act of 1969 (NEPA) requires that an environmental impact statement be prepared as part of the review and approval process of major actions by federal agencies which significantly affect the quality of the human environment. The action contemplated here is approval of the Alaska Coastal Management Program under Section 306 of the federal Coastal Zone Management Act of 1972, as amended.

Approval qualifies Alaska for federal matching funds for use in implementing and administering the coastal management program. In addition, the Coastal Zone Management Act stipulates that federal activities affecting the coastal zone shall be consistent, to the maximum extent practicable, with the approved coastal management program.

It is the general policy of the Office Coastal Zone Management (OCZM) to issue a combined draft environmental impact statement (DEIS) and coastal management program document. This has been done and the DEIS has been reviewed. The result of that review was to proceed with the next step which is publication of this FEIS. Part I of this FEIS was prepared by OCZM and includes a summary of Alaska's coastal management program. Part II of the FEIS is a detailed description of the state's program and was prepared by the Alaska Office of Coastal Management (OCM) as were the appendixes and attachments. Part II also fulfills, in part, the NEPA requirement for a description of the proposed action. Parts III through X address the remaineder of the NEPA requirements for a FEIS and were prepared jointly by OCZM and OCM.

For purpoese of reviewing the proposed action, the important federal concerns are:

- whether the Alaska program is consistent with the objectives and policies of the national legislation;

- whether the award of federal funds under Section 306 of the CZMA will help Alaska meet those objectives;

- whether the state's management authorities are adequate to implement the ACMP; and

- whether there will be a net environmental benefit as a result of program approval and implementation.

As a result of the DEIS review, OCZM maintains its assessment that the answers to these questions are affirmative. OCZM wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions, and wishes to thank those participating in the review of the Alaska program and this final environmental impact statement.

Summary

( ) Draft Environmental Impact Statement

(x) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Pacific Regional Manager
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N. W.
Washington, D. C. 20235
Phone: 202/254-7100

Written comments should be forwarded to the Pacific Regional Manager at the above address.

1. Type of Action

Proposed Federal approval of the Alaska Coastal Management Program

(x) Administrative ( ) Legislative

2. Brief Description of the Proposed Action

It is proposed that the Assistant Administrator for Coastal Zone Management approve the Coastal Management Program application of Alaska pursuant to P.L. 92-583. Approval would permit implementation of the proposed program, allow program administration grants to be awarded to the state, and require that federal actions be consistent with the program.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the program will enhance governance of the state's coastal land and water areas and uses according to coastal policies and standards implemented by existing state and local authority. The effect of these policies and standards is to condition, restrict or prohibit some uses in parts of the coastal zone, while encouraging development and other uses in other parts. This program will improve decision-making processes for determining appropriate coastal land and water uses in light of resource considerations and will increase predictability of public and private coastal decisions. The program will result in some short-term economic impacts on coastal users but will lead to increased long-term protection of and benefit from the state's coastal resources.

4. Alternatives Considered

All alternatives would involve a decision by the Assistant Administrator to delay or deny approval of the Alaska Coastal Management Program. Delay or denial of program approval would be based on the following conditions:

1. If the state does not have all authorities necessary to implement the program, particularly the authorities necessary to:
   (a) assure protection of wetlands; and
   (b) assure that local land and water use regulations will not unreasonably exclude uses of regional benefit.
2. If the standards of the ACMP are not sufficiently specific.

5. Distribution

Comments were requested on the DEIS, and this FEIS has been sent to the following federal, state and local agencies and other parties:

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health, Education & Welfare
Department of Housing & Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transporation
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammal Commission
Nuclear Regulatory Commission
U.S. Coast Guard

National Interest Groups

A.M.E.R.I.C.A.N.
AFL-CIO
American Association of Port Authorities
American Bar Association
American Bureau of Shipping
American Farm Bureau Federation
American Fisheries Society
American Forest Institute
American Gas Association
American Hotel and Motel Association
American Industrial Development Council
American Institute of Architects
American Institute of Merchant Shipping
American Institute of Planners
American Littoral Society
American Mining Congress
American Oceanic Organization
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
Amoco Production Company

Ashland Oil, Inc.
Associated General Contractors of America
Association of Oil Pipe Lines
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Atomic Industrial Forum
Barrier Islands Coalition
Boating Industry Association
Center for Law and Social Policy
Center for Natural Areas
Center for Urban Affairs
Center for Urban & Regional Resources
Chamber of Commerce of the United States
Chevron U.S.A., Inc.
Cities Service Company
City Service Oil Company
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Governments
Council of State Planning Agencies
The Cousteau Society
Earth Metabolic Design Laboratories, Inc.
Edison Electric Institute
El Paso Natural Gas Co.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Company, U.S.A.
Friends of the Earth
Getty Oil Company
Great Lakes Basin Commission
Gulf Energy and Minerals, U.S.
Gulf Oil Company
Gulf Refining Company
Gulf South Atlantic Fisheries Development Foundation
Independent Petroleum Association of America
Industrial Union of Marine & Shipbuilding Workers of America
Institute for the Human Environment
Institute for Marine Studies
Interstate Natural Gas Association of America
Izaak Walton League
Lake Michigan Federation
League of Conservation Voters
League of Women Voters Education Fund
Marathon Oil Comapny
Marine Technology Society
Mobil Oil Corporation

Mobil Exploration & Producing, Inc.
Murphy Oil Company
National Academy of Engineering
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Electric Companies
National Association of Engine & Boat Manufacturers
National Association of Home Builders
National Association of Realtors
National Association of Regional Councils
National Association of State Boating Law Administrators
National Association of State Park Directors
National Audubon Society
National Boating Federation
National Canners Association
National Coalition for Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Farmers Union
National Federation of Fisherman
National Fisheries Institute
National Forest Products Association
National Governors Association
National League of Cities
National Ocean Industries Association
National Parks and Conservation Association
National Petroleum Council
National Petroleum Refiners Association
National Realty Committee
National Recreation and Park Association
National Research Council
National Science Foundation
National Science Teachers Association
National Shrimp Congress
National Society of Professional Engineers
National Wildlife Federation
National Waterways Conference
Natural Gas Pipeline Company of America
Natural Resources Defense Council
The Nature Conservancy
Nautilus Press
New England River Basin Commission
North Atlantic Ports Association
Outboard Marine Corporation
Resources for the Future
Rice University Center for Community Design and Development

Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Society of Real Estate Appraisers
Soil Conservation Society of America
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.
Texas A & M University
United Brotherhood of Carpenters & Joiners of America
Union Oil Company of California
Urban Research and Development Association, Inc.
U.S. Conference of Mayors
U.S. Power Squadrons
Virginia Marine Resources Commission
Water Pollution Control Federation
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute
The Wildlife Society
World Dredging Association

State Distribution

Governor Hammond
Lt. Governor Miller
Members, Alaska State Legislature
Legislative Affairs Agency
State Clearinghouse
Federal/State Land Use Commission
International Fisheries & External Affairs
Alaska Historical Commission
Commercial Fisheries Entry Commission
Department of Administration
Department of Commerce & Economic Development
Department of Community & Regional Affairs
Department of Education
Department of Environmental Conservation
Department of Fish & Game
Department of Health & Social Services
Department of Labor
Department of Law
Department of Military Affairs
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Transportation & Public Facilities
Division of Budget & Management
Division of Economic Enterprise
Division of Energy & Power Development
Division of Tourism
Alaska Pipeline Commission
Public Utilities Commission
Alaska State Housing Authority
Alaska Transportation Commission
Alaska Power Authority
Division of Community Planning
Division of Local Government Assistance
Division of Community & Rural Development
Division of Geological & Geophysical Surveys
Division of Land & Water Management
Division of Minerals & Energy Management
Division of Oil & Gas Conservation
Division of Parks
Division of Lands, Leasing, Right-of-Way & State Equipment
Division of Aviation Design & Construction
Division of General Design & Construction
Division of Harbor Design & Construction
Division of Marine Highways
University of Alaska, Arctic Environmental Information & Data Center
University of Alaska, Sea Grant Program

Local Distribution

Municipality of Anchorage
Bristol Bay Borough
Fairbanks North Star Borough
Haines Borough
City & Borough of Juneau
Kenai Peninsula Borough
Ketchikan Gateway Borough
Kodiak Island Borough
Matanuska-Susitna Borough
North Slope Borough
City & Borough of Sitka
City of Haines
City of Homer
City of Kenai
City of Seldovia
City of Seward
City of Soldotna
City of Ketchikan
City of Kodiak
City of Palmer
City of Barrow
City of Cordova
City of Petersburg
City of Valdez
City of Wrangell
City of Craig
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City of Skagway
City of Unalaska
City of Yakutat
City of Tenakee Springs
City of Kupreanof
City of Unalakleet
City of Bethel
Metlakatla, Federal Law City

Other Interested Parties

Alaska Coastal Policy Council
North Pacific Rim Corporation
Bristol Bay Native Association
Aleutian/Pribilof Island Assn.
Sealaska Corporation
NANA Regional Corporation, Inc.
Koniag Inc.
Bering Straits Native Corporation
Aleut Corporation
Cook Inlet Native Assn.
Mauneluk Association
Association of Village Council Presidents
Kodiak Area Native Assn.
Inupiat Community of the Arctic Slope
Cook Inlet Region, Inc.
Chugach Natives Inc.
Calista Corporation
Bristol Bay Native Corporation
Arctic Slope Regional Corporation
Tlingit & Haida Central Council
Kawerak Association
Nunam Kituluksisti
Moening-Grey Associates
Alaska Center for the Environment
Alaska Miners Association
Atlantic Richfield Company (Alaska)
Alaska State Chamber of Commerce
Alaska Rural Development Council
Alaska Lumber & Pulp Company
Martech International Inc.
Alaska Oil & Gas Association
Alaska Legal Services Corporation
EXXON Co., U.S.A. (Alaska)
United Fishermen of Alaska
Alaska Native Foundation
Alaska Federation of Natives
Trustees for Alaska
Alaska Municipal League
Alaska Loggers Association
Woodward-Clyde Consultants
U.S.Borax, Surveyor's Office (Alaska)
Kramer, Chin & Mayo, Inc.
Tongass Conservation Society
Union Oil Company (Alaska)
Sierra Club (Alaska)
Olaf Hellen
I.S.E.R.
A.R. Company (Alaska)

Other Interested Parties (Cont'd)

SOHIO BP Alaska
National Audubon Society (Alaska)
Marathon Oil Company (Alaska)
Pacific Rim Planners
League of Women Voters (Alaska)
Chuna McIntyre
David Katz, University of Pennsylvania
Robert Chen, Advanced Study Program, NCAR
Daniel Mandelker, Washington University (St. Louis)
Conner, Moore & Corber (Washington, D.C.)
Wildland Recreation Research (Seattle)
Jonathon Lyon
Steve Volker
Ralph Fenner
Dale Stirling
Dixie Baade
North Pacific Fishery Management Council
Kodiak Area Community Development Corp., Inc.
Robert E. Price
Marsha Erwin Bennett
SEACC
Alaska Conservation Society
Territorial Sportsmen
Alaska Wilderness Society
Alaska Association of Soil Conservation Sub-Districts

In addition, copies of the FEIS are being sent to all who received copies of the DEIS from the Office of Coastal Management.

6. Final Environmental Impact Statement made available to the Environmental Protection Agency and other reviewers on May 18, 1979.

7. This final EIS was prepared based on oral and written comments received at the public hearings held February 27 and 28, 1979, and comments submitted in response to a request for comments contained in the DEIS. Summarized in Attachment 3 is a discussion of the written comments and Office of Coastal Zone Management (OCZM) responses. The full text of written comments can be obtained from OCZM in Washington, D.C. or from the Office of Coastal Management, Pouch AP, Juneau, Alaska 99811.

Introduction

Part I

PART I: INTRODUCTION

The Federal Coastal Zone Management Act

In response to intense pressure, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) (CZMA) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976 (P.L. 94-370). The Act and the 1976 amendments affirm a national interest in the effective protection and development of the coastal zone by providing assistance and encouragement to coastal states to develop and implement rational programs for managing their coastal areas.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to states for developing coastal management programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as revised and published March 1, 1978, in the Federal Register. In summary, the requirements for program approval are that a state develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state;

(2) Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

(3) Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, states are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, state, interstate and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. So far, Alaska has received nearly $4,700,000 in program development funds. After developing a management program, the state may submit it to the Secretary of Commerce for approval pursuant to Section 306 of the CZMA. If approved, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may be eligible for preliminary approval and additional funding under Section 305(d).

Section 307 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable, with approved State management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal state with respect to a Federal consistency issue.

Section 308 of the CZMA contains several provisions for grants and loans to coastal states to enable them to plan for and respond to onshore impacts resulting from coastal energy activities. To be eligible for assistance under Section 308, coastal states must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA. Section 308 has been important to Alaska. The state has received $623,000 in planning funds, $1,179,000 in grants and $50,182,000 in loan guarantees for financing new or improved public facilities and public services, and $663,000 in funds to help prevent, reduce or ameliorate unavoidable losses to valuable coastal environmental and recreational resources.

Summary of the Alaska Coastal Management Program

This section summarizes the coastal problems, issues and conflicts confronting Alaska, its coastal management program, and the differences the coastal management program will make. These topics are more fully discussed in subsequent parts of this document.

Alaska's interest in coastal management was spurred by coastal conservation and development pressures. In the midst of the national exploration and development of oil and gas on its continental shelf and elsewhere, the harvest of timber, fisheries expansion, the extraction of minerals and the increasing pace of development along its coast, certain coastal management problems emerged and required attention. These included limited waterfront space for development, the need to protect fish and wildlife habitats, the impacts of timber harvest, transportation, and mining, extensive coastal hazards, the impacts of western culture on Native culture, and the need to protect subsistence cultures which compete with other users for the resources.

The response to these pressures and problems is the Alaska Coastal Management Program. During the period of coastal program development, Alaska decided upon an approach, established a process, and fashioned rules which would respond to the needs of the state and the nation. A history of the coastal program development is provided in Attachment 1 and may be reviewed at this time. The program alternatives which the state considered are outlined in Attachment 2.

Alaska's coastal management program establishes new coastal policies, rules, responsibilities, obligations and relationships, but relies primarily on existing state and local authorities and controls for implementation. The program is based on the Alaska Coastal Management Act of 1977 which established an approach of shared local and state coastal management responsibility. The Act requires coastal program development within a specified period by local government units or districts in organized areas, and in unorganized areas when these areas are faced with large-scale resource development. It also sets up relationships between the districts and state agencies, and provides basic objectives and policies for coastal management.

The Act establishes a Coastal Policy Council to direct the coastal management program and resolve conflicts during its implementation. The Council is responsible for reviewing and approving district coastal programs and developing specific standards and guidelines for managing coastal land and water areas and uses. District coastal programs and Council standards and guidelines require legislative approval.

The following coastal standards have been approved:

1. Standards and priorities for siting and approval of coastal uses, addressing coastal development, geophysical hazards, recreation, energy

facilities, transportation and utilities, fish and seafood processing, timber harvest and processing, mining and mineral processing and subsistence;

2. Resource and habitat standards, addressing air, land and water quality, historic, prehistoric and archaeological resources, and protection of coastal habitats including offshore areas, estuaries, wetlands and tideflats, rocky islands and seacliffs, barrier islands and lagoons, exposed high energy coasts, rivers, streams and lakes, and important upland habitat; and

3. Government process standards, addressing the consistency of state agency actions with all standards and with district coastal programs. Public participation and information, and program management and intergovernment coordination are also addressed.

As a result of the continuing review of these standards required by the Act, the Council has approved a number of amendments to the standards. These amendments have been approved by the legislature.

Guidelines for the preparation, review and implementation of district coastal programs are also approved. These guidelines prescribe the general elements of district coastal management programs, addressing goals, organization, resource inventories and analyses, uses subject to management, proper and improper uses, policies, implementation methods, and public participation.

District coastal programs must follow these guidelines and be consistent with the standards. Until district programs are approved, state agencies will use police, proprietary and spending powers to implement the standards in all areas of the state. These powers control uses and areas which have a direct and significant impact on coastal waters. When district programs are approved, planning and management actions of state agencies must be consistent with the standards and applicable district programs; the actions of districts must be consistent with their coastal management programs.

The guidelines also prescribe the boundaries of the coastal zone. The boundary defines the area in which the guidelines and standards apply. The initial boundary, that is, the boundary before approval of district programs, includes zones of "direct interaction" and "direct influence" which are mapped. These zones define areas where physical and biological processes are a function of direct contact between land and sea, and areas closely affected and influenced by the close proximity between land and sea. The boundary excludes Federal lands, and extends seaward three miles to the limit of the territorial sea. The final boundary will be the same as the initial boundary, except where redefined in district programs. According to criteria in the guidelines, districts must make certain findings in order to redefine the initial boundary.

The guidelines also establish a "zone of indirect influence", a broad area which has a less definite relationship to coastal lands and waters

and which extends some distance landward and seaward of the other zones. While not included in the program's boundary, districts and state agencies may review actions in this zone for possible impacts on the coastal lands and waters included in the boundary.

Two additional provisions of the ACMP require heightened management attention to special coastal uses and areas which are defined in the Act. "Uses of state concern" are coastal land and water uses of greater than local concern which would significantly affect the public interest. They encompass uses of national, statewide and regional interest, and include navigation, transportation, communication, recreation, energy and industrial or commercial uses. Districts cannot arbitrarily or unreasonably restrict or exclude a use of state concern from their coastal areas.

The second statutory provision is "areas meriting special attention". These are to be designated by the Council and by districts, and provide for special management of geographic areas which warrant special attention because of their extraordinary values. As defined, they include special natural areas, hazard areas, and areas especially valuable for recreation, development, subsistence, sanctuaries, scientific research and other purposes. Council standards provide a process for identifying, recommending, designating and managing such areas.

The Council has adopted internal guidelines for council operations, and for Federal agency consultation and coordination to further assure continuing consideration of national interests.

The responsibilities of state agencies in the coastal management program are further delineated in an administrative order. The order addresses state agency compliance with the program, consistency, and conflict resolution procedures and responsibilities. It also addresses the operation of Federal consistency.

The Division of Policy Development and Planning, as lead agency for the program, is responsible for reviewing the consistency of state and Federal actions with the ACMP. On petition, the Council may order any action considered necessary to implement, enforce or comply with the district coastal management program. Council orders are enforced in the state Superior Court. State agency actions inconsistent with the standards are subject to judicial review.

Alaska's coastal management program will make sweeping differences in the manner in which coastal lands and waters are managed. Most significant are:

1. It provides a common basis for coastal decisions which must be made with reference to policies and rules which govern all actions in the coastal area;

2. It substantially improves the protection of coastal land and water habitats;

3. It provides a capability to anticipate and manage impacts of large resource developments such as energy, timber, mining and commerce;

4. Its approach, local and state implementation of guidelines and standards, clearly defines the division of responsibility for management of coastal resources;

5. It establishes a process for resolving conflicts;

6. It provides a role for local units of governments in coastal decisions of local as well as statewide and national significance;

7. It provides better certainty about state and local desires to entreprenuers concerned with locating development sites;

8. It forms districts in unorganized areas of the state when nec-ecessary to manage coastal resources and grants large measures of local control to unincorporated communities (villages);

9. It provides a special process for heightened and specific management attention to geographic areas with extraordinary coastal values; and

10. It guards against the unreasonable exclusion of coastal uses of statewide and national significance.

Federal approval of the program will make a difference. It will provide the funding and assistance necessary to fulfill the promises of the state's coastal management program. Specifically, it will allow development of district programs, organization of coastal resource service areas, designation and management of special management areas, location of sites for facilities such as those supporting continental shelf oil and gas development, identification of coastal hazards, enforcement of standards, and it will allow continued improvements in the state's capability to manage coastal lands and waters. Federal approval is also considered important in authorizing the state to require Federal consistency. Federal activities such as outer continental shelf leasing and regulation of fisheries are of considerable interest to, and have large impacts on, the state.

How the Alaska Coastal Management Program Meets the Requirements of the Coastal Zone Management Act:

Requirements	Sections of Approval Regulations	Location
Sec. 306(a) which includes the requirements of Sec. 305:		
305(b)(1): Boundaries.	923.31, 923.32	Ch.4
	923.33, 923.34	Ch.5
305(b)(2): Uses subject to management.	923.11	Ch.5
305(b)(3): Areas of particular concern	923.21 - 923.23	Ch.4
305(b)(4): Means of control.	923.41	Ch.6
305(b)(5): Guidelines on priorities of uses. . . .	923.21	Ch.2
305(b)(6): Organizational structure.	923.46	Ch.6
305(b)(7): Shorefront planning process	923.24	App.8
305(b)(8): Energy facility planning process. . . .	923.13	App.7
305(b)(9): Erosion planning process.	923.25	App.9
Sec. 306(c) which includes:		
306(c)(1): Notice; full participation; consistent with Sec. 303	923.58, 923.51	Ch.8
	923.55, 923.3	Ch.2
306(c)(2)(A): Plan coordination.	923.56	Ch.8
306(c)(2)(B): Continuing consultation mechanisms .	923.57	Ch.8&App.10
306(c)(3): Public hearings	923.58	Ch.8
306(c)(4): Gubernatorial review and approval . . .	923.48	Gov. Letter
306(c)(5): Designation of recipient agency	923.47	Gov. Letter
306(c)(6): Organization	923.46	Ch.6
306(c)(7): Authorities	923.41	Ch.6
306(c)(8): Adequate consideration of national interests	923.52	Ch.7 & 8
306(c)(9): Areas for preservation/restoration. . .	923.22	Ch.4
Sec. 306(d) which includes:		
306(d)(1): Administer regulations, control development; resolve conflicts.	923.41	Ch.6
306(d)(2): Powers of acquisition, if necessary . .	923.41	Ch.6
Sec. 306(e) which includes:		
306(e)(1): Technique of control.	923.42- 923.44	Ch.6
306(e)(2): Uses of regional benefit.	923.12	Ch.7
Sec. 307 which includes:		
307(b): Adequate consideration of Federal agency views.	923.51	Ch.8
307(f): Incorporation of air and water quality requirements	923.45	Ch.2

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 18, 1979

TO: Reviewers of This Document

And
Mr. Robert W. Knecht, Assistant
Administrator
Office of Coastal Zone Management
NOAA, U.S. Department of Commerce
3300 Whitehaven Street Northwest
Page Building One
Washington, D.C. 20235

Dear Mr. Knecht:

I am pleased to present the Final Environmental Impact Statement for federal approval of the Alaska Coastal Management Program under the joint auspices of your office and the State of Alaska.

This document represents a program which we in Alaska believe meets and exceeds the requirements for state coastal programs under the Coastal Zone Management Act of 1972, as amended, and under regulations promulgated by OCZM under that Act.

Therefore, I request that you accept this document and grant approval to the Alaska Coastal Management Program under the terms of section 306 of the federal Coastal Zone Management Act.

I have reviewed the Alaska Coastal Management Program as portrayed in this document, and, as Governor, herewith approve the Program and further certify to the following:

1. the state has the required authorities to implement the management program;

2. the state has established and is operating the necessary organizational structure to implement the program;

3. the Division of Policy Development and Planning is the single designated agency to receive and administer grants for implementing the program, and further, this Division is hereby designated the lead agency for implementation of the program;

4. the state, in concert with local governments, has the authority to control land and water uses, control development and to resolve conflicts among competing uses;

5. the state presently uses the methods listed in Section 306 (e) (1) of the federal Coastal Zone Management Act for controlling land and water uses in the coastal zone including: (a) the authority derived from the Alaska Coastal Management Act, and the Act's implementing guidelines and standards and local government coastal programs now being developed under that Act; (b) administrative review of local coastal programs by the Alaska Coastal Policy Council, provided for in the Alaska Coastal Management Act; and (c) direct state authorities for control of land and water uses including the state authority for control of air and water pollution;

6. the state has sufficient powers to acquire lands, should that become desirable or necessary under elements of the coastal program;

7. those state laws cited in the program have been passed by the legislature and enacted into law. Administrative regulations required to implement the laws have been formally adopted by the responsible state agencies and the Alaska Coastal Policy Council;

8. the air and water pollution control programs established pursuant to the Clean Water Act and the Federal Clean Air Act, insofar as those programs pertain to the coastal zone, have been made a part of the state's coastal program. The regulations appurtenant to the air and water programs are incorporated into this program and are the water pollution and air pollution control requirements applicable to the state's coastal management program. Further, any additional requirements and amendments to air and water pollution control programs will also become part of the state's coastal management program; and,

9. I further certify that the Alaska Coastal Management Program is now an official program of the State of Alaska, and the state, acting by and through its several instrumentalities, will strive to meet the intent of the federal Coastal Zone Management Act of 1972, as amended, and the state's corollary legislation; and to do so in a uniform, cooperative, and aggressive spirit.

We trust you will approve this program in an expeditious manner and we will gladly assist in whatever way we can during the review procedure.

We have been pleased to enjoy a cooperative working relationship with the Office of Coastal Zone Management throughout the development of this program. We look forward to the continuation of this relationship during the administration of the program.

Please contact Ms. Frances Ulmer, Director of the Division of Policy Development and Planning, if you have any questions or need any assistance.

Sincerely,

Jay S. Hammond
Governor

Acknowledgements

The development of ACMP to this point is largely a credit to the sixteen members of the Alaska Coastal Policy Council and the Alaska Legislature. The legislature provided the structure and authority for ACMP and the Council filled in the policies and procedures with the ACMP Guidelines and Standards. The members and affiliations of the Council are:

LOCAL MEMBERS:

Roger Allington,
Northern Southeast,
Co-Chairman

Stanley Anderson,
Bering Straits

Donald Gilman,
Lower Cook Inlet

Eben Hopson,
Northwest

Malcolm "Pete" Isleib,
Prince William Sound

John Nicori
Southwest

Robert Sanderson,
Southern Southeast

Lidia Selkregg,
Upper Cook Inlet

Betty Wallin,
Kodiak-Aleutians

STATE MEMBERS:

Frances Ulmer,
Director of Policy
Development & Planning
Co-Chairman

Robert Ward
Commissioner of
Transportation & Public
Facilities

Charles Webber
Commissioner of
Commerce & Economic
Development

Robert LeResche,
Commissioner of
Natural Resources

Lee McAnerney,
Commissioner of
Community & Regional Affairs

Ernst Mueller,
Commissioner of
Environmental Conservation

Ronald Skoog,
Commissioner of
Fish & Game

Acknowledgements

The Office of Coastal Management within the Division of Policy Development and Planning has been responsible for coordinating the development of ACMP, and bears the lead responsibility for the production of this document. The staff of OCM are:

Murray R. Walsh, Coordinator
Judith Anderegg
Jean Danielson
Michelle Shook
Ingrid Sims
Brenda Willis
Ellen Searby

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Former ACMP Coordinators:
Glenn Akins: Dec. 1975-Feb. 1978
F.F. Wright: Mar. 1975-Dec. 1975
M. Nayudu: July 1974-Jan. 1975

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Former Employees:
Howard Goldman
Rick Sinnott
Rob Ridgway
Betsy Hastdorf
Connie Barlow
Alison Horton
Gordon Euler

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Special thanks also to the federal Office of Coastal Zone Management, which, in addition to a great deal of work on this document, has also been very supportive of ACMP, and without which, this program could not have been developed.

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OCZM staff related to ACMP:

Robert W. Knecht, Assistant Administrator for CZM
William Mateuszeski, Director of State Programs
Peter Coffey
Bill Brah
Pat Travers
Carol Sondheimer
Eileen Mulaney
Rebecca Barber

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OCM also thanks the hundreds of Alaskans who gave their time and effort to help develop the program at the many hearings and public workshops that were held, and particularly to past Coastal Policy Council Members, Robert Fagerstrom and the late Stan Paukan.

Chapter 1: Introduction

Section (a): Issues and Problems

This document describes the Alaska Coastal Management Program (ACMP) which is designed to provide for the management of the 33,000 miles of Alaska's coastline. This document will describe the events which led to the passage of the Alaska Coastal Management Act of 1977 and what has taken place since.

The State of Alaska has immense coastal resources. The length of its coastline, measured either on the tideline or measured around an average perimeter that parallels the mainland limits of the Territorial Sea, is equal to that of the entire continental United States. Alaska's coast has national and international significance for its vast, healthy ecosystems and has a generous source of renewable and non-renewable resources, especially potential energy resources. Three-quarters of Alaska's people live on or near the coast. Many earn their living from direct use of coastal resources and many more from indirect uses, such as Alaska's growing tourist industry. The Native peoples of Alaska -- Indian, Eskimo, and Aleut -- maintain a cultural and economic intimacy with the coast that dates back thousands of years.

Increasing demands for coastal resources, and the increasing knowledge of the impacts that one activity may have upon another, led to the Alaska Coastal Management Act of 1977. In passing the Act, the Alaska Legislature made these findings about the state's coast:

(1) The coastal area of the state is a distinct and valuable natural resource of concern to all the people of the state;

(2) the demands upon the resources of the coastal area are significant and will increase in the future;

(3) the protection of the natural and scenic resources and the fostering of wise development of the coastal area are of concern to present and future citizens of the state;

(4) the capacity of the coastal area to withstand the demands upon it is limited;

(5) the degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term considerations, unrelated to sound planning principles, and

(6) in order to promote the public health and welfare, there is a critical need to engage in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having an interest in the coastal area may be effectively implemented.

A more detailed description of the coastal-related problems in Alaska can be found in Part III of this FEIS.

Briefly, several of the problems which led the legislature to make these findings and which gave rise to ACMP were:

1. Waterfront Space Scarcity. Despite Alaska's vast coastline, only limited area is available for commercial and industrial use. Much of the coastline is uninhabited, with no overland linkage to other areas. This, combined with adverse topographic and geologic hazard conditions, eliminates most of the 33,000 miles of coast from consideration for ports, harbors and other shoreline development. Such developments also usually need to be near the markets and populations they intend to serve. This results in competition among users for the limited sites which meet the market, physical and transportation requirements of commerce and industry.

2. Energy Resource Development Impacts. Alaska is known to have substantial coal and petroleum resources, and has already had to contend with the negative impacts of their extraction. Additional fossil energy resources are expected to exist here along with other non-fossil energy resources, such as uranium. Enormous effort is needed to find and extract these resources in Alaska's often hostile environment, and impacts on that environment are bound to result. Impacts are frequently increased by the special measures needed for operations in Alaska. Projecting and coping with these impacts is an important public responsibility.

3. Maintaining the Fishery. While Alaska's fishing industry is regulated by state and federal authorities, problems remain of assuring continued protection of the habitat necessary to support this industry. This requires management of land and water areas, rather than of species. Except for special areas designated under state and federal laws, like critical habitat areas, land use management is beyond the scope of wildlife management agencies, and must be carried out by other agencies in coordination with wildlife management requirements.

4. Managing the Forest Resource. Several areas of the state have significant timber resources of commercial value. Harvesting this resource and providing for the continuation of it is the focus of a comprehensive state program, but the broader impacts of silviculture on other coastal values are also of particular concern to Alaskans.

5. Transportation Needs and Impacts. Because of its size and character, Alaska has a considerable transportation problem. The lack of widespread transportation facilities has important consequences for other aspects of the state's economy. Provision of transportation is the goal of several state programs, but the possibly heavy impact of transportation facilities on other coastal values is a source of concern to many Alaskans. These problems also make resource management a difficult and expensive task.

6. Impacts of Mining. As with other coastal activities, mining has, and has had, adverse impacts on other coastal values. Yet, Alaska's economic future, and national energy needs, will require new and continued mining.

7. Impacts of Western Culture on Native Cultures. Alaska has been inhabited by Native cultures for thousands of years. These cultures have now been touched by western civilization. The Native cultures will continue to be affected, and will undoubtedly change as a result, but controlling that change and minimizing the adverse impacts that may result are important coastal issues.

8. Providing for the Alaskan Subsistence Lifestyle. The subsistence lifestyle, or "living off the land," is a unique cultural aspect of Alaska. Practiced by Natives and non-Natives alike, subsistence competes with other uses of coastal resources. Protecting subsistence is one of the most important coastal issues.

9. Geological Hazards. Alaska has many coastal and inland areas with geologic conditions that may pose hazards to ill-planned development. The catastrophic 1964 earthquake is a recent example of unstable geologic conditions found in many parts of the state. With adequate knowledge and planning, development may still occur in hazard areas, but it is an important public responsibility to assure that such development is safe.

10. Changing Land Ownership Patterns. Native corporation land selections and conveyances, Statehood Act selections and conveyances, municipal entitlements, village selections and disposal of land to individuals all present a complex series of land ownership changes. When these changes are coupled with new management designations such as the recent invocation of the Antiquities Act, or other federal actions that may occur as a result of current deliberations in Congress over "national interest lands", major land and water management challenges are presented to governmental and private landowners.

11. Bottomfish. With anticipated American participation in harvesting of Alaska's offshore bottom fisheries, and expected changes in harvesting and processing methods, Alaska can expect substantial growth onshore and the consequent need for community planning and preparation to support this new industry.

12. Governmental Regulation. As governmental attention to coastal concerns has increased, so have the number of regulations, permit systems, licenses and other requirements of state, local, and federal agencies. Major management and coordination challenges are present as a result, and a valid state coastal program must address and attempt to simplify these concerns as well.

These are the types of problems which ACMP is intended to address. In many cases, the solution to one coastal problem will have impacts on other coastal values. This, in itself, requires a program which looks at all of the coastal problems and involves all of the coastal interests, both governmental and private, in finding and implementing the solutions.

Section (b): The ACMP Approach

When the legislature addressed these coastal problems, it selected a comprehensive management program as the general solution and set forth basic program policy in Section 2 of the Alaska Coastal Management Act:

(1) preserve, protect, develop, use, and where necessary, restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state;

(4) assure the participation of the public, local governments, and agencies of the state and federal governments in the development and implementation of a coastal management program;

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.40.

Chapter 1: Introduction

It should be stressed that, while ACMP is a program of government, the private sector is viewed as a partner in coastal management. This partnership applies to the business community, public interest groups, environmental organizations and, rural interests as well as the public at large. The reader will note the emphasis on management and use of coastal resources. Certainly, ACMP has environmental goals, but these goals are part of a spectrum of management goals set forth as policies for the program by the legislature. Continued development of Alaska's coastal resources is vital to both the state and local economies, and to national interests as well. The framers of the program, both legislative and administrative, believe that state, local, national, and private goals and aspirations which depend on the use of coastal resources can be met through an open planning and management process where interested parties can be brought together to resolve their differences, eliminate potential conflicts before more serious problems occur, and achieve their individual goals in harmony.

General plans which govern the use of coastal and water areas, and which determine and satisfy the diverse array of coastal needs, were seen as the best overall approach. The legislature determined that a focused application of local government planning and police powers would yield the most detailed and reliable solution. Local governments, aside from being closest to coastal problems, are also most familiar with local conditions and have the traditional political right and responsibility to govern general land use. Alaska is little different from other states in this respect.

With this in mind, the legislature called on local governments to prepare programs to govern the use of coastal resources in their areas. At the same time, a state level element was established by the formation of the Alaska Coastal Policy Council. The Council, made up of state agency and local government officials, provides overall leadership for the program and established the basic guidelines and standards to be used by the local governments in the development of their coastal programs and by state agencies in making coastal decisions.

The Council's first task, begun in the fall of 1977, was to develop the ACMP Guidelines and Standards. These were completed in the spring of 1978, and are now in effect. Local governments are now developing their coastal programs in accordance with the guidelines and state agencies are conforming their coastal decisions to the standards.

The result will be a state-local partnership for the management of Alaska coastal lands and waters. At the local level will be the responsibility for development and implementation of local coastal programs. Because of their complexity, the local programs will take some time to develop. Areas not presently having local governments may not have local programs for some time. In the absence of local programs, the ACMP will rely on the combined management powers of the state and federal agencies. These powers, already in existence under other laws, will be exercised in a coordinated fashion which is consistent with the ACMP Standards.

As of this writing, coastal management in Alaska is handled primarily by the exercise of state powers in conformity with the ACMP Guidelines. Over the next several years, the local government programs will come into force and the final management system, as conceived by the legislature, will be in place.

Section (c): Relationship to the Federal Coastal Zone Management Program

There has been coordinated state level coastal management activity in Alaska since 1974 when the state received the first of several grants from the federal government under the Coastal Zone Management Act of 1972, as amended (CZMA). In that Act, Congress declared that the states should develop their own coastal programs and provided funding for the development, implementation and administration of these programs.

The CZMA set several standards which state programs must meet before they can move from development funding into the more substantial administrative funding. Achieving the status of administrative funding is called "306 approval" after the section of CZMA which sets the requirements which a state program must meet. Gaining 306 approval is an administrative goal of ACMP and is part of the purpose of this document. Additional funding is provided to implement approved programs. This funding is twice to three times the amount provided for program development.

There is another and more important advantage to achieving 306 approval. After 306 approval, federal agency decisions which affect the

coast of the state must be consistent with the state's management program "to the maximum extent practicable," in the words of the CZMA.

Federal regulations describe the extent to which federal agencies will have to act consistent with a state's coastal program (after that program has been approved). The effect of this is that where a federal agency is contemplating an action which will have impact on a state's coastal resources, and where that impact is not confined to land or water controlled solely by the federal government, and where the federal agency can reasonably be expected to conform that action to the state's coastal program, then it must do so.

States with CZM programs then have a concommitant obligation to define the national interests in the management of their coastal resources. Approaches used in program development and techniques available during implementation in order to consider national interests are discussed in later chapters of this document.

With passage of the Alaska Coastal Management Act and approval of the ACMP Guidelines and Standards, and full review of the program, ACMP is now ready for approval under the terms of section 306 of the CZMA. In this document is assembled the evidence supporting the contention that ACMP does indeed meet the requirements of the CZMA.

This point in the development of ACMP comes four years after program development began. Progress has been slow and not always smooth, but the program now has become an effective resource management tool for all levels of government in Alaska.

Section (d): The Next Eight Chapters

The next eight chapters, plus the appended material will provide the reader with a clear understanding of the Alaska Coastal Management Program.

Description of the Proposed Action

The Alaska Coastal Management Program

Part II

Chapter

2 - sets out the basic objectives and standards of the program and discusses how these will be used.

3 - describes the local program development process, along with the state and federal role in that process.

4 - defines the areas which are subject to ACMP. This includes discussion of the boundaries of Alaska's coastal zone, special management areas and other geographic aspects of the program.

5 - discusses the uses which are subject to the program, responding to the CZMA requirement that state coastal programs control land and water uses having direct and significant impacts on coastal waters and demonstrating the extent of ACMP authority and how it will be applied.

6 - is a discussion of the ACMP management system for land and water uses, concentrating on the state portion of the management system, as it is the most complex. Local management and federal consistency procedures are also described.

7 - shows how the Alaska Coastal law intended to provide special recognition of, and protection for, state and national concerns.

8 - is a discussion of participation and coordination in the development of the program. This is largely a historical discussion to show who was involved in ACMP development and what they said was needed in the program.

9 - is a general look at the future of the program.

Chapter 2: Policies, Objectives and Standards of the Program

Section (a): General

The following discussion of the guiding policies, objectives and standards of ACMP is divided into four sections. The first section contains the legislative provisions which guide the program; second are the general regulatory provisions; third are use-specific provisions; and fourth, the resource-specific provisions. The provisions contained in the first section are also found in the Alaska Coastal Management Act, attached as Appendix 1. The provisions of the next three sections are found in "6 AAC chapter 80," which is attached in its entirety in Appendix 3. "6 AAC chapter 85" found in the same appendix, is presented and discussed in the next chapter which discusses local government coastal programs.

The material in this chapter constitutes the "policy base" for ACMP and will:

(1) be used to measure consistency of local programs with ACMP;

(2) provide minimum standards for actions taken by state agencies which would affect the coast, and

(3) after 306 approval, be used to measure consistency of federal actions which might affect the coast.

This policy base will grow with the approval and addition of local coastal programs, and state and federal actions will have to consistent with local policies and regulations as these become a part of ACMP. The local rules will, of course, apply only in the area of jurisdiction of local government, but there they will carry the force of state law. Additionally, the Alaska Coastal Policy Council may adopt further regulations, should the need arise.

Section (b): Statutes

The Alaska Coastal Management Act contains a policy section and objective section. The policy section was set forth in Chapter 1 to

explain the approach of ACMP, but is reprinted here as reference for the substantive aspects of the section.

Section 2. LEGISLATIVE POLICY. It is the policy of the state to:

(1) preserve, protect, develop, use, and, where necessary restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the use of resources which have a direct and significant impact upon the coastal land and water of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have direct and significant impact upon the coastal land and water of the state;

(4) assure the participation of the public, local governments, agencies of the state and federal governments in the development and implementation of a coastal management program;

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies set out in this section; and

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of the resources of the coastal area in accordance with the policies set out in this section and the guidelines and standards adopted by the Alaska Coastal Policy Council under AS 46.40.

Chapter 2: Policies, Objectives and Standards of the Program

To further set forth the desired end result of ACMP and to give additional guidance to program participants, the legislature included the following set of objectives:

Section 46.40.020. OBJECTIVES. The Alaska Coastal Management Program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority which compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area.

Section (c): General Regulations

This section presents three sections of the ACMP regulations which deal with the structure and conduct of the program. In addition, the internal guidelines of the Coastal Policy Council are presented as further guidance for the conduct of the program.

6 AAC 80.010. COVERAGE OF CHAPTER. *(a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19. 891-894.)*

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter.

(c) At a minimum, the Council will review this chapter annually.

6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION. *(a) The Council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska Coastal Management Program. The Council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska Coastal Management Program.*

(b) The Council will not approve a district program or significant amendments of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The Council will make available to the public information and educational materials concerning coastal management, in understandable form, including:

(1) a guide for the development of district programs;

(2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;

(3) areas recommended for council designation as areas which merit special attention;

(4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;

(5) an identification of major data and information sources concerning coastal management;

(6) a summary of information regarding coastal regions;

(7) summaries of public hearings and workshops;

(8) films and slide programs;

(9) written material summarizing or explaining the Alaska Coastal Management Program; and

(10) the Council's annual report to the legislature.

(d) At public meetings concerning the Alaska Coastal Management Program, the Council will insure that, when requested and reasonably necessary, translation into the appropriate Native language is provided.

6 AAC 90.030. PROGRAM MANAGEMENT AND COORDINATION. *(a) The Office of Coastal Management is the designated lead agency for the Alaska Coastal Management Program. The Office of Coastal Management shall:*

(1) present the staff position regarding matters before the Council;

(2) coordinate the activities of state agencies participating

in the Alaska Coastal Management Program; and

(3) review state and federal actions for consistency with the Alaska Coastal Management Program subject to council review.

Comment

Confusion arose during review of the DEIS over the roles of the Office of Coastal Management (OCM) and the Division of Policy Development and Planning (DPDP) in the administration of ACMP. The powers and responsibilities for ACMP are held by DPDP, as designated by the Governor. The actual work is carried out by OCM in DPDP as staff to the Council, or the state A-95 Clearinghouse, also in DPDP, in coordinating state and federal consistency review. During the upcoming year, DPDP will ask the Council to clarify the language in 6 AAC 80.030(a) to make the role of OCM and DPDP clear. For the moment, the designation contained in this section should be interpreted to apply to DPDP as a whole.

(b) The Council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.891 (a) (1). Regional programs will:

(1) assist the Council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the Council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of this section must be transmitted to the district through the Office of Coastal Management. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the Council.

Comment

Chapter 9 provides a discussion of the regional planning activity to be conducted in response to the regional program requirements of 6 AAC 80.030(b) and (c). During 1977 and 1978 it was thought that single documents, to be called "regional programs," could be prepared by an interagency planning team and delivered for all nine coastal regions of the state. The speed of ACMP development, and the need of local governments for state agency assistance and information, plus funding problems, contributed to abandonment of unified regional plans, and movement instead to an approach where each state agency works directly with coastal local governments to provide the information listed in 80.030(b). This is coordinated by the Office of Coastal Management through contractual arrangements with the agencies. See Chapter 9 for a full discussion of regional planning arrangements proposed for ACMP implementation.

(d) The Council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs.

Comment

The Manual of Standards will be a two-volume compendium of existing, state and federal laws and regulations that are pertinent to coastal resources and management of uses. The first volume of the manual will be organized in such a way to serve as a convenient reference document to coastal decision makers. The key to its use will be the inclusion of a matrix that will relate specific coastal uses to individual coastal resources or values. Each cell at points of intersection on the matrix will direct users to a page that will treat the appropriate use/resource combination, with references to statutes and regulations, and responsible agencies, that likely will be applicable to the use and location. The compiled statutes and regulations will be attached in full. It is important to understand that the manual will not include new management standards or policy, but will only collect and organize for convenience existing applicable regulations. The first volume is expected to be available in July 1979.

Volume two will be prepared and made available for general review late in 1979 or early in 1980. This volume will contain the collected recommendations of state and federal agencies pertaining to the use/resource combinations cited in volume one. The discussions will suggest management considerations and approaches to assist in the solution of likely use/resource conflicts in each combination. While containing more substantive guidance than volume one, volume two will also be a reference document with no official or regulatory status. It is intended to make the expertise and advice of the agencies widely available to the districts in a concise, consolidated format, and will be circulated for review and consensus before it is issued in final form. Both volumes will be updated annually or as appropriate.

In order to clarify certain procedural aspects of its duties, the Council has adopted internal guidelines dealing with Council operations and federal agency consultation and coordination.

These internal guidelines provide as follows:

Council Operation

(1) If a public member of the Council ceases to be a mayor, member of the assembly or council of a municipality, the Council shall recommend to the Governor the removal of that member from the Council and the declaration of a vacancy. Public members whose removal is recommended under this guideline shall serve until a replacement is appointed.

(2) Public members appointed to fill vacancies may be reappointed.

(3) The names of permanent alternates selected by members of the Council shall be submitted in writing to the Council.

(4) Per diem and travel for Council members and their alternates shall be provided from the Alaska Coastal Management Program.

(5) The Council shall receive financial support from the Alaska Coastal Management Program budget and from such other sources as become available.

(6) The Coordinator of the Office of Coastal Management shall be responsible for and have charge of Council records.

(7) Additional staff support to the Council shall be available from the commissioner of the Department of Community and Regional Affairs as prescribed in the Alaska Coastal Management Act.

(8) All meetings of the Council, except for executive sessions conducted solely for personnel matters, shall be open to the public and the press. Public meetings shall be electronically recorded, where possible, and the record shall be made available to any interested party.

(9) Minutes of all public meetings of the Council shall be kept. All relevant areas of business and decisions of the Council shall be recorded in the minutes. Minutes shall be made available through the Office of Coastal Management.

(10) The Coordinator of the Office of Coastal Management shall present the official staff position regarding matters appearing before the Council. Each Council member or participant in the Alaska Coastal Management program may, at the discretion of the Council, present his or her position on such matters to the Council.

(11) Each public member of the Council shall, to the extent practicable keep the public within the region that member represents fully informed of all relevant matters concerning the Alaska Coastal Policy Council and Alaska Coastal Management Program.

Federal Agency Consultation and Coordination

(1) All participants in the Alaska Coastal Management Program, including coastal resource districts, state agencies, the Council, and Council staff, shall provide opportunities for federal agencies to participate in the Alaska Coastal Management Program, including furnishing timely notice of relevant action to federal agencies and solicitation of federal agencies comment, review, and contribution, where appropriate.

(2) The Council and its staff shall provide information concerning relevant federal agencies and programs to participants in the Alaska Coastal Management Program generally and as requested.

(3) The Council may, in its discretion, mediate or otherwise seek to resolve conflicts between federal agencies and participants in the Alaska Coastal Management Program.

(4) The Office of Coastal Management shall be the single designated state agency for all purposes of sections 305, 306, and 307 of the federal Coastal Zone Management Act.

(5) The Council shall establish procedures for the implementation of the federal consistency requirements of the federal Coastal Zone Management Act.

Note: The item (4) under Federal Agency Consultation and Coordination above caused confusion during review of the DEIS. See the preceding comment under 6 AAC 80.030(a) for clarification.

Section (d): Land and Water Use and Activity

Section 305 (b) (2) of the Coastal Zone Management Act of 1972 requires the management program for each state to include:

A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

The Alaska Coastal Management Act of 1977 delegates the task of meeting this requirement to the Alaska Coastal Policy Council:

Section 46.40.040. DUTIES OF THE ALASKA COASTAL POLICY COUNCIL. *Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall:*

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62), within six months of the effective date of this Act, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for:

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal managment program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specified proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter.

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state.

In its standards, the Council has identified nine major uses or activities and for each has promulgated a standard. These standards have the force and effect of law. Both the districts and state agencies are bound by them. These uses and activities are:

1. coastal development;
2. geophysical hazards (development in such areas);
3. recreation;
4. energy facilities; (see Appendix 7)
5. transportation and utilities;
6. fish and seafood processing;
7. timber harvest and processing;
8. mining and mineral processing; and
9. subsistence.

Coastal resource districts are required to plan for these listed uses and activities in a manner consistent with the standards promulgated by the Council. The Council will review district coastal management programs to assure that the standards are met.

State agencies are also required to conduct all of their activities in the coastal zone in a manner consistent with the standards of the Council. The Division of Policy Development and Planning/Office of Coastal Management will monitor state agency actions for consistency with the Council standards.

After ACMP receives 306 approval, the actions of federal agencies will also be reviewed for consistency by DPDP/OCM.

These standards are minimum standards for local program development and are also the operational standards for ACMP until more detailed standards become available through the approval of district programs. Chapter 6 describing the ACMP Management System, shows how the standards will be implemented at the state level, as well as how local standards will be followed at the state level.

Chapter 6 also describes the system that will be used to implement the standards, but does not go into detail on the individual standards themselves. The remainder of this section will present the use standards, discussing the purposes and characteristics of each.

To use these standards as well as the resource standards set forth in the next section, one must first determine the characteristics of the use proposed, and then determine which standards apply to the pending decision. For example, a large energy development might easily be subject to nearly all of the standards if subsidiary uses were to be part of the development. Such an energy development would probably involve mining, transportation facilities, and waterfront development; impact recreational areas; impact on habitats, and might require the removal of trees.

In making a decision on a proposed use or activity, or in considering a local government coastal program, all of the standards and statutory provisions that might apply must be considered. This requires a comprehensive viewpoint on the part of the decision-maker, as well as considerable technical knowledge. The local government involved should be part of the consideration process and able to present its views. State and federal agencies having expertise in one or another area of the standards should also be consulted.

At its meeting of December 14-15, 1978, the Council adopted a number of proposed changes to the guidelines and standards. These amendments have now been approved by the legislature. In the following discussion, each standard will be set forth in its entirety, followed by a short discussion of its purposes and characteristics.

Standard

6 AAC 80.040. COASTAL DEVELOPMENT. *(a) In planning for and approving development in coastal areas, districts and state agencies shall give, in the following order, priority to*

(1) water-dependent uses and activities;

(2) water-related uses and activities; and

(3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations, (Vol. 42 of the Federal Register, pp. 37133-47) (July 19, 1977).

Comment

Rather than being specific to a use, this standard addresses the problems of limited waterfront space and the effects of dredging and filling. Subsection (a) establishes priorities for the limited amount of waterfront space. The standard can be applied to specific use proposals by determining whether a proposed use is water-related or water-dependent and whether a reasonable inland alternative exists. The district programs are expected to contain waterfront use limitations, in the form of zoning or other land use control devices, which respond to this standard.

It is possible that the topography of some local districts may preclude development of any kind of upland areas, making the shoreline the

only usable area. Southeast Alaska may have a few examples of this situation, due to much steep topography. Thus, uses which are not water-dependent or water-related may be located on the shoreline due to scarce upland space, and in situations where long-range local planning in an approved district program indicates that the waterfront space in question will not have water-dependent or water-related uses competing for the same space. All uses which locate along the shoreline must comply with the other ACMP standards as a further assurance of management control over siting of inappropriate shoreline uses.

"Water-dependent" is defined in the guidelines and standards (6 AAC 80.900) as "...a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body." "Water-related" is defined in the same place as ..."a use or activity which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered." These terms apply to development all along the state's coastline. Thus the requirements of the coastal development standard would inhibit the siting of public or commercial facilities such as schools, hospitals, automotive-related facilities, and water independent industry adjacent to the water. The services provided to the maritime elements of the state's population may give an element of water-relatedness to otherwise water-independent activities. Examples of this situation might be port stores, laundromats, and similar facilities designed to serve water-going customers, and which must be located within easy walking distance of the docks to serve their intended functions and patrons.

The reference to the Corps of Engineers' regulations is a recognition of standards which have already been developed and put into use. Their incorporation into ACMP results in extending the applicability of the Corps standards to state and local coastal decision-making. The Corps of Engineers' regulations contain a considerable amount of guidance for assessing the environmental impacts of proposals and for balancing competing national interests in a decision. This incorporation will give greater utility to the Corps of Engineers' regulations and expand the use and consideration of them in dredge and fill operations. The Council may, in the future, adopt different or additional dredge and fill standards, as may the districts. These standards require a general

balancing process taking account of public need, alternatives, cumulative effects, and effects on wetlands, fish and wildlife, water quality, scenic and recreational values, public safety, water dependence, and access to coastal waters. Specific standards, criteria, and policies are prescribed for the placing of structures and the discharge of dredged or fill material. The ACMP has adopted these standards by reference; consistency with the ACMP will include consistency with these standards and criteria.

Standard

6 AAC 80.050. GEOPHYSICAL HAZARD AREAS. *(a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.*

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided.

Comments

This standard is also specific to a problem rather than a use. Alaska has a wide variety of geophysical hazards, and while many are known, their extent and exact location are not. The standard requires study by the state and local governments to identify hazard areas, but limits the mandatory scope of such studies to areas where development is likely, or where there is a suspected hazard.

6 AAC 80.900 (9) provides:

'geophysical hazard areas' means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-ups, storm surge run-ups, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process.

A geophysical hazard inventory or study will be needed in the development of each district program. On the basis of this study, policies and regulations will be developed to account for the identified hazards. Districts will then assure that these regulations are followed in dealing with use proposals in the hazard areas. Since it will be impossible for districts to thoroughly assess each hazard area and devise detailed standards covering any conceivable use, developers will be obligated to conduct the surveys and studies needed to determine exactly what siting, design and construction measures are needed. The districts and state agencies will have enough general data to know when to require such surveys from the developers. Current state programs underway for identification of geophysical hazards are those of the Division of Geological and Geophysical Surveys in the Department of Natural Resources and the Division of Emergency Services in the Department of Public Safety. In addition, the Corps of Engineers publishes flood hazard reports and other studies of general use for implementing this standard.

This provision of the ACMP Guidelines and Standards addresses the principal requirements of Presidential Executive Order 11988 concerning Floodplain Management. In defining areas subject to flooding as "geophysical hazard areas" and by requiring districts and state agencies to identify such areas, the standard addresses the requirements of the Executive Order to identify floodplains. Flood area maps may be available from the Federal Insurance Administration or other federal agencies. District programs and state agencies with development assistance or permit responsibilities must manage development in recognition of the hazard of floodplain siting.

The Order, further, requires the avoidance of floodplain siting where practicable and measures to minimize harm to life or property when avoidance of the floodplain is not practicable. Subsection (G) of the geophysical hazard standard speaks of "siting, design and construction measures" for minimizing harm to life or property. Clearly, the most effective siting measure to achieve this objective is to site the proposed development out of the floodplain. Should that be impracticable, design and construction measures to minimize risk are required. In certain cases, if the risk to life is so great that design or construction is unable to reduce that risk to acceptable levels, siting in the floodplain may not be a practicable alternative in itself.

The Executive Order and accompanying Water Resources Council guidelines speak to preservation or restoration of floodplain values. These values are not addressed in the program as specific to floodplains but rather are protected for their individual values, whether in or out of a floodplain. These values include the water quality and habitat protection afforded by the ACMP standards.

Identification of hazard areas now occurs through existing state and local programs and will be augmented by ACMP funds.

Standard

6 AAC 80.060. RECREATION. *(a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are:*

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological or cultural features.

(b) District and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal waters.

Comment

This standard obligates the districts to provide for the recreational and tourist needs of their areas by stipulating that areas shall be designated for recreational use. The standard sets two criteria that should be used, although the districts are free to use additional criteria if they choose. This does not require that any areas identified as meeting the two criteria are automatically designated as recreational areas. It only means that either of these are minimim criteria for such a designation. The decision to designate an area for recreation is a choice among other possible land and water uses.

The local means for implementing this standard will vary, depending on the type of recreation intended. The local government could designate the area as a park, which would mean that the area is in public ownership or will be acquired. In other situations the district could zone for recreational housing or for recreational commercial areas which would have the effect of developing or maintaining the desired value.

The state role in this standard is not specified in the regulations. Large scale recreational resources, or those covered by existing or potential state designations, such as state parks, are uses of state concern and will be subject to consideration by the state agencies. Recreational resources of particular value could be designated by the state as Areas Meriting Special Attention (AMSAs) (discussed in Chapter 4). Further, the expertise available from the state, including studies already completed (some of which were paid for by ACMP) will be useful to local governments in the development of their district programs.

Standard

6 AAC 80.070. ENERGY FACILITIES. *(a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.*

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) seek to cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that the construction of facilities and support infrastructure in coastal areas of Alaska are designed to allow for the free passage and movement of fish and wildlife with due consideration for historic migration patterns, and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern.

The definition of the term "major energy facility" is contained in 6 AAC 80.900(12) is important to the use of the standard:

"major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(1) a facility required to support energy operations for exploration or production purposes;

(2) a facility used to produce, convert, process, or store energy resources or marketable products;

(3) a facility used to transfer, transport, import or export energy resources or marketable products;

(4) a facility used for in state energy use; or

(5) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (1)-(4) of this section.

Major energy facilities include marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilities.

The energy standard and this definition will be discussed in Appendix 7.

Comment

The districts and the state are obligated to identify suitable sites for energy facilities, but this does not automatically mean that a facility will be built, as the actual decision to build is usually made by the private sector. The standard is positive in that a good deal of uncertainty will be eliminated if the state, or a local government, declares that a certain site is or is not suitable for energy development. The state could, in the case of a state lease sale of energy resources, insist that only certain sites be used for facilities. It is more likely, however, that a series of alternative designated sites will be available to the developer.

Part (b) of the standard is a list of siting criteria against which site proposals must be judged whether such sites are proposed by the state or district as part of their ACMP responsibilities, or by private industry in seeking siting approval for a proposed facility.

Part (c) of the standard was adopted to eliminate any doubt that state mineral and energy resource extraction leases are uses of state concern, as are the uses associated with and authorized by such leases.

In accordance with Section 305 (b)(8) of the federal CZMA, the ACMP includes an energy facility planning process. This element of the ACMP is described in Appendix 7.

Standard

6 AAC 80.080. TRANSPORTATION AND UTILITIES. *(a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.*

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility.

Comment

This standard was developed as a result of two transportation issues that arose in the course of ACMP development. Subsection (a) requires compatibility with properly expressed local desires and reflects public awareness of the impact that transportation facilities can have on communities. However, transportation is also listed as a Use of State Concern, and thus, local programs may not exclude such uses arbitrarily or unreasonably. Note that the vehicle for expression of local desires is the coastal program of a district, which is created according to the consultation and involvement requirements of ACMP.

The second paragraph of the standard declares that transportation and utility routes and facilities are generally not high priority uses of the coast, and should be kept away from the water's edge in other than extreme circumstances. This section is intended to address only land-based routes. Facilities such as shipping lanes, docks, terminals, and the like are clearly water-dependent and protected by the coastal development standard.

Standard

6 AAC 80.090. FISH AND SEAFOOD PROCESSING. *Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing.*

Comment

This standard is similar to the recreation standard, as the districts are obligated to recognize the fishing industry, but retain the choice whether to make special provision for it. The emphasis is on the shoreside facilities needed to support the industry. Many towns in Alaska are dependent on the fishing industry, and this standard provides an opportunity for those towns to plan for the shoreside needs of the industry.

Standard

6 AAC 80.100. TIMBER HARVEST AND PROCESSING. *(a) Commercial timer harvest activities in the coastal area must be conducted so as to meet the following standards:*

(1) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(2) free passage and movement of fish in coastal water must be assured; and

(3) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, prevent adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

(b) Commercial timber transport, storage, and processing in the coastal area must be conducted so as to meet the following standards:

(1) onshore storage of logs must be encouraged where compatible with the objectives of the Alaska coastal management program;

(2) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects on the marine ecosystem minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(3) roads for log transport and harvest area access must be planned, designed and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage pattern (put to bed); and

(4) stream crossings, including bridges and culverts, must be kept to a minimum number, designed to withstand seasonal high water and flooding and must provide for free passage and movement of fish.

Comment

In their approval of recent changes to these regulations, the legislature requested that the word "prevent" in 80.100(a)(3) be changed to "minimize" by the Council. This will be proposed during the Council's next general review of the regulations.

The Forest Practices Act, AS 41.17, was passed at the same time that the original ACMP standards were approved (in 1978), and should be considered an integral part of ACMP. When regulations are adopted under the Forest Practices Act, they will supercede the current ACMP timber harvest standards. Any such new forest practices regulations must, however, be consistenct with the other ACMP standards to the same extent as any other state agency regulations. Until new forest practices regulations are adopted, the ACMP timber regulations remain in effect. A copy of AS 41.17 is included as Appendix 2, along with an opinion of the Attorney General which clarifies the relationship between that law and ACMP.

The standard addresses most of the timber issues that are relevant to the coast and all of the issues that relate to the impacts of forest practices on coastal values. Herbicides and pesticides are already

regulated by the Alaska Department of Environmental Conservation. One issue that awaits resolution is how a concept of "sustained yield" should be defined and, once defined, whether and how it should be applied to forestry on private lands. The legislature has instructed the Council to continue its consideration of this issue. With the creation of the Board of Forestry, one member of which is to be a Council member, the two groups will look at the question together.

Standard

6 AAC 80.110. MINING AND MINERAL PROCESSING. *(a) Mining and mineral processing in the coastal area must be regulated, designed and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.*

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel.

Comment

While mining and mineral processing have impacts on coastal values, most of these impacts are addressed by other ACMP standards. However, the Council chose to treat compatibility with local desires and sand and gravel extraction specifically under this heading. The standard states that the other standards of ACMP apply to mining activities, and establishes a low priority for sand and gravel extraction from certain areas of the coast. The Council, after further investigation, may determine that additional regulations are needed, but the present standard is adequate to protect mining as an acceptable use in the coastal area, with some limitations, and to control the adverse impacts that mining and mineral processing may produce.

ACMP regulations on mining should not be taken as an exclusion of this important use. Mining will be a use of state concern in many instances, and as such cannot be arbitrarily or unreasonably excluded by the coastal programs of local governments. Both the state and federal governments own lands known to have significant mineral deposits valuable for coal, copper, molybdenum, and uranium among others.

Standard

6 AAC 80.120 SUBSISTENCE. *(a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.*

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all non-subsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management.

Comment

Subsistence is one of the most important uses in Alaska's coastal areas and a great deal of controversy surrounds it. The Council felt that resolution of all subsistence issues was beyond the scope of ACMP and the standard was restricted to declaring that subsistence should generally be recognized and protected, that districts are obligated to identify areas of importance to subsistence, and that they then have the option of designating and managing such areas for the benefit of subsistence users.

This standard may generate uncertainty if it is read outside the context of the other standards and state and federal law. The standard relates to land and water use only. It provides that land use may be planned and governed for other values, including residential, commercial,

recreational and industrial values. The standard does not enable districts to set season openings or bag limits, or to allocate subsistence resources such as fish and game among subsistence, sport, or commercial harvesters. The power to manage species, and allocate such resources at the state level is held by the Board of Fisheries and the Board of Game, and this power is protected by 6 AAC 80.010(b) of the standards which provides that the existing powers of state agencies are not diminished by these standards.

The standard does not aim to protect subsistence activities directly, but rather enables the districts to identify and protect subsistence resources so that, in turn, subsistence activities will be protected.

The standard should be read in conjunction with the habitat protection standards discussed in this Chapter, as these standards protect the habitat which supports subsistence resources.

By setting this standard, the Council has eliminated any doubt that making land use decisions for the purpose of protecting subsistence usage of coastal resources is a legitimate and necessary exercise of planning and land use control powers.

While the protection of subsistence resources has been clearly identified in the standards as an appropriate objective of local district programs, the standard should not be read as relieving any district of the responsibility imposed by the ACMA to reasonably accommodate uses of state concern. If a district chooses to emphasize subsistence use in its land and water area planning, and if doing so will exclude or restrict uses of state concern, then the district is obligated to follow the procedures provided for such exclusions and restrictions in ACMA to give evidence of the reasonableness of the limitations. These procedures include consultation with affected interests, a finding that alternative sites do exist for the use of state concern which will be excluded, and a determination that the excluded use would have been incompatible with the proposed site.

General Comment: "Dominant Uses"

Subsistence, along with public access to coastal waters, and water-related uses have been given special emphasis in the ACMP standards.

This does not prevent a district from giving priority or emphasis to other uses as well, including uses of state or national interest.

Section (e): Resource Regulations

In addition to setting standards for major uses and activities in the coastal area the Alaska Coastal Policy Council has identified and promulgated standards for certain coastal habitats and resources. These standards apply to these habitats and resources regardless of the use or activity under consideration. Thus, in addition to satisfying an applicable use standard, a use or activity affecting a specified habitat or resource must meet the relevant habitat or resource standard.

Standard

6 AAC 80.130. HABITATS. *(a) Habitats in the coastal area which are subject to the Alaska Coastal Management Program include:*

(1) offshore areas:

(2) estuaries;

(3) wetlands and tideflats;

(4) rocky islands and seacliffs;

(5) barrier islands and lagoons;

(6) exposed high energy coasts;

(7) rivers, streams and lakes; and

(8) important upland habitat.

The key standard applicable to all of the habitats in the coastal zone is:

> *(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical and chemical characteristics of the habitat which contribute to its capacity to support living resources.*

Comment

In earlier drafts of its guidelines and standards, the Council attempted to list all of the important "living resources" of the habitats by species. As the list grew, the Council realized that the term "living resources" included all species and categories of life, and chose to use that term.

Note in particular the word "avoid" as it is used in the following standards for various types of habitat. The term is used to apply a strict limitation on impacts, to the point of prohibition. Where the public interest requires some flexibility in the application of those standards, Section 6 AAC 30.130(d) of the approved standards provides a series of stringent tests that divergent activities must meet to be allowed. The directive word "avoid" was used to keep the habitat standards extremely stringent.

The ACMP, in protecting habitats that are essential to the life functions of coastal fish and wildlife species, protects the species themselves and complements the provisions of the Federal Endangered Species Act and Marine Mammal Protection Act in Alaskan coastal lands and waters.

In addition to the key standards referred to above, the Council adopted particular standards for particular habitats. Habitats in the coastal area subject to ACMP follow.

Offshore Areas

Offshore areas define the submerged lands and waters seaward of the coastline extending to the continental shelf break. Offshore

areas are essential habitats for marine mammals, anadromous fish, marine fish, shellfish, seabirds and associated invertebrate fauna. Offshore habitats support Alaska's commercial, recreational and subsistence fisheries. They are particularly important along ice affected coast where activities may be concentrated between pack ice and the land. Offshore ice is used for hauling out and pupping by walrus and seals. Polar bears frequently den on stable landfast ice. Offshore areas are used as migration corridors by whales, fish and seabirds. Although the legal seaward extent of the coastal zone is the edge of the territorial sea, three miles offshore, activities beyond that limit will be monitored closely by the state and the districts for their possible impact on resources within the defined coastal management area.

Standard

Offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial and subsistence fishery.

Estuaries

An estuary is a semi-enclosed body of water having an opening to the sea, and containing a measurable quantity of salt. In Alaska, this classification includes, but is not restricted to, river mouths, deltas, fiords, inlets, bays and basins of tidewater glaciers.

The management justification for regarding estuaries as a significant coastal resource involves both the importance of the estuary to the animals and its sensitivity to development. Alaskan estuaries are vital production areas for fish, waterfowl, marine mammals, shellfish and associated marine life. Estuaries indirectly support coastal plant and animal communities. Conservation of estuarine habitats is necessary for the protection of many renewable and natural resources of Alaska.

Standard

Estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients

and oxygen levels, and avoid the discharge of toxic wastes, silts, and destruction of productive habitat.

Wetlands

Wetlands are lands shallowly or intermittently submerged by water. They are characterized by vegetation complexes consisting primarily of sedges, rushes and grasses. Wetlands are vitally important as nesting, rearing, molting, and staging areas for migratory waterbirds, and can provide prime calving habitat for moose and caribou. They are extensively utilized for spring foraging by coastal brown bear. Wetlands have abundant small mammal populations, replenish and regulate stream flow, are natural water purifiers, and provide an important source of detrital nutrients to coastal waters.

Standard

Wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse affects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances.

Rocky Islands and Seacliffs

Rocky islands and seacliffs include islands with rocky shores and steep faces. Also included are offshore rocks, capes and steep rocky sea fronts. They frequently serve as breeding areas for seabirds, raptors, fur seals, sea lions and harbor seals. Walrus, sea lions, harbor seals and fur seals haul out on rocky islands in the Gulf of Alaska and the Bering Sea. During breeding and hauling out marine mammals and seabirds are highly sensitive to disturbances and seek relatively secluded, predator-free habitat. Large proportions of the world's population of several species of marine mammals and seabirds are dependent on the rocky islands and seacliffs of Alaska's coast.

Standard

Rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important

habitat, and the introduction of competing or destructive species and predators.

Barrier Islands and Lagoons

Barrier islands are predominently depositional coastal environments. Barrier island/lagoon systems are formed by deposits of sediments offshore which form a barrier of low-lying islands protecting a salt water lagoon. The lagoon has a free or intermittent exchange of water with the sea.

Barrier island/lagoon systems are productive marine environments in the Beaufort and Chukchi seas. The brackish lagoon systems provide a unique ecosystem which is approximately four times as productive as the surrounding marine waters. They provide vital molting and staging areas for waterbirds during migration. Waterfowl nest on some barrier islands. The lagoon systems provide important feeding areas for birds, seals, and fish. Polar bears den on barrier islands. Barrier islands and offshore bars protect the coast during winter from ice shove and during summer from excessive wave and thermal erosion.

Standard

Barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds.

Exposed High Energy Coasts

Exposed high energy coasts are open sections of coastline with direct exposure to ocean-generated wave impact. They are usually characterized by mixed sand and gravel beaches and an active surf-zone. High energy coasts in northern areas may have severe icing conditions during the winter. High energy coasts provide spawning and feeding areas for important shellfish and marine fish.

Standard

High energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy.

Rivers, Streams, and Lakes

These areas need no special definition. They are important as habitat for anadromous and resident fish, migratory birds, small mammals, big game, and supporting species. Rivers, streams and lakes are also the sole sources of freshwater for human use in some coastal areas.

Standard

Rivers, streams and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

Important Upland Habitat

This category is intended to include all upland habitats within the coastal zone which are necessary to maintain existing wildlife populations or which are essential to the function of coastal ecosystems. No single standard has been promulgated for these habitats because of the broad array of features and values that may be represented in this category. Activities and uses in the coastal upland habitats that significantly effect the other protected habitats are subject to the program. This habitat, in addition, is protected by the general habitat protection provisions of 6 AAC 80.130(b).

In recognition of the fact that complete nondegradation is an impossible standard to meet, and that in certain instances tradeoffs between natural values and other human values will have to be made, the Council adopted the following limitations on the types of extenuating circumstances that must be demonstrated before an exception to the policies just described can be made:

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible and prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

Other Resource Standards

Standard

6 AAC 80.140. AIR, LAND, AND WATER QUALITY. *Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality are incorporated into the Alaska coastal management program and as administered by that agency, constitute the components of the coastal management program with respect to those purposes.*

Comments

The Alaska standards for air, land and water quality are equal to or more restrictive than corresponding federal standards. This regulation incorporates federal standards as well. Since the Department of Envrionmental Conservation is specifically mentioned in this regulation, the findings of that department will be conclusive in determinations of consistency with ACMP based on air, land, and water quality considerations. Thus, for example, failure of a coastal development proposal to acquire a waste treatment permit from Environmental Conservation constitutes automatic inconsistency with ACMP.

The federal Coastal Zone Management Act requires incorporation into state coastal programs of the requirements of the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended. These standards are the law in Alaska, although in some cases Alaska air and water quality standards are more stringent and must be met as well. The federal standards are nevertheless incorporated into ACMP, and should be considered as parts of the ACMP policy.

Standard

6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES. *Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory.*

Comment

This standard requires attention to historic, prehistoric and archaeological values by the districts and state agencies, but does not require automatic protection of such values. However, there are existing governmental programs available to protect these resources and values once they are identified. Such programs include the National Historic Register, the State Historic Register, state parks designation provisions, and the Alaska Native Claims Settlement Act, and the AMSA designation process.

The Alaska Division of Parks, a unit of the Department of Natural Resources, operates a program of historic site identification and protection. At a minimum, the sites are obtained or held by Natural Resources until the Division of Parks can develop them as historic waysides, parks, or recreation and interpretation areas.

The fact that ACMP is part of a federal program, in terms of both authority and funding makes it subject for certain purposes to the National Historic Preservation Act of 1966, the regulations which have been adopted by the Advisory Council on Historic Preservation under that Act (36 CFR 800), and a presidential executive order on the same subject (Executive Order 11593).

The districts are obligated, by the ACMP standard, to identify resources along their coastal areas which have historic or cultural

values, and are encouraged to protect these values, but if the district allocates land containing known historic resources to an industrial land use category, for example, this is not automatically an action which will result in the destruction of historic resources, since allocating land for a particular use does not in and of itself cause such use to happen. If after the district has made the industrial allocation, an industrial entrepreneur appeared and proposed a development that would require either federal funding support, or a federal permit, then the requirements of the National Historic Preservation Act, Advisory Council regulations, and Executive Order 11593 would take effect. The same will occur with state-sponsored or locally-sponsored physical developments if such developments are federally supported or permitted as a result of ACMP or any other federally-assisted program.

Clearly the best approach for the districts is to arrange for evaluation of cultural and historic resources in their coastal programs to begin with, and this can be done as part of the district's coastal resource inventory. Assistance for this aspect of the inventory is available from the Advisory Council, the Heritage Conservation and Recreation Service, or the State Historic Preservation Officer. With this information, the district can then assure direct protection of the resources in its coastal program rather than having to depend on federal systems for the same purpose.

Section [f]: "Feasible and Prudent"

An important term that appears in many of the standards that have just been discussed is "feasible and prudent". This term is used to describe situations when a normally applicable standard may be departed from, where forcing compliance with the standard would be impossible or cause a worse result than non-compliance. The term appears in the standards on coastal development, energy facilities, transportation and utilities, mining and mineral processing, and habitats.

As part of the recent group of amendments, the following definition of "feasible and prudent" was added:

"feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard modified by the term "feasible and prudent".

To learn more about the various state and federal authorities that can and will be used to assure implementation of these standards, as well as how local governments will respond to the standards in their programs, see Chapter 3, District Programs, and Chapter 6, the ACMP Management System.

Section (g): Additional Guidance from the Council

In addition to the provisions of ACMA and the ACMP regulations, the Council provides an additional form of guidance to participants in ACMP.

The Council can pass resolutions. These are statements of Council with which the Council may bind itself to procedures, interpret the ACMA or ACMP Standards, or suggest courses of action to others. Resolutions have no binding legal effect but can be useful in predicting how the Council will act in particular situations. The Internal Guidelines of the Council, presented earlier in this chapter, are an example of how the resolution method may be used.

Another resolution, discussed in more detail in Chapter 4, was designed to clarify the Council's activities in special area designation, and to show how the Council could be involved in special area designation undertaken by authorities other than ACMP. This is a procedural resolution which augments the substantive provisions of the Areas Which Merit Special Attention section of the ACMP regulations.

Chapter 3: District Coastal Management Programs

Section (a): Introduction

The size and diversity of Alaska's coastal area have required specially adapted organizational arrangements for coastal management. These specialized needs are reflected in the Alaska Coastal Management Act of 1977 (AS 46.40 and 44.19.891-894), which provides for local coastal programs to be developed in conformity with general guidelines and standards. This approach represents a partnership of shared state and local management responsibilities. The Coastal Policy Council is responsible for statewide oversight and coordination, while local units, the coastal resource districts, are to develop more specific programs for their own areas. These district coastal management programs are the building blocks of the Alaska Coastal Management Program (ACMP).

One of ACMP's administrative goals is to complement and strengthen local and areawide planning and management capabilities in coordination with state and federal agency and private sector activities. In so doing, ACMP is intended to furnish coastal area citizens with improved opportunities to constructively influence the land and water management decisions which affect their lives. District coastal management programs are intended to more equitably and efficiently apply the diverse array of existing federal, state, and local authorities governing such uses, and to ensure the balanced consideration of a broad range of competing interests. Likewise, district coastal programs are not solely regulatory in nature. They are intended to foster affirmative actions which enhance the human and natural environment of the coast by such means as matching capital improvement programs with coastal management policies and priorities.

This chapter defines and describes the role of local governments in ACMP in detail. The following subjects are covered:

- Coastal Resource Districts - What they are
- Coastal Resource Service Areas - General Information
- District Program Development - Regular and Service Area
- District Program Approval Procedure
- Status of District Programs - Spring, 1979

Section (b): Coastal Resource Districts - What They Are

Coastal resource districts are the basic local governmental units of ACMP. They include:

(1) Unified Home Rule Municipalities. Unified city and borough governments fall within this category. They are the:

---Municipality of Anchorage
---City and Borough of Juneau, and
---City and Borough of Sitka.

(2) Organized boroughs which exercise planning and zoning authority. Other organized boroughs, of any class, which exercise planning and zoning authority fall within the second category. These include home rule and second class boroughs and specifically are:

--- North Slope Borough (home rule),
--- Bristol Bay Borough (second class),
--- Kenai Peninsula Borough (second class),
--- Kethcikan Gateway Borough (second class),
--- Kodiak Island Borough (second class), and
--- Matanuska-Susitna Borough (second class).

The Haines Borough is the only third class borough in Alaska. Planning and zoning authority may be assumed by a third class borough on a service area basis if a majority of voters in a general election vote to provide for planning, platting and zoning on a service area basis; and the exercise of these powers is established by ordinance by the borough assembly, and approved by a majority of qualified voters residing within the service area and voting on the question at a regular or special election.

Planning and zoning are not mandatory functions of third class boroughs. Thus, the Haines Borough could presumably become a coastal resource district if a service area (or areas) encompassing the coastal zone outside the City of Haines was established. But until this step is taken, the Haines Borough is not a coastal resource district. AS 38.05.037(b) conveys authority to the Division of Lands in the Department of

Natural Resources to exercise its zoning power within any portion of a third class borough covered by the Alaska Coastal Management Program, if the municipality has not done so.

(3) Home rule and first class cities outside of organized boroughs with planning and zoning authority. AS 29.43.040 gives mandatory planning and zoning powers to home rule and first class cities outside of organized boroughs with these powers. Each of these home rule and first class cities is then, by definition, a coastal resource district. Home rule and first class cities that are coastal resource districts include the cities of:

Cordova	Nome
Craig	Pelican
Dillingham	Petersburg
Haines	St. Mary's
Hoonah	Skagway
Hydaburg	Unalaska
Kake	Valdez
King Cove	Wrangell
Klawock	Yakutat

AS 46.40.190(a) allows a city to include itself within an adjacent coastal resource service area (defined and described in a subsequent section of this chapter) if the city's governing body consents by resolution, and a copy of the resolution is filed with the Commissioner of Community and Regional Affairs. Such an action would presumably remove a city from its status as a separate coastal resource district. The State Attorney General has determined that cities that wish to include themselves in coastal resource service areas must decide to do so before any elections are held to form the service area. In this way, the residents of the city may vote on the question of formation, as well as run for, and vote for, the members of the service area planning board. Also, the voters outside the cities will know whether or not the cities will be a part of the service area when they vote.

(4) Second class cities outside of organized boroughs' planning and zoning authority, which have an established planning commissions and,

in the judgment of the Commissioner of Community and Regional Affairs, have the capability to prepare and implement a district program. Under AS 29.43.040, second class cities may assume planning and zoning authority; but planning and zoning is not mandatory. District boundaries would coincide with municipal limits, as described in (3) above.

The Alaska Coastal Management Act does not set a deadline for determining the capability of second class cities to develop and carry out district coastal programs. For this reason, along with the strong theme of responsiveness to local concerns embodied in the Act, the Department of Community and Regional Affairs has taken the position that rather than making a single, all-encompassing evaluation of second class city capabilities, it will consider each city expressing interest on a case-by-case basis. At present, most second class cities probably do not possess the requisite capability of being coastal resource districts. The cities of Whittier and Tenakee Springs are, to date, the only second class cities which have expressed the intent to develop a district coastal management program for their area.

(5) Coastal resource service areas established and organized under AS 29.03.020 and AS 46.40.110-80. Coastal resource service areas may be organized to develop district coastal management programs in the remainder of the Unorganized Borough. Because of special problems faced in the Unorganized Borough, a separate section dealing with service area organization and operation has been developed.

It should also be mentioned that ACMP is cooperating with other local governments which are not districts in the legal sense because they are organized under federal, rather than state law. These are the Indian reservations and villages organized under the Indian Reorganization Act. These areas are legally not a part of Alaska's coastal zone because the lands involved fall under the definition of "excluded lands" found in the federal Coastal Zone Management Act. However, the state does share common interest with these areas, and, in the case of the Metlakatla Indian Reservation, a grant for the development of coastal management policies has been made. While such funding is important to help build an awareness of coastal issues and a management approach, funding for implementation of a "local program is not permitted under Federal regulations, since Indian lands are excluded from the program. Cooperative ventures between the state, or districts, and these excluded areas will be encouraged in implementation of ACMP.

Section (c): Coastal Resource Service Areas General Information

Alaska is of immense size, but much of its small population is concentrated in the urban areas. This results in large areas having insufficient population to support a regular local government. The legislature, in attempting to cope with the vast areas having no local government, designated the entire unincorporated area as the Unorganized Borough, and provided various means by which services could be delivered to areas within it. It should be noted that there are many cities located in the Unorganized Borough, and a number of these cities have the powers to become districts in their own right. Still, the area covered by these cities is very small in comparison to the vastness of the unincorporated area. Some basic governmental services are provided to the Unorganized Borough directly by the state. Police protection is one example. In other cases, areas of the Unorganized Borough may be partially organized for specific purposes. Such lesser forms of organization are called "service areas" and are provided for in AS 29.03.020:

> *Allowing for maximum local participation, the Legislature may establish, alter, or abolish service areas within the Unorganized Borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing area, by incorporation as a city, or by annexation to a city.*
> (emphasis added)

Recognizing the need to provide Unorganized Borough residents with an opportunity to participate in the development of district coastal management programs, and the lack of an existing areawide mechanism through which this could be accomplished, the legislature provided for the creation of coastal resource service areas in Article 2 of the state Coastal Management Act. A coastal resource service area becomes a coastal resource district (just as organized boroughs with planning authority are) following a special organization election.

Service Area Boundaries

Legislation was passed in 1975 which provided for the creation of special service areas to furnish public education in the Unorganized Borough. The Unorganized Borough was divided into educational service areas generally using the boundaries of the regional corporations established under the Alaska Native Claims Settlement Act. The units that were established are called "regional educational attendance areas" (REAAs). Each REAA was delineated to contain a culturally, linguistically, and socio-economically homogeneous area. Also considered in establishing REAA boundaries were transportation and communications systems, drainage basins and other identifiable geographic features, and municipal or other governmental or regional boundaries.

A coastal resource service area contains the area defined by one or more of the existing REAAs. AS 46.40.120 allows the Commissioner of the Department of Community and Regional Affairs to place two or more adjacent REAA's containing a part of the coastal area in a single coastal resource service area after a public hearing is held in the area affected. This statute sets criteria to be applied in considering combinations of REAAs, and required all determinations to be made by December 4, 1977.

The Department of Community and Regional Affairs conducted a number of public hearings, with the Commissioner rendering a determination dated December 2, 1977. The Commissioner's major finding was that a determination was generally premature, and that given the strong emphasis on responsiveness to local conditions embodied in the Alaska Coastal Management Act, the fact that guidelines and standards for the Alaska Coastal Management Program had yet to be adopted by the Coastal Policy Council, and the fact that Unorganized Borough residents were not sufficently conversant with the options offered by the Alaska Coastal Management Program, a postponement of the deadline was strongly recommended. A statutory amendment, allowing a determination on the combination of REAA's to form a coastal resource service area to be made after December 4, 1977, as long as the determination preceded actual organization, was incorporated into the ACMA by SB 388, passed in 1978.

To date, significant interest has been expressed in combining REAAs 6 and 7 in the Bristol Bay region. REAA's 6 and 7 were combined in the December 2, 1977 determination. REAA's 3 and 4 in the Yukon-Kuskokwim

Delta Region were combined on December 18, 1978.

Organization

Organization of a coastal resource service area may be initiated in three ways:

1) Submission to the Council of a petition signed by a number of registered voters equal to 15% of votes cast in the service area at the last state general election; or,

(2) Submission to the Policy Council of a resolution approved by 25% of the city councils or traditional village councils within the service area; or

(3) The Policy Council may decide to consider organization of a coastal resource service area because it appears that a major economic development activity will occur in the area.

In the case of a locally initiated petition or resolution sent to the state, the Council transmits the proper petition or resolution, and requests the Lieutenant Governor to conduct an organization election, which must be held within 60 to 90 days after receipt of the petition, resolution or direction. If the vote is certified, the coastal resource service area is organized (i.e., it becomes a coastal resource district), and a district coastal management program must be submitted to the Council 30 months from the date of certification. If the vote is negative, the Council may take no further action, unless it appears that a major economic development activity has or will occur and the Council chooses to take action.

A major economic development activity"... *includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in water of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the Council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal waters of the State."* (AS 46.40.160(b)). If the Council decides to

consider organization of a coastal resource service area, one or more public hearings must be held in the proposed area. Following this, a majority of Council members may direct the Lieutenant Governor to conduct an organization election.

Not less than 60 nor more than 90 days after certification of an affirmative organization election, the Lieutenant Governor will provide for an election of the coastal resource service area board.

The Commissioner of Community and Regional Affairs may, after consultation with residents, divide the service area into sections for the purpose of nominating and electing coastal resource service area board members. If sections are set, each board member must represent, as nearly as practicable, an equal number of persons. Each section must be compact and contiguous and, again as far as practicable, be culturally, linguistically, and socio-economically homogeneous. In any case, board members are elected on an at-large basis.

Following the certification of election results, the seven-member coastal resource service area board takes office and assumes the responsibility for developing the district program in compliance with the guidelines and standards. The service area also becomes eligible for financial assistance at this time.

If a service area which has been organized fails to make substantial progress in the preparation of an approvable management program within 18 months of election certification, or has not submitted a program to the Council within 30 months of certification, the Council will meet with the service area board to determine whether the board is capable of completing a program within established time limitations. The Council may request the Department of Community and Regional Affairs to complete the district program.

Review

A district coastal management program prepared for a coastal resource service area must be submitted for review to each city and village within the service area before the program is adopted by the

board or the Department of Community and Regional Affairs. (A "village" is an unincorporated community where at least 25 persons reside as a social unit.)

Within 60 days of submission to a city or village, the city council or traditional village council must either approve the program or enter objections to all or any part of the program.

Objections by a city council are limited to program elements affecting resources or use of resources within two miles of the village. They should be detailed and specific. New matter submitted by a city or village which is consistent with the guidelines and standards must be accepted, and the district coastal management program modified accordingly.

If cities and villages approve the program, or if cities and villages fail to object within the allotted time, the coastal resource service area board or the Department of Community and Regional Affairs may adopt the district coastal management program as offered.

Following adoption of the district coastal management program by the board or the Department of Community and Regional Affairs, the program will be submitted to the Policy Council for review and approval as provided for review and approval as provided for in the guidelines and standards.

Implementation

An approved district coastal management program for a coastal resource district which does not have and exercise zoning or other controls on the use of coastal area resources is to be implemented by appropriate state agencies. Implementation is to be in accordance with the statement of needs, policies, objectives and standards adopted by the district in its program.

Section (d): District Program Development - Regular and Service Area

Procedures for developing district coastal management programs and provisions for their review, approval and implementation are found in the guidelines and standards, Title 6, Chapter 85 of Alaska's Administrative Code. Ten elements of district programs are described. These elements need not be completed in a sequential fashion, nor set out as discrete parts of the district program. Districts need only demonstrate compliance, through an appropriate local approach, with the requirements of the guidelines and standards and the Alaska Coastal Management Act. For purposes of discussion, each of these ten elements is described individually:

Needs Objectives and Goals

Each district program must describe coastal management needs and program goals and objectives. If a district already has a comprehensive plan governing land and water resource uses, the district's coastal program is to be based on the plan.

Organization

Each district must also describe how it is organized to develop and carry out its coastal program, and identify staff, financial needs, and any reorganization necessary.

Boundaries

District programs must map inland and seaward boundaries of the coastal zone. Prior to Council approval of a district program, initial boundaries encompass the "zone of direct interaction" and "zone of direct influence," as defined in Biophysical Boundaries of Alaska's Coastal Zone. (Refer to Chapter 4 for an explanation of these terms). Final boundaries of the coastal area subject to a district program must be mapped to enclose those lands which would be included in the coastal area and subject to the district program if they were not subject to the exclusive jurisdiction of the federal government. This provision supplies a definition of the area subject to district program jurisdiction that will allow for the anticipated transfer of lands under the Statehood Act

and the Alaska Native Claims Settlement Act without boundary redefinition. Ownership maps, of course, will be subject to revision as transfers occur. District defined boundaries may diverge from the initial boundaries if they:

> *(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and*
>
> *(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands and beaches (6 AAC 85.040.)*

Providing the criteria are met, final district boundaries may be adjusted to reflect new or more detailed resource information and may be based on political jurisdiction. The Coastal Policy Council, through its oversight and review functions, is responsible for ensuring that district coastal area boundaries are compatible with those of adjoining areas.

Resource Inventory

District programs must contain a resource inventory which describes:

(1) habitats within and adjacent to the district;

(2) major cultural resources within and adjacent to the district (This refers to a broad range of social and cultural factors and man-made facilities, including demographic and financial resources, utilities, major recreational and transportation facilities, etc.);

(3) major land and water uses and activities conducted within and adjacent to this district;

(4) major land and water resource ownership and management responsibilities within and adjacent to the district; and

(5) major historic, prehistoric, and archaeological resources within and adjacent to the district.

Resource Analysis

Based upon the resource inventory, a district program must also contain a resource analysis that includes:

(1) significant changes in any of the conditions portrayed in the resource inventory described above;

(2) an evaluation of the environmental capability and sensitivity of resources (including cultural resources) and habitats with respect to accommodating various uses; and

(3) an assessment of present and anticipated needs and demands for coastal resources.

Subject Uses

District programs must describe land and water uses and activities subject to the program. These uses and activities must include:

(1) coastal development,
(2) development in geophysical hazard areas,
(3) recreation,
(4) energy facilities,
(5) transportation and utilities,
(6) fish and seafood processing,
(7) timber harvest and processing,
(8) mining and mineral processing, and
(9) subsistence.

Further, district programs must address all uses that may affect the three types of resources specifically addressed in the ACMP Guidelines and Standards. These are:

(1) habitats;
(2) air, land and water quality; and,
(3) historic, prehistoric, and archaeological resources.

Proper and Improper Uses

Each district program must describe uses and activities, including uses of state concern, considered proper and those considered improper within the coastal area.

Uses of state concern are defined in AS 46.40.210(6).

Policies

A key element of a district program is the policies for those land and water uses and activities subject to the program. Policies must be sufficiently comprehensive to apply to all uses, activities, and areas in need of management; specific to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be approved; and enforceable to ensure their implementation.

Areas Which Merit Special Attention

Coastal resource districts are also responsible for designating and developing management policies for areas which merit special attention within district coastal area boundaries. Areas which merit special attention are defined in AS 46.40.210(1) and in 6 AAC 80.160.

Implementation

District programs must include a description of the methods and authorities which will be used for implementation. Examples which might be applied include: land and water use plans; municipal ordinances and resolutions, including zoning and subdivision ordinances and building codes; state and federal statutes and regulations; capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources; cooperative agreements and memoranda of understanding; purchase of development rights; and coordinated project or permit review procedures. Methods and authorities should be adequate to insure program implementation and, if not, the additional steps which will be necessary must be specified.

Public Participation

District programs must include evidence of significant and effective opportunities for public participation during program development and implementation.

At least two public meetings are to be held in a district during program development, to inform the public and receive comments on the program. A brief summary or report of the matters considered at public meetings held is to be prepared by the district, made available to the public, and retained for inclusion in the record file described in review and approval procedures.

At least 60 days before giving conceptual approval to the district program, or a significant amendment to it, the district must give public notice of the proposed action by advertisement in a newspaper of general circulation within the district. The notice must specify the time and place of a public hearing on the proposed action, which may not be held any sooner than 30 days after first publication. At the hearing, each interested person will be given the opportunity to present statements, orally or in writing. Districts must also insure that, when requested, translation into appropriate Native languages is provided.

Districts must also provide, in a timely manner and an understandable form, information explaining: the district coastal management program; public participation requirements during program development; how and when the public may participate in program development; what related information is available; and where this information may be obtained.

Coordination and Review

Districts must provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and others with a significant interest in coastal resources or who are or may conduct uses and activities that will or may have a direct and significant impact on the district's coastal area.

Section (e): District Program Review Procedure

This procedure is designed to meet both the legal requirements of Council review and approval, and to assure timely and adequate review opportunities for state and federal agencies and the public.

During the development phase of the program, the districts must submit regular progress reports, including early drafts of segments of the district program, and provide for state, federal and private involvement in their development process.

The formal procedures begin at the point where the district has generally completed its basic work, and its program is in a draft document stage. The district has one or two hundred copies of its draft program document, called the "review draft," printed. (The Department of Community and Regional Affairs may do this if the district has limited printing capability.) Its publication does not imply approval by the district, but only that the material in the draft is under consideration.

Here is the approval process:

Step 1: District prints review draft and circulates copies within the district for review, sends 50 to 100 hundred copies to the Department of Community and Regional Affairs for distribution and, in consultation with the Department of Community and Regional Affairs and Office of Coastal Management, schedules one or more public hearings 30 to 60 days from the date of transmittal to the Department of Community and Regional Affairs. That department sends copies of the draft to state and federal agencies, and to private interested groups if requested. The Office of Coastal Management also gets a copy.

Step 2: A public hearing is held within the district. (There may be more than one.) Any person or agency may comment. All who comment, whether at the hearing, or in writing to the district prior to the hearing, are entitled to receive OCM's recommendation in Step 5.

Step 3: After the hearing, the district will respond to the comments made. This can be done in either a new draft of the district program document or an addendum. When the changes are made, the draft containing those changes is made available for public inspection for at least 30 days.

Step 4: The governing body of the district, or the board in a service area gives "concept approval" to the changed program document, which is called the "concept approval draft." The concept approval draft is then officially transmitted to OCM, which receives it on behalf of the Council. Also transmitted is the record of the hearing(s), including all comments received in writing. (Note: The governing body may, at the time of concept approval, make further changes, thus the "concept approval draft" could constitute yet a third version of the district program.)

Step 5: When OCM receives the concept approval draft and the hearing material a 90-day time period begins, by the end of which the Council must give approval to all or part of the program, or determine and declare which parts of the program are not approvable. Within 30 days of receipt of the concept approval draft OCM will conduct its own review and make recommendations. These recommendations will then be sent to the district and to other interested parties. Also at this point, OCM will send copies of the concept approval draft to other parties, particularly the federal and state agencies. (Note: OCM is obligated to send its recommendations to any person or agency who commented at the public hearing held by the district, whether orally or in writing, at or before the hearing. The extent to which OCM can also send copies of the concept approval draft along with the recommendations will depend on the number of commentators and the size of the document. The concept approval draft would, in any case, be available for inspection at convenient places in the district and elsewhere in the state.)

Step 6: During the second 30-day interval of the 90-day time period, any person who received OCM's recommendations may comment to the Council in writing. (Note: this means that a person must have commented to the district first in order to participate in this phase of the process. This lends strength and meaning to the district hearing, and encourages the resolution of problems at the district level.) The deadline for these comments is the 60th day of the procedure.

Step 7: By the 70th day, OCM must submit its response to the comments on its recommendations to the Council (Note: By this point, the Council has had copies of the concept approval draft and the OCM recommendations for a little over 30 days, and is just receiving the comments by others and OCM's reactions to those comments.)

Step 8: By the 90th day, the Council will have held a meeting and taken an action on the concept approval draft. By this point, the state and federal review, including OCZM review for the purpose of including the local program into the federally-approved ACMP, will have occurred. (Note: see discussion of incorporation of district programs into the federally-approved ACMP in Section f.) The Council action may be full approval, partial approval, or refusal to approve. In the case of full approval, the procedure continues to Step 9; if partial or no approval, then a special procedure begins to allow the Council and the district to resolve the problems that prevented full approval. This will result in a new draft of the district program document, or a further addendum.

Step 9: This step begins when a version of the district program document has received both concept approval from the district (prior to submittal to the Council) and approval by the Council. This draft is called the "council approved draft," and is returned for final approval by the district. This is done for two reasons. First, the district should directly approve any changes made in the concept approval draft made by the Council; and second, full district approval must be made by ordinance, which is a more formal and binding action than

concept approval. After the district has made final approval of the Council approved draft, it is returned to OCM for processing in the legislature. At this point addended material may be incorporated into the main body of the draft. This will depend on the amount of time remaining before the beginning of the legislative session. Also at this point, the district may begin implementation of the program under its own authority if the district has planning and zoning powers provided by Title 29 of the Alaska Statutes. State and federal consistency provided by ACMA and CZMA are not available to the district at this point.

Step 10: The Council and district approved draft is submitted to the legislature by OCM on behalf of the Council and the district. This must occur before the 10th day of the regular session, which usually occurs in late January or early February of each year. The district is free to proceed with implementation of its program prior to this time, since it has been adopted by local ordinance and is in force under the planning and zoning authorities of the district, but the program does not have status as a part of ACMP until the legislature has ratified the Council's approval. Incorporation of a district program as part of the federally approved ACMP is discussed in the following section.

Step 11: After the legislature has approved the district program, it is returned to Office of Coastal Managment and the district. At this time the final program document may be printed.

The Council has recently adopted changes to the guidelines and standards that would extend "standing" to participate in the later stages of its review of a district program to a range of persons other than these who participate in the district's hearing. These changes require that the OCM recommendations be sent to all persons who have requested the recommendation in writing, and would allow comments by such persons on the recommendation within 30 days after its service. Broad public notice of the recommendation would also be required, and any person not served with the recommendation would have the right to comment on it within 30 days after notice was published. OCM would

respond to all comments within 30 days after the deadline for their submission had passed. If mediation sessions between the Council and a district are held under AS 46.40.060(b), any person would be allowed to attend the sessions.

This rather complex procedure results from the requirements of the Alaska Coastal Management Act itself and the need to assure that the Council will be taking action based on a solid record of comments and findings. The legislature may choose, at some future time, to delete its role in district program approval. This will speed matters to some extent and allow district programs to take effect at any time of the year. As the situation stands, district programs will be taking effect some time after the beginning of each legislative session (January), and therefore, will require submissions to the Council in the summer or early fall of the preceding year in order to match time with the legislature.

Amendments

The same procedure is used for substantial amendments to district programs. Minor amendments, such as small zone changes or conditional uses, will not be subject to the procedures if the initial district program forecasts them and provides adequate procedures at the district level to assure that the ACMP Guidelines and Standards will not be violated.

Section (f): Incorporation of District Programs Into Federally - Approved State Coastal Programs

In order for district programs to acquire the same status and authorities under federal law as a federally approved state program, the district programs must officially be incorporated into the state program by the federal Office of Coastal Zone Management as provided in the preceeding section. Approval under the federal CZMA would make the districts eligible for funds to implement their programs, and would add

the district programs to the body of policy that is the basis of federal consistency determination. Federal regulations (15 CFR 923.80 et seq.) provide procedures for changes in state programs. The addition of a district program to the state program would be treated according to the requirements of these regulations.

In March 1979, the federal Office of Coastal Zone Management published its final regulations, including provisions pertaining to amendment of federally-approved state coastal management programs. Proposed rules published for review and comment in the Federal Register on December 29, 1978, had proposed to treat the incorporation of local programs (in states using that technique) as amendments in every case. Comments received on the proposed rules led the agency to revise that approach. It was found inappropriate to hold local program incorporation to a different standard than other program changes. This conclusion is particularly reasonable since the concern in evaluating amendments to approved programs, that is, the significance of changes in enforceable policies or authorities, is precisely the focus of questions raised on the DEIS about local program incorporation. Differences among state programs in the role of a local program in the overall management scheme, or even differences within a state in the approaches used by various local entities in interpreting state policies, preclude reasonable treatment of local programs uniformly. Rather, OCZM will evaluate on a case-by-case basis any proposed changes to a state program, including state adoption of a local program, and determine whether such adaption should properly be treated as routine program implementation or as an amendment.

In making such a determination, OCZM will review proposed adoption of a district program (or other program change) to see if it constitutes "substantial changes in or substantial changes to enforceable policies or authorities related to:

(1) boundaries;
(2) uses subject to the management program;
(3) criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
(4) consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements that are other than local in nature." (15 CFR 923.80)

If OCZM finds affirmatively in one or more of the above subject areas, the proposed change will be considered in accordance with the requirements of 15 CFR 923.81-82. Those procedures require OCZM to determine if the proposed change would impair the approvability of the state's program under federal regulations and whether the state followed proper and approved procedures in involving affected interests in making or proposing the change. If the change is preliminarily acceptable under the preceding tests, a review is necessary to establish whether approval of the change would constitute a major action with significant environmental effects under NEPA, requiring an EIS. This decision process, and its relationship to the ACMP's state regulations concerning district program approval, is presented in a somewhat simplified fashion, in Figure 1.

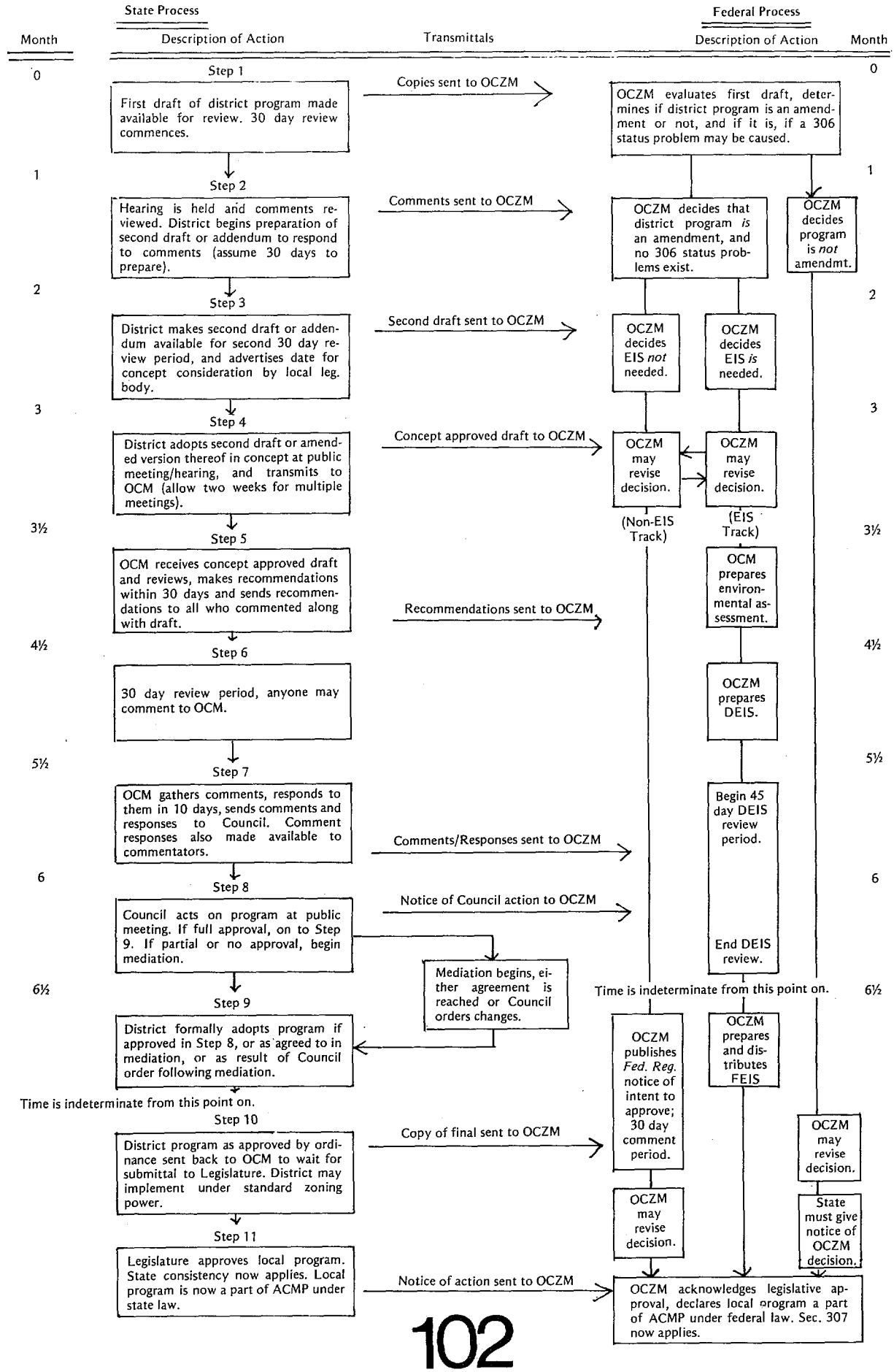
If the state submits a district program as a routine program implementation, OCZM will, after reviewing comments submitted in support or opposition to such treatment of the district program within four weeks, concur with or reject the state's contention. If OCMZ concurs, the state must publish notice of the concurrence thus establishing the effective date for the federal consistency requirements. If OCZM does not concur that the proposed program represents a routine program implementation, the state will be advised to submit the proposal as an amendment. A concurrence determination may be revised if changes occur during the local program approval process.

Section (g): Federal Involvement and Review of District Management Programs

OCM has procedures for incorporation of district programs that include broad review and consultation. The guidelines and standards have been recently revised to assure that all interested parties, including state and federal agencies, have ample opportunity to participate in the review process that precedes district program approval. OCM feels that these procedures provide assurance that the federal agency views of the national interest in facilities of greater than local concern are carefully considered. The opportunities for federal involvement in, and review of, district coastal management programs are summarized below.

FIGURE 1

DISTRICT COASTAL MANAGEMENT PROGRAM APPROVAL PROCESS



These procedures occur in three phases:

1. federal agency involvement during the preparation of the local program;

2. federal agency participation in the review of the local program; and

3. federal agency opportunities after a district program has been approved by the legislature.

See also Appendix 10 for additional information about agency involvement in district program development.

1) Federal agency involvement during preparation of the local program - Before a district begins preparation of a local program, all federal agencies will be notified by OCM. A copy of the scope of services embodied in the grant contract between the state and the district will also be provided to federal agencies. During the course of the development of the district program, the district will be obligated to solicit the advice and contribution of federal agencies. In turn, the district will also provide copies of draft materials and other interim products in an attempt to refine the areas of common concern between the district and federal agencies. The Office of Coastal Management will facilitate this process whenever and wherever possible. This may include setting up meetings between the federal agencies involved with the district, or mediation of disputes between the district and a federal agency. Additionally, there may be information, or even direct services, that the federal agency could provide to the district. OCM would act to determine what services might be available from a federal agency for a given district, alert the district to the availability of these services, and in any other way facilitate the two-way delivery of services and improvement of communication.

2) Federal agency participation in the review of the local programs -- This period begins when a local government completes a full draft of its district coastal management program. There are three levels of approval for district coastal programs. They are:

a. the district itself;

b. the Alaska Coastal Policy Council;

c. the Alaska Legislature.

It is important at this point to note that the structure of the Alaska Coastal Management Program has been designed to encourage the maximum amount of problem resolution at the local level; therefore, participation at the local level of review is extremely important. As described earlier, the local government will prepare a draft of its program called a "hearing draft" and will submit this to the Office of Coastal Management. OCM will insure that it is distributed to all relevant federal agencies (those that expressed interest in reviewing the hearing draft). Federal agencies will then have a period of time in which to examine the hearing draft and respond to the local government. The response may be either in writing, or orally at a public hearing that will be held by the local government. The local government will use the federal comments it receives, along with other comments, to revise the hearing draft into a "concept draft". Local response to comments will be by means of actually making the changes requested in the concept approval draft, or by corresponding with reviewers and reporting how the concerns of the reviewer have been addressed, and why suggestions that were not adopted were rejected. In many cases, the problems of a reviewer can be dealt with by clarifications in the text of the district program document, or by simply noting another portion of the hearing draft which responds to the reviewer's concern. OCM will monitor this aspect of comment response carefully, and will assure that all federal comments are responded to and all federal letters answered. The record file accompanying the concept approval draft must contain all of the comments on the review draft and local response to those comments. OCM will make a finding as to the adequacy of the local program. This will be sent, along with a copy of the second draft of the local program document, again to interested federal agencies. Federal agencies which commented on the hearing draft will be asked to comment a second time, and address the Council if they wish.

Upon Council approval, the district program document is sent back to the district for full adoption by the district, and then transmitted to the legislature through OCM. Copies of the Council and district approved draft would be made available to the federal agencies at this

time. At this time again, the federal agencies will have the opportunity to comment by addressing the legislature directly, prior to legislative action on the program. At this point the legislature approves the local program for the purposes of state law.

(3) Federal agency opportunities after a district program has been approved by the legislature. -- If, after the legislature has approved a district program, a federal agency continues to believe that its legitimate concerns have not been addressed adequately, it will have the opportunity to present its views to OCZM by means of the "serious disagreement" procedure which is available to any federal agency at any time (see 15 CFR 923.54).

Local Response to National Interest

Another issue which has arisen in the development of ACMP and the guidelines for local programs is the matter of local response to federal concerns. First, federal concerns are in the ACMP definition of uses of state concern, and thus districts may not arbitrarily or unreasonably restrict or exclude uses of national concern.

Second, federal agencies will have had the opportunity to participate in the development and approval of local programs, and thus a chance to express their concerns in the local context, and in light of local desires. The Office of Coastal Management is obligated to review not only the district program but the comments received at the district hearings. By this means, OCM will be able to determine if federal comments were properly considered in district revisions to the review draft, and the federal agencies will be able to determine if OCM has done this when they see OCM's recommendations on the program.

Finally, at the state level, unsatisfied federal agencies will be able to approach the Council directly either when the Council meets to act on the district program or at subsequent meetings held to discuss implementation of the program. Even beyond this, an aggrieved federal agency may appeal to the Department of Commerce for exclusion of the local program from the federally approved Alaska Coastal Management Program.

Section (h): Status of District Programs - Fall 1979

Coastal resource districts range in size from the Municipality of Anchorage, a metropolitan area with some 200,000 residents which offers a full complement of services and facilities, to the numerous small villages and cities of rural Alaska, which are dispersed settlements with low populations and limited municipal government staff and resources. Some areas, such as the Ketchikan Gateway Borough, have remained relatively stable, while others, as exemplified by Cook Inlet region boroughs, have experienced explosive growth. With this extreme variability, coastal resource districts have made uneven headway in the completion of district programs. In addition, uncertainty surrounding the contents and ultimate fate of the guidelines and standards, as well as constraints imposed by the availability of funding and the timing of grant awards, have discouraged commitments by some coastal resource districts.

Funds were allocated for local coastal program development for the first time, as part of the third-year grant to the state. Some $200,000 was targeted for municipalities, with the Department of Community and Regional Affairs serving as pass-through agent. These funds pre-dated the passage of the Alaska Coastal Management Act, definition of coastal resource districts, and the development of guidelines and standards.

In anticipation of state legislation, the Department of Commmunity and Regional Affairs developed preliminary guidelines for local coastal program development. These guidelines were to serve as ground rules in soliciting and evaluating grant applications, awarding grants, and administering grant contracts with local governments.

In the fourth-year program development grant for ACMP, $520,000 has been allocated for coastal resource districts. Grants have been made to the:

---Cities of Craig and Klawock, to complete their joint program;

---Ketchikan Gateway Borough, to add a coastal management element to its recently completed comprehensive plan, and comply with the guidelines and standards;

---City of Cordova, to simultaneously develop a coastal management element to its recently completed comprehensive plan in compliance with the guidelines and standards, and a coastal energy impact strategy. (A combined grant applying both coastal management and CEIP funds was awarded.)

---City and Borough of Juneau, to complete second phase of 2-phase program;

---North Slope Borough, completion of Prudhoe Bay Area CZM Program;

---Kenai Peninsula Borough, to complete Phase I of a 3-phase program;

---Municipality of Anchorage, to complete second phase of a 2-phase program;

---City of Valdez, to complete Phase I of a 2-phase program;

---Matanuska-Susistna Borough, to complete Phase I of a 2-phase program;

---City of Haines, to complete program;

---City of Sitka, to complete Phase I of a 2-phase program;

---Annette Islands Indian Reserve (Metlakatla), to complete program; and

---Protectors of the Land, to implement educational program towards possible service area organization.

A grant with the City of Petersburg to complete Phase I of a 3-phase program is anticipated soon. In addition, a number of districts are engaged in related planning and management projects which will facilitate coastal program development. While a number of districts have yet to take affirmative action toward complying with requirements

of the Alaska Coastal Management Act and the guidelines and standards, roughly 85% of the state's coastal population resides within districts where substantial progress has been realized.

Under prevailing statutes, district coastal programs must be submitted to the Coastal Policy Council for approval within 30 months of the effective date of the Act (i.e., by December 4, 1979), or, in the case of a coastal resource service area, within 30 months of the organizational election.

In its Resolution No. 7 of December 15, 1978, the Council asked the legislature to permit the Council, in its discretion, to extend the deadline for submission of district programs on a case-by-case basis for a period of up to 54 months from the effective date of the Act or from the organizational election of a coastal resource service area (to December 4, 1981). If the legislature grants the Council's request, the Council and the districts obtaining extensions will probably conclude agreements incorporating compliance schedules for district program completion. If the Council suspects that a coastal resource service area will not be able to complete its program within the alloted time, the Department of Community and Regional Affairs may be requested to complete the program. DPDP would assure that DCRA had the necessary funding to do this. (See AS 46.40.170 of ACMA in Appendix 1 for further details.)

District program development efforts have expanded and intensified since the guidelines and standards became effective. As additional funds become available following state program approval by OCZM, coastal resource district residents become more familiar with ACMP, and coastal resource service areas begin to organize, this effort will be expanded even further.

Chapter 4: Areas Subject to the ACMP

Section (a): Introduction

Both state and federal coastal management programs realize that management of coastal areas must extend some distance offshore and some distance onshore. The first and most important question about the extent of the program, then, is the delineation of the boundaries of the coastal area to be managed. Within these boundaries, however, there will be areas which have particularly important characteristics and that deserve special attention in management. The state and federal programs both incorporate this concept. This chapter sets forth how the boundaries of Alaska's coastal zone are determined on an initial and final basis, and also describes how special areas within these boundaries will be identified, designated for special management, and managed.

Section (b): Boundaries for ACMP

Section 305(b)(1) of the Coastal Zone Management Act of 1972 requires the management program for each coastal state to include:

> *An identification of the boundaries of the coastal zone subject to the management program.*

Coastal zone management approval regulations 923.30-923.34 divide the boundaries into four elements: the inland boundary, the seaward boundary, areas excluded from the coastal zone and interstate boundaries (which do not apply to Alaska).

Inland boundaries must include six elements: "those areas the management of which is necessary now or is likely to be necessary in the near future to control uses which have a direct and significant impact on coastal waters,..." plus special management areas, transitional and intertidal areas, salt marshes and wetlands, islands, and beaches.

Seaward boundaries are established as "the three mile outer limit of the United States territorial sea."

To be excluded from state coastal zones are "those lands owned, leased, held in trust, or whose use is otherwise subject solely to the

discretion of the Federal Government." The federal boundary requirements call for definable geographic boundaries, but the main criterion for determining the boundary is non-geographic, that is, one must forecast likely uses, survey the nature of the coastal zone, and determine a boundary on the basis of a mix of the findings from these efforts. To have done this in detail for the entire 33,000 miles of Alaskan coastal waterfront would have been a massive, and very expensive, undertaking.

The method which was used for determining the ACMP boundaries was to survey the general relationships between the marine environment and the terrestrial environment. These include geophysical relationships such as water flow, salt water intrusion, tidal actions, erosion, wave fetch, salt spray, flooding, storm and tsunami surges and run-up, ice movements, glacial activity and the like. The relationships also include biological links between the marine and terrestrial environments. These include the habits and habitats of anadromous fish, polar bears, sea birds, marine mammals such as walrus and seals, and other animals and plants that have a unique relationship to the land/water area.

With all of these relationships established, the method simply declares that an impact on these relationships could result in an "impact on the coastal waters," but ACMP went further, and declared that an impact on animals using the coastal waters, including anadromous fish, is part of the definition of impact on coastal waters.

The next step was to map these relationships. This was done in Biophysical Boundaries of Alaska's Coastal Zone, a set of 65 maps and commentary produced for ACMP by the Department of Fish and Game. This document identifies the "landward and seaward limits of coastal biological and physical processes which must be considered for effective long-term coastal management."

This is accomplished by dividing the coastal zone into two subzones. The "zone of direct interaction" is "the portion of the coastal area where physical and biological processes are a function of direct contact between land and sea." "The zone of direct influence" is "the portion of the coastal zone extending seaward and landward from the zone of direct interaction...closely affected and influenced by the close proximity between land and sea." A third "zone of indirect influence" extends outward from the zone of direct influence to the limit of iden-

tifiable land/sea relationships. The "zone of indirect influence" is excluded from the legally-defined coastal zone because the land/sea relationships are considerably less direct or significant than those of the other zones.

The full set of ACMP boundary maps is available at either a scale of 1:250,000 or 1:500,000, and one scale or the other is already in the hands of most ACMP participants. Appended at the back of this FEIS are two additional maps showing the entire state. The first map shows major federal landholdings which are classified in special management status. These are lands which will very likely stay in federal ownership for the forseeable future. Not shown on this map are the numerous other federal ownerships which may eventually move into non-federal hands. The map is intended to be illustrative of the federal interest in Alaska. Districts and other ACMP participants will need to obtain more detailed maps of particular regions to have full knowledge of the extent and location of federal lands.

The second map shows the inland and seaward boundaries of Alaska's coastal zone as it exists now. Also shown are the various local governments which will be participating in ACMP. Again, because of its scale, this map is only illustrative, and ACMP participants should obtain the more detailed maps for planning and management purposes.

A third attachment is a guide to the map development process, which illustrates the relationships between the zones of direct interaction and direct influence, and the parameters upon which these boundaries are based.

Zone of Indirect Influence

The mention of the zone of indirect influence requires discussion of something a little more abstract. The federal coastal zone management requirements call for boundary settings that result in a boundary which will include uses which have a direct and significant impact on the coastal waters; yet, the zone is not to go too far inland. In fact,

however, it is possible to imagine activities in any part of Alaska that might eventually have an impact on the coastal waters. So the addition of the zone of indirect influence to the Biophysical Boundaries of Alaska's Coastal Zone recognizes that there are some possible circumstances where an inland event will have impact on the coastal waters, but stops short of including the entire state in the program boundaries. The purpose of including this zone is, in essence, informational. The Alaska Coastal Policy Council selected the line between the zone of direct influence and the zone of indirect influence as the official initial boundary for ACMP, but participants in ACMP should not overlook the third area, and should consider the rationale that led to its establishment.

As an example of how the boundary system works, in the Beaufort Sea region, the zone of direct interaction extends landward to the extent of storm surge intrusion, averaging two to three miles inland, and seaward to the limit of shorefast ice and the shear zone. The zone of direct influence extends from the zone of direct interaction landward to include optimum water fowl and shorebird nesting habitat, and seaward into the ice pack. The zone of indirect influence extends to the limit of the coastal wet tundra ecosystem, corresponding to the 200-foot land contour and seaward to include major circumpolar and circumpacific migration patterns.

The guidelines and standards govern the boundaries of the coastal resource districts. Districts may plan for areas within their political boundaries only. The Alaska Coastal Management Act does not geographically increase the jurisdiction of local governments in Alaska. Initial district boundaries, prior to Council approval of the district program, are the zones of direct interaction and direct influence, as described in Biophysical Boundaries of Alaska's Coastal Zone. Final district boundaries may diverge from the initial boundaries if they:

(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have direct and significant impact on coastal waters; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands and beaches.

Chapter 4: Areas Subject to the ACMP

The Alaska Coastal Policy Council, in reviewing district coastal management programs for approval, must find that the proposed final boundaries meet the above criteria. In addition, the Council must find that the final district boundaries are:

> *sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska Coastal Management Program.*

The coastal zone boundaries of state owned land outside of coastal resource districts are determined by administrative order. This order establishes the boundaries as the zone of direct interaction and direct influence.

Federal lands in Alaska are excluded from the coastal zone pursuant to sec. 304(1) of the Coastal Zone Management Act of 1972, which states:

> *Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.*

The boundaries shown on ACMP boundary maps were drawn without regard to ownership. Federal land is excluded from state coastal zones by the federal CZMA however, and the maps should not be interpreted to imply inclusion of federal lands in Alaska's coastal zone. Recognition of this exclusion is noted on the maps themselves.

The maps were drawn in this way for two reasons. First, and most importantly, large parcels of federal land will be moving into non-federal ownership as a result of the Alaska Native Claims Settlement Act and the state's entitlement under the Statehood Act. When these transfers occur, certain lands now excluded from the coastal zone by virtue of federal ownership will be added to the coastal zone. The biophysical boundaries are mapped now to guide the state and districts in determining the areas subject to ACMP after future transfers.

Second, federal activities occurring on federal lands which result in impact on the state's coastal area must be consistent with the state coastal management program. If a federal agency knows where the bio-

physical boundary is, it will be easier to determine whether or not a proposed activity will have an impact on the coastal area, as the boundaries were drawn on the basis of the actual relationships of the coastal lands and waters.

Three additional points should be made to have full understanding of the boundaries. First, Alaska adjoins no other states so no effort is needed to coordinate boundary setting, as required by the federal coastal program approval regulations, although an effort will be initiated with Canada at such time as that nation, or its provinces, should begin a similar effort in coastal management, or if other reasons for such an effort appear as may be the case for OCS development in the arctic region.

Second, the three mile limit is indeed the seaward boundary of Alaska's coastal zone, as required by law. However, the various zones shown on the boundary maps often run further seaward than the three-mile limit. This is done to show the relationship of offshore areas to onshore areas and the shoreline. The area beyond the three-mile limit is excluded under the terms of the U.S. Coastal Zone Management Act, but federal activities on the outer continental shelf should be conducted with thought for impacts inside of the three-mile limit. A federal activity on the OCS which causes impacts on the Alaska coastal zone would have to be consistent with ACMP, at least as far as the impacts are concerned.

Third, the initial boundary maps do show an area on either side of the coastline called the "zone of indirect influence," as discussed above. This should be regarded as primarily informational for ACMP participants. However, the information provided for the zone of indirect influence should be considered in coastal decision-making, as major resource activities (such as large-scale mining or forestry operations) may have impacts of significant effect on coastal waters, and therefore, must conform to provisions of the ACMP. In some cases, the zone of indirect influence may suggest the need to move district boundaries further inland, following more detailed investigation of the land-water relationships.

In general, the ACMP boundary system is designed to concentrate attention in the most critical areas where the need for management is the greatest, and to provide somewhat less attention to areas where management is not so critical. This results in a relative decrease in initial management and planning effort as one moves either inland or seaward from the shoreline.

Copies of the boundary maps showing the interim boundaries have been widely circulated, and a full set is not included with this draft of the ACMP program document. At the end of this chapter is an example of what the boundary looks like in the map set. Copies of the maps are available on request from OCM or the Arctic Environmental Information and Data Center in Anchorage.

Section (c): Special Area Designation and Management in ACMP

The multiple values and uses of all coastal areas, and the inevitable conflicts between various uses and these values, gave rise to coastal management at the state and national levels. The legislation which created both levels of the program declared that within the general coastal areas there would be more specific areas, which had even more value than the coast in general, and that a coastal management program should provide special means to identify and manage these values.

Government at all levels has engaged in special area designation and management for various purposes. ACMP has created two new methods by which special areas may be designated and managed, and there are a number of state and federal programs that now exist for the purpose of identifying, designating, and managing special areas for special reasons. This section will show how these areas are designated and managed for special coastal values in Alaska.

Rationale for Special Area Management

In Alaska, as in other states, much of the coastal area can be managed with only generalized land and water use controls. This in it-

self is expensive, but the fact that the effort must be spread over the entire coastal area results in an inability to properly recognize and manage (with overall program authorities) certain areas that have unique values or fragile characteristics that make them, on balance, more in need of special attention. By adding a special area identification and management element to a state coastal program, the financial and managerial resources of the program may be focused on such areas and detailed management programs may be developed.

The State of Alaska has a number of special area management programs now underway. Until ACMP, however, there has been no single program for identifying and managing special areas for all values. The existing programs in aggregate, however, do address nearly any special value. In addition, local governments also are involved in providing management attention in certain areas, or for certain values.

The identification of special areas is not the exclusive province of the state or local governments. Federal agencies, private organizations and individuals, may know of special areas, or might seek them out, knowing that a process for accommodating such areas is available.

Finally, special area identification and management should take place in a process which recognizes the other interests that which might be affected by such management, assuring that the value of the area is protected without causing other unnecessary impacts.

In light of these considerations, ACMP has its own special area identification, designation, and management element, and can participate in similar programs under other authorities.

Special Area Designation in Alaska

The three methods by which special areas can be designated and managed in Alaska's coastal area are:

Method (a): Council approval of special area designations appearing in district coastal management programs as Areas Which Merit Special Attention.

Method (b): Direct designation of special areas as Areas Which Merit Special Attention in the Unorganized Borough by the Council.

Method (c): Special area designations proposed by state and federal agencies which offer such proposals under authorities other than those provided by the Alaska Coastal Management Act.

Method (a) General Discussion As required by ACMA and the ACMP regulations, districts will designate AMSAs in their programs. Such designations will contain the information called for by 6 AAC 80.160(a), and may be in response to values listed in AS 46.40.210.(1) or 6 AAC 80.160.(b). AMSAs may be proposed in the initial district program submission or in later amendments to the district program. Districts may choose to manage the designated AMSA through their own land use control authorities, or may propose that a different authority be used. If a different authority is used, then whatever procedural steps are required for that authority must be taken before the actual management of the AMSA may begin. Preferably, the additional steps will occur after the Council has acted on the district's AMSA designation. Council action on the district AMSA designation does not supplant whatever additional procedural steps must be taken.

Method (a) Definition of Areas Which Merit Special Attention

The Legislature provided a generic definition of AMSA's in the Alaska Coastal Management Act:

> *"area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their indentification, include:*

(A) areas of unique, scarce, fragile of vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits. (AS 46.40.210.(1))

The Council has added three more categories of areas to this listing:

(1) areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) areas with special scientific values or opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) potential estuarine or marine sanctuaries.

Method (a) Process for Identification

Identification may come from any source, whether governmental or private. The information required in an AMSA recommendation (or designation) is stated in 6 AAC 80.1601.

(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;

(2) a map showing the geographical location, surface areas and, where appropriate, bathymetry of the area;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management scheme, consisting of the following:

(A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area:

(B) a summary or statement of the policies which will be applied in managing the area; and

(C) identification of the authority which will be used to implement the proposed management scheme.

The "management scheme" referred to in (7)(C) above must "preserve, protect, enhance, or restore the value or values for which the area was designated."

Delivery of an identification for method (a) is handled in two ways. If a state agency, federal agency, other local government, or private party makes the identification, it is transmitted to the Office of Coastal Management which will assure that the guidelines and standards requirements have been met, and then forward the identification to the local government involved.

The second way is where the local government itself identifies the AMSA, and then the recommendation, along with all the information called for in the ACMP regulations, is included in the program document for the district coastal management program.

Method (a) Designation

The actual designation of the AMSA occurs with the approval of the district program. This, as discussed in Chapter 3, is a complex process which culminates in the legislative approval of the program. It may be said that the legislature is the final authority for designation of the AMSAs identified in district programs.

The designation of AMSAs can also occur by amendments to district programs, and these follow the same approval process as the initial program. Briefly, the process is as follows:

1. The district makes a hearing draft document of the program or amendment available for comment and hearing.

2. The district revises the document and gives it concept approval, and submits it to the Council.

3. The Council approves the program or amendment, after public involvement opportunities, and in so doing may negotiate changes in the document with the district.

4. The document, once fully approved by the Council, is returned to the district for formal approval by district ordinance.

5. The document, now bearing full and formal approval by both the district and the Council, is sent to the legislature for approval.

Method (a) Management

After the AMSA has been approved, then management of the area on behalf of the particular value which led to its designation begins. The

plan for this management is part of the AMSA recommendation, and is thus approved along with the designation itself. The management plan may be carried out by either state or local authority, depending on what the value of the area is and how it will be used after designation. For example, if an area is determined to have particular value for the recreation of local residents, it might be most appropriate to manage the area through local powers, perhaps acquisition and management as a park. If the AMSA has some value that is important to the state, or to a region larger than the district, then state powers might be more appropriate.

The type and degree of management for an area is decided when the decision is made to establish special management for the area. The state and local decision-makers who are considering an AMSA recommendation will know not only what value is under consideration for protection or utilization, but also exactly how this is to take place. In the past, many special area designation and management programs have been ineffective because the decision-makers, and the public, did not know the effect of the designation decision. In the ACMP AMSA process, the decision is not made until all of the planning is done.

As previously discussed, AMSAs may be designated along with the general approval of a district program, or as a later amendment to a district program. In either case, the management system developed for the AMSA will be devised and approved in the context of the larger program. Thus the effects and impacts of the special area management will be considered at the same time that the uses of the areas around and adjacent to the AMSA are being planned. This will work in the case of AMSA designation by amendment as well, since any change to an existing program should consider the impact of the change on other parts of the program.

Method (b) General Discussion

The Council has provided an additional means by which AMSAs can be designated. Any person may recommend an area in the Unorganized Borough for designation as an AMSA. Any such designation by the Council must contain the information required in 6 AAC 80.160(a). Such recommendations must be submitted to the Office of Coastal Management which must

first determine that the information is adequate before presenting the recommendation to the Council. If the Council approves, and designates the recommended place, actual management of the AMSA for the specified uses or purposes cannot begin until the Office of Coastal Management has arranged for an appropriate managing authority, in most cases a state or federal agency, and until that authority has taken whatever steps may be required by law to gain the powers needed to effectuate the management scheme for the AMSA. The Office of Coastal Management has no powers to directly manage any area.

Method (b) Definition of Areas Which Merit Special Attention

AMSAs are defined for method (b) in the same way as for method (a).

Method (b) Process for Identification

As indicated above, the process for identifying AMSAs in method (b) is that any person, group, or agency may make an AMSA recommendation directly to the Council. This is done by preparing the same type of information that is required for an AMSA in method (a) and submitting it to the Office of Coastal Management. Recommendations under method (b), of course, may only be made for areas in the Unorganized Borough. When OCM receives a recommendation, it will assure that all the required information is included in the recommendation, and then schedule the matter for Council consideration.

Method (b) Designation

As indicated earlier, designation of AMSAs in the Unorganized Borough where there is no service area is directed by the Council. After the Council has designated the area, arrangements then must be made with appropriate state agencies to undertake direct management. This is described below.

Designation will not occur until there have been one or more well-advertised public hearings on the matter, and not until all parties likely to be interested or affected by the designation have been contacted on the matter. The actual amount of time needed, from the point of recommendation to final action by the Council, will vary depending on the type and complexity of the proposed AMSA.

Method (b) Management

After the Council has designated the AMSA under Method (b), the Office of Coastal Management will arrange for the management of the area with the state or federal agency most appropriate to the purpose. The management scheme for the AMSA, which is a part of the designation, would be adopted by the managing agency under its own authority. This adoption process will require additional public review opportunities and hearings. Only after the managing agency takes all steps required by law to adopt the AMSA management plan will actual management begin.

Method (c) General Discussion

The two methods previously discussed are applicable to any of the coastal values listed in the definition of AMSA. Nearly all of these values have been the subject of governmental attention in the past as well as in the present. Method (c) is simply the continued application of these existing government programs, primarily those of the state. The Council can now participate in special area designation in a review and endorsement capacity, and has resolved to do so in the future if Council approval for a special area designation is sought by the agency which operates an existing governmental program for whatever type of coastal value is involved.

Special area proposals offered to the Council by this method are not AMSA proposals, and acquire no authority from the Alaska Coastal Management Act. Endorsement by the Council of such a special area proposal does not supplant any other steps required by law to cause the designation and management of the special area.

Of course, special area designation proposals under method (c) are not obliged to be submitted to the Council except in the sense that the Council is entitled to see special area proposals just as any other person or organization is entitled to public disclosure of governmental intent. OCM, in its capacity with DPDP as the lead agency for ACMP, will monitor all such governmental activity and will review special area proposals for consistency with the ACMP policies.

Definitions of special areas under these other authorities, as well as procedures for identification, designation, and management, all vary

with the type of authority involved. The state and local authorities available for special area designation are listed next. For details of definition, identification, designation, and management, the reader should consult OCM or the state agency or local government most directly connected with the authority.

Tools for Identification and Management (all three methods)

ACMP itself provides considerable authority to local governments to identify and manage special areas. This, in conjunction with existing authorities at the state and local level, amounts to a broad array of agency programs and powers with which to find and manage areas that have particular values. It should be remembered that many such programs are already underway. ACMP can help to coordinate and stimulate these programs.

These are the state and local powers which are available for special area management:

1. State Parks
2. State Recreation Areas
3. State Historical Sites
4. State Game Refuges
5. State Game Sanctuaries
6. State Critical Habitats
7. Estuarine Sanctuaries
8. State Land Classification (for any use)
9. Trading of State Lands
10. Eminent Domain, either at the state or local level
11. Article VII, Section 14, Alaska Constitution, Access to Navigable Waters

12. Article VIII, Section 14, Alaska Constitution, Access to Navigable Waters
13. Article VIII, Section 15, Alaska Constitution, No Exclusive Right of Fishery
14. Local Zoning and and other Development Control Power
15. Endangered Species Protection
16. Department of Transportation and Public Facilities
17. Airport Zoning Act
18. Alaska Housing Authority
19. Alaska Housing Finance Corporation
20. Alaska Industrial Development Authority
21. General Authority of the Department of Fish and Game to Protect Anadromous Fish Streams
22. Joint Federal-State Land use Planning Commission
23. Alaska Historic Preservation Advisory Committee
24. Alaska International Development Commission
25. Development Cities Act (for creation of new cities)
26. Powers of Cities Outside Boroughs
27. Local Improvement Districts
28. Local Capital Improvement Programs
29. Coastal Energy Impact Program

Existing Special Areas Because of its recent beginnings, no special areas have yet been designated under methods (a) or (b) that is, no AMSAs have been designated under ACMA authority. However, quite a number of areas have been designated under by other state and federal authorities. A few examples follow:

1.	NAME:	Old Sitka State Historical Site
	VALUE:	Heritage is the primary value with associated scenic and recreation values
	ACREAGE:	5
	TYPE OF MANAGEMENT:	The area is managed as a historic site unit of the Alaska State Park System.
	LOCATION:	In the City of Sitka, in Southeast Alaska
	OWNERSHIP:	State
	ALLOWABLE USES:	Historical interpretation, recreation and scenic uses are allowable. Uses which would adversely affect these values are of the lowest priority.

DISCUSSION:

The site has been leveled by bulldozing and is covered with grass with a few Sitka spruce at the western end of the clearing. Most of the area which was excavated by archaeologists in the 1930s has eroded. Portion of the eastern half of the area has been covered with a gravel parking lot. Surrounding the site are mountain slopes covered with spruce trees and dense undergrowth. The area has a maritime climate with moderate temperatures and high precipitation. The area is located on Starrigavan Bay.

Old Sitka Site represents a first Russian attempt to check England's expansion into North Pacific area commerce. Events that occurred at the site typify a pattern that was repeated in Russian-Native relations. Careful negotiations, sometimes payment for a trading station, native realization and objection to the arrangement, Russian attempts to

maintain their presence with a show of force and finally an open conflict. The post was established in July of 1799 and destroyed by Tlingits in June, 1802. Not reoccupied by Russians when they returned to the area in 1804; it was occasionally used as a Native camp and cannery site. During 1934 and 1935 the U.S. Forest Service excavated a portion of this site. The site is a National Historic Landmark. Accessible by road from Sitka and located on Starrigavan Bay, the area represents an important potential coastal recreation resource for local residents and visitors to Sitka.

2.	NAME:	Walrus Islands
	VALUE:	Walrus haulout grounds and other wildlife values
	ACREAGE:	8,000
	TYPE OF MANAGEMENT:	The area is a State Game Sanctuary established by the Legislature in 1960.
	OWNERSHIP:	State.
	ALLOWABLE USES:	Generally no use is prohibited outright and oil and mineral exploration and development is allowed, but uses which would adversely affect walrus and other wildlife are of the lowest priority.

DISCUSSION:

In its designation, the legislature found:

(1) the Walrus Islands are the sole remaining place in the state where walruses annually haul out on land and all similar "hauling grounds" in the state which were formerly utilized have been abandoned by walruses due to excessive molestation and slaughter;

(2) the Walrus Islands are uninhabited, and the walruses frequenting them are not required by the state for subsistence utilization;

(3) the Walrus Islands have great importance as a retreat for the Pacific walrus from the standpoints of conservation, scientific value, and tourist interest;

(4) the Department of Natural Resources has taken appropriate action to achieve transfer of title in the Walrus Islands to the state.

3.	NAME:	Fort Abercrombie
	VALUE:	Heritage is the primary value with associated recreation and scenic values
	ACREAGE:	183
	TYPE OF MANAGEMENT:	Managed as a historic site in the Alaska State Park System
	LOCATION:	On Kodiak Island, 3.5 miles northwest of the City of Kodiak
	OWNERSHIP:	State
	ALLOWABLE USES:	Recreation and interpretation activities compatible with the Fort's historic values are allowed. Uses damaging to the historic values are of the lowest priority.

DISCUSSION:

Fort Abercrombie is representative of the North Pacific shore defense operations in Alaska established and manned during World War II. The Fort was one of three established to defend Kodiak harbor. The ruins are material evidence of a time that anticipated and witnessed a foreign invasion of American soil (The Japanese occupation of islands in the Aleutians). In 1941 the land was withdrawn for military purposes and that year Headquarters Battery 250th Coast Artillary Regiment was assigned to the post. The post was one of the first radar installations in the area. On October 27, 1970 the site was entered into the National Register of Historic Places. Aside from the historical interest of the site, significant recreational and scenic values exist. Camping, picnicking, hiking, observing nature, and beachcombing are popular activities. The park is heavily visited by Kodiak residents and visitors to Kodiak.

The area is located within a coastal spruce forest area in the northeastern portion of Kodiak Island. The shoreline of the area is comprised of rock blocks with gravel and rock beaches. Nonashka Bay is located to the northwest and Mill Bay on the southeast. Area soils

contain a layer of volcanic ash from the 1912 eruption of Mt. Katmai. These soils overlay graywacke rock. Annual average precipitation for the area is 60.54 inches.

4.	NAME:	Kachemak Bay
	VALUE:	Shellfish, crab, fish rearing and spawning habitat and waterfowl habitat
	ACREAGE:	215,000
	TYPE OF MANAGEMENT:	Managed as a Critical Habitat, designated by the Legislature in 1974.
	LOCATION:	On the west side of the Kenai Peninsula, near the southern end of the peninsula.
	ALLOWABLE USES:	Any use allowed by the ADF&G management plan is allowable. Those of lowest priority are uses which would adversely impact the species for which the area was designated.

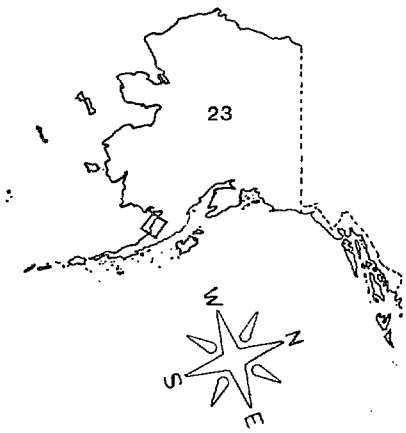
DISCUSSION:

Kachemak Bay is one of three special areas in the general area of the bay. This particular area was designated for its habitat values. Fox River Flats is also a critical habitat and the third is Kachemak Bay State Park. The area in general has been subject to considerable controversy in recent years, primarily as a result of a state petroleum lease sale which was made, and then reversed, with the state buying back the leases.

COASTAL BIOPHYSICAL BOUNDARIES

BERING SEA

BRISTOL BAY-PORT HEIDEN TO CAPE CHICHAGOF



Coastal Zone Boundaries

The biophysical boundaries in Bristol Bay between Port Heiden and Cape Chichagof are defined as follows:

Zone of Direct Interaction

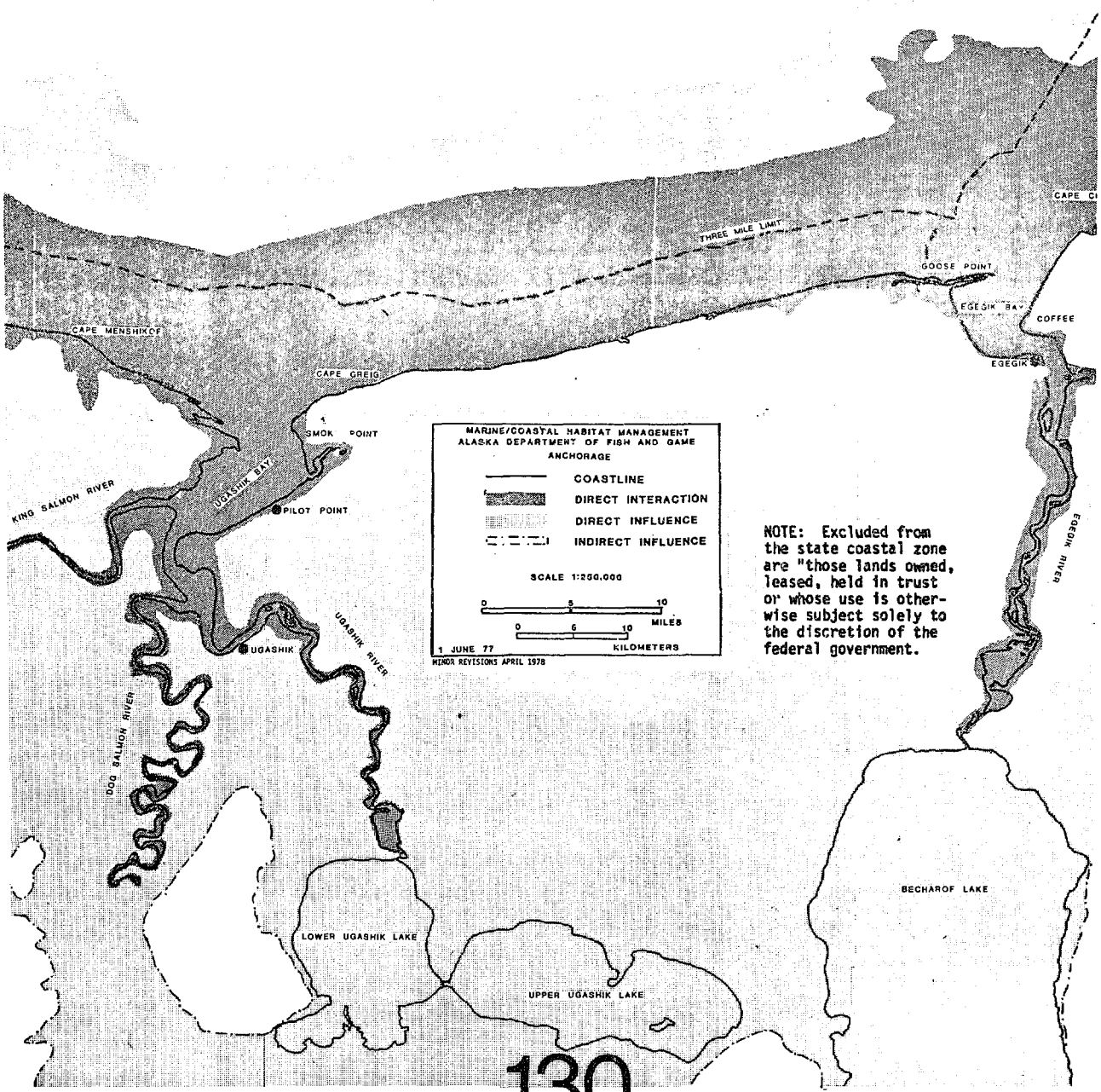
a. Landward Limit
Landward, the zone of direct interaction is defined by the inland extremes of wave impact, saltwater intrusion and active coastal erosion. The zone of direct interaction includes intertidal areas, salt spray zones, marine mammal haul out and pupping areas, seabird cliff nesting sites, storm surge lines and the lower reaches of rivers to the extent that they are controlled by tides and saltwater intrusion. Brackish water coastal marshes used by migrating birds also lie within the zone of direct interaction. In this region tidal influence extends as far as 16 km (10 mi) up low-lying rivers.

b. Seaward Limit
The seaward limit of the zone of direct interaction is defined by the 20 m (60 ft) depth contour. Within this zone are found nearshore marine plant communities, nearshore spawning areas for marine fish and invertebrates and critical feeding areas adjacent to harbor seal haul out and pupping areas. The maximum extent of shorefast ice is determined by the 20 m (60 ft) depth contour in this region.

Zone of Direct Influence

a. Landward Limit
Landward, the zone of direct influence is best defined by the inland extent of coastal wet tundra plant communities located at the 60 m (200 ft) contour. This habitat is important to animals which have a daily or seasonal dependence on the marine environment. The wet tundra environment is physically determined by its close proximity to the sea. Examples of landward direct influences for this region include wetlands used by migrating and nesting waterfowl and denning and foraging areas for coastal mammals.

b. Seaward Limit
Seaward, the zone of direct influence extends to the edge of the continental shelf at approximately the 200 m (600 ft) depth contour. The shelf edge defines the limit of influence of Bristol Bay waters and marks the southern extent of winter ice cover.



Chapter 5: Uses Subject to the ACMP

Section (a): Introduction

Section 305(b)(2) of the Federal Coastal Zone Management Act provides:

> *The management program for each coastal state shall include...a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal water.*

In addition, 15 CFR Sec. 923.3(g) indicates that the federal Office of Coastal Zone Management will attempt to insure that all uses with direct and significant impacts on coastal waters are addressed by the program.

The ACMP incorporates two distinct definitions of the land and water uses subject to management under its provisions. The first of these applies to the areas for which a district program has not yet been approved. The second will apply to any area for which a district program is in effect. The scope of the program is practically identical under each.

Section (b): Uses Subject to the Program in Areas for Which District Programs Have Not Been Approved

Chapter 6 describes how land and water uses will be managed in areas not yet subject to a district program, through the operation of existing state agency authorities. Until further experience is gained in implementing the ACMP in these areas, it is desirable to extend program management to all of the land and water uses that are subject to state agency approval.

The description of existing state agency land and water use approval authority contained in Chapter 6 reveals the extreme unlikelihood that any activity directly and significantly affecting the coastal water will fail to be subject to at least one of the controls that are described. The comprehensive regulatory authority of state agencies over such matters as water appropriation, waste disposal, air and water quality maintenance, public utilities, and fish and game; together with the state's direct ownership of large areas of the coastal zone, its ability to control the construction of transportation facilities and other infrastructural developments through its spending decisions; and its

authority to affect federal clean water permit decisions; gives state agencies a practical veto over any land or water use having a potentially negative effect on coastal waters.

In areas for which district programs have not been approved, therefore, the range of uses subject to the ACMP is still sufficiently broad to meet the applicable federal requirements.

Section (c): Uses Subject to the Program in Areas for Which District Programs Have Been Approved

AS 46.40.030(2) requires that each district program include:

> *a statement, list, or definition of the land and water uses and activities subject to the district coastal management program...*

6 AAC 85.070 provides:

> *Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in Ch. 80 of this title are, if applicable, subject to the district program.*

The uses and activities mentioned in 6 AAC Chapter 80 are the nine categories of uses listed in Article 2 of that chapter, and all activities that might affect the habitats and resources are discussed in Article 3. Because these habitats and resources include all coastal waters, the guidelines and standards require, as a practical matter, that each district program include within its scope all land and water uses significantly affecting the coastal waters. The exact wording will be left to each district, subject to the approval of the Council and legislature, but the required substantive result is clear.

Thus, both before and after the approval of a district program for any area, the land and water uses subject to the ACMP will include all uses having direct and significant impacts on coastal waters. Because this is the broadest coverage of uses envisioned in the federal Coastal Zone Management Act, its requirements in this respect are completely satisfied.

Chapter 6: The ACMP Management System

Section (a): Introduction

The term "ACMP management system" is used to describe the process by which the state and local ACMP programs will be implemented. It should be pointed out at the onset of this chapter that the objective of this management system is to assure that the public policies and goals associated with ACMP are carried out. Other requirements of the program insist that those interests which will be affected by this management are consulted with and that the expectations and requirements applied to the use of property are reasonable and necessary to carry out the objectives of the program. In the case of the ACMP legislation, and the ACMP standards, the affected industries and other interests have indeed been involved in the establishment of these rules, and the rules have been found acceptable limitations of how lands and waters should be used. The same will apply in the case of local program rules and limitations as these are added to ACMP.

Both land and natural resources are managed by regulating their uses. This happens at all levels, but governments, attempting to impose land use management, have a limited number of options. They fall into three categories: police powers, proprietary power, and the power inherent in discretionary public spending.

Police power is granted to public agencies to protect the public welfare as it is defined through legislation. Police powers for governing land use are usually exercised by permit systems, land use allocation or zoning, or monitoring and inspection of development. Police power is not limited by ownership of land, except where it is owned by the federal government. Although a direct federal development project is not normally required to conform to local zoning regulations, the federal Coastal Zone Management Act alters the previous relationships somewhat if the local zoning regulations are a part of the coastal program since federal agencies must conduct their developments consistently with an approved coastal program. This is certainly true where the state is also a partner in federal projects such as federally funded buildings or highways which are also sponsored by the state.

The second form of land use power is proprietary. This is the same power held by any land owner, and in Alaska, the state and federal governments own large amounts of land. Local governments also own land

and will be obtaining more as land claims are settled and municipalities select the land granted to them under the Municipal Selections Act. Any coastal management program must address itself to this type of power as well.

In general, proprietary power is usually subordinate to police power. That is, the police power protects the more general public welfare, and proprietary power is exercised to fulfill agency missions within the context of, and consistent with, the police power regulations and laws. In terms of amounts of land owned, the federal government has the bulk of the proprietary power in Alaska. This is changing, but the federal government will remain the largest single landowner in Alaska, and as such, will have considerable ability to impact Alaska's coastal resources. Technically, federally-owned land is "excluded" from Alaska's coastal zone under the terms of the federal Coastal Zone Management Act of 1972, and this matter is discussed at greater length in Section (e) of this Chapter. Federal usage of federal land will continue to be a concern of ACMP because of the potential for impact resulting from that usage.

The third type of power is financial. This is the government's ability to influence land use by the direct use of funds, tax incentives, etc., to achieve particular ends. This power also includes the use of public relations and promotional information to influence certain decisions about land or water uses. While financial powers have a narrower impact than police or proprietary powers, they can still have a significant influence on coastal resources, and should be exercised consistently with the goals, policies and rules of a coastal management program.

The key components of the ACMP management system are:

1) The Alaska Coastal Management Act. (Appendix 1). The Act establishes the program, requires coastal program development by districts, sets up relationships between the districts and state agencies, and provides basic policies and objectives for coastal land and water use management.

2) The ACMP Guidelines and Standards. (Appendix 3). These regulations provide further basic rules as to how land and water uses should be managed, and also sets requirements for local coastal program management systems.

3) Administrative Order. (Appendix 6). In response to the obligations of the Act and the Guidelines and Standards, the Governor has issued this order to clarify roles and responsibilities among the state agencies and to formally establish the state component of the ACMP management system.

4) The approved district coastal program rules and regulations.

The objective of the management system is to assure that all decisions which relate to land and water uses that have a significant impact on coastal resources will be made consistently with the ACMP rules and regulations, both state and local. The rest of this chapter will discuss first, the requirements of the federal CZM legislation and regulations; second, how management will occur in areas where district programs have not been approved; third, management of areas where there is an approved district program; and finally, how the federal consistency requirements of the national CZM program fit into the system.

Section (b): Requirements of the Federal CZM Program

Section 305(b) of the Federal Coastal Zone Management Act provides, in part:

The management program for each coastal state shall include...
(4) An identification of the means by which the state proposes to exert control over the land and water uses (subject to the program), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions;...

(6) A description of the organizational structure proposed to implement such management program including the responsibilities and inter-relationships of local, areawide, state, regional, and interstate agencies in the management process...

Section 306(d) of the Federal Act imposes the following requirement:

Prior to granting approval of the management program the Secretary shall find that the state, acting through its chosen agency or

agencies, including local governments...has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power:

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

Section 306(c)(6) and (7) provide:

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that...

(6) The state is organized to implement the management program...;

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

The regulatory requirements based on these statutory provisions are contained in 15 CFR 923.41 and 923.45.

Section 306(e)(1) of the federal Coastal Zone Management Act provides that each state program must provide for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulations, or

(C) State administrative review for consistency with the management program of all development plans, projects, or land

and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

The specific requirements associated with each of these techniques are set forth in 15 CFR 923.42.

The preceding chapters have described the scope, development, and policies of ACMP. This chapter describes how state, local and federal agencies will apply the ACMP policies to determine which land and water uses will be permitted in the coastal zone. In so doing, it demonstrates that ACMP fulfills the federal requirements just cited. This chapter also discusses the application to ACMP of the federal consistency requirements contained in Section 307 of the federal Act.

ACMP will rely upon the first two use control techniques set forth in Section 306(e)(1) of the federal Act: local implementation of criteria established and enforced by the state (Section 306(e)(1)(A)); and direct state land and water use regulations (Section 306(e)(1)(B)). In areas for which district programs have not been approved by the Council and the legislature, state agencies will ensure that uses in the coastal zone comply with the Alaska Coastal Management Act policies and the ACMP Guidelines and Standards through the exercise of their existing regulatory, proprietary, and financial authority, as modified by the Act. In areas for which district programs have been approved, compliance with those programs will be ensured through the exercise of zoning and other use management authority by district governing bodies having such authority. In districts where there is no local use management authority, such as the coastal resource service areas, compliance of uses with the district programs will be ensured through the exercise by state agencies of their regulatory and proprietary authority. In either case, state agencies must comply with the applicable district programs in their land and water use management activities.

Section (c): Management of Uses In Areas For Which District Programs Have Not Been Approved

It was emphasized in Chapter III that district programs approved

under AS 46.40.060 will eventually serve as the principal management tool of ACMP. This is consistent with the conclusion of the legislature that coastal land and water use management is best conducted at the local level.

For many areas, however, district programs will not be approved for a number of months, even years. Until such programs are developed for these areas, coastal land and water uses will be managed in accordance with ACMP policies through the exercise by state agencies of their existing legal authority. To this extent, then, ACMP will rely upon the use management technique authorized in Section 306(e)(1)(B) of the federal Act: direct state land and water use regulation.

AS 46.40.200 provides, in part:

> *State agencies shall, within six months of the effective date of the Alaska Coastal Management Program, take whatever action is necessary to facilitate full compliance with and implementation of the program...*

The last two sentences of 6 AAC 80.010(b) provide:

> *Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter.*

These statutory and regulatory provisions have the force of law. Their effect is to amend all existing legal authority for state agency action to require that, in addition to fulfilling any other legal criteria, such action must be consistent with the policies of ACMP. In areas for which district programs have not been approved, these policies consist of the policies set forth in ACMA Section 2 and the Guidelines and Standards contained in 6 AAC 80.040-80.150. These policies were discussed in Chapter 2.

Chapter 6: The ACMP Management System

In order for the requirements of Section 306(e)(1)(B) of the federal Act and its implementing regulations to be satisfied, state agencies must be able to apply the ACMP policies to any land or water use subject to ACMP, as discussed in Chapter V, that is proposed for a coastal area for which a district program has not been approved. State agencies must, in particular, have authority to prevent or modify any such use that would be inconsistent with ACMP policies. It is plain from the state statutory and regulatory provisions just quoted, that any state agency which is legally required to approve an action before it may be carried out, must deny such approval for an inconsistent action, and thereby prevent it, or require its modification to comply with the ACMP policies. As noted in Chapter V, the uses subject to management under ACMP in areas for which district programs have not been approved are defined as all uses in the coastal area for which the approval of a state agency is legally required. Thus, state agencies are obliged to apply the ACMP policies to any use subject to their approval in an area for which a district program has not been approved. It should be noted in particular, that this obligation does not depend upon amendment of state agency regulations that were in effect before the enactment of the ACMA and the adoption of the guidelines and standards. 6 AAC 80.010(b), quoted above, directly supplements all existing regulations with the ACMP policies.

State agencies will manage uses in the coastal zone in accordance with the ACMP policies through the exercise of three broad categories of state authority:

(1) State regulatory authority, exercised primarily through a number of permit systems;

(2) the proprietary authority of the state over the lands and waters that it owns;

(3) the authority of the state to expend public funds on uses in the coastal zone.

State Regulatory Authority.

The term "regulatory authority" is used here in a very broad sense to mean the authority of the state to control any public or private

activity taking place within its boundaries in the interest of the public welfare. The main vehicle for the exercise of this authority is a variety of state permitting procedures under which persons desiring to carry out certain activities must first obtain the formal approval of designated state agencies. The following are the permit procedures that will be relied upon most heavily in the management of uses under ACMP.

(1) Air quality control. (AS 46.03.010, 140-170, 18 AAC 15, 18 AAC 50) A permit from the Department of Environmental Conservation is required if any facility is capable of emitting into the ambient air, regardless of whether air quality control equipment is operating, more than:

(a) 25 tons per year of sulfur dioxide or particulate matter.

(b) 100 tons per year of either nitrogen oxides, or carbon monoxide, or hydrocarbons.

(c) All mercury retorts, regardless of size.

(d) All fuel burning electric generating equipment greater than 250 kilowatts capacity.

(2) Solid waste disposal. (AS 46.03.020-100; 18 AAC 15.60) With exceptions for very small-scale or on-site disposal operations, no solid waste disposal facility may be operated in Alaska without a permit from Department of Environmental Conservation. Such a permit is also required for the disposal of sludge in or on the lands and waters of the state.

(3) Waste water disposal. (AS 46.03.020-100; 18 AAC 15.70.72) Any operation, with the exception of the discharge of domestic sewage into a sewage system, that results in the disposal of waste-water into or on Alaska land or water, or into a publicly operated sewage system, requires a permit from Department of Environmental Conservation. The term of the permit may not exceed five years. The Department of Environmental Conservation may waive the permit requirement for an activity for which the United States Environmental Protection Agency (EPA) has issued a National Pollutant Discharge Elimination System (NPDES) permit, discussed below.

(4) Construction and operation of sewage systems and treatment works. (AS 46.03.720(a); 18 AAC 72.020-060) No person may construct, modify, or operate a sewage system or treatment works until plans have been submitted to and approved by the Department of Environmental Conservation in writing. The term "treatment works" includes any plant, device, or structure installed for the purpose of treating, neutralizing, stabilizing, or disposing of wastewater and sludge. It includes even such small-scale treatment facilities as septic tanks.

(5) Subdivision plan review. (AS 46.03.020,050,090;18 AAC 15.72.065) Any person proposing a subdivision in Alaska must submit plans of the subdivision to the Department of Environmental Conservation for approval, unless the subdivision is isolated. An "isolated" subdivision is one that results in five or fewer lots, and that is not part of a plan or scheme involving more than five lots. Local platting authorities may petition the Department of Environmental Conservation to waive subdivision plan review after providing information about their ordinances, procedures, and resources for regulating sewage treatment and disposal.

(6) Public utilities certificate of public convenience and necessity. (AS 42.05; 3 AAC 48) The issuance of a certificate of public convenience and necessity by the Alaska Public Utilities Commission, Department of Commerce and Economic Development is required before any individual, association, or corporation may own, operate, manage, or control a public utility. Included in the term "public utility" are systems for the transmission or transportation of water, electricity, gas, steam, telecommunications, sewage, and refuse. In deciding between competing applications, the Commission must determine which proposal best satisfies the requirements of public convenience and necessity and which of the applicants is most willing and able to furnish the service.

(7) Appropriation and use of water. (AS 46.15.030-185; 11 AAC 72, 73) All waters occurring in a natural state in Alaska are reserved for the common use of its people, subject to appropriation and beneficial use under permits issued by the Department of Natural Resources. In considering an application for an appropriation permit, the Department of Natural Resources must determine, among other things, whether the proposed use of the water is "beneficial."

(8) Anadromous fish protection. (AS 16.05.870; 5 AAC 95.010) No person or agency may construct a hydraulic project or affect the natural flow or bed of a river, lake or stream specified as being important to anadromous fish, or use equipment in such waters, without a permit from the Department of Fish and Game.

(9) Pesticide application. (AS 46.04.320; 18 AAC 15.90) A permit must be issued by the Department of Environmental Conservation before any person may apply pesticide in conjunction with a public pesticide project, to the waters of the state, or by an airplane or a helicopter. A "public" pesticide project is one affecting properties owned separately by two or more persons and which is participated in by the state or a municipality.

(10) Drilling or deepening of oil and gas wells. (AS 31.05.010-110; 11 AAC 22.005-570) A permit from the Department of Natural Resources is required for the drilling or deepening in Alaska of any well for oil or gas, or for stratigraphic information. A permit may be required for wells having other purposes if the state Oil and Gas Conservation Committee finds a sufficient likelihood of an unexpected encounter of oil, gas, or other hazardous substances.

(11) State game sanctuaries. (AS 16.20.090-140,160-170,255; 5 AAC 81.050) A permit from the Department of Fish and Game is required for access to and for any activity taking place in the McNeil River and Walrus Island State game sanctuaries.

(12) Fish and game critical habitat areas. (AS 16.20.230) A permit from the Department of Fish and Game is required for any work or development within the statutorily designated state fish and game critical habitat areas.

(13) State game refuges. AS 16.20.010,030) No work or development may take place within the statutorily designated state game refuges except under a permit from the Department of Fish and Game.

(14) Utilities within highway rights-of-way. (AS 19.25.010; 17 AAC 15) No utility may be placed or maintained under, on, in, or over a state highway right-of-way without a permit from the Department of Transportation and Public Facilities. "Utilities" for this purpose include railroads, public utilities, publicly owned fire and police signal

systems, and street lighting systems. A permit is also necessary for modification of such utilities.

(15) Encroachments on state and federally-funded highways. (AS 19.25.200; 17 AAC 10.010) The placement, modification, or maintenance of an encroachment across or along a state highway, or a highway funded in whole or in part by federal funds, may be carried out only under a permit issued by the Department of Transportation and Public Facilities.

(16) Certificate of Reasonable Assurance for Proposed Discharges into Navigable Waters (Federal Water Pollution Control Act Section 401). A wide variety of discharges of dredge and fill material and wastes into navigable waters, including wetlands, are subject to federal permit under sections 402 and 404 of the Federal Water Pollution Control Act (FWPCA). Such permits may not normally be issued unless the state in which the discharge would take place issues a Certificate of Reasonable Assurance under FWPCA Section 401. This certificate states that the proposed discharge would comply with certain provisions of the FWPCA. More importantly, for purposes of ACMP, FWPCA Section 401(d) provides that the certificate shall set forth any limitations and monitoring requirements necessary to assure compliance with "any ... appropriate requirement of State law," and that these limitations and monitoring requirements shall thereupon become conditions of the federal permit.

The capacity of these procedures for ensuring compliance with the ACMP policies is derived from the obligation of the agencies administering them to deny approval where issuance would be inconsistent with those policies. This is true even for permits that have, in the past, been granted or denied on the basis of fairly specialized criteria. For example, it is no longer sufficient for the Department of Natural Resources, in its consideration of an application for a water use permit, to take account only of such factors as the capacity of the water source to accommodate the proposed appropriation and the effect it would have upon the rights of prior appropriators. The Department of Natural Resources must now, in addition, consider such matters as whether the use depending upon the appropriation is water-dependent or water-related, and whether it would eliminate opportunities for subsistence usage of local resources. Similarly, the Public Utilities Commission must now incorporate the ACMP policies into its concept of the "public convenience and necessity," the touchstone for the authorization

of public utilities. Thus, if the only prospective user of a proposed electric line would be a planned major non-water-dependent development on the shorelines that could readily be located elsewhere, the Public Utilities Commission would be obliged to deny a certificate of public convenience and necessity, even if the applicant was willing and able to provide the proposed service, and the service would be fully utilized by the proposed development.

State agencies also have regulatory authority that has not, as yet, been embodied in established permit procedures. Very broad authority for the regulation of a wide range of activities appears in the general statutes establishing the Department of Environmental Conservation (AS 46.03.020), Department of Transportation and Public Facilities (AS 44. 42.020), and Department of Fish and Game (AS Title 16). Under the ACMA and the guidelines and standards, agencies possessing such authority are obligated to use it to ensure implementation of the ACMP policies.

One example of a general grant of regulatory authority that has not yet given rise to a permit system, but which has much potential for ensuring compliance with the ACMP policies, is the general authority of the Department of Natural Resources over all mining in the state. AS 27.05.010 provides that the Department of Natural Resources "has charge of all matters affecting exploration, development and mining of the mineral resources of the state..." If it were to prove necessary, the Department of Natural Resources could explore an expansion of its regulatory activities on the basis of this very broad statutory language.

State Proprietary Authority.

The State of Alaska itself owns a considerable part of the land in the coastal zone, including almost all tidelands and submerged lands. As owner of this property, the state is authorized to regulate and prohibit land and water uses within it more intensively and with more discretion than is the case for uses outside state lands.

The proprietary authority of the state over its lands is exercised through a series of leasing systems and permit procedures administered

by the Department of Natural Resources. The coverage of these is so comprehensive that it can be said with assurance that, as a legal matter, no activity may take place on state-owned lands without the express or implied consent of the Department of Natural Resources.

By far the most important leasing and proprietary permit systems for purposes of ACMP are those governing the use of tidelands and submerged lands. These include all lands lying between the mean high tide line and the three-mile limit. There are three separate systems for the leasing of tidelands and submerged lands:

1. Leasing for purposes other than for the extraction of natural resources (AS 38.05.070; 11 AAC 62);

2. Leasing for the extraction of offshore locatable minerals other than oil and gas (AS 38.05.145; 11 AAC 84, 86, 88);

3. Oil and gas leasing (AS 38.05.145, 180; 11 AAC 82, 82, 88).

Two permit systems govern uses in tidelands and submerged lands:

1. Tidelands and submerged lands general use (AS 38.05);

2. Offshore locatable mineral prospecting (AS 38.05.145; 11 AAC 82, 84, 86, 88).

These tidelands and submerged lands permit and leasing systems, like the permit and leasing systems for all other state-owned lands, must be administered in a manner that ensures compliance of all uses subject to those systems with the ACMP policies. The Department of Natural Resources must deny leases and permits that would authorize uses violative of those policies, and must attach conditions to permits and leases that are granted when necessary to assure compliance with ACMP policies.

State Spending Authority

The state, as well as other levels of government, may have substantial influence on coastal resources by considering the goals of coastal

management when government controlled funds are spent. The state sponsors a great deal of coastal development directly, with the use of state money and federal money made available for state use. The state constructs highways, ferry terminals, airports, small boat harbors, commercial and industrial harbor facilities, and public buildings. In addition, the state provides funding for public facilities that can stimulate and encourage private development. The construction of sewage treatment plants, roads, electrical services and other utilities can have a large impact on the type and speed of private development. Thus, state spending can result in impacts far in excess of the scope of the initial development. By subjecting spending decisions to ACMP policies and regulations, the state assures that its own actions will not cause unnecessary damage to the coastal resources, and reinforces the ACMP regulatory authority.

It should be emphasized that state spending is more a positive management technique than it is a control. The state can encourage proper coastal development simply by designing and undertaking such development itself. Alaska may be unique in the variety of coastal development undertaken in public programs. Development costs are so high in Alaska, and other conditions so uncertain, that the state and federal governments are frequently asked for support for projects that would normally be privately financed in other states. For example, the projected increase of American participation in the offshore bottomfishery is expected to result in substantial demands for new and expanded onshore service facilities and processing plants. The state can and will take the lead in showing what is needed for supporting the bottomfishery and in initiating the needed developments. The policies and standards of the ACMP, as well as any pertinent local program that may address this need, will serve to guide state and federal spending to appropriate facilities.

Like other state actions, spending decisions are subject to AS 46.40.090, 100, and 200, as well as 6 AAC 80.010 (b), and thus must be consistent with the ACMP policies and regulations.

The two primary means that will be used to assure that state spending decisions will be made consistently with ACMP are the state budgeting process and the A-95 Clearinghouse.

Chapter 6: The ACMP Management System

State Budgetary Process

State agency budgets are prepared annually, and in the case of the Department of Transportation and Public Facilities, there is a six-year capital improvements program that provides additional guidance to the capital budget. Both the general budget and the six-year capital improvements program are approved by the legislature, so consistency at the highest level of policy is assured as the legislature also approves all substantive elements of ACMP.

Consistency is also provided at the administrative level. When all state agencies have prepared their individual budgets, these are aggregated for refinement and joint presentation to the legislature by the Governor. This refinement process is carried out by the Division of Budget and Management, an arm of the Office of the Governor. Aside from seeing that agency budgets are properly prepared, that division also assures that the budgets properly respond to state policy, and makes recommendations to the Governor with regard to the size of agency budgets and level of service.

A special device, the Budget Review Committee, is called into the process at budget preparation time. The group includes the Commissioner of the Department of Revenue, the Director of the Division of Budget and Management, the Director of the Division of Policy Development and Planning, and the Administrative Assistant to the Governor. This group makes the final budget recommendations to the Governor.

The Director of the Division of Policy Development and Planning is also charged with monitoring state and federal consistency for ACMP. Thus, the Division of Policy Development and Planning director's role on the Budget Review Committee will, among other things, be to assure that agency budget submissions are consistent with ACMP. This is an added measure of protection for ACMP, since the Division of Budget and Management shares the same responsibility.

A-95 Clearinghouse

The A-95 Clearinghouse review system is another means to assure that state spending decisions will be consistent with ACMP. First, all

federally-funded projects are subject to A-95 review, and most state projects are as well. Second, the Clearinghouse operates within the Division of Policy Development and Planning, which provides a direct method of assuring consistency. The use of the A-95 process is important because the review of spending proposals is wide, and an effort is made to determine and notify all parties who might be affected by the proposal. Further, there is more information in clearer format in the A-95 notice than in a budget proposal. Also, the A-95 review usually occurs earlier in the history of a project than does the approval for budgeting purposes. This provides a double consistency check for capital projects.

Conflict Resolution

The Federal Act and its implementing regulations require that each state that adopts a program have the authority "to resolve conflicts among competing uses." In areas for which district programs have not yet been adopted, the state will assure such conflict resolution through a number of mechanisms:

(1) Public notice, comment, and hearing on applications for permits and leases. The permit and leasing systems described above incorporate some provision for public notice of pending applications and an opportunity for interested persons to comment on those applications before the agency makes a final decision. Some of the procedures even include an opportunity for public hearings. Agencies must evaluate and consider comments on pending actions.

The submission of comments and participation in hearings on permit and lease applications are the most effective ways in which persons supporting or opposing a proposed use can assure that their views are taken into account. Such participation brings to the agency's attention the fact that a dispute over the proposed use does exist and, if the participation is sufficiently active, provides a basis on which the agency can resolve the dispute.

Because the ACMP policies are among the requirements that must be satisfied before a permit or lease may be issued, the extent to which a

proposed use would comply with those policies is a proper subject for comment or testimony during the agency's consideration of an application.

(2) The A-95 Review System. (discussed earlier in this Chapter).

(3) Intervention by the Office of Coastal Management, the Council and the Governor. Under 6 AAC 80.030(a)(3), the Office of Coastal Management and the Council are authorized to review state as well as federal actions for consistency with the ACMP policies. While no remedies for noncompliance are specifically provided in the regulation, the Office of Coastal Management and the Council will attempt to correct such situations by informal means. If these should fail, it will be necessary to invoke the provision of the Administrative Order under which the Governor reserves authority to arbitrate disputes among agencies, and to intervene in the event an agency fails to be consistent with the ACMP.

(4) Judicial Review. The ACMP policies are prescribed by statute and regulation, and therefore have the force of law. Their violation thus provides a ground for judicial reversal of a state agency action. As a result, a person who is dissatisfied by the outcome of the conflict resolution procedures just discussed may resort to a state court as the ultimate forum for determining the requirements of the ACMP policies in a particular situation.

The Alaska Administrative Procedure Act, AS 44.62, provides explicitly for judicial review of agency actions that are taken under its provisions. The Alaska Supreme Court has not, however, considered such express statutory grants of jurisdiction to be prerequisite to judicial review of agency action. It has, in fact, reviewed at least one action that a statute had purported to render nonreviewable. The court appears to consider the availability of some judicial review of any agency action to be a right of constitutional dimensions. See Alyeska Ski Corporation v. Holdsworth 426 P.2d 1006 (Alaska 1967); 486 P.2d 351 (Alaska 1971). It has probably been much more liberal in this respect than most other American courts, whether state or federal.

State Acquisition of Interest in Land and Water

While state agencies have the authority to acquire land by eminent domain, the use management authorities described above are sufficiently comprehensive and binding that the acquisition by the state of interests in land and water is not necessary for the achievement of the program's management objectives. As will be discussed in Chapter 7, however, the state's eminent domain authority will be relied upon to assure that uses of state concern are not arbitrarily excluded from coastal areas in municipalities that have not yet developed their district programs.

Section (d): Management of Use In Areas For Which District Programs Have Been Approved

After a district program has been approved by the Council and the legislature, the management of land and water uses in the district's coastal zone becomes subject to a new combination of procedures and criteria. This new management system combines direct state land and water use regulation, provided for in Section 306(e)(1)(B) of the Federal Act, and local implementation of state criteria and standards, subject to state level review, provided for in 306(e)(1)(A).

Upon final approval of a district program by the legislature, that program becomes an integral part of ACMP. Its criteria and standards thus become a matter of state, as well as local, policy. AS 46.40.100(a) provides:

> *Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and legislature and in effect.*

Under this provision and those that will be discussed immediately below, the district programs assume an authority equal to that of the guidelines and standards, which, for some purposes, they entirely supersede.

Under AS 46.40.090(a), a district program that is approved for a district that does not exercise zoning or other controls over its coastal resources must be implemented by state agencies. For these areas,

most of which will be coastal resource service areas in the Unorganized Borough, management of uses subject to the program will continue to take the form of direct state regulation. In carrying out their duties, the agencies will have at their disposal the full array of management techniques described in the preceding section. They will continue to operate under the principle set forth in 6 AAC 80.010(b):

> *Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter.*

Thus, in districts lacking their own use control authority, the primary change in the ACMP use management structure that will result from approval of the district program will be the new obligation of state agencies to comply with the district program as well as the ACMA policies and the guidelines and standards. It should be noted that 6 AAC 80.010(b) departs from AS 46.40.090(a) and AS 46.40.100 in requiring consideration of the guidelines and standards as well as the district program: the ACMA provisions would have required compliance with the district program alone, even if the result in any particular instance would be inconsistent with the guidelines and standards.

Because 6 AAC 80.010(b) was itself approved by the legislature, it should be considered to amend the ACMA in this respect.

There is one source of authority in addition to those described in the preceding chapter that may assume special prominence in the implementation of district programs by state agencies in the Unorganized Borough and third class boroughs. This is the authority of the Department of Natural Resources, Division of Lands, to adopt zoning regulations, subject to approval by the legislature, for the Unorganized Borough and for the coastal areas of those third class boroughs which have not adopted such regulations themselves. While this zoning author-

ity has been little used up to now, its utilization may be necessary if district programs for areas lacking local zoning authority are to be effectively implemented.

AS 46.40.090(b) provides that a coastal resource district exercising zoning and other use controls within the coastal zone shall implement its own approved district program. In these districts, the management of land and water uses will thus take the primary form of local implementation of state standards subject to state level review, as authorized by Section 306(e)(1)(A) of the CZMA. While the exercise of local zoning authority will be the main vehicle for implementation of these district programs, it must be emphasized that the state land and water use management activities described above will co-exist with and supplement local management measures.

An important distinction between state and local management of uses in areas for which district programs have been approved concerns the standards that must be adhered to in the authorization of uses. As was noted above, state agencies must comply with both the applicable district program and the guidelines and standards, due to the language of 6 AAC 80.010(b). There is, however, no comparable regulatory provision governing local government activities. Thus, they continue to be subject to the second sentence of AS 46.40.090(b) requiring consistency only with the local plan. District programs are to be developed in a manner consistent with the guidelines and standards, and will be evaluated by the Coastal Policy Council on this basis. Recognizing that differing and at time unforeseen circumstances might prevail in various districts, the legislature provided for limited divergence from these provisions provided certain findings spelled out in AS 46.40.070(b) can be made. Thus, district programs will be consistent with the guidelines and standards, except in those rare instances where common sense dictates limited variation as provided in AS 46.40.070(b). Districts are therefore also by implication required to carry out their programs consistently with the guidelines and standards, except in those few cases where AS 46.40.070(b) has been brought into play. State agencies must administer their authorities consistently with the guidelines and standards and district programs. In those unusual instances where there might be a conflict between these two criteria, the district program provisions

would prevail, because strict adherence to the guidelines and standards would probably result in violation of another state law or policy, cause substantial and irreparable harm to another interest or value, or the inconsistency would be of a technical nature with no substantial harm resulting. (This is after the Coastal Policy Council has reviewed and approved the district program consistent with the guidelines and standards, with the exception of inconsistencies provided for under AS 46.40.070(b)).

The main device for conflict resolution in areas for which district programs have been approved is provided for in AS 46.40.100(b)-(e). Under these provisions, a district, a citizen of a district, or a state agency may submit a petition to the Council showing that a district program is not being implemented, enforced, or complied with. The Council must thereupon hold a public hearing under the Administrative Procedure Act, AS 44.62, to consider the matter. After the hearing, the Council may direct the responsible district or state agency to take any action that the Council considers necessary to implement, enforce, or comply with the district program. Such orders of the Council may be enforced in the state Superior Courts.

In view of 6 AAC 80.010(b), discussed above, the Council is probably not authorized to issue, or the courts to enforce, an order to a state agency to comply with a local program when this would entail violation of the guidelines and standards. A provision that might accomplish the same result in the case of local governments, despite the fact that other parts of the ACMA seem to require strict adherence to the district programs alone, is AS 46.40.100(c). This states that, after the hearing on a petition of the kind just described, the Council shall find in favor of the local government if:

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the Council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the Council and subsequently approved by the Legislature have been followed and considered.
(emphasis added)

Thus, as a practical matter, local governments as well as state agencies may be obliged to continue compliance with the guidelines and standards even after the approval of an applicable district program.

The conflict resolution procedures available in areas where district programs have not yet been approved will continue to be available after district program approval. The most significant change in the application of the procedures will be the addition of the applicable district programs to the guidelines and standards as criteria for conflict resolution.

Section (e): Federal Consistency

The procedures contained in this section are the choices that the State of Alaska has made within the limits of 15 CFR Part 930, Federal Consistency With Approved Coastal Management Programs. In order to prevent confusion and to minimize delays, the state will use existing federal/state coordination mechanisms to the maximum extent practicable.

ACMP, of course, represents a number of agencies and activities, and the specific parts of ACMP with which federal activities, licenses, permits, and assistance must be consistent are:

- The legislative policies and objectives set forth in the Alaska Coastal Management Act.
- Chapter 80 of Title 6 of the Alaska Administrative Code (the ACMP Standards.)
- The state and federal air, land, and water quality regulations and statutes, and the Corps of Engineers dredge and fill regulations, adopted by reference in Chapter 80.
- The regulations that will eventually be adopted under the Alaska Forest Practices Act.

-The regulations and requirements of district coastal management programs which have been fully approved and made a part of the ACMP.

The Division of Policy Development and Planning in the Office of the Governor (DPDP) is the lead agency designated pursuant to 15 CFR 923.53(a)(1) and 15 CFR 930.18.

For federal consistency purposes, the coastal zone consists of the seaward limit of the territorial sea and the landward limit of the zones of direct influence and direct interaction, as contained in The Biophysical Boundaries of Alaska's Coastal Zone, (ACMP, 1978). Federal lands are excluded from the coastal zone, but activities on federal lands that significantly affect the coastal zone must be consistent with the ACMP. It should also be noted that among the federal excluded lands are individual Native allotments, restricted townsites, and villages which are organized under the Indian Reorganization Act, since all these lands are held in trust by the federal government.

The zones of direct interaction and direct influence run beyond the three mile limit on the seaward side on many of the boundary maps. This information is included because, while the area seaward of the territorial sea is legally excluded from Alaska's coastal zone, there is a potential for impacts to occur within the zone which would result from activities occurring on the seward of the three mile limit which have impacts Federal activities seaward of the three mile limit which have impacts inside the three mile limit must be consistent with ACMP, at least as far as the impacts are concerned. DPDP will also monitor activities outside of these zones which may have a direct effect on the coastal zone.

Four types of federal functions are discussed in this chapter:

1. Federal activities
2. Federal licenses and permits
3. Activities described in detail in OCS plans
4. Federal assistance programs

The federal regulations cited above provide detailed procedural requirements for administration of the consistency aspects of approved coastal programs. The following summary is provided for the convenience of the reader:

Federal Activities

Sections 307(c)(1) and (c)(2) of the Coastal Zone Management Act state respectively that:

> *Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.*
>
> *Any federal agency which shall undertake any development project in the coastal zone of a state shall ensure that the project is, to the maximum extent practicable, consistent with approved state managment programs.*

As used in this section, "federal activity" means:

> *...any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities.*

It includes federal development projects, but does not include the issuance of a license or permit to a nonfederal applicant or the granting of assistance to an applicant agency. Federal agency issuance of a permit to another federal agency is considered a federal activity.

The federal agency will initially determine which of its activities significantly affect the coastal zone (930.33). If the agency decides that an activity does, in fact, affect the coastal zone, a consistency determination must be provided to the state (930.34(a)). Consistency determinations are not normally required if the federal agency determines that the coastal zone is not affected by its activity. The state and federal agency may, however, develop a list of federal activities likely to affect the coastal zone (930.35(a)) and the agency (930.35(d)) must then provide a consistency determination for that listed project.

The state A-95 Clearinghouse, located within DPDP, will be the notification point for all federal activities directly affecting the coastal zone and all federal development projects in the coastal zone. In most cases, the state Clearinghouse is routinely notified of proposed actions of federal agencies. The Clearinghouse process will be used by

DPDP to gather comments of state agencies and local governments on the federal agency's proposed activity and consistency determination.

15 CFR 930.21(b) defines "activities which significantly affect the coastal zone" as those actions that cause significant:

(1) changes in the manner in which land, water or other coastal zone natural resources are used;

(2) limitations on the range of uses of coastal zone natural resources; or

(3) changes in the quality of coastal zone natural resources.

Activities meeting the criteria of 15 CFR 930.21(b) or 15 CFR 930.31(b), including those affecting the protected habitats, historic resources or air and water quality, will be reviewed by DPDP for consistency with the ACMP. More refined lists of agency activities will be worked out in agreements between DPDP and the individual federal agencies.

The process for the review of federal activities is:

1) The federal agency submits a consistency determination along with notification of the proposed federal activity to the state Clearinghouse.

2) Using established Clearinghouse procedures, state agencies, including DPDP and local governments which might be affected by the federal activity, will be notified and asked to submit comments within thirty days to the state Clearinghouse.

3) DPDP will analyze comments received from the Clearinghouse and will recommend concurrence with or objection to the federal agency's determination of consistency to the director of DPDP. Any recommendation to object will include reasons and suggested changes that could allow the federal activity to be conducted consistent with the ACMP.

4) Within 45 days of Clearinghouse notification, DPDP will respond in writing to the federal agency informing the agency of its finding, along with a statement that Clearinghouse requirements have been met.

Federal Licenses and Permits

Federal agencies issuing licenses or permits to non-federal applicants for proposed activities in the coastal zone may do so only for activities that will be conducted in a manner consistent with the approved state coastal management program.

A summary of the procedures that DPDP will use for review of federal license or permit activities is:

1) Applicant submits the license or permit application and consistency certification to the federal agency and to DPDP. The "consistency certification" certifies that proposed license or permit activity will be carried out in a manner consistent with the approved ACMP.

2) DPDP insures timely public notice of the project or activity pursuant to 15 CFR 930.61, (This division will attempt to establish agreements with relevant federal agencies for the publication of joint public notices.) DPDP, at its discretion, may hold one or more public hearings on the proposed license or permit activity in accordance with 15 CFR 930.62 and AS 44.62, the Administrative Procedure Act.

3) DPDP circulates the application and certification to affected state agencies and local governments and collects comments.

4) The staff of DPDP reviews the comments, and recommends concurrence with or objection to the applicant's consistency certification to the director of the division. Any recommendation to object will include reasons and suggested changes which would allow the proposed project or activity to be conducted in a manner consistent with the ACMP.

5) DPDP responds in writing to the federal agency and the application informing them of its findings. In accordance with 15 CFR 930.63(b) and (c), DPDP responds at the earliest practicable time. If no decision has been reached within three months, DPDP reports on progress and the reason for delay. DPDP will make a finding within six months of initial receipt of the federal license or permit application and consistency certification, or the state may be presumed to have concurred with the certification.

6) In the event of a dispute, DPDP initiates negotiations between disagreeing state and federal agencies and, if necessary, the applicant. Mediation procedures will follow the process detailed in 15 CFR 930, Subpart G.

The federal licenses and permits that DPDP will review for consistency with the ACMP include:

Department of Agriculture, U.S. Forest Service

1) Permits for water easement of USFS lands.
2) Permits for construction on USFS lands.
3) Special use permits meeting the criteria of 15 CFR 930.21(b).

Department of Commerce, Office of Coastal Zone Management

1) Permits within Marine Sanctuaries under 33 USC 1401-1444.

Department of Defense, Army Corps of Engineers

1) Permits under Sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters.

2) Permits under Section 4(F) of the Outer Continental Shelf Lands Act and amendment, authorizing artificial islands or fixed structures on the OCS.

3) Permits under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea.

4) Permits under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters (also subject to state certificate of reasonable assurance, FWPCA Section 401).

Department of Energy, Federal Energy Regulatory Commission

1) Licenses for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4 (e) and 15 of the Federal Power Act (16 U.S.C. 787(e) and 808).

2) Orders for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

3) Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

4) Permission and approval for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

Environmental Protection Agency

1) Permits required under Section 402 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (also subject to state certificate of reasonable assurance, FWPCA Section 401).

2) Permits required under Section 405 (NPDES) of of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.

3) Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act.

4) Exemptions granted under the Clean Air Act for stationary sources.

Department of the Interior

1) Permits and licenses for drilling and mining and related facilities on public lands (BLM).

2) Permits for pipeline rights-of-way on public lands and the Outer Continental Shelf.

3) Permits and licenses for rights-of-way on public lands.

4) Permits and licenses required for drilling and mining on OCS lands (USGS).

Nuclear Regulatory Commission

1) Permits and licenses for the siting, construction and operation of nuclear facilities.

Department of Transportation, U.S. Coast Guard

1) Permits for construction or modification of bridge structures and causeways across navigable

waters.

2) Permits for siting, construction and operation of deepwater ports.

General

1) Licenses and permits subject to 15 CFR 930.54.

More refined lists of federal licenses and permits subject to consistency review by the state will be worked out in agreements between DPDP and the federal agencies. These agreements will also specify timing and procedures where additional detail is needed. Any additions or deletions to the list of licenses and permits must be approved by the Assistant Administrator for Coastal Zone Management (NOAA) pursuant to 15 CFR 930.53.

OCS Activities

Section 307 (c)(3)(B) of the Coastal Zone Management Act states that each activity which is described in detail in a plan for the exploration or development of, or production from, any lands leased under the Outer Continental Shelf Lands Act (43 USC 1331, et seq.) will be carried out in a manner consistent with a state's approved management program. No federal official or agency may issue a license or permit for any activity described in detail in an OCS plan until the state concurs with the consistency certification of the plan describing such activities, or until the Secretary of Commerce finds that each activity described in detail is consistent with a state's program or is otherwise necessary in the interest of national security.

Pursuant to 30 CFR 250.34, a system was established between the U.S. Geological Survey and the State of Alaska for state agencies, including DPDP, to review OCS plans. USGS sends copies of reports it received for OCS lands lessees to affected state agencies, which in turn send comments through DPDP back to the USGS. This procedure may or may not change by virtue of the new amendments to the OCS Lands Act.

With the addition of a consistency certification for each activity described in detail in an OCS plan, DPDP will concur with or object

to consistency certification after comments are received on the OCS plan from state agencies and local governments. Recommendations are then made to the director of DPDP, and a letter sent to the USGS from DPDP concurring with or objecting to the consistency certification. Objections will be accompanied by the state's reasons and suggested changes that would allow the license or permit activities to be conducted in a manner consistent with the ACMP. The provisions for public notice (15 CFR 930.61), public hearings (15 CFR 930.62), and earliest practicable review and notification by the state (15 CFR 930.63) also apply to OCS plans describing in detail federal licenses and permit activities.

Federal Assistance and Programs

Section 307(d) of the Coastal Zone Management Act states that state and local governments applying for federal program assistance for coastal zone activities shall indicate the views of appropriate state or local agencies on the relationship of such activities to the approved coastal management program. Federal agencies may not approve proposed assistance programs which are inconsistent with the approved coastal management program.

The state A-95 Clearinghouse insures that appropriate state and local agencies or entities are notified of applications for federal assistance. DPDP will use this process for review of federally assisted projects in Alaska's coastal zone.

The procedures for review of federally assisted projects are:

1) The applicant sends to the Clearinghouse the application for federal assistance and a certification that the project being undertaken is consistent with the ACMP.

2) Using established Clearinghouse procedures, state agencies, including DPDP, and local governments in the area to be affected by the proposed project, are notified and asked to submit comments within thirty days to the State Clearinghouse.

3) DPDP staff analyzes comments received through the Clearinghouse and recommends concurrence with, or objection to, the applicant's consistency certification to the director of the

division. Any recommendations to object will include the reason, and suggested changes which would allow the proposed project to be conducted in a manner consistent with the ACMP.

4) Within 45 days of Clearinghouse notification, DPDP responds in writing to the federal agency and the applicant informing them of its finding, along with a letter stating that Clearinghouse requirements have been met.

Federal grant programs subject to review include: (The numbers shown at the left are the code numbers from the Federal Domestic Assistance Catalogue.)

Department of Agriculture

10.405	Farm Labor Housing Loans and Grants
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans (exception: loans to grazing associations to develop additional pasturage and loans for purchase of equipment)
10.410	Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.422	Business and Industrial Development Loans (Exception: loans to rural small businesses having no significant impact outside community in which located.)
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.658	Cooperative Forest Insect and Disease Control
10.901	Resources Conservation and Development (Exception: small projects costing under $7500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems.)
10.904	Watershed Protection and Flood Prevention

Department of Commerce

11.300 Economic Development-Grants and Loans for Public Works and Development Facilities
11.304 Economic Development-Public Works Impact Projects (Procedural variation)
11.305 Economic Development-State and Local Economic Development Planning
11.306 Economic Development-District Operational Assistance
11.307 Economic Development-Special Economic Development and Adjustment Assistance Program
11.308 Grants to States for Supplemental and Basic Funding of Title I, II, and IV Activities (Basic grants only)
11.405 Anadromous and Great Lakes Fisheries Development
11.407 Commercial Fisheries Research and Development
11.418 Coastal Zone Management Program Administration
11:420 Coastal Management - Estuarine Sanctuaries
11.421-424 Coastal Energy Impact Program

Department of Health, Education and Welfare

13.237 Mental Health-Hospital Improvement Grants
13.240 Mental Health-Community Mental Health Centers
13.261 Family Health Centers
13.286 Limitation on Federal Participation for Capital Expenditures
13.340 Health Professions Teaching Facilities-Construction Grants
13.369 Nursing School Construction - Loan Guarantees and Interest Subsidies
13.378 Health Professions Teaching Facilities - Loan Guarantees and Interest Subsidies
13.392 Cancer-construction
13.408 School Assistance in Federally Affected Areas-Construction
P.L. 93-318 (Section 161) Construction of Academic Facilities
P.L. 93-641 (Section 1516) Planning Grants to Health Agencies; (Section 1601 et seq, Title XVI Public Health Service Act) Assistance for modernization,

construction or conversion of medical facilities. These programs will replace Catalog 13.206, 13.220, 13.249, and 13.253.

Department of Housing and Urban Development

14.146	Public Housing-Programs (New construction and acquisition)
14.203	Comphrehensive Planning Assistance
14.207	New Communities-Loan Guarantees
14.218	Community Development Block Grants-Entitlement Grants
14.219	Community Development Block Grants-Discretionary Grants
14.702	State Disaster Preparedness Grants

Department of the Interior

15.350	Coal Mine Health and Safety Grants
15.400	Outdoor Recreation-Acquisition, Development and Planning
15.501	Irrigation Distribution System Loans
15.503	Small Reclamation Projects
15.600	Anadromous Fish Conservation
15.605	Fish Restoration
15.611	Wildlife Restoration
15.904	Historic Preservation

Department of Transportation

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program
20.205	Highway Research, Planning and Construction
20.214	Highway Beautification-Control of Outdoor Advertising, Control of Junkyards, Landscaping and Scenic Enhancement
20.500	Urban Mass Transportation Capital Improvement Grants (planning and construction only)
20.501	Urban Mass Transportation Capitol Improvement Loans (planning and construction only)

20.505	Urban Mass Transportation Technical Studies Grants (planning and construction only)
20.506	Urban Mass Transportation Demonstration Grants
20.507	Urban Mass Transportation Capital and Operating Assistance Formula Grants

Water Resources Council

65.001	Water Resources Planning

Environmental Protection Agency

66.001	Air Pollution Control Program Grants
66.005	Air Pollution Survey and Demonstration Grants
66.027	Solid Waste Planning Grants
66.418	Construction Grants for Wastewater Treatment Works
66.419	Water Pollution Control-State and Interstate Program Grants
66.426	Water Pollution Control-Areawide Waste Treatment Management Planning Grants
66.432	Grants for State Public Water System Supervision Programs
66.433	Grants for Underground Injection Control Programs
66.505	Water Pollution Control Demonstration Grants
66.506	Safe Drinking Water Research and Demonstration Grants (demonstration only)
66.600	Environmental Protection-Consolidated Program Grants
66.602	Environmental Protection-Consolidated Special Purpose Grants

Veterans Administration

64.005	Grants to States for Construction of State Nursing Home Care Facilities.

General

More refined lists of federal assistance programs subject to the state's review for consistency will be worked out in agreements between DPDP and the individual federal agencies. Any such revisions are subject to approval by the Assistant Administrator for Coastal Zone Management pursuant to 15 CFR 930.94.

Chapter 7: Uses of State and National Concern

Section (a): ACMA Requirements

One special type of use or activity is the "use of state concern". This is defined in the ACMA:

> *"uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:*
>
> *(A) uses of national interest, including the resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;*
>
> *(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;*
>
> *(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;*
>
> *(D) facilities serving statewide or inter-regional transportation and communication needs; and*
>
> *(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries, or critical habitat areas under AS 16.20.*

The definition encompasses (a) uses in which there may be national interests, and (b) uses of greater than local concern. Thus it includes those uses involving the planning and siting of facilities in which

there may be a national interest, and also uses of regional benefit, both of which are described in the OCZM state coastal management program approval regulations. Further, the definition clearly suggests that uses of some magnitude or broad need are uses of state concern.

The ACMP guidelines require districts to submit a description of the uses and activities in their programs, including uses of state concern, which are proper or improper within their coastal area. In determining which uses would be improper, the districts are required by the ACMA not to "arbitrarily or unreasonably" restrict or exclude a use of state concern. Should a district program restrict or exclude a use of state concern, the restriction or exclusion is reviewable by the Council upon submission of the district program to the Council for approval. In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the Council is bound by the ACMA to approve the restriction or exclusion if it finds that:

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

Should the Council find the exclusion or restriction to be arbitrary or unreasonable it shall direct mediation. After mediation, should the differences not have been resolved to the mutual agreement of the district and the Council, the Council shall call for a public hearing and shall resolve the differences in accordance with the procedures set forth in the Alaska Administrative Procedure Act. Following the hearing the Council has the power to order that the district program be revised to accommodate the disputed use of state concern, should the Council continue to find that the district program has arbitrarily or unreasonably restricted or excluded the disputed use.

Chapter 7: Uses of State and National Concern

It is not inconceivable that in the development of their programs some districts may encounter one or more proposed uses of state concern competing for the same area or locality within the district's coastal zone. The issue is easily resolved when reasonable alternative sitings are available for the competing uses; however, it becomes critical should two or more competing proposals lack such alternatives. The question then arises as to how the district would resolve the conflict in favor of one use of state concern without arbitrarily or unreasonably excluding other possible uses of state concern.

As noted above, to avoid an arbitrary or unreasonable restriction or exclusion of a use of state concern, districts are required to (1) consult with and consider the views of appropriate federal, state or regional agencies, as well as (2) base their restriction or exclusion on the availability of reasonable alternative sites. These procedural requirements are not unlike those required of federal agencies under the National Environmental Policy Act of 1969, as amended (NEPA).

The procedural requirements of NEPA have been well clarified by judicial precedent to require the gathering of information relevant to competing alternatives. That information is then used in a balancing process to determine which alternative should prevail. Accordingly, under the ACMA (AS 46.40.070) districts must actively consult with, and consider the views of appropriate federal, state or regional agencies regarding competing uses of state concern. From these consultations the districts must document the relevant factors for and against each of the competing uses of state concern, and use those factors in a "NEPA-like" balancing process. That balancing process would consist of the consideration and weighing of competing factors for the determination of which use of state concern should prevail to the exclusion of another.

The documentation need not appear in the district's program document, but should be available for Council review. The district's decision as to which use of state concern should be restricted or excluded will be reviewed to determine whether the district's action was arbitrary or unreasonable. (See Section 46.40.060 and .070 of ACMA.)

Some confusion has arisen over the second test for exclusion or restriction of uses of state concern, that of the matter of reasonable alternative sites. The Alaska coastal law says that the Council must approve a restriction or exclusion of a use of state concern if, among other things, the district has based the action on the availability of alternative sites. This means, in practical terms, that the district first must evaluate its own program to see if indeed, uses of state concern would be excluded or restricted. The districts will need help with this. Such help will come from state and federal agencies as well as the private sector during the various review opportunities at the local level. The district must also find that alternative sites are available, and if it cannot, the district must revise its program.

Following program approval by the Council and adoption of the program by the legislature, districts may encounter difficulty in applying their provisions for uses of state concern. That difficulty would involve uses of state concern which were not anticipated during the process of program development and approval. Consequently, it is possible that a district could find itself, after program approval and adoption, faced with the issue of exclusion or restriction of a use of state concern that it did not address in its district program.

Should this occur, a solution would be found in the district program amendment process provided in the ACMP guidelines and the ACMA. An amendment would be mandatory if a district elected to exclude or restrict a newly discovered use of state concern. The amendment process would follow the initial program approval procedure. The district would first comply with the ACMP guidelines in describing whether and on what basis the use of state concern would be considered proper or improper within the district's coastal zone. The amendment would then be submitted to the Council for its approval, and the Council would be guided by the statutory standard regarding arbitrary and unreasonable restriction or exclusion of uses of state concern in determining whether the amendment would be approved. Approval of the amendment by the Council would be required as the amendment would be a significant one. Its significance would lie in the high priority placed by the ACMA on uses of state concern. The amendment would take final effect upon adoption by the legislature.

Section (b): Uses of Regional Benefit

Section 306 (e) (2) of the federal CZMA requires that each state management program provide:

> *for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.*

For purposes of the ACMP, "uses of regional benefit" include all uses of state concern as defined in the preceding section. The procedure just described for assuring that district programs do not arbitrarily or unreasonably restrict or exclude uses of state concern will be the primary means by which ACMP will assure that local land and water use regulations do not exclude uses of regional benefit.

The procedure described above in Section (a) will be triggered as each district program is submitted to the Council for approval. During the period before presentation of such a program by a district which has zoning authority, there will be adequate safeguards to assure that forseeable uses of state concern (and thus uses of regional benefit) are not unreasonably restricted or excluded from the coastal area.

It is established, under Alaska law, that local ordinances may not interfere with the operation of statutes. Chugach Electrical Association v. City of Anchorage, 476, P.2d 115 (Alaska 1970); Macanley v. Hildebrand, 491, P2d 120 (Alaska 1971); Jefferson v. State, 527, P.2d 37 (Alaska 1974); and Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978) are all cases establishing this view. The uses of state concern most often mentioned as possible targets of unreasonable restriction or exclusion prior to district program submission - those relating to the extraction of oil, gas, and coal - are subject to regulation under state and federal statutes with which unreasonable local restriction or and exclusion would unavoidably interfere. Similarly, electric power, transportation, and communication facilities are extensively regulated by state and federal statute. Unreasonable restriction or exclusion of such facilities by local ordinance would likewise be impermissible under state law, and such ordinances would be subject to invalidation by state courts.

There is available, in addition, a non-judicial procedure, by which sponsors of a use of state concern can overcome unreasonable local restrictions or exclusions. This procedure is based upon the state's inherent eminent domain authority as acknowledged in Article I, Section 18 of the Alaska Constitution, and implemented under AS 09.55.240-460.

AS 09.55.240(a)(2) provides:

> *The right of eminent domain may be exercised for the following public uses:*

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state...

It is a general principle of American law that:

zoning ordinances cannot encroach upon or limit the absolute right of the state or those to whom the right has been delegated to exercise the power of eminent domain.

1 Nichols, The Law of Eminent Domain, Rev. 3d ed., at 1-42 (1976).

This principle has recently been reaffirmed by the courts of the State of Montana, the eminent domain statutes of which form the basis for the corresponding Alaska provisions. Id., 1978 Supp, at 11; State ex rel. Smart v. City of Big Timber, 528 P.2d 688.

Even in states that have departed from this general principle, the courts have utilized a "balancing-of-public-interests" test, assuring that the statewide interests reflected in a proposed exercise of the state's eminent domain authority are not subject to arbitrary frustration by local zoning ordinances. See Nichols, supra at 1-44, 1978 Supp. at 11-14; Town of Orinico v. City of Rochester, 197 N.W. 2d 426; City of Fargo, Cass County v. Harwood Township, 256 N.W. 2d 694.

In the absence of any contrary decisions of the Alaska Supreme Court, it can be concluded that one of the two principles just described is the prevailing law in Alaska. Either one would provide the State with an effective means of preventing arbitrary exclusion from the coastal zone of uses of regional benefit under local land and water use regulations.

It is well established that a "public use," for the accomplishment of which the power of eminent domain may be exercised under the Alaska statute, may be carried out by private entities deriving profit from the use, provided that the use is for the public welfare. Spratt v. Helena Power Transmission Co., 94 P. 631 (Mont. 1908); Alaska Gold Recovery Co. v. Northern Mining and Trading Co., 7 Alaska 386 (1926). The "uses of state concern" defined in the ACMA would in practically all cases constitute "public uses" in this very broad sense. They may thus, to the extent authorized by the legislature, be accomplished through the exercise of the state's eminent domain authority by their sponsors, and when that authority is so exercised, are exempt from the normal operations of local land and water use regulations. It should be emphasized that, in the

case of privately sponsored uses, compensation for takings would be paid by the sponsors, and not by the state.

The Office of Coastal Management has devised a procedure by which uses of state concern that are alleged to be in danger of unreasonable exclusion from the coastal zone under local land and water use regulations, can be presented expeditiously to the legislature for recognition and "authorization" as "public uses" under AS 09.55.240(a)(2). Upon receipt of a complaint that an alleged use of state concern has been arbitrarily excluded from the coastal zone under a local land or water use regulation, OCM will conduct an investigation of the surrounding facts. It will summarize its findings in a report to the Council. If OCM finds that an unreasonable exclusion of a use of state concern has taken place, it will submit for the Council's consideration a draft resolution, requesting the legislature to recognize the proposed project as a use of state concern, and to authorize it as a public use under AS 09.55.240(a)(2).

After considering OCM's report, as well as oral and written comments on the proposal from interested persons, the Council will decide whether the individual proposed use is a use of state concern. If its decision is in the affirmative, the Council will adopt the draft resolution requesting the legislature to authorize the use, and forward to the legislature the resolution, the OCM report, and the comments. If, after reviewing these materials, the legislature determines that the use should be allowed despite local land use regulations, it may authorize it as a public use under AS 09.55.240(a)(2). The sponsors of the project will then be authorized to exercise the power of eminent domain on behalf of the state, and will be exempt from the normal operation of local zoning. The legislature's determination that the use constitutes a public use will be subject to judicial review during the course of the condemnation procedures subsequently initiated by the sponsors.

Thus, the ACMP fulfills all requirements of the federal CZMA concerning uses of regional benefit.

Section (c): Continued Consideration of the National Interest in Facilities Serving Other Than Local Needs

Section 306(c)(8) of the federal CZMA requires that each state management program provide for:

> *adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature*

As was noted in Section (a) above, the ACMA concept of "uses of state concern" include:

> *uses of national interest, including the resources for the siting of ports and major facilities which contribute to meeting national energy needs*

and

> *the siting of major energy facilities or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance.*

The procedures described in Section (a) will thus serve to assure continuing consideration of the national interest in facilities serving other than local needs in the development and implementation of district programs.

In areas for which district programs have not been approved the state agencies managing coastal land and water uses will also be required to consider adequately the national facilities of greater than local significance. Under AS 46.40.200, state agencies must take whatever action is necessary to facilitate full compliance with and implementation of the ACMP. Because of the importance attached in the ACMA to reasonable treatment of uses of state concern, a state agency that failed even to consider adequately the national interest that might be involved in such

a use would plainly violate its obligation to facilitate full compliance with the program. The obligation of state agencies to accord adequate consideration to the national interest in uses of state concern will be recognized and reaffirmed in the Administrative Order. Failure of an agency to meet this obligation would constitute a ground for judicial reversal of that agency's action.

The open nature of state and district proceedings affecting coastal land and water uses assures that all persons and organizations wishing to present alleged national interests for consideration will be the opportunity to do so. The Administative Order requires that state agencies provide notice and opportunity to comment on permit applications sufficient to allow meaningful input by interested persons.

Chapter 8: Coordination and Participation

Section (a): Introduction

This chapter describes the general effort to develop ACMP in coordination with, and with opportunities for involvement by, all interested parties.

ACMP has been under development since the spring of 1974, and during this time a variety of efforts to coordinate the program with other programs and interested parties have been made. These efforts have usually centered on a particular element of ACMP rather than the program as a whole. This was due, in part, to the fact that there was no single document which described the entire program, except for the annual grant applications. These applications for federal program development funds were circulated through the A-95 clearinghouse and represented a good effort to coordinate the overall program, as they were sent to local governments and state and federal agencies. Persons who reviewed the grant applications were thus able to keep track of the direction of the program. More tangible coordination and participation efforts were made for the primary elements of ACMP. These are the Alaska Coastal Management Act itself and the ACMP Guidelines and Standards.

Section (b): Alaska Coastal Management Act

The Coastal Management Act which passed in June of 1977 was not the first attempt to pass coastal management legislation for Alaska. Earlier bills were proposed and circulated among state and local governments for comment. At one point in 1976, twelve public hearings were held on one such bill. The current Act was sent to federal agencies very early in the 1977 legislative session for their comments, which were passed on to the legislature. It was partly a result of this, plus prior efforts of ACMP to coordinate with federal agencies, that resulted in the inclusion, and protection, of various federal functions in the definition of uses of state concern now found in the Act.

Local governments, too, had a great deal to say about the eventual coastal legislation, and it was their active interest in the program, protest of the original legislative concepts, and eventual support of

the present legislation that enabled passage of the Alaska Coastal Management Act.

During the period prior to passage of the Coastal Management Act, the state agencies participated in the development of the ACMP through a policy committee organized by the Governor. This committee represented the major state agencies and provided guidance to the program until the present Alaska Coastal Policy Council was established.

Section (c): ACMP Guidelines and Standards

While the Coastal Management Act was crucial to the program in terms of structure and authority, the guidelines and standards define what the program is to accomplish and how management must take place. Examination of local plans showed great differences in local situations and needs. To assure that the ACMP Guidelines and Standards would be coordinated with local plans, at least at the policy level, drafts were sent to coastal local governments for their comments. One clear message came back: in order to be workable for the entire coastal area of the state, the standards would have to be fairly general, as there are an endless number of special cases and situations.

The guidelines and standards were also developed with other local considerations in mind. Many local governments have been engaged in planning activity for some time, and it was felt that this prior work should be used wherever possible. An examination of local comprehensive plans and other work demonstrated that many of the districts could prepare approvable coastal programs with expansions and updates of their existing plans.

The public and federal participation discussions which follow will show in greater detail how those sectors were involved in the development of the guidelines and standards.

Section (d): Public Participation

Alaska has traditionally been an isolated, independent, and slow-moving land, although occasional turmult has been experienced from time to time with war and rushes for gold, oil and fur. Climate, distance, and lack of facilities have all contributed to this situation. The development of an effective public participation process for the coastal management program had to take into account that:

- 75% of Alaska's 418,000 people live in 200 coastal communities. Many make their living from coastal resources, fishing, hunting, logging, and mining. Of the 33,904 miles of coastline in Alaska, most is undeveloped and access is limited.

- Alaska spans five time zones from east to west. It takes approximately four hours by jet to fly from north to south. Roads connect only the major cities, and many of the lesser roads are unpaved. Weather often stops all transportation for days, and in some places, weeks.

- There are few newspapers circulated statewide. Many local newspapers are weekly, and some areas have no newspaper at all.

- Live television is now available in some parts of the state via satellite. Cable TV is also available in some areas, but many areas continue to have no television.

- Whereas many local radio stations, AM and FM, operate within the state, their range is generally limited and their perspective local. News of national or statewide significance is often poorly covered.

- Telephone service still does not cover the entire state. It may take hours, or even days, to place a call from a village to the "outside." Some villages have only one telephone, and many communicate primarily by radio.

- Language barriers in rural Alaska are considerable. The three major Native language groups are Eskimo, Indian, and Aleut. The Indian and Aleut people generally speak English with

varying degrees of fluency, but many Eskimos in rural areas are less familiar with English, and some older Eskimos cannot speak English at all. Translators are a necessity when government officials conduct public meetings, and must be carefully selected to allow communication of concepts which may have no Native equivalent. Publication in Native languages is difficult as there are different orthographies, and many older non-English speakers do not read at all.

ACMP's response to these factors has been primarily by developing informational products for statewide distribution; holding public workshops for educational purposes; and holding public hearings to formally solicit public testimony.

Through these techniques, people in Alaska have become involved in this complex government program to an unprecedented extent.

Products

The ACMP now has a mailing list of over 2400, including legislators Native organizations, federal and state agencies, local governments, special interest groups, and individuals.

The Office of Coastal Management publishes a newsletter, the "Alaska Current-ly," which is distributed to the entire mailing list. The newsletter carries articles on coastal-related issues as well as announcements of meetings and opportunities for public participation. In addition, the Office of Coastal Management staff releases informational articles and press releases to newspapers, as necessary.

Several movies and slide shows have been produced by the ACMP and are available on request. One slide show was produced by an Eskimo from the Yukon-Kuskokwim Delta, in Yup'ik, with an English translation. Because many villagers will not come to a meeting solely to view a slide show, it is shown at regular village meetings. It will take approximately two years for all villages within the region to receive the presentation. This slide show has been extremely well received and it is an effective technique of education in rural Alaska.

Speakers have been provided to groups interested in learning about coastal management. The ACMP has participated in four conference

workshops sponsored by the Alaska League of Women Voters, the National Oceanic and Atmospheric Administration, the Alaska Native Foundation and Kawerak, Inc., the non-profit Native association for the Bering Straits region.

Workshops

The ACMP has held two separate sets of statewide workshops.

In the Spring of 1977, six workshops were held in Southeast and Southcentral Alaska. Approximately 200 people attended. Because this was before the Alaska Coastal Management Act was adopted (June 1977), staff members explained the basic requirements of the state coastal management program and the bill then being considered in the legislature. Technical and financial assistance were offered to communities wishing to begin the process of local coastal planning.

The major issue was the proposed coastal legislation. Many participants had been involved with, or were aware of, previous bills which were basically "direct state control" techniques. Much concern was expressed about insuring sufficient local control in a statewide coastal management program.

As a result of these meetings, the Office of Coastal Management enlarged its mailing list to include all registrants, and began planning a second set of workshops, which were held in the Fall of 1977. By this time, the Alaska Coastal Management Act had gone into effect, with the legislature having considered the results of the ACMP workshops. This Act required the Alaska Coastal Policy Council to develop, using the public hearing process, the guidelines and standards for coastal management. The primary function of the Fall workshops, therefore, was to get public input to help draft these regulations.

Of the 200 coastal communities in Alaska, twenty were chosen for workshop sites. Most would be required to prepare coastal plans under the Alaska Coastal Management Act. Dates for the workshops had to be carefully set on the basis of hunting and fishing seasons, as throughout coastal Alaska, many people leave their homes for periods of time to gather food in season. In addition, because several communities had only one location suitable for holding a public meeting, as well as only

one hotel, schedules had to be adjusted so as not to conflict with other uses of these facilities. Workshops had to be scheduled far enough apart in time to allow for weather delays; it took two and one half months to actually conduct the twenty workshops.

In preparation for the workshops, a special tabloid was mailed to everyone on the mailing list and distributed statewide as a newspaper supplement. The tabloid contained both educational material and a pull-out questionnaire to be filled out at the workshop or mailed to the Office of Coastal Management. The questions concerned what people thought the coastal management program should and should not be concerned with. It was designed to be understandable by everyone, and usable by all. Although some workshop participants complained that the questionnaire was too simplistic, it was generally successful at encouraging thought and discussion on coastal management.

In addition to the tabloid, a thirty minute television program was shown prior to the workshops in each region. The program was an introduction to the concept of coastal management.

Three examples of locations at which workshops were held in more rural areas are Unalaska, North Slope Borough, and Kipnuk.

Unalaska, in the Aleutian Islands, has only one TV cable station, no radio station and no newspaper. The scheduling of the TV station is so informal that the city manager had the OCM TV program run for the three nights preceding the workshop. Because there is relatively little entertainment in Unalaska, it is likely that most residents learned something about coastal management, even if they did not attend the workshop.

The North Slope Borough covers the entire northern section of the state. A workshop was scheduled in Barrow, the headquarters of the borough. The school superintendent sent the TV program and the tabloids out through the school system. This meant that most of the major villages, where the people see relatively little of state government, had an opportunity to view the half hour program and fill out the questionnaire. Two months later the Office of Coastal Management received in the mail a set of filled-out typed questionnaires from Kaktovik, Barter Island in the Arctic Ocean. It had been typed and duplicated by a

teacher in the school there because not enough copies were received. Comments included:

> *We do not want our camp to be ruined. We usually hunt ducks and fish. We do not want our camp for nothing else but camping.*

> *Every family has a camp for fishing and hunting for some meat. We eat the food and we don't hang the antlers on the wall like the white man.*

In Kipnuk, a village of 300 Yup'ik Eskimos on the edge of the Bering Sea, three-quarters of the meeting was held in Yup'ik. There is no TV or newspaper in Kipnuk and a workshop was not scheduled there. The Office of Coastal Management was invited to be on the agenda of a meeting of the village leaders from the surrounding area. About 25 villages were represented.

In the more urban workshops, radio, television, and newspaper coverage was provided.

Approximately 900 persons attended the twenty coastal management workshops.

- 699 people registered
- approximately 600 registrants were from communities in which workshops were held
- approximately 100 registrants were from other towns and villages
- 64 Alaskan communities were represented at workshops
- Coastal Policy Council members attended thirteen of the workshops
- 1,963 questionnaires were filled out and returned at the workshops and through the mail

Chapter 8: Coordination and Participation

Most of those participating in the workshops, in all parts of the state, identified three important feelings:

1. The protection and development of renewable resources, especially fishing, should take precedence over non-renewable resource development;

2. Local control in coastal planning should be maintained; and

3. Cooperative planning on a regional basis should be established.

A substantial number of participants recognized a need for additional development along the coast, but felt that natural resources should be developed in a way that protects existing lifestyles and values.

In the North, Northwest, and Southwest Regions of Alaska, subsistence activities were given the highest priority. Participants wanted to protect their traditional village lifestyles, and they considered impending development threatening. Many villages are still dependent to a large degree upon the land and sea.

In Bristol Bay, Kodiak, Cordova, and the Aleutians, commercial fishing was the highest priority. Participants were extremely concerned about the impact of oil and gas development upon the fishing industry.

In the Southeast and Southcentral Regions, there was recognition that there must be a balance between competing demands on coastal resources. In the Southcentral Region, fishing, offshore oil, recreation, tourism, port development, and wildlife protection were seen as the most important uses which must be managed. In the Southeast Region, fishing, logging, tourism, and wildlife protection were considered the most important coastal issues.

In every region, questionnaire results show that coastal food harvesting for commercial purposes, aquaculture, and harvesting of fish and game by local people (subsistence) were considered to be the most important uses. Discussion of oil and gas development revealed ambivalent feelings. Some people wanted to encourage oil and gas development, and the growth which accompanies it; some wanted the development,

but not the growth; and others wanted to discourage oil and gas development altogether. On the questionnaire, oil and gas development ranked in the middle in every region. It ranked higher in Southcentral, which includes Anchorage and Kenai, than it did elsewhere. The least favored uses were the filling of wetlands, although participants recognize that it may be necessary in some limited cases, and allowing non-local people to harvest fish and game.

Questionnaire results showed that, in deciding where development should occur, the most important question is how the development would affect the plant and animal resources of the coast.

Most people did not favor the idea of government planning for the coast. However, many people recognized the necessity to plan before many irreversible commitments of lands and resources are made. People stated at the workshops and on the questionnaire that they wanted to be kept informed and involved in the planning process. They felt they will be affected by the program, and they wanted to be involved in making the decisions.

Narrative summaries of the workshops were prepared by the Office of Coastal Management and distributed to all participants. In addition, a statistical analysis of the workshop results was prepared. A thirty minute television program entitled "The People's Coast" was produced and distributed statewide, summarizing the workshops with footage shot at several of the workshops.

In the fall of 1977, with summaries of the workshops, the statistical analysis of the workshop results, and the video program in hand, the Office of Coastal Management began to draft the guidelines and standards. Summaries of the workshop results were also furnished to the Council members and all state legislators.

Public Hearings

On January 4, 1978, after several meetings, the Alaska Coastal Policy Council adopted a hearing draft of the guidelines and standards. Public hearings were scheduled in February and March 1978, in fifteen of the communities in which workshops had been held. Because of weather problems, only two hearings per week could be scheduled for each hearing

officer. In order to conduct fifteen hearings in the two-week alloted time, five hearing officers were necessary. Legal notice was published in newspapers statewide, and posters were placed in all hearing communities. An article was published in the "Alaska Current-ly" announcing the times and locations of all hearings.

The Office of Coastal Management wrote public service announcements for radio and TV stations and press releases for newspapers. Over 2,000 public information bulletins on the review period were sent to the OCM mailing list, including all people who registered at the fall workshops. Translators were arranged in appropriate communities and copies of the hearing drafts were distributed to the city offices of each community where hearings were scheduled.

Approximately 340 people attended the public hearings. Many did not testify, but came to ask questions about the program. Each meeting was divided into two parts: an "on-the-record" portion for those who wished to formally testify, and an informal portion when the hearing officer answered questions. All hearing officers prepared detailed hearing summaries in which both aspects of the meeting were reported.

The major concerns expressed at the hearings were:

Juneau	- government "taking" of private property through coastal regulation - local control
Unalaska	- subsistence - local control - opportunities for public involvement
Kotzebue	- subsistence - the Unorganized Borough - local control
Dillingham	- local planning - subsistence - public involvement
Cordova	- local planning - planning for areas outside the district

Valdez	- local control - the responsibilities of state agencies
Ketchikan	- timber harvest over-regulation - local control - planning for areas outside the district
Bethel	- subsistence - local control - public education and involvement
Kodiak	- local control
Barrow	- subsistence - local control - oil and gas development
Anchorage	- local control - conflict resolution and appeals procedures - public education and participation
Nome	- subsistence - public participation - bilingual opportunities - the role of the Native corporations
Soldotna	- abilities of local and state governments in planning - local control
Homer	- local control - conflict resolution and appeals
Sitka	- local control - federal and state consistency

On the basis of the comments received in the public hearings and the thorough written comments received during the sixty-day comment period (see federal agency participation chapter), the guidelines and standards were revised by staff and presented to the Council, along with

summaries of all comments received. The Council then revised the guidelines and standards and adopted a final version in April 1978. This version contains numerous requirements for public participation both at the Council and at the district levels.

Earlier Activities

In addition to public workshops and hearings sponsored by OCM and the Council, the Alaska Legislature also held fourteen hearings statewide in the summer of 1975 on the original proposed coastal legislation. Their hearings led to the defeat of a "direct state control" coastal bill and the passage, one year later, of the present Alaska Coastal Management Act.

Program Document Hearings

All of the ACMP sponsored hearings in the past have been directed at obtaining public comment on important elements of the program. The guidelines and standards are the most notable example. The program document is a description of ACMP, and has considerable importance for the program in terms of public understanding and federal approval of the program. Therefore, it seemed appropriate that a public comment opportunity should be made available for an early draft of this document as well. Toward this end, a "Preview Draft" was circulated in July of 1978 for public and agency comment. The DEIS was based in part on the comments that were received from that review.

The review was a very useful effort and the Office of Coastal Management Staff was assisted greatly in revising the format and presentation on the basis of the review comments. A separate publication is available from the Office of Coastal Management which contains the oral and written comments received, along with a response from staff as to how the comments were utilized.

As part of the review process that must precede federal approval, public hearings were held on the DEIS in Juneau and Anchorage on February 27 and 28, 1979, respectively, in accordance with the requirements of the National Environmental Policy Act. Written comments also were submitted to the federal Office of Coastal Zone Management, and are summarized and responses provided as an appendix to this document.

Appropriate revisions have been made in response to the comments received.

Section(e): Federal Agency Participation

1. Steps Taken to Involve Federal Agencies

The State of Alaska has more reason than most other states to recognize the importance of federal agency participation in the coastal management program. The Alaska Native Claims Settlement Act transfers 44 million acres of land from federal to Native corporation ownership and provides the means for the creation of millions of acres of federal reserves. The Alaska Statehood Act allows the state to select millions of acres of federally owned land. Much of the land affected by these two acts is located in the coastal zone, thus creating a fundamental uncertainty as to the final contours of land ownership. This, together with the fact that approximately 60% of the land area in Alaska will remain in federal ownership after all transfers are made, has made federal participation in the ACMP especially important.

The first substantive involvement of federal agencies in the ACMP came in 1975 with a request by the Office of Coastal Management for summaries of federal agency goals, policies, and programs related to the coastal zone. These summaries were to become the basis of the national interest provisions of the Alaska Coastal Management Act, then under development in the legislature. In addition, the Office of Coastal Management became aware of major federal planning processes. This information can be obtained from the Office of Coastal Management.

The first federal agency meeting was held on May 22, 1975, and was attended by 22 federal agency representatives. A second meeting was held in September 1975, attended by 21 federal agencies. At these meetings the need for the summaries referred to above was discussed, as well as such matters as federal lands excluded from the coastal zone, federal consistency with the ACMP, and designing a coordination process. Several more meetings took place in 1976.

Chapter 8: Coordination and Participation

In the summer of 1976, the position of Federal Programs Coordinator was established in the Office of Coastal Management. The coordinator, a full-time position, was responsible for relating ACMP developments with federal agency policies and programs. The Federal Programs Coordinator made numerous contacts with federal agencies in the late summer and fall of 1976, and participated in meetings with the Department of the Interior Coordination Committee and the Department of Transportation Intermodal Planning Committee.

In December 1976, federal agencies were afforded the opportunity to comment on proposed state coastal management legislation. This proposed legislation contained the best expression to date of the State of Alaska's policies on coastal management. This legislation was enacted as the Alaska Coastal Management Act.

In early 1977, the Office of Coastal Management began distributing its monthly newsletter, the "Alaska Current-ly." All federal agencies that were participants in program development were on the mailing list. Interagency meetings, special federal agency mailings, and individual meetings continued.

Major mailings were made in August 1977 (including a copy of the Alaska Coastal Management Act, a federal agency participation timeline, a schedule for the ACMP fall workshops, and a summary of state agency activities in the coastal zone); September 1977 (another request for federal agency policies, and copies of federal coastal zone management program approval and consistency regulations); and November 1977 (the new draft of guidelines and standards, a description of proposed boundaries, and a list of state agency products concerning coastal management).

In September 1977, the Alaska Coastal Policy Council held its first meeting in Anchorage. Federal agencies were invited to attend and participate in this and all subsequent Policy Council meetings.

In November 1977, federal agencies were given the first draft of the Council's guidelines and standards at a special meeting. Fifteen agencies were represented.

At least three formal drafts of the ACMP Guidelines and Standards

were sent to federal agencies for their review and comments, one each in November and December 1977, and another in January 1978. The latter was the draft on which public hearings were held. The periods for review were, of necessity, short, as the Alaska Coastal Management Act specified December 1977, as the date when the Council was to have completed hearings on the guidelines and standards. A few agencies commented in writing on the first drafts of the guidelines and standards; eighteen agencies submitted comments on the hearing draft.

Sixteen agencies attended a February 1978, federal agency meeting. A presentation was made on the coastal zone boundaries, additional comments on the guidelines and standards were solicited, and federal consistency procedures were discussed for the first time. A subsequent mailing included more details about boundary delineation, the Council's internal guidelines, a draft of the Office of Coastal Management's federal consistency procedures and a draft of the text of the ACMP document.

In order to establish federal consistency procedures, the Office of Coastal Management requested federal agencies to provide lists of federal activities, licenses, permits, and assistance programs in the coastal zone. Most of this information was obtained at another round of individual meetings held in March.

2. The National Interest, the ACMA, and the ACMP Regulations

The Coastal Zone Management Act was enacted in response to the recognition of the importance of the nation's coastline. Thus, it is in the national interest to "preserve, protect, develop, and where possible to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations."

Considering the "national interest" is a difficult undertaking, as no one has ever adequately defined the collective national interest. There are, however, readily identifiable uses, activities and resources in which there may be a national interest. Their uses and resources are presented in tables 1 and 2 found at the end of this chapter, along with the guidelines and standards and relevant sections of the ACMA that relate specifically to those uses and resources.

Chapter 8: Coordination and Participation

Certainly the most important result of coordination with federal agencies has been the recognition of the national interest in the Alaska Coastal Management Act definition of "uses of state concern," which specifically identifies certain federal functions and responsibilities. By making these a part of the definition, local governments must recognize these functions and responsibilities in their plans. The following are specifically identified in AS 46.40.210(6):

- ports
- major energy facilities which contribute to national energy needs
- navigational facilities and systems
- resource development on federal land
- national defense
- communication
- transportation
- and generally any uses of more than local concern, which could be state, regional or federal responsibilities.

As well as the category "resource development on federal land," the last category includes resources in which there may be a national interest. These include, but are not limited to, endangered species, both floral and faunal; wetlands and their protection, both freshwater and saltwater, as specified by Presidential Order; floodplains and their management as specified by Presidential Order; wildlife refuges and reserves, national parks, monuments, historic sites and recreation areas, and agricultural lands.

AS 46.40.060 states, in part, that the Council may grant summary approval to a district program if it "does not arbitrarily or unreasonably restrict or exclude uses of state concern..." The statutory test for the reasonableness of a restriction or exclusion (AS 46.40.70(c)) is outlined in Chapter 7 and includes consultation with state and federal agencies, availability of alternative sites, and incompatibility of the proposed use. In addition, 6 AAC 85.080 requires districts to identify improper and proper uses of state concern, and 6 AAC 80.140 obliges the districts to involve federal agencies from the beginning of district program development.

Recognizing that federal agencies will have limited staff capability to monitor the status of each of the many district programs, the

Office of Coastal Management and Department of Community and Regional Affairs plan to assure that federal agencies will receive copies of all district program draft documents.

The Office of Coastal Management will compile a document (and supplement it) which will contain federal agency statements of interests and activities in Alaska. The Office of Coastal Management will continue its federal agency outreach program, and involve federal agencies in state or local affairs as issues arise. State agencies will also work with federal agencies in carrying out their tasks of program implementation and assistance to the districts. For federal consistency matters, individual agreements will be made with each agency to declare which of the agency's activities will be subject to consistency and what procedures will be used.

Federal agencies will continue to be involved in future additions and amendments to ACMP regulations, and the Council has obligated itself to review the regulations at least annually.

3. Federal Agency Views and the ACMP

As tables 1 and 2 point out, there is a diversity of national interests that must be considered in the Alaska Coastal Management Program, and as the earlier discussion showed, federal agencies were given adequate opportunity to provide input into the ACMP. Federal agency concerns and how they were addressed follow:

Boundaries. Several agencies were concerned that the guidelines and standards and the boundary maps did not mention or show the coastal zone seaward boundary as the limits of the territorial sea, that is, three miles. The program document text and program maps now reference the federal law which states that the seaward limit is indeed the limit of the territorial sea.

District Program Development Final Approval Process. Many federal agencies have suggested that adequate safeguards are needed to ensure consideration of their views in the district program approval process, and that such consideration can be guaranteed only by amending the district programs into the ACMP. The Office of Coastal Management has devised procedures that have been adopted by the Alaska Coastal Policy

Council as regulations which ensure that federal agency interests are considered and are not unreasonably excluded or restricted. These procedures have been revised recently to increase the length of advance notice, the number of opportunities for review, and the duration of the review periods. Federal regulations concerning modifications to approved state programs are undergoing revision as of this writing and unfortunately, the final regulations are not available for guidance on this subject. OCM assures federal agencies that the incorporation process that will be contained in the final draft of this program will provide ample opportunity for comment, and will be fully in compliance with federal regulations.

Guidelines and Standards Specificity. Many federal agencies argued that the guidelines and standards were too general. Revisions have been undertaken to strengthen certain of the guidelines and standards. Reviewers are reminded, however, that these regulations apply to all state agency activities and permit programs, as well as to district programs. Any activity undertaken must be in conformance with each of the standards, including those protecting habitats and prescribing water dependency, and not only the standard that addresses the particular use. The guidelines and standards, when complemented by the ACMA and other state police and proprietary authorities that must be carried out in a manner consistent with the program, provide policy guidance that is specific enough to manage coastal uses.

Mention of Endangered Species. Some agencies were concerned that endangered species were not adequately protected. The ACMP protects endangered species by protecting their habitats. Such protection under the ACMP is provided by the habitat standards. Any person, including federal agencies, can nominate critical habitat of endangered species for special protection as areas which merit special attention, either directly to the Council or through the district planning process.

Wetlands Protection. Certain federal reviewers suggested that the ACMP was unable to protect wetlands adequately. Wetlands were considered, and a standard adopted under the habitats section of the guidelines and standards stating wetlands must be managed to maintain or enhance their ability to support living resources. Any development that requires a state permit and that would require wetland alteration would have to meet this protective standard. Other federal reviewers argued that this

standard for habitat protection was too rigid. Three criteria were added, that if met, would allow strictly limited exceptions to any habitat standard in cases where no feasible or prudent alternative was available. Also, the coastal development standard was written specifically to include by reference the Corps of Engineers' standards for wetlands protection.

AMSA's . Most agencies expressed a desire to be allowed to nominate AMSA's for inclusion in district programs or for Council designation in the Unorganized Borough. Provisions for such nomination has been included in the revisions to the guidelines and standards.

Energy Policies. Many agencies expressed the opinion that stronger, more specific standards for energy were needed. Despite the fact that energy facilities must be sited in full compliance with the guidelines and standards that are not activity-specific, such as the habitat and coastal development standards, and, therefore, could be adequately treated without revisions, a more specific set of coastal energy policies has been added to the ACMP Standards.

Other Concerns. Federal environmental concerns (which are equally state and local concerns) have been provided for in the Habitats and the Air, Land and Water Quality sections of the guidelines and standards. The specific regulations of the Corps of Engineers for dredging and filling have been adopted by reference, as have the air and water quality requirements of EPA (this by adoption of the Alaska air and water quality standards, which meet or exceed those of EPA).

There remain disagreements over the wording of some ACMP regulations. Many of these problems may be resolved in future amendments to the regulations. Because the various federal agencies have divergent concerns, however, it is unlikely that all of these agreements can be fully resolved. It is clear the present regulations, as well as the provisions of the Alaska Coastal Management Act, ensure adequate consideration of the federal agency views and the national interest, as defined directly by the federal agencies themselves.

Not surprisingly, the national interest parallels the state and

local interests. Each level of government desires economic stimulation. Each wants environmental quality and protection. Each is concerned about navigation, national defense, energy, communications, mineral transportation and the other issues ACMP has addressed. This commonality of interest does not preclude the possibility of conflict. Conflicts are more likely to arise between communities of interests which span the three levels of government, than between one level of government and another.

4. Federal Programs in Alaska

There are a number of federal programs underway in Alaska which relate in one way or another to ACMP. This is not at all surprising given the vast coastal resources of the state and the national interest in the use and management of those resources. Some of the projects listed below are federal in origin, but are being carried out by state agencies. Others utilize a combination of state and federal agencies to execute the project. In many cases, there are advisory groups of state agency representatives with whom the federal agencies consult. ACMP is usually a member of these groups directly or indirectly by virtue of the presence of DPDP or another line agency on the advisory group.

1) The "208" Study. This program is in essence a state response to national efforts to control non-point source pollution. Funding comes from EPA but the work is being carried out by the Alaska Department of Environmental Conservation. Four specific types of non-point source water pollution are being examined: placer mining; silvicultural practices; road and pipeline construction; and waste oil disposal. The effort will eventually result in ADEC regulations, or other management schemes, to control non-point source pollution from these activities. Those regulations will be worked into the ACMP regulations. Coordination at present consists of relations between OCM and ADEC staff and mutual review of draft products.

2) BLM Transportation of OCS Oil and Gas Study. BLM has devised a planning process for the leasing and transportation of OCS oil and gas. ACMP participates in this effort through the leadership of DNR. BLM has a state advisory group assisting in the study. The study materials already make reference to ACMP and specifically the

role of district programs.

3) National Forest Planning. The National Forest Management Act of 1976 requires land use planning for national forests. Planning is underway for Alaska's two national forests, the Tongass and the Chugach. State agencies were involved in task forces set up to identify land use values in the forests. OCM commented on some elements of these plans. While the national forests are technically excluded from the coastal zone, ACMP has worked with the Forest Service to assure compatibility between the planning efforts, with a special emphasis on coastal boundary identification.

4) Southcentral Alaska Water Resource Study (Level B). This study is designed to assess existing and projected water and related land resource problems and to evaluate alternative solutions for the next 15 to 25 years. The results of the study will have an important bearing on future industrial, commercial, and residential development, which will impact the district and regional ACMP planning processes. Both federal and state agencies are participating in the project. Primary liaison for ACMP occurs with ADEC. At some point, the study will determine the limitations to growth in the study area that are caused by water supply, and then the state, acting now primarily through DNR, will have a better idea of how to allocate water.

5) Intermodal Transportation Planning. This study is centered on efforts to assess Alaska's present and future transportation needs. Any resource development in Alaska will depend on transportation planning and costs of moving materials to markets. Federal and state agencies are participating in the effort, the result of which will impact district and state coastal planning. The Alaska Department of Transportation and Public Facilities, which is a member of both the Alaska Coastal Policy Council and the ACMP state agency working group, provides liaison for ACMP to this planning project.

6) Federal/State Land Use Planning Commission. This body was established to undertake a process of land use planning

and to make recommendations regarding the use and management of Alaska's federal and state public lands and resources. The FSLUPC was directed to improve coordination between state and federal agencies, to assist in implementing the Alaska Native Claims Settlement Act, and to recommend policies that will work to ensure that economic development in Alaska is orderly and compatible with state and national environmental and social objectives. Much of the inventorying and mapping done by FSLUPC will be of use to state and local coastal planning activities. FSLUPC has many projects and the ACMP relationship with the Commission depends on the nature of the project being discussed. In many cases, particularly with mapping, DNR provides the primary ACMP liaison. In a relatively new effort, computer storage of geographic information, OCM is directly involved in considerations for computer storage of data.

7) Beaufort Sea Leasing Committee. BLM and the state each have tracts of land in the Beaufort Sea coastal area that are suspected of containing oil reserves. The tracts adjoin each other, and there are several areas where the ownership is not clear. In order to expedite exploration and development of potential petroleum resources, the state and BLM decided to hold a joint lease sale, and make all the leases subject to coordinated stipulations, such that both parties' needs would be accounted for in the lease agreements, and thus, exploration and development could proceed in advance of a final determination of the ownership of the disputed lands. Revenues from the leases and production will be divided between the state and federal governments after the ownership question is settled. In order to assure adequate communication and coordination, the Leasing Committee was established to draw up lease stipulations and to participate in the various environmental and other studies that precede the lease. DNR provides the leadership for this committee, since it has the major responsibility for the state in the leasing venture. DPDP is also on the committee and provides ACMP liaison by that means, as well as through DNR.

8) Coast Guard Ten Year Plan. In order to determine the demands for its services, the Coast Guard has engaged in a

process to identify changes expected or possible in the Alaska economy and external economy, and how this will affect USCG's mission. The Alaska Coastal Policy Council is part of the general distribution for copies of the plan and has the opportunity to comment at appropriate points. The plan is aimed primarily at USCG personnel, property and equipment concerns, and at this juncture, the relevance to land and water use management is slight.

9) BLM-OCS. One of the largest planning efforts in Alaska is related to the leasing, exploration, and development of anticipated petroleum and gas reserves in Alaska's OCS. While the area beyond the three-mile limit is excluded, the state will be providing a great deal of on shore services to OCS development, and many changes can be expected. ACMP is heavily involved at the state and local level in planning for onshore impacts of OCS development, and several of the districts have this as regular elements in their planning efforts. OCM has direct liaison with the Environmental Assessment Division of the BLM-OCS office, whereby the activities of that office are monitored by OCM, and that office may keep track of, and participate in the development and implementation of ACMP.

10) NOAA-OCSEAP. NOAA is sponsoring a multi-million dollar Outer Continental Shelf Environmental Assessment Program. This program looks at all aspects of the OCS, including social and economic aspects. DPDP has two staff members working directly in the program as state "working-liaison" personnel. Coordination with ACMP is achieved in this manner as well as occasional direct contact between the OCSEAP leaders and OCM.

11) Bureau of Land Management -- Management Framework Plan. The Bureau of Land Management prepares comprehensive land use plans for the public lands it administers. These plans involve inventorying (Unit Resource Analysis), socio-economic analysis (Planning Area Analysis) and conflict analysis, resolutions, and a Management Framework Plan. While these federally owned

lands are excluded from the coastal zone, BLM will work with OCM to assure consistency with the ACMP when developing plans for lands in the coastal areas.

An inter-agency task force is completing a land use plan for the National Petroleum Reserve-Alaska and has worked closely with the North Slope Borough.

12) HUD Land Use Element. As part of the state participation in the Community Planning Assistance Program of the U.S. Department of Housing and Urban Development (HUD), the Division of Policy Development and Planning has developed a set of land use policies. These policies basically reflect existing land use objectives as practiced by line agencies, including the ACMP standards, and are required in order for the state to continue to receive HUD funding for community planning. This assistance is used in concert with CZM funding to develop community plans and implementation ordinances. In the ACMP formulation stage, OCM staff worked with other DPDP staff members to make sure that the HUD policies were consistent with the ACMP Guidelines and Standards. DPDP is now in the process of revising the HUD policies because of changes being made to the guidelines and standards, and further direct review of the policies formulated as part of the HUD-financed planning effort.

13) Flood Insurance Program. The Federal Insurance Administration within HUD administers the national flood insurance program. The program provides federal insurance for flood-prone areas and is coupled with local floodplain management to reduce flood losses.

The Department of Community and Regional Affairs has developed a model zoning ordinance which basically provides engineering solutions for floodplain construction. The floodplain ordinance ties in directly with the geophysical hazard standard of the ACMP in that it provides a vehicle for flood-prone communities to meet the ACMP geophysical hazard standard. HUD is mounting a program for identification of flood-prone areas and for surveying and mapping. This material will be useful for district planning.

The program also identifies standards for floodproofing. Land use regulations and controls in district programs will be useful tools in responding to FIA program needs as well.

Flooding is listed as one of the geophysical hazards that districts must confront in their programs. State and local participation in the federal flood insurance program should make it easier for districts to meet the ACMP standards.

14) State Comprehensive Outdoor Recreation Program (SCORP). This also is a federally-sponsored planning program undertaken by the state to plan for outdoor recreation. Funds from the Heritage Conservation and Recreation Service are allocated to states on the basis of these plans. SCORP is prepared and maintained by the state Division of Parks, which is part of the Department of Natural Resources. Coordination with ACMP occurs through the mutual review of reports, through A-95 as well as direct communication. Also, ACMP will be funding the Division of Parks for various services needed for review of district programs and for consistency determinations related to recreational resources and heritage and cultural resources.

15) Alaska Natural Gas Transportation Act. This act (P.L. 94-586; 15 U.S.C. 719) was enacted so that the President and Congress would be involved in the planning of a transportation system to supply natural gas to the contiguous states of the U.S. This law also provides the means to limit administrative and judical review processes that could affect the transportation system. Current plans call for a gas pipeline to originate in the North Slope Borough, follow the existing Trans-Alaska oil pipeline south to the Al-Can Highway and then follow the highway down through Canada and eventually to the mid-western U.S. The only coastal management considerations for this pipeline would be at its point of origin. The rest of the route is sufficiently inland to avoid the coastal area of the state. Since the gasline would be a use of state concern, it enjoys the protections available for such uses under the Alaska Coastal Management Act, and so the facilities and activities associated with the point of origin may not be arbitrarily or unreasonably excluded. To provide for coordination, a state coordinator for the gasline has been added to the Department of Natural Resources. ACMP will use this office, plus its present contacts with federal agencies, to assure coordination of ACMP activities with the agencies having responsibilities for the gasline.

16) State Historic Preservation Plan. The National Historic Preservation Act of 1966 provides financial support for state historic preservation efforts. This support is guided by the State Historic Preservation Plan prepared in Alaska by the State Historic Preservation Officer located in the Division of Parks, Department of Natural Resources. The Plan consists of an historic background document and inventory plus annual reports which detail past activities and set forth the next year's work program. Funding in the magnitude of $600 to $700 thousand is received annually by the Division of Parks from the Heritage Conservation and Recreation Service. Part of this money is used to support the state's historic preservation office and staff, and the lion's share is used in planning or other grants to state agencies, local governments, or private organizations to do historic preservation work. Coordination with ACMP on a general level is provided by A-95 review of the annual reports and grant applications. A more specific coordination device is pending in the form of a three-way memorandum of understanding between DPDP, HCRS and the Division of Parks to assure future coordination.

17) BLM-USGS Outer Continental Shelf Oil and Gas Leasing, Exploration and Development. In order to find and extract suspected oil and gas deposits on Alaska's OCS, two agencies of the Department of the Interior play key roles. BLM conducts the act of leasing tracts of the OCS to oil and gas exploration firms. Once the leases are sold, USGS, in concert with several other federal agencies, controls the exploration and development process. All major steps are coordinated with the state and ACMP through the A-95 Clearinghouse. These steps are:

a. Call for nominations and comments. Oil companies suggest tracts they would like to bid on, other agencies and groups comment on areas they would like to see not leased or make other comments pertinent to where and how OCS tracts should be leased, explored and developed.

b. Circulation of the DEIS for the proposed leasing.

c. Notice of sale. This is after the FEIS has been circulated and the decision to sell has been made. After the notice, interested oil and gas companies bid and the leases are sold.

d. Environmental Report and Exploration Plan. After a firm has acquired leases, it prepares this report and plan as the vehicle for obtaining USGS permits. This may also be the vehicle for obtaining other federal agency permits.

e. Development and Production Plan. If commercial quantities of oil or gas are found, the firm must then submit this plan to obtain federal permits for development of the field.

18) "201" Program. This is a program of grants and assistance from the Environmental Protection Agency for water and sewer facilities. The Program is administered in Alaska by the Dept. of Environmental Conservation. Grants for the facilities are made available on a 75% federal share basis. Naturally, all such facilities must be consistent with ACMP, and the primary coordination between DEC is provided by the Division of Planning and Program Coordination of DEC which handles all DEC coordination matters and is the key division in DEC with ACMP responsibilities.

19) North Pacific Fisheries Management Council. This body is one of several regional councils that were created with passage of the 200-mile fisheries conservation zone law. The Council develops and implements fish management plans and regulates harvest and various aspects of processing. Coordination with ACMP is presently at the staff-to-staff level. No issues of common concern have arisen yet between this Council and the Alaska Coastal Policy Council, although some are expected in the future.

Section (f): Coordination and Consultation at the State Level

This section sets forth the four basic ways in which state agencies participate in ACMP, and also discusses how state agencies will consult with local governments regarding actions they may take that affect the local governments. State agency involvement in ACMP occurs through four major mechanisms:

1. Policy-level coordination through agency membership on and participation in, the Alaska Coastal Policy Council;

2. Implementation and enforcement in the course of existing permit or program activities of the ACMP regulations, ACMA itself,

and the local government coastal programs when such programs have been placed into effect;

3. Generation and dissemination of information on coastal resources and activities which will be of use to both districts and state agencies, as well as to other ACMP participants; and,

4. Operations of the state agency ACMP Working Group, consisting of representatives from the six line agencies (Departments of Natural Resources, Environmental Conservation, Fish and Game, Commerce and Economic Development, Community and Regional Affairs, and Transportation and Public Facilities) directly involved in ACMP, as well as the A-95 Clearinghouse and the Office of Coastal Management.

The Division of Policy Development and Planning has the responsibility of coordinating all four of these activities. This responsibility is primarily carried out by the Office of Coastal Management within that division, but to avoid confusion, the term DPDP will be used. Many of these activities are to be carried out via contracts for services between DPDP and the servicing agency. DPDP is responsible for all financial matters relevant to ACMP, except that the Department of Community and Regional Affairs is responsible for receiving funds from DPDP and passing them through to the local governments. All local contracts are reviewed by DPDP and approved before they may begin.

DPDP is also given the responsibility for substantive coordination, both by the Council and the Governor. DPDP is to monitor all state and federal coastal activity and is the designated agency for federal consistency. If DPDP should find that a state agency is about to deviate from an ACMP requirement, it will seek resolution through informal means. If this fails, DPDP will request the Council, if time permits, or the Governor, to resolve the matter. The activities described later in this section show how DPDP will be kept apprised of agency activities. The principal responsibilities for coordination are set forth in the Governor's Administrative Order found in Appendix 6.

Chapter 8: Coordination and Participation

Mechanisms Which Provide Coordination Between State Agencies

Mechanism No. 1. Alaska Coastal Policy Council Membership

ACMA provides that policy-level leadership for ACMP will be vested in the Alaska Coastal Policy Council. Since ACMP is based on both state agency and local authorities, the Council membership is composed of representatives from each group. There are nine elected local government officials and seven state agency heads on the Council.

The Council adopts the ACMP regulations and supporting resolutions, participates and advises in the development of grant applications for federal funding to support ACMP, reviews and approves local government coastal management programs, and provides the general leadership for ACMP.

Discussion and participation in development of regulations and local programs, along with overall state program guidance, should limit the occasions where agency conflict occurs in implementation. However, different agency interests and directions will likely lead to occasional conflicts. Should a dispute arise between state agencies and local governments, particularly with regard to the implementation of local programs, the Council will be the forum for resolution, and is equipped with special powers, as described in Chapter 6, to resolve conflicts in the implementation of local programs. The Governor has, in addition, accorded the Council a conflict resolution role in inter-agency conflicts if the statutory deadlines relevant to the conflict allow enough time for Council resolution. If not, as provided in the Administrative Order, the conflict resolution duty passes to the Governor.

The Council is the main coordination mechanism for ACMP, and is also the repository of most of the authority for the program.

With membership of the six departmental commissioners on the Council, ACMP can be assured of state agency participation at the highest policy level. The additional membership of the Director of Policy Development and Planning assures coordination, in that DPDP is the body charged with inter-agency coordination for ACMP and most other state programs related to ACMP (such as HUD 701 planning, OCS activities,

remote sensing, and dozens of others).

Each of the commissioners, and the DPDP Director, are also represented at the staff or working level on the state agency working group, discussed under Mechanism 4 in this section. Figure 2 clarifies the composition and working relationships among members of the Council.

Mechanism No. 2. Implementation and Enforcement

Both the Alaska Coastal Management Act and the ACMP Regulations call for state agencies to operate their programs and permit systems consistently with ACMP provisions. Simple consistency of agency action is only a part of ACMP implementation. The agencies must assure that the proposals of third parties over which the agencies have control are also consistent.

The "ACMP provisions" mentioned above include the policies and objectives of the Alaska Coastal Management Act, the ACMP Regulations codified in 6 AAC 80 and the approved coastal programs of the districts. All agencies, including those not represented on the Council, will be made aware of additional ACMP provisions by OCM, and a period of time (six months is allowed by ACMA) will be provided for each agency to make whatever internal adjustments will be needed to implement the new provisions. One particular type of ACMP provision deserves further discussion. This is the district program of a Coastal Resource Service Area in the Unorganized Borough. The service areas will have no powers with which to implement their programs. This burden will fall entirely on the state agencies. Additional procedures, regulations and other tools will have to be developed to provide for coordination in the implementation of service area programs.

A basic obligation to act consistently with the ACMP provisions is established in the Act and the ACMP Regulations. An Administrative Order has been promulgated by the Governor to provide procedures for meeting this obligation. Basically, each agency will examine its internal workings and make such changes and develop procedures as needed to assure consistent actions.

The role of OCM and DPDP will be two-fold in the management system. First, DPDP will be the designated agency for review of federal consis-

tency matters. All federal initiatives and permit requests (for federally-issued permits) will be sent to DPDP for circulation via the A-95 Clearinghouse. DPDP will analyze the comments resulting from the review and make a consistency finding on the matter. This will not replace or circumvent existing channels between state agencies and federal agencies. Such procedures as the Department of Fish and Game's role in the Fish and Wildlife Coordination Act or the Department of Environmental Conservation's Sec. 401 certification powers will not change, except to the extent that the activities under these related federal programs can be better coordinated with ACMP procedures.

The second role of DPDP will be in the state management system. To the extent that a particular agency may request, DPDP will make consistency findings for state permits or other state activities on behalf of that agency. Those state agencies which wish to make consistency findings on their own behalf will do so. Another DPDP responsibility in this regard will be to monitor statewide consistency findings and to mediate conflicts between state agencies over consistency matters. If DPDP cannot resolve a difference of opinion between itself and another state agency, or between two or more other state agencies, the matter will be taken to the Alaska Coastal Policy Council for resolution. If statutory time limits for agency action on permits make it impossible for the Council to act in time, the matter will be resolved by the Governor.

The ACMP management system is intended to operate on the following principles:

a) Agency opinions on a subject clearly within the agency's area of expertise will generally carry more weight than opinions of others on the same subject.

b) No additional time will be added to existing permit systems. Consistency findings and decisions must be reached within existing time frames.

c) Maximum involvement of local governments and federal agencies, as well as other state agencies, must be sought. Agency permit systems are now more than tools to serve the agencies' original missions; these systems are now tools to serve the purpose of ACMP as well. ACMP is based on multilateral, coordinated decision-

making, and this concept should extend to all state agency actions in ACMP.

The Administrative Order requires state agencies and DPDP to consult with local governments if they would be affected by a pending action. This is particularly true if the pending action might conflict with an approved local coastal program. In general, the A-95 Clearinghouse review system will be used to keep local governments up to date on the activities of state and federal agencies. In addition, DPDP and the state agencies will contact the affected local governments directly if the pending action is a permit or other action that would affect a land or water use.

Mechanism No. 3. Delivery of Information and Assistance

The involved state agencies have been developing a great deal of information over the last four years of ACMP development. This came mostly in response to the agencies' own coastal management needs and the need for data to develop the ACMP boundaries. The guidelines and standards require a great deal more information to be produced, primarily for the benefit of the districts, but certain regulations specifically mention state agencies and obligate them to produce additional information. This information should result in better district programs, but the information may be of use to all ACMP participants. Delivery of information is also the primary vehicle for communicating the state and national interest. More specifically, the reasons for delivery of state agency information are:

a) Districts must consider and provide for uses of state concern. The opinions of individual state agencies are important in this regard and should be delivered without delay.

b) The districts are obligated to follow the ACMP standards for uses, activities, habitats, and other subjects. The policies expressed in the ACMP standards are expressions of state policy, adopted by the legislature. In order for the districts to comply with the standards, they will need relevant information. To comply with the habitat standards, for example, the districts will need to know where the

habitats are.

c) The districts are generally obligated to solicit the views and concerns of all persons and agencies who may have responsibilities in the district or who may be affected by the district program.

Agencies are encouraged to develop and disseminate any relevant information that will serve any of these three reasons. OCM will continue to contract with each individual state agency to obtain and make available specific categories of information as shown on the list below. The following list of information products is derived from an examination of the ACMP standards, speculation as to the other needs of the districts and the recent history of the types of information that the state agencies have been able to deliver under past and current contracts.

OCM's contract with each agency will contain standards for the format and content of information to be delivered, as well as a schedule for areas of the coast to be examined. Also, it is generally intended that the information to be delivered by the agencies be existing material; that is, available through existing literature, or is within the knowledge of the agencies' personnel. Original research and study can be funded, but only under special circumstances.

This list is tentative, but will serve as the basis for draft grant applications and agency contract negotiations. A final list will result from approved federal grants and finalized contracts between OCM and the providing agencies.

Department of Fish and Game

1. Maps showing habitats;
2. Maps showing anadromous fish streams, lakes and rivers, along with existing management policies and processes used to identify new anadromous fish areas;
3. Maps showing existing refuges, sanctuaries, and critical habitats, along with existing management plans and policies for such areas;
4. The state's existing policies for harvesting of fish and

wildlife by region;
5. Maps showing significant subsistence and commercial fish and wildlife usage areas;
6. Existing and proposed hatchery sites, aquaculture sites, and monitoring and research sites;
7. Distribution and abundance of coastal fish and wildlife; and
8. Ecosystem information that can be used by the districts in setting their district coastal boundaries.

Department of Natural Resources

1. Land status and ownership;
2. Mineral and mining sites, leases, prospects, and existing policies;
3. Existing and proposed parks, waysides, historical and archaeological sites and resources, and their policies;
4. Hazardous areas, potential hazards and hazard policies;
5. Energy resources, development sites, and related information;
6. Timbered areas, and policies; and
7. Water resource information.

Department of Environmental Conservation

1. Existing air pollution sources;
2. Existing water pollution sources;
3. Existing solid waste problem areas;
4. Existing and proposed sewage treatment facilities;
5. Existing and proposed public water supply facilities;
6. Existing and proposed solid waste facilities.

Department of Community and Regional Affairs

1. Sites under consideration for the Development Cities Act;
2. Energy facility sites as known or recently projected;
3. Existing and projected onshore marine industry sites;
4. Cultural sites and resources; and
5. A list of issues and problems confronting new community development and the state's interests and involvement in each community.

Department of Commerce & Economic Development

1. Existing commercial and industrial sites and facilities, and new ones proposed by others;
2. A process for identifying potential industrial and commercial sites;
3. A list of site requirements for various types of commercial and industrial facilities;
4. A list of municipal services needed by various types of commercial and industrial facilities; and,
5. Forecasts and demand indicators for various economic sectors.

Department of Transportation & Public Facilities

1. Existing and proposed transportation routes and facilities;
2. Existing and proposed public buildings and facilities;
3. Existing policies for routing, design and construction of various facilities.

This list may not include all of the categories of information that the state agencies would like to deliver, and if so, the list may be lengthened and changed in the contracting process.

Mechanism No. 4. State Agency ACMP Working Group and Coordinators

In the DEIS, this mechanism was described as "SACCT", or the State Agency Coastal Coordinating Team. Since publication of the DEIS, the SACCT as a separate coordination mechanism has been abandoned and a more direct mechanism of interagency coordination has been developed. The ACMP "Working Group" has existed informally since the early years of program development. The group consists of senior level employees of the six line agencies which are represented on the Alaska Coastal Policy Council. The group was originally convened to help develop the basic structure of ACMP. The group will now operate more formally as a device to prevent or resolve interagency conflicts which arise in ACMP. The group consists of:

Director, Habitat Division, Department of Fish and Game
Director, Planning and Program Coordination Division, Department of Environmental Conservation

Director, Division of Community Planning, Department of Community and Regional Affairs
Director, Division of Economic Enterprise, Department of Commerce and Economic Development
Director, Transportation Planning Division, Department of Transportation and Public Facilities
Director, Office of Planning and Research, Department of Natural Resources
Coordinator, State A-95 Clearinghouse, Division of Policy Development and Planning, Office of the Governor
Coordinator, Office of Coastal Management, Division of Policy Development and Planning, Office of the Governor

In addition, each of the six line agencies has an "agency ACMP coordinator". The six division directors obviously have many responsibilities, and so each is assisted by a part or full time person who attends to the detailed aspects of his respective agency's involvement in ACMP.

The six directors are second echelon people in their respective agencies and report directly to their commissioners. These same people are the primary advisors to their commissioners on ACMP matters in general, and, more specifically, these people advise their commissioners as members of the Coastal Policy Council.

The commissioners' primary role in ACMP is at the policy level as members of the Coastal Policy Council, but their departments have functional roles as well. The Working Group members provide the bridge between policy level activities of the agency commissioners and the functional level of program implementation, assistance to the districts, and special ACMP activities of the agencies.

The Working Group will serve as a coordinating body and conflict resolution mechanism in the following instances:

1. When an issue is pending before the Council, the Working Group can resolve interagency disagreements, advise their commissioners, and thus cause a united state viewpoint on the issue to be presented.

2. By virtue of their individual authority, the Working Group can cause uniform agency responses to requests of the Council and contractual obligations of OCM.

3. In situations where state agencies disagree on a consistency question, the Working Group, or affected members thereof, can meet to attempt resolution of the matter before it is elevated to the Council or Governor for resolution.

4. The Working Group will serve as an official conduit for agency discussions of grant applications and work programs. The Group for example, has examined OCM proposals for the format of various ACMP products, the content of ACMP's first 306 grant application, assignment of various coordination, local assistance, and enforcement responsibilities.

5. The Group will act as both a sounding board and a review board for new planning elements to be added to ACMP, major contracts to be let by OCM, and other program initiatives.

6. The Working Group members will also be the "liaison" people to be designated pursuant to the Administrative Order, and carry out the responsibilities assigned by the Order.

Also mentioned in the title of this mechanism are the State Agency ACMP Coordinators. These are people who report to the Working Group members, but who principally act to facilitate execution of each state agency's contracts with OCM. Most of these people work full time on ACMP matters. While each agency as a whole is responsible for carrying out its legal and contractual obligations, the ACMP Coordinators are the focal points for this activity. Their general duties are:

1. To assure the flow of ACMP information throughout the agency. This means to assure that all sectiors and other divisions in the agency know of ACMP events and proposals, such as district programs, permits applied for which are subject to the ACMP requirements, reports from contractors and the like. These documents must be made available to all sectors of the agency which might have reason to review and comment on the events and proposals.

2. To aggregate agency concerns over ACMP affairs and arrange for their presentation to the Council through the Working Group member and/or the commissioner.

3. To assure coordinated and timely delivery of agency assistance to the districts. This assistance, at a minimum, will include:

a. Agency information concerning the particular standards which have been assigned to that agency for both the purpose of agency assistance, and for the purpose of consistency determinations. (See Mechanism No. 3 for further explanation of this.)

b. Agency information concerning uses of state concern which the agency may wish the district to address in its program or in the operation of its program after approval. (As with the standards, each agency has a subset of the full list of uses of state concern which it will take the lead in identifying for the districts.)

c. Agency information concerning potential Areas Which Merit Special Attention which the districts should consider.

If a conflict appears between the material sent by one agency and that of another, it will be noted by the agencies themselves, by OCM, and by the district. If possible, the agency ACMP coordinators will resolve the conflict themselves, with the involvement of OCM and the district if necessary. Above the coordinators, as stated, is the Working Group, the commissioners, the Council, and the Governor.

4. To manage the contract between OCM and the agency, which involves preparing the contract in association with OCM and monitoring agency performance, particularly where other sections or divisions within the agency are also involved in the contract in addition to the particular division in which the agency ACMP coordinator works. Contract management also includes the preparation of quarterly financial and performance reports and negotiation of contract amendments.

Chapter 8: Coordination and Participation

Mechanism No. 4 is the overall state structure for carrying out the state's ACMP responsibilities and addresses the need for coordination in the review of coastal development projects for consistency, in assisting the development and implementaion of district programs, and in general management of the program at the state level. The needs for regional planning and regional considerations are also a part of this structure and this aspect of ACMP is addressed in more detail in Chapter 9.

FIGURE 2

STATE ORGANIZATION FOR ACMP MANAGEMENT AND COORDINATION

INDICATING KEY STATE AGENCIES AND DIVISIONS WITHIN SUCH AGENCIES AND THE ACMP STANDARDS FOR WHICH EACH DIVISION WILL SUPPLY EXPERTISE, CONSULTATION, AND RESPONSIBILITY

TABLE 1.

FACILITIES IN WHICH THERE MAY BE A NATIONAL INTEREST

USES	ASSOCIATED FACILITIES	ASSOCIATED FEDERAL AGENCIES	RELATED ACMP PROVISIONS
National Defense & aerospace	Military bases & installations; defense manufacturing facilities; aerospace facilities	Department of Defense; National Aeronautics and Space Administration	AS 46.40.210(6)(A); 6 AAC 80.040
Energy production & transmission	Oil & gas rigs; distribution & transmission facilities; power plants; deep-water ports; LNG facilities; geothermal facilities; coal mining facilities	Department of Energy; Department of the Interior; Department of Commerce Department of Transportation; Corps of Engineers Nuclear Regulatory Commission	AS 46.40.210(6)(A); AS 46.40.210(6)(B); AS 46.40.210(6)(C); 6 AAC 80.040; 6 AAC 80.070; 6 AAC 80.130
Recreation	National seashores; parks; forests; large & outstanding beaches & recreational waterfronts	Department of the Interior; Department of Agriculture	AS 46.40.210(1)(C); AS 46.40.210(6)(A); AS 46.40.210(6)(E); 6 AAC 80.060
Transportation	State & Interstate highways; railroads; ports; aids to navigation, including Coast Guard stations; navigation channels	Department of Transportation; Department of Commerce; Corps of Engineers	AS 46.40.210(6)(A); AS 46.40.210(6)(D); 6 AAC 80.040; 6 AAC 80.080
Regional water treatment plants	Sewage treatment plants; desalinization plants	Environmental Protection Agency; Department of the Interior	AS 46.40.310(6)(B); 6 AAC 80.040; 6 AAC 80.140
Water Resources Development	Flood control; erosion control; dams; dikes; levees; etc.	Corps of Engineers; Department of the Interior	6 AAC 80.050; 6 AAC 80.080; 6 AAC 80.110
Solid Waste Disposal	Disposal sites for solid and hazardous wastes	Environmental Protection Agency	6 AAC 80.140

TABLE 2.

RESOURCES IN WHICH THERE MAY BE A NATIONAL INTEREST

RESOURCES	MAJOR FEDERAL LEGISLATION	ASSOCIATED FEDERAL AGENCIES	RELATED ACMP PROVISIONS
Water	Clean Water Act of 1977; Toxic Substances Control Act; Federal Insecticide, Fungicide & Rodenticide Act	Environmental Protection Agency; Corps of Engineers	6 AAC 80.140
Drinking Water	Safe Drinking Water Act	Environmental Protection Agency	
Air	Clean Air Act	Environmental Protection Agency	6 AAC 80.140
Wetlands	Federal Water Pollution Control Act; Fish & Wildlife Coordination Act	Corps of Engineers; Environmental Protection Agency; Department of the Interior; Department of Commerce	AS 46.40.210(1)(A); AS 46.40.210(1)(B); 6 AAC 80.040; 6 AAC 80.130
Endangered flora & fauna	Endangered Species Act	Department of the Interior; Department of Commerce	AS 46.40.210(1)(A); AS 46.40.210(1)(B); 6 AAC 80.130
Floodplains & erosion hazard areas	Flood Insurance Act	Housing & Urban Development; Corps of Engineers; Department of Agriculture	AS 46.40.210(1)(F); AS 46.40.210(6)(B); 6 AAC 80.040; 6 AAC 80.050
Barrier islands & lagoons	Coastal Zone Management Act	Department of the Interior; Department of Commerce; Corps of Engineers	AS 46.40.210(1)(E); 6 AAC 80.040; 6 AAC 80.050; 6 AAC 80.130
Historic & cultural resources	National Historic Preservation Act	Advisory Council on Historic Preservation; Heritage Conservation & Recreation Service; National Park Service	AS 46.40.210(1)(A); AS 46.40.210(6)(B); 6 AAC 80.120; 6 AAC 80.150
Wildlife refuges & reserves	Pitman-Robinson Act; Dingell-Johnson Act; Land & Water Conservation Fund	Department of the Interior; Department of Commerce	AS 46.40.210(1)(A); AS 46.40.210(1)(B); AS 46.40.210[illegible]); 6 AAC 80.130

Table 2. continued

RESOURCES	MAJOR FEDERAL LEGISLATION	ASSOCIATED FEDERAL AGENCIES	RELATED ACMP PROVISIONS
Areas of unique cultural significance	National Historic Preservation Act	Advisory Council on Historic Preservation; Department of the Interior	AS 46.40.210(1)(A); 6 AAC 80.120; 6 AAC 80.150
Minerals	Mineral Leasing Act	Department of the Interior	AS 46.40.210(6)(A); 6 AAC 80.110; 6 AAC 80.130
Prime agriculture lands	Homestead Act	Department of Agriculture	6 AAC 80.130; 6 AAC 80.140
Forests	National Forest Management Act	Department of Agriculture; Department of the Interior	AS 46.40.210(6)(A); 6 AAC 80.130; 6 AAC 80.130
Living marine resources	Fisheries Conservation & Management Act; Marine Mammal Protection Act	Department of Commerce; Department of the Interior	AS 46.40.210(1)(A); AS 46.40.210(1)(B); AS 46.40.210(6)(E); 6 AAC 80.040; 6 AAC 80.090; 6 AAC 80.130
Recreation Resources	Land & Water Conservation Fund Act; Wild & Scenic Rivers Act; National Trails Systems Act; Wilderness Act	Department of the Interior Department of Agriculture	6 AAC 80.060

Chapter 9: The Future of the Alaska Coastal Management Program

Section (a): Introduction

With the completion of state coastal program development, the focus of attention for the next few years and beyond will be the management of coastal areas and uses, along with completion of district program development. A substantial increase in the amount of federal funding is expected. Management will involve the implementation of the ACMP Guidelines and Standards at the state level and the implementation of district coastal programs. Management will also involve other important initiatives such as improving fisheries management. This Chapter focuses on the direction of the ACMP in the next few years in terms of the work that needs to be funded and completed, and the agencies expected to be involved.

Section (b): Program Implementation Goals

Direct Management of Coastal Resources

The ACMP moved into direct management in July of 1978 when the legislature approved the ACMP Guidelines and Standards. From that point, the state agencies began issuing permits and making other decisions on the basis of the policies expressed in the guidelines and standards and the ACMA. As time progresses, the amount of management done according to ACMP policies will increase. Federal approval of the ACMP will give the state the powers of federal consistency provided in Section 307 of the CZMA, which is another important device for assuring coherent and consistent management of Alaska's coastal resources. State and federal agency consistency with ACMP policies and the regulatory structures at both levels of government, are the basis of the ACMP management system, as described in Chapter 6. Detailed management of coastal resources will come when the local government coastal programs are completed and approved. When this process is complete all three levels of government will be making their decisions which affect coastal resources according to the same policies.

Chapter 6 shows in detail how the state agencies are now managing Alaska's coastal resources. A few improvements have been made recently as a result of the Administrative Order contained in Appendix 6. When this order was promulgated, the responsibilities and procedures for operation of the state agency management structures was clarified, but the actual authority for the management of coastal resources by state

agencies according to the ACMP policies was established by ACMA and the ACMP regulations.

All state agencies are bound by the ACMP standards, and must conduct their activities consistently with them. Three agencies are especially important in assuring that coastal development conforms with the standards. These are the departments of Environmental Conservation, Natural Resources, and Fish and Game. They are making special efforts to involve their field and operational staffs in ACMP, and will do so for district programs as well. It is not known yet whether significant increases in field or operational staffs will be needed to assure adequate application of the ACMP policies, or whether improved intra-agency communication and coordination will suffice. If the former proves to be needed, ACMP may be in a position to augment field and operational budgets.

DPDP will be playing an important role in direct management as well. The A-95 Clearinghouse will be an essential coordinative mechanism for federal consistency, as discussed later and in Chapter 6, but the Clearinghouse will also serve to assist state coordination. The Office of Coastal Management is specifically charged to review state actions for consistency with the ACMP and to involve the Council in such matters. Rather than institute a new and potentially cumbersome system on top of the existing review systems, OCM, as a part of DPDP, will use the systems which DPDP already has in place. The administrative burden on the Clearinghouse will increase substantially as a result of ACMP, as more issues, proposals, and matters will be circulated through the system. In light of this, ACMP will be providing financial support to the Clearinghouse.

With federal approval of ACMP, the federal agencies which make coastal land and water use decisions in Alaska will have a new set of policies which must be considered. It is expected that the federal agencies will maintain and expand the liaison arrangements they now have with ACMP. In addition to the overall consistency procedures, memoranda of understanding are being prepared with each agency to resolve the details of their participation in ACMP. Some of these will be finalized before federal approval of the ACMP occurs. These memoranda will clarify

the specific procedures needed to assure that the differences between federal agencies are accounted for in the federal consistency function of ACMP.

Certain federal permit systems will be particularly important to the fulfillment of ACMP objectives. Most notable of these are the Corps of Engineers Section 10 and Section 404 permit systems. The Corps can anticipate a time when it will receive a single, official state opinion on applications for these two types of permits, and the state expects better coordination of the review of these permits. Federal agencies will also be able to see their own objectives supported by ACMP.

The Office of Coastal Management will continue to coordinate the direct management efforts through its three main vehicles: administration of funding for the program; coordination and review through A-95 and other coordination devices of DPDP; and by serving as staff to the Alaska Coastal Policy Council.

Completion of District Programs

As discussed in Chapter 3, many local governments are now involved in coastal planning activities. However, no coastal resource service areas have yet been formed in the unincorporated part of the state, and many local governments are just beginning program development. While the amounts of money made available to local governments in the past years of the program have been adequate to meet the needs of communities which had a high interest in the program or which were facing large or new coastal impacts, the funding has not been adequate for general program development by all coastal resource districts. The federal program implementation funds will allow for a substantial increase in funds for local district program development.

Under the ACMA, programs for existing districts must be completed by December 1979. It is expected that many of the programs will be completed on this date, but refinements will continue. Those programs which are completed and approved by the Council and legislature will then be implemented by the appropriate local governments. Federal funding may be used for implementation, as well as for program development.

District programs in the Unorganized Borough will take longer to establish. A coastal resource service area has thirty months to develop and submit a program after the service area has been formed. No time limit has been set in the law for when service areas must be established. It is expected that if most are in place in 1979 then the program development effort will continue into the early 1980's. Once approved, a service area program must then be implemented by state agencies, involving a substantial new workload.

Local governments will be responsible for developing their district programs. State agencies will have the responsibility of providing necessary information and technical assistance to the districts. Federal agencies will review and comment on district programs and provide information and assistance to the districts. The Council, with assistance from staff will be responsible for assisting districts in their local program efforts, reviewing and approving district programs, ensuring that all interested parties are involved during district program development, hearing and settling complaints concerning coastal management between various parties involved, and submitting resolutions to the legislature requesting necessary revisions and amendments to the Act and regulations.

Information and Technical Assistance

In order to prepare comprehensive local programs, and to institute coordinated state management, this information and assistance will be needed by the districts. It will be provided by state agencies, which are obligated by the ACMP to provide it. Chapter 8 contains a list of the types of information that will be provided to the districts by state agencies.

In the process of providing this information, agencies may discover areas which have particular values or unique situations. These may be proposed as AMSA's to the district and would be accompanied by the information required for AMSA recommendations in the ACMP regulations.

Distribution of Publications Produced by ACMP

In addition to the information and data provided to districts discussed above, there have been many reports, summaries and maps

produced for the ACMP over the past four years which are now available to state and federal agencies and the general public through a pilot project at the Arctic Environmental Information and Data Center (AEIDC) sponsored by RALI-USGS. Alaska has a difficult problem when it comes to distribution and receipt of materials due to its size, weather and transportation difficulties. OCM's information distribution system at AEIDC is an attempt to cope with the situation. Depending on how well received this service is, OCM is considering expanding the service to include a research assistant who would be available to search for materials requested by the districts.

Regional Planning Considerations in ACMP

ACMP will focus heavily on local coastal programs in the near future since these programs are the building blocks of the program as it is eventually to exist. However, there will continue to be statewide and regional problems that merit ACMP attention. Many of the districts are so large that they constitute regions in their own right, and will thus be responsible for regional considerations as well as more local matters. The main responsibility for regional considerations will, however, fall to the state agencies and, to some extent, federal agencies. The Coastal Policy Council is charged, in the Alaska Coastal Management Act, to "initiate an interagency program of comprehensive coastal resource planning for each" of the nine regions from which the public members of the Council are appointed.

There are a variety of approaches possible to carry out this charge. One would be to undertake a planning activity of the same type as intended by the districts. The legislature provided no specific instruction in the law specific to regional planning, however. Furthermore, a duplication of the local efforts would be neither cost-effective nor workable, since the ACMA provides no basis for enforcement of a planning document prepared by state agencies. In any event, the time that would be needed for preparation of nine such plans would be just as long, if not longer, than that needed by the districts; regional plans could not be completed soon enough to represent the final state consensus of how the various coastal resources in each region should be reflected in district programs. The local program, however, or multiples of such programs, could represent the state view as well as the local and even federal view of how resources are to be used, since state and federal agencies, as well as others, will be intimately involved in the development and approval of the local

programs. OCM, therefore, has dismissed the development of "regional plans" as an approach to represent regional concerns in district programs.

As ACMP analyzed various alternative regional planning concepts, one specialized need became clear, and was thought to be a proper objective for a regional planning effort. This was the need to provide the districts with five particular types of information:

1. An indication of, generally, what the state agencies considered to be uses of state concern. (This has now been clarified in Resolution 13 of the Council which expands the definition found in the Alaska Coastal Management Act for this term.)

2. Agency expertise and information that the districts will need to be able to respond to the ACMP standards. For example, eight types of habitat standards are specified in the ACMP regulations. The districts will need help in determining which of these might exist within the districts' jurisdictions, and how such areas should be used and regulated. The same is true for all the other standards.

3. A regional perspective on resource characteristics, uses, demands and impacts, including information or cumulative effects of resource uses or management practices.

4. Agency opinions as to uses of state concern that may exist within the districts now, or which are likely to need locations in the district in the forseeable future. This is needed so that the districts will not unknowingly exclude or restrict a use of state concern in a manner that could later be deemed arbitrary or unreasonable.

5. Agency opinions and information on special areas within the district which would be candidates for designation in the district programs as Areas Which Merit Special Attention.

The first aspect of this objective has been satisfied with the adoption of Resolution 13, although case-by-case determination of state or national concern will have to be made in the event of a conflict when a local coastal program reaches the Council for review. The other four aspects of the local program assistance objective can be conveniently met by the state agencies and federal agencies working with the local governments on an individual basis. OCM can assure that interagency coordination occurs because of the record files kept for each district program, by attention to regional considerations in reviewing and monitoring the communications between the districts and the agencies, and by taking full advantage of the opportunities for coordination through the ACMP Working Group.

Current plans call for an increased amount of attention to regional matters directly in OCM. By using the relationships OCM has developed with state and federal agencies, OCM will maintain a master planning list showing all statewide and regional planning activities of state and federal agencies. The status of any of these projects will be available, as well as descriptions of the objectives and work done to date on any of them. Using this list, OCM will be able to assure that the local planning efforts are cognizant of these state and federal activities. This will act as a double check since the state and federal agencies themselves are to work directly with the local governments as much as possible. Along this line, the state agencies represented on the Coastal Policy Council will each be contracted by OCM to directly assist the districts. Parts of each of these contracts will be obligations upon the state agencies to make districts aware of regional problems and considerations that affect or could be affected by, the district coastal programs.

Where regional concerns appear that are not being dealt with by an existing state, local or federal planning activity, and where ACMP goals, objectives or standards are involved, OCM can initiate a regional concern. Examples of this are current plans for a bottomfish industry impact study in the Aleutian Islands, and an energy facilities sites survey for western Alaska.

Another technique available to achieve regional planning needs is formal coordination among the districts themselves, especially where

the districts share common coastal features. The three local governments around Cook Inlet, or the two cities located in Prince William Sound are examples. To enable such activity at the local level, the local governments will be able to use portions of their coastal program development or implementation grants in concert with each other to address regional issues.

In summary, ACMP will respond to the legislative mandate for regional planning by supporting or initiating, on a regional basis:

1. A master file containing data covering all state, federal and local planning activities affecting the region. The file will also contain all correspondence relevant to uses of state concern, special areas, and expressed state and federal interests as they appear in correspondence among ACMP participants. This file will be maintained in such a way that it can be readily duplicated and summarized on a short-notice basis and made available to anyone who needs it.

2. Special studies initiated by OCM to address regional concerns or problems not being addressed by others.

3. Special studies initiated by local governments as part of their local coastal program development or implementation.

4. Regional reports, prepared by OCM, as the need arises, or as requested by the Council or other ACMP participants.

5. The efforts of the state and federal agencies to assist the local governments in the development of their coastal programs, which will be monitored, facilitated, and recorded by OCM, as well as paid for in the case of state agencies.

Council and Staff Activities

With regard to the development of district programs, OCM has established and is implementing a series of procedures to allow and encourage

the participation of all interested parties in the development of district programs. Procedures have been developed:

a. to notify state and federal agencies and the general public of the start up of district programs in an effort to encourage agency participation (OCM is keeping a record file of all ongoing district programs and is responsible for overseeing the coordination of participation by state and federal agencies and the public in local programs);

b. to hear complaints and handle arbitration of disagreements between various levels of government and interests in the private sector;

c. to receive, review, adopt, and forward district programs from staff to the Council to the legislature.

Implementation of District Programs

After a local government has successfully developed a coastal program, it will become eligible for additional funds to implement the program. This can range from funding to support simple municipal coastal governance, to further work on detailed aspects of the program. An example of the latter may be detailed management programs for Areas Which Merit Special Attention or to additional local attention to certain issues which were treated on a general basis in the initial program and deserve more attention.

Local coastal programs will be implemented through a partnership with state agencies, but the devices that will be used are the familiar techniques used for implementing local comprehensive planning efforts. These include zoning or other forms of land use management, building codes, capital improvement programs, subdivision ordinances and other applications of the local police and proprietary powers.

Over the next three years, most of the existing local governments should complete the development of their programs and move into the

implementation phase. It is OCM's intent that the amounts of federal and state funds allocated to the local government participants in ACMP be relatively constant over the life of the program. Thus. local governments should be able to look forward to continuous funding after they complete their initial programs so the basic programs may be improved and implemented.

In the case of coastal resource services areas, ACMP will not be able to provide funds to the service areas for program implementation as that function will be undertaken by state agencies. Funding will flow, in some degree, to the state agencies for service area program implementation. However, funding could continue to the service areas for program enhancement and monitoring. OCM would expect that funding of this type would be less than the amount used to develop the basic service area program.

An important feature of the ACMP management system is state implementation of and consistency with the local programs when they are approved and have become a part of the ACMP. As described in Chapter 3, the state agencies will be heavily involved in the development and approval of the district programs. When these programs take effect the agencies will have to incorporate the district programs into their other criteria for permit issuance and other actions. There are two types of local programs involved in this context. The first is the program of a local government which has planning and zoning powers. In this case, the state agencies are partners with the district in the implementation and application of the local program. This will require the establishment and operation of coordination procedures between the agencies and the individual local governments involved. It can be expected that much of this will occur at the field office level of the state agencies. The second situation is state implementation of a local program for an area which does not have planning and zoning powers. The coastal resource service area, organized under Article 2 of ACMA will be the most typical example of this situation. Here, the state agencies will bear the full burden of assuring that the local program is implemented. It is thought now that the planning boards which are created along with the service areas will stay in existence after the service areas program is approved for the purpose of monitoring the effectiveness of state agency implementation and to act as a forum for state decisions relevant to the service area program.

At the state level, the primary agencies for implementation will have to take several actions to prepare for implementation of the service area program. This could range from notification to field personnel and operational personnel for some agencies to new regulations for others, as well as establishment of mechanisms to coordinate with the residents of the service areas during the implementation of the service area program. Agency expenses for this type of activity will begin during the final stages of development of the service area program, and will increase after the program is approved. This type of activity should start by 1980.

Coordination of Government Actions

A general activity that all the primary agencies (those represented on the Council) will continue with, is its coordination with ACMP activities of all types, whether developmental or management. Agency coordination will range from developing the agency's viewpoint on a particular state or federal permit to developing agency input to local coastal programs still under development. In either case, the agency will have to obtain the comment of its operating divisions, field offices and central staffs. Field trips, visits with other agencies and research may be needed. All of this is the cost of coordination, and for coordination to succeed, these activities must be supported by ACMP in both financial and procedural ways.

Improving Coastal Management

Special planning elements have been subject to attention over the time of program development and management. New elements have been the result of changes in the Federal Coastal Zone Management Act, discovery of need for expanded services on the part of local and state agencies and the availability of new funding to meet other opportunities.

1. Information Systems

At the present time, the DPDP is conducting a user needs survey in the hopes of clarifying what will be the most efficient way to establish

a computerized data bank for the state of Alaska. When the survey is completed, the state will begin to study which type of information system will best serve the needs of the greatest number of people.

2. Fisheries Management Planning

Alaska has an important fisheries resource which has been of economic significance to the state for decades, and promises to be even more significant in the future. The passage of the Fisheries Conservation and Management Act creating the 200 mile fisheries management zone around the U.S. has greatly increased the fisheries resource available in Alaska. This Act impacts Alaska significantly. It will probably lead to new onshore support facilities for the expected increase in the harvest of bottom fisheries, greater coordination between state and federal fishery management agencies, and international coordination beween the U.S. and Canada, and between the U.S. and other countries which have in the past made use of the fishery resources of the Alaska Continental Shelf.

These events, in combination with existing Alaskan concerns regarding the habitat of anadromous fish and the sharing of fishery resources among sport, commercial and subsistence users, give rise to the need for comprehensive planning for Alaska's fishery resource.

In cooperation with the Department of Fish and Game and other relevant agencies, OCM will develop a procedure for identifying fishery management problems, issue and opportunities, planning goals and strategies, and work which needs to be completed to accomplish the goals. This procedure will be the basis for funding.

3. Energy Facility Planning

Alaska has developed a planning process for energy facilities which are likely to locate in or which may significantly affect the coastal zone. This process will enable anticipation and management of the impacts of such facilities. Funding will be provided for identification of sites suitable for the location of energy facilities, and efforts will be devoted to further articulation of the process involved in siting and approving energy facilities.

4. Erosion Planning

Alaska has also developed a planning process for identifying and managing erosion problems in the coastal zone. Work funded in this area will involve identification of coastal areas where erosion is likely and further investigation of methods to manage coastal development in eroding areas.

5. Shoreline Access Planning

Shoreline access needs are part of the ACMP recreation resource planning process. In the next few years, state agencies and districts will receive funding for identification of additional sites where shoreline access is necessary. This information will be particularly useful to districts in development of their coastal management programs.

6. Wetlands Management Planning

Recognizing the vast amount and diversity of Alaska's wetlands and that ACMP's current policy is fairly general, OCM will mount a wetlands management planning program during the first two years of program implementation to do the following:

1. Refine definition of the term, and categories of wetlands. OCM, using contacts and contributors from government, academia, and the public, will attempt to achieve consensus on the general definition of the term, and definitions of the various categories of wetlands. This will involve an examination of the productivity and nature of each category and will be a prelude to identifying the types of wetlands that are the most critical.

2. Expand and detail the management policies and regulations for use of wetlands. Again working with other parties, OCM will develop a wetland policy base which addresses each type or category of wetland. Drafts of the wetland policies will be circulated independently for review. When it appears that general agreement with the policies can be reached, they will be offered for adoption as regulations by either the

Coastal Policy Council, or a combination of the authorities administered by the Departments of Natural Resources and Environmental Conservation.

3. Possibly, but not necessarily, in conjunction with the Permit Simplification Planning Element, a new management regime will be developed. While the goal of this regime will be better management of wetlands, an important side objective will be to equip the state to take over the Corps of Engineers section 404 permit system. A work program for this effort will be offered to the 1980 session of the state legislature with a request that the legislature establish an interim committee to work with OCM and other ACMP participants during the summer and fall of 1980 to prepare a legislative package to manage wetlands and to take over the 404 permit system. The agreement of the Corps of Engineers will have to be obtained during this same period, and other preparations made for a more active state role in wetland management.

A detailed work program for this planning element will be circulated to ACMP participants in the summer of 1979, and adjusted as a result of comments.

7. Permit Simplification

ACMP will continue to work on simplyfying the current array of permits and other governmental sanctions along three directions:

1. Continued support of the existing one-stop permit system and permit information centers operated by the Department of Environmental Conservation.

2. Investigations into more automated permit information systems that could make operation of the existing systems more coordinated and effective.

3. New investigations into structural changes in the existing array. This will involve examinations of the existing array

of permit systems and proposals to consolidate, streamline or eliminate systems. A proposal for this task will be presented to the 1980 session of the legislature with a request for an interim committee to work with OCM over the summer and fall of 1980 to prepare a full package of changes to simplify the existing array.

Section (c): Conclusion

The future of the ACMP depends on the future of the national coastal management program, which is uncertain at the present. The ACMP is in large part a response to the national interests expressed in the policies of the Coastal Zone Management Act. This response has involved substantial federal financial support in the past, and federal funding is vital to the continuation of this response. Alaska has reached a point in coastal management where actual management is taking place, but there is still much to be accomplished. The real promise of coastal management-the legislative and congressional objectives and expectations-will still involve more effort and expense over what has been done at the state and national level to date. Alaska's coastal resources are important to the state as well as to the entire nation and the proper management of those resources should continue to be a matter of national as well as state concern.

degrees F and annual precipitation is from less than four inches (at Barrow) to about seventeen inches per year, sixty percent of which is snow. When the sea ice pulls back from the warmer coast, the moist oceanic influence creates prevailing cloudy and foggy conditions. There are less than ten frost-free days in a year.

Section (c) Natural Hazards

An inventory of Alaskan natural hazards is long and varied. Most of the coastal hazards are common in other state coastal zones, but Alaska hazards are often more widespread or violent than those experienced in more temperate regions. Some natural hazards are instigated by man's disturbance of natural condition or processes. This problem is magnified in Alaska because of the fragile nature of much of the coastal environment.

Strong winds and storms are common throughout the Alaska coastal zone. Broad storm tracks move up the Aleutians into the northern Gulf of Alaska throughout the year, with winds occasionally reaching 75 to over 100 mph. In the mountainous coastline bordering the Pacific Ocean, narrow passes funnel winter winds into dangerous gusts that can continue for weeks. Violent storms often arise with very little warning. In western Alaska summer storms of gale force are common and even cyclonic storms frequent the Aleutian Islands where winds average seventeen to twenty mph year-round. Shemya Island, for example, experiences calm conditions only about nine days of the year.

Visibility is greatly reduced in many areas by ubiquitous torrential rains, blizzards, and fogs. An extreme blizzard condition known as a "white-out" can reduce visibility in winter months to zero.

Navigation is limited by numerous and uncharted sand bars, reefs, and rocky islets. The extreme tidal ranges (14.1 feet at Skagway, 40 feet at Anchorage) in southcentral and southeast affect all activities, especially log dumping or storage, shoreline construction and the location of recreational facilities. Tidal currents as strong as six knots are not uncommon in narrow southeastern straits.

Critical beach erosion is occuring at approximately 35 coastal communities. Most coastal erosion is due to nearshore currents and storm surges, but windblown ice contributes to shoreline erosion in the arctic. Ice erodes annually up to nine feet off bluffs and up to 24 feet off of sand and gravel beaches (backed by bluffs in some locations). The broad coastal flood plains of Alaska are also subject to severe erosion and flooding during spring breakup.

The coastal strip between Cordova and the tip of the Aleutian chain is classified as one of the two highest seismic risk areas in the United States. The 1964 Good Friday earthquake, which registered about 8.5 on the Richter Scale, caused notable tectonic changes in land level over a 70,000 to 110,000 square mile area. The area of crystal

deformation is larger than any such area known to have been associated with a single earthquake in historic times. Maximum subsidence was 7.5 feet; maximum measured uplift was 38 feet. Subsea lifting may have been as great as fifty feet.

The resulting tsunami, another natural hazard, destroyed part or all of three major towns and numerous small villages in Alaska. The seismic sea wave was still four feet high when it washed up on Antarctica less than 24 hours later. Five Alaskan communities (Sitka, Yakutat, Unalaska, Dutch Harbor and Adak) have recorded nine or more catastrophic tsunamis.

About 48 volcanic centers in a 1500 mile coastal arc from Cook Inlet through the Aleutians have been reported active since 1760. Earthquakes and tsunamis are well-known, but equally hazardous to human life and property, are highspeed mud flows and flash floods from glacier-dammed lakes which are suddenly released, both of which can extend many miles. The 1912 eruption of Novarupta on the Alaska Peninsula filled moutain valleys with magma to depths as great as 700 feet. It also expelled 2.5 cubic miles of white-hot ash into the atmosphere. Some of the ash fell on Kodiak, about 100 miles downwind, and drifts up to twelve feet deep were reported. Needless to say, terrestrial and intertidal life was severely damaged on Kodiak Island. Corrosive acidic rains are common after eruptions and can also fall hundreds of miles from their origin.

Surging ice is another coastal hazard in Alaska. In the Beaufort Sea, oceanographic and meteorological influences maintain the summer arctic ice pack in a position almost always threatening, if not halting, navigation. In winter the pack ice reaches Bristol Bay regularly; sometimes advancing as far as the eastern Aleutian Islands and covering the entire Bering Sea Continental Shelf. Surging glaciers are an uncommon but potential threat in southern and southeastern Alaska, and one now threatens tanker traffic into Valdez. The gravelly soils of flat, glacier valleys are inviting sites for construction, but occasionally a glacier will surge without warning. The Black Rapids Glacier is an example. Advancing up to 61 meters per day in 1936-37, the terminal moraine nearly blocked the only road link between Anchorage and Fairbanks before the glacier began to recede. Icebergs, split away from the seasonal ice pack or calved from tidewater glaciers in southcentral and southeastern Alaska, are an obvious threat to coastal navigation.

In Alaska, vastness itself is a natural hazard. With few inhabitants and scarce medical services along immense reaches of coastline, even a slight accident can be dangerous. The layer of permafrost on the arctic and western coast of Alaska is a unique natural hazard aggravated by human disturbance. The persistently frozen ground prevents internal soil drainage, forcing water to drain over the surface and accumulate in peaty bogs. Because it is impermeable, permafrost hinders proper functioning of conventional sanitary waste treatment facilities, dispersing pollution over a greater surface area.

Landslides are particularly common along the southern and southeastern coasts because of steep slopes and unstable soils. Snow avalanches are frequent in the spring. Both are often instigated by the removal of vegetation by the construction or timber industries. Less spectacular erosion is initiated by placer mining, overgrazing, agriculture and the use of vehicles on permafrost soils. Solifluction is a peculiar "landslide" occurring in thawed soils underlain by permafrost.

Irregular subsidence, caused by the thawing of frozen soils beneath disturbed vegetation, severely curtails construction and farming activities in arctic and western Alaska. A more widespread subsidence problem may follow the removal of oil and gas reserves in the arctic.

Section (d) Marine Ecosystems

There are six major ecosystems represented in the Alaskan coastal zone. The nearshore and intertidal ecosystems are wave-beaten coast, fjord estuary, tide-mixed estuary, ice-affected Bering Sea coast and the ice-affected Arctic Ocean coast; offshore is the vast continental shelf of Alaska. Almost all of the wave-beaten coasts, fjord estuaries, and tide-mixed estuaries are located on the Pacific coast.

The Pacific continental shelf of Alaska is cut by large undersea valleys and averages a little over 50 miles in width. The continental shelf becomes discontinuous along the Aleutians Island chain but widens in the Bering Sea. Prehistorically a broad plateau bridging Asia and North America, the Bering Sea continental shelf underlies half of the Bering Sea. Most of it is within the 200 mile U. S. fishing limit recently established by Congress. The Arctic Ocean continental shelf averages slightly less than 50 miles in width. Major ocean currents flow north and west around the Gulf of Alaska and along the Aleutian Islands, then northward through the islands and up the western coast. A weak current flows westward along the northern coast. The Pacific Ocean shelf provides habitat for a variety of bottom, pelagic, anadromous, and shellfish species. The major commercial fisheries in the western Gulf of Alaska and the Aleutian Islands are King crab, tanner crab, and shrimp. In much of the Beaufort Sea, the coldness of the water and seasonal ice cover limit habitat for bottom fish. One of the world's largest flatfish and pollock fisheries is located on the southern edge of the Bering Sea shelf. Surface fish stocks, such as salmon and herring, are among the largest in the world.

Wave-beaten coasts border about 20 percent of the State's tidal shoreline. These nearshore and intertidal areas are extremely productive because waves, the primary mixing agent, churn nutrients from the sea floor up into the sunlit zone. The waters adjacent to the exposed

headlands of the Gulf of Alaska coast and the rocky Aleutian shores support much greater concentrations of plant and animal life than the mud flats and silty beaches found along most of western and arctic Alaskan coasts. Phytoplankton and the large marine plants (e.g., kelp and clinging intertidal seaweeds) are extremely abundant. Marine animals include high incidence of clinging and intertidal species, such as snails, small crabs, barnacles and mussels. Because of the abundance of food, seabirds, marine mammals, and fish are plentiful.

Fjord estuaries indent most of the State's tidal shoreline (about seventy percent). Productivity and species diversity are influenced by wave action in fjords, but there is little direct pounding and mixing. Fjord estuaries comprise all but the seaward inlets of Southeastern Alaska, Prince William Sound, and Shelikof Strait between Kodiak Island and the mainland. The spectacular fjords of Southeast Alaska are believed to be former drainage sources eroded and deepened by glaciers. Many of the seaways have rocky bottoms over 400 feet deep. These waters become stratified, limiting high phytoplankton production to early spring "blooms." However, local upwelling creates some highly productive areas. Marine animal life is similar to that found in wave-beaten coastal waters but overall production of marine life is moderate to low because of limited seasonal productivity. The hydrography of fjords in association with extended sunlit summer periods, high energy and deep-lying, nutrient-rich waters, offers an unusually good opportunity for aquaculture. Only mollusks cannot be harvested in Southeast Alaska due to the common occurrence of paralytic shellfish poisoning.

About two percent of the tidal shoreline lies adjacent to tide-mixed estuaries and most of this ecosystem is found in Cook Inlet. Tides are the primary mixing agent in Cook Inlet, where tidal ranges and currents are extreme. Anchorage experiences tides ranging up to 30.4 feet. The tidal variance of Turnagain Arm is one of the few places in the world capable of producing tidal-generated power. However, the high suspended sediment loads, bottom instability and present economic factors make tidal power here unlikely. Productivity in upper Cook Inlet waters is greatly curtailed because suspended sediments from glacier streams reduce light penetration. However, lower Cook Inlet is highly productive. Kachemak Bay may be the world's most productive estuarine fishery for its size. Marine mammals and seabirds are not as abundant in Cook Inlet as in many areas of the state, but its shores are an important rest stop for migrating waterfowl.

The coastal waters of the Bering Sea are influenced by sea ice during winters of most years. Bering Sea coasts comprise about four percent of the State's tidal shoreline. Mainland coasts are silty and unusually wide with nearly flat offshore slopes. Near-shore plant productivity, particularly of kelp and eelgrass, is among the highest in the world. In protected areas, extensive mats of eelgrass, kelp, and other attached plants provide critical sea otter and fish habitat and essential staging grounds for migrating seabirds and water

fowl. Other marine mammals are abundant. Seal, walrus, and whales contribute substantially to Eskimo subsistence harvest. Polar bear are seasonally present, following the edge of the ice pack in the northern Bering Sea.

All coasts north of the Bering Strait, approximately two percent of the State's total tidal shoreline, are bordered by sea ice in winters of all years. Pack ice may be just offshore all summer. Most of the coastline is sedimentary and portions have extensive barrier islands and lagoon-forming spits. There is little shelter from ice movement and there are few harbors. The annual productivity is limited by sea ice and is the lowest of the States' marine waters. In a typical adaptation of arctic life to a harsh environment, the spring phytoplankton "bloom" actually begins under and within the sea ice. Lagoons are productive waterfowl and shorebird breeding areas. Many birds and marine mammals represented in this ecosystem are rare or non-existent south of the Bering Sea.

Section (e) Shoreland Ecosystems

Southeast Alaska has about 1,000 of the state's 1,800 named islands, rocks, and reefs (several thousand remain unnamed). Kodiak Island, Nunivak Island, St. Lawrence Island, the six largest islands of Southwest Alaska, and the Aleutian Islands total almost 23,000 square miles. Most of the major seabird and marine mammal rookeries are located on the isolated wave-beaten coasts of islands. Indigenous island species are extremely sensitive to disturbances. Marine mammal and seabird concentrations in rookeries are susceptible to harassment by humans and the environmental changes that accompany man's presence, including marine oil spills, domestic animals, and aircraft noise. The most limited and sensitive habitats in Alaska may be certain islandic seabird breeding colonies. The endangered Aleutian Canada goose and a growing population of once-endangered sea otters also inhabit the remote Aleutian Islands.

Alaskan soils are predominantly infertile; insufficient nitrogen and phosphorus are the major limiting factors.

Most Alaska streams are also less productive than waters at lower latitudes, due to steep stream flow gradients, drastic seasonal fluctuations in water volume, low nutrient levels from unproductive soils and

frozen ground, low temperatures, and the high silt loads of glacial streams.

Essentially all Alaska streams and rivers are migration routes for spawning salmon. In western and northern Alaska, standing freshwater systems have high contents of organic materials with a very slow turnover rate. Freshwater habitats in Alaska, with the exception of several Cook Inlet and Southeast locations, have been preserved in much their original condition as agriculture, logging, dam construction and other human activities have been minimal.

Seven major ice fields blanket almost 20,000 square miles of the immediate Gulf of Alaska and Cook Inlet coastal zone. Glaciers and ice fields once scored most of the jagged coastline, and still play a key role in the hydrologic system of the Pacific coastal zone. Glaciers terminating in tidewater are major components of the physical beauty of the coastline.

There are six major land ecosystems abutting the Alaskan coastline: wet tundra (or marsh), moist tundra, alpine tundra, high brush, western hemlock-Sitka spruce coastal forest, and lowland spruce-hardwood forest. Each ecosystem has characteristic plant and animal populations and life cycles.

The two most extensive wet tundra ecosystems are found on the central arctic coast and on the Yukon-Kuskokwim Delta. In these areas topographic relief is in inches. Sea waves erode the river banks 67 miles up the Kuskokwim River at Bethel. In summer, ponds and lakes are ubiquitous. Many of Alaska's three million lakes with surface areas greater than twenty acres are located in the wet tundra/marsh ecosystems at or near sea level. The net annual biological production in the artic is low only because the tundra is unproductive seventy to ninty percent of the year. Marshes in more temperate regions of the state are exceptionally productive. Although birds in northern and western Alaska are almost strictly a spring-summer phenomenon, waterfowl and shorebird production in the wet tundra ecosystem is among the highest in the world. The dominant wet tundra plant species are sedges and cottongrass. Only five species form half of the total plant cover in the arctic wet tundra. Up to ninty percent of the annual growth occurs below ground. The tundra ecosystem has few checks and balances because of low plant diversity, and seemingly minor ecosystem disturbances have far-reaching ramifications.

Most of the Arctic Ocean and Bering Sea coastal zone is moist tundra. A slight increase in topographical gradient facilitates runoff so that these tundra soils are less saturated and there is less standing water. Grasses and sedges are the dominant vegetation. Productivity is slightly lower than in the wet tundra. Saprophytes play a dominant role in the arctic and sub-arctic terrestrial food web. Since there are relatively few vertebrate species, most organic material ends up in the soil and is decomposed by dense populations of bacteria, fungi and soil invertebrates. Small mammals such as lemmings, because of their abundance and year-long

residence, have the major above-ground impact on vegetation. During population peaks, approximately every three years, lemmings consume over one-third of the annual above-ground primary production in the arctic.

Beach ridges surrounding aquatic habitats, serpentine barrens, limestone outcrops, marshes, sloughs and other ecologically important and fragile regions in the arctic and western coasts provide habitat for unique species of plants and animals. Sandy dune soils on the coast provide burrow and den sites for mammals ranging from arctic ground squirrel to wolf. Coincidentally, these dry soils are favored sites for sand and gravel removal and construction.

Breeze-swept beaches afford insect-free habitat attractive to caribou and reindeer in the summer. Other typical coastal mammals are grizzly bear, wolf, wolverine, arctic and red fox, weasel, and lemmings. There are no reptiles or amphibians in the Arctic or Western Alaska (only about three amphibians are found in coastal Alaska, all in the southern and southeastern regions).

Most of the coastal alpine tundra ecosystems are found on mountain ranges and on exposed ridges in the Aleutian Islands and the Alaska Peninsula. This ecosystem consists of barren rocks and rubble interspersed with low plant mats, both herbaceous and shrubby. Ecological diversity is low. Regeneration is extremely slow. Some lichens may require over sixty years to recover after over-use or trampling.

The most extensive high brush ecosystems in the coastal zone are on the Seward Peninsula near Nome, along the Alaska Peninsula, and on western Kodiak Island. Usually these dense coastal brush systems are alder thickets, often having a well-developed layer of grass and ferns below. Most rivers in northern and western Alaska are lined with high brush, usually willow. Dense populations of black-tailed deer are located in high brush habitat on Kodiak Island. High brush ecosystems are preferred seasonal habitats for brown (grizzly) bear throughout Alaska because of the abundant berry crops.

Most of the coastal zone east of Cook Inlet is western hemlock-Sitka spruce coastal forest ecosystem. Mainland areas have considerable alpine tundra but Prince William Sound and southeast Alaska are mossy, temperate rain forests. This forest produces 95 percent of the commercial timber cut in Alaska and contains over 80 percent of the saw timber volume. Typical coastal mammals are black-tailed deer, brown bear, mink and land otter. Most of the world's bald eagle population inhabits southeast Alaska.

Lowland spruce-hardwood forest meets the coastline only in upper Cook Inlet and on the northern Kenai Peninsula. Willow scrub covers extensively burned areas on the Kenai Peninsula and this secondary growth supports one-third of the state's moose population. Kenai moose are the largest in the world. Much of the lowland spruce-hardwood forest has been cleared in the fertile Matanuska Valley and in the Anchorage bowl area. Because productive bottom lands in Alaska are the prime habitat for large mammals, populations of moose, caribou and bear have been reduced by this displacement.

Section (f) Threatened or Endangered Species

Alaska hosts a number of threatened or endangered species which receive special management attention. Well-known are the peregrine falcon, the Aleutian-Canada goose and the bowhead whale. Other marine mammals on the Department of Interior's list of such species are the humpback whale and the gray whale. The blue whale is also endangered and is an infrequent visitor to Alaskan waters. Interestingly, the brown bear is considered a threatened species in the lower 48 and in certain other countries, but is a thriving species in many places in Alaska. Southeast Alaska hosts a healthy population of bald eagles which have special protection under the Bald Eagle Protection Act of 1940, which not only protects the bird itself from taking by humans but protects the habitats and nests of the bird as well.

Section (g) Commerce and Economic Development

Since the Caucasian discovery of Alaska some two centuries ago, the history of economic development has been a recurring cycle of boom and bust. Fortunes found in Alaska were spent somewhere else. In 1743, two years after the first Russian land-fall, intensive hunting of sea otters began. For over 100 years, furs were the major resource harvested. Vulnerable sea otter and fur seal populations were severely reduced. Whaling was profitable in the late 19th century until the commercially valuable species were eliminated. In the mid-19th century mining began on the Kenai Peninsula. Between 1874 and 1914, fourteen major gold discoveries occurred in Alaska. Most were in the interior, but three of the largest were in Nome and near Juneau. Commercial logging began in southeast Alaska, while salmon canneries also appeared in Southeast. The peak salmon catch, 126.4 million fish, occurred in 1936. Coincidentally, farming began at the head of Cook Inlet in the fertile Matanuska Valley. As a result of World War II and the temporary Japanese occupation of the Aleutian Islands, a massive military buildup began in Alaska and continued through the Cold War of the 1950's and 1960's. Tht total Federal budget in Alaska continues to play a significant role in the state's economy. In 1968 the discovery of immense oil and gas fields on the arctic slope and subsequent outer continental shelf leases by the Federal government generated the present economic dominance of oil and gas fields on the arctic slope, and the prospect of outer continental shelf leases by the Federal government generated the present economic dominance of oil and gas development. Because of the current energy crisis and measures by the federal government to lessen dependence on foreign oil imports, Alaska's resources are still figuratively and literally flowing out of the state.

In a recent economic survey (McDowell 1975), 55 coastal communities were asked to rate the relative importance of selected industries in their area. Of these communities, 24 rated commerical fishing and fish processing and 10 rated subsistence hunting and fishing as the major economic factor. Important secondary economic influences, in their respective order, were: tourism, state government and the federal government including military.

The total value of all minerals produced in Alaska reached a record high of $524 million in 1975, representing a twenty percent gain over 1974. Oil and gas accounted for three-fourths of all mineral production. However, the value of sand and gravel production reached over $100 million, almost double the 1974 figure as a result of private construction on the trans-Alaska pipeline. Depending on locational factors, excavating sand or gravel can devastate fish and wildlife populations dependent upon limited stream bed or coastal bluff dune habitats.

Oil and gas exploration and production is expected to show a slow but steady increase. According to continental shelf lease schedules under discussion and consideration, Federal lease sales are likely in the Gulf of Alaska, Kodiak, Cook Inlet and Norton Basin regions. A joint Federal-state lease sale in the Beaufort Sea is scheduled to preceed the above sales. Much of the activity in the next few years will center around the call for nominations for the Beaufort Sea sale, and the call for nominations in the Gulf of Alaska. The lease sale of the Lower Cook Inlet was held in late 1977, and exploration activities are underway. Regarding state leasing activities, long range planning and evaluation of the Beaufort Sea oil and gas lease sale is now in progress, with sales scheduled for 1980. Exploration activities continue in the North Gulf of Alaska in the midst of pessimism about its once highly regarded petroleum potential.

State oil production in 1977 was 88 percent more than the previous year, while gas production showed a 27 percent increase. The start-up of the trans-Alaska pipeline transporting oil from Prudhoe Bay accounted for the major increase in oil production. In the summer of 1977, tankers began loading this crude oil at its termination point in Valdez, Prince William Sound, and six months later, the 100th tanker had been loaded.

Oil and gas exploration, production, and transportation affect the environment in a variety of ways. Construction in remote locations disrupts terrestrial animal habitat and behavior. Oil spills from drilling rigs, pipelines or tankers can destroy marine life and recreation opportunities.

Fisheries are the other major source of basic income and the major source of subsistence in Alaska. The thirty year decline of salmon harvests since the peak is primarily due to overharvesting, and illustrates a classic economic point of diminishing return. Commercial logging also has been an important contribution to the decline of fish production in thousands of salmon streams of Southeast Alaska. Careless logging practices have varied stream flows, silted and compacted spawning beds and destroyed the food organisms for young salmon.

Preliminary 1975 figures put the statewide harvest of all species at about 460 million pounds, valued at $292 million. Five species of salmon are the major fish harvested (25 million fish in 1975) but the total harvest includes 146 million pounds of crab, 99 million pounds of shrimp and 25 million pounds of halibut. The U.S. has virtually no domestic groundfishery in Alaska. However, foreign trawl fleets, particularly those from Japan and the U.S.S.R., harvested an estimated 4.3 billion pounds of pollock,

herring, perch and other bottom and pelagic fish in the Bering Sea and Gulf of Alaska in 1975. Intense state efforts to develop a domestic bottomfish industry are underway in 1978.

Most of Alaska's commercial timber is in southeast Alaska. Timber harvest declined drastically in 1975 as a result of recessions in the U.S. and Japan, the principal buyers. Approximately 469 million board feet of timber was harvested in 1975, down one-quarter from 1974. Value was $5.1 million. Most of the forest products are exported to foreign markets, notably Japan. In the early 1970's Japan, in return, contributed over half of Alaska's imports, primarily steel for pipeline construction. Because Japan is as near as many U.S. markets it will continue to be an important trade partner, exchanging natural resources for manufactured products.

At the present time, Alaska is making a major effort to develop some of its vast acreages of latent agricultural resources. The Delta agricultural project in the upper Tanana Valley is in the process of bringing into production some 60,000 to 100,000 acres of land. Most of these lands will produce barley and rapeseed for foreign markets. This is nearly four times the acreage that produced crops in 1978 throughout Alaska, and the potential for further project development is considerable. Recently completed exploratory soil surveys of the state have identified approximately 18.6 million acres suitable for farming and an additional 10 million with good potential for grazing cattle and sheep. Up to 100 million acres could be utilized for reindeer production, but conflicts with caribou in certain areas tend to limit the use of tundra ranges. State law requires that at least 650,000 areas of the better soils on state lands be classified for agricultural use, and current policy is encouraging the development of farm industries in Alaska. Most of the current production is in the Matanuska Valley. Milk, hay and potatoes, in that order, are the dominant farm products. In 1975, State agricultural production was the greatest on record with a total value of nearly $9.3 million. Added production from the Delta project area is expected to greatly increase the total value. The major portion of the good agricultural soils is in the interior regions of the state, however, and land development will not significantly affect coastal areas.

After 80 years, tourism in Alaska is only beginning to develop toward economic maturity. Nearly 270,000 visitors travelled to Alaska in 1976. Almost half arrived by air, usually landing in a major coastal community such as Anchorage. About one-third came on a tour ship or state ferry. Tourism and other recreation is and will be an important economic activity in coastal Alaska, but exactly to what extent is unknown. The 1976 contribution of tourism in Alaska should approximate $90 million. But tourism is a consumptive rather than productive industry and cannot be compared economically to those industries based on resources, such as mining or fishing. Productive industries have highly objectionable aspects. Tourism, even though it has objectionable aspects of its own (particularly in "bush" communities) may well prove to be the more desirable alternative. Tourism in Alaska is mostly an active sightseeing rather than a sedentary vacation activity. Natural

scenic and wildlife values are the major coastal attractions. Thus conflicts arise between tourism and development, e.g., logging (especially clearcutting) or offshore oil and gas production, even though the Alaska pipeline may be a tourist attraction in its own right. Historical and cultural attractions are also important in coastal communities.

Tourism is seasonal, and much tourist development and economic impact is concentrated in the Anchorage and Kenai Peninsula area and a few specific towns in Southeast Alaska. Sport fishing and hunting are major attractions; 80 percent of all sport fishing effort occurs in coastal regions along with most of the non-resident big game hunting.

The estimated 1975 total average employment for non-agricultural civilian resident workers was $161,000--up 57 percent from 1970. Unemployment is traditionally high. It dropped below ten percent as a result of pipeline employment but is presently about 15 percent. Alaska's 1974 percapita income was the highest in the country--$7,062 compared with the national average of $4,448. In contrast with overall state averages, unemployment in the villages is usually much higher than 15 percent and average wages in the Native villages are much lower than the state average.

In the future, increased demands for energy and strategic minerals will be directed towards Alaska. Almost certain discoveries of OCS and National Petroleum Reserve, Alaska (Pet 4) oil and gas reservoirs will continue the flow of petroleum revenues, for perhaps thirty years, but probably not much longer. Prudhoe Bay and the pipeline have "opened up" the North Slope, and the adjacent seas and lands along the pipeline corridor to new Federal, state and Native corporation leasing and exploratory activity. It is generally easier and cheaper to extend development and to share or expand transportation facilities from existing areas than to open new and isolated areas. This "opening up" of Alaska's lands and continental shelves will facilitate large-scale development of coastal mineral resources such as coal, copper, tin, lead and other commodities that were too remote to develop economically.

Because the mountains come right down to the sea, the Pacific coast has a great potential for hydroelectric power developments. Many problems have not been solved, not the least of which is the remoteness of the market for any surplus hydroelectric power developed. Reducing sediment loads delivered to the coast may change the net coastal erosion--with subsequent loss of beaches and shorelines. The frequent inundation of floodplains is critically important to waterfowl and shorebirds. Damming streams anywhere in Alaska will prevent salmon migrations unless adequate fish ladders are built. Salmon and other fish that feed in the sea and return annually to spawn and die act as a biological "nutrient pump" to the nutrient-poor streams of Alaska. Drastically reducing the runs would significantly alter both terrestrial and aquatic ecosystems. Bald eagle, raven, brown bear and humans all depend, to some extent, on the spawning fish.

Additional data on the current and projected status of the industries of Alaska (minerals, petroleum, gas, timber, fishing, international trade and tourism) can be found in the Alaska Economy, Year-End Performance Report 1977, prepared by the Alaska Department of Commerce and Economic Development.

Section (h) Population

Alaska's populations has been increasing at rates which vary from two percent to six percent per year, and is expected to increase at varying rates in the future. The reason is the large constuction projects that occur in the state. At certain points in these projects the population increases sharply with the demand for labor. After the labor force is at work, the rate of increase slows or even flattens back to the natural increase rate of around two percent. Interestingly, the population will not decline as much as was expected with completion of the Trans-Alaska Oil Pipeline. Many who came to work on the line itself did leave the state, but many who came to supply support services found that there was a general demand for their services and have stayed.

The next major physical project may be the Alcan gas pipeline, and this could approach the oil pipeline in magnitude. Additionally, the Alaska bottom fishery is beginning to develop and some new employment is anticipated as a result of this. The bottom fishery and the gas pipeline employment demands are expected to occur in 1979 and 1980 and this is the reason for the increases in general population shown below for those years:

(The following figures come from the third quarter forecasts for the subject years. Source is the Alaska Economic Information on and Reporting System, April 1978, Quarterly Report, Alaska Department of Commerce and Economic Development, Division of Economic Enterprise, and is based on Bureau of Census data.)

1976:3--408,300
1977:3--407,400
1978:3--410,400
1979:3--422,500
1980:3--436,600

The Alaska population is young and mobile. The median age is 22.9 years. Males outnumber females slightly in all age groups except the early twenties where the ration is about two to one. Two-thirds of the population were born in other states.

Roughly 15 percent of the total state population is Eskimo, Indian or Aleut. Establishing a tradition still imitated by the Caucasian majority, the Eskimos, Aleuts and Southeast Alaskan Tlingit and Haida Indians settled on the shores, and derived most of their livelihood form the sea and shorelands.

The estimated 1975 population of Alaska was 384,000. This was a 27 percent increase over 1970. The population is currently over 400,000 and may well double in two decades. Approximately three-fourths of the population live within ten miles of the coast. Considering the vast interior bulk of the state this is an unparalled concentration. However, most of the coastal population, about 176,000 in mid-1975, is further compressed into the port city of Anchorage, leaving most of the coastline unpopulated.

The majority of the coastal population lives in thirteen communities (besides Anchorage) with mid-1975 populations greater than 2,000. Excepting the Beaufort and Bering Sea communities (Barrow, Kotzebue, Nome and Bethel) the populations are predominately Caucasian and have most of the amenities familiar to any citizen of an American rural community, except convenient road access to other parts of the state.

Roughly 15 percent of Alaska's population inhabits wet and moist tundra near the northern and western coasts. Most of the state's Eskimo and Aleut population live in this ecosystem. Communities are located on sand spits, old beaches or elevated river banks. A great part of human livelihood is derived from the sea and rivers. The four previously mentioned predominantly Native towns are regional service, transportation, government and trade centers for the rest of the coast. Villages in the surrounding regions do not resemble the typical American small town. There are few roads and no road networks. Local transportation is by small boat in the summer and snowmachine in the winter. Light planes equipped with floats, skis or balloon tires are year-round transportation. Residents participate in a wage-boosted subsistence economy and must supplement their seasonal cash income by fishing, hunting and gathering. Sport hunting and commercial fishing compete with subsistence hunting and fishing throughout the state. Eskimo, Aleut and Indian cultures and traditions are still strong in the villages. For many residents in northern and western Alaska, English is a second language and is spoken with difficulty or not at all.

An eccentricity of Alaska land management is the Unorganized Borough. Almost the entire western and southern Alaska coastal zone, and most of Southeast Alaska's coastal zone, has no incorporated city or borough (county) government. Residents in the Unorganized Borough have fewer opportunities to participate in the public decision-making that affects them; they do not participate equally in paying for services such as education or police protection through local taxes.

Roughly 15 to 20 percent of the state's population lives within or adjacent to the western hemlock-Sitka spruce coastal forest. All communities are located on the coast. The absence of a continuous coastal plain in Southeast Alaska and Prince William Sound has precluded intraregional highway and railroad networks. The Southeast panhandle communities rely upon maritime and air transportation, sharing state highway funds with their "marine highway" network.

The acute shortage of flat land necessitates the filling of tidelands and wetlands to accommodate expanding industries, housing and local roads. Only where coastal plains coincide with favorable natural harbors are topographic conditions amendable to moderate urban and industrial development. The major industry is commercial salmon fishing. Tourism, state spending and timber production are important local boosts to the economy. The well-drained glacial till soils, rolling topography and comparatively mild climate make the western Kenai Peninsula and Anchorage region most conducive to development. Over half of the state's coastal population lives in or near Anchorage. A road network connects most of the communities with each other and the interior. The Upper Cook Inlet region has become the economic and agricultural heartland of Alaska. Ground layer air inversions are common in coastal lowlands, such as the Anchorage bowl. Air pollution, mostly from internal combustion engines, often accumulates to undesirable levels downtown. Because of the proximity to Anchorage, southcentral big game and sport fish populations are subjected to intensive pressures. Most recreational development has occurred in this region of the coastal zone. Coastal parks are favored and heavily used. The Cook Inlet region has more elements in common with coastal zones in the rest of the United States than any other area in Alaska.

Recreation in the Alaskan coastal zone is both water and land-oriented. Most outdoor recreation is focused on outstanding biological or geographical features. These include concentrations of bird, mammal or fish populations, unique vegetation, sand beaches, hot springs, flat or mountainous terrain, etc. There is occasionally an overlap between recreation and tourism or recreation and subsistence uses. The most popular recreational activities along the Alaskan coast are common to the rest of the United States. These include trail-related activities (e.g., hiking, bicycling, snowmobiling), sight-seeing, driving for pleasure, picniking, fishing and boating. Natural and scenic features which have educational, observational or photographic value are the most popular attractions of trail-related recreational activities.

Alaska's recent phenomenal rate of growth has overloaded public services and facilities and induced critical housing shortages and inflation. Immigration is a major concern in the still underdeveloped state. Due to the influx of new people and the recent inflation and "uncontrollable" growth generated by the Trans-Alaska oil pipeline and OCS oil and gas exploration activities, the Alaska public is not as naive as it was several years ago.

A survey study of Alaskan opinions conducted by the Rowan Group (1976) showed that over half the public was in favor of an oil and gas industry in Alaska and development in general. This urge to develop is a persevering manifestation of the frontier ethic. But one-third of the population feel that, in a socioeconomic sense, more has been lost than gained. Almost half said that the Alaskan "quality of life" has deteriorated. The public may be two to one in favor of the petrochemical industry, but two people to one can immediately name a place where in their opinion oil and gas should not be developed--development is fine but do it somewhere else. Three-fourths of the population said new industry was desirable only if it could pay its own way. Development has brought new jobs and higher incomes, but, overall, a sense of ambiguity over its net contribution to the Alaskan way of life.

Section (i) Land Ownership

The federal government, now as in the past, is the largest landowner in Alaska. It will remain pre-eminent in the future. At statehood almost 100 percent of Alaskan lands were owned by the federal government. The Alaska Statehood Act of 1958 gave the state 25 years to choose over 103 million acres of state land. The state administration chose at the time to wait until land use patterns and natural resource values were better delineated.

In 1971, Congress passed the Alaska Native Claims Settlement Act, awarding over 44 million acres and about $1 billion to the native Alaskan Eskimos, Indians and Aleuts in compensation for their aboriginal claims to most of the land in Alaska. The belated action triggered a massive reallocation of land in Alaska and accelerated the rate of state selection. In addition to Native village and regional corporation selections, the state is rapidly selecting its 103 million acres and the federal government is prepared to designate up to 116 million acres for public domain as national parks, wildlife refuges, forests and wild and scenic rivers, in response to Section 17(d)(2) of the Settlement Act.

Today seventy percent of Alaska lands are in federal reserves; the state has selected about eighteen percent of their 103 million acres and the Natives are completing their selections of over eleven percent of Alaska lands. When the state completes its selections, which must occur by 1984, it will own about 28 percent of the land. Native and other private holdings will amount to about twelve percent, and the federal government will still own the majority of the land--about 57 percent.

Until the selections are patented, the actual extent of coastline in each category will be unknown. However, most of the coast is currently under federal uwnership, particularly the Tongass National Forest of Southeast Alaska and the Chugach National Forest of Southcentral Alaska, and will remain so. Almost all of the tidal and submerged lands offshore to the three mile limit, approximately 45 million acres, are under state ownership.

The future pattern of land ownership could resemble a jigsaw puzzle. Because natural resources and traditional land use activities will not confine themselves to arbitrary legal boundaries, land use planning and management on federal lands is a major concern in Alaska.

Section (j) General

The trend in resource management today is the growing realization that conservation policy and practice must be based on sound ecological theory and must be directed towards entire ecosystems. This realization has developed slowly, as failures and shortcomings in the management of individual resources or species were observed. Land owners can be independent but land uses may not. In the coastal area, one use always impinges upon another. This indicates the need for some kind of cooperative land and water planning and management. State and local policies can have an important effect on the quality of life--on where, when and what types of development occurs in the coastal area.

PART III: DESCRIPTION OF THE ENVIRONMENT AFFECTED

Section (a) Introduction

Alaska appears in summer satellite photos of the earth as a massive green peninsula, surrounded on three sides by blue oceans. This largest peninsula of the North American continent seems too large to be one of the fifty units known as the United States of America. It looks large and remote enough to be an autonomous nation.

Alaska sprawls longitudinally some 2,400 miles across the North Pacific Ocean. Its westernmost chain of islands is flung so wide that the International Date Line tacks to avoid them. Alaska includes the western and northernmost points of land in North America and spans 1,420 miles from south to north. Even distances of this magnitude do little to illustrate the length of Alaska's coastline. It is the only state bounded by two oceans and two seas. Glaciers have carved many large islands from the mainland and retreated to uncover a shoreline with abundant narrow fjords and craggy headlands. Volcanic activity has formed numerous islands. As a result of its convoluted coastline and vast extent, the marine shoreline of Alaska measures 33,904 miles. This is about one third the total marine shoreline of the United States and its possessions.

The ice-stressed coastal ecosystems of Alaska are unique in the United States, but its diverse coastline includes every ecosystem found in the contiguous states except the tropical.

Alaska's scenic grandeur, wilderness, wildlife, fisheries and human life styles are unique in the country.

Alaska's fertile continental shelf totals 830,000 square miles, or 74 percent of the nation's total. It is an important continental interface between Asian and North American biotic and human communities. There are species and subspecies indigenous to Alaska alone. Many species of migratory fish, birds and marine mammals use the islands, estuaries and coastal streams and ponds for breeding, spawning, birthing and resting. Some of the world's richest commercial fish stocks are found along Alaska's continental shelf.

The unique biophysical character of Alaska's coastal zone is of extreme national and international scientific value. On the other hand, its potential oil and gas reserves are among the largest in the world. Nearly all of the minerals classified as strategic by the federal government, ranging from antimony to zinc, are found in Alaska. With the advent of the jet plane, Anchorage has become a hub of international air transportation. Because it is situated between the Soviet Union and the contiguous United States, Alaska is of significant value in strategic national defense.

Many of these diverse uses of the coastal zone are conflicting. Opportunities to preserve sections of the coastal zone for future

recreation, education and scientific study are without equal in the United States. Conversely, opportunities to develop the wealth of coastal resources such as oil and gas, mineral, fish and timber are also without equal. Striking a balance between conserving and developing the wild and rich coastal resources of Alaska is the reason for coastal zone management.

Section (b) Climate

In Alaska, climatic extremes are the primary factor in determining the location and intensity of fish, wildlife and human activities in the coastal zone. The geographical breadth of the state results in radically different climates found along its coasts. These climatic conditions also depend on the season, the topography and the different characteristics of the surrounding seas. The three major coastal climatic zones in Alaska are maritime, transition, and arctic.

The maritime climate is found in Southeast Alaska, the Aleutian Island chain, and the narrow coastal strip in between. The Pacific Ocean is the major moderating influence. This climatic zone is characterized by cool summers and mild winters. Temperature variations are relatively slight. The average annual temperature is approximately 40 F in Southeast Alaska and is slightly cooler in the Aleutians. In Southeast Alaska cloud cover and precipitation are persistent. Cloudy skies occur approximately 275 days per year, with rain or snow on 220 to 230 days. Average annual precipitation is about ninty inches in Southeast Alaska, but ranges from 26 inches near Skagway to over 360 inches on Baranof Island. In Southeast Alaska there are 111 to 208 frost-free days per year. However, the overabundance of rain and unsuitable soils prohibits agricultural development.

Between the maritime and the extensive continental climatic zone lies the transition zone. This zone includes the coasts of the northern Gulf of Alaska, western Alaska, and the Alaska Peninsula. Along the Pacific coast the transition zone is narrow. It is a highly variable climatic region being overwhelmed alternately by maritime and continental conditions. The ocean has much less influence on climate along the western coast of Alaska. The transition zone generally has more marked temperature variation, less cloudiness, and less precipitation than is characteristic of the maritime climate. Mean annual temperatures range between 29 degrees F in northwestern Alaska to 39 degrees F in south-central Alaska. Precipitation generally ranges from less than twelve inches per year in the north to about sixty inches in the south. Summer fogs are frequent in the Bristol Bay and Yukon-Kuskokwim Delta regions.

The north slope of Alaska is in the arctic climate zone. At Point Barrow the sun stays below the horizon for 67 days and above the horizon eighty days each year. A persistent frozen condition dominates the climate. Predictably, winters are long and cold, and summers short and cool. The mean annual temperature is about seventeen

Description of the Environment Affected

Part III

The Alaska Coastal Management Program has evolved with considerable assistance from the numerous Federal agencies with responsibility for activities in the coastal zone. No Federal agency activities are specifically excluded from the coastal zone, although these activities may have to meet environmental standards to obtain coastal sites or be located outside the coastal zone if adverse environmental effects cannot be sufficiently mitigated.

When Federal agencies undertake activities, including development projects, directly affecting the state's coastal zone, they will have to notify the state of the proposed action. Steps will then be taken to insure that the proposed action not only meets Federal requirements but is also consistent with the state's management program. In the event of a serious disagreement between the state and Federal agency either party may seek mediation by the Secretary of Commerce. The availability of early Federal-state consultation and the mediation services of the Secretary of Commerce will increase the potential for conflict resolution. These procedures will provide all parties with an opportunity to balance environmental concerns with other national, state and local interests.

In cases where the state judges that a proposed Federal license, permit or assistance activities is inconsistent with the state's coastal program, the Federal agency will be required to deny approval for the activities. State objections must be based upon the substantive requirements of the management program. State objections may require Federally regulated and assisted projects to consider and locate in alternative sites thereby causing adverse impacts in non-coastal marine or distant coastal areas. State objections must otherwise suggest ways projects could be modified to achieve conformance with the management program.

In certain instances, upon appeal, a state objection to a proposed Federally licensed or assisted activity may be set aside by the Secretary of Commerce if the proposed activity is consistent with the objective of the CZMA or is in the interest of national security. In the former case, the Secretary must find that (1) the activity will not cause an adverse impact on the coastal zone sufficient to outweigh its contribution to the national interest; (2) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the management program; and (3) that the proposed activity will not violate requirements of the Federal Water Pollution Control Act or the Clean Air Act. Even if state objectives are set aside by the Secretary, the override will be dependent upon consideration of environmental protection needs. This procedure conforms with NEPA's objective for incorporating environmental values in Federal agency decision-making.

Where the state determines that a proposed federally regulated or assisted project is consistent with the requirements of the management program, the Federal agency may approve the project which will then be in conformance with the state's management program requirements, including those related to environmental protection. Notwithstanding state approval for the project, the Federal agency is not required to approve the license, permit or assistance application. The proposed project may still require Federal government

disapproval based upon NEPA, Endangered Species Act, Fish and Wildlife Coordination Act, or other overriding national interest grounds where Federal criteria are more stringent than the state's management program requirements. Between Federal and state environmental requirements for the coastal zone, the more stringent apply, thereby fulfilling NEPA's objectives to administer Federal programs in a manner which maintains the quality of the environment.

National Interest

Federal approval of the state's program will also certify that the state has an acceptable procedure to insure the adequate consideration of the national interest involved in the siting of facilities so as to meet requirements which are other than local in nature. These facilities might involve energy production or transmission; recreation; interstate transportation; production of food and fiber; preservation of life and property; national defense; historic, culture, aesthetic, and conservation values; and mineral resources to the extent they are dependent on or relate to the coastal zone.

This policy requirement of the CZMA is intended to assure that national concerns related to facility siting are expressed and dealt with in the development and implementation of a state's coastal management program. The requirement should not be construed as compelling states to propose a program which accommodates certain types of facilities. It works to assure that such national concerns are not arbitrarily excluded or unreasonably restricted in the management program.

This provision might have two impacts. First, it insures that a state has a process and program that does not prohibit or exclude any use or activity dependent on the coastal zone. In the absence of a comprehensive program such considerations might simply be ignored by oversight or default. This requirement will insure they are specifically considered. On the other hand, the existence of a consultative procedure should lead to more deliberate and less fragmented decision-making concerning the siting of facilities in the coastal zone.

Section (b) Social and Economic Impacts of the ACMP

With a program that must be implemented in conjunction with many other Federal, state and local government programs, and which will be implemented in social and economic systems that are constantly changing in response to other demands, potential socio-economic impacts can only be discussed in general terms and trends.

Programs such as the ACMP are intended to have an impact on existing regulatory mechanisms. Some are designed also as environmental protection measures and have an obvious effect on environmental resources. It is the socio-economic impacts of such programs that are usually insufficiently recognized. What follows is an identification of those socio-economic impacts which can be discerned. Given the unique land ownership and population density

patterns in Alaska, it must be recognized that the impacts will vary greatly both in scale and duration. Much of the coastal zone will not be subject to development pressures because of existing environmental management units such as parks and refuges, etc, which prohibit further development or exploitation of resources. Therefore, many impacts will be localized to existing population centers or new lands which will soon be opened up. Likewise, the Alaska coastal zone is extensive and some of the ACMP Guidelines and Standards which will cause socio-economic impacts will apply only to the shoreline area, so some facilities which may not locate along the shoreline because of environmental restrictions may still locate inland but be within the coastal zone.

Costs and Benefits

According to a study of the potential impacts of coastal zone management programs conducted by the Real Estate Research Corporation for the Office of Coastal Zone Management, benefits of coastal management will accrue to people throughout the state and Nation. These benefits will be of various kinds and will occur in different ways and degrees. The following major beneficiaries can be identified: owners of property directly affected by implementation decisions, neighboring property owners, owners of businesses whose productivity or market attractiveness would be enhanced by the ACMP Guidelines and Standards and district programs, government at all levels, and the general public.

This study also concludes that benefits of coastal zone management will be based on changes in the nature, scale, distribution, and pace of production (including manufacturing, agriculture, mining, fishing), utility services and costs, business sales, employment opportunities, population and the labor force, housing demand and supply, construction, financing and investment, property values, government costs and revenues, educational and recreational opportunities, and aesthetics.

Coastal management consists of the use of foresight in cooperatively determining how to both conserve valuable natural resources and accommodate the needs of an expanding population and economy. Achieving this balance involves trade-offs which include some short-term positive and negative effects. Long-term benefits from enhanced productivity of renewable resources --fisheries, forests--would also be realized.

Potential economic benefits of the coastal zone policies have the following attributes:

- They can be "one time only" or "recurring,"
- They can cause net increases in economic activity or merely shift benefits among individuals or groups,
- Costs may be incurred in their attainment--such as, expenditures for shoreline restoration or pollution control, and
- Secondary "spin-off" effects may be felt--both positive and negative depending on the nature of the policies and the economic activities affected.

Potential economic benefits can include increased productivity, higher sales, more jobs, greater demand for facilities and services, increased property values, lower taxes, reduced or stabilized consumer prices, and heightened satisfaction with one's physical environment. Prudent coastal zone planning, therefore, results in a balance between conservation of irreplaceable natural resources and the needs--job creation, housing, recreation, and shipping--of an expanding economy. While some coastal zone actions result in net gains or net losses for the local economy, in most instances the short-term effects of the program cause a redistribution of assets.

Some lost expectations will be encountered, but gains elsewhere should offset these losses. In those cases where regulations would actually result in a legally-determined taking, the regulations would be declared void or compensation paid. Reduced property taxes could help offset severe losses. Planning stabilizes erratic "swings" in expectations because it results in less uncertainty in future prospects of land investment. While there may be short-term lags as the economy adjusts to changes induced by the ACMP, long-term benefits are likely to balance or exceed costs. For example, some industrial plants may not be built near the shoreline, in part because environmental protection regulations may make them too costly. They would yield an inadequate rate of return on equity when compared to alternative opportunities. However, lower financing costs or improved marketing outlook could result in a decision to ultimately go ahead with a deferred project despite the costs of complying with coastal zone regulation. These same regulations will result in heightened opportunities in coastal dependent economic activities--tourism, recreation, fisheries, and commerce.

Impacts Upon Land Values

Land values in Alaska continue to rise as increased pressure for development is constrained by the supply of readily usable land. These pressures are magnified in parts of Alaska's coastal areas where land is relatively flat and suited for development because of the water access and population distribution.

The Real Estate Research Corporation cited the following as some of the key determinants of property values in their report which are applicable to Alaska. The key determinants of land values include:

- Natural site characteristics and environment
- Man-made site characteristics and environment
- Community image
- Demand for particular land uses
- Access

- Utilities
- Public facilities and services
- Taxes
- Land use and development regulations

Table 3, also from the Real Estate Research Corporation's Study, summarizes impacts of government action on land values.

The guidelines and standards of the ACMP will be implemented through existing government mechanisms, and may result in the following land value impacts.

1. Land values in the coastal zone will not necessarily increase faster than other land values as a result of CZM objectives and policies. Land values may increase, however, in areas where the ACMP imposes on proposed developments additional restrictions and/or conditions. Permits for developments in areas containing coastal areas uniquely suited for recreation, historic resources, subsistence habitat, or unique coastal ecosystems, for example, may be denied unless certain conditions are met. Placement of conditions on development proposals may tend to increase land values in such affected areas.

2. By restricting land use options in some coastal areas, land values will be redistributed to other areas not subject to use restrictions. In coastal areas, the value of land near or within existing developments will rise and coastal dependent developments may be compelled to move inland to avoid high costs.

3. Land values probably will decrease in some coastal areas where there is no development. The ACMP will foreclose development in some areas by concentrating development in areas which are already developed. The undeveloped land will then be left in the present, less "valuable" (in the economic sense), state.

When local governments develop district programs to reflect the guidelines, standards and objectives of the ACMP, the zoning ordinances and other implementing actions must be consistent with the Program This may require down-zoning in some communities and in some instances may cause a reduction in land values, affecting the assessed land values and resulting in a decline in tax base. The extent of the impact in each district will have to be weighed against increases in allowable development in other areas.

Impacts Upon Cost of Development

The ACMP will affect the cost of development in two ways. First, land acquisition cost may increase as discussed above. The competition for available land will intensify, and the increased prices paid to acquire that land will be reflected in higher development costs.

TABLE 3: IMPACT OF GOVERNMENT ACTION ON PROPERTY VALUES

Type of Action	Impact on Values of Subject Property	Impact on Values of Neighboring or Competetive Properties	Net Effect on Property Values	Relative Importanc on Specific Action in Determining Impacts
Restrictions on land use	Value declines	Value rises	Redistri-butional	Very Important
Developer required to make improve-ments or pay fees	Value declines	Value rises	Slightly negative	Unimportant compar to other public actions
Resource amenities protected or restored by government action	Value rises	Values rises	Slightly positive to very positive	Very Important
Shore access by the public maximized and protected	Value declines	Value rises	Slightly negative	Less Important tha use restrictions o amenity protection
Concentrating de-velopment in existing communities	If still unde-veloped, value declines; if already improved, value rises	Value rises	Positive	Very Important
Providing infra-structure, public facilities, and services	Value rises	Value unchanged	Positive	Important
Tax reduction or deferral for re-gulated, restricted, or encouraged uses of coastal properties	Value rises	Values unchanged	Slightly positive	Less Important tha use restrictions o amenity protection

Source: Real Estate Research Corporation.

Second, coastal development locating in sensitive areas but still permissible will probably be more costly as a result of conditions based on siting and design considerations to mitigate adverse impacts. For example, some may find that to meet restrictions placed upon residential developments to conform with the coastal hazards standard may make future development of their land prohibitively expensive. Additionally, costs for public services may increase due to standards such as the transportation and utilities standard designed to make such facilities consistent with other local and area goals and patterns. The siting of such facilities may or may not be the most economically efficient.

One effect which could arise from a new public regulatory program is a delay in approval of development. However, ACMP is mitigating this affect by utilizing existing land and water use controls rather than adding new permits. In addition high priority has been placed on developing permit coordination mechanisms. Pursuant to the Environmental Permit Coordination Act of 1977, funds have been allocated to the development and operation of a one-stop permit system for developers, and to improve internal agency procedures at the state level. The impacts that most developers cannot accept are the delays associated with permit approval and duplication of authorities among state agencies. It has been shown that delays may not only frustrate development but hurt industries whose costs have been extraordinary in getting a permit. If the delays can be minimized, most industries and developers can accept the adverse economic impacts normally associated with environmental regulation, since these are known and can be made a part of the developemnt process.

Impacts Upon Employment

Implementation of the ACMP will impact employment in some industries because of the effects it may have on their future activities. The protection of sites for coastal dependent facilities and fish and seafood processing facilities will benefit these industries and the work force. Industries which may be adversely affected are the timber and mineral industries.

Impacts Upon Development Patterns

The ACMP may have a substantial effect on development patterns. It will affect the manner in which governmental bodies review development applications and the manner in which proposals for private development are formulated and presented. Once the program is implemented, many of its effects will be felt very early in the development process. The ACMP will affect the patterns of development in four ways: (1) it will alter the nature of private planning and design; (2) it will increase the sophistication of the standards the agencies apply in reviewing development; (3) it will establish a set of priorities for use of the coastal area; and (4) land use designations of district programs will place restrictions or allow development within certain geographic areas only.

Overall, the economic benefits of the ACMP will, at a minimum, effect non-compensated losses in land values or business opportunity. Better coordinated governmental action and sound informaton on which to base management decisions both for private and public interests will help outweigh the potential future losses due to program implementations. The program will have positive impacts for cultural groups such as subsistence cultures who want to continue their lifestyles under the increasing pressures due to economic growth.

Section (c) Impacts of the Program's Policies and Standards

This section addresses the impacts of the policies, standards and other related provisions of the state's coastal management program. These will be implemented through the planning and management actions of Federal, state and local governments.

The following objectives and policies of the Alaska Coastal Management Act provide the basis for discerning the overall impacts of the more specific standards of the program:

1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

3) the orderly, balanced, utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location,

5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems r processes within the coastal area;

6) the prevention of damage to or degradation of land and water reserved for their natural values, as a result of inconsistent land or water usages adjacent to that land;

7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

8) the full and fair evaluation of all demands on the land and water in the coastal area.

Standards have been adopted for coastal land and water areas and uses in furtherance of these legislative objectives and policies. These will be implemented through a management system which assures that all decisions relating to coastal land and water areas and uses will be made in accordance with the standards. This system is described in Chapter 6 of Part II.

These standards apply coastwide, and tend to be adaptable to allow flexibility in interpretation and application. The variability and differences in local conditions made difficult if not impossible very specific standards that would be appropriate everywhere on the coast. The standards do prescribe appropriate forms of management and priorities, but in effect allow some discretion, especially to local governments, in applying them.

During public review of the ACMP, some expressed concern about the generality of the standards. It was pointed out that an effect of this situation is uncertainty about what the standards may require in specific circumstances. Most reviewers believe this situation is unavoidable for the reasons discussed above. A possible impact of this situation is extended conflict if the standards do not provide the guidance necessary to resolve the uncertainty. Some local governments believe this situation may prolong the negotiations involved in approval of district programs, while others do not expect such problems. Local governments contend that it will be most difficult to apply statewide standards to smaller geographic areas.

Whether the standards are thought to be too general or specific, conflicts are likely. These will be resolved through the conflict resolution mechanisms provided in the ACMP. The entire process of implementing the standards is structured to avoid confrontation and foster collaboration of all interests involved, especially state and local governments.

The following material forecasts the anticipated effects of the implementation of each standard, and other related program provisions. It should be remembered that more than one of the standards may apply to any given use and area; so too with the impacts of implementing the standards. Since the substantive policies of the Alaska Coastal Management Act are reflected in the standards, no additional discussion of these policies is provided. The full text of each standard is not repeated here, but can be found in Appendix 3.

Coastal Development (6 AAC 80.040)

This standard addresses the problems of limited waterfront space available for development, and the effects of dredging and filling. The standard makes dependence or relatedness to coastal water, or the need for a waterfront site, the criteria for determining the priority of waterfront space allocation. Uses which are neither water-dependent nor water-related are accorded lowest priority, but may locate in coastal waterfront areas when there are no other inland alternatives.

The standard also addresses dredging, filling and placing structures in, on, or adjacent to coastal water. It prescribes criteria to evaluate the probable impact of proposals on the public interest.

Positive Impacts

1. Impacts of some coastal area development will be shifted upland, avoiding shorelands. Since upland areas are better able to withstand the impacts of development than sensitive shoreland areas, the overall environmental impact of development in the coastal area will be reduced.

2. Economic opportunities will be increased for water-dependent and water-related developments, since such uses are accorded priority.

3. Uncertainty as to whether a proposed development will or will not be allowed will be reduced.

4. Competition for limited waterfront space among competing and conflicting uses will be reduced.

5. Environmental impacts of necessary dredging and filling will be reduced.

Negative Impacts

1. Economic opportunities for uses which would benefit from a waterfront location, but which are not dependent on the location, may be precluded.

2. Costs of coastal development and activities may increase as a result of approval conditions relating to design and location which may be required to achieve conformance with the coastal development standards.

Geophysical Hazard Areas (6 AAC 80.050)

Alaska is subject to a large number of geologic forces and processes which may severely affect coastal development. The term "geophysical hazard area" means those areas which present a threat to life or property from geophysical processes. The standard states that hazard areas should be identified for potential areas of development where hazards are possible, and for areas where hazards are already known. The standard then requires proper siting, design and construction measures for development in identified hazard areas, to minimize damage to life and property.

This standard forms the core of the ACMP's shoreline erosion planning process. The impacts of the planning process are not significantly different from the impacts described below and in other sections of this document.

Positive Impacts

1. Loss of life and property resulting from inappropriate development in hazard areas will be avoided or minimized.

2. Public and private costs associated with geological hazards, such as resources expended on rescue and relief, loans for rebuilding, lost productivity, lost agricultural or forest lands, high insurance rates, and costs of prevention projects, will be substantially reduced.

3. Adjoining properties will be protected from the consequences of unsafe development, for example, lowland properties damaged by landslides caused by inappropriate highland development.

4. Major secondary problems (oil spills, radiation leaks, exploration, etc.) will be prevented by curtailing high-risk development in hazard areas.

Negative Impacts

1. Costs of development in hazard areas will increase. Developers will have to pay more for assessment, engineering and construction measures to deal with identified hazards. This could include changing foundation plans, constructing protective works, soil stabilization, etc.

2. Owners of property in identified hazard areas may find their property unsuitable for some types of development, or in extreme situations, any types of development at all, and as a consequence, property values may be adversely affected.

3. Implementation will require expenditure of funds by local governments to identify hazard areas, but federal funds will be available to offset the cost of hazard identification. Detailed hazard definition, engineering and designing may have to be done by the developer, and will involve costs.

Recreation (6 AAC 80.060)

This standard requires districts to designate coastal areas for recreational use. Criteria are provided for designating these areas, but additional criteria may be used. 6 AAC 85.090 requires districts to approve specific proposals for uses and activities within areas designated for those uses and activities. The recreation standard also accords high priority to maintaining and increasing public access to coastal waters.

This standard forms the core of the ACMP's shoreline access planning element. The impacts of this planning process are not different from the impacts described below and in other sections of this document.

Positive Impacts

1. Recreation opportunities in coastal areas will be protected and increased.

2. Public access to coastal waters generally will be maintained and increased.

3. Uncertainty about the acceptability of specific proposals for recreational uses will be reduced.

4. Areas designated for recreation uses will be protected from other competing and conflicting uses.

Negative Impacts

1. Designation of recreation areas may lead to increased attention and use in the designated areas and in areas adjacent to designated areas. This may stress and degrade recreational resources and values.

2. Designated recreation areas may require provision of recreation facilities and services which will involve increased public costs.

Energy Facilities (6 AAC 80.070)

With present and proposed leasing, exploration and production of oil and gas areas on its continental shelf, Alaska is assuming a position of a supply and transport base for the energy industry. Its offshore waters represent the nation's most significant frontier petroleum area and cover one of the most valuable and sensitive of all continental shelfs.

Along with the potential offshore impacts of energy development are potential onshore impacts of the facilities necessary to support offshore operations. This standard affects decisions about the location, design and construction of onshore energy facilities and about coal, geothermal and hydroelectric energy facilities. It deals with the onshore and nearshore aspects of energy development. The approach is to allow the location and expansion of energy facilities in the coastal area consistent, to the maximum extent possible, with the protection of coastal areas and other important uses of these areas.

The standard has three parts. One requires local and state identification of sites suitable for development of energy facilities. Another explicitly considers uses authorized by the issuance of state and Federal leases for mineral and petroleum resource extraction as uses of state concern which cannot be arbitrarily or unreasonably excluded from the coastal area.

The other part of the standard prescribes sixteen specific standards or criteria for the siting and approval of energy facilities. These specific standards seek to maximize public benefits of facility development and minimize adverse effects. The standard includes a careful provision for exceptions to these specific standards.

This standard forms the core of the ACMP's energy facility planning process. The impacts of this planning process are not significantly different from the impacts described below and in other sections of this document.

Positive and Negative Impacts

The anticipated impacts of the part of the standard which requires the identification of energy facility sites are:

1. Adverse environmental, social and economic effects of development will be lessened through concentration of development in appropriate areas.

2. Certainty about the most suitable sites for development will be substantially increased. Advance information about sites will improve entrepreneurs' planning and scheduling of development.

3. Identification of sites will encourage development of energy facilities.

4. Speculation and competition for areas identified as suitable for energy facilities will be encouraged, affecting property values and public expectations.

The anticipated overall impacts of the standards for siting and approval are:

1. Some areas will be completely eliminated from consideration as suitable for energy facilities.

2. Certainty about how development proposals are evaluated will be substantially increased.

3. The private costs of energy facility development will increase, in some cases to the point of deterring proposed development or displacing it to other areas.

4. Coastal resources of environmental and economic value will be protected, as will other important uses of these resources.

5. The effect of allowing exceptions to the standards will be to cause adverse impacts which the standards seek to avoid.

The anticipated specific impacts of the standards for siting and approval of energy facilities are:

1. Facilities will be consolidated, which offers the following advantages: a) reduced necessity of additional sites as long as identified sites can accommodate demands; b) reduced conflicts with other uses for scarce waterfront areas; c) reduced relative public costs of providing utilities and other services, and reduced relative private operating costs as a result of concentrating facilities in the fewest different locations; d) reduced adverse visual effects of additional facilities; e) reduced number of potential sources of air and water pollution. Consolidation of facilities offers the following disadvantages: a) reduced competitive

advantage due to the information exchange and intercompany cooperation required in planning for consolidated facilities; b) reduced flexibility in production and marketing strategies for facilities that must be designed and operated to accommodate needs of other companies as well; c) increased capital costs, making marginal ventures uneconomic.

2. Compatibility of facilities with existing and projected adjacent land uses will lessen conflicts among uses.

3. Concurrent use of facilities will minimize environmental impacts and maximize economic benefits of energy facilities.

4. Cooperation in the development of facilities will insure the most suitable and acceptable proposals.

5. Avoidance of constructing additional but unnecessary infrastructure will prevent adverse environmental and economic impacts.

6. Avoidance of harbors and shipping routes with natural obstructions will prevent collisions and loss of life and property.

7. Disruption of productive habitats through clearing, dredging and construction will be minimized.

8. The probability along shipping routes of oil spills affecting fishing grounds and other habitats will be minimized.

9. Areas of scenic, recreational, environmental and cultural value will be protected.

10. Air and water pollution will be minimized.

11. Adverse impacts on population centers will be lessened.

12. Overcrowding of harbors and interference with fishing operations by vessel movements will be avoided.

The anticipated impacts of considering uses authorized by state and federal energy leases as uses of state concern are as follows:

1. These uses will not be arbitrarily or unreasonably excluded from the coastal area.

2. Adverse environmental, social and economic effects will attend acceptance of these uses, but will be minimized and may be prevented through conformance of the uses with the other standards.

3. The needs of the state and nation for these energy uses will not be neglected.

4. Since exclusions must be based on among other things, reasonable alternative site availability, the costs of development may increase.

Transportation and Utilities (6 AAC 80.080)

This standard responds to two major issues: the concern that transportation facilities be planned to be consistent with other local and area goals and patterns, and a concern over whether the immediate shoreline is a proper site for transportation and utility facilities which either do not serve the shoreline area or for which there is an alternate inland location.

The standard requires transportation and utility routes and facilities to be sited, designed and constructed in accordance with district programs which express local goals and preferences. It also requires avoidance of shorelands unless there is no other alternative.

Positive Impacts

1. Adverse impacts of routing through sensitive shorelands and habitats will be avoided.

2. The process of locating these facilities on the coast will be accelerated by giving sponsors the advantage of a predictable local response to their project. Some additional time may be needed at the initial stage of project development to assure compliance with the standards, but this compliance will save time that might have been spent having to overcome unexpected local objection.

Negative Impacts

1. Inland location of some facilities could cause an overall lengthening of some transportation routes, causing additional construction costs and raising the costs, both in time and in energy, of moving from point to point.

2. Gravel and fill material are essential for any large development, and they are most plentiful and easily accessible on the coast. Location of large developments away from the coast may make the acquisition of this material more time-consuming and expensive. However, site selection away from the coast includes less unstable ground areas, and a reduced need for gravel pads and similar measures.

3. Causing state and national transportation and utilities facilities to be consistent with local goals may create situations where it may be difficult to construct facilities in a particular district. Many of the district programs are going to be in remote areas, which may choose to severely limit development in their regions. On the other hand, transportation serving greater than local needs cannot be arbitrarily or unreasonably excluded in districts.

Fish and Seafood Processing (6 AAC 80.090)

Fishing is one of the major Alaskan industries, and until the development of the North Slope oilfields, was the largest industry in the state; the fishing industry is again in a period of growth.

The protection of the habitat which supports the resource is dealt with by another standard. This standard addresses the onshore facilities which support harvesting and processing. It requires identification of areas especially suited for onshore facilities for the fishing industry. The districts may then designate from among these areas those which they consider appropriate for development, taking into consideration the needs of the fishing industry and the effects that this development may have on local communities.

Positive Impacts

1. Certainty about areas suitable for commercial fishing operations will be increased.

2. Economic opportunities for commercial fishing and seafood processing uses will be increased.

Negative Impacts

1. Fish and seafood processing and harvesting support activities impose special burdens on the areas in which they are located. Some of these potential problems are fuel or oil spills, removal of beach area, reduced access to the water, odors, noise, traffic density, and the disposal of organic waste materials. All of these problems should be mitigated by careful planning.

2. Designated areas of fish and processing will exclude other uses. This may be a problem unless other on-shore areas are made available for other water-dependent facilities.

Timber Harvest and Processing (6 AAC 80.100)

The timber industry in Southeast Alaska alone provides for an estimated 29 percent of all primary employment, and timber-related employment is much greater than this in certain communities. Currently, most of the timber land

in Alaska is in Federal ownership, but considerable amounts of this land will become the property of Native corporations with the transfer of land.

This standard sets specific standards for all forest practices. While dealing with many impacts which result from timber harvest or processing the primary consideration in the timber harvesting standard is to minimize impacts on the coastal fishery. The links between timber practices and anadromous fish production are extremely close, and conflicts between these two important economic activities are evident.

Positive Impacts

1. The adverse environmental effects of commercial timber harvest in the coastal area will be minimized.

2. The free passage and movement of fish in coastal water and streams is protected along with fish and wildlife and their habitats.

3. Streambanks and shorelines will be protected.

4. Mass wasting, erosion, sedimentation and interference with drainage will be minimized.

5. Conflicts of timber harvesting and processing uses with recreational uses and navigation will be minimized.

Negative Impacts

1. The time and money costs of timber harvesting and processing may be increased, if more rigorous forest practices are required.

Mining and Mineral Processing (6 AAC 80.110)

Mining is a coastal issue due to geographic constraints, potential adverse impacts on habitat, adjacent land use, and community goals. Little large-scale mining is now taking place in Alaska, but the state's large coal reserve has recently become the focus of considerable attention. Large areas of the state are known to be heavily mineralized. The combination of increased demand, and the development of methods for extraction in Alaska which would allow economical operation, point to an increase in mining activity.

The standard removes sand and gravel mining from the immediate coast when a feasible and prudent alternative exists. It also requires that all coastal mining activities be compatible with other ACMP standards, adjacent uses, and statewide and national needs.

Positive Impacts

1. Coastal waters, intertidal areas, barrier islands and spits will be protected from adverse effects of mining sand and gravel, unless there are no inland alternatives.

2. Compatibility of mining and mineral processing with adjacent uses and activities will reduce potential use conflicts.

3. State and national needs for minerals obtained from the coastal area will not be neglected.

4. Adverse impacts of mining and mineral processing will be minimized and may be prevented.

Negative Impacts

1. The costs of mining and mineral processing will be increased. These costs will be due to use approval conditions designed to meet the ACMP standards, and searches for upland mining alternatives.

Subsistence (6 AAC 80.120)

A great number of Alaskans depend on coastal lands and waters to provide part or all of their food. Subsistence hunting, fishing and gathering is a major component of Native cultures, and both Natives and non-Natives engage in subsistence for traditional and economic reasons.

The standard calls on state agencies and districts to recognize and protect opportunities for subsistence usage, and requires districts to identify areas which support subsistence uses. If areas are designated, safeguards for subsistence usage are required before conflicting uses are allowed.

Positive Impacts

1. Subsistence areas and the fish and wildlife and their habitats in these areas will be protected.

2. Subsistence uses will be protected from other conflicting uses.

3. An Alaskan "way of life" will be protected.

Negative Impacts

1. Development which would adversely affect subsistence areas and uses will be limited and in some cases prohibited.

2. Long-standing conflicts and controversies involving subsistence will be increased in the short-term as subsistence decisions are made, but reduced in the long-term after decisions are made.

Habitats (6 AAC 80.130)

The coastal area generally is the most productive and sensitive environment in Alaska; it comprises the habitats for hundreds of different species during part or all of the year. Rich natural and economic values are associated with these coastal habitats. The ACMP recognizes that when the state's oil and gas resources are exhausted, coastal habitats will continue to be the state's economic basis in the long term.

In the management of coastal habitats it is important to first identify which habitats are more important than others, either due to biological productivity or where the area has some special feature which makes it important to particular species. To help set priorities, the standard specifies eight types of habitat areas which are to be accorded special protection. A general standard is set out to protect all habitat, and then more specific standards are set to protect certain features of specific habitats.

Because these standards afford complete protection, an exception is provided which would allow non-conformance with the standards in the case of a significant public need for the use, and no reasonable alternatives. The use or activity must still minimize degradation of the habitat. The habitat standards do not prohibit development, but rather require certain performance standards be met, which in turn allows for the possibility of technical solutions to achieve conformance.

Positive Impacts

1. The function and value of offshore areas, estuaries, wetlands and tideflats, rocky islands and sea cliffs, barrier islands and lagoons, coasts, rivers streams and lakes and important upland habitat are completely protected.

2. Protection of habitat will contribute towards the protection of fish and wildlife resources.

3. Timing of human use may be adjusted to protect wildlife and habitat.

Negative Impacts

1. Conformance with this standard may limit some development in coastal areas.

2. If exceptions are allowed, there will be biological, ecological, cultural, economic and aesthetic impacts, depending on the exact nature of the development.

3. The costs of development in the coastal area may increase.

4. Upland resource production will depend upon coastal locations for processing and marine transporation access. Excessively restrictive management of the coastal zone can also restrict product diversification from upland areas.

Air, Land and Water Quality (6 AAC 80.140)

There are already comprehensive air, land and water quality standards in effect in Alaska, administered by the State Department of Environmental Conservation. This standard adopts these standards as part of the ACMP. The new effect that this has is that those regulations become part of the body of policy which must be considered for federal consistency requirements. But this has little effect since federal agencies must comply with state standards in any case. Due to the fact that ACMP has adopted state regulations in full force, there will be no different or additional impacts as a result of the approval of the ACMP.

Historic, Prehistoric and Archaeological Resources (6 AAC 80.150)

There is a great deal of interest in the cultural and historic resources of Alaska, in part because of the state's position as the land bridge to Asia and its place in circumpolar culture. This standard calls for the identification, but not necessarily the protection, of areas with historic, prehistoric and archaeological values. Once identified, there are other state programs available to protect them.

Positive Impacts

1. The effects of identifying historical areas would be to increase the probability of their protection through increased interest in and study of these areas.

2. Identification of these areas will increase their economic value as visitor attractions.

Negative Impacts

1. While some historical, prehistoric and archaeological areas will be protected, some may not. The effect will be a foregone opportunity of increased awareness about the area's past.

2. The value of private land with identified historic, archaelogical and prehistoric resources may be decreased because of limitations on possible uses.

3. Identification and hence, public awareness may increase the number of visitors and impacts which will necessitate additional protective measures.

Areas Meriting Special Attention

The policies and standards of the program require comprehensive management of coastal areas. But there are coastal areas of extraordinary value that require special management attention.

PART IV: PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

The Federal action is the proposed approval of the ACMP as having met the requirements of the CZMA and, after approval, the awarding of Federal grants-in-aid to assist Alaska in implementing and administering their program. Also, approval places an obligation on Federal agencies to act in a manner consistent, to the maximum extent practicable, with the approved program, thereby significantly impacting the Federal decision-making process as it relates to land and water use activities and funding in the coastal zone.

This Part addresses the impact associated with the above action, as well as the secondary impacts of implementing the state program.

Section (a) General Impacts

The intent of the CZMA is to promote the wise use of the Nation's coasts. The CZMA encourages states to achieve this goal through better coordination of government actions, explicit recognition of the long-term consequences of development decisions, and the institution of a more rational decision-making process. This process, which could affect much of the future activity in the coastal zone, will have a substantial environmental impact.

Both beneficial and adverse environmental and socio-economic effects will result from Federal approval and state implementation of the ACMP. The fundamental criterion for assessing these impacts should be the CZMA's declaration of policy: "to achieve wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and aesthetic values as well as the need for economic development."

Protection of the coastal zone may be viewed as beneficial to the environment and to the public welfare for many reasons, but it also may have adverse economic effects on development interests, including property owners and potential property owners whose plans are limited or modified by the program.

The ACMP is a comprehensive program which will be implemented over a period of many years. It is impossible to assess discrete impacts that will occur over this time, but a few points can be made. There are strong safeguards built into the coastal management program system because the CZMA requires that the intent of the National Environmental Policy Act (NEPA) be met. Resource inventories, designation of boundaries, permissible uses, areas of particular concern, areas to be preserved or restored and consideration of alternatives are all a part of the overall process associated with managing coastal resources in Alaska. The overall purpose of this EIS is to determine if implementation of the ACMP process can reasonably meet the objectives which the state has set and meet the broader national CZMA and NEPA goals.

Impacts associated with Federal approval of the ACMP fall into two categories: (1) impacts due to a direct increase of funds and funding options to the State and local governments, and (2) impacts from the implementation of the CZMA.

Although the ACMA could be implemented as a state coastal management program separate from participation under the CZMA, Federal approval offers several advantages to the state and allows a more comprehensive and effective program.

Program Funding

Federal approval will permit the OCZM to award program administrative grants (Section 306) to Alaska. This will allow increased use of resource management specialists at both the state and local government levels. In turn, this will improve resource management decision-making in the coastal zone. Section 306 grants will also be used to help administer, enforce and improve the state and local implementation programs. These funds will also allow state and local agencies to obtain information on coastal hazards, sites for energy, transportation industry and commerce facilities and for other needs which will increase the quality of the information base for coastal zone management decisions. An increase in coastal management staff will speed the permit review and appeals system and provide better enforcement of the program regulations, and thus help meet the CZMA objective of more coordinated governmental action.

Under Section 306 of the CZMA, Alaska would be eligible for funds on the order of $4 million annually to carry out the management program. Over half of the Federal funds available to the state will be used for the development and implementation of district coastal programs. This will improve local ability to manage coastal resources, and allow for sharing of coastal regulatory authority by state and local governments. The Office of Coastal Management has estimated that about $3.5 million will be required over three years to complete district coastal program preparation. As district coastal programs are approved, an increasing portion of available Federal assistance would go to local governments to assist them in carrying out the regulatory function of the state's coastal management program.

Section 308 Coastal Energy Impact Funds and Formula Grants could aid substantially in ameliorating the impacts of offshore oil and gas production. While Section 306 program approval is not a prerequisite for Section 308 funding eligibility, active program participation is. Additional funding for interstate coordination, beach and island preservation and access, research, and training also may be available in the futur

Federal Consistency

Federal approval and state implementation of Alaska's Coastal Management Program will have implications for Federal agency actions. Approval of the state's program will lead to operation of the Federal consistency provisions of the CZMA (Section 307(c) and (d)). These provisions, and the manner in which Alaska intends to implement them, are described in Chapter 6 of Part II.

The purpose of the Federal consistency provisions is to allow closer cooperation and coordination among Federal, state, and local government agencies involved in coastal related activities and management. This desirable impact is one of the principal objectives of the CZMA.

Probable Impacts of the Proposed Action

Part IV

This need is recognized in the program through a provision which requires designation, and identification of the policies which will be applied to coastal areas which merit special attention. This provision covers sensitive and valuable areas of public importance and concern which need protection from incompatible uses. Specific areas which are areas meriting special attention are defined in a generic sense. Based on this definition they will identified in the coastal area.

No specific standards are prescribed for areas meriting special attention, but the policies which will be applied to these areas must preserve, protect or restore the value for which the area was designated. A management scheme is required for these areas which identifies permissible uses, policies and management authorities.

Positive Impacts

1. All or parts of the following areas may be preserved, protected or restored: areas of unique, fragile or scarce natural, cultural, historic or scenic value, areas of substantial recreation value, areas where development of facilities needs access to coastal waters, areas of unique geologic or topographic significance susceptible to development, areas of significant hazard, areas needed to protect and replenish coastal resources including floodplains, aquifer recharge areas, beaches and offshore sand deposits, areas important for subsistence, areas with special scientific value, critical habitats, and potential estuarine and marine sanctuaries.

2. Adverse impacts on these areas will be avoided.

3. Conflicts about uses of these areas will be reduced.

4. The predictability of public responses to use proposals in these areas will be increased.

5. The opportunity for attention to industrial and commercial needs for water access will be increased.

6. Value of adjacent areas may be increased.

Negative Impacts

1. Special restrictions on the use of these areas will increase the costs of, and may deter, development.

2. Uses of these areas will be limited to those which are not incompatible with the values of the area.

3. The value of land in areas meriting special attention may be decreased due to special use restrictions.

Uses of State Concern

Under certain circumstances there is a potential for the arbitrary or unreasonable exclusion from the coastal area of uses of regional, statewide and national significance. These uses are defined in the Alaska Coastal Management Act, and include transportation, communication, energy developments and other uses.

This and a related provision of the ACMP guard against the arbitrary or unreasonable exclusion from the coastal area of these uses. It requires that local units of government make certain findings before uses of state concern are restricted or excluded from their coastal areas.

Positive Impacts

1. Regional, state and national interests and benefits in these uses will be protected to a large extent.

2. Certainty about local desires regarding these uses will be increased.

3. Conflicts about locations for these uses will be reduced.

Negative Impacts

1. Accommodation of these uses will result in social, economic and environmental impacts in the coastal area; adverse impacts will be lessened through conformance of the use with the other use and area standards of the ACMP.

2. Exclusions of uses of state concern which are allowed will affect regional, state and national interests. Exclusions may be allowed, among other reasons, if reasonable alternatives are available, so the impacts of the use will be shifted to other locations. Shifting these uses to other locations may increase the costs of developing the use.

SECTION (D) INSTITUTIONAL IMPACTS

The ACMP affects the relationships, responsibilities and obligations of Federal, state and local governments. These in turn will affect private sector operations. Many of these impacts are the goals of the state's coastal management program. They have already been discussed in environmental, social and economic terms. The following discusses the institutional impacts of the program

State Coordination

Cooperation among all levels of government, especially among state agencies is an objective and requirement of the program. Coordination will be achieved in three basic ways. First, state agencies are required to coordinate and

collaborate in the development of district coastal plans. Second, the planning and management actions of state agencies must be consistent with the policies and standards of the program, which provide a common basis for all coastal decisions. Finally, policy coordination will be achieved through the Coastal Policy Council, comprised of the directors of all state agencies with a role in the program, as well as local government representatives.

State-Local Relationship

The program sets up a shared state and local responsibility to manage coastal resources. In doing so, the relative responsibilities and obligations of state and local governments, and their relationships, are changed. The most significant change is the obligation on the part of state government to follow the provisions of local or district coastal programs. In turn, local governments are obligated to accommodate, to a large extent, state interests and needs. The effect of the state-local approach is to substitute collaboration and cooperation for confrontation.

Cost of Government

A general increase in the public costs of governing coastal land and water areas is anticipated. These costs will be due to the planning remaining to be completed, the state and local government responsibility to review actions for consistency with the program, and the administration of the program.

In some cases, the cost of organizing to implement the program will not be significant, since the program will become part of existing programs. In other cases, the program will require substantial additional costs, especially in the case of local governments. The guidelines require a number of planning tasks be performed. Some local governments have adequate planning organizations which have already completed much of the groundwork. Others must start from the beginning. The costs of implementing the program will depend on the size of the geographic area and the extent of imminent and existing economic development, among other factors. Estimated annual local government costs in administering the program range from $35,000 to $100,000. These costs will be offset to a large extent by funds available to implement the program from the Federal government.

Successful coastal management should result in a net decrease in government costs after a few years, as the program is institutionalized. This will be difficult to quantify, as the savings will be mostly due to avoiding expenditures of public funds to pay the costs resulting from no management. When basic planning is complete updating the plans will require less annual funding.

Local-Federal Coordination

An increase in coordination between Federal and local governments is expected. First, local governments are obligated to collaborate with Federal agencies during development of district programs. Second, the Office of Coastal Management and the Department of Community and Regional Affairs are obligated to assist federal involvement in local programs, in recognition of the fact that there will be many local programs in which the federal agencies will have an interest. Further, Federal agencies are obligated to be involved in state coastal management programs, and in programs like Alaska's, this carries an obligation to carry this involvement to the local level as well. The federal consistency requirement of Section 307 of the CZMA will also result in greater local-federal coordination. After a local program is approved under ACMP it will become a part of the state program and thus the federal consistency rules will apply for the content of the local program as well. Federal agencies have an incentive to coordinate for this reason. District programs also represent an opportunity for federal agencies to recognize their own goals and missions.

Certainty About What Is and What Is Not Acceptable

Developers and conservationists are both calling for more certainty in land and water use decisions. Uncertainty is costly to both parties. The numerous state and local government regulatory authorities increase uncertainty about the nature and timing of future development. The program's guidance about proper and improper uses may eliminate some options, but it will also eliminate much uncertainty about local and state desires. The program accommodates the needs of entrepreneurs who need to find sites suitable for development. These factors combine to improve private planning by providing a more predictable and stable business environment. Private costs may increase in order to conform to the program's policies and standards.

Citizen Participation

The public involvement in coastal management to date has been extensive. The program calls for continued substantial citizen and interest group participation in decisions about the allocation of coastal resources. This will facilitate accountable and representative government decision-making.

Local Ability to Respond to Impacts of Resource Developments

Through the district coastal program process, local governments can anticipate and manage the impacts of resource developments. District programs provide a continuing means for responses to unanticipated developments. The organized and accessible information available will substantially assist in this regard

Coordination on Major Projects

Major resource utilization projects have effects on the state level as well as in the communities where they take place. Coordination early in the evaluation phase is essential. ACMP will be integrated with other programs to assure that this happens. Six tools are available, or will soon be, to increase state coordination.

First, ACMA and ACMP guidelines and standards provide basic policy direction for any development proposal, and these will be made more specific by the policies of district programs. Second, the consistency requirements at both state and federal levels demand that coordination takes place and provides a legal responsibility that cannot be ignored. Third, state agencies can use the regional planning program to unify their positions on major development possibilities, which may result, for example, in the identification of alternative locations. Fourth, in order to assure full state involvement in the consideration of major proposals, a major project review system at the state level will become available. Fifth, the A-95 Clearinghouse system is in place to provide the state with local, federal and private comments on a proposal. Sixth, the one-stop permit system will be available to the developer to assure rapid and coordinated consideration of the various state permits required for a large development.

Recognition of the National Interest

Implementation of ACMP will improve state recognition of the national interest in two ways. First, Federal agencies which often present the national interest as expressed through national legislation, will have a forum to express their views and a continuing demand from state and local agencies to define their concept of the national interest as it relates to various uses and proposals. The second way is reflected in the manner in which the ACMA and ACMP guidelines and standards, prepared with input from various entities, reflect the national interest. As a result, local and state government planning and management will consider the national constituency as well as the state and local constituency.

Section (e) Impacts of District Coastal Programs

Local units of government, or districts, will develop management programs for their coastal areas. These will be developed according to the ACMP guidelines and in conformance with the ACMP standards. Some general points about the anticipated impacts of district programs can be made. First, the process of developing these programs may be controversial as districts make basic decisions about how the ACMP standards apply to their coastal areas. Second, some of the impacts already described in other sections of this document may not be applicable to a district's coastal area. Third, when applicable, the impacts described in other sections of this document in a general sense

will be apparent in a district in a specific sense. Finally, the impacts of district programs will not be significantly different from the impacts described in other sections of this environmental impact statement.

This section describes the anticipated impacts of the three provisions of district programs (areas subject to management, managed uses, and policies) which may be more specific than the ACMP provisions, the impacts of which have been described in other sections of this document. This discussion is based on, among other things, a review of those district programs which are more advanced than others.

1. Areas Subject to Management

Districts may redefine the initial coastal zone boundary, but must still include the areas important for management. When district boundaries are complete, a more detailed boundary will be in place. The districts may include more or less land area in their boundaries as a result of their surveys and studies which will be more detailed than the effort the state was able to mount for the initial boundary.

Districts may also include within the final boundary, but not subject to direct control, areas in federal ownership or use which are excluded from the coastal zone boundary but which may be transferred to the districts. When transferred, the impact will be the subjection of additional areas to management. This impact will not be different from the impact of the program on areas presently included in the coastal zone boundary.

2. Managed Uses

Districts will identify coastal land and water uses subject to their management programs. To the extent applicable to the district, the managed uses will not be different, but may be more specific, than those uses addressed in the ACMP standards. The impacts of how these uses are managed have already been described.

District programs will also define those uses considered proper and improper. This may be done absolutely for all areas, or for certain areas. Within the limits of discretion prescribed in the ACMP standards, decisions about proper and improper uses decisions will be based on the environmental capability of areas for uses, and the needs and goals of the districts. The impacts of including, restricting and excluding uses of the coastal area have already been described.

3. Policies

District programs will contain policies for coastal land and water uses. These policies will be consistent with the ACMP standards which prescribe how uses and areas are to be managed. Where these standards are less detailed, district standards may be more detailed but not significantly different. The impacts of how uses and areas will be managed have already been described.

The Relationship of the Proposed Action To Land Use Plans, Policies and Controls of the Area

Part V

PART V: RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS OF THE AREA

Alaska has a variety of land use plans and programs which affect the coastal area. Some local governments have comprehensive plans and ordinances, while others are in preparation. These plans will have to be revised to incorporate a coastal element which is consistent with the policies, guidelines and standards of the program.

State agencies with plans and programs affecting the coastal area will now have to assure that they are implemented consistent with the program. The ACMP standards approved by the legislature are considered amendments to land and water use policies and regulations presently in force. The policies of state planning, resource and regulatory agencies must conform with the objectives, policies and standards of the program. Even regulations that will be developed pursuant to the Forest Resources and Practices Act, and which will supplant the Timber Practices standards of the ACMP, must be consistent with all other development, habitat and air and water quality standards of the ACMP. The ACMP relies on existing state controls to implement these policies and standards.

Certain Federal and state land and water programs, policies and plans were determined to relate to the ACMP, and were coordinated with the ACMP during its development. The state's 208 program which is examining various sources of non-point source pollution will result in regulations which will be worked into the ACMP regulations. The state's 701 program was coordinated with the ACMP to ensure that 701 land use policies are consistent with the ACMP Guidelines and Standards. Funding for community planning under 701 will be in concert with Federal funds under the CZMA to assist in the development of district programs.

Other plans, policies and programs which were coordinated with the ACMP include those related to water resources, planning, national forest land use planning, floodplain management, transportation planning, continental shelf leasing plans, and management plans for Alaska's Federal and state lands. The relationship of these plans, policies and programs with the ACMP is fully described in Chapter 8 of Part II.

Alternatives to the Proposed Action

Part VI

PART VI: ALTERNATIVES TO THE PROPOSED ACTION

The alternatives to approving the Alaska Coastal Management Program are to delay or deny approval. These alternatives would be appropriate if the program is deficient in meeting one or more of the requirements of the Coastal Zone Management Act. Section 305(d) of the Act permits preliminary approval of the program if the program meets the requirements of Section 305 of the Act, but is deficient in meeting one or more of the requirements of Section 306. Preliminary approval allows additional funding for implementation of the approvable parts of the program but not Federal consistency, while unapprovable parts are remedied. It should be noted that Congressional authorization of funding under Section 305 (d) expires on September 30, 1979, so that preliminary approval under Section 305 (d) would, as a practical matter, support further program development only for a very limited time.

The Assistant Administrator has made a preliminary determination that the ACMP is not deficient in any of the requirements necessary for program approval. During the course of program development and review, a few potential deficiencies were identified. While the Assistant Administrator is satisfied that these have been adequately addressed and resolved in the program presently under review, he wishes to elicit public review and comment to assure his preliminary determination is correct.

The following identifies the possible deficiencies which could be the basis for delaying or denying approval of the program. The impacts of not approving the program are: the loss of Federal funds necessary to implement the program, the inability to assure continued consideration of the national interests in siting facilities necessary to meet more than local needs, and the inability to apply Federal consistency. These points are fully discussed in Part IV.

The Assistant Administrator could delay or deny approval of the Alaska Coastal Management Program:

1. <u>If the State Does Not Have All Authorities Necessary to Implement the Program</u>

It has been suggested that the Assistant Administrator delay or deny approval of the ACMP because it fails to comply with Section 306 (c)(7) of the CZMA, requiring that, before the program is approved, the state must have the authority to implement it. Concerns have been based on the proposed land and water use control method which relies on state agency authority to implement the ACMP standards until district programs are approved. The use of direct state control is specifically allowed under Section 306 (e)(1)(B) of the CZMA, and was considered necessary in Alaska because of the need to implement the ACMP before completion and approval of district programs. This approach is similar to that employed in other approved state coastal management programs, including those of California and Oregon. In addition, it is likely that district programs will not be developed in the foreseeable future for certain parts of the Unorganized Borough. In these areas, the ACMP will rely upon direct state control of land and water uses.

Particular concern has been expressed about the sufficiency of state authority to implement the ACMP standards requiring protection of wetlands, and to assure that local land and water use regulations will not unreasonably exclude uses of regional benefit from the coastal area. These concerns are addressed in the following:

(a) Authority to assure the protection of wetlands

The Federal CZMA requires states to demonstrate that their programs will accomplish national objectives, including the conservation and management of important coastal resources. In Alaska, wetlands were identified as an important coastal resource in need of management under an approvable coastal management program.

On the basis of the discussion contained in Chapter 6 of Part II, it has been concluded that the state does have the authority necessary to implement the program in wetlands. By combining the exercise of its proprietary authority over certain wetlands and its regulatory authority over uses proposed for others with its opportunity under Section 401 of the Federal Water Pollution Control Act to prescribe conditions for Federal permits for modification of wetlands, the state can exercise ample authority to control land and water uses in wetland areas consistently with the ACMP.

(b) Authority to assure that local land and water use regulations will not unreasonably exclude uses of regional benefit

Section 306 (e)(2) of the CZMA requires that, before granting approval, the Assistant Administrator must find that the program provides

> for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

The OCZM regulations that implement this statutory requirement appear in 15 CFR Sections 923.13 and 923.43.

The argument that the ACMP is deficient in this respect is based upon the circumstance that, under the ACMA, the Alaska Coastal Policy Council can require local governments to provide for "uses of state concern" only in the context of its consideration of proposed district programs. It is alleged that, during the period before its district program is submitted to the Council, a local government possessing zoning authority may arbitrarily exclude "uses of state concern" (including uses of regional benefit) that may conflict with a municipality's purely parochial interest. Because submission of a district program to the Council may take place as long as two years after the program approval date currently under consideration, the argument has been made that in the meantime, uses of regional benefit are subject to arbitrary exclusion from the coastal zone by local governments.

The Assistant Administrator disagrees with this argument, and believes that the state has provided in the ACMP a procedure suitable for assuring that uses of regional benefit and other "uses of state concern" are not excluded from the coastal zone arbitrarily through the exercise of local land and water use regulation. This procedure is based upon the state's inherent eminent domain authority. Both the procedure and the authority upon which it is based are fully described in Chapter 7 of Part II.

Briefly, the state's right of eminent domain may be exercised for public uses authorized by the legislature of the state. It is a general principle of American law that zoning ordinances cannot encroach upon or limit the absolute right of the state or those to whom the right has been delegated to exercise the power of eminent domain. This principle has been reaffirmed by the courts in one state, the eminent domain statutes of which form the basis for the corresponding Alaska provisions. Even in states that have departed from this general principle, the courts have used a "balancing of public interests" test, assuring that the statewide interests reflected in a proposed exercise of the state's eminent domain authority are not subject to arbitrary frustration by local zoning ordinances.

In the absence of any decisions of the Alaska Supreme Court on this point, it was concluded that one of the two principles just described is the prevailing law in Alaska. Either one provides the state with an effective means of preventing arbitrary exclusion from the coastal zone of uses of regional benefit under local land and water use regulations.

If it were determined that the state did not have all authorities necessary to implement the program, program approval could be delayed until district programs were completed and approved, or until authorities were established.

2. <u>If the Standards of the Program Are Not Sufficiently Specific</u>

It has been suggested that the Assistant Administrator delay or deny approval of the ACMP because the standards of the program fail to comply with the general CZMA requirements that they be sufficiently specific to indicate how coastal uses and areas will be managed.

The standards of the ACMP are described in Chapter 2 of Part II along with an explanation of their intent. These standards address coastal areas and uses of these areas.

The standards are specific with respect to areas and how these areas will be managed. They indicate in certain terms how coastal land and water habitats are to be managed. They also direct the identification of areas necessary for certain uses, and indicate how other uses are to be managed.

The standards are less specific with respect to priorities of uses. The enormous differences in local environmental, social and economic conditions prevented, in all but a few cases, prescription of use priorities that would be appropriate everywhere on the coast. The standards allow local governments to determine what uses will or will not be allowed, but are clear

about what uses cannot arbitrarily be excluded from the coastal area. Overall, the standards substantially reduce uncertainty and provide enough specificity to be considered approvable.

The present level of specificity in the ACMP standards is a result of the continuing review of the ACMP Guidelines and Standards required of the Alaska Coastal Policy Council, and the concurrent review of the ACMP by the Federal Office of Coastal Zone Management. These reviews resulted in the identification of a number of areas where more specificity in the guidelines and standards was desirable, including the recreation, energy facilities, and timber harvest and processing standards.

Revisions to these and other guidelines and standards were approved by the Council at its meeting of December 14-15, 1978, and have been submitted to the legislature for approval. These revisions are indicated by brackets in Chapter 2 of Part II of this document, and merit the special attention of reviewers. Final Federal action on the ACMP will await the action of the legislature on these amendments to the ACMP Guidelines and Standards.

If it were found that the ACMP standards were not sufficiently specific, program approval could be delayed until district programs were approved or until more specific standards were approved.

Probable Adverse Environmental Effects Which Cannot Be Avoided

Part VII

PART VII: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

The Alaska Coastal Management Program establishes a method to reconcile competing demands for environmental protection and economic development. The program intends to maximize environmental benefits and minimize any adverse effects which may result as a consequence of economic development. Economic quality and growth are essential if the program is to achieve its objectives.

Adverse impacts may result from implementation of the program, however. Uses of state concern such as energy, transportation and commerce cannot be arbitrarily or unreasonably excluded from the coastal area. Such uses impact water conditions, marine and coastal ecosystems, community development patterns, potentials of other resources, and fiscal resources. The environmental, social and economic impacts of these uses may be accepted, but the adverse effects will be lessened to a substantial degree by other program standards which protect important coastal land and water areas and uses.

Other standards permit coastal developments such as mining and seafood processing facilities which will have adverse impacts, but the impacts will be lessened in the same way. Most developments will be allowed only after alternative inland locations have been fully considered.

Alaska's coastal management program is not intended to preclude development in the coastal area. As a practical matter, it provides a set of mitigating measures which will affect coastal development. These measures will normally be attached to the permit or approval in the form of "conditions." The conditions will assure compliance with the coastal protection standards, and will have the effect of allowing development to occur in the least damaging way. The agencies administering the standards have a certain amount of discretion in applying those conditions, but the failure to adequately condition permits and approvals to comply with the standards may lead to judicial enforcement orders. Moreover, established review procedures already exist at the Federal, state and local levels for insuring that environmental effects of land and water uses are mitigated to the greatest extent possible on a project-by-project basis.

Other unavoidable impacts which can be detected is that future development proposals may be stopped, delayed, or withdrawn by entrepreneurs due to the costs involved in delays, and so on. To mitigate these possible impacts, a one-stop permit system is being developed. The program itself provides an articulated, official statement about state and local desires which will lessen one of the greatest impediments to coastal development in Alaska: uncertainty. Increased certainty will be beneficial to entrepreneurs who are not only concerned about finding a development site, but who also need guidance about its acceptability.

It is impossible to precisely determine or prejudge the impacts which will follow program implementation for individual parcels of land or resources, since much of this depends on district programs and development proposals which are independent of this Federal action, but it is clear what impacts

have occurred without it, and which created the need for the coastal management program in the eyes of the Alaska public. Because this is an evaluation of a comprehensive and ongoing program, two points have already been demonstrated with respect to adverse impacts:

1. The development of this program has been a thorough process. It is based on broad support and extensive contributions from all of the various institutional interests and the public, and reflects current scientific and technical information. Thus it generally will represent the majority viewpoint of all interests in the development and preservation of Alaska's coastal resources. The basic good of the program has been to minimize adverse environmental impacts to these resources so that they may continue to be utilized and enjoyed by future generations as well as present users.

2. An adequate means the program has to ensure that environmental effects of development are kept to a minimum on each development.

The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity

Part VIII

PART VIII: RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

While approval of ACMP will restrict some local, short-term uses of the environment, it will also provide long-term assurance that the natural resources and benefits provided by the Alaska coast will be available for use and enjoyment. This theme is central to both the state and Federal programs.

The ACMP does the following:

A. Short-Term Uses

(1) Does not prohibit future development, but creates a system of guided growth based on agreed upon state and local policies for coastal land and water uses.

(2) Recognizes that some energy facilities and coastal-dependent developments will have adverse environmental consequences, but that for various reasons they may still have to be located in the coastal zone.

(3) Allows some short-term uses in the coastal zone but requires developments to provide for long-term benefits.

B. Long-Term Uses

(1) Recognizes the coastal zone is a delicately balanced ecosystem.
(2) Enhances the permanent protection of the State's natural and scenic resources.

(3) Contributes to the orderly and balanced utilization and conservation of coastal resources.

(4) Sets forth sound resource conservation principles in objectives, goals, and standards.

(5) Provides for a method which will protect regional, state, and national interests by assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the public, and which avoids long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources.

Without the implementation of rationally based land and water use management programs, intense short-term uses and gains, such as provided by residential or industrial development, might be realized. However, such uses frequently result in long-term restrictions on coastal resource use and benefits because of degradation of the environment. Without proper management the traditional conflicts between coastal resource users -- residential, commercial, industrial, recreational, agricultural, and wildlife -- may be expected to occur.

By providing a sound basis for decision-making, and by protecting the important segments of the natural system, this management program will directly contribute to the long-term maintenance of the environment.

Public management preserves many options for future public use that may be foreclosed without the program.

It has often been the case that where restrictions are imposed on a proposed development, technical and innovative improvements are generated, thereby bringing more returns at lower public or private cost.

Implementation of the program will result in minimization of the social costs which inevitably accompany environmentally destructive development, the mitigation of which requires public expenditure.

Irreversible and Irretrievable Commitments of Resources That Would Be Involved in the Proposed Action Should It Be Implemented

Part IX

PART IX: IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

The approval of the ACMP will not in itself lead to an irreversible commitment of resources such as a site specific project would. Tradeoffs between development and preservation will be able to be made based on policy guidance from the program.

The program provides that priority be given to coastal-dependent development (industrial, commercial, and recreational) which may often be the most damaging to the environment. However, in almost all cases, the program's criteria and standards for siting and habitat protection will assure that effective mitigation measures be taken. Development will occur in the absence of program approval, but ACMP will channel such activity toward appropriate sites based on specific coastal land and water use considerations.

The existing economic system of allocating coastal resources among various uses has been labeled "inefficient" and as not being a system which has generally allowed the greatest economic benefits. It is believed that the most feasible way to correct the misallocation of resources resulting from the present system of the private market being regulated by an uncoordinated array of Federal, state, and local regulations, is to allow for a carefully reasoned and coordinated public intervention to take place. This is the basis of the Federal and state coastal management program. It is expected that there will be a net economic as well as an environmental gain through the use of a coordinated comprehensive plan and program at both the state and local government level.

Carrying out ACMP will require funds as well as human time and skill. Fiscal resources include Federal 306 grants and state matching funds as well as other monies needed to implement the program. Human resources include the person hours required of federal, state, and local governments for program administration. However, approval of ACMP is not an "irretrievable" commitment of Federal financial resources. A decision to go forward with approval is a Federal action subject to modification or termination based upon a review of the performance of ACMP under Section 312 of the CZMA. In terms of commitment of Alaska's coastal natural resources, the entire program, within the limits of its scope and application, is designed to evaluate the commitment of specific resources prior to a particular action in terms of a "balancing" mechanism very similar to that contemplated by NEPA through the 102(c) requirements.

In the broadest sense, ACMP may be viewed as a means for assuring that decisions involving the irretrievable commitment of coastal resources will be made with consideration of potential costs and benefits to the public. In the past, coastal developments accruing economic benefits to a few have been permitted with little or no regard to the full value of coastal resources to the greater public. The ACMP will encourage decision makers to make informed choices for various resource commitments.

Consultation and Coordination

Part X

PART X: CONSULTATION AND COORDINATION

Extensive consultation, coordination, and contribution has been received in developing the Alaska Coastal Management Program and this EIS. Because the program was developed with the natural and human environment many alternatives have been considered.

The Office of Coastal Zone Management requires that a state conduct an environmental impact assessment on their coastal management program prior to any approval of the program. This assessment is then used in developing the EIS. Additional contributions have been received from various Federal agencies throughout the state's coastal program development period, regarding such matters as the impact of the program on the Federal agency program as well as an analysis of the program.

The development of the Alaska Coastal Management Program has been a thorough, well-publicized and documented process, and rather than again describe this very substantial state effort, the reader is directed to Chapter 8 of Part II, which pertains to consultation, coordination, and the public and private interest review which has been solicited and acted upon.

Coordination with all local, state, Federal, public, and private interests remains a key component of the Alaska Coastal Management Program. Local governments will have major responsibilities for coastal management and they are the most accessible and accountable to their constituents. Continuous consultation and coordination will continue at all institutional levels during district program development, state permit reviews, and subsequently, by local accountability to the public.

With specific regard to this EIS, a special effort at consultation was mounted to obtain the views of various experts and officials. The following individuals and organizations were interviewed in the course of preparing this EIS:

Division of Policy Development and Planning

Dona Lehr
Sally Rue
Bruce Baker

Alaska Dept. of Fish and Game

Lance Trasky
Richard Cannon
Dick Logan
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Alaska Department of Natural Resources

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Alaska Department of Community & Regional Affairs

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Alaska Dept. of Transportation & Public Facilities

John Umlauf

U. S. Army Corps of Engineers

U. S. Fish and Wildlife Service

Bureau of Land Management - Outer Continental Shelf Office

U. S. National Park Service

Kenai Peninsula Borough

Phil Waring - Planning Director

Kodiak Island Borough

Harry Milligan - Planning Department

Klawock-Craig Planning Office

City of Valdez

Mike Schmidt - City Planner

Municipality of Anchorage

Tom Nelson - Planning Office

City and Borough of Juneau

Tom Lawson - Planning Office
Ron Bolton - Planning Office

North Slope Borough

Herb Bartel - Borough Planner

United Fishermen of Alaska

Alaska Loggers Association

Alaska Legal Services Corporation

Alaska Oil and Gas Association

Aleutian Pribilof Islands Association

Nunam Kitlusisti

In addition to the consultation with those identified above, many other sources of information were consulted during preparation of this EIS.

These sources of information include the following:

State-Local Collaborative Planning: A Growing Trend in Coastal Zone Management. A report prepared by Jens Sorensen for the Office of Coastal Zone Management, Washington, D. C., July 1978.

Planning for Offshore Oil Development: Gulf of Alaska OCS Handbook. Alaska Department of Community and Regional Affairs, Juneau, 1978.

Business Prospects Under Coastal Zone Management. A report prepared by the Real Estate Research Corporation for the Office of Coastal Zone Management, Washington, D. C., March 1976.

The Alaska Economy: Annual Performance Report for 1977. Alaska Department of Commerce and Economic Development, Juneau, 1977.

The Environment of Alaska: Analysis of the Impact of Potential Development. Joint Federal-State Land Use Planning Commission, Anchorage, 1976.

Tourism in Alaska's Coastal Zone: An Economic Study. Alaska Department of Environmental Conservation, Juneau, 1975.

The Environment of Alaska: An Analysis of Physical and Biological Determinants. Joint Federal-State Land Use Planning Commission, Anchorage, 1976.

Major Ecosystems of Alaska. Joint Federal-State Land Use Planning Commission, Anchorage, 1973.

Resources of Alaska: A Regional Summary. Joint Federal-State Land Use Planning Commission, Anchorage, 1974.

Alaska Regional Profiles. Arctic Environmental Information and Data Center, University of Alaska, Anchorage, 1976. Volumes I-VI.

Appendix I

The Alaska Coastal Management Act And Amendments Thereto

Chapter 40. The Alaska Coastal Management Program.

Article

1. Development of Alaska Coastal Management Program (§§ 46.40.010 — 46.40.100)
2. Coastal Management Programs in the Unorganized Borough (§§ 46.40.110 — 46.40.180)
3. General Provisions (§§ 46.40.190 — 46.40.210)

Article 1. Development of Alaska Coastal Management Program.

Section
10. Development of Alaska coastal management program
20. Objectives
30. Development of district coastal management programs
40. Duties of the Alaska Coastal Policy Council
50. Action and submission by coastal resource districts
60. Review and approval by council
70. Standards for council review and approval
80. Effective date of Alaska coastal management program
90. Implementation of district coastal management programs
100. Compliance and enforcement

Sec. 46.40.010. Development of Alaska coastal management program. (a) The Alaska Coastal Policy Council established in AS 44.19.891 shall approve, in accordance with §§ 10 — 210 of this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program.

(c) The Alaska coastal management program shall be reviewed by the council and, when appropriate, revised to

(1) add newly approved district coastal management programs, or revisions and amendments to the Alaska coastal management program;

(2) integrate newly approved district coastal management programs, or revisions and amendments of district coastal management programs, with existing approved programs and with plans developed by state agencies;

(3) add new or revised state statutes, policies, regulations or other appropriate material;

(4) review the effectiveness of implementation of district coastal management programs; and

(5) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under § 40 of this chapter. (§ 4 ch 84 SLA 1977)

Sec. 46.40.020. Objectives. The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration and enhancement of the overall quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historic, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;

(5) the protection and management of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area. (§ 4 ch 84 SLA 1977)

Sec. 46.40.030. Development of district coastal management programs. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under § 40 of this chapter and shall include:

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;

(3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

(5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and

(7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit special attention. (§ 4 ch 84 SLA 1977)

Sec. 46.40.040. Duties of the Alaska Coastal Policy Council. Through the public hearing process and the recording of the minutes of the hearings, the Alaska Coastal Policy Council shall

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62), within six months of the effective date of this Act, for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state. (§ 4 ch 84 SLA 1977)

Sec. 46.40.050. Action and submission by coastal resource districts. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of June 4, 1977 or within 30 months of certification of the results of the district's organization, whichever is later. (§ 4 ch 84 SLA 1977)

Sec. 46.40.060. Review and approval by council. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district costal management program, or may approve portions of the district program which are consistent.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section. (§ 4 ch 84 SLA 1977)

Sec. 46.40.070. Standards for council review and approval. (a) The council shall approve a district coastal management program submitted

for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if it finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days. (§ 4 ch 84 SLA 1977)

Sec. 46.40.080. Effective date of Alaska coastal management program. The Alaska coastal management program adopted by the council, and any additions, revisions, or amendments of the program, take effect upon adoption of a concurrent resolution by a majority of the members of each house of the legislature or by a vote of the majority of the members of each house at the time the houses are convened in joint session to confirm executive appointments submitted by the governor. (§ 4 ch 84 SLA 1977)

Sec. 46.40.090. Implementation of district coastal management programs. (a) A district coastal management program approved by the council and the legislature for a coastal resource district which does not have an exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the district.

(b) A coastal resource district which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation shall be in accordance with the comprehensive use plan or the statement of needs,

policies, objectives and standards adopted by the district. (§ 4 ch 84 SLA 1977)

Sec. 46.40.100. Compliance and enforcement. (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and the legislature and in effect.

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being implemented, enforced or complied with, the council shall convene a public hearing to consider the matter. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to implement, enforce or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises zoning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program, or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council and subsequently approved by the legislature have been followed and considered.

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council. (§ 4 ch 84 SLA 1977)

Article 2. Coastal Management Programs In The Unorganized Borough.

Section
110. Authority in the unorganized borough
120. Coastal resource service areas
130. Organization of coastal resource service area
140. Coastal resource service area boards
150. Elections in coastal resource service areas
160. Organization at the direction of the council
170. Preparation of district coastal management program by the Department of Community and Regional Affairs
180. Approval of programs in coastal resource service areas

Sec. 46.40.110. Authority in the unorganized borough. Under AS 29.03.020 and §§ 110 — 180 of this chapter, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter. (§ 4 ch 84 SLA 1977)

Sec. 46.40.120. Coastal resource service areas. (a) Except as provided in (b) of this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the Department of Community and Regional Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area

(1) if a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) if, after giving due consideration to the standards applicable to incorporation of borough governments and the likelihood that a borough will be incorporated within the area, the commissioner determines that the functions to be performed under this chapter could be undertaken more efficiently through the combination of two or more regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area and no later than six months from the effective date of this Act. (§ 4 ch 84 SLA 1977)

Sec. 46.40.130. Organization of coastal resource service area. (a) Organization of a coastal resource service area may be initiated by

(1) submission to the council of a petition signed by a number of registered voters equal to 15 per cent of the number of votes cast within the coastal resource service area at the last state general election;

(2) submission to the council of a resolution approved by the city council or traditional village council of not less than 25 per cent of the

number of cities and villages within the coastal resource service area; or

(3) at the direction of a majority of the members of the council in the manner set out in § 160 of this chapter.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area. (§ 4 ch 84 SLA 1977)

Sec. 46.40.140. Coastal resource service area boards. (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

(b) A coastal resource service area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under § 130(a)(1) of this chapter, in the resolution submitted under § 130(a)(2) of this chapter, at the direction of the council under § 130(a)(3) of this chapter, or may be proposed at any time by the members of the coastal resource service area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal resource service area board.

(d) The term of office of a member of a coastal resource service area board is three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal resource service area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under § 130(b) of

this chapter in which a majority of votes cast favors organization of the coastal resource service area.

(f) Except for the first election of members of coastal resource service area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.071(b).

(g) A vacancy on a coastal resource service area board shall be filled by appointment as provided in AS 14.08.041(a) for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal resource service area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.28.130 — 29.28.250. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections. (§ 4 ch 84 SLA 1977)

Sec. 46.40.150. Elections in coastal resource service areas. Organization elections under § 130 of this chapter and other elections, including recall elections conducted under § 140 of this chapter, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15.05 — 15.60). In addition, the lieutenant governor may adopt regulations necessary to the conduct of coastal resource service area board elections. The state shall pay all election costs. (§ 4 ch 84 SLA 1977)

Sec. 46.40.160. Organization at the direction of the council. (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in waters adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) For purposes of this section, "major economic development activity" includes a call for nomination by the Secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in waters of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal waters of the state. (§ 4 ch 84 SLA 1977)

Sec. 46.40.170. Preparation of district coastal management program by the Department of Community and Regional Affairs. (a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the

Department of Community and Regional Affairs to prepare and recommend for consideration by the council and for submission to the legislature a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a program within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal resource service area board to determine whether the board is able to complete a district coastal management program within the time limitations established in this section. (§ 4 ch 84 SLA 1977)

Sec. 46.40.180. Approval of programs in coastal resource service areas. (a) Before adoption by a coastal resource service area board, or by the Department of Community and Regional Affairs under § 170 of this chapter, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or traditional village council shall consider the program submitted for review. Within 60 days of submission, the council of a city or traditional village council shall either approve the program or enter objections to all or any portion of the program.

(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management program prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and standards adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs. (§ 4 ch 84 SLA 1977)

Article 3. General Provisions.

Section

190. Cooperative administration
200. State agencies
210. Definitions

Sec. 46.40.190. Cooperative administration. (a) A city within the coastal area which is not part of an adjacent coastal resource service area may include itself for purposes of this chapter within an adjacent coastal resource service area if its governing body, by resolution adopted by a majority of its membership, consents to the inclusion of the city and a copy of the resolution is filed with the commissioner of the Department of Community and Regional Affairs.

(b) Nothing in this chapter restricts or prohibits cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose. (§ 4 ch 84 SLA 1977)

Sec. 46.40.200. State agencies. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. State agencies shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary to facilitate full compliance with and implementation of the program, including preparation and submission of recommendations to the council for additional or amended legislation. (§ 4 ch 84 SLA 1977)

Sec. 46.40.210. Definitions. In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude

subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities established under AS 29.68.240 — 29.68.440;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of the Department of Community and Regional Affairs, have the capability of preparing and implementing a comprehensive district coastal management program under § 30 of this chapter;

(E) coastal resource service areas established and organized under AS 29.03.020 and §§ 110 — 180 of this chapter;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs;

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource district;

(C) the siting of major energy facilities or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (§ 4 ch 84 SLA 1977)

Article 11A. Alaska Coastal Policy Council.

Section	Section
891. Alaska Coastal Policy Council	893. Duties of the council
892. Powers of the council	894. Council staff

Cross references. — As to the Alaska coastal management program, see AS 46.40.010 et seq. As to planning assistance for development and maintenance of district coastal management programs, see AS 44.47.095.

For provisions stating the legislative findings and legislative policy, see §§ 1 and 2, ch. 84, SLA 1977, effective June 4, 1977, in the Temporary and Special Acts of 1977.

Effective date of article. — Section 7, ch. 84, SLA 1977, makes this article effective June 4, 1977, in accordance with AS 01.10.070(c).

Editor's note. — Section 6, ch. 84, SLA 1977, effective June 4, 1977, provides: "The Administrative Regulation Review Committee established in AS 24.20.400 — 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1979, make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature."

Sec. 44.19.891. Alaska Coastal Policy Council. (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

(1) nine public members appointed by the governor from a list comprised of at least three names from each region, nominated by the municipalities of each region; the nominees shall be the mayor or member of the assembly or council of a municipality; one public member shall be appointed from each of the following general regions:

(A) northwest Alaska, including, generally, the area of the North Slope Borough and the Northwest Arctic regional educational attendance area;

(B) Bering Straits, including, generally, the area of the Bering Straits regional educational attendance area;

(C) southwest Alaska, including, generally, the area within the Lower Yukon, Lower Kuskokwim, Southwest, and Lake-Peninsula regional educational attendance areas and the Bristol Bay Borough;

(D) Kodiak-Aleutians, including the area of the Kodiak Island Borough and the Aleutian, Adak and Pribilof regional educational attendance areas;

(E) Upper Cook Inlet, including the Municipality of Anchorage and the Matanuska-Susitna Borough;

(F) Lower Cook Inlet, including, generally, the area within the Kenai Peninsula Borough;

(G) Prince William Sound, including, generally, the area east of the Kenai Peninsula Borough to 141° W. longitude;

(H) northern Southeast Alaska, including the area southeast of 141° W. longitude and north of 57° N. latitude, including the entirety of the City and Borough of Sitka; and

(I) southern Southeast Alaska, including that portion of southeastern

Alaska not contained within the area described in (H) of this paragraph;

(2) each of the following:

(A) the director of the division of policy development and planning;

(B) the commissioner of the Department of Commerce and Economic Development;

(C) the commissioner of the Department of Community and Regional Affairs;

(D) the commissioner of the Department of Environmental Conservation;

(E) the commissioner of the Department of Fish and Game;

(F) the commissioner of the Department of Natural Resources; and

(G) the commissioner of the Department of Public Works.

(b) Each public member appointed by the governor under (a) (1) of this section serves a term of two years and until his successor is appointed and qualified, except that the term of office of a public member first appointed under (a) (1) (A), (a) (1) (C), (a) (1) (E) and (a) (1) (G) of this section shall be one year. A public member may be reappointed.

(c) The council shall designate co-chairmen, one of whom shall be selected from among the public members appointed under (a) (1) of this section and one from among the members designated in (a) (2) of this section.

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, he shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed after July 9, 1978 under (a) (1) of this section shall, at the time of his designation and throughout the period of his service as a permanent alternate, be the mayor or member of the assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for a designated member serving under (a) (2) of this section shall be a deputy commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

(e) Four public members and three designated members of the council constitute a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the members present and voting.

(f) Members of the council or their alternates are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a) (1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be

immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a) (1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term. (§ 3 ch 84 SLA 1977; am §§ 4, 5 ch 129 SLA 1978)

Effect of amendment. — The 1978 amendment, effective July 9, 1978, rewrote subsections (d) and (g).

Sec. 44.19.892. Powers of the council. The council may

(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds which may become available for coastal planning and management;

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in, affected by, or concerned with coastal area planning and management;

(B) agents and officials of the coastal resource districts of the state, and federal and state agencies concerned with or having jurisdiction over coastal planning and management;

(4) take any reasonable action necessary to carry out the provisions of §§ 891 — 894 of this chapter. (§ 3 ch 84 SLA 1977)

Sec. 44.19.893. Duties of the council. In conformity with the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), the council shall

(1) through the public hearing process and the recording of the minutes of the hearings, develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.35, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate the development and implementation of the Alaska coastal management program; in carrying out its duties under this paragraph, the council shall initiate an interagency program of comprehensive coastal resource planning for each geographic region described in § 891 (a) (1) of this chapter;

(3) assure continued provision of data and information to coastal resource districts to carry out their planning and management functions under the program;

(4) submit annually to the legislature, not later than the 10th day of each regular session, the portion of the coastal management program approved or amended by the council during the preceding year. (§ 3 ch 84 SLA 1977)

Sec. 44.19.894. Council staff. The council shall utilize the staff of the office of coastal management within the division of policy development and planning in discharging its powers and duties. The coordinator of the office, with the concurrence of the council, may contract with or employ personnel or consultants he considers necessary to carry out the powers and duties of the council. (§ 3 ch 84 SLA 1977)

Chapter 47. Department of Community and Regional Affairs.

Article
8. The Temperate Social Activities Revolving Loan Fund (§§ 44.47.320 — 44.47.350)

Article 3. Planning Assistance.

Section
92. Land use planning and state facility procurement plan
95. Planning assistance for development and maintenance of district coastal management programs

Sec. 44.47.092. Land use planning and state facility procurement plan. The department shall make recommendations to the Department of Transportation and Public Facilities and to appropriate program agencies concerning the effect upon the comprehensive plan or other land use plans or proposals of municipalities and unincorporated communities with respect to the facility procurement plan required to be prepared in accordance with AS 35.10.170 and AS 44.42.055. (§ 16 ch 168 SLA 1978)

Sec. 44.47.095. Planning assistance for development and maintenance of district coastal management programs. The department shall conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development and implementation of district coastal management programs under AS 46.35. The technical assistance shall include the direct granting to the coastal resource districts of a portion of any funds received by the state from the federal coastal zone management program, in amounts to be individually determined for each coastal resource district by the commissioner. State agencies shall assist the department in carrying out the purposes of this section. (§ 5 ch 84 SLA 1977)

Cross references. — As to the Alaska Coastal Policy Council, see AS 44.19.891 et seq. As to the Alaska coastal management program, see AS 46.40.010 et seq.

For provisions stating legislative findings and legislative policy, see §§ 1 and 2, ch. 84, SLA 1977, effective June 4, 1977, in the Temporary and Special Acts of 1977.

Effective date. — Section 7, ch. 84, SLA 1977, makes this section effective June 4, 1977, in accordance with AS 01.10.070(c).

Editor's note. — Section 6, ch. 84, SLA 1977, effective June 4, 1977, provides: "The Administrative Regulation Review Committee established in AS 24.20.400 — 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1979, make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature."

Original sponsor: Orsini Offered: 6/17/78

IN THE SENATE BY THE FREE CONFERENCE COMMITTEE

FREE CONFERENCE CS FOR HOUSE CS FOR CS FOR SENATE BILL NO. 388

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the state's coastal management program; and providing for an effective date."

* Section 1. AS 46.40.040(1) is amended to read:

(1) by regulation, adopt under the provisions of the Administrative Procedure Act (AS 44.62), <u>not later than April 15, 1978</u> [WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ACT], for the use of and application by coastal resource districts and state agencies for carrying out their responsibilities under this chapter, guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to the land and water uses subject to the district coastal management program;

(E) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(F) designating and developing policies for the use of areas of the coast which merit special attention; and

(G) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

* Sec. 2. AS 46.40.120(c) is amended to read:

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area [AND NO LATER THAN SIX MONTHS FROM THE EFFECTIVE DATE OF THIS ACT].

* Sec. 3. AS 46.40.210(6)(C) is amended to read:

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

* Sec. 4. AS 44.19.891(d) is repealed and re-enacted to read:

(d) Each member of the council shall select one person to serve as a permanent alternate at meetings of the council. If a member of the council is unable to attend, he shall advise the alternate who may attend and act in the place of the member. The alternate for a public member appointed after the effective date of this section under (a)(1) of this section shall, at the time of his designation and throughout the period of his service as a permanent alternate, be the mayor or member of the assembly or council of a municipality within the region from which the permanent member is appointed. The alternate for a designated member serving under (a)(2) of this section shall be a deputy commissioner of the department or the director of a division in the department. The names of alternates shall be filed with the council.

* Sec. 5. AS 44.19.891(g) is repealed and re-enacted to read:

(g) If an incumbent public member ceases to meet the qualifications prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists among the public members for any other reason

except for a vacancy due to the expiration of the term of a public member, the governor shall, within 30 days of the establishment of the vacancy by lack of qualification or other reason, make an appointment, to be immediately effective, for the unexpired portion of the term. An appointment by the governor made under this subsection to fill an unexpired term of a public member shall comply with the requirements of (a)(1) of this section; however, the governor may appoint from qualified persons without soliciting from municipalities nominations of persons to fill the unexpired portion of the term.

* Sec. 6. Section 1 of this Act is retroactive to June 4, 1977.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Appendix 2

Alaska Forest Practices Act and Legal Opinion

Appendix 2 Note:

This Appendix contains the Alaska Forest Practices Act, and a legal opinion from the Attorney General of Alaska. The opinion was requested by the Alaska Coastal Policy Council in order to determine the legal relationship between the Forest Practices Act and the Alaska Coastal Management Act and the ACMP regulations. As the opinion states, the Dept. of Natural Resources can replace only those ACMP regulations which fall within that Department's expertise, which in this case, means only the ACMP regulations which directly address timber harvesting and processing. (6 AAC 80.100.) As of publication of this P/FEIS, the Department of Natural Resources has not yet promulgated any regulations under the Forest Practices Act.

Original sponsor: Rules Committee by request of the Governor

Offered: 6/9/78

IN THE SENATE

BY THE RULES COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59 (Rules) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date."

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

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation, water, soil, air, minerals, and general health and welfare;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;

(4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon the expertise of professional foresters in conjunction with other disciplines;

(5) under the leadership of the Department of Environmental Conservation, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;

(6) subject to sec. 307(f) of the Coastal Zone Management Act of 1972 (P.L. 92-583), the provisions of this chapter shall be the basis for forest management standards, policies, and guidelines developed under the Alaska Coastal Management Act.

Sec. 41.17.020. DIVISION OF FOREST, LAND, AND WATER MANAGEMENT ESTABLISHED. (a) The governor shall establish, within the Department of Natural Resources, a division of forest, land, and water management to carry out this chapter and other appropriate duties designated by the governor. The division shall be headed by a director who shall be the state forester, appointed to the partially exempt service in accordance with law by the commissioner, from a list of two or more candidates submitted by the board. The commissioner may reject all candidates, in which case the board shall submit a new list. The state forester shall be a natural resources land manager with generally accepted educational credentials, familiar and experienced with the renewable and nonrenewable resources and values of forest land and the products, benefits, and services obtained from them.

(b) The commissioner shall administer this chapter and is authorized and encouraged to delegate responsibilities for carrying out this chapter to the state forester.

(c) After planning and classification procedures under AS 38.05 have been completed, the governor may propose to the legislature, state forests, to consist of forest land determined by him to be desirable for retention in state ownership as multiple-use land.

(d) The commissioner may designate and operate experimental and

research forests on state land consistent with the limitations of AS 38.05.300. Laboratories and other facilities may be employed in conjunction with those forests.

(e) The commissioner may establish and maintain forest vegetation nurseries and greenhouses for planting stock to be made available, with or without charge, to organizations, institutions, government agencies, individuals, and businesses for reforestation, afforestation, and related purposes.

(f) The commissioner is authorized to undertake cooperative forestry programs, extension services and education programs, and to otherwise offer a full range of professional management services to the interested public. When he considers it beneficial, the commissioner may participate in federal assistance programs by accepting assistance in whatever form offered.

(g) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner of environmental conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations and cooperative agreement are therefore subject to the advance approval of the commissioner of environmental conservation.

(h) In the administration of this chapter, the commissioner shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The commissioner may enter into cooperative agreements and contracts with them to carry out this chapter.

(i) The commissioner shall locate department personnel with

forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(j) Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Management Act; and (2) if authorized by the commissioner of environmental conservation, regulations relating to control of nonpoint source pollution.

(k) The commissioner may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under the Administrative Procedure Act (AS 44.62) and under sec. 40(f) of this chapter.

Sec. 41.17.030. RESPONSIBILITIES OF DIVISION. (a) The division shall manage state forests and, as directed by the commissioner, provide technical advice to the division of lands on sound forest practices necessary to ensure the continuous growing and harvesting of commercial forest species on other state land.

(b) The division shall regulate operations on private forest land as authorized by the provisions of this chapter or state law.

(c) The division shall provide public information and assistance regarding forest practices and timber management generally.

Sec. 41.17.040. BOARD OF FORESTRY. (a) The Board of Forestry is established in the Department of Natural Resources, division of forest, land, and water management.

(b) The board is composed of 14 members appointed by the governor from nominations submitted from the groups listed in (c) of this section. The board shall elect its own presiding officer.

(c) Seats on the board shall be allocated as follows:

(1) the state forester ex officio has one seat;

(2) a nominee of the regional forester, United States Forest Service has one seat;

(3) a nominee of the Society of American Foresters has one seat;

(4) nominees of Native corporations owning or likely to own commercial timber stands have four seats;

(5) a nominee of the Alaska Loggers' Association or of a timber processor doing business in Alaska has one seat;

(6) a nominee of an Alaskan environmental group has one seat;

(7) a nominee of the Alaska Coastal Management Council has one seat;

(8) a nominee of unions engaged in processing forest products has one seat;

(9) a nominee of the United Fishermen of Alaska has one seat;

(10) a nominee of the Alaska Miners' Association has one seat; and

(11) a member from the public at large has one seat.

(d) Each group entitled to make nominations under (c) of this section shall submit three names to the governor for the vacancy on the board it is entitled to make nominations for.

(e) The term of office of a member of the board is three years; the governor shall make his initial appointments to the board in such a way that four nominations expire during 1980, four appointments expire during 1981, and three appointments expire during 1982. The state forester serves an indefinite term, ex officio.

(f) The board shall review and comment to the commissioner on regulations proposed for adoption under this chapter. The board shall

also report to the legislature its recommendations for changes in the provisions of this chapter and its comments on the regulations adopted by the commissioner under this chapter. It may also review and advise the legislature on the activities of the division.

(g) Members of the board, except the state forester, do not serve at the pleasure of the governor.

(h) The governor may initiate the removal of a board member for inefficiency, neglect of duty, or misconduct in office by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or by counsel at a public hearing before the governor or his designee on at least 10 days written notice by registered mail. The member has a right of confrontation and cross-examination of witnesses testifying. The removal is effective 15 days after the governor files a complete statement of all charges made against the member and the findings on those charges in the main office of the board except that a member may appeal the findings to the superior court. The court shall limit its review to a determination of whether the findings on the charges are substantiated by the evidence presented. The removal is suspended for any period of time during which an appeal from the findings of the governor or his designee is pending.

Sec. 41.17.050. APPLICABILITY. (a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(b) The provisions of this chapter applicable to state land are applicable to forest land under federal ownership to the extent permitted by law.

(c) The commissioner shall exempt by regulation from the provisions of this chapter

(1) minor, small scale, or incidental commercial operations

of little significance with respect to the purposes of this chapter; and

(2) operations for primarily noncommercial purposes, including but not limited to the harvesting of timber for personal use.

Sec. 41.17.060. REGULATORY AND ADMINISTRATIVE STANDARDS. (a) All regulations, administrative actions, and other activities and duties undertaken under this chapter shall be in full accordance with the standards set out in this section.

(b) With respect to state, municipal, and private forest land, the following standards apply:

(1) to the maximum extent possible, all applicable data and information of applicable disciplines shall be updated and used in making decisions relative to the management of forest resources;

(2) environmentally sensitive areas and best management practices shall be recognized in the implementation of any nonpoint source pollution control measures authorized under this chapter;

(3) administration of forest land shall consider marketing conditions and other economic constraints affecting the forest landowner, timber owner, or the operator;

(4) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land; if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price in Alaska.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land shall be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides for the present needs and preserves the future options of the people of

Alaska;

(2) any system of allocating predominant uses or values to particular units within a contiguous area of land shall reflect in reasonable proportion the various resources and values present in that area;

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, activities, and lifestyles which are dependent upon or derived from forest resources;

(4) timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;

(5) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources; and

(6) where economically practicable, allowance may be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry.

Sec. 41.17.070. ADMINISTRATIVE PLAN AND REPORT. (a) The commissioner shall develop and continually maintain a long-range plan for the administration of this chapter which demonstrates that the provisions of sec. 10 are being recognized and that the standards of sec. 60 are being met. The commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

(b) On December 31, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the plan will affect the welfare of the forest products industry and other

activities and pursuits derived from or affected by forest resources.

(c) As a part of the report to be submitted on December 31, 1980, under (b) of this section, the commissioner shall, after consultation with interested constituencies,

(1) review the structure and operations of the division;

(2) describe the degree to which the division has established a high-profile forestry program utilizing the expertise of professional foresters;

(3) describe the responsiveness of the division to the interest of forest resources constituencies; and

(4) make recommendations to the legislature respecting the legal authority of the Department of Natural Resources relating to forestry, the qualifications of the director of the division, and the location of the division within the department.

(d) On December 31, 1980, the commissioner, after consultation with the commissioner of revenue, shall transmit to the legislature recommendations for legislation establishing economic incentives which would further the purposes of this chapter.

Sec. 41.17.080. REGULATIONS. (a) The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) and under sec. 40(f) of this chapter governing operations on forest land with respect to the following:

(1) harvesting and removal from the site of timber and tree products;

(2) reforestation, revegetation, and prescribed burning;

(3) brush, slash, and debris, and salvage of trees;

(4) soil erosion and wasting;

(5) fire and flood hazards;

(6) prevention and control of disease and insect infestation.

(b) An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures in accordance with AS 46.35. The commissioner shall notify the operator of the action taken. Where practicable and desirable, the commissioner may enter into cooperative agreements with federal agencies authorizing the department to serve as a collection point for federal permit applications.

(c) The commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply to reflect varying conditions within the state, or to facilitate administration.

(d) The commissioner shall adopt only those regulations necessary to accomplish the purposes of this chapter, and shall avoid those which increase operating costs without yielding significant benefits.

Sec. 41.17.090. NOTIFICATION AND REVIEW OF OPERATIONS. (a) Operations on forest land shall be reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under this chapter.

(b) The commissioner shall make full use of professional management services and other educational and assistance programs of the department to encourage early contact between operators and the state and to minimize reliance on this section as a principal means of achieving the purposes of this chapter.

(c) Before operating on forest land, an operator shall give notification to the commissioner consisting of

(1) a brief written description of the proposed operation;

(2) a USGS map of the largest available scale showing the location of all proposed activities;

(3) proposed measures for soil conservation and reforestation; and

(4) evidence that the landowner and timber owner (if different from the operator) have approved the proposed operation.

(d) Within five days after receipt, the commissioner shall distribute the notification materials to affected state agencies. The agencies shall make their recommendations within 20 days after receiving the materials.

(e) Within 30 days of receipt of a notification under (c) of this section, the commissioner may inspect the proposed operation to ensure that the proposed operation is in accord with the standards promulgated by this chapter.

(f) The operator may legally commence operations upon the expiration of the 30-day period or upon notice from the commissioner that the inspection has been completed, whichever occurs first. Whether or not an inspection is conducted, the operator is liable for a violation of this chapter or other violation of law.

(g) An operator shall notify the commissioner of a proposed substantial change in his operations by following the procedure specified in (c) - (d) of this section.

(h) Information and paperwork required of the operator under this section shall be limited to that necessary to accomplish the purposes of this section. Site examinations, including an interdisciplinary review, may be undertaken by the commissioner.

(i) The commissioner may limit the review process under this section to 10 days where such action is immediately necessary for the preservation of the public peace, health, safety or general welfare, and is undertaken in concert with affected agencies.

(j) Operations which begin before the effective date of this Act

have one year to comply with this chapter.

Sec. 41.17.100. DEPLOYMENT OF BROADCAST CHEMICALS. The commissioner of environmental conservation, in consultation with the commissioner, shall formulate necessary plans and measures to insure that application of broadcast chemicals and other substances foreign to the Alaska forest ecosystem do not lead to results contrary to the objectives and provisions of this chapter and other applicable laws and regulations relating to renewable resources. Regulations adopted by the commissioner of environmental conservation may include requirements for advance testing, posting of security, written reports, and other matters.

Sec. 41.17.110. CONVERSION OF FOREST LAND TO OTHER USES. An intention to convert forest land to other uses after timber harvesting may be stated in the notification submitted under sec. 90 of this chapter. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion shall be completed during the time set by regulation for minimum reforestation of the land, and other requirements for revegetation may be imposed to the extent permitted by law. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requirements.

Sec. 41.17.120. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT. The commissioner may inspect and investigate forest land and activities on it and may enter upon it in conjunction with any operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land. Those agencies and the commis-

sioner shall coordinate their actions under this section.

Sec. 41.17.130. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES. (a) No person may violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 90 - 110 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed $10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. The respondent shall be granted 10-day extensions up to a total of 60 days upon request. The notice shall also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state shall show by clear and convincing evidence that the respondent has caused or permitted a violation described in (a) of this section.

(c) Within 10 days after the hearing, or upon nonappearance of the respondent, the hearing officer shall enter a final order. The order shall be based on the evidence presented at the hearing, and shall be accompanied by a written opinion stating the reasons for the decision. The commissioner shall immediately notify the respondent of the order by registered mail. The order may include:

(1) a directive to stop the violation;

(2) the imposition of a civil fine under (a) of this section, which is payable immediately;

(3) a directive to repair damages;

(4) a finding that the charges are wholly or partially unjustified; or

(5) a combination of (1) - (4) of this subsection.

(d) In determining the amount of any civil fine imposed, the following shall be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent; and

(4) if such information is available, the net economic savings realized by the respondent through the violation described in (a) of this section.

(e) If the commissioner finds that a violation described in (a) of this section has occurred and that continuation of the violation or failure to repair damage would likely result in irreversible or irretrievable damage to the forest resources or values affected, and it would be prejudicial to the welfare of the state to delay action pending a hearing, the commissioner may, without prior hearing, issue a temporary order in addition to the documents required by (b) of this section requiring the respondent to stop the violation or repair damage or both. The order remains in effect for 21 days unless a final order is issued earlier; an extension of time granted under (b) of this section extends the order issued under this subsection until the hearing officer issues a final order under (c) of this section. Proceedings in conjunction with the alleged violation must otherwise be the same.

(f) If a person fails to comply with an order issued under (c) or (e) of this section, the attorney general, at the request of the commissioner, may seek an injunction suspending all or part of the operations being conducted by the respondent until the respondent complies

with the order. If the order directs the respondent to repair damage, the commissioner may proceed with department staff or contractors to repair the damage, and the respondent is liable for the cost of the repair after delivery by the commissioner of an itemized statement of expenses incurred.

(g) All orders issued under this section are enforceable by injunction, attachment, garnishment, or other appropriate remedy.

(h) Unless otherwise specified, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). A hearing under this section shall be held before a hearing officer, appointed by the attorney general from among members of the Alaska Bar Association who have been nominated by the Board of Forestry and who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings shall be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing shall be recorded.

(i) If the respondent notifies the commissioner within five days before the hearing provided for in (h) of this section, the following rules and procedures apply to the hearing:

(1) the hearing shall be a nonadversary proceeding, with the hearing officer fully and impartially representing the interests of the state and the respondent;

(2) the hearing officer shall thoroughly investigate the facts and circumstances relating to the alleged violation, including taking testimony from appropriate persons, collecting and examining documents and other evidence, and performing other actions consistent with due process of law;

(3) issue a decision in accordance with the applicable procedures of (h) of this section.

Sec. 41.17.140. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 130 of this chapter and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. The respondent shall be granted 10-day extensions up to a total of 60 days upon request. Within 10 days after conclusion of the hearing, the commissioner shall issue a written decision based upon the evidence, which shall be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer appointed by the attorney general from among members of the Alaska Bar Association who have been nominated by the Board of Forestry and who are knowledgeable and experienced in the subject matter.

(b) A final decision under (a) of this section or a final order under sec. 130 of this chapter may be appealed to the superior court within 30 days after it is issued. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

(c) A temporary order issued under sec. 130 of this chapter may be

immediately appealed to the superior court as to its propriety.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "board" means the Board of Forestry established in sec. 40 of this chapter;

(2) "broadcast chemicals" includes pesticides, herbicides, fungicides, fertilizers, poisons, and any other substances

(A) used for silvicultural management or related purposes;

(B) not native to the ecosystem in which they are being applied; and

(C) having a foreseeable adverse impact on the welfare of renewable resources, as determined by the commissioner of environmental conservation;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "division" means the division of forest, land, and water management;

(6) "forest land" means land stocked or having been stocked with forest trees of any size and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(7) "forest landowner" means a person who owns forest land;

(8) "multiple use" means

(A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of Alaska, making the most judicious

use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(B) that some land will be used for less than all of the resources; and

(C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output;

(9) "operations" means timber harvesting or activities associated with timber harvesting or forest development unless exempted under sec. 50 of this chapter;

(10) "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in an operation as employee with wages or piecework as his sole compensation;

(11) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(12) "silviculture" means the art of producing and tending a forest, the application of the knowledge of silvics in the treatment of a forest, and the theory and practice of controlling and managing forest establishment, composition, and growth;

(13) "state forest" means an area which is retained in state ownership in order to

(A) provide a base for sustained yield management of

renewable resources; and

(B) permit a variety of beneficial uses;

(14) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water, but does not require that timber be harvested in a non-declining yield basis over a rotation period;

(15) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself; and

(16) "significant impairment of the productivity of the land and water" means any activity which may foreseeably result in prolonged or substantial damage to renewable resources or prolonged or substantial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels.

* Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:

(10) the state forester, in the Department of Natural Resources.

* Sec. 3. This Act takes effect January 1, 1979. However, the commissioner of natural resources is not precluded from undertaking preparatory activities in the interim.

STATE
of ALASKA

MEMORANDUM

TO: Frances A. Ulmer, Director
Division of Policy Development
& Planning
Office of the Governor

DATE: December 4, 1978

FILE NO: J-66-224-79

TELEPHONE NO: 465-3686

FROM: Avrum M. Gross
Attorney General

By: Jonathan K. Tillinghast
Assistant Attorney General

SUBJECT: Forest Practices Act Preemption of Coastal Management Standards

By memorandum of October 9, you have asked for our opinion as to the degree to which the Forest Practices Act (AS 41.17) (hereinafter "Forest Act") preempts the coastal development guidelines of the Alaska Coastal Policy Council (6 AAC 80) promulgated under the Alaska Coastal Management Act (AS 46.40) (hereinafter "Coastal Act").

As we have previously advised you orally, it is our opinion that:

1. Displacement of a particular Council standard occurs when the Division of Forest, Land and Water Management ("Division") either (a) adopts a regulation addressing the same particular subject matter as the pertinent Council standard, or (b) affirmatively decides that no such standard is necessary; and

2. The Division has the ability to displace a Council standard if the subject matter of the standard is peculiarly within the expertise of the Division.

It is our understanding that proposed Division regulations would reflect our perceptions, by explicitly providing for the preemption of the Council's forest management standards, while not attempting a displacement of other, broader Council guidelines which may, in given cases, be pertinent to activities on forest lands, among others.

AS 41.17.010(6) provides that "the provisions of this chapter shall be the basis for forest managment standards, policies, and guidelines developed under the Alaska Coastal Management Act." Accordingly, AS 41.17.020(j) provides for an exception to the general rule of nonpreemption established in the Forest Act:

> "Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Management Act. . ."

Thus, to preempt a coastal management regulation, some form of administrative action by the Department of Natural Resources is necessary. In our view, this scheme is substantially similar to that established in Title I of the federal Ports and Waterways Safety Act. 33 U.S.C. § 1221 et seq. Although the concerns in Title I of the PWSA relate to preemption of state authority, rather than of a sister statute by the same sovereign, the PWSA is similar to the Forest Act in that preemption of other authority occurs not by automatic statutory operation, but rather by administrative action. Thus, 33 U.S.C. § 1222(b) provides that nothing in Title I:

> "prevent[s] a state or political subdivision thereof from prescribing for structures only safety equipment requirements for safety standards than those which may be prescribed pursuant to this chapter." Emphasis supplied.

In Ray v. Atlantic Richfield, 435 U.S. 151 (1978), the Supreme Court was called upon to determine the circumstances under which premption under Title I would occur. The court concluded that state authority would be usurped if the Coast Guard, which administers the PWSA, either promulgated its own rule regarding the same particular subject matter as the state standard in question, or affirmatively decided that no such rule was necessary. Id. at 171-2. If the record of a Coast Guard rulemaking proceeding disclosed that the agency had in fact considered and rejected a particular standard, preemption would occur. However, consistent with the PWSA's policy that no "automatic" preemption occurred absent administrative action, the mere fact that the Coast Guard had not promulgated a similar standard would not be sufficient to oust state authority.

Applying the Ray v. Atlantic Richfield rationale to this situation, the pertinent inquiry becomes whether the Division has promulgated a standard dealing with the same operational topic as the particular Council standard involved,

or whether the rulemaking record discloses that the Division has considered, and rejected the need for that particular constraint. Applying that test after the fact, of course, can lead to uncertainty on the part of the forest industry. The express preemption language proposed by the Division would remove that uncertainty. However, we would caution that, in our view, the Division should give careful consideration--which should be reflected in the rulemaking record--to each of the Council's forest management standards. If the Division's ultimate regulations do not contain a standard dealing with the same particular operational issue as a Council guideline, the Division's record should demonstrate that the Division has considered the need for such a guideline, and rejected it.

A more difficult question is raised with regard to the scope of the Division's ability to preempt Council guidelines. Happily, the issue appears to be headed for administrative resolution, by the insertion of language in the Division's regulations which provides for the preemption only of the Council's forest management standards. Had the Division attempted to go further, preempting other Council guidelines which may apply to forest lands, but which do not constitute actual forest management performance standards, substantial questions would be raised regarding the preemptive ability of the Division. While, as noted previously, the Act does indeed provide the preemption of "forest mangement standards," there also exists a strong policy in the Forest Act against the creation of an omnibus super agency. Thus, the sponsor analysis notes:

> "While a state forest resources program is necessary and desirable, it is not the intention of this legislation to create a massive new beauracracy which would only result in a waste of government funds and manpower. Rather, the approach used is to fill existing gaps in the statute through enabling legislation which would provide for a thorough forest management program without duplication or overlapping existing government programs of the Department of Natural Resources or other state agencies. Emphasis is placed on cooperation between these agencies to achieve generally desired goals." Sponsor Analysis of sponsor substitute for SB No. 59, 10th Leg., 2d Sess. at 2.

Whether or not the Division would have the authority to preempt Council guidelines not dealing particularly with forest management performance standards, but which are universally applicable to all lands in the coastal area, is a question we need not reach, because of the Division's proposed administrative resolution of this controversy. We will only note that we believe there are serious questions regarding whether a reappraisal of other Council standards would be within the peculiar expertise of the Division.

JKT:dlm

Appendix 3

The Guidelines & Standards

PART 6.
ALASKA COASTAL POLICY COUNCIL

Chapter
80. Standards of the Alaska Coastal Management Program
85. Guidelines for District Coastal Management Programs

CHAPTER 80.
STANDARDS OF THE ALASKA COASTAL MANAGEMENT PROGRAM

Article
1. Government Process
2. Uses and Activities
3. Resources and Habitats
4. Areas Which Merit Special Attention
5. General Provisions

ARTICLE 1.
GOVERNMENT PROCESS

Section
10. Coverage of chapter
20. Public participation and information
30. Program management and coordination

6 AAC 80.010. COVERAGE OF CHAPTER. (a) This chapter contains standards for the use of and application by districts and state agencies in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40, and AS 44.19.891 – 44.19.894).

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, each state agency shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the applicable district program and the standards contained in this chapter.

(c) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.020. PUBLIC PARTICIPATION AND INFORMATION. (a) The council will provide adequate, effective, and continuing opportunities for public participation from the beginning of the Alaska coastal management program. The council will give notice of when and where opportunities for public participation will be provided before adoption of guidelines and standards, review and approval of district programs and amendments to district programs, and amendments to the Alaska coastal management program.

(b) The council will not approve a district program or significant amendment of a district program unless evidence of significant opportunities for public participation at the district level has been provided.

(c) The council will make available to the public information and educational materials concerning coastal management, in understandable form, including

(1) a guide for the development of district programs;

(2) maps and narratives describing physical and biological characteristics to be used in establishing boundaries of coastal areas;

(3) areas recommended for council designation as areas which merit special attention;

(4) maps showing the distribution and abundance of coastal fish and wildlife species with commercial, recreational, subsistence, or general ecological importance;

(5) an identification of major data and information sources concerning coastal management;

(6) a summary of information regarding coastal regions;

(7) summaries of public hearings and workshops;

(8) films and slide programs;

(9) written material summarizing or explaning the Alaska coastal management program; and

(10) the council's annual report to the legislature.

(d) At public meetings concerning the Alaska coastal management program, the council will ensure that, when requested and reasonably necessary, translation into the appropriate Native language is provided. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.030. PROGRAM MANAGEMENT AND COORDINATION. (a) The Office of Coastal Management is the designated lead agency for the Alaska coastal management program. The Office of Coastal Management shall

(1) present the staff position regarding matters before the council;

(2) coordinate the activities of state agencies participating in the Alaska coastal management program; and

(3) review state and federal actions for consistency with the Alaska coastal management program, subject to council review.

(b) The council will initiate an interagency program of comprehensive resource management for each geographic region listed in AS 44.19.891(a)(1). Regional programs will

(1) assist the council and districts in identifying uses of state concern and developing management policies for these uses;

(2) provide resource, social, and economic information on a coordinated regional basis; and

(3) assist the council and districts in identifying, avoiding, or minimizing existing or potential conflicts.

(c) Plans and recommendations developed as part of the regional program described in (b) of

this section must be transmitted to the district through the Office of Coastal Management. District planning efforts must demonstrate review and consideration of these plans and recommendations. If the final district program proposed does not agree with the regional program plans and recommendations, the differences will be resolved by the council.

(d) The council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

ARTICLE 2.
USES AND ACTIVITIES

Section

40. Coastal development
50. Geophysical hazard areas
60. Recreation
70. Energy facilities
80. Transportation and utilities
90. Fish and seafood processing
100. Timber harvest and processing
110. Mining and mineral processing
120. Subsistence

6 AAC 80.040. COASTAL DEVELOPMENT. (a) In planning for and approving development in coastal areas, districts and state agencies shall give, in the following order, priority to

(1) water-dependent uses and activities;

(2) water-related uses and activities; and

(3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material or fill material into coastal water must, at a minimum, comply with Parts 320-323, Title 33, **Code of Federal Regulations** (Vol. 42 of the **Federal Register**, pp. 37133 – 47 (July 19, 1977)). (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.050. GEOPHYSICAL HAZARD AREAS. (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.060. RECREATION. Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.070. ENERGY FACILITIES. (a) Sites suitable for the development of major onshore, nearshore, offshore, and outer continental shelf energy facilities must be identified by the state in cooperation with districts.

(b) The siting and approval of major oil and gas facilities must be based on the policies of the State of Alaska concerning the onshore and nearshore aspects of oil and gas development.

(c) Districts shall consider that the uses authorized by the issuance of state leases for mineral and petroleum resource extraction are uses of state concern. District programs and plans must be consistent with those uses. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.080. TRANSPORTATION AND UTILITIES. (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with local community goals and desires as expressed in district programs and local comprehensive plans.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.090. FISH AND SEAFOOD PROCESSING. Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.100. TIMBER HARVEST AND PROCESSING. (a) Not approved by Legislature under AS 46.40.080.

(b) Commercial timber harvest activities in the coastal area must be conducted so as to meet the following standards:

(1) the location of facilities and the layout of logging systems must be managed so as to minimize potential for adverse environmental impacts;

(2) unrestricted fish movement in coastal water must be assured; and

(3) Not approved by Legislature under AS 46.40.080.

(c) Commercial timber transport, storage, and processing in the coastal area must be conducted so as to meet the following standards:

(1) onshore storage of logs must be encouraged where compatible with the objectives of the Alaska coastal management program;

(2) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(3) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage pattern (put to bed); and

(4) stream crossings, including bridges and culverts, must be kept to a minimum number, designed to withstand seasonal high water and flooding, and must provide for unrestricted passage of fish.

(d) Not approved by Legislature under AS 46.40.080. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.110. MINING AND MINERAL PROCESSING. (a) Mining and mineral processing in the coastal area must be permitted, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, regional programs, statewide and national needs, district programs, and local comprehensive plans.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.120. SUBSISTENCE. (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

ARTICLE 3.
RESOURCES AND HABITATS

Section
130. Habitats
140. Air, land, and water quality
150. Historic, prehistoric, and archaeological resources

6 AAC 80.130. HABITATS. (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

(1) offshore areas;

(2) estuaries;

(3) wetlands and tideflats;

(4) rocky islands and seacliffs;

(5) barrier islands and lagoons;

(6) exposed high energy coasts;

(7) rivers, streams, and lakes; and

(8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources.

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards

contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in sec. 30(b) of this chapter. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.140. AIR, LAND, AND WATER QUALITY. Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES. Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

ARTICLE 4.
AREAS WHICH MERIT SPECIAL ATTENTION

Section
160. Areas which merit special attention

6 AAC 80.160. AREAS WHICH MERIT SPECIAL ATTENTION. (a) Districts and appropriate state agencies shall recommend to the council areas to be designated as areas which merit special attention. Recommendations must include the following information:

(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;

(2) a map showing the geographical location, surface area and where appropriate, bathymetry of the area;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management scheme, consisting of the following:

(A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area;

(B) a summary or statement of the policies which will be applied in managing the area; and

(C) an identification of the authority which will be used to implement the proposed management scheme.

(b) In addition to the categories contained in AS 46.40.210(1), areas which merit special attention may include the following:

(1) areas important for subsistence hunting, fishing, food gathering, and foraging;

(2) areas with special scientific values or

opportunities, including those where ongoing research projects could be jeopardized by development or conflicting uses and activities; and

(3) potential estuarine or marine sanctuaries.

(c) Management schemes for areas which merit special attention must preserve, protect, enhance, or restore the value or values for which the area was designated.

(d) As used in this section, "areas which merit special attention" has the same meaning as in AS 46.40.210(1). (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

ARTICLE 5.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 80.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "barrier islands and lagoons" means depositional coastal environments formed by deposits of sediment offshore or coastal remnants which form a barrier of low-lying islands and bars protecting a salt-water lagoon with free exchange of water to the sea;

(2) "coastal water" means all water bodies in the coastal area, including wetlands and the intertidal area;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "estuary" means a semiclosed coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;

(7) "exposed high-energy coasts" means open and unprotected sections of coastline with exposure to ocean generated wave impacts and usually characterized by coarse sand, gravel, boulder beaches, and well-mixed coastal water;

(8) "facilities related to commercial fishing and seafood processing" includes hatcheries and related facilities, seafood processing plants and support facilities, marine industrial and commercial facilities, and aquaculture facilities;

(9) "geophysical hazards" includes potential flooding, tsunami run-up, landslides, snowslides, severe faults, and ice hazards;

(10) "mining and mineral processing" means the development of mineral resources extracted in tidal rivers, coastal water, and on continental shelves of the open sea, and found in surface, subsurface, and aqueous deposits;

(11) "offshore areas" means submerged lands and waters seaward of the coastline;

(12) "rocky islands and seacliffs" means islands of volcanic or tectonic origin with rocky shores and steep faces, offshore rocks, capes, and steep rocky seafronts;

(13) "tideflats" means mostly unvegetated areas that are alternately exposed and inundated by the falling and rising of the tide;

(14) "transportation and utility routes and facilities" include power transmission lines, mineral slurry lines, oil and gas pipelines, land and marine corridors, railways, highways, roadways, air terminals, water and sewage transfer, and facilities required to operate and maintain the route or facility;

(15) "upland" means drainages, aquifers, and land, the use of which would have a direct and significant impact on coastal water;

(16) "uses of state concern" has the same meaning as in AS 46.40.210(6);

(17) "water-dependent" means a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body;

(18) "water-related" means a use or activity

which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with water-dependence and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered;

(19) "wetlands" includes both freshwater and saltwater wetlands; "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth; "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.040

CHAPTER 85. GUIDELINES FOR DISTRICT COASTAL MANAGEMENT PROGRAMS

Article
1. Program Elements
2. Government Process
3. General Provisions

ARTICLE 1. PROGRAM ELEMENTS

Section
10. Coverage of chapter
20. Needs, objectives, and goals
30. Organization
40. Boundaries
50. Resource inventory
60. Resource analysis
70. Subject uses
80. Proper and improper uses
90. Policies
100. Implementation
110. Public participation

6 AAC 85.010. COVERAGE OF CHAPTER. (a) This chapter contains guidelines for the use of and application by districts in carrying out their responsibilities under the Alaska Coastal Management Act (AS 46.40 and AS 44.19.891 – 44.19.894).

(b) At a minimum, the council will review this chapter annually. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.020. NEEDS, OBJECTIVES, AND GOALS. Each district program must include a statement of the district's overall coastal management needs, objectives, or goals, or the district's comprehensive land and resource use plan. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.030. ORGANIZATION. Each district program must include a description of the district program organization for coastal management. Budgetary and staff needs and, where appropriate, a schedule for necessary

reorganization must be included. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.040. BOUNDARIES. (a) Each district program must include a map of the boundaries of the coastal area within the district subject to the district program.

(b) Before council approval of the district program, initial boundaries must be based on *Biophysical Boundaries of Alaska's Coastal Zone* (published by the Office of Coastal Management and the Alaska Department of Fish and Game, 1978, a copy of which is on file with the Office of the Lieutenant Governor, and which is available from the Office of Coastal Management) and must include the zone of direct interaction and the zone of direct influence.

(c) Final boundaries of the coastal area subject to the district program may diverge from the intial boundaries if the final boundaries

(1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water; and

(2) include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches.

(d) If the criteria in (c) of this section are met, final boundaries of the coastal area subject to the district program may be based on political jurisdiction, cultural features, planning areas, watersheds, topographic features, uniform setbacks, or the dependency of uses and activities on water access.

(e) The boundaries of the district must be sufficiently compatible with those of adjoining areas to allow consistent administration of the Alaska coastal management program. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.050. RESOURCE INVENTORY. Each district program must include a resource inventory which describes, in a manner sufficient for program development and implementation

(1) habitats listed in 6 AAC 80.130 that are found within or adjacent to the district;

(2) major cultural resources that are found within or adjacent to the district;

(3) major land and water uses and activities which are conducted within or adjacent to the district;

(4) major land and resource ownership and management responsibilities within or adjacent to the district; and

(5) major historic, prehistoric, and archaeological resources which are found within or adjacent to the district. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.060. RESOURCE ANALYSIS. Each district program must include a resource analysis which describes, in a manner sufficient for program development and implementation

(1) significant anticipated changes in the matters identified under sec. 50 of this chapter;

(2) an evaluation of the environmental capability and sensitivity of resources and habitats, including cultural resources, for land and water uses and activities; and

(3) an assessment of the present and anticipated needs and and demands for coastal habitats and resources. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.070. SUBJECT USES. Each district program must include a description of the land and water uses and activities which are subject to the district program. The uses and activities mentioned in ch. 80 of this title are, if

applicable, subject to the district program. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.080. PROPER AND IMPROPER USES. Each district program must include a description of the uses and activities, including uses of state concern, that will be considered proper, and the uses and activities, including uses of state concern, that will be considered improper within the coastal area, including land and water use designations. This description must be based on the district's statement of overall needs, objectives, or goals, or the district's comprehensive land and resource use plan, under sec. 20 of this chapter, and must be consistent with the standards contained in ch. 80 of this title. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.090. POLICIES. Each district program must include a summary or statement of the policies that will be applied to land and water uses and activities subject to the district program and the process which will be used to determine whether specific proposals for land and water uses and activities will be allowed. It shall be the general policy of the district to approve specific proposals for uses and activities within areas designated for those uses and activities under sec. 80 of this chapter. Districts shall use existing means appropriate for the evaluation of specific proposals to the greatest extent feasible and prudent. Policies and procedures under this section must be consistent with the standards contained in ch. 80 of this title and must meet the following criteria:

(1) comprehensiveness, so as to apply to all uses, activities and areas in need of management;

(2) specificity, so as to allow clear understanding of who will be affected by the district program, how they will be affected, and whether specific proposals for land and water uses and activities will be allowed; and

(3) enforceability, so as to insure implementation of and adherence to the district program. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.100. IMPLEMENTATION. Each district program must include a description of the methods and authority which will be used to implement the district program. Methods and authority must be adequate to insure program implementation, and any additional methods or authority which are required must be specified. Methods and authority include land and water use plans, municipal ordinances and resolutions, (including shoreline, zoning, and subdivision ordinances and building codes), state and federal statutes and regulations, capital improvement programs, the purchase, sale, lease, or exchange of coastal land and water resources, cooperative agreements, tax exemptions for nondevelopment purchase of development rights, memoranda of understanding, and coordinated project or permit review procedures. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.110. PUBLIC PARTICIPATION. Each district program must include evidence of effective and significant opportunities for public participation in program development under sec. 130 of this chapter. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030

ARTICLE 2.
GOVERNMENT PROCESS

Section

120. Submittals to council
130. Public involvement
140. Coordination and review
150. Council review

6 AAC 85.120. SUBMITTALS TO COUNCIL. (a) During program development, districts shall submit brief annual progress reports concerning program development to the council.

(b) Following adoption of the final program, districts shall submit brief annual progress reports concerning program implementation to the council.

(c) All significant amendments to the district program must be submitted to the council for approval. The Office of Coastal Management shall review proposed amendments to determine if council approval is required. This determination is subject to council review when requested by a council member.

(d) Districts shall give conceptual approval to district programs and significant amendments to district programs before their submission to the council. The district program as approved by the council becomes effective upon adoption by the district. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.130. PUBLIC INVOLVEMENT. (a) No less than two public meetings must be held within the district during program development to inform the public and receive comments concerning the program. A brief summary or report of the matters considered at the public meeting held under this subsection must be prepared by the district, made available to the public, and retained for inclusion in the record file referred to in sec. 150(c) of this chapter.

(b) At least 30 days before giving conceptual approval to the district program or significant amendment to the district program, the district shall give public notice of the proposed action by conspicuous advertisement in a newspaper of general circulation within the district. The notice must specify the time and place of a public hearing on the proposed action. The public hearing under this subsection may be held not sooner than 10 days after publication of the notice. At the public hearing, each interested person must be given the opportunity to present statements, arguments, or contentions, orally or in writing. Districts shall ensure that, where reasonably requested, translation into the appropriate Native language is provided. The district shall consider all relevant matter presented to it. A written transcript or electronic recording of the public hearing must be submitted to the council.

(c) In addition to the requirments of (b) of this section, districts shall provide publicly advertised opportunities for public involvement in the development of all program elements contained in secs. 20 – 110 of this chapter.

(d) Districts shall provide the public, in a timely manner and in understandable form, information explaining the district coastal management program, the requirements of public participation in program development, how and when the public may participate in program development, what information is available, and where that information may be obtained. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.140. COORDINATION AND REVIEW. Districts shall provide opportunities for coordination and review by federal, state, and local governmental agencies, including adjacent districts, and other persons with a significant interest in coastal resources or who are conducting or may conduct uses and activities that have or are likely to have a direct and significant impact on the district's coastal area. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 85.150. COUNCIL REVIEW. (a) When a district program or significant amendment to a district program is given conceptual approval by the district, the program or amendment, together with the transcript or recording of the public hearing held under sec. 130(b) of this chapter and all other material on which the district based its decision, must be submitted to the council.

(b) Within 30 days after submission of the district program or amendment under (a) of this section, the Office of Coastal Management shall issue its recommendation. The recommendation may be based, in whole or in part, on matters not submitted by the district under (a) of this section. Any matters so used must be identified in the recommendation and placed in the record file under (c) of this section. The recommendation must contain findings and conclusions based on this chapter, the standards contained in ch. 80 of this title, AS 46.40.060, and AS 46.40.070. The recommendation must be served on the district, the council, and all persons who testified or submitted timely

written statements at the public hearing held under sec. 130(b) of this chapter.

(c) A record file containing all matter submitted by the district under (a) of this section, the Office of Coastal Management's recommendation under (b) of this section, and all matters on which the recommendation was based must be maintained at the Office of Coastal Management and at a convenient location within the district.

(d) Within 30 days after service of the recommendation, any person served with the recommendation may serve upon the council comments on the recommendation. Within 10 days after the deadline for serving comments on the council under this subsection, the Office of Coastal Management may submit additional matter to the council in response to the comments. All comments served and all additional matter submitted under this subsection will be placed in the record file.

(e) Within 20 days after the deadline for the Office of Coastal Management's submission of additional matter to the council under (d) of this section, the council will approve or disapprove the district program, in whole or in part. The council's decision will contain findings and conclusions based on this chapter, the standards contained in ch. 80 of this title, AS 46.40.060, and AS 46.40.070. The council's findings and conclusions will be based upon matters contained in the record file. The council will, in its discretion, adopt the findings and conclusions of the Office of Coastal Management by reference. The council will serve its decision under this subsection on the district and on all persons who submitted timely comments on the staff recommendation under (d) of this section, and will place the decision in the record file.

(f) If the council's decision under (e) of this section disapproves, in whole or in part, the district program, the decision will specify the date and location for the initial mediation session under AS 46.40.060(b). Mediation sessions will be held within the district and will be scheduled with due regard for the convenience of the participants. Any person served with the council's decision under (e) of this section may attend mediation sessions.

(g) If the council and district reach accord in mediation sessions held under (f) of this section, the council will, within 20 days after reaching accord, serve its modified decision on the district and all persons who were served with the council's decision under (e) of this section, and will place the modified decision in the record file. The modified decision will contain findings and conclusions, based on the record file and additional matters adduced during mediation, necessary to demonstrate that the modified decision does not violate this chapter, the standards contained in ch. 80 of this title, AS 46.40.060, or AS 46.40.070.

(h) If the council and the district do not reach an accord, the council will, within 20 days after its determination that an impasse has been reached, set the matter for an adjudicatory hearing under AS 46.40.060(c). Notice of the hearing under AS 44.62.370(c) will be served on the district and all persons who were served with the council's decision under (e) of this section. Any person served with notice of the hearing under this subsection may intervene as a party to the hearing. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

ARTICLE 3.
GENERAL PROVISIONS

Section
900. Definitions

6 AAC 85.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "beaches" means the area affected by wave action directly from the sea;

(2) "marine coastal water" means water adjacent to shorelines which contains a measurable quantity of seawater, including sounds, bays, lagoons, bayous, ponds and estuaries, and the living resources which are dependent on these bodies of water;

(3) "council" means the Alaska Coastal Policy Council;

(4) "district" means a coastal resource district as defined in AS 46.40.210(2);

(5) "district program" means a district coastal management program;

(6) "islands" means bodies of land surrounded by water on all sides; interior portions of major islands may be excluded from the coastal area if uses of these islands do not cause direct and significant impacts on coastal waters;

(7) "saltwater wetlands" has the same meaning as that contained in 6 AAC 80.900(19); and

(8) "transitional and intertidal areas" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels. (Eff. 7/18/78, Reg. 67)

Authority: AS 44.19.893
AS 46.40.030
AS 46.40.040

6 AAC 80.040(b), COASTAL DEVELOPMENT, is amended to read:

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations, (Vol. 42 of the Federal Register, pp. 37133--47 (July 19, 1977)). (Eff. 7/18/78, Reg. 67; am. / /, Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.060, RECREATION, is amended by adding a new subsection to read:

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.070, ENERGY FACILITIES, is amended to read:

(a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

(1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;

(2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;

(3) consolidate facilities;

(4) consider the concurrent use of facilities for public or economic reasons;

(5) cooperate with landowners, developers, and federal agencies in the development of facilities;

(6) select sites with sufficient acreage to allow for reasonable expansion of facilities;

(7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;

(8) select harbors and shipping routes with least exposure to

reefs, shoals, drift ice, and other obstructions;

(9) encourage the use of vessel traffic control and collision avoidance systems;

(10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;

(11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that the design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.080(a), TRANSPORTATION AND UTILITIES, is amended to read:

(a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.100, TIMBER HARVEST AND PROCESSING, is amended to read:

(a) Commercial timber harvest activities in the coastal area must be conducted so as to meet the following standards:

(1) the location of facilities and the layout of logging systems must be sited so as to minimize adverse environmental impacts;

(2) free passage and movement of fish in coastal water must be assured; and

(3) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, prevent adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

(b) Commercial timber transport, storage, and processing in the coastal area must be conducted so as to meet the following standards:

(1) onshore storage of logs must be encouraged where compatible with the objectives of the Alaska Coastal Management Program;

(2) sites for in-water dumping and storage of logs must be selected and these activities conducted so as to minimize adverse effects

on the marine ecosystem, minimize conflicts with recreational uses and activities, be safe from storms, and not constitute a hazard to navigation;

(3) roads for log transport and harvest area access must be planned, designed, and constructed so as to minimize mass wasting, erosion, sedimentation, and interference with drainage, and must be adequately maintained until they are returned to their pre-road natural drainage patters (put-to-bed); and

(4) stream crossings, including bridges and culverts, must be kept to a minimum number, designed to withstand seasonal high water and flooding, and must provide for free passage and movement of fish. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.110(a), MINING AND MINERAL PROCESSING, is amendend to read:

(a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.160(a), AREAS WHICH MERIT SPECIAL ATTENTION, is amended to read:

(a) Any person may recommend to a district or to the council areas to be designated as areas which merit special attention. Districts shall designate in district programs areas which merit special attention. Areas which are not in districts and which merit special attention shall be designated by the council with the concurrence of appropriate state agencies, municipalities, and villages affected by the designation. Designations must include the following information:

(1) the basis or bases for designation under AS 46.40.210(1) or (b) of this section;

(2) a map showing the geographical location, surface area and, where appropriate, bathymetry of the area;

(3) a description of the area which includes dominant physical and biological features;

(4) the existing ownership, jurisdiction, and management status of the area, including existing uses and activities;

(5) the existing ownership, jurisdiction, and management status of adjacent shoreland and sea areas, including existing uses and activities;

(6) present and anticipated conflicts among uses and activities within or adjacent to the area, if any; and

(7) a proposed management scheme, consisting of the following:

(A) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to land and water within the area;

(B) a summary or statement of the policies which will be applied in managing the area; and

(C) an identification of the authority which will be used to implement the proposed management scheme. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 80.900, DEFINITIONS, is amended by adding new paragraphs to read:

6 AAC 80.900, DEFINITIONS. Unless the context indicates otherwise, in this chapter

(20) "feasible and prudent" means consistent with sound engineering practice and not causing environmental, social, or economic problems that outweigh the public benefit to be derived from compliance with the standard which is modified by the term "feasible and prudent;

(21) "including" means including but not limited to;

(22) "major energy facility" includes marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilities; "major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:

(1) a facility required to support energy operations for exploration or production purposes;

(2) a facility used to produce, convert, process, or store energy resources or marketable products;

(3) a facility used to transfer, transport, import, or export energy resources or marketable products;

(4) a facility used for in state energy use; or

(5) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (1) - (4) of this paragraph;

6 AAC 80.900(9), is amended to read:

(9) "geophysical hazard areas" means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami run-up, storm surge run-up, landslides, snowslides, faults, ice hazards, erosion, and littoral beach process;
(Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.040(a), BOUNDARIES, is amended to read:

(a) Each district must include a map of the boundaries of the coastal area within the district subject to the district program. Boundaries must enclose those lands which would reasonably be included in the coastal area subject to the district program if they were not subject to the exclusive jurisdiction of the federal government. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.130(b), PUBLIC INVOLVEMENT, is amended to read:

(b) At least 60 days before giving conceptual approval to the district program or significant amendment to the district program, the district shall give written notice to the council and any person who has requested notice in writing, as well as public notice of the proposed action by conspicuous advertisement in a newspaper of general circulation within the district. In addition, notice must be given by radio and by posting in villages and municipalities within the district. The notice must specify the time and place of a public hearing on the proposed action and the availability for review of the proposed district program document or significant amendment to the district program. The public hearing under this subsection may be held not sooner than 30 days after notice is given. At the public hearing, each person must be given

the opportunity to present statements, arguments, or contentions, orally or in writing. Districts shall insure that, where appropriate, translation into the appropriate Native language(s) is provided. The district shall consider all relevant matter presented to it. A written transcript or electronic recording of the public hearing must be submitted to the council. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.150, COUNCIL REVIEW, is amended to read:

(a) (((No changes.)))

(b) Within 30 days after submission of the district program or amendment under (a) of this section, the Office of Coastal Management shall issue its recommendation. The recommendation may be based, in whole or in part, on matters not submitted by the district under (a) of this section. Any matters so used must be identified in the recommendation and placed in the record file under (c) of this section. The recommendation must contain findings and conclusions based on this chapter, the standards contained in ch. 80 of this title, AS 46.40.060, and AS 46.40.070. The recommendation must be served on the district, the council, all persons who testified or submitted timely written statements at the public hearing held under sec. 130(b) of this chapter, and all persons who have requested the recommendation in writing. Broad public notice of the recommendation must be given.

(c) (((No changes.)))

(d) Within 30 days after service of the recommendation, any person served with the recommendation may serve on the council comments on the recommendation. Within 30 days after public notice of the recommendation, any other person may serve on the council comments on the recommendation. Within 10 days after the deadline for serving comments on the council under this subsection, the Office of Coastal Management may submit additional matter to the council in response to the comments. All comments served and all additional matter submitted under this subsection will be placed in the record file. The Office of Coastal Management shall respond to all comments within 30 days of receipt.

(e) (((No changes.)))

(f) If the council's decision under (e) of this section disapproves, in whole or in part, the district program, the decision will specify the date and location for the initial mediation session under AS 46.40.-060(b). Mediation sessions will be held with due regard for the convenience of the participants. Any person may attend mediation sessions. (Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

6 AAC 85.900, DEFINITIONS, is amended by adding new subsections to read:

6 AAC 85.900, DEFINITIONS. Unless the context indicates otherwise, in this chapter

(9) "feasible and prudent" has the same meaning as in 6 AAC 80.900;

(10) "including" has the same meaning as in 6 AAC 80.900.

(Eff. 7/18/78, Reg. 67; am / / , Reg.)

Authority: AS 44.19.893
AS 46.40.040

Apendix 4

HCR 125 and SCR 12

Appendix 4 Note:

This Appendix contains HCR 125 from the 1978 session of the Alaska Legislature, SCR 12 from the 1979 session, and two letters of intent from the 1979 session. HCR 125 was the resolution which approved the original ACMP regulations in June of 1978. SCR 12 approved the additional regulations which were approved by the Council in December of 1979. The two letters of intent request the Council to re-examine certain parts of the regulations and look into other matters.

Original sponsor: Community and Regional Affairs Committee

Offered: 5/25/78
Referred: Rules

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 125 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 Approving regulations adopted by the

6 Alaska Coastal Policy Council.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS Chapter 84, Session Laws of Alaska 1977, established the Alaska
9 Coastal Policy Council and charged the council with the responsibility, among
10 others, of adopting guidelines and standards for the development of the dis-
11 trict and the statewide coastal management programs; and

12 WHEREAS the Alaska Coastal Policy Council has adopted guidelines and
13 standards in 6 AAC 80 and 6 AAC 85 for use by state agencies and by munici-
14 palities and service areas in the preparation and development of the district
15 and statewide coastal management programs; and

16 WHEREAS the guidelines and standards approved and adopted by the Alaska
17 Coastal Policy Council are generally consistent with the objectives for the
18 state coastal management program identified in AS 46.40.020 and are the first
19 part of the statewide district coastal management program; and

20 WHEREAS AS 46.40.080 requires approval of the state coastal management
21 program either by adoption of a concurrent resolution or by majority vote of
22 the members of both houses at a joint legislative session as a prerequisite
23 to the taking effect of the program; and

24 WHEREAS, in accordance with the statute, the Alaska Coastal Policy
25 Council has submitted its final guidelines and standards for legislative
26 approval; and

27 WHEREAS, after opportunity for public hearing, the legislature finds
28 that certain provisions of 6 AAC 80.100, adopted by the council to establish
29 requirements for timber harvesting and processing in coastal areas are con-

fusing in language and intent, over broad in effect, and potentially detrimental to the development of timber harvest and processing in coastal portions of the state; and

WHEREAS, notwithstanding the shortcomings of these provisions, inclusion of requirements regulating commercial timber harvest in coastal areas is a requirement both to guide the preparation of coastal management programs by coastal resource districts and to gain federal program approval, financial support, and consistency;

BE IT RESOLVED that the Alaska State Legislature approves the regulations adopted by the Alaska Coastal Policy Council on March 31, 1978, and filed with the lieutenant governor on May 9, 1978, except that the following subsections and paragraphs of administrative regulations presented by the Alaska Coastal Policy Council are not approved: 6 AAC 80.100(a); 6 AAC 80.-100(b)(3); 6 AAC 80.100(c)(2) and (4); and 6 AAC 80.100(d).

Introduced: 2/13/79
Referred: Community & Regional Affairs

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

2 SENATE CONCURRENT RESOLUTION NO. 12

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 Approving regulations adopted by the

6 Alaska Coastal Policy Council.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS Chapter 84, Session Laws of Alaska 1977, established the Alaska
9 Coastal Policy Council and charged the council with the responsibility of
10 adopting regulations establishing guidelines and standards for the develop-
11 ment of a coastal management program; and

12 WHEREAS the Alaska Coastal Policy Council has adopted guidelines and
13 standards in 6 AAC 80 and 6 AAC 85 for use by state agencies in making land
14 and water use decisions and for use by municipalities and coastal resource
15 service areas in the preparation and development of district and coastal
16 resource service areas coastal management programs; and

17 WHEREAS the guidelines and standards adopted by the council on March 31,
18 1978 have been approved by the legislature during the Second Session of the
19 Tenth Legislature with selective deletions and letters of intent calling for
20 further attention to certain matters in the guidelines and standards; and

21 WHEREAS the council adopted amendments to the guidelines and standards
22 on December 15, 1978, in response to the request of the legislature and other
23 parties; and

24 WHEREAS the amendments to the guidelines and standards approved and
25 adopted by the Alaska Coastal Policy Council are generally consistent with
26 the objectives for the state coastal management program identified in AS 46.-
27 40.020; and

28 WHEREAS AS 46.40.080 requires approval of amendments to the state
29 coastal management program either by adoption of a concurrent resolution by a

majority of the members of each house of the legislature or by majority vote of the members of each house at the time the houses are convened at a joint legislative session to confirm executive appointments submitted by the governor; and

WHEREAS, in accordance with the statute, the Alaska Coastal Policy Council has submitted its amendments to the guidelines and standards for legislative approval;

BE IT RESOLVED, that in accordance with AS 46.40.080, the Alaska State Legislature approves the amendments to 6 AAC 80 and 6 AAC 85 adopted by the Alaska Coastal Policy Council on December 15, 1978.

Official Business

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT
SCR 12

The concept of local control in coastal zone management has been basic to the development of the state's coastal zone management program. A predominant concern of the committee is the functioning of this local control in the unorganized borough.

This letter is intended to condition legislative approval of these regulations on a requirement that the Department of Community and Regional Affairs submit an adequate development plan for the organization of effective, locally-controlled coastal resource districts. Appropriations for the coastal management program will be allocated accordingly. The committee suggests that the Department of Community and Regional Affairs work with the Legislative Council to satisfy this requirement.

While rural communities may not initially want to involve themselves in coastal zone management, it is doubtful they will want to entrust it to others when fully understood. Considering the implications district coastal zone management has for subsistence habitat protection and rehabilitation, one can probably expect strong local participation in district coastal zone management policy making.

The Legislative Council will establish an interim program to monitor the state's coastal resource disticts' community organization. Important to this organization is fair local-level understanding of the phrase "land and water uses of state concern". The energy siting regulations are designed to guide local coastal resource districts to properly regulate such land and water uses of state concern.

In addition, the committee is aware that the proposed standard 6 AAC 80.160 (a) introduces a new element in the coastal management program . Existing public participation regulations (6 AAC 80.020 and 6 AAC 85.130) apply specifically to adoption of district programs and amendments to district programs. In districts which develop district programs containing areas which merit special attention, the public involvement provisions of 6 AAC 85.130 apply. It is the intent of this committee that regulations for public involvement be developed for areas not in districts which are designated as meriting special attention by the Council. Council designation should include evidence of effective and significant opportunity for public participation in the specified "concurrence" and such public involvement process should be specified in the Alaska Coastal Managemnet Plan Guidelines.

Further, it is the intent of the committee that the letter of intent of the Senate Community and Regional Affairs Committee which appears on page 463 of the Senate Journal be approved.

SENATE LETTER OF INTENT

SENATE CONCURRENT RESOLUTION NO. 12

Testimony received by the Community and Regional Affairs Committee indicated the need for a change in the Alaska Coastal Policy Council's regulations. Specifically:

(1) 6 AAC 80.100 (a)(3) timber harvest and timber management activities must be planned so as to protect streambanks and shorelines, prevent adverse impacts on fish resources and habitats, and minimize adverse impacts on wildlife resources and habitats.

The testimony indicated the need:

following words "streambanks and shorelines," delete "prevent" insert "minimize"

A representative from the Alaska Coastal Policy Council and a representative from the Office of Coastal Management concurred with the need for this change.

It is the intent of this committee that the words "minimize adverse impacts" should apply to both fish resources and habitats and wildlife resources and habitats.

The Committee urges the Alaska Coastal Policy Council to consider and adopt this change at its earliest convenience.

Adopted as a Senate Letter of Intent March 13, 1979 by unanimous consent

Appendix 5

The Internal Guidelines

INTERNAL GUIDELINES OF THE ALASKA COASTAL POLICY COUNCIL

Council Operations

(1) If a public member of the Council ceases to be a mayor, member of the assembly or council of a municipality, the Council shall recommend to the Governor the removal of that member from the Council and the declaration of a vacancy. Public members whose removal is recommended under this guideline shall serve until a replacement is appointed.

(2) Public members appointed to fill vacancies may be reappointed.

(3) The names of permanent alternates selected by members of the Council shall be submitted in writing to the Council.

(4) Per diem and travel for Council members and their alternates shall be provided from the Alaska coastal management program.

(5) The Council shall receive financial support from the Alaska coastal management program budget and from such other sources as become available.

(6) The Coordinator of the Office of Coastal Management shall be responsible for and have charge of Council records.

(7) Additional staff support to the Council shall be available from the Commissioner of the Department of Community and Regional Affairs as prescribed in the Alaska Coastal Management Act.

(8) All meetings of the Council, except for executive sessions conducted solely for personnel matters, shall be open to the public and the press. Public meetings shall be electronically recorded, where possible, and the record shall be made available to any interested party.

(9) Minutes of all public meetings of the Council shall be kept. All relevant areas of business and decisions of the Council shall be recorded in the minutes. Minutes shall be made available through the Office of Coastal Management.

(10) The Coordinator of the Office of Coastal Management shall present the official staff position regarding matters appearing before the Council. Each Council member or participant in the Alaska Coastal Management Program may, at the discretion of the Council, present his or her position on such matters to the Council.

(11) Each public member of the Council shall, to the extent practicable, keep the public within the region that member represents fully informed of all relevant matters concerning the Alaska Coastal Policy Council and Alaska Coastal Management Program.

Federal Agency Consultation and Coordination

(1) All participants in the Alaska Coastal Management Program, including coastal resource districts, state agencies, the Council, and Council staff, shall provide opportunities for federal agencies to participate in the Alaska Coastal Management Program, including furnishing timely notice of relevant action to federal agencies, and solicitation of federal agencies' comment, review, and contribution, where appropriate.

(2) The Council and its staff shall provide information concerning relevant federal agencies and programs to participants in the Alaska Coastal Management Program generally and as requested.

(3) The Council may, in its discretion, mediate or otherwise seek to resolve conflicts between federal agencies and participants in the Alaska Coastal Management Program.

(4) The Office of Coastal Management shall be the single designated state agency for all purposes of sections 305, 306, and 307 of the federal Coastal Zone Management Act.

(5) The Council shall establish procedures for the implementation of the federal consistency requirements of the federal Coastal Zone Management Act.

Appendix 6

Administrative Order

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER No. 54

FOR THE MANAGEMENT SYSTEM TO
IMPLEMENT THE
ALASKA COASTAL MANAGEMENT PROGRAM

Findings:

1. In 1977, the Alaska Legislature enacted the Alaska Coastal Management Act (AS 46.40) to provide for coordinated planning for the rational use of the coastal resources of the state. (AS 46.40.020);

2. A primary purpose of the Act is to avoid the creation of new regulatory structures wherever possible, relying instead upon existing state and local authorities to implement the provisions of the Act. Accordingly, AS 46.40.040(1) provides that the Alaska Coastal Policy Council shall develop guidelines and standards "for the use of and application by" local governments and state agencies;

3. In establishing the Alaska Coastal Policy Council, the legislature recognized that there is both a local and state interest in coastal management and provided representation on the Council for officials of local governments and seven state agencies. Six state agencies in particular were deemed to have primary land and water use responsibilities in the coastal area--the Departments of Commerce and Economic Development, Community and Regional Affairs, Environmental Conservation, Fish and Game, Natural Resources, and Transportation and Public Facilities. Further, the legislature recognized that a seventh--Division of Policy Development and Planning--had a critical coordination responsibility. (AS 44.19.891(a)(2)(B)-(G));

4. On March 31, 1978, the Alaska Coastal Policy Council adopted the Alaska Coastal Management Program (ACMP) Guidelines and Standards for land and water use activities in the coastal area. A general provision in the standards requires that each state agency reviewing or considering a coastal land or water use or activity under its jurisdiction shall determine and assure that the use or activity is consistent with the ACMP Guidelines and Standards (6 AAC 80.010(b));

5. On June 18, 1978, House Concurrent Resolution No. 125, approving the ACMP Guidelines and Standards, was passed by the legislature, and the guidelines and standards took effect on July 18, 1978;

6. Because of the provisions of the Alaska Coastal Management Act, each state agency is responsible for administering land and water use regulations and controls in conformity with both the ACMP Guidelines and Standards, and, as required in AS 46.40.100, also in conformity with the coastal programs of local governments and coastal resource service areas which have been approved and are in effect;

7. Each state agency is responsible for insuring the implementation of the Alaska Coastal Management Program, and for determining whether there exists any impediment within the agency's statutes, regulations or procedures to the carrying out of that responsibility (AS 46.40.200). It must be recognized that in complying with this obligation, state agencies must first determine whether impediments exist for the carrying out of the ACMP Guidelines and Standards and then do so again for each subsequent local coastal program which takes effect;

8. In light of the purposes of the Alaska Coastal Management Act, it is of vital importance that the regulations and local coastal programs adopted by the Council are uniformly and coherently applied by state agencies making and reviewing coastal land and water use decisions, while at the same time making maximum use of existing expertise within each state agency, and avoiding time delays in evaluation of, and agency action upon, proposals for coastal land and water uses;

9. Upon approval of the Alaska Coastal Management Program under section 306 of the federal Coastal Zone Management Act, it will be necessary to review federal projects and permit and license applications for consistency with the Alaska Coastal Management Program under section 307 of the federal Act. The state must designate a single agency for making these determinations;

Order:

In light of the foregoing, I JAY S. HAMMOND, Governor of the State of Alaska, order and declare the following:

1. The foregoing cited responsibilities and obligations require the establishment of a system and procedures to

assure uniform, coherent and aggressive implementation of the Alaska Coastal Management Program, and further delineation of responsibility among the state agencies. Toward this end, this order creates and formalizes the ACMP management system;

2. Every state agency shall comply with applicable provisions of the order;

3. Each state agency represented on the Alaska Coastal Policy Council pursuant to AS 44.19.89(b)-(g) (hereafter "primary agency") shall, on or before June 30, 1979, prepare a written report describing how that agency shall carry out its responsibilities under this Order, 6 AAC 80.010(b), and AS 46.40.200. The report shall include existing or proposed procedures, regulations, and other material deemed necessary by the agency, and shall detail the coastal land and water uses and activities subject to that agency's authority, for which it will determine consistency with ACMP. The report shall also show how the agency plans to provide public comment opportunities in consistency determinations using existing public hearing and comment procedures to the maximum extent practicable. The agency shall forward a copy of the report to the Division of Policy Development and Planning (DPDP), which in turn will assure the reports are consistent.

4. Within 30 days of the execution of this order, each primary agency shall designate a coastal management liaison who will be responsible for communicating with DPDP and other ACMP participants on matters related to this order and other ACMP matters. Notification of this designation will be filed with DPDP.

5. In accordance with 6 AAC 80.010, each state agency, in authorizing--by permit, license or other approval--any use or activity having significan impact on the coastal area, shall grant the permit, license or other approval if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use or activity is consistent with the standards contained in 6 AAC 80 and with approved local coastal programs. The provisions of this paragraph apply to any permit, license or other approval for which application is made after July 18, 1978, and which is for a use or activity located to be or located between the seward limit of the United States territorial sea and the landward boundary of any applicable district program.

6. Upon the execution of this order, each state agency shall review each pending major land or water use project or plan in the coastal area being conducted, or wholly or partially financed, by that agency, to determine

whether the project or plan complies with the standards contained in 6 AAC 80 and approved district coastal programs. Agencies shall include lists of such activities in the report provided for in paragraph 3 above. A project is considered "major" if the agency determines that it is likely to significantly affect land or water resources in the coastal area. All uncompleted major projects are considered "pending" unless they have advanced beyond the conceptual stage and have been funded or approved by the legislature. After execution of this order, no state agency may make any fiscal or other resource commitment to (a) any pending major project, or (b) any major project initiated after execution of this order, unless the agency determines that the project is consistent with the standards contained in 6 AAC 80 with approved district coastal programs, and with other applicable state laws and regulations.

7. Within one year of the execution of this order, each state agency shall review all projects or plans of that agency which may affect land or water use in the coastal area, and make any changes in those plans that may be necessary to insure their consistency with the standards contained in 6 AAC 80 and with approved district coastal programs. Upon a determination under this paragraph that the plan is consistent with the standards contained in 6 AAC 80 and with approved district coastal programs, projects or plans specified as to their nature and location in the plan need not be approved under paragraph 6 of this order, unless significant changes in the project are made prior to its execution.

8. Each primary agency shall, within three months of the effective date of each district coastal management program, prepare supplementary reports to the initial report required under paragraph 3 of this order, showing agency actions necessary to assure full implementation of the district program. A copy of each supplementary report shall be forwarded to DPDP. DPDP will, in consultation with the agencies and the district, consolidate and finalize the supplementary report within three months and make necessary contractural arrangements to assure full implementation of the district program.

9. While, in most cases, consistency determinations can be most efficiently and properly made by the primary agencies responsible for them, there may be certain occasions when an agency concludes that it cannot properly make such a determination. In such cases, the agency, or I, may ask DPDP to make the consistency determination. When making such a request, the agency shall promptly transmit the application for a permit, license or other approval to DPDP for review. In the report required in paragraph 3 of this order, an agency may stipulate certain coastal land and water uses and activities on which it will routinely ask

DPDP to make the consistency determination. When making such a request, the agency shall promptly transmit the application for a permit, license or other approval to DPDP for review. In the report required in paragraph 3 of this order, an agency may stipulate certain coastal land and water uses and activities on which it will routinely ask DPDP to make the consistency determination. The agency shall provide reasonable time limits for DPDP's review, after which consistency shall be presumed in order to meet applicable review deadlines.

10. Should a dispute arise between or among state agencies, or between or among state agencies and DPDP, as to any matter relevant to consistency with the provisions of 6 AAC 80, the matter will be resolved by the Coastal Policy Council, if the matter falls under Council jurisdiction set forth in AS 46.40.100, otherwise I shall resolve the matter.

11. DPDP will be the responsible agency for all matters related to the federal consistency provisions of section 307 of the federal Act. DPDP shall utilize appropriate expertise of other state agencies, and the views of local governments, in discharging its responsibilities under this paragraph. The A-95 Clearinghouse will be used to process federal consistency matters concerning federal developments (307(c)(1)), (307)(c)(3)(A)), plans for the exploration or development of areas leased under the Outer Continental Shelf Lands Act (307)(c)(3)(B)), and applications for federal assistance (307)(d)). Standard clearinghouse procedures will be used to coordinate the review for each of these types of consistency matters.

12. In making federal consistency determinations, state agencies and DPDP shall consult with affected local governments, federal agencies, and other state agencies, and shall accord great weight to their views within their areas of expertise.

13. Nothing in this order may be construed as authorizing a state agency to defer action on any application for a permit, license or other approval beyond the time period otherwise provided by law.

14. In carrying out their obligations under the Alaska Coastal Management Act and the ACMP Guidelines and Standards, state agencies shall assure that uses of state concern, as defined in AS 46.40.210(6) and as may be later defined by the Council, are given full consideration. State agencies must participate in the development and review of district coastal programs so that the districts will be made aware of potential exclusions or restrictions of uses of state concern

that might be caused by proposed provisions of district programs. Further, in carrying out their own planning functions related to ACMP, state agencies will avoid arbitrary or unreasonable exclusions of uses of state concern which might be caused by their own actions.

15. If any person, state agency, federal agency, or local government feels that a state agency is not making consistency determinations in accord with the provisions of the Alaska Coastal Management Program and this order, he shall submit to DPDP a written statement detailing the grounds for the complaint. DPDP shall review the statement and, if it appears that the complaint has merit, shall attempt to resolve the matter informally with the agency within 30 days of receipt of the statement. If resolution by this means fails, DPDP shall bring the matter to the attention of the Coastal Policy Council if the matter relates to development, approval, or implementation of a district program, and to me for all other matters.

16. Until applicable district coastal program boundaries are established, the boundaries delineated by 6 AAC 85.040(b) shall be the boundaries for purposes of this order. Boundaries of approved district programs will be used by state agencies.

17. This order is intended to assure interagency communication, coordination and effective implementation and management of ACMP. Nothing in this Administrative Order shall be construed as conferring standing upon any party, public or private, to institute litigation against the state government or an agency thereof for noncompliance with this order.

Done in Juneau on this 23rd
day of April, 1979.

Jay S. Hammond
Governor

Appendix 7

Energy Facilities Planning Process

I. FEDERAL REQUIREMENTS

The Coastal Zone Management Act of 1972, as amended in 1976, requires that states develop a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities. (Section 305(b)(8)). To implement this section of the law, federal regulations require coastal states to pay special attention to energy facility siting and to address the following procedural elements:

(a) identification of energy facilities which are likely to locate in, or which may significantly affect, a state's coastal zone;

(b) procedures for assessing the suitability of sites for such facilities;

(c) articulation of state policies for managing energy facilities and their impacts, including a clear articulation of policies regarding conditions that may be imposed on site location and facility development;

(d) identification of how interested and affected public and private parties may be involved in the planning process, and a discussion of the means for continued consideration of the national interest in the planning for and siting of energy facilities that are necessary to meet more than local requirements, after program approval; and

(e) identification of legal authorities and management techniques that will be used to implement state policies and procedures.

II. BACKGROUND AND ALASKA STATUTORY PROVISIONS

The prospect of nine offshore lease sales in three years, including a joint federal/state sale in the Beaufort Sea, and the possibility of major energy facilities located along Alaska's coast, captured much attention during the formative stages of Alaska's coastal program and focused a large segment of the work accomplished on the siting of energy-related facilities and the mitigation of significant impacts. Prior to passage of the Alaska Coastal Management Act, the commissioner-level Coastal Management Policy Committee met regularly and designated the Department of Community and Regional Affairs to develop, in concert with all levels of government and the petroleum industry itself, a workable planning process for energy facility siting. The objective was to build a unified state position which recognized both the national interest and the state's desire to manage onshore and nearshore activities associated with energy development.

To accomplish one half of this objective, the state incorporated national objectives for energy self-sufficiency into its oil and gas leasing program for state-owned lands. The Alaska Department of Natural Resources has announced a five-year leasing schedule in January, 1979 which calls for sales as follows:

1979	July	Copper River Basin (Exempt Acreage Sale)
	December	Beaufort Sea (State-Federal Sale)
1980	Early	Relinquished tracts on Arctic Slope (Exempt Acreage Sale)
	Mid	Cook Inlet South of Kenai River (Exempt Acreage Sale)
	Late	Upper Cook Inlet onshore and offshore including the Susitna Valley
1981*	Early	Lower Cook Inlet offshore and onshore (Coordinated with planned Federal Sale)
	Mid	Prudhoe Bay Uplands
	Late	Norton Basin offshore and onshore (Coordinated with planned Federal Sale)
1982*	Early	Second Beaufort Sea sale (submerged lands)
	Mid	Middle Tanana Basin and Copper River Basin
	Late	Southwest Bristol Bay Uplands
1983*	Early	Upper Cook Inlet onshore and offshore including Susitna Valley (possible drainage sales)
	Mid	Chukchi Sea onshore and offshore (Coordinated with planned Federal Sale)
	Mid	Norton Basin
	Late	Minchumina Basin

*Additional exempt acreage sales are also planned for 1981, 1982 and 1983 as acreage in these categories is identified for lease. Exempt acreage is acreage which can be leased without having been included in the schedule (AS 38.05.180(d) and (w)). In general, relinquished acreage will be re-offered on a regular basis as it becomes available.

The other half of the objective to manage onshore and nearshore activities associated with energy development is recognized in the Alaska Coastal Management Act of 1977 which directs the Coastal Policy Council to:

> *initiate a process for identifying and managing uses of state concern within specific areas of the coast (AS 46.40.040(4)).*

As defined in the Act, "uses of state concern" include:

> *uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs (and) the siting of major energy facilities...which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or surrounding area, are reasonably likely to present issues of more than local significance (AS 46.40.210(6)).*

The uses so defined, the standards and guidelines of the Alaska Coastal Management Program require the state and districts to identify sites suitable for major energy facilities and to approve actual siting decisions on the basis of standards concerning the onshore and nearshore aspects of energy activity (6 AAC 80.070(b)).

III. DEFINITION AND IDENTIFICATION OF ENERGY FACILITIES LIKELY TO AFFECT THE COASTAL AREA

The Alaska Coastal Policy Council and the legislature has approved the following definition in 6 AAC 80.900 for major energy facilities which are likely to locate in, or which may significantly affect, the coastal area:

> *"major energy facility" means a development of more than local concern carried out in, or in close proximity to, the coastal area, which meets one or more of the following criteria:*
>
> *(a) a facility required to support energy operations for exploration or production purposes;*
>
> *(b) a facility used to produce, convert, process, or store energy resources or marketable products;*
>
> *(c) a facility used to transfer, transport, import, or export energy resources or marketable products;*
>
> *(d) a facility used for in-state energy use;*
>
> *(e) a facility used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in (a)-(d).*

Major energy facilities include marine service bases and storage depots, pipelines and rights-of-way, drilling rigs and platforms, petroleum or coal separation, treatment, or storage facilities, liquid natural gas plants and terminals, oil terminals and other port development for the transfer of energy products, petrochemical plants, refineries and associated facilities, hydroelectric projects, other electric generating plants, transmission lines, uranium enrichment or nuclear fuel processing facilities, and geothermal facilites.

IV. ENERGY FACILITY PLANNING PROCESS

Alaska's energy facility planning process is central to its coastal management. Energy facility planning and management is shared by local and state governments. The basic steps of this process are outlined in the following discussion.

Site Selection

Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with the districts (6 AAC 80.070). In organized areas, district coastal programs will be developed. The program development process will result in the identification of sites for major energy facilities. In unorganized areas, district programs will be developed upon organization of coastal resource service areas. These may be organized where major economic activity in the area is likely, among other reasons. Such activity may include a call for nominations for oil and gas development in adjacent waters, or development of major energy facilities. In these areas, a district program will be developed which identifies sites suitable for major energy facilities.

The district program development process involves inventories of lands and waters, uses, assessments of the capability of the lands and waters to support uses, identifications of proper and improper uses and policies for land and water areas and uses.

The state's role in identifying sites suitable for development of energy facilities is likely to be more significant in unorganized areas than in organized areas. In cooperation with local governments, the state is prescreening potential energy facility sites at the present time.

Designation

Once sites suitable for energy facilities are identified, districts may decide to designate those sites for those uses. If identified sites are designated, it must be general policy of the district to approve specific proposals for uses and activities within areas designated for those uses (6 AAC 85.090). In deciding whether or not energy facilities will be considered proper or improper uses of their coastal areas, districts are bound not to arbitrarily or unreasonably exclude "uses of state concern." These are defined to include the siting of major

energy facilities (AS 46.40.210(6)), and all activities authorized by the issuance of a state or federal lease for mineral and petroleum resource extraction (6 AAC 80.070(c)). At the present time, state agencies are identifying "uses of state concern" with specific geographic regions of Alaska.

Once sites suitable for energy facilities are identified, they may be designated as "areas meriting special attention" if uses of the areas are dependent upon utilization of, or access to coastal waters (AS 46.40.210(1)(D)). Anyone can recommend designation of such an area. The recommendation must be accompanied by a special management program for the area and for the uses of the area, including policies. AMSAs will be designated by districts in their programs in organized areas and in unorganized areas by the Alaska Coastal Policy Council, provided the concurrence of state agencies, municipalities and villages affected by the designation is obtained. This process is appropriate for areas of extraordinary value which require special management attention.

Siting and Approval

The siting and approval of major energy facilities by districts and the state must be based on the standards which are discussed in the following section. The state intends to assess the demand for future energy facilities, and to prescreen potential sites in advance of siting decisions to determine whether they are capable of serving the national interest and other needs, suitable in terms of existing laws and state and local policies, and available for development.

Alaska does not at the present time have a formal energy facility siting and approval certification process, but the Office of the Governor is evaluating alternative approaches for reviewing major projects. It is anticipated that the process which is finally selected will be effectuated through an administrative order. At the present, major projects such as energy facilities are evaluated by specially designated task forces coordinated by the Division of Policy Development and Planning in the Office of the Governor.

V. STANDARDS AND IMPLEMENTATION MECHANISMS FOR SITING AND APPROVAL OF ENERGY FACILITIES

The standards which are described in this section have been approved by the Alaska Coastal Policy Council and the Legislature. They constitute the rules of Alaska for the nearshore and onshore aspects of energy development and provide direction for all energy facility siting decisions.

ENERGY FACILITY PLANNING...GENERAL GUIDELINES

(1) Optimum Location. *site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements; (6 AAC 80.070(b)(1)).*

(2) Compatibility. *site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs; (6 AAC 80.070(b)(2)).*

Discussion

In small coastal communities, where growth has been slow and fish processing plants may be the only industry of any consequence, major energy facility development will have a great impact. Planning, platting and zoning are important mechanisms for insuring compatibility of the development with existing and projected land uses. Sometimes, local bodies are reluctant to impose zoning out of fear of deterring development proposals. This fear is largely unfounded as it relates to energy. Sites meeting the requirements for such facilities are few, so the proposal itself indicates the area's high degree of desirability. Local government is in a good bargaining position as long as its conditions for siting are reasonable.

(3) Consolidation. *consolidate facilities; (6 AAC 80.070(b)(3)).*

Discussion

In the strictest sense, consolidation refers to the development and operation of an industrial facility as a unit by a single company or group of companies (utilization) or the sharing of the same facility. Broadly, however, consolidation refers to the concentration of different industrial activities in a single location, as in an industrial park.

Consolidation of energy facilities offers several benefits. The greatest public advantage is that the effects of development--visual, environmental, social and economic--are concentrated in the fewest different locations. Fewer sites imply less complicated and less costly systems of monitoring and of providing utilities or such basic services as fire and police protection. Cost savings may also be realized for industry from reduced capital and operating expenditures and avoidance of delays in processing necessary permits.

This standard means the state will discourage new energy facilities as long as existing sites can handle anticipated industrial needs. Since the effects of consolidation may not always be desirable, consolidation of energy facilities shall be discouraged if the capacity of existing facilities cannot be expanded. Instances when an exception might occur include, but are not limited to circumstances in which:

(a) additional harbor activities would seriously jeopardize marine safety;

(b) water supply is insufficient for future demand;

(c) environmental protection measures (e.g., ballast treatment facilities and solid waste disposal sites) at existing facilities could not be expanded to handle new loads;

(d) air and water quality problems would be compounded to a point where projected environmental degradation would exceed allowable state and federal air and water quality standards; and

(e) federal anti-trust laws.

(4) Concurrent Use. *consider the concurrent use of facilities for public or economic reasons; (6 AAC 80.070(b)(4)).*

Discussion

This standard acknowledges the contribution that major energy facilities could make to local and regional economies if they are planned with imagination and foresight. Provisions for long-term use or conversion of facilities should be included in initial stages of planning.

Service bases offer the greatest potential for concurrent use, particularly as a general cargo dock, because of a similarity of purpose and vessel size. Once a facility is no longer required, its reuse for similar activities may require only minor rehabilitation and structural alteration. Many facilities--docks, fuel storage tanks, warehouses, outside storage yards, office buildings, onshore pipelines and repair shops--could be reused in this manner.

Specialized facilities such as hydroelectric power projects, crude oil storage tanks and liquefaction plants usually cannot be directly reused or easily converted. If no appropriate ultimate use is determined for these facilities, they should be removed and the site as well as any other land disturbed should be reclaimed or restored. Since this will be costly, provisions for insuring and financing site reclamation or restoration should be stipulated in leases or permits as with the consolidation standard, federal anti-trust requirements could present concurrent use in certain circumstances.

(5) Cooperation. *seek to cooperate with landowners, developers, and federal agencies in the development of facilities; (6 AAC 80.070(b)(5)).*

Discussion

Cooperation management and development agreements are constructive ways of coordinating the many different decisions that contribute to successful development. The State is willing and seeks to enter into cooperative management and development agreements and to manage its lands and resources accordingly.

ENERGY FACILITY PLANNING...SITING CRITERIA

(1) Expansion. *select sites with sufficient acreage to allow for reasonable expansion of facilities;*

(2) Infrastructure. *site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;*

(3) Navigational Safety. *select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;*

(4) Traffic Control. *encourage the use of vessel traffic control and collision avoidance systems;*

(5) Site Preparation. *select sites where development will require minimal site clearing, dredging and construction in productive habitats;*

(6) Shipping Routes. *site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;*

(7) Resource Protection. *site facilities so that the construction of facilities and support infrastructure in coastal areas of Alaska are designed to allow for the free passage and movement of fish and wildlife with due consideration for historic migration patterns, and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;*

(8) Water Quality. *site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;*

(9) Air Quality. *site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;*

(10) Compatibility. *select sites designated for industrial purposes and where industrial traffic is minimized through population centers;*

(11) Interference. *select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment; (6 AAC 80.070(b)(6)-(16))*

ENVIRONMENTAL GUIDELINES AND STANDARDS

The state recognizes the necessity for energy development both to satisfy local demand and to contribute to the national need for energy resources. However, some coastal resources have an inherent vulnerability that makes protection expecially critical. Fish spawning and rearing grounds, bird nesting and staging areas, sea mammal rookeries and hauling out grounds and wildlife wintering areas are among the well-defined and limited habitats that must be protected if valued resource diversity and productivity are to be maintained. Both habitat requirements and resident populations at risk must be recognized when siting, construction and operating energy facilities.

The guidelines and standards of the Alaska Coastal Management Program provide direction for major energy facility siting and design in hazardous or ecologically sensitive coastal areas. They are accordingly incorporated into the energy element in full.

ENERGY FACILITY PLANNING...IMPLEMENTATION

(1) Planning Provisions

To meet the objectives of the Alaska Coastal Management Program (AS 46.40.020), the state will encourage energy facility planning that recognizes the national interest in energy development and related coastal dependent industrial uses. Such planning will identify suitable locations for energy facilities and allow for reasonable expansion in designated or zoned areas.

Zoning is a major mechanisim for ensuring consolidated and compatible development. Under existing statutes, the Department of Natural Resources and the Department of Transportation and Public Facilities have the authority to zone the Unorganized Borough and land surrounding airports, respectively. Although the state has not used this authority extensively to date, it may be used to insure that major energy facilities and associated activities are compatible with other land and resource uses. In incorporated areas, the state will be consistent with approved district coastal programs.

AUTHORITY

AS 29.33.070	Planning, Platting and Zoning 1st and 2nd Class Boroughs
AS 38.05.037	Planning and Zoning in the Unorganized Borough
AS 40.15.075	Platting in the Unorganized Borough
AS 29.43.040	Planning, Platting and Zoning in 1st and 2nd Class Cities in the Unorganized Borough
AS 35.30.020	State Compliance with Municipal Ordinances
AS 46.40.100	State and Municipal Compliance with District Coastal Management Programs
AS 31.05.040	Prescribing Rules and Regulations Governing Oil and Gas Activities on Alaska Lands
30 CFR 250.34	Federal Regulations for Exploration, Development and Production Plans on Federal OCS Lands
30 CFR 252	Outer Continental Shelf Oil and Gas Information Program

(2) Information Needs for Evaluating Proposals

To adequately evaluate proposals for major energy facilities, the state will require at least the following information for prospective developments:

Facility Proposed - e.g., service base, marine terminal, LNG plant.

Location - Of all facilities and activities associated with or expected to be attracted to the proposed development, e.g., helicopter operations, construction camps, motels.

Description of Proposed Facility - e.g., acreage, site plans, technologies to be used, probability and anticipated causes of system failure.

Expansion - Probability of additional demand on the proposed facility in the future; provisions for expansion and sharing of the facility with other companies; plans for unitization of OCS leases and/or shared pipelines to landfill.

Schedule - Proposed construction schedule and anticipated operational timetable over the life of the facility, e.g., type and level of seasonal activities, anticipated years of peak usage.

Land Status and Ownership - Of development site and other land affected by the proposal, e.g., private, public, unpatented, in litigation.

Management - Of the project, e.g., an oil company; a Native corporation, joint management.

Contractors and Subcontractors - For all or portions of the project, if known.

Resource Requirements - Quantities and probable sources of power, water, gravel, and other materials.

Transport - Frequency and routes of boat and aircraft movements and expected level of vehicular traffic in the region resulting from construction or operation of the facility.

Employment - Anticipated number of persons to be employed by job description, tenure (permanent/temporary), and place of employment.

Population - Approximate addition to the population of Alaska by place.

Public Services - Extent of need for the means of providing public services, e.g., road, sewers, water, solid-waste disposal, care, police and fire protection, and other health and social services.

Environmental Implications - Potential environmental benefits, conflicts and mitigative measures, particularly concerning solid-waste management and air and water quality.

Siting and Design - Features to compensate for natural processes (e.g., floods, earthquakes, storms, erosion and sedimentation); to provide for safe and effective management of sewage and solid waste; and to minimize noise and visual impacts.

Economic Implications - e.g., public cost and revenue resulting from the proposed project; potential conflicts with existing industry; anticipated expenditures in Alaska by place.

Social Implications - e.g., training programs, local hiring policy, housing, health care.

Arrangements for Reducing Social, Economic and Environmental Conflicts - e.g., traffic control systems, oil spill contingency plan, compensation plan, orientation program for imported workers.

Alternative Sites - For the required facilities and operations and reasons for rejecting alternative sites.

Obviously, much of this information could only be supplied by the developer, but, for general site information, the state will do its best to assist the developer. Presently, a developer can contact the Arctic Environmental Information and Data Center in Anchorage for many types of information.

AUTHORITY

43 U.S.C. 1331 et seq.	Outer Continental Shelf Lands Act of 1953, as amended
16 U.S.C 1456	Coastal Zone Management Act of 1972, as amended
42 U.S.C. 4331	National Environmental Policy Act of 1969
30 CFR 250.34	Exploration, development and production plans
15 CFR 930	Federal Consistency with approved coastal management programs

(3) Siting Mechanisms - State and Federal Administrative Procedures

Through consistency requirements and the issuance of permits and leases, the state will ensure that suitable sites for major energy facilities are chosen and developed according to the guidelines and standards of the Alaska Coastal Management Program. The following are among the most important means through which the state will guide energy development. Besides the existing statutory or regulatory requirements for each permit or license, the ACMP Guidelines and Standards and the anticipated administrative order will require conformance with the ACMP as a prerequisite for permit issuance.

(a) State Concurrence with Consistency Certification

According to the regulations promulgated in the Federal Register, lessees of federal OCS lands must submit exploration, development and production plans to the U.S. Geological Survey. States have the opportunity to comment on the adequacy of the plans and concur that the proposed activities are consistent with the state's coastal management program.

State concurrence with consistency certifications will be used to ensure that exploration, development and production plans conform to Alaska's coastal management program, including the energy facility planning standards of 6 AAC 80.070.

AUTHORITY

Pub. L. 92-583, Section 307	Coastal Zone Management Act of 1972, as amended

(b) State Land Disposal

The state will, to the maximum extent feasible, lease, sell or exchange state land in the vicinity of existing communities if such actions enhance local control over development and the site satisfies the state's siting criteria and if an approved municipal or district plan establishes the desirability of expansion onto state-owned parcels and provides for phased growth. Although local preference is a significant factor in deciding whether to lease, sell or exchange state land near existing communities, it is not the only factor. Additional considerations are specified in the Alaska Statutes and Administrative Code.

AUTHORITY

AS 38.05.020	Authorities and Duties of the Commissioner
AS 38.05.070-107	Leasing of Lands other than for the Extraction of Natural Resources
AS 38.05.300	Classification of Lands
AS 29.48.260	Municipal Properties
11 AAC 58	Leasing of Lands
11 AAC 60	Grazing Leases
11 AAC 62	Tide and Submerged Lands
11 AAC 64	Shore Fisheries Leasing

(c) Leasing of Lands

Land to which the state holds title or to which it may become entitled may be leased through an upland lease, a grazing lease, a tideland lease, or a shore fisheries lease. The director of the Division of Lands, Department of Natural Resources will determine the land to be leased and the conditions, limitations and terms of the lease. In some instances, local municipalities own the tidelands and have the authority to lease or dispose of the property according to the terms and conditions set by the assembly or council.

Where appropriate, the state will facilitate the consolidation of energy activities and will specify concurrent use of facilities as stipulations on leases.

AUTHORITY

AS 38.05.020	Authorities and Duties of the Commissioner
AS 38.05.070-107	Leasing of Lands other than for the Extraction of Natural Resources
AS 38.05.300	Classification of Lands
AS 29.48.260	Municipal Properties
11 AAC 58	Leasing of Lands
11 AAC 60	Grazing Leases
11 AAC 62	Tide and Submerged Lands
11 AAC 64	Shore Fisheries Leasing

(d) Tidelands Permits

Projects conducted on state-owned tidelands and submerged lands require permits issued by the Division of Land and Water Management, Department of Natural Resources and the U.S. Department of the Army, Corps of Engineers. Most onshore facilities supporting offshore energy operations will require these permits in conjunction with a lease.

AUTHORITY

AS 38.05.035	Powers and Duties of the Director
AS 38.05.330	Permits
11 AAC 62	Tide and Submerged Lands Obstruction of Navigable Waters, Generally, Wharves, Piers, etc.; Excavation and Filling
33 U.S.C. 1413	Dumping Permit Program for Dredged Material

(e) Right-of-Way Lease or Easement

"The State of Alaska reserves unto itself all rights, powers, privileges and immunities not preempted by federal interstate commerce laws and regulations in the right-of-way leasing of any state lands for pipeline construction, transmission, or operation within its boundaries."

Any construction or operation of oil, products or natural gas pipelines will commence only after a right-of-way lease and the necessary easements are obtained. Easements on right-of-way leases for crude oil and natural gas pipelines are granted by the Commissioner of Natural Resources on a non-competitive basis under conditions specified by him/her.

While right-of-way leases will only affect that portion of the pipeline crossing state lands, they may influence the location of marine pipeline routes destined for onshore installations.

AUTHORITY

AS 38.05.035	Powers and Duties of the Director
AS 38.05.330	Permits
AS 38.35.010	Legislative Declaration of Policy
11 AAC 58.200	Right-of-Way or Easement Permit

(f) Land Exchange

When a large parcel of land suitable for development is held in varied ownership by the state, P.L. 92-203 corporations (Native), and a municipality, the parties may enter into an agreement to sell, lease or exchange lands and thus encourage consolidated development at a particular location.

AUTHORITY

AS 38.95.050	Contracts between Department of Natural Resources and P.L. 92-203 Corporations
AS 29.48.260	Municipal Properties

(g) Air Quality Control Permit to Operate

Under certain topographic and meteorological conditions that trap and concentrate pollutants or when there is considerable development already at a particular location, the siting of an energy facility may cause air quality and related health and nuisance problems. The U.S. Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation share responsibility for regulating air emissions.

Under the new amendments to the Clean Air Act, EPA handles permits for all facility development subject to the Prevention of Significant Deterioration Program. Construction or modification of most sources of air emissions which have the potential to emit more than 100 tons per year of any air pollutant, and other sources which have the potential to emit 250 tons per year of any pollutant require air discharge approval. Approval is granted if:

1. The proposed facility will not violate the air quality increment areas classified on geographical basis;

2. The proposed facility will meet the best available air emission control technology;

3. The proposed facility will not violate national ambient air quality standards; and

4. The proposed facility meets all applicable guidelines and standards of the ACMP.

Presently the Alaska Department of Environmental Conservation has not promulgated regulations to implement the Prevention of Significant Deterioration Program. When regulations are adopted, the state will take over this permit function. All other air emissions permits required under the Clean Air Act

are issued by the Department of Environmental Conservation.

AUTHORITY

AS 46.03.010	Declaration of Policy
AS 46.03.140	Emission Control Requirements
AS 46.03.150	Classification and Reporting
AS 46.03.160	Additional Contaminant Control Measures
AS 46.03.170	Variances
18 AAC 15	Administrative Procedures
18 AAC 50	Air Quality Control
	Clean Air Act, Part 2
Secs. 160-169	Clean Air Act, as amended in 1977
40 CFR Part 51	Requirements for Preparation, Adoption and Submittal of Implementation Plans

(h) Anadromous Fish Protection Letter of Objection/Non-Objection

Any developer (public or private) who wishes to construct a hydroelectric project, onshore pipeline or engage in other energy activities which could affect the natural flow of a specified anadromous river, lake or stream must obtain approval from the Department of Fish and Game before beginning such a project.

The siting of a major energy facility on, across or near, an anadromous river, lake or stream could result in significant changes in the stream including:

siltation and sedimentation altering spawning and rearing habitats;

blockage of migration routes;

spillage of oil and other toxic materials; and

water withdrawal and dewatering of the system and associated entrapment/impingement.

The Department of Fish and Game will review proposed developments and may place stipulations on the siting, construction and operation of the proposed facility to assure that significant impacts, such as those cited above, will be avoided.

AUTHORITY

AS 16.05.870	Protection of Fish and Game
5 AAC 95.010	Waters Important to Anadromous Fish

(i) Critical Habitat Letter of Objection/Non-Objection

Under AS Title 16, the Department of Fish and Game can require a public or private entity to submit full plans, specifications and schedules for any proposed activities within a critical habitat designated by the state. Prior to commencing any work or development, the person or governmental agency must receive written approval or conditional approval

from the Commissioner.

In areas where the siting of major energy facilities may endanger the biological, physical and chemical characteristics of the habitat, the state will consider recommending to the legislature that these areas be designated critical habitats, thereby enhancing the opportunities for effective management of the impacts.

AUTHORITY

AS 16.20.230	Fish and Game Critical Habitat Areas
AS 16.20.260	Submission of Plans and Specifications
AS 16.20.270	Additional Critical Habitat Areas
6 AAC 80.130	Habitats

(j) Certificate of Risk Avoidance

A Certificate of Risk Avoidance is required of anyone who plans to operate a tank vessel in Alaskan waters, an oil terminal or a marina with storage capacity for refined petroleum products or their by-products.

The certificate is a means to assure that the operator of a facility or carrier has assumed a minimum level of financial responsibility for unlawful discharge of oil, has adopted and fully implemented a Spill Prevention Control and Countermeasure Plan, and has complied with all applicable regulations issued under AS 30.25 or AS 46.03.

AUTHORITY

AS 30.25	Oil Terminal Facilities: Transfer of Crude Oil, Refined Petroleum Products or Their By-Products
AS 46.03	Environmental Conservation
18 AAC 15	Administrative Procedures
18 AAC 20	Certificate of Risk Avoidance

(k) Discharge into Navigable Waters - Certificate of Reasonable Assurance

Any energy-related activity which may result in a discharge into navigable waters of Alaska will need a federal license or permit and a Certificate of Reasonable Assurance from the Department of Environmental Conservation under Section 401 of the Federal Water Polution Control Act.

Service bases, oil terminals and LNG plants will discharge effluents into nearby waters. Liquid waste is produced from sewage treatment, ballast treatment and cooling water that is significantly warmer than the receiving waters into which it is discharged and often contains biocides and rust inhibitors. The chronic introduction of soluble hydrocarbons into receiving waters adjacent to ballast treatment facilities could impose long-term toxic effects on sensitive marine organisms. This Certificate will assure compliance with the requirements of

Section 401 and 404 of the Federal Water Pollution Control Act, as modified by the Clean Water Act of 1977. It will also be an important means of assuring compliance with the ACMP Guidelines and Standards, especially by activities affecting wetlands.

AUTHORITY

PL 92-500	Federal Water Pollution Control Act, Section 401
Title 33 U.S.C.	Rivers and Harbors Act of 1899, as amended
18 AAC 15	Administrative Procedures
18 AAC 70.081-085	Certificate of Reasonable Assurance

(l) Waste Water Disposal Permit

Any developer who builds or operates a facility which disposes waste water into or upon the waters or surface of the land or into a publicly operated sewerage system must first procure a permit from the Department of Environmental Conservation.

Hazardous wastes and effluents from major energy facilities raise serious concerns as to the proper disposal and subsequent effects on water quality, biota and human health. Proper management of these wastes and effluents will require well-designed sanitary landfill sites, effluent standards and monitoring systems.

AUTHORITY

AS 46.03.100	Waste Disposal Permit
AS 46.03.090	Plans for Pollution Disposal
AS 46.03.110 & 720	Waste Disposal Permit Procedure
18 AAC 15	Administrative Procedures
18 AAC 70	Water Quality Standards
19 AAC 72	Waste Water Disposal

(m) Water Use Permit

Many energy-related facilities require dependable sources of fresh water in large quantities. Fresh water is used for domestic purposes, electric power, drilling, fire protection, and cooling. Increased demand in coastal areas raises concerns about potential impacts on ground and surface water (such as lowering of the water table, saltwater instrusion and reduced streamflow), adverse effects on fish and wildlife (if surface water sources are reduced below the minimum flow necessary to sustain them) and possible competition with municipal water systems and other users.

The water use permit is a means to facilitate the appropriation of water for energy-related uses and at the same time to avoid the adverse effects of excess demands on limited water supplies. A developer who needs to appropriate water must first obtain a permit from the Division of Land and Water Management, Department of Natural Resources.

AUTHORITY

AS 46.15.030-185	Appropriation and Use of Water
11 AAC 72	Water Use

(4) Continued Consideration of the National Interest

The energy facility planning process, like other elements of the ACMP, must, under Section 305(b)(8) of the federal CZMA, provide means for continued consideration of the national interest in facilities serving other than local needs, including energy facilities. The manner in which the ACMP, including the energy facility planning process, satisfies this requirement is described in Part II, Chapter 7, Section (c). As noted there, it relies upon the obligation of state and local agencies not to restrict or exclude unreasonably uses of state concern, including energy facilities of more than local significance; and upon the open nature of the procedures that must be followed by these agencies.

(5) Public Involvement

For most permits and all district programs, public involvement is mandated in the governing statutes and regulations. Successful cooperation depends on the generous flow of information and on willingness of local, state and federal agencies and the industry to discuss the issues jointly, mediate differences, and satisfactorily resolve conflicts. The implementation measures described below suggest some of the ongoing means by which the state is involving the public and encouraging timely, coordinated development decisions.

(a) District Coastal Programs. District program development provides effective opportunities for public participation and discussion of potential energy sites. At least two public meetings are to be held in a district during program development, and one other hearing before giving conceptual approval to the district program, or a significant amendment to it. All persons have the right to present comments to the Council on district programs that are submitted for its approval.

(b) Attitudinal Surveys and Workshops. The state has and will continue to anticipate and plan for energy developments and the demands they might place on local communities. Many of the analyses are contained in reports circulated to affected groups. In addition, the Department of Community and Regional Affairs and the Alaska Coastal Management Program have an ongoing program of information dissemination, workshops, and attitudinal surveys.

(c) Orientation of Non-Resident Employees. The State will encourage development companies to conduct orientation programs for non-resident employees on community values to minimize misunderstandings between temporary residents and permanent members of a community.

(6) Coordination

(a) Technical Assistance

The State will assist communities in directing energy-related growth according to local preferences. The Coastal Energy Impact Program has and will continue to be a main vehicle for providing grant and loan assistance to communities impacted by energy-related development. The Department of Community and Regional Affairs is the pass-through agency. Other programs, including manpower training, technical planning assistance, public facility grants, and bond authorizations will also be used to strengthen local management.

AUTHORITY

PL 94-370, Sec. 308	Coastal Energy Impact Assistance
AS 44.47	Department of Community and Regional Affairs

(b) Agency Advisory Committee on Leasing

The Agency Advisory Committee on Leasing (AACL) has already proven to be an effective link between state leasing decisions and local government. In each area where a state lease is scheduled, local government representatives are invited to join with state agencies in providing information and advice to the Commissioner of Natural Resources on oil and gas leasing.

(c) A-95 Review

The A-95 system provides a structural mechanism for coordinating the review of environmental impact statements, federal assistance programs and development projects, OCS exploration, development and production plans and environmental reports. No explicit or procedural criteria are applied to the reviews. However, Alaska does use A-95 as a major vehicle for soliciting and coordinating agency response to proposed energy-related activities. The Division of Policy Development and Planning is the lead agency.

(d) Master Permit Application

The 1977 Legislative Session enacted a law establishing a simplified procedure to assist those who must obtain a permit from one or more federal, state or local government agencies. While this procedure is not mandatory, a person proposing a project may submit a single master application to the Department of Environmental Conservation who will then circulate the application to the other appropriate regulatory agencies for comment. Final decisions will be made on a coordinated basis. Permits to be included in this process are:

- Waste water disposal permit - AS 46.03.100, 18 AAC 72;
- Solid waste disposal permit - AS 46.03.100, 18 AAC 60;
- Air emissions permit - AS 46.03.150, 18 AAC 50.120;
- Pesticides permit - AS 46.03.320, 18 AAC 90;
- Surface oiling permit - AS 46.03.740, 18 AAC 75;
- Open burning permit - AS 46.03.020, 18 AAC 50.120;
- Anadromous fish protection permit - AS 16.05.870, 5 AAC 94.100;
- Critical habitat area permit - AS 16.20.250 - 16.20.260;
- State game refuge land permit - AS 16.20.050 - 16.20.060;
- Encroachment permit - AS 19.25.200;
- Utility permit - AS 19.25.010;
- Driveway permit - AS19.05.020. 17 AAC 10.020;
- State park incompatible use permit - AS 41.20.020, 11 AAC 18.010;
- Access road permit - AS 41.20.020, 11 AAC 18.020;
- Water well permit AS 31.05.030, 11 AAC 22.140;
- Brine or other salt water waste disposal permit - AS 31.05.070; 11 AAC 22.250;
- Coal development permit - AS 27.20.010, 11 AAC 46.010;
- Right-of-way and easement permits - AS 38.05.330, 11 AAC 58.200;
- Special land use permit - AS 38 .05.035, 11 AAC 58.210;
- Tidelands permit - AS 38.05.320, 11 AAC 62.710;
- Tidelands right-of-way or easement permit - AS 38.05.320, 11 AAC 62.810;
- Limited personal use permit - AS38.05.320, 11 AAC 62.820;
- Permit to appropriate water - AS 46.15.040, 11 AAC 72.050;
- Dam construction permit - AS 46.15.040, 11 AAC 72.060;
- Preferred use permit - AS 46.15.040, 11 AAC 72.160;
- Permit for use of timber or materials - AS 38.05.110, 11 AAC 76.185;
- Authorization for tidelands transportation - AS 38.05.110, 11 AAC 76.205;
- Special material use permit - AS 38.05.115, 11 AAC 76.540;
- Mineral and geothermal prospecting permits - AS 38.05.145;
- Tide and submerged lands prospecting permit - AS 38.05.250;
- Surface use permit - AS 38.05.255, 11 AAC 86.600;
- Burning permit during fire season - AS 41.15.050; 11 AAC 92.010;
- Miscellaneous state land use permit - AS 38.05.035, 11 AAC 96.010;
- Right-of-way permit - AS 38.05.330.

(e) Regional Planning Activities

The Alaska Coastal Management Act mandates that the Council establish continuing coordination among state agencies to facilitate the development and implementation of the coastal management program (AS 44.19.893 (2)). Coastal resource planning is to be accomplished on a regional basis and is to include:

- Assisting the Council in identifying uses of state concern within specific areas of the coast and developing management policies and practices for these uses and areas;

- Providing resource, social, and economic information on a coordinated regional basis as necessary for development and implementation of the Alaska Coastal Management Program; and

- Assisting the Council in identifying, avoiding, and minimizing existing or potential conflicts between coastal resource districts and state and national interest (6 AAC 80.020 (c)).

(f) Memorandum of Understanding Regarding Procedures and Practices Affecting Oil and Gas Leasing in the Beaufort Sea

Prior to consideration of a joint federal-state lease sale in the Beaufort Sea, federal and state representatives negotiated an M.O.U. to meet the following objectives:

- Identify general policies and procedures for joint leasing and administrative activities associated with an oil and gas sale in the Beaufort Sea.

- Develop guidelines for allocating costs and responsibilities associated with pre-sale and post-sale administration.

- Describe a means of developing specific processes and responsibilities.

(g) Cooperative Agreement Between the Governor of Alaska and the Alaska State Director, Bureau of Land Management, U.S. Department OF the Interior

This agreement establishes a mechanism for the state and BLM to cooperate in the development and implementation of land use plans and policies for the management of public lands and resources within Alaska. Since many public lands, subject to future energy development, fall within federal jurisdiction, this agreement holds promise for cooperative planning on both federal and non-federal lands of mutual concern.

VI. DESCRIPTION OF STATE ENERGY FACILITY PLANNING PROGRAM

During the last three years, the state has sponsored a continuing program designed to provide technical information, siting strategies and planning assistance for coastal energy development. Major components of that program include:

Gulf of Alaska Planning Project

The objective of this project was to formulate a stable and viable policy framework to govern decisions about the

location and management of onshore and nearshore OCS-related developments. The geographic scope was coastal areas affected by petroleum exploration and development in the Northern and Western Gulf. The Department of Community and Regional Affairs designed a program which would (1) provide good technical information about offshore oil development and probable levels of activity (2) suggest an approach to decision-making for onshore facilities that was firm as to purpose but flexibly open to alternative solutions and (3) pave the way for prompt and consistent state action on siting matters. The program resulted in several working documents and a 275-page book entitled Planning for Offshore Oil Development: Gulf of Alaska OCS Handbook, published in April 1978.

Highlights of this project were:

(a) Background Research

Time was alloted to becoming familiar with OCS operations, offshore technology and the Gulf of Alaska region. Four preliminary products resulted:

- Supply Boat and Port Facility Scenario: OCS Sale No. 39 Northern Gulf of Alaska;
- Fixed Wing and Helicopter Scenario: OCS Sale No. 39 Northern Gulf of Alaska
- Description of the Gulf of Alaska and the Gulf OCS Program;
- Technical Questionnaire on OCS operations submitted to the Alaska Sub-Arctic Offshore Committee.

(b) Industrial Profiles

Eight industrial profiles illustrating and describing the function and requirements of key OCS-related industrial facilities were prepared. Profiles described service bases, submarine pipelines, treatment facilities, oil terminals, LNG plants, refineries, petrochemical plants and concrete platform fabrication yards.

(c) Facility Siting

- Physical Capability Study. To determine which locations might be capable of handling a marine service base, oil terminal or LNG plant, the Gulf of Alaska region was surveyed with respect to physiography, climate, geology, oceanography, hydrology, soil and vegetation, and fish and wildlife.

- Preliminary Site Evaluation. Siting criteria for each facility were based on site and access requirements developed in the industrial profiles (e.g., proximity to offshore operations, adequate shelter, harbor depth and maneuvering room, etc.) and state facility siting policies.

Sites in the Gulf of Alaska region were evaluated to see if they were capable of meeting oil company needs, suitable in terms of existing laws and policies, and available for development. The Alaska Department of Fish and Game, the Department of Environmental Conservation and the Department of Natural Resources assisted in this evaluation.

(d) OCS Nearshore and Onshore Policies

The staff spent considerable time organizing a coherent and succinct policy framework to guide onshore and nearshore OCS-related development. Several drafts of findings, goals, and policies were written and reviewed by state agencies, federal agencies, the petroleum industry, local governments and interest groups. The policies were adopted by the Governor and the Alaska Coastal Management Policy Committee.

(e) Development Scenarios

- Estimates of Activity Levels. To more fully understand the scale of demands to be made on Gulf of Alaska communities, development scenarios, describing different levels of OCS-related activities, were examined for both the Northern and Western Gulf lease sale areas. Assumptions concerning oil and gas reserves, the number of rigs engaged in exploration, fields discovered and platforms installed were used to estimate the demand for supply boat berths, oil terminals and LNG plants.

- Employment and Population Estimates. For each development scenario, the level of offshore, onshore, indirect and total employment was estimated. By applying a population/employment ratio, population estimates were also derived.

(f) Community Impacts

Although employment and population estimates were tentative, a general outline of local demands which OCS activities might generate was researched. The implications of increased demands for land, housing and public services were examined for Yakutat, Cordova, Seward and Kodiak.

SCOOP Modeling Program

SCOOP is a regionalized model, originally designed to forecast North Sea petroleum activity levels and employment, which has been modified for use in Alaska. The model operates by taking forecasts of the level of petroleum activity offshore and applying them to a series of coefficients to produce forecasts of onshore employment, offshore employment, construction labor, equipment required, oil and gas production and land required. The model has been used by the Department of Community and Regional Affairs to forecast levels of energy development in the Lower Cook Inlet. The next production run will generate forecasts for the Beaufort Sea lease sale area.

Alaska Regional Energy Resource Planning Project-Division of Energy and Power Devleopment, Department of Commerce and Economic Development.

(a) Phase I. Alaska's Energy Picture

The purpose of Phase I is to provide an overview of Alaska's energy picture as it is and where it may be by the year 2000. Particularly noteworthy is completion of a detailed inventory of the state's oil, gas, coal, uranium and hydropower resources involving the location of those resources likely to be developed within the next 25 years. Pertinent social, economic, and environmental issues affecting present and future energy development in the state are also identified.

(b) Phase II. Beluga Coal Field Project

Phase II of the project is concentrating on several important areas with special emphasis on social, economic and environmental impacts resulting from Beluga Coal Field Development. Analyses of applicable permits and licenses required for hydropower and coal development are underway. Additional efforts are concentrating on applicable advanced technologies, small hydro, wood waste, fuel cells, waste heat and land tenure.

(c) Phase III. Energy Intensive Industrial Development Study

This is an attempt to identify specific energy intensive industries which could locate to Alaska, taking into account the state's land, mineral, and energy resources. The study will address the following questions:

- Where and at what level might the development occur?

- What are the costs and benefits to the state and its people, should the development take place?

- What options are avilable to the state to encourage relocation of some industries and discouragement of others?

(d) An Analysis of Future Electric Power Requirements and Supply Alternatives for the Railbelt Region

This is the first of several analyses which will address power needs and supply options for the Fairbanks-North Star Borough, the Matanuska and Susitna Valleys, Anchorage and the Kenai Peninsula, an area presently consuming over 83% of the state's electric power. Evaluated for the first time are the primary electric power development options to provide the least expensive power to Railbelt Region consumers in view of timing, resources, availability and legal considerations.

(e) Northwest Geothermal Development Plan

As the Alaska representative on the Northwest Geothermal Committee, the Division of Energy and Power Development is an active participant in the Northwest Geothermal Development Plan. Working out of this office, a Research Associate of the Oregon Institute of Technology (Department of Energy contractor for the project) is preparing an inventory of the state's geothermal resources. The main focus of the planning effort is to determine the economic potential of each of Alaska's geothermal sites including a preliminary assessment of institutional and legal barriers, and potential environmental, social and economic impacts.

(f) Rural Energy Survey

A catalog of rural energy information is available. Included in the information gathered and assembled is village fuel use and cost, bulk storage, transportation, construction and electrical use as given by Native villages and corporations, fuel and transport companies and other related agencies. Also included is information on expected fuel shortages and alternative energy sources.

The survey has proven to be helpful in determining the proximity of other fuel that may be available to a village experiencing a fuel shortage emergency.

VII. BIBLIOGRAPHY OF COMPLETED ENERGY-RELATED PLANNING PROJECTS

Alaska Consultants, Inc. 1976. Marine Service Bases for Offshore Oil Development. Anchorage, Alaska.

This report deals primarily with the types of comprehensive service bases developed to support North Sea petroleum operations. It provides good background information on site requirements and types of activities associated with service bases.

-----, 1978. City of Yakutat: Capital Improvements and Services Program. Anchorage, Alaska.

To accommodate energy development in the City of Yakutat, this report looks at a number of development scenarios, forecasts population and city revenues and expenditures for each case and evaluates the future of traditional industries in the event of expanded coastal energy activity.

CH2M/Hill, 1978. Offshore Oil Development in Lower Cook Inlet;

This study identifies anticipated impacts of oil and gas development in Lower Cook Inlet and recommends actions which will enable municipalities to prepare for and cope with the demands of growth.

Alaska Department of Commerce and Economic Development, Division of Energy and Power Development, 1977. Alaska Regional Energy Resources Planning Project-Phase I. Anchorage, Alaska.

A compilation of available information on the renewable and non-renewable energy resources in Alaska, including oil and gas, coal, hydroelectric power and uranium. As a starting point, it is an excellent reference.

Alaska Department of Community and Regional Affairs, Division of Community Planning, 1976. Concepts of Major Energy Facility Planning Legislation. Juneau, Alaska.

The purpose of this paper is to demonstrate the importance of energy facility siting legislation for Alaska, to illustrate the wide spectrum of planning, fiscal and administrative approaches available to achieving such laws and to summarize the various approaches taken to date by other states.

-----, 1978. Gulf of Alaska OCS Handbook. Juneau, Alaska.

The handbook presents the State position on oil and gas development in the Gulf of Alaska and provides a fairly concise description of the offshore industry itself as well as the implications of such development on coastal communities.

-----, 1977. Economic Forecasts-Lower Cook Inlet Lease Sale. Juneau, Alaska.

The third in a series of forecasts of the economic impact on the state of OCS lease sales, this paper estimates the number of jobs that would be created and the additions to population both statewide and in the Kenai Peninsula Borough.

-----, 1977. The Use of Mathematical Models to Evaluate OCS Impact on Alaska. Juneau, Alaska.

A paper describing the SCOOP model used by the Department of Community and Regional Affairs to calculate the impact of OCS development on the state's economy. It is presently the only general description available on the model itself.

Alaska Department of Education, Division of State Libraries and Museums, 1977. Continental Shelf Development: A Bibliographic Background for Alaska. Juneau, Alaska.

The two volume bibliography is a guide to various materials and subjects related to offshore energy development. Organization of the bibliography includes full citations under broad headings and three indexes: author, title and subject.

Alaska Department of Highways, 1976. Transportation Impacts of Outer Continental Shelf Oil and Gas Development in the Northern Gulf of Alaska and Kodiak Areas. Juneau, Alaska.

This report examines the current use and capacities of coastal sea, air and land transport facilities and modes in the Gulf of Alaska region. It assesses present levels of service in light of expected use levels anticipated from OCS development.

David M. Dornbusch & Company, Inc., 1976. Management of OCS-Related Industrial Development - A Guide for Local Communities. San Francisco, California.

The study provides a good overview of approaches and management tools communities might use to insure that coastal energy development is compatible with other land and water uses.

Goldsmith, O.S., T. Morehouse, Institute of Social and Economic Research, 1976. Impact Problems and Intergovernmental Aids in Alaska, Parts I and II. Fairbanks, Alaska.

The overall objectives to this study are to:
(1) describe and analyze public finance and related policy issues of impact aid in Alaska;
(2) identify and assess alternative concepts and methods of impact aid administration; and
(3) make recommendations for state administration of impact assistance programs for local communities.

Kenai Peninsula Borough, 1977. OCS Development: A Headache or a Blessing? Soldotna, Alaska.

A five-volume baseline study of the Kenai Peninsula Borough's municipalities: Homer, Kenai, Seldovia, Seward and Soldotna. The study contains valuable information on physical features, land use, land ownership, population, workforce, natural resources, public revenue and debit, and community facilities and services.

-----, 1977. A Profile of Five Kenai Peninsula Towns. Soldotna, Alaska.

The profiles describe the methodology and results of a community survey on population, housing and community attitudes.

Kramer, Chin & Mayo, Inc., 1978. Kodiak Island Borough Regional Plan and Development Strategy. Seattle, Washington.

This study is a series of working papers which form the basis for the proposed updated version of the Kodiak Island Borough's Comprehensive Plan and energy development strategy. The focus is on the urban area of the island, although village sketch plans are included by reference.

Simpson Usher Jones, Inc., 1977. Kodiak Island Outer Continental Shelf Impact Study. Anchorage, Alaska.

A preliminary look at possible levels of oil activity off the coast of Kodiak Island, policy alternatives for handling the development, and a summary of the impacts.

-----, 1978. Growth Management Strategy-Seward Region. Anchorage, Alaska.

A regional examination of the effects of OCS development on the Seward area. Strategies for coping with possible energy-related growth are briefly discussed.

Woodward-Clyde Consultants, 1977. Oil Terminal and Marine Service Base Sites in the Kodiak Island Borough. Anchorage, Alaska

An evaluation of oil terminal and service base sites in Kodiak Island Borough jointly sponsored by the state, the Borough and the Native corporation. The report examines the advantages and disadvantages of particular sites and ranks them through a decision analysis process.

Appendix 8

Shorefront Access and Protection Planning Process

PREFACE

Unlike other coastal states, Alaska's 33,904 miles of coastline is virtually undeveloped and access to and along the shoreline is for the most part unhindered. However, there are many current developments that could dramatically change this situation. Industrial and residential construction in developed areas, d-2 legislation, Native land selection, homesteading, resource development and natural resource extraction will all affect the amount and location of shoreline available for public use.

The Alaska shoreline abounds with traditional and potential public use areas. Coastal areas have long been major tourist attractions. Recreation is one of the primary uses of the Alaska shoreline. The developments above can, and probably will, isolate vast coastline areas from public use. Public access to the shoreline should be planned for now to insure continued public use and enjoyment of this important natural resource.

This planning process is developed in the spirit of the increasing awareness of the value of wise management of the coastal zone resource.

The time factor for implementing this program is short. As each of the mentioned issues is settled, the preservation of public use areas and the reservation of access will become more difficult.

I. INTRODUCTION

The federal Coastal Zone Management Act of 1972, as amended, specifically calls for states to develop a planning and management process to address public access to and protection of coastal areas. Federal regulations pursuant to Section 305 (b)(7) of the Act cite six elements that are required in order for a state to adequately address the access and protection issue in the context of its coastal management program.

This addresses the questions enumerated in federal program approval regulations and describes the state's coastal planning process which assures that public access to coastal resources is adequately considered through the Alaska Coastal Management Program.

Accordingly, this discusses, in major part, current issues that affect shoreline use and access; the importance of assuring access to certain areas; and the need for additional, coordinated planning and management activities to evaluate and manage areas that are critical for public access.

Section II discusses, in brief, the origins of public concern for access to coastal areas. Section III discusses a number of important statewide issues that will affect or limit shoreline access. Section IV discusses technical and legal definitions that apply to beaches, including a summary of state regulations relating to shoreline access and protection. Section V identifies critical areas (generically and specifically) where access and protection should be provided. Section VI describes the planning program.

II. HISTORICAL PERSPECTIVE

The conflict of private use versus public use of the coastal shoreline and tidelands dates back to the time of England's Magna Charta, the foundation of English Common Law, which is the basis of the American legal system. At this time in England's history, private title to the coastlands was interferring with coastal commercial activity. English common law expanded the jus publicum (public rights) principle to hold the shoreline and tidelands in public trust, even if title had been granted to individual subjects. These public rights to the shoreline held fast up to the time of American Independence and were maintained by the original 13 states and passed on to the non-colonial states as they were admitted to the Union. In short, early American law clearly intended for the states to hold title to their tidelands and submerged lands.

The recent history of legislation concerning coastal zone management and shoreline access in Alaska can be traced to the 1940's and 1950's when the federal government expanded the states' boundaries to include a point three geographical miles seaward of the ordinary low water mark outside inland waters with the passage of the Submerged Lands Act of 1953 (Public Law 83-31; 67 Stat. 29). When the Alaska Statehood Act of 1959 (Public Law 85-508) became law, Alaska received full ownership of

its tidelands and submerged lands pursuant of the Submerged Lands Act of 1953.

The Alaska Constitution further addresses shoreline access in Article VIII when it discusses common use of resources in their natural state (Section 3) and public access to navigable and public waters (Section 14).

The environmental awakening years in the late 1960's saw certain states, such as Oregon, move to preserve their beaches for public use. The Oregon Beach Bill of 1967 (Chapter 601 of 1967) assured continued public use of Oregon's beaches based on doctrines of customary use.

Later, the U.S. Congress, realizing the importance of coastal resources, enacted the Coastal Zone Management Act of 1972 (Public Law 92-583, 86 Stat. 1280) and the Coastal Zone Management Act Amendments of 1976 (Public Law 94-370). These laws not only recognized the commercial and industrial importance of the coastal zone, but also the importance of the natural, recreational, ecological, cultural, and historic resources to the present and future well-being of the people of individual states and the nation as a whole.

Alaska, working within the federal framework, enacted the Alaska Coastal Management Act of 1977. This act established the basic framework in which the Alaska Coastal Management Program is to evolve.

In summary, three themes are evident:

1. Both Congress and the Alaska Legislature have recognized the importance of the proper management of the coastal zone for the benefit and enjoyment of the people now and in the future with the passage of their respective Coastal Zone Management Acts.

2. The State of Alaska, therefore its people, owns the tidelands, submerged lands, and lands beneath navigable and public waters.

3. The federal government and the Alaska State Constitution recognize the importance of access to coastal shoreline areas and navigable waters.

III. CURRENT ALASKA ISSUES AFFECTING SHORELINE ACCESS

Many current issues will have a significant effect on shoreline access in Alaska. These issues can be grouped under the general headings of upland ownership, tideland ownership, and local and state coastal management planning programs. The generally unrestricted access to the coastal zone enjoyed by past generations of Alaskans is coming to a rapid end. Shoreline access will become more and more limited as each one of these issues is settled. These issues exemplify the usefulness of a comprehensive planning process that will identify and reserve shoreline access and protect shorefront areas.

A. Upland Ownership

Land ownership patterns in upland areas can play a critical role in planning programs to protect public access opportunities. A number of issues in Alaska relate to future public coastal access.

1. Alaska Native Claims Settlement Act

The Alaska Native Claims Settlement Act (ANCSA) will have a lasting effect on shoreline access in Alaska. Forty-four million acres of unreserved federal land will be transferred to the Native Corporations, and 36 percent of all coastal townships contain Native selections. Section 17(b)(1) of ANCSA gave the authority to review and reserve easements through Native selected lands to the joint Federal-State Land Use Planning Team (LUPT). The LUPT relinquished its authority to the Secretary of the Interior, who delegated the task to State Director of the Bureau of Land Management (BLM). Guidelines for reviewing easements through Native selected lands were promulgated in 1976 by Secretarial Order 2982.

Included in this order was a continous shoreline easement 25 feet above the mean high water mark. Order 2982 was successfully contested in District Court by the Native Corporations in Calista v. Andrus, 435 F. Supp. 664 (D. AK 1977). Current Secretarial policies assure that public access easements which are necessary for access to public lands and major waterways will be reserved. General easements for recreation and scenic purposes will not be reserved before or after conveyance of lands under ANCSA. Access easements will be granted only through Native selected lands to preserve existing transportation corridors between two coastal communities, two upland public land areas, or a community and a public land area. Access easements will also be reserved across Native selected lands to the coastline only if significant present use occurs on lands below the mean high tide mark.

Site easements may be reserved for boat and float plane pullout access upon a shore and for temporary camping, loading, or unloading for a period of no more than 24 hours upon a shore, along an access route, at a trailhead, or within a reasonable distance of these points where it is necessary to provide for the use of and access to public lands and major waterways. Site easements will be designated on the coastline only at determined intervals along the coast where there is a need to use coastal waters for travel or access to upland public lands. The spirit of the current easement policy, however, is to grant a minimum number, only where necessary and only when no alternatives are available. Further, the BLM intends to designate all easements by September of 1978.

2. D-2 Legislation

Section 17 (d)(2) of the ANCSA granted the Secretary of the Interior authority to withdraw up to 80 million acres of unreserved public lands and to add them to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems in Alaska. Wilderness classifi-

cation may disallow most vehicular traffic. Pending d-2 legislation, if enacted, will have a limiting effect on shoreline access for vehicular oriented recreation. Access through the wilderness areas to the shoreline will be provided for foot travel. Boats will be permitted unlimited access to the shoreline from saltwater. Aircraft access will be allowed where landing sites have been used. D-2 lands not classified wilderness may permit some roads for vehicular access.

The extent of shoreline access on d-2 lands will depend on the final classification of these lands. Non-wilderness National Forest and National Refuge lands will potentially be the least restrictive, allowing access to most recreationists. Lands classified wilderness would be the most limiting, allowing access via navigable saltwater (by boat or floatplane), on foot and in special situations by air in upland areas. All valid existing rights will be recognized on d-2 lands.

3. Subdivision of Private Lands

In the past, shoreline access in Alaska has been virtually unrestricted. In many cases, people have gained access to the shoreline by traversing or trespassing over whatever land they had to, whether it was private, borough, state or federal. Alaska's small population and lack of development have made this situation possible. However, in recent years, Alaska's population has grown tremendously and urban expansion and second homes outside population centers have become more common. This trend will continue. To meet the demand of the increasing urban and community development and second home development and to cope with high property taxes, landowners in outlying areas are subdividing their holdings. The Matanuska Valley and Kenai Peninsula are areas where subdividing activities are evident. These activities are reducing access to the shoreline.

4. Uses of Public Lands Adverse to Shoreline Access

Certain uses of state public lands could have a lasting adverse effect on shoreline access. Ideally, if an individual leases or purchases state lands adjacent to the shoreline, public access will be guaranteed in accordance with Alaska Statute 38.05.127. However, there are cases where the conveyance or leasing of public lands caused the disruption of access from one point on the shoreline to another. The shoreline staging dock at Nikiski on the Kenai Peninsula is an example of industrial activity disrupting the pedestrian flow along the coastline below the mean high water mark. Numerous other cases of this situation are documented in communities such as Cordova, Juneau, Ketchikan and Kodiak, where filling of tidelands has occurred for industrial purposes.

Shoreline access also has a visual as well as physical mode. Industrialization, urban development, and other activities can disrupt visual access to the coastal zone.

5. Land Disposal Activities

Various state land disposal activities have been touched upon in previous sections. The Department of Natural Resources, Division of Land and Water Management is directed in 11 AAC 70.030 to include in land planning and disposal activities, provisions for access to public or navigable waters and to lands where heavy recreation or non-recreational use exists or is expected.

Homesteading is one type of land disposal employed by the state. Present and proposed homesteading activities, if not properly controlled, will have a significant affect on shoreline access as well as overall land management activities in the State. Homesteading will remove land from public use and restrict public access in varying degrees. Where Alaskans once had unrestrictive access they might find homesites with "no trespassing" signs. Uncontrolled homesteading could also disrupt visual access to the shoreline. Access to navigable waters along section line easements is not sufficient as these easements are not located with regard to topography, highways, resources valued by the public, or other adjacent land uses. Another means of disposing land is by leasing or selling acreage for recreational or residential, agricultural, or resource development use.

6. Vacation of Easements

An easement, when referring to coastal navigable and public waters, is defined by 11 AAC 70.910 as "the perpetual public right of access to the water and recreational use of the land covered by the easement; it does not include the right to camp overnight, to cut trees, to build structures, or trespass beyond the easement."

When property owners subdivide their lands they are usually required to provide easements to each lot. Easements are also reserved on section lines for utilities. Easements may also be obtained by customary use, dedication, and prescription. The majority of these are public property and individuals have the right to use these easements for public access. But these easements are often unmarked or undeveloped and thus unknown to the general public. State and local governments may vacate or make void these easements or rights-of-way and sell them to the adjoining property owner(s). The public land thus becomes private and public access is blocked.

The vacation of easements by governments can have a significant effect on limiting upland access to coastal resources if undertaken indiscriminately.

B. Tideland Ownership

State ownership of tidelands provides a major capability to assure public access is protected. Two issues are important when considering access across these lands.

1. Tideland Leasing

The State of Alaska owns all tidal and submerged lands from the mean high tide mark seaward for three nautical miles. The State holds title to the natural resources found in these lands (totaling about 34 million acres) except for some 25,000 acres of tidelands conveyed to individuals and muncipalities who were required to exercise their preference rights prior to 1965. The State may lease tidelands and submerged lands to private parties for resource extraction. Present tideland leases retain for the State the right to provide easements across leased lands. This provision becomes more important with the increasing number of tideland leases being let each year because these leases will have the net effect of limiting access across the tideland.

2. Dredging and Filling

Dredging and filling activities can block passage from one point on the shoreline to another or from one point on the shoreline to a point on the tidelands. These activities limit longshore access and access across the tidelands. Although tideland lease agreements and easement regulations reserve access rights to the State, dredging and filling activities as well as tideland leases for resource extraction may disrupt historic uses of these lands as well as critical habitat areas.

IV. DEFINITION OF BEACH

This section defines "beach" in terms of those areas of the coast which will be addressed in the shorefront access and protection planning process.

The ACMP Guidelines define "beach" as follows: "the area affected by wave action directly from the sea" (6 AAC 85.900(1)). The ACMP Standards define "coastal water" as "all water bodies in the coastal area, including wetlands and the intertidal area" (6 AAC 80.900(2)). "Wetlands" include those vegetated areas extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally-induced water table changes (6 AAC 80.900(19)). Intertidal areas are those areas subject to periodic or occasional inundation by tides (6 AAC 85.900(8)).

Hence, as defined above, those areas subject to the shorefront access and protection planning process are beaches and coastal waters.

V. CRITICAL AREAS WHERE SHORELINE ACCESS AND PROTECTION SHOULD BE PROVIDED

The state and federal coastal management acts recognize that the coastal zone is comprised of a variety of resources. These resources are to be managed in the best interest of the public. Recreation, historic, scenic, and wilderness resources are among those mentioned by the acts. Protection of and assurance of access to these areas should be facilitated by implementation of the ACMP.

A. Shoreline Recreation Areas

Shoreline recreation is one of the major activities that occurs in the coastal zone. The shoreline provides the public with a complete spectrum of recreation activities. In Alaska, these activities include, in part, hunting, fishing, clamming, camping, hiking, boating, wildlife observation, and beachcombing. The demand for shoreline access and recreation areas is increasing as their availability is decreasing. This trend is evident nationwide. Ducsik (1974) comments on the demand for shoreline recreation:

> "The demand for outdoor recreation, especially that which is water oriented, is growing rapidly as the trends toward more leisure time, more real income, and greater mobility enable larger proportions of our growing population to seek recreation of all types. The American coastal shoreline, as a unique recreational resource, is ideally situated to accommodate a wide range of these activities; most planners agree that the "hidden demands for recreational use of this resource are enormous, limited only by effective supply..."

The limiting effects of the issues discussed earlier may not become apparent for some time. However, it is important to institute protective measures to insure shoreline access for recreational and other purposes and to set aside areas of importance. The Alaska Coastal Policy Council has responded generally to shoreline access concerns by making the provision of access a high priority for district coastal programs and state agency activities in 6 AAC 80.060.

B. Shoreline Historic Sites

Alaska's coastal area has been a center for cultural development throughout man's history. Alaska Natives now and in the past have depended on coastal resources for food, clothing, shelter, and transportation. Early Russian settlers established trade centers on the coast. Gold seekers entered Alaska through the coastal communities of Skagway, Valdez and Nome. Today, the majority of Alaska's residents live in coastal communities.

Coastal areas are rich in sites of historical and archaeological significance. Statewide, nearly 4,000 sites have been identified and catalogued by the State Division of Parks Office of History and Archaeology -- 2,500 of which are located in coastal areas. A recent visitor survey conducted by the Division of Parks (1978) indicates that visiting historical areas is one of the top 10 activities pursued by people visiting state park areas. A marketing survey by the Alaska Travel Marketing Council showed visiting historic communities and resources to be an important "attractor" for the tourism industry. However, as commercial and residential development expands, the possibility of conflict rises.

The state has, in the ACMP Standards, a general obligation to identify historic, prehistoric, and archaeological sites at the state and local level. (6 AAC 80.150.) In addition, for protection of such sites, and for planning the protection of such resources, the state has a number of existing statutory provisions:

> The Department of Natural Resources shall develop a continuing plan for the conservation and maximum use in the public interest of the historic, archaeological and scientific resources of the state. (AS 41.20.020)
>
> The Department of Natural Resources shall locate, identify, and preserve in suitable records information regarding historic, prehistoric and archaeological sites, locations and remains. The information shall be submitted to the heads of the executive agencies of the state. (AS 41.35.070)
>
> Prior to public construction or public improvement of any nature which is undertaken by the state or by a private person under contract with or licensed by the state, the Alaska Department of Natural Resources may survey the affected area. If the Department determines that historic, prehistoric or archaeological values will be adversely affected by the project, the project may not be commenced until the Department has performed the necessary field work. Should artifacts be discovered during construction, the Department shall be notified and may stop the project until field work is completed. The cost of field work shall be paid by the agency sponsoring the project. (AS 41.35.070)
>
> A permit from the Department of Natural Resources is required prior to appropriation, excavation, removal or destruction of any historic, prehistoric or archaeological resources of the state. (AS 41.35.200)

C. Coastal Scenic Resources

The entire Alaska coastline is a scenic resource. Some areas on the coastline have more dramatic and spectacular scenic values than others. Visual and physical access are equally important for the enjoyment of scenic resources. Commercial and residential development can seriously disrupt visual access to the shoreline from public places. The City of Anchorage is an example where commercial development has partially disrupted visual access to the scenic features of the shoreline.

Physical access to and longshore access between the significant coastal resources can be disrupted by any of the developments discussed in earlier sections. Homesteading, industrial development, d-2, etc., all will limit the amount of available access to the scenic resources of the shoreline. The West Kenai Peninsula shoreline is noted as being a magnificent scenic resource. Subdivision of private lands and residential development are greatly limiting the amount of physical access to the West Kenai shore. This trend will continue, increase and affect other areas as population pressures increase.

D. Coastal Wilderness Resources

The Alaska Coastal Management Program conducted a series of workshops from September through November 1978. Nearly 2,000 questionnaires were filled out and returned at the workshop and through the mail. The purpose of the workshops was to educate the public on the functions of the Coastal Zone Management Program and to determine the primary concerns of the inhabitants of coastal communities. When asked if wilderness preservation near the coastal areas of their communities would be beneficial, 62% responded good, 20% bad, 13% no effect, and 5% other.

The concept of wilderness is vague. Wilderness is a personal state of mind. To one person, a bicycle ride in one of Anchorage's greenbelt areas is a wilderness experience. To another, wilderness would be kayaking along the pristine coastline of Prince William Sound. To some, the experience is just knowing that there is wilderness to enjoy. Generally, wilderness can be defined as an area where man is a visitor and the land and its systems are untrammeled by man. The majority of communities surveyed by the Coastal Zone Management Program consider wilderness beneficial or good for their community.

Presently, all federal land managing agencies are reviewing all lands under their management to identify any areas that meet the requirements of the National Wilderness Preservation Act of 1964. They will make recommendations for areas to be included into the National Wilderness System. The Alaska Division of Parks plans to introduce wilderness proposals to add areas to the state park system. Several wilderness proposals are included in d-2 legislation. Many areas in Alaska are de facto wilderness because of inaccessibility and rugged topography and will remain such after other wilderness legislation is completed.

Wilderness areas, by their very nature, limit access through them to pedestrian travel. Most motorized vehicles will be disallowed in wilderness areas. Shoreline access by boat or floatplane is permissible unless natural hazards prevent safe docking or landing. These areas will provide an opportunity, for those able, to enjoy a wilderness experience.

Perhaps the most critical issue facing wilderness today is not the preservation of such areas but providing access to them. The Alaska Native Claims Settlement Act and private land ownership, as discussed earlier, will significantly limit access to wilderness areas. Upland access to wilderness areas, as well as other public areas, is in jeopardy after the Native lands are conveyed. After conveyance, easements can either be purchased or obtained through the power of eminent domain. If the wilderness area borders the coastline, access to the area by way of the coastline is assured. However, natural hazards may prohibit access through the coastline, therefore, isolating the area without access.

VI. ACCESS AND PROTECTION STANDARDS AND RULES

The most important state regulations concerning shoreline access and protection are contained in the ACMP Guidelines and Standards set forth in 6 AAC Chapter 80. 6 AAC 80.060, "Recreation," provides:

> Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are:
>
> (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or
>
> (2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

Because the designation of recreational areas on or near the shoreline would be pointless if access to those areas were not also provided for in district programs, a requirement to that effect could be read into the "Recreation" standard. In order to make this requirement explicit and to clarify that it applies to activities of state agencies in the coastal area, the Alaska Coastal Policy Council, at its December 14, 1978, meeting, added the following new subsection to 6 AAC 80.060:

> (b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal waters.

This provision will go into effect upon its approval by the legislature.

6 AAC 80.160 provides for the designation by districts, the Council, and other agencies of "areas which merit special attention" (AMSA's). The types of areas suitable for designation and subsequent protection are listed in the standard and in AS 46.35.210(1). Among these are:

> "areas of substantial recreational value or opportunity"
>
> "areas needed to protect, maintain, or replenish coastal land or resources, including... beaches..."

Hence, this special area designation is available for heightened attention to shorefront access and protection.

It should also be noted that, of the habitat standards contained in 6 AAC 80.130, those dealing with rocky islands and seacliffs, barrier islands and lagoons, and exposed high energy coasts help assure the protection of beaches. The other habitat standards in general assure the protection of both beaches and coastal waters.

There are also other existing state regulations pertaining to shoreline access. The state Department of Natural Resources, Division of Land and

Water Management is responsible for the establishment of easements and rights-of-way across conveyed lands to navigable and public waters (11 AAC 70.00). Oceans, seas, bays, and inlets are defined as navigable or public waters by AS 38.05.365. 11 AAC 70.080 pertaining to easements to and along navigable and public waters, states:

> "The director shall reserve a continous easement for public access along any water affected by tidal action when land adjacent to that water is conveyed unless the director determines that such an easement is contrary to public interest. The easement must extend 25 feet upland and 25 feet seaward of the mean highwater line. Where access along the easement is difficult because of topography of obstructions, an alternate upland access route may also be reserved.
>
> If reasonable access is not otherwise available, the director shall reserve an easement or right-of-way to provide access to coastal or inland navigable or public waters in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must be at least 25 feet wide.
>
> Further additional easements may be reserved to provide increased access where heavy recreational or non-recreational activity exists or is anticipated, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public waters.
>
> In determining the easements to be reserved to and along navigable and public water, the director shall solicit comment from the Department of Fish and Game and the Division of Parks and, if appropriate, from other state and municipal agencies."
>
> The authority for these rules is granted by Alaska Statutes 38.05.020, 38.05.035, and 38.05.127.

Alaska Statutes 38.05.020, 38.05.070, 38.05.035, and 38.05.127 grant the power to lease state owned lands, including tidelands, submerged lands, and lands adjacent to coastlines. Written into the current tideland lease agreement are the following stipulations concerning access and certain recreation activities:

> "The Lessor (State) expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interest of the State to do so provided, however, that the Lessee (local government or private party) shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of the easement or right-of-way.

The Lessee shall not deny the lawful pursuit or the hunting of game or the taking of fish, provided, however, the Director, upon request in writing, may allow the lands leased herein, or portions thereof, to be posted to prohibit hunting and fishing when it appears necessary in order to properly protect the Lessee and his property."

VII. THE GENERAL PLANNING PROCESS

The basic planning process for provision of access to coastal areas is embodied in the district coastal program development process. In organized areas, districts will assess shorefront access and protection needs; inventory resources including land and water areas, uses, and ownership of these areas; analyze resources in terms of anticipated needs and the environmental capability of lands and waters for uses and activities; and develop policies for shorefront access and protection. District programs will also include methods for implementing the programs and provisions for access.

The process will also rely on the efforts of state agencies, especially the Departments of Fish and Game and Natural Resources. The state will continue its programs of park and recreation area development and will probably continue the current practices of selecting park areas on and near shorelines, and imposing access conditions on disposal and lease of state-owned lands.

Both phases of the process must comply with the ACMP Guidelines and Standards, and will utilize the ACMP authorities and procedures for implementation.

The protection of shoreline areas will also be assured through the district program development and implementation process and state agency activities subject to the ACMP Guidelines and Standards, particularly the habitat standards of 6 AAC 80.130. In addition, however, the special management designation procedures described in Part II, Chapter 4, will be available for this purpose. Another means for protecting or providing shoreline access lies in the Department of Natural Resources. The Division of Lands may reserve easements or rights-of-way for access over state lands which are conveyed to others (11 AAC 70.030).

VIII. FUNDING SOURCES FOR FURTHER PROGRAM DEVELOPMENT, RESEARCH, AND ACQUISITION OF SHORELINE ACCESS

Funding sources are available to conduct further research and planning studies concerning shoreline access. These studies would further develop the Alaska Coastal Management Program's ability to meet the requirements of section 305(b)(7) of the federal Coastal Zone Management Act. Funding is made available for program expansion through section 306 management program development grants,. Further funding for research and planning activities is available through the Coastal Energy Impact Program established by the 1976 Amendments to the CZMA. Section 310 of the amended Act makes planning

grants available for research studies and technical assistance. If the planning and research studies indicate that the purchase of easements is necessary to insure shoreline access, Section 315 of the CZMA provides federal grants to purchase such easements. Grants are also available for acquisition through the Land and Water Conservation Fund administered by the Heritage Conservation and Recreation Service, U. S. Department of Interior

Appendix 9

Shoreline Erosion Planning Process

I. INTRODUCTION

This outlines Alaska's planning process for assessing the effects of shoreline erosion, and evaluating methods to control or lessen the effects of erosion.

Erosion is the wearing away of land by the action of natural forces. For the purposes of this planning process, these forces are water-related: wave action, tidal currents, littoral currents, and ice. Although erosion has caused significant damage in some local areas, lack of development along much of Alaska's coastline until recently, has prevented hazardous conditions from becoming a significant threat on a large scale. However, as the pace of development along the shoreline increases, it is important to identify and assess areas of erosion.

The nature and extent of erosion is varied. Ordinary tidal forces are augmented by such additional conditions as extreme tidal variations, and ice. The degree to which material is transported, deposited or added to the shoreline system is also more prevalent in the western and northern regions of the state. In the north, streams are small, and there is not an ample source of riverborne sediment as in the south where glacier retreat supplies a significant amount of material. The final result is general depletion of shoreline. The climate affects erosion to a certain degree, but the addition of man's effects on the processes could be significant.

Erosion along the rugged and rocky coastline in the southeast has been generally insignificant. Glacier activity supplies a large amount of sediment to the system in the northern Gulf of Alaska area. Erosion rates are relatively high in some Cook Inlet areas because poorly consolidated reistocene deposits are exposed in seacliffs. These seacliffs and sand spits are subject to direct wave and tidal attack. Rocky shorelines predominate along the Alaska Peninsula and Aleutians, and erosion rates are generally less severe. However, much of the west coast and arctic is subject to extensive erosion. The predominance of low flatlands composed of sands and gravels fronting on pebbly beaches, and the absence of abundent littoral sediment, contribute to high shoreline erosion rates. Locally, and on varying time scales, coastal deposition does occur even in areas undergoing regional erosion.

Approximately 330 miles of Alaskan coastline can be classified as developed. Critical erosion may be occurring in as much as one-third of that, while much of the remainder may be subjected to hazards in varying degrees. At least 40 Alaskan communities are faced with a critical erosion problem. The developments most frequently subjected to erosion are personal homes which may vary from dwellings in the villages to expensive homes in Anchorage. Perhaps the most critical and complex

problem faces the Native communities which for thousands of years have been forced to move entire villages due to encroaching erosion. Now, many of these villages have become permanent settlements which are continually being threatened by erosion. The solution to this problem must involve sociological adjustment as well as land management.

II. ASSESSMENT OF SHORELINE EROSION

Both mechanical and thermal erosion should be considered potentially hazardous in Alaska. Mechanical erosion is caused by wind, water and ice action and occurs throughout the state. The degree and effect depend to a great extent on local conditions such as type of bedrock, and climatic conditions, which are discussed further below. Thermal erosion occurs in permafrost zones which, become thawed due to natural processes or human activity and are thus more susceptible to mechanical action.

Occurrence intervals may be important in assessing erosional rates. Although mechanical erosion can be a continual process, different factors such as movement of material perpendicular to the shoreline, may be seasonal and cyclic in nature. Other cyclical processes include the scouring of ice, which occurs seasonally when the ice is not fast to the land, and thermal erosion, which can occur only in ice-free periods. One-time events, such as accelerated erosion caused by a storm surge, must be taken into account in any consideration. Also, land-level changes (glacial isostatic rebound, and tectonic changes during earthquakes, etc.) act to change the locus, as well as rates, of erosion.

Basic factors which always must be considered in evaluating erosion hazard and potential are vegetation, topography and soil conditions. Vetegation type and density are, basically, a function of rainfall, temperature and soil characteristics. Beach vegetation may be extremely important in determining the stability of coastal forms, and interference with such natural systems may cause unintended and unexpected results. Vegetation is especially important in stabilizing sand dunes, which in turn act to protect the uplands. Topography and composition of surface materials are more directly linked to mechanical processes, and to a great extent determine rates and effects of erosion.

Many factors must be studied for each area where erosion is active. Daily astronomical tides are important because of the range and force of currents which can be produced, and the effect of transport of bedload and suspension-load. The effects of these currents on sediment transport is poorly understood. More significant is the effect of wind. Wind may move loose materials, and may cause wind stress on the water, producing a wind tide which increases erosion by increasing beach area subject to wave activity. Most important, wind direction affects the direction of wave approach, and this, taken together with shoreline orientation, determines direction of movement.

Waves and longshore drift are the principle agents of sediment transport, deposition and erosion in the nearshore zone. Wave steepness, as determined by wind and bottom configuration, combined with approach direction and shoreline trend determine direction and rate of sediment transport, since steep waves erode and set up strong longshore currents which move sediment out of the area.

In determining wind direction, major meterological features must be considered. The fluctuation of barometric pressure is of prime importance since the passage of cyclones causes winds to change in speed and direction, which affects waves. Prevailing winds and features of cyclonic low pressure systems must be seen as part of the dominant energy-generating mechanism.

The source and volume of terrigenous sediment entering the system is a factor to be considered in a coastal processes program. The major rivers are prime suppliers of sediment, and play a significant role in shoreline maintenance. Other states have found that the effect of dams and diversions has been to seriously deplete this source. Many Alaskan rivers have a particularly high sediment load because of their glacial origins. Also, river deltas, themselves, can cover significant portions of the coastline, and deltaic processes must be taken into account. This is particularly true of the coastline in the Yukon River and Copper River delta areas.

Storms along the coastline result in rapid erosion in a very short period of time. Such brief, extremely high-energy processes occur seasonally, but are notable for their sometimes disastrous effects. Storm surge can greatly accelerate coastline recession, and the equivalent of several years' erosion can occur in one event. Plans in areas susceptible to surge, particularly low lying coastal areas in the northern part of the state, should consider the effects of such a possibility.

While the primary emphasis of this section is on erosion, the possibilities and effects of accretion cannot be ignored, and should be addressed in any coastal assessment. Depositional shorelines may be extensive in Alaska because of the large amount of sediment entering the system, particularly in the area of the northeastern Gulf of Alaska. Seaward displacement of shoreline can occur also from sudden tectonic events. While accretion does not necessarily pose any physical hazard to property, it may cause economic problems through the removal of small docking facilities from deep water, or the periodic dredging of harbors.

Lastly, coastal features are constructed and destroyed by processes which vary in scale both in time and space. Large coastal features such as mountain ranges, deltas and continental shelves are strongly influenced by crustal plate movements, may develop over long periods of time and need not concern the program unless a tectonic event such as that which occurred in 1964, causing vast areas to subside or emerge, recurs.

Intermediate scale features including estuaries, spits and barrier islands are more closely related to change in sea level caused by tectonic changes or glaciation and may be formed in hundreds to thousands of years. Small features including beaches, nearshore bars and rip channels undergo constant change due to ongoing processes. It must be kept in mind that the smaller features caused by wind and storm waves and currents are superimposed on the much larger forms caused by global tectonics and eustatic change in sea level.

Aside from the daily wearing away of the coast by natural forces, the activities of man can initiate or accelerate erosion. Often man-made structures which are intended to alleviate erosional problems only exacerbate the situation.

Structures, such as groins or jetties, interrupt littoral sediment supply and, while trapping sand on one side of the structure, may cause erosion downside as the longshore current moving parallel to the shore picks up material. Other human activities, such as mining of beach deposits and channel dredging, undermine and deepen offshore submarine profiles, which can accelerate erosion downdrift. Finally, the removal of stabilizing vegetation interferes with natural buffer zones, and disturbances in the insulating material over permafrost quickens the incidence of thermal erosion. All man-induced activities, in the final analysis, are controllable, since the choice exists whether or not to undertake the activity which causes the disruption. Because of the small percentage of inhabited coastline, man-induced erosion in Alaska is not yet a major problem. However, without adequate study and control, unwise activity could result in greatly increased erosion problems.

The process of coastal erosion is generally slow and noticeable on a regional scale, though the amount in any given period of time is not necessarily predictable with accuracy. However, many of Alaska's communities are situated on the coastline, and are directly dependent on it for transportation and livelihood. Because of this overall dependence on maritime resources by such a large number of people, the implications of erosion on some aspects such as harbor siting may be locally significant. Predictable erosion rates cause few problems, but any construction in an active erosional area must proceed with the understanding that the structure may be eroded before the end of the projected life of the development, resulting in a total destruction of the structure and complete loss of capital. Losses may occur to public or private lands, property or facilities, and public recreational resources.

III. PLANNING PROCESS

The shoreline erosion planning process is part of a comprehensive planning process for coastal hazards. The following outlines how this process works.

Identification

The ACMP geophysical hazard areas standard prescribes planning and management considerations for shoreline erosion. The management part of the standard is discussed in a following section. The planning part of the standard requires districts and state agencies to:

> identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur (6 AAC 80.050(a)).

These areas are defined as including erosion areas and are considered hazards when they present a threat to life or property (6AAC 80.900(9)). At the present time there is no complete source of information on areas of erosion, but additional information will be produced in the course of conformance with this standard. Identification of erosion areas will be limited to areas where coastal development is imminent or anticipated, in addition to recording information about areas already known to present erosion hazards.

Assessment

In the course of district program development, an inventory of areas of erosion will be completed. The planning process for districts is described in 6 AAC 85. Districts will complete resource inventories which describe land and water areas and uses of these areas, and resource analyses which describe changes in lands and waters and uses of these areas. Districts will evaluate the environmental capability and sensitivity of resources and uses and assess anticipated needs and demands for coastal resources. In this manner, the nature and extent of erosion will be determined.

Districts will receive technical assistance from state agencies in indentifying and assessing erosion areas. In areas for which district programs are not approved, state agencies will have to identfy erosion areas where development is anticipated or imminent and evaluate rates and effects of erosion. Information, although not complete, about coastal hazards has and will be compiled by the Departments of Natural Resources and Public Safety.

Funding under Section 306 of the Coastal Zone Management Act will be available to the state to do the necessary survey and inventory work for identifying erosion hazard areas.

Management

Once erosion hazard identifications are completed, the ACMP geophysical hazard area standard requires that

> Development in areas identified... may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided (6 AAC 80.050(b)).

In the course of program development, districts will determine those uses of their coastal areas which will be considered proper or improper. This may be done generally or for specific geographic areas, such as erosion hazard areas. Districts must also develop policies for areas in need of management, such as erosion areas, and the policies must be consistent with the ACMP Standards, including the geophysical hazard area standard.

This standard allows structural solutions to erosion hazards, but non-structural solutions may be applied. Structural solutions include seawalls, bulkheads, revertments, groins, jetties and breakwaters. Non-structural solutions include setbacks and building codes which prescribe proper siting, design and construction criteria for coastal development.

In areas already developed, structural solutions to erosion may be most appropriate for economic and social reasons since these areas may not be able to accommodate the non-structural solutions which would otherwise be preferred. In areas where development is imminent or anticipated, either structural or non-structural solutions may be applied depending on circumstances and conditions. Frequently, structural solutions are found to be inadequate because protective works entail high initial costs, high frequency of maintenance and often exacerbate erosion hazards.

Along the undeveloped coast where development is not imminent, Alaska's policy is not to control erosion. This policy is implicit in the ACMP habitat standards which mandate protection of natural features and processes. These standards also have the effect of protecting natural buffer areas which prevent erosion from becoming a hazard in the face of coastal development. The overall policy in all cases is to minimize property damage and protect against the loss of life due to erosion hazards.

In areas identified as erosion hazards, the hazard standard will be implemented by districts which must demonstrate the authority to insure implementation of their policies in order to obtain approval of their programs. Possible implementation methods for district programs are listed in 6 AAC 85.100. In areas where there is not an approved district program, state agencies will not approve development in identified erosion hazard areas unless conformance with the hazard standard is achieved. Chapter 6 of Part II of this document discusses how the state will implement the ACMP Standards. The detailed siting, design and construction measures required by the ACMP hazard standard will have to be determined by those who propose development in erosion hazard areas.

Special Management

The ACMP also provides a method to focus special management attention on identified erosion hazard areas. "Areas of significant hazard due to

storms, slides, floods, erosion or settlement" may be designated as "areas which merit special attention" (AS 46.35.210(f)). Designation of these areas may be recommended by anyone. Districts will designate the areas in organized areas of Alaska; the Alaska Coastal Policy Council may designate these areas in unorganized areas. Designations will include a management scheme for the area which describes proper and improper uses and management policies, and identifies the authority which will be used to implement the proposed management scheme (6 AAC 80. 160). Management schemes for areas which merit special attention must preserve, protect, enchance or restore the value or values for which the area was designated (6 AAC 80.160(c)).

Appendix 10

Procedures for Agency Involvement in District Program Development

District Coordination Procedures
Introduction

Both the state and federal coastal management programs are based on participation by all affected parties at all important points in the development of coastal programs. For the Alaska Coastal Management Program (ACMP) this is especially important at the local level. ACMP is based in large part on the coastal programs to be developed by local governments. It is crucial that local governments make every effort to involve state and federal agencies early in the development of their coastal programs and maintain that involvement throughout the program development and implementation period.

It is just as important, also, that state and federal agencies make positive efforts to be involved in local programs, By early involvement, the district which has been granted work program approval, can be made aware of any helpful existing information, data and material that would be available from federal and state agencies to assist them in their program preparation. By setting up and maintaining an open line of communication between the agencies during program formulation and at completion, the differences and points of conflict can be reconciled and consistency requirements met before they reach the final approval stage.

The Office of Coastal Management (OCM), is involved with the District approval process in that it is required to maintain a "District Record File". This file is to contain all the evidence of the District Program which would be used for Council approval. Since these responsibilities are related to the work program coordination, the OCM has set up a procedure whereby federal and state agencies will be involved in the various steps of program development and evidence for the Record File can be cleared through a single contact. A Deputy Coordinator for District Program Assistance has been assigned full time to establish OCM as a central point of coordination; and if necessary, in cases of conflict, a mediator for local, state and federal agencies in achieving a viable management program.

This procedure is suggested so that proper lines of communications are set up and maintained to accomplish the best coordinating effort for all involved.

It is felt that the following procedure for agency involvement will simplify the final review and recommendation to the Alaska Coastal Policy Council and will set up an open line of communication with constant awareness before, during and after the district program preparation.

DISTRICT COORDINATION PROCEDURE

Office of Coastal Management

I. When a district applies for grant funds to produce a coastal management program, and a work program has been approved, OCM Staff will transmit a copy of the work program along with a Comment Sheet and cover letter to all state, federal and private agencies that have indicated a desire to be notified, with copies to the district, CRA and other interested parties.

   A. A representative should be established by each agency to handle all comment sheets.

   B. The distribution list (transmitted to you October 2, 1978) should be kept current by notification of any changes to OCM.

II. After notification by OCM of the district work program, the agency contacted should consult internally and externally to determine if the agency should be directly involved in the program or only make comments.

   A. This determination should be made within 30 days and the decision conveyed to OCM by means of the comment sheet. If the agency does not feel that it is directly involved, it should be noted on the comment sheet and returned to OCM. If the agency has reason to become directly involved with the work program, it should be detailed to the greatest extent possible on the comment sheet, with additional sheets if needed, and returned to OCM for further processing.

III. The Deputy Coordinator for District Program Assistance, located in the OCM in Juneau, has the responsibility for agency coordination and maintenance of the District Record Files. Upon receipt of all agencies' comments at the end of the 30 day review period, the Deputy Coordinator will activate the Record File for the approved district work program and make the necessary arrangements for future communications and involvement by the agencies which indicate their desire to participate and/or pass along pertinent information.

IV. The District Record File will be established and maintained by OCM Staff at the time the agencies are first notified of a work program. The Comment Sheet received by OCM will trigger the coordination process and activate the Record File.

   A. The Record File will contain all evidence of the entire work program and any subsequent correspondence necessary for review

and approval by the OCM Staff for recommendation to the Council. All correspondence and evidence of information exchange or meetings should be sent to OCM for incorporation into this record file. (The record file will also incorporate all public participation information and records as further evidence of compliance and conformance.)

B. If any agency indicates interest in involvement with the District Program, OCM as coordinator, will notify the district representative and/or their consultants, of the various agencies that are interested in the subject work program. The district will be responsible for contacting the agency representative to set up an avenue of discussion.

C. Meetings (two or three, depending on the amount of involvement) would be scheduled by CRA Staff for the district, at the beginning of the work program and again during the review of the policy development stage. When notified, OCM Staff will transmit notice and any appropriate and necessary background materials. OCM Staff also will be available to attend any of the informational meetings to offer assistance or help facilitate a smooth transfer of information. (At this point, conformance may be achieved and further dialogue between state, federal and the district would no longer be necessary.)

V. Agency Disputes.

A. If an informal discussion between parties does not solve disagreements between agencies and districts during the local program development process, OCM will sit in on a meeting to seek a solution to the disagreement. This meeting should be set up by CRA, but can be arranged by OCM if necessary.

B. If there is still disagreement after the meeting, a second, more formal meeting will be set up with the parties involved, OCM and agency representatives.

C. If differences are not resolved by meetings, OCM with the agreement of the other parties involved, will take the matter to the Coastal Policy Council for resolution by that body. (Note, this resolution by the Council is not the same as the procedure, the Council will use for settling disputes <u>after</u> the local program is completed.)

VI. The state and federal agencies will continue to be involved during the development of the district program until the completed program is submitted for review and comment by the District for its public hearing. The program document is then reviewed and transmitted along with recommendation to the Council by OCM.

A. If additional information, evidence or testimony becomes available from state or federal agencies at any time during program development, the OCM should be made aware of such and copies transmitted to this office for incorporation into the District's Record File.

VII. After the 30 day agency review period, which follows distribution of the district work program, OCM Staff will send the district information received through the review process and assist them if necessary, in setting up their coordination process. A district representative, as well as a consultant representative (if one is hired), should be designated for all future contacts.

A. All evidence of dialogue between the district and any local, state or federal agency, shall be dispatched to OCM for incorporation into the record file.

VIII. When requested, the OCM staff will attend any meetings to provide guidance for a smooth transfer of data or to answer questions about the coordination process.

A. OCM will also maintain and provide a current list of contact persons for each agency involved in the work program.

B. At any time there is a change in any of the information on the contact list, please notify OCM via the Comment Sheet to facilitate keeping the list current.

Attachment 1

History of the Alaska Coastal Management Program

ATTACHMENT 1: HISTORY OF THE ALASKA COASTAL MANAGEMENT PROGRAM

In Alaska, like other west coast states, interest in coastal management preceded the passage of Federal legislation. In the early 1970's, it was recognized that detailed resource information was necessary to resolve management problems. But for much of the remote and uninhabited Alaskan coast and offshore waters, little or nothing was known. A special effort to gather scientific information on coastal lands and waters was established at the state level.

First Year: (1974-1975) Identifying the Resources of Alaska's Coast

In 1974, the State of Alaska received its first CZM grant. The program was then established in the Department of Environmental Conservation, during the Administration of Governor Egan. A work program was developed to meet the requirements of the Federal CZMA, with an emphasis on development of a scientific basis for decisions affecting coastal resources. Midway in the grant period, after the election of Governor Hammond, the ACMP was moved to the Office of the Governor.

Despite the difficulties presented by the initiation of a new program, followed immediately by a change in Administration, Alaska's first year of program development provided products which were applied to the definition of boundaries, permissible uses, areas of particular concern, and the structure of the management system. Because the collection of information was based on early lease-sale areas, products are available to support the development of district coastal programs in the Cook Inlet and Gulf of Alaska regions.

Second Year: (1976) A Shift to Management Responsibilities

The second-year work program was developed in the Fall of 1975 by ACMP with assistance from OCZM and consultants to ACMP. In one respect, the work program was a response to the difficulties of the first-year. The first year resulted in separate products rather than a comprehensive system for program development. Coastal planning was also hampered by the conspicuous defeat of the State's first proposed coastal management bill. Opponents of coastal planning contended that the State had failed to make a case for establishing a program, which discouraged attempts to initiate public participation and local government involvement.

The second-year work program represented a commitment to developing the structure of the program while continuing the long range tasks started in the first year. It was not until after the grant was completed that an initial structure for organization of ACMP (the Coastal Management Policy Committee) was formally established by the Governor.

Immediately after the start of the second-year, the ACMP staff assisted the Policy Committee in developing a coastal management bill, which was introduced by the Governor on the opening day of the 1976 session of the Legislature. Considerable staff time was involved in preparation of the draft, in attending hearings, and discussing the bill with various interest groups.

Although the bill did not receive final action during the session, it represented a recognizable shift from the image of SB 175, the Administration's 1974 CZM bill.

During the first months of the second-year, the ACMP staff developed an overall coastal program design to establish a more detailed explanation of the structure of the management program. ACMP staff attended a large number of meetings, workshops and hearings to provide information on the changing focus of coastal management in the state. This effort in establishing a public participation system resulted in a large number of showings of ACMP's films in coastal communities and on state-wide television. Later in 1976, a considerable amount of time was devoted to individual meetings and conferences with Commissioners and key agency staff. These led to two Policy Committee meetings at which future CZM legislation was reviewed. The Policy Committee reached consensus that the program and future legislation should focus on the definition of state and local roles in management. The Committee agreed to a major effort in policy development, and to the preparation of a legislative proposal which was consistent with the points agreed on at the meetings during June and July of 1976.

After reaching agreement on an approach, members of the Policy Committee and ACMP staff discussed the issue with the Governor. The Governor urged an emphasis on local government participation in the program. Shortly thereafter, the members of the Policy Committee began meeting with legislators to discuss possible action on a coastal management bill for Alaska. These discussions were part of the work of a committee (called the HCR 123 Committee) composed of legislators and representatives of the administration. The Committee completed a final report on coastal management to the legislature in January of 1977.

Third Year: (1977) Legislative Recognition-Detailed Development

The HCR 123 Committee prepared and presented new legislation for coastal management to the Legislature in January of 1977. Several months passed during discussion of that bill and eventually the Alaska Coastal Management Act became law in June of 1977. The Office of Coastal Management in the Division of Policy Development and Planning became the recognized lead agency for the program and was also designated as the staff of the Alaska Coastal Policy Council, a group which was formed by the Act.

The Act provided that local governments situated in coastal areas prepare coastal management programs using the land planning and managing powers already held by those local governments. The local plans are to be reviewed and approved by the Council. (Council actions are subject to review and approval by the legislature as well.) In order to guide the development and substance of the local programs, the Council was also instructed to prepare guidelines and standards for management of coastal land and water areas and uses to be adopted by regulation. These regulations became the focus of ACMP activity for the next twelve months.

OCM conducted a massive public involvement campaign in the fall of 1977 in order to propose guidelines to the Council which addressed the important coastal problems, and which would receive public support. The Council issued a hearing draft of the regulations in winter of 1978 for public review, just as the third year of the program came to a close.

Also during the third year, some local governments began to develop their own coastal programs. The Department of Fish and Game completed the Biophysical Boundary maps of the Alaska coastal zone and other state agencies continued to gather information and prepare for administration of the program as it took on more and more substance.

By the end of the third year, ACMP had changed dramatically. The Council was in full charge of the program and several definite goals had been reached and new ones established. What remained for the fourth year was to complete the preparation of the ACMP regulations and obtain both Council and legislative approval of the them. This would set the stage for Federal approval of ACMP.

Fourth Year: (1978) ACMP Assumes Final Form

Early in the fourth year the Council and OCM held a series of fifteen hearings on the proposed regulations. In March of 1978, the Council adopted a revised version and sent the regulations on to the legislature. Three more months passed before the legislature acted in the affirmative and the ACMP Guidelines and Standards became administrative law for the state.

State agencies are obliged to implement the ACMP regulations in carrying out their regular management activities along the coast. These activities are substantial in number and scope. The ACMP regulations represent unified state policy on many coastal issues and the existing authorities of the state agencies represent comprehensive management powers that are used to assure adherence to the regulations by significant users of coastal resources. With Federal approval of ACMP, and the accompanying responsibility for Federal agencies to issue permits and licenses consistently with ACMP policies, this aspect of the collaborative management process will be complete.

Local governments have also begun to prepare coastal programs in earnest with legislative approval of the ACMP regulations, and these efforts now have clearer direction with the formal establishment of the ACMP regulations.

Since July of 1978, Alaska has been prepared to seek Federal approval of ACMP under the terms of the national Coastal Zone Management Act. When the first formal Preview Draft was distributed for public review, hearings were held and the current program prepared as a result.

Attachment 2

Alternatives Considered in Developing the Alaska Coastal Management Program

ATTACHMENT 2: ALTERNATIVES CONSIDERED IN DEVELOPING THE COASTAL MANAGEMENT PROGRAM

The ACMP was structured to address and attempt to resolve major coastal resource development issues, especially those identified through the public participation process.

The following alernatives were considered through the development of the ACMP:

1. Program versus no program;
2. Use of existing authorities and planning versus the development of new structures;
3. State-only program versus cooperating in the federal CZM program;
4. State controlled program versus shared state/local control;
5. Performance standards versus policy standards;
6. Boundary-setting alternatives.

1. Program Versus No Program

Before ACMP was considered, there existed a number of state, Federal, local and private programs which affected the management of coastal resources. Among them are the species management programs of state, Federal and private land holders and living resource management agencies, and as many land management programs of widely varying degrees of goals, powers, and effectiveness as there are government and private land owners with proprietary management rights. There are police-power types of management programs as well, including planning and zoning by local governments and the air and water pollution control powers of EPA and the Alaska Department of Environmental Conservation. There are also policy and budget management programs at the state and Federal levels aimed at program integration and coordination. Many of these government management programs require public notice before substantive actions are taken. Some even have public involvement requirements to assure that public input is taken into account in the formulation of new policies.

Passage of the Federal CZM Act did not answer this question for Alaska. The Act did not require a state program, although powerful incentives for the adoption of a program on the state level were offered. Had the state desired, these incentives could have been ignored. The federal consistency provisions are desirable, but it is possible that a good deal of this consistency could be attained through recourse to the courts and the use of political suasion.

Absent ACMP, no mechanism exists for detailed coastal planning for the huge unincorporated area of the state by its residents, although if the desire to implement plans for these areas was great enough, a planning effort could be mounted, assuming that the state legislature and government would provide sufficient funds and trained personnel. This is also true of most of the other elements of the present ACMP.

However, ACMP is specifically intended to define the coastal issues, bring together those people and agencies involved and establish land and water use management rules for coastal resources which will work to resolve policy problems. No program in existence can do this as well. Other programs are, for various reasons, often in a party position to policy disputes and none are charged with resolving conflicts for coastal areas from a comprehensive viewpoint. While other programs recognize that well-planned land use would resolve many coastal problems, none are charged with assuring that land use planning aimed at coastal problem resolution takes place. There is a general government ethic that programs which relate to each other should coordinate their efforts, but few are charged, or funded, to assure that this coordination takes place.

Each state program represents an aspect of the whole state interest, but none are capable, by themselves, of determining an overall state interest and coordinating its implementation. ACMP is specifically enabled to coordinate the interests of all of the agencies and parties to coastal decision-making, and is charged with resolving conflicts between interests.

A consideration of these factors led the Alaska Legislature to adopt the Alaska Coastal Management Act.

2. Use of Existing Authorities and Planning Versus the Development of a New Structure

Before the legislature acted by passing Alaska's CZM Act, there was an effort within state government to meet the goals of the Act by using existing state legislation and powers, using administrative and executive orders and formal interagency agreements.

One of the immediate problems with the existing structure and authority approach was the lack of a viable role for local governments. Other problems were a lack of coherent state policy for central issues and the inability of this approach to include private (including Native) landowners. Absent specific legislation, the state government only had authority over its own actions. This approach also lacked an effective way to include guidance from the legislature.

Further weaknesses were a need for legislation to deal with the unincorporated area, relations with local governments, and an inability to coordinate with Federal programs outside of the context of the CZMA.

All of these problems led to the decision to seek state legislative action which resulted in the Alaska Act, which in turn established the Policy Council and an important role for local governments.

3. State-Only Program Versus Cooperating in Federal CZM Program

The question of what would happen if Federal approval of ACMP were withheld, or if it became apparent that the costs of gaining Federal approval were too high, has been examined.

First, the benefits to Alaska: The funds to develop and operate the program are helpful, and, given the state's financial position, there is a real question if it could have undertaken the program without this financial assistance. Federal consistency is the other major benefit. The value of Federal consistency to the state is substantially affected by the "excluded Federal lands" feature of the CZM Act. As presently interpreted, any land in which the Federal government has an interest, even if the land is only leased, is excluded from the state coastal zone. While additional interpretations provide that Federal development which results in impacts off the excluded land must be consistent (at least as far as the impacts go) with the state policies, this exclusion could result in a great deal of Federal development taking place outside of the control of the state's coastal management program. Should this developed land leave Federal ownership (as will surely happen in the large transfers which will take place under the Alaska Native Claims Settlement Act and the Statehood Act), there is a good chance that the state will be left with a legacy of Federal development inconsistent with state management goals. The interpretation of what is and what is not federally excluded land may change as the matter is judicially reviewed.

A possible disadvantage to participation in the federal program is that the state must structure its program to meet the Federal Act and CZM regulations, and meet Federal expectations in grant applications. This had the potential of eliminating options and program development strategies for the state. To date this has not proven to be a problem. The Federal Act and regulations are not unlike the standard comprehensive planning process that is used in resource management, and the need to work within Federal expectations has provided positive emphasis and impetus to the program.

The most compelling reason, aside from funding, for participation in the federal CZM program is the fact that all participants are mandated to cooperate, and this includes the Federal establishment. For ACMP not to have participated in the Federal program would have resulted in far less efficient coordination with the Federal agencies whose degree of control of Alaska land is extensive.

Beyond this, Federal agencies may have been far less willing to devote their time and efforts to a state program which was not participating in the national CZM effort.

4. State Controlled Program Versus Shared State/Local Control

The arguments for a state-dominated CZM program were the relative inexperience of many local governments, the huge state proprietary interests in Alaskan coastal resources, and the fact that substantial areas of the state are unincorporated and have no local planning and zoning powers which could be focused on coastal issues.

On consideration, a state-dominated program was found to be unacceptable. First, such a program would have been politically unworkable, and would have alienated local governments from participation in further state planning. The vastness of the Alaskan coastal resource made the participation of knowledgeable local governments extremely important for effective control, as tools available to coastal planners for land use control are mostly zoning and other types of police powers which are traditionally, and effectively, in the hands of local governments.

The legislature then provided a means for the unincorporated areas of the state to organize on a limited-power basis for the purpose of coastal management. The state already had land use control authority for the unincorporated areas that could be used to implement the plans developed by these special organizations. This eliminated the problem of "coverage" for coastal planning in the unincorporated areas.

As now structured, the ACMP is shared between state and local government. The state's role is found in the Alaska CZM Act, the ACMP Guidelines and Standards, regional coastal planning, and the power of the Council to review and approve local plans. The local governments will do detailed land and water use planning for their coastal areas and may expect state (and then Federal) consistency when their local plan has been approved by the Council and legislature.

5. Performance Standards Versus Policy Standards

ACMP's operating policies, as found in the Alaska CZM Act and in the ACMP Guidelines and Standards, are policy rather than performance standards. They are rather brief and address all of the major coastal issues expressed at our public hearings and workshops.

Performance standards are often put forward as a desirable policy framework because they are oriented towards preventing certain impacts but do not otherwise direct development. While this allows a good deal of freedom to the developer, it could cause problems if the undesirable impacts are not clearly spelled out or predicted in advance. Performance standards are in common use in municipal zoning ordinances but are complex and require a great deal of work to develop. For Alaska's statewide standards, covering many different types of areas and situations, performance standards would have had to be encyclopedic in scope and minute in detail, leading, if nothing else, to undue restrictions and unrealistic standards for the inevitably missed special situation. The scope of local variations in Alaska was one of the prime reasons for the inclusion of the substantial role for the state's local governments.

Policy standards tend to be more general and adaptable and allow maximum local flexibility and interpretation. They are intended to set a minimum standard, and as refinements of the even more general policies of the Alaska CZM Act. Aside from the unavailability of the time which would have been needed to prepare adequate performance standards, the Council chose policy standards for the ACMP Guidelines and Standards because they were a straightforward way of declaring what they felt was acceptable and what was not. Also, certain aspects of coastal management, such as water-relatedness, are difficult to deal with by the performance standard approach.

6. Boundary-Setting Alternatives

The CZMA requires states to set the boundaries of their coastal zones. This is a complicated issue as boundaries are geographically expressed but, as required by the CZMA, determined by the consideration of non-geographic factors such as potential uses.

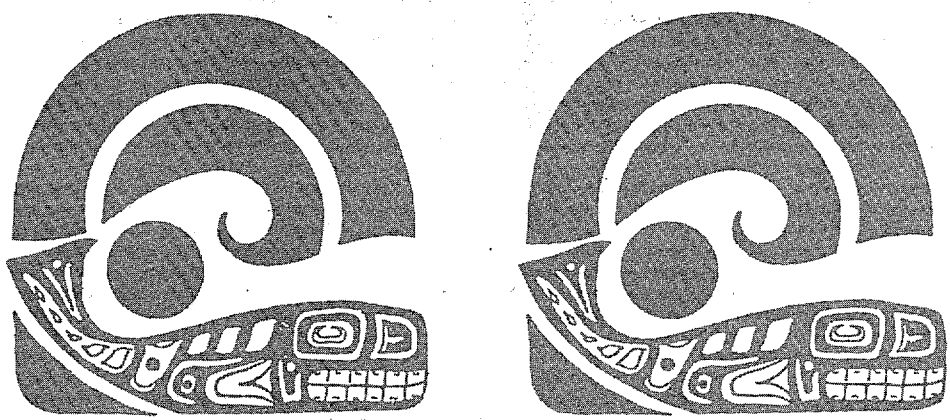
There are several options for boundary setting. Some states have declared semi-arbitrary dimensional limits for the upland boundary. (The seaward boundary is not a problem as there are no alternatives; the CZMA sets this at the limits of the territorial sea.) The practice of setting definite dimensional boundaries has merits, in that the issue becomes one of feet and inches. Choosing a specific boundary must be done with impacts of land uses in mind so that the boundary is neither so close to the shoreline that major upland developments which will impact the coast will not be manageable, nor so far inland that coastal management might interfere with matters unrelated to coastal issues. Selecting a boundary is also dependent, in part, on the type of management schemes which will be used. Some states have selected multiple boundaries in conjunction with their management systems so that the tier nearest the water's edge is subject to more management attention than those further inland.

Another boundary-setting technique, and the one selected for use in Alaska, is to actually study the nature of the coastal resources in each segment or area of the coast, consider the types of impacts for each relationship of the marine environment to the land environment, and then set the boundaries on the basis of determined impacts on the land-water relationships.

This also can be done, and has been done here, in tiers, so that the boundaries are defined in terms of zones of marine influence. Because of the size and diversity of the Alaska coastal resource the direct study method was used. This was obviously a large effort since there are 33,904 miles of coast and the initial boundary was general. Local governments will use the same technique in setting their own program boundaries, and will be able to devote more effort to specific locations and sub-areas. ACMP believes that defining boundaries on the basis of actual biological and geophysical processes comes closest to the original intent of the CZMA's boundary requirements, and is also the best response to the variety of Alaska's coast.

The major difficulty in the technique adopted by ACMP is in determining whether a given site is within the boundary and in locating the actual boundary

on the ground. This is mitigated somewhat by map details, but more by some of the definition measures used. For example, in Southeast Alaska, the zone of direct interaction (which is part of the official interim boundary of the program until local boundaries are set) is defined to be the upper limit of the coastal forests, i.e., the tree line. This is because the forests contain a variety of factors which influence coastal waters and resources, but it is also extremely easy to determine exactly where the boundary is. Local boundary definitions will be more precise, and the guidelines and standards encourage the selected boundaries to be easily located.



Attachment 3

Comments on the DEIS and Responses by OCZM to Those Comments

These biologically- and physically-based boundaries are modified by two specific requirements of the Federal Coastal Zone Management Act. First, the Federal statute limits the seaward boundary of any state's coastal management jurisdiction to the limits of the territorial sea, that is, three miles. Even in cases in which the zone of direct interaction or zone of direct influence extends beyond that limit from a physical or biological basis, the seaward extent of the "coastal zone" is limited to three miles from shore. Secondly, all Federal lands are excluded from the defined coastal zone, although Federal agencies are bound by the Federal CZMA to conform their activities and programs as much as possible to the State's Program.

The boundaries that have been defined by the State may be subject to revision by the districts as each district program is approved. As explained above, the established boundaries are based on existing information. To the extent that more detailed or complete information on determinant coastal processes is available to the districts at the time of boundary redefinition, revisions to the interim boundary may be justified. According to the enforceable "Guidelines for District Coastal Management Programs" (6 AAC 85.040(c)), "final boundaries of the coastal area subject to the district program may diverge from the initial boundaries if the final boundaries: (1) extend inland and seaward to the extent necessary to manage uses and activities that have or are likely to have direct and significant impact on marine coastal water, and (2) include all transitional and intertidal areas, saltmarshes, saltwater wetlands, islands and beaches." These criteria parallel the Federal boundary requirements. Setting the district inland coastal boundaries will be an open process, as will the entire district program effort, and interested parties with pertinent expertise should participate.

Various reviewers expressed some confusion over the significance of the "zone of indirect influence." This zone is the third of the three biophysically defined areas of coastal influence, but is excluded from the legally-defined "coastal zone". Certain reviewers suggested that coastal management jursidiction be exercised in the zone of indirect influence, while others simply questioned the significance of the zone. As mentioned earlier, coastal boundaries were first defined on a biological and physical basis, and then were limited by the constraints of the authorizing Federal statute (territorial sea) and by the State legislature. Subsection 304(1) of the Federal CZMA states that the coastal zone "extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." (Emphasis supplied.) Although land/sea relationships are still identifiable in the zone of indirect influence, they could not normally be termed "direct and significant." For this reason, the zone of indirect influence is excluded from the coastal zone under the provisions of 6 AAC 85.040(b).

In certain cases, major activities using or altering lands and waters outside of the coastal zone may significantly affect coastal waters. Examples would include a hydroelectric or water-supply reservoir that controls water flow into an estuary, or a major forestry or mining activity that may have spillover impacts on water quality or protected coastal habitats. Under certain circumstances, the Federal Act and regulations provide the State the opportunity to review the consistency of such activities with the ACMP if they are conducted by a Federal agency or require a Federal license or permit, as is often the case (CZMA §307; 15 CFR 930). State agencies may be similarly bound to consistency with the ACMP for activities and authorizations outside of the coastal zone that significantly affect the coastal zone by the provision of the ACMA that requires State agencies to "take whatever action is necessary to facilitate full compliance with and implementation of the management program." (AS 46.40.200)

A number of reviewers asked for clearer description of the actual boundary location, while others went a step further and asked for maps of the boundary. Maps of the coastal zone that delineate major Federal land holdings, district boundaries and the unorganized borough accompany this P/FEIS document, along with the previously mentioned descriptive piece on identification of the boundary.

Responses to Comments Received on the State of Alaska Coastal Management Program and Draft Environmental Impact Statement

This section summarizes the written comments received on the Alaska Coastal Management Program and Draft Environmental Impact Statement (P/DEIS) and provides the Office of Coastal Zone Management (OCZM) responses to these comments. Generally, the responses are made in one or more of the following ways:

1) revision of the Alaska Coastal Management Program (ACMP) by the Office of Coastal Management (OCM),

2) revision of the Draft Environmental Impact Statement by OCZM,

3) general responses to comments raised by several reviewers, and/or

4) individual responses to the individual comments made by each reviewer.

OCZM is not addressing late comments in the general or in the individual responses in the Alaska Coastal Management Program/Final Environmental Impact State (P/FEIS). Some of the concerns of reviewers sending in late comments are addressed in the P/FEIS, however, because others commenting on time raised them. OCZM will publish all comments in a compendium and distribute it to persons commenting on the P/DEIS. Copies of the compendium will be available to anyone else upon request.

Issues of concern raised by several reviewers-(Referred to as General Comments in the double column text)

A. The Coastal Zone Boundary

The ACMP boundary and the description of it in the P/DEIS have generated a considerable number of questions and comments. These involve the basis of the boundary definition; its interim nature and the standards applicable to its revision; the significance of the various zones that compose the boundary definition; the adequacy of the inland extent of the boundary; and the effect of the ACMP authorities on activities or resources outside the boundary. These issues will be addressed in turn.

The Alaska coastal zone was based on the landward and seaward limits of coastal biological and physical processes. The boundaries drawn are based on a comprehensive review over a three-year period of available information concerning the geology, oceanography and biology for each segment of the coastline. The landward and seaward extent of the boundaries derive from a recognition that biological and physical processes occurring along the coast can extend far beyond the immediate shoreline. For example, the influence of the salinity of the ocean can extend for miles inland via wind-carried salt spray and will have a significant regulating effect on plant communities as well as on the corrosive deterioration of human structures and machinery. Particular attention was also given to the patterns of distribution and behavior of fish and game populations which are of great importance to both the commercial and subsistence needs of many of Alaska's citizens. The majority of these fish and game populations are totally dependent on nearshore coastal habitats during some phase of their life histories, but migrate away from the coastline over wide areas to carry out their life functions. In order to protect these resources, landward and seaward boundaries of the coastal zone include coastal lands larger in extent than those immediately adjacent to the shoreline. The biological and physical parameters of the component zones of the official coastal zone are detailed in the Program text (Chapter 4) and mapping guide accompanying the P/FEIS.

The biophysical zones were divided into three subzones. The "zone of direct interaction" occurs in the portion of the coastal zone where physical and biological processes are a function of direct contact between land and sea. Immediately landward and seaward of the "zone of direct interaction" is the "zone of direct influence" which is strongly affected and influenced by the proximity of land and sea, but is not subject to the dynamics of land/sea energy dissipation characteristic of the former zone. These two biophysical subzones comprise the legally-adopted coastal zone for the purposes of the ACMP statewide. The third bipophysical subzone, excluded from the "coastal zone" for reasons explained below, is called the "zone of indirect influence," and continues landward and seaward of the zone of direct influence to the point at which land/sea relationships are no longer identifiable.

B. Preventing Unreasonable Restriction or Exclusion of Uses of State Concern by Districts that have not Submitted Their Programs to the Council

Pages 167-69 of the P/DEIS continued a discussion of a procedure, based upon the state's inherent authority to take property with just compensation, known as "eminent domain," by which the state proposed to prevent unreasonable restriction or exclusion of uses of state concern by districts that have not yet submitted their programs to the Council. When a district submits its program to the Council, a sequence of procedures is triggered by which questions involving uses of state concern can be dealt with expeditiously at the state level. The ACMA does not, however, contain explicit provisions for protection of uses of state concern before a district has submitted its program to the Council.

Under the described procedure, the sponsor of an alleged use of state concern who had reason to believe that a district would attempt to unreasonably restrict or exclude it, would call this to the attention of OCM. If OCM found this apprehension justified, it would submit to the Council a draft resolution asking the Legislature to authorize the use of state concern as a "public use," thereby authorizing the sponsor to acquire the property necessary for the use by eminent domain and to disregard the local land use measures that would have unreasonably frustrated that use. The procedure is based on the general principle, which appears to prevail in Alaska, that local zoning ordinances cannot limit the right of those to whom the authority has been delegated to exercise the power of eminent domain.

Several commenters on the P/DEIS criticized this proposed procedure, and questioned its adequacy to prevent unreasonable restriction or exclusion of uses of state concern. Some of these comments dealt with the legal basis for the procedure. At least one commenter, the SOHIO-BP Alaska Production Division, appeared to be under the impression that the "property" to be taken under the procedure would be the local zoning authority itself. It quite correctly pointed out that such an application of the eminent domain power would be novel, and would probably require judicial confirmation before it would be viable. This was not, however, what was being proposed. The override of local zoning authority would only be an incident to the taking of real property for the proposed use of state concern by the promoter under the authority of the Legislature's designation of the use of state concern as a "public use" within the meaning of the Alaska eminent domain statute, AS 09.55.240-460. It should be emphasized that this override of local authority would not depend, as one commenter suggested, upon the Governor making a finding of "overriding public need" pursuant to AS 35.10.020. This requirement is part of an exception contained in a statute by which the state voluntarily limited the normal exemption from local zoning that would be enjoyed by projects of the Department of Transportation and Public Facilities and the University of Alaska. Because the statutory limitation does not apply to private entities carrying out "public uses" under eminent domain authority delegated from the state, there is no need for the Governor to make the finding that would relax that limitation.

Most comments on the proposed procedure did not focus as much on its legal basis as on doubts that the commenters had about its workability and practical effect. The most frequent criticism involved the length of time that might be required for the process to be completed due to the fact that the Legislature might not be in session for several months after adoption of a resolution by the Council. OCZM agrees that this may be a source of delay. Recognizing the prominence that the matter would be given by the Council's resolution, however, it seems unlikely that final resolution of the matter would have to wait for more than one legislative session. A delay of 7-9 months, while not inconsequential, would not be out of line with the time required to obtain necessary state and federal permits and make other preparation for a major project. Much would depend upon early initiation of the process by the sponsors of a proposed use of state concern as soon as it becomes apparent that there may be a problem with local land use regulations.

While the eminent domain procedure continues to be discussed in the P/FEIS, Part II, Chapter 7, OCZM has determined that the general law of state municipal relationships currently prevailing in Alaska provides more ready means of ensuring that uses of state concern are not unreasonably excluded or restricted by municipalities that have not yet submitted district programs to the Council. At the suggestion of Sohio-BP, OCZM reviewed and analyzed a line of Alaska Supreme Court cases that deal with direct and indirect conflicts between ordinances of municipalities, particularly home rule municipalities, and state statutes. OCZM finds that the principles enumerated in these cases provide ample protection for uses of state concern.

The Alaska cases on conflicts between home rule municipal ordinances and state statutes all interpret Article X, Section 11 of the Alaska Constitution, which provides:

> "A home rule borough or city may exercise all legislative powers not prohibited by law or charter."

In determining whether an exercise of legislative power by a home rule municipality is "prohibited by law" within the meaning of this provision, the Alaska Supreme Court has held:

> "The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially unreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law."

Jefferson v. State, 527 P.2d 37, 43 (Alaska 1974).

The necessity of finding a "prohibition," whether express or implied in state statute before an exercise of legislative authority by a home rule municipality can be overridden by state law has required the Alaska Supreme Court to reject the principles adhered to in other states that home rule municipalities may not legislate in any areas that are of "statewide," rather than "local," concern, or which the legislature has even silently intended to "occupy" or "pre-empt." Id.; Rubey v. City of Fairbanks, 456, P.2d 470, 475 (Alaska 1969).

The requirement of a statutory prohibition for override of home rule legislative authority has not, however, been interpreted narrowly by the Alaska Supreme Court. The breadth that the Court has given to the concept of "prohibition. . .by implication" is illustrated by two major cases, each embodying a distinct strand of analysis, that were specifically reconfirmed in the leading Jefferson case, 527 P.2d at 44.

In Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), a home rule city denied a building permit for construction necessary to initiate electric power service within the city that had been authorized by the state Public Service Commission through issuance of a certificate of public convenience and necessity. Rejecting the contention of the city that every piece of legislation that restricts the powers of home rule municipalities must be specifically labled as so doing, Id. at 120; and emphasizing that it considered the question to be one of conflict between certain municipal ordinances and the state statutes vesting power in the Public Service Commission, rather, than one of an implied "pre-emption," Id. at 121, the Court held that the local ordinances must yield. In so doing the Court applied what it referred to as the "local activity" rule.

> "This rule. . .is merely an expedient method for resolving an impasse between state statutes which seek to further a specific policy and municipal ordinances which either directly or collaterally impede this implementation."
>
> . . .
>
> "Here, the activity sought to be regulated is unquestionably of a state-wide concern--the determination of service areas wherein a public utility may operate. Even assuming some doubt as to a correct characterization of the activity, we would be inclined to rule in favor of the legislative authority of the state."
>
> . . .
>
> "The statutes involved herein [footnote omitted], while not evincing a clear manifestation of intent to occupy the entire field of public utility regulation, certainly demonstrate a strong policy in favor of treating such regulation as a matter of state-wide concern. The type of service provided and the area wherein it shall be provided are the subjects of specific statutory provisions. On the basis of these laws, the Public Service Commission has concluded that it will best serve the needs of the public if Chugach is allowed to provide service in a given area. The determination should not be allowed to miscarry because the City of Anchorage withholds a permit."

476 P.2d at 122-23.

The Court in Jefferson, supra, did not refer to the "local activity" rule by name, although Justice Connor, the author of the Chugach opinion, wrote an extremely well-reasoned concurring opinion in Jefferson that explored further the implications of that rule. 527 P.2d at 44-46. In addition, the Jefferson Court summarized and specifically endorsed the reasoning followed in Chugach:

> "We resolved the conflict by application of a rule requiring the local enactment to yield where it directly or indirectly impeded implementation of statutes which sought to further a specific statewide policy. This court discerned in the statute a strong policy in favor of treating regulation of public utility service areas as a matter of statewide concern. The situation was one in which locally created variations from state regulation could have affected public utilities beyond the local area. In these circumstances, we found a legislative intent, that regulated utilities, were to be within the exclusive jurisdiction of the Public Service Commission to the extent that such jurisdiction was conferred on the Commission. Accordingly, municipalities were prohibited from regulating the same utilities to the extent of the Commission's proper jurisdiction."

527 P.2d at 44.

The Chugach case, as reconfirmed in Jefferson, thus provides a solid basis for judicial challenge of municipal ordinances that purport to restrict or exclude likely uses of state concern in an unreasonable manner. The uses of state concern that are the most often mentioned as likely targets of unreasonable local regulation are oil, gas, and coal extraction, storage, and distribution facilities including ports and staging areas. Oil, gas, and coal extraction will in almost all foreseeable cases take place on state or federal land. On state land, it will take place under leases and permits issued by the Department of Natural Resources under the state's constitutional duty to manage its natural resources for the maximum benefit of the people of the state, Alaska Constitution, Article VIII, Section 2, in implementation of the policy that these resources be made available for maximum use consistent with the public interest, Id., Article VIII, Section 1. These are thus plainly "matters of statewide concern," subject to state statutory and constitutional provisions the implementation of which by DNR would be directly impeded by unreasonable local regulation. These uses thus fall squarely within the principles of Chugach, and any such unreasonable local ordinances would, upon judicial challenge, almost certainly be declared invalid as applied to these uses.

Oil, gas, and coal extraction on Federal lands would be carried out under leases and permits issued by the United States Department of the Interior under federal statutes providing for the management of these resources in accordance with policies of national scope. The application of these policies in the national interest by the Interior Department would be directly impeded by local ordinances purporting to prevent such extraction. Article X, Section 11 of the Alaska Constitution, which provides the basis for the Chugach and Jefferson decisions, forbids local legislative action that is "prohibited by law." Because this provision is not limited to prohibitions by state law, the principles of Chugach and Jefferson can be applied, in addition to the Supremacy Clause of the Federal Constitution, to invalidate unreasonably restrictive local ordinances that interfere with the implementation of federal statutes, including those providing for oil, gas, and coal extraction on federal lands.

The same principles would be applied to invalidate unreasonable local restrictions on uses ancillary to the extraction of oil, gas, and coal, such as pipelines, ports, storage, facilities, and staging and assembly areas. Chugach provides for invalidation of municipal ordinances which "directly or collaterally" impede the implementation of statutes. 476 P.2d at 122. Since unreasonable restriction of ancillary facilities would, however indirectly, frustrate effectuation of state and federal statutes providing for extraction of oil, gas and coal under the direction of DNR and the Interior Department, it, too, would have to give way under Chugach and Jefferson.

The second major case that was reconfirmed in Jefferson is Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971). Macauley dealt with the attempt of a home rule municipality to take over the accounting functions of a school board without that board's consent, when a statute provided that such consent was necessary. The Court could have invalidated the local activity based on the plain violation of an express statutory provision. It chose, however, to deal with the situation in a manner which has important implications for the protection of uses of state concern involving the exploitation or use of natural resources. Claiming to apply the "local activity" rule of Chugach, the Court focused on Article VII, Section 1 of the Alaska Constitution, which provides:

> "The legislature shall by general law establish and maintain a system of public schools open to all children of the State. . ."

Noting (1) that this provision is mandatory not permissive; (2) that it embodies a continuing obligation--the "maintenance" of the system; and (3) that no unit of government other than the Legislature shares responsibility or authority under the provision, the Court concluded that there was a clear constitutional mandate for pervasive state authority in the field of education. 491 P.2d at 122.

> "The statute involved in Macauley was an express delegation by the state legislature to municipal corporations of a constitutionally mandated legislative power. [Footnote omitted.] We reasoned that the language of the state constitution mandating maintenance of a school system by the state vested the legislature with pervasive control over public education. Thus, home rule municipalities were precluded from exercising power over education unless, and to the extent, delegated by the state legislature, and the local ordinance was therefore overridden by the statute."
>
> Jefferson, supra, 527 P.2d at 44.

Article VIII, Section 2 of the Alaska Constitution provides as follows:

> "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."

Like the public education provision considered in Macauley, this natural resources section is (1) mandatory, (2) expressive of a continuing obligation, and (3) directed solely to the Legislature. It thus meets the three criteria upon the basis of which the Macauley Court found constitutionally mandated pervasive state authority over public education. It is therefore plain that the management of the state's natural resources is, under the Alaska Constitution, an area over which there is pervasive state authority and over which home rule municipalities are precluded from exercising power "unless, and to the extent delegated by the state legislature. . ." 527 P.2d at 44. Any attempt by a municipality to interfere with that management without express legislative authorization, and particularly any unreasonable attempt to do so, would be illegal and invalid.

The cases discussed thus far have dealt with home rule municipalities. State authority to prevent unreasonable exclusion of uses of state concern is even easier to demonstrate in the case of non-home-rule municipalities, which do not enjoy the benefit of Article X, Section 11 of the Alaska Constitution. In Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978) the Court held that, while non-home-rule municipalities in Alaska are not limited to the exercise of powers that are either expressly granted by the state, necessarily incident to such expressly granted powers, or absolutely essential to the declared objects and purposes of the municipality Id. at 1120-21, they are subject to implied pre-emptions of authority by the state.

> "We believe that an appropriate accommodation can be made between the state and general law municipalities by a rule which determines pre-emption to exist in the absence of an express legislative direction or a direct conflict with a statute, only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose."

584 P.2d at 1122.

For substantially the same reasons that ordinances of home rule municipalities that unreasonably restrict uses of state concern would be "prohibited by law," and thus overridden under the Jefferson, Chugach, and Macauley cases, ordinances having that effect would when passed by general law municipalities be found under Liberati to violate an area of implied state pre-emption.

The discussion to this point has focused upon protection of uses of state concern before the concerned local government has submitted its district program to the Council and activated the state-level administrative process for resolving any questions concerning such uses. It is appropriate to emphasize here that submission of a district program cannot be delayed indefinitely and is, in fact, a matter over which both the Council and the state courts have considerable control.

AS 46.40.050 requires that all municipalities constituting coastal resource districts, including all such municipalities exercising land and water use controls, have submitted their district programs to the Council by December 1979. When the P/DEIS was prepared it appeared that this deadline would be extended on a general basis by the Legislature for a period of two years.

It now appears that the Legislature will either decline to extend the deadline at all or that it will authorize the Council to extend the deadline for individual districts on a case-by-case basis subject to negotiated compliance schedules. Under either set of circumstances, the passing of the deadline will make available direct methods for bringing unreasonable exclusions of uses of state concern before the Council.

If the Legislature simply declines to act, and retains the December 1979 deadline, all districts will, as soon as the deadline arrives, be under a legal obligation to have submitted their district programs to the Council. If the sponsors of a use of state concern encountered attempts by a district that had failed to submit its program to restrict or exclude the use, they would be entitled to bring a suit in the nature of mandamus or for a mandatory injunction to force the district to submit its program to the Council within a specified period of time. This would give the Council the opportunity to decide the matter at the state level, subject to legislative approval, in an expeditious manner.

If the Legislature gave the Council discretion to extend the deadline on a case-by-case basis, the Council would be in a position to require early submission of programs for districts experiencing disputes over alleged uses of state concern, in order to provide for their resolution within reasonable periods of time.

The December 1979 deadline will arrive less than six months after the proposed approval date for the ACMP, in contrast with the thirty months that would have elapsed under the blanket extension that was expected when the P/DEIS was issued. Because of the shortness of this period, OCZM does not consider it to detract significantly from the level of protection afforded uses of state concern from unreasonable restriction or exclusion. In fact, it would give the Council the opportunity to determine where the controversies over uses of state concern were occurring and to take this into account in determining schedules for program submission and approval following passage of the deadline.

C. Guidance to Local Governments in the Development of District Programs

Many commenters expressed uncertainty about the substance or adequacy of guidance to local governments in the development of their district programs. Attention was focused on three main areas: (1) the content and purpose of the Manual of Standards; (2) the need for a regional planning perspective in district programs; and (3) the amount and quality of direct guidance and assistance given to the local governments under the auspices of the ACMP.

1. The "manual of standards" was the source of considerable misunderstanding to reviewers of the P/DEIS. The ACMP Guidelines and Standards state that the "Council will prepare a manual of standards for the management of land and water uses in the coastal area to assist in the development of district and state agency programs" (6 AAC 80.030(d)). In discussing the purpose of the manual, also known as the land and water uses guide, the P/DEIS indicates that the manual "will be adopted by the Council by resolution and thus [will] constitute additional guidance to ACMP participants." With some reason, the preceding two statements in combination were interpreted by several reviewers to mean that the manual would represent a substantive new set of ACMP "standards" that were unavailable for review at the time of the circulation of the P/DEIS. As the revised text in this document more clearly indicates, the manual of standards simply will be a compilation of existing Federal and State laws and regulations that are pertinent to resource management and planning. These "standards" will be organized for the convenience of local resource managers to guide them to the laws and regulations applicable to a given combination of coastal activity and coastal resource. While the manual is envisioned as a handy planning tool, it will contain no new policy or standards and will not be an integral element of the ACMP. Furthermore, the statement that the manual would be adopted by the Council by resolution was a misstatement, and has been deleted from the revised text. Because of funding limitations, the manual still is not available as this P/FEIS goes to press. Availability is expected at about mid-1979.

2. "Regional planning" was the second area of ACMP guidance to local governments that raised questions among commenters. The concern about the availability of a regional perspective took many forms. Several reviewers were generally interested in the development of "regional programs" in response to the ACMA directive that the Council "initiate an interagency program of comprehensive coastal resource planning" in order to "facilitate the development and implementation" of the ACMP (AS 44.19.893(2)). Certain commenters pointed out the need for a regional or statewide perspective as well as technical and financial support to districts in siting of energy facilities, while others spoke more broadly of a need for State guidance in treatment by districts of uses of state concern in district programs. Finally, two reviewers sought State agency guidance to local governments in identifying "areas which merit special attention" for protection through district program approval.

Shortly after passage of the ACMA in 1977, the Council did, in fact, "initiate an interagency program of comprehensive coastal resource planning." The original intent of the "regional program" effort was to develop resource management programs for each of nine major regions in the State. These programs would serve to guide districts in identifying uses of state concern and areas which merit special attention, as well as to guide State agency decision-making in the unorganized borough. However, the regional program effort as described here floundered. Lack of guidance in the ACMA as to the regional program effort's exact role, coupled with the absence of any authority assigned to regional programs once completed, have been cited by the State as among the reasons that the interagency effort fell far short of its goals.

Unwilling to abandon the effort completely, the Office of Coastal Management attempted to restructure the regional planning initiative in early-1979. The new group, with more modest expectations, was called the State Agency Coastal Coordinating Team (SACCT) and was composed of representatives of the six line agencies on the Council and a chairman from DPDP. In redefining the interagency function of the SACCT, the goal of developing comprehensive regional programs was set aside for two reasons. First, development of a consensus document, recognizing the complexity of the resource issues, was considered an enormous and expensive task in the absence of a clear directive from the Legislature concerning the eventual authority of such regional programs. Secondly, even if such a task could be accomplished, it is highly unlikely that such programs for nine state regions could be completed in time to guide development of the district programs, several of which are likely to be submitted before the end of 1979. The SAACT's stated purpose was to improve interagency coordination, particularly with respect to establishing unified State positions on uses of state concern and areas which merit special attention. SACCT went nowhere, however, since Federal funding available to ACMP in early 1979 was limited, and other final program development tasks and staff maintenance consumed the remaining funds.

The Office of Coastal Management, rather than attempt, once again, to create an interagency program of regional planning that fit its early conceptions, reexamined the intent of the legislative directive. The need was for (1) State direction on what constitutes uses of State concern in different regions of the State; (2) provision to the districts of agency expertise and greater-than-local management perspective concerning resource characteristics, demands and use impacts, including major facility siting; (3) agency expertise in applying habitat standards to local conditions; and (4) assistance to districts in identifying and managing areas which merit special attention. OCM has concluded that these objectives can each be achieved by the efforts of Federal and State agencies working individually with the local governments in the development of the district programs. The Department of Community and Regional Affairs and OCM together can bring other State agencies' expertise or perspective to bear on district management issues. OCM intends to support a position in-house to serve such coordination functions. The Council, in turn, can function as a conflict resolution body when, for example, the Statewide perspective of a resource development agency differs from that of a resource protection agency. Finally, when special issues or management needs of a regional nature arise in the course of program implementation, special-purpose regional planning studies or management efforts can be mounted. A proposed Aleutian bottom-fishery impact study is an example. In these ways, OCM intends to meet the regional planning needs for district programs in a timely and efficient fashion.

3. The ACMA (AS 44.47.095) directs the Department of Community and Regional Affairs (DCRA) to "conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development and implementation of district coastal management programs." Working closely with the Office of Coastal Management, DCRA has been using its established ties with Alaskan communities as the basis for contracting with local governments for the development of district programs. DCRA's responsibilities include liaison between the communities and OCM; contract management; evaluation of local government planning capabilities and recommending professional planning assistance by contract where appropriate; transmission of technical needs of districts to appropriate information or assistance sources in the State; guidance in compliance with the ACMA and Guidelines and Standards in program development; and, with OCM, other State agencies and other interested parties, review of programs as they are developed.

The basis of DCRA's guidance to the districts is found in the ACMA (AS 46.40.030 and AS 46.40.070) and the Guidelines and Standards (6 AAC 85 and 6 AAC 80). The cited sections of the Act define the essential parts of the district programs to include district boundaries; land and water uses subject to the program; policies to be applied to the management of uses; regulations carrying out those policies; policies and procedures for evaluating uses as proper and improper; and, a delineation of any AMSA's as may exist (AS 46.40.030). The Act also provides standards for Council approval of a district program. These standards also serve as guidance to the districts, of course, and include provisions requiring consistency with the Guidelines and Standards and reasonable consideration of uses of state concern (AS 46.40.070). The Guidelines and Standards, in turn, set not only minimum management standards for district program treatment of habitats, coastal development, and major resource uses (6 AAC 80), but also provide enforceable guidelines on the content of the district programs, responsive to the requirements of AS 46.40.030. These guidelines include such matters as criteria for revision of coastal boundaries from those set by the State; content of resource inventory; standards for the specificity, enforceability and comprehensiveness of policies developed in accordance with the ACMA and Standards; requirements for a description of the district's management organization; and, standards for public involvement. In negotiating contracts with local governments for the development of two district programs, OCM and DCRA must determine that the work program design accompanying the application for funds will lead to development, in a timely manner of a program that will meet these cited standards and be approvable by the Alaska Coastal Policy Council.

Part of the uncertainty expressed by certain reviewers over the guidance the districts have received has arisen from their review of the first drafts of district programs that have been released. These drafts are the result of work that began after passage of the ACMA, but before adoption of the Guidelines and Standards in 1978. While several draft district programs appeared after the adoption of the Guidelines and Standards, program development occurred without benefit of their guidance. None of these early drafts was accepted for formal review by the Council in light of the inconsistencies with the approved Standards. Draft district programs circulated in the months ahead should more closely reflect the letter of the 1978 regulations.

D. Management of Wetlands under the ACMP

A number of commenters expressed concern or confusion about the manner in which wetlands will be managed and protected under the ACMP. Large areas of the coastal zone and, indeed, of the state as a whole are composed of wetlands. Yet, unlike some states, Alaska has no special permit system governing uses of wetlands. Certain reviewers consider that such a single-purpose permit system provides the only adequate protection for wetlands. Compounding the problem, in the eyes of some commenters, is their belief that federal vigilance has been lacking in enforcing statutory and regulatory requirements applicable to wetlands.

During the development and review of the ACMP, the need for an adequate state wetlands management system has been a matter of great concern to OCZM. A focused permit system would have been one way to provide assurance that the management capability existed prior to federal approval. In light of magnitude of the effort that was necessary to develop and adopt the ACMA and the Guidline Standards, however, the ACMP staff concluded that development and legislative adoption of a state wetlands permit prior to timely federal review of the ACMP was unlikely.

In view of this, and in view of the President's expressed concern over the protection of wetlands (Executive Order 11990), OCZM has carefully analyzed the legal authorities and administrative mechanisms that are currently available for the protection and management of wetlands in Alaska. OCZM has concluded that existing state and federal legal authorities and organizational structures are adequate for the protection and management of Alaska's wetlands. It is also recognized, however, that these authorities and administrative structures cannot be used to full advantage unless (1) they are focused more specifically upon problems of wetlands management and protection, especially those problems that are peculiar to Alaska; and (2) the resources available to these organizations for implementation and enforcement of these authorities are substantially increased. Based upon these findings, OCZM has determined that existing authorities and organizations for management and protection of wetlands justify approval of the ACMP at this time; but that further development and strengthening of these authorities and organizations must be a task of the highest priority for the first years of implementation of the ACMP.

In addition to the direct authority of DNR and other state agencies, adequate if indirect controls exist to assure the protection of wetlands using the combined authority of the ACMA, and the Guidelines and Standards (especially 6AAC 80.040(6) and 6AAC 80.130(b)(3)), and the review activity provided to the States under §401 of the Clean Water Act. As in other states, there is broad authority under federal statutes and regulations for the protection of wetlands in Alaska. The U.S. Army Corps of Engineers is responsible for the administration of §10 of the Rivers and Harbors Act of 1899, 33 USC §403 of the Clean Water Act 33 USC 1343, governing the placing of structures or work (including dredging) in the tidal wetlands shoreward to the mean higher high water mark; and of §404 of the Clean Water Act, 33 USC §1344, governing discharges of dredged or fill material into any wetland. Most of the area that is subject to permitting under §10 must, under the federal consistency requirements, comply with the ACMP guildelines and standards. §10 provides a means for enforcing the ACMP on dredging activities in tidelands not owned by the state in the comparatively rare instances when those activities are not subject to another state permit.

The §404 permit system applies to all wetlands, defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions." A permit cannot normally be issued by the Corps under this section unless the state has first issued a certificate of reasonable assurance under §401. This certificate, which in Alaska would be issued by the Department of Environmental Conservation, states that the discharge in question would comply with certain provisions of the Clean Water Act. Most significant for purposes of wetland protection under the ACMP, however, is the requirement of §401(d) that the certificate set forth any limitations and monitoring requirments necessary to assure compliance with "any ... appropriate requirement of State law," and that these limitations and monitoring requirements shall thereupon become conditions of the federal permit. Under the ACMA and the Guidelines and Standards, DEC would issue a certificate of reasonable assurance only if it contained such conditions as were necessary to asure compliance with the ACMP. §404 permit applications would also, of course, be subject to the generally applicable federal consistency requirements of §307 of the federal CZMA.

While the §10 and §404 permit systems afford protection to large areas of wetlands, and a vehicle for application of the ACMP to those wetlands, they suffer from two shortcomings of which some commenters took note, or of which they seemed to be aware.

The first of these shortcomings concerns the limitations on their geographic and substantive scope. §404 applies to all wetlands, and regulates the placing or discharge of practically any matter into them, including dams and dikes for draining, but does not cover the dredging of wetlands. §10 regulates dredging, but does not apply to most wetlands in Alaska shoreward of the mean higher high water line. Dredging and similar modification of the latter wetlands in the relatively rare instances where no fill or discharge into wetlands is involved or included in the project must thus be regulated, if at all, under other permit systems.

The other apparent shortcoming of §10 and §404 as vehicles for implementation of the ACMP is the apparent lack of confidence on the part of many interested persons and agencies in the will or the ability of the Corps of Engineers to implement these two permit systems fully. Whether justified or not, this lack of confidence would seem to call for caution on the part of the state in relying on the two permit systems as mechanisms for implementation of the ACMP in wetlands. In recognition of this problem, the Council and the Legislature have, in subsection (b) of the coastal development standard, 6 ACC 80.040, imposed upon state agencies, including OCM, the duty to see that applicable federal regulations are complied with not only by the state,local governments, and private persons, but also by federal agencies, particularly the Corps itself. This was done by specifically referencing the Corps regulations implementing §10 and §404 as part of the coastal development standard. As a result, OCM and the Council will now evaluate the compliance of the Corps with its own regulatory standards as part of the federal consistency process. The failure of the Corps to require a permit in any situation in which such a permit would seem to be called for under its regulations would be violation of the ACMP (and, thus, of §307 of the CZMA), as well as of the Corps regulations themselves. It is hoped that the prospect of state intervention under the federal consistency requirements to assure that §10 and §404 are being vigorously implemented will remove the source of the lack of confidence concerning the current viability of these provisions in Alaska.

Almost any of the state regulatory, proprietary and budgetary authorities described in Part II, Chapter 6 might be available to assure compliance of a proposed wetand use with the ACMP. This would be true particularly where construction of improvements would be proposed. The most important of these authorities and the one that will apply with the greatest regularity, even in the absence of construction proposals, is the authority of the Department of Natural Resources over the appropriation and use of water under AS 46.15.030-185. Under this extremely broad statute, all waters occuring in a natural state in Alaska are reserved for the common use of its people, subject to appropriation and beneficial use under permits issued by the Department. The concept of appropriation and use under the statute and under current DNR regulations, 11 AAC 72,73, is so broad that it plainly encompasses the diversion of water that would result from the dredging or other modification of a wetland. The Department itself recognized this last year when it proposed new regulations that would have expressly provided for permitting of the modification of non-marine wetlands. Unfortunately, these regulations have not been adopted, as was believed when the P/DEIS was issued, apparently because of a perceived need to conserve the Department's administrative resources. As was noted above, the present regulations are broad enough to cover wetland modification, but they are not specifically focused on wetlands management problems due to their primary concern with the allocation of water for use as a resource in itself. The necessary authority though not highly refined, is in place nevertheless. The Department already possesses the basic organization necessary to implement this authority. What is needed is (1) refinement of the authority, i.e., the DNR water use regulations, to take special account of wetlands management problems; and (2) provision of additional resources for implementation and enforcement of that authority by the Department. OCZM has concluded that these are suitable and normal tasks for the first year of program implementation. It and the state have therefore assigned high priority to wetlands management in planning the work to be carried out during the first year. It is expected that, at the end of that year, the state's existing authorities and organization for wetlands management will have achieved a level of efficiency and sophistication to more fully reflect the importance of Alaska's wetland areas to the people of the state and of the rest of the nation.

E. Federal Procedures for Incorporation of District Programs Into the CZMP

Many commenters, a number of Federal agencies among them, expressed the view that initial incorporation of each district program into the ACMP should be treated by OCZM as an "amendment" to the program, and should conform to the procedures set forth in OCZM regulations for the approval of program amendments. Some of these commenters urged similar treatment of subsequent changes to incorporated local programs. Some commenters in addition, contended that each incorporation of a district program into the ACMP will require the preparation by OCZM of an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA).

Since the P/DEIS was issued, OCZM has promulgated new regulations governing changes to approved CZM programs. 15 CFR §§923.80-923.84, 44 FR 18617-18619 (March 28, 1979). Both the issuance of the PIDEIS and the promulgation of these new regulations took place against the background of an OCZM rulemaking proposal of December 29, 1978, 43 FR 60949-60954, under which the incorporation of any local program into an approved CZM program would have been treated as an "amendment" of the program, and made subject to the procedures for federal approval of amendments that are required pursuant to Sections 306(c) and (g) of the Federal CZMA. On the other hand, the proposal would uniformly have considered subsequent changes to incorporpated local programs not to be amendments of approved state programs, and would not have subjected those subsequent changes to the procedures required for approval of amendments.

Based upon its consideration of comments received on the December 29 proposal, OCZM charged the treatment of local programs in formulating the March 28 final regulations on changes to approved CZM programs. It removed the conclusive presumptions of the December 29 proposal that initial incorporations of local programs would always demand treatment as amendments, and that subsequent changes to those local programs would never require such treatment. OCZM concluded, based on the comments that the variety of local program approaches in the states using the technique, as well as the possible significance of changes to local programs as part of the state program, did not support the earlier proposed treatment of local programs and amendments thereto. The final regulations treat incorporation of local programs and subsequent changes in those local programs no differently from any other changes to approved CZM programs

The final regulations classify changes to approved CZM programs into two categories: "amendments" and "routine program implementation." "Amendments" are defined as "substantial changes in, or substantial changes to enforceable policies or authorities related to:

(1) Boundaries;

(2) Uses subject to the management program;

(3) Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and

(4) Consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature."

15 CFR §923.80(c), 44 FR 18617.

The preamble to the final OCZM regulations states, at 44 FR 18594:

> ". . .[W]hen incorporation of a state approved local program will result in any of the changes defined in §923.80(c), these will be treated as amendments to the state's approved management program. Thus, for example, the process for local program development in Alaska may result in substantial changes in the approved state coastal zone management boundary or in uses of state concern. Where this occurs, such changes will constitute amendments and be processed as such.

As this passage demonstrates, OCZM recognizes the possibility that the incorporation of a district program into the ACMP will have to be treated as an amendment to the program. The decision whether each individual district program will be subject to the amendment procedure will be made as soon as possible after it is first submitted to OCZM under the procedures described in Part II, Chapter 3. District programs that are treated as amendments to the ACMP will be considered under the procedures prescribed in 15 CFR §923.81-923.83. Other district programs will be treated as routine program implementation pursuant to 15 CFR §923.84. Whether a district program is treated as an amendment or as routine program implementation, public notice will be provided before the incorporation and the procedures of 15 CFR, §923.54 will be available for mediation of serious disagreements between the state and the head of relevant federal agencies.

When the state requests OCZM approval of a district program as an amendment to the ACMP, OCZM must first decide, as a preliminary matter, whether the ACMP, as changed by the amendment, would continue to constitute an approvable program--and whether the state has fulfilled all the procedural requirements of Section 306(c) of the Federal CZMA 15 CFR §923.82(a)-(b). Documentation concerning these matters must be contained in the state's amendment request 15 CFR, §923.81(b). DPDP will submit amendments to OCZM.

If OCZM determines preliminarily that the ACMP, if changed, would continue to be approvable and that the procedural requirements of Section 306(c) have been met, it will then determine, pursuant to NEPA, whether an EIS is required. This decision must also be made on a case-by-case basis.

If OCZM decides that an EIS is required, it will prepare and distribute a draft EIS and final EIS purusant to CEQ regulations and NOAA procedures. If no serious disagreement is raised by the head of a federal agency, OCZM will take final action to approve or disapprove the amendment request following review of comments on the final EIS. Notice of this decision will be published in the Federal Register and, if the amendment is approved, will indicate that Federal consistency with the district program is required as of the date of OCZM's approval.

If OCZM decides that an EIS or incorporation of the district program is not required, it will publish in the Federal Register a notice of intent to approve the district program as part of the ACMP. This notice would describe the content of the district program, specify a comments period of not less than thirty days, and contain information on how interested persons might gain access to the entire district program. If no serious disagreement concerning the district program is raised by the head of a federal agency during the comment period, and after taking all comments received into account. OCZM will make a final decision whether to approve the district program as part of the ACMP, and will issue notice of the decision in the Federal Register.

When the state notifies OCZM, pursuant to 15 CFR §923.84(b)(1), that it intends to treat incorporation of a district program as routine program implementation, it must concurrently notify the general public and affected parties, including state agencies and relevant federal agencies, of this intention. The notice must describe the nature of the district program, indicate that the state considers it routine program implementation and has requested OCZM's concurrence in that determination, and state that any comments on the matter may be submitted to OCZM within three weeks of the issuance of notice. Within four weeks of receipt of notice from the state, OCZM must inform the state whether it concurs that the action constitutes routine program implementation. Failure to provide such notification in writing within four weeks will be considered OCZM concurrence in the state's determination. Where OCZM concurs, the state must provide notice of this to the general public and affected parties, including local governments, state agencies, and relevant federal agencies. Federal consistency with the district program is not required until this notice has been issued.

National Marine Fisheries Service
(T. Leitzell, 3/15/79)

Comment	Response
Find the DEIS adequate; major concerns are addressed; recommend approval provided that district programs are approved through the amendment process.	Comment accepted. Concerning district program approval, please refer to General Response E.

Corps of Engineers
(V.L. Rathburn, Colonel, 3/2/79)

Comment	Response
States that the Program is well-designed and well-written and recommend approval subject to consideration of enclosed comments.	Comment accepted.
Requests deletion of sentence on p. 107 and there is no legal basis for requiring consistency beyond the three mile limit.	The view expressed in the comment is incorrect. Federal consistency applies to federal activities licenses and permits, outer continental shelf exploration, development and production activities, and assistance to state and local governments significantly affecting the coastal zone. (See 15 CFR 930)
Corrects Program Federal grant list on p. 158.	Comment accepted. The programs listed under the Department of Defense, i.e., beach erosion control, flood control, navigation, and shipping and clearing for flood control, are deleted from p. 158 in response to comment.
Questions the adequate consideration of national interest during program development as required in 15 CFR 923.52(b).	Consideration of the national interest during program development is reflected in the Program in: (1) the definition of uses of state concerns which includes: "uses of national interest, including the uses of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon" coastal locations; (see AS 46.40.210(6)(A)); (2) the recognition of conflicts and the provision for resolution between or among competing national interests within the context of "uses of state concern" procedures (see Chapter 7, Uses of State and National Concern); (3) the consideration of activities in which there may be a national interest in public workshops and hearings, (see Chapter 8); (4) the consideration of activities in which there may be a national interest during federal agency coordination activities. Specifically, the national interests in the uses and resources identified in Tables 1 and 2, P/DEIS pp. 209-211, were considered during program development as evidence in the related sections of the State Act and Guidelines and Standards identified in these Table. The national interest in endangered species, wetlands, air, water, and energy received extensive consideration during program development in particular (See P/DEIS p. 191).

Corps of Engineers (Con'd)

States that "uses of state concern" should include resources for siting flood control projects.	Comment accepted. The referenced language is that of AS 46.40.210. While the statutory language is not changed for purposes of responding to this comment, Alaska recognizes that there may be a national interest in resources for siting flood control projects in the future.
Recommends an additional category for water resources development for Table I and the inclusion of Corps flood control and beach erosion projects as associated facilities. The addition of navigation channels as an associated facility within the transportation category is suggested too.	These additions are not made in this document, but Alaska recognizes that there may be a national interest in the siting of these facilities in the future.
States Corps' understanding that District programs subsequent changes will be subject to the official program amendment procedure.	See General Response E.

U.S. Department of the Navy
(Marvin G. Hansen, 3/8/79)

Suggests insertion of the following sentence in the discussion of police powers in the introduction to Part II, Chapter 6: "A direct Federal development project is not required to conform to local zoning regulations."	Text has been revised. OCZM is not in a position to judge whether this statement is generally true. Federal agencies undertaking development projects in or significantly affecting coastal zone, however, must be consistent to the maximum practicable with an approved coastal program.
Federal consistency discussion in Part IV of DEIS is confusing regarding the limitations on Federal activities in the coastal zone.	We have been unable to compose substitute text that presents this issue more clearly.

Environmental Protection Agency (EPA)/General Comments
(Alexandra B. Smith, 3/12/79)

Comment	Response
The State's approach to incorporation of CZMA Section 307(f) requirements is inadequate as noted in the attached 12/11/78 letter to the Alaska Coastal Program Manager. Specifically, incorporation of the requirements of the Alaska Department of Environmental Conservation is insufficient because, in some instances, they do not meet the requirements of the corresponding Federal statute, do not reflect the minimum requirements of the Federal statute, or do not cover a pollution problem which is covered by the Federal statute. Adoption of language similar to that suggested in 15 CFR 923.44(c) in 6 AAC 80.140 would satisfy EPA's concerns.	The P/DEIS (Part II, Chapter 2(e)) notes the Federal CZMA requirement to incorporate Clean Water Act and Clean Air Act requirements and, accordingly, states that "the Federal standards are ... incorporated into the ACMP and should be considered as parts of the ACMP policy." This language is consistent with the requirements of 15 CFR 923.44, incorporated into the program guidelines and standards.
EPA has issued national guidance stating that guidelines issued by EPA under Section 404(b) of the Clean Water Act are covered by the CZMA's Section 307(f) incorporation requirements. This incorporation requirement could be handled at 6 AAC 80.140 or at 6 AAC 80.040(2)(b).	The Federal CZMA and regulations, while requiring adoption of Federal Clean Air and Clean Water Act standards, as noted in the above comment, do not specify that each subject EPA program or standard be cited in State law or regulations. As stated above, the requirements of the Federal Clean Air and the Clean Water Acts are incorporated into the ACMP. OCZM does not necessarily concur in EPA's assertion of authority to define what is covered by CZMA Section 307(f): OCZM has primary responsibility for interpretation of the CZMA.
The final CMP document must document how DPDP will insure that local planning efforts account, in their planning processes, for the specific procedural and substantive requirements under the Clean Air and Clean Water Act.	Federal regulations (15 CFR 923), as well as guidance from EPA and the Alaska Department of Community and Regional Affairs and Department of Environmental Conservation inform districts developing coastal programs of their responsibilities under the Clean Air Act and Clean Water Act. Program review by Alaska DPDP and interested Federal agencies prior to district program approval lend added assurance to that provided by the fact that these requirements are contained in Federal law.
The statutory basis for the ACMP is unclear. It appears that the Alaska Coastal Management Act and associated regulations (the Guidelines and Standards) are the only substantive enforceable standards under the program. Statutes cited as enforcement mechanisms for achieving ACMP objectives, therefore, are not the basis for a consistency determination.	This description of the ACMP statutory basis is precisely correct. Statutes and regulations cited as available enforcement mechanisms can serve as such since they are subject to enforcement provisions of the Alaska coastal act which require administration of State agency regulations and operations in conformance with policies pursuant thereto. See sections AS 46.40.100 and 46.40.200 in the ACMA.

EPA (cont'd.)

Comment	Response
Few of the Guidelines and Standards contain specific substantive requirements that could be deemed enforceable; that is compliance with most of them is judgmental.	We disagree that the Alaska Guidelines and Standards contain few "specific substantive requirements." While more specific requirements could be written -- for example, with quantitative performance standards -- such an approach is neither required by Federal regulations nor appropriate in most instances to application in Alaska. Certainly the reviewers recognize, for example, that the character of a protected estuary in the Chukchi Sea will differ vastly in physical and biological characteristics from one in Southeast Alaska. Arbitrary statewide quantitative standards are less likely to adequately serve the protection of the subject resources than the policy standards used, and informed judgment as questionable cases arise.
The absence of "specific enforceable standards" in Washington and Oregon programs has led to limited Federal agency efforts to comply with the consistency requirements of Section 307 of the CZMA and 15 CFR 930. Efforts that have been made have "probably" been more expensive for the agencies than if "specific enforceable standards" existed.	We again take exception to the implication that enforceability is achieved in law or regulations only through the quantitative standards that the reviewer appears to believe are necessary. We do not believe this is a forum to analyze the substance of the charge or reasons for the alleged limited effort by Federal agencies to comply with consistency requirements in Oregon and Washington. We do believe, however, that to suggest that compliance or lack thereof is dependent solely on the type of policy approach a state takes in its coastal program is an oversimplification. See Subpart E of OCZM's program approval regulations.
OCZM program approval regulations interpret the permissible land and water use requirements to mean that the state must identify land and water uses subject to the program and that only those uses specifically identified as being subject to the program are, in fact, subject to the program and Federal consistency requirements. The incorporation of uses by reference, as Alaska proposes to incorporate any uses affecting a protected habitat area, does not appear to be permissible under OCZM's interpretation of CZMA §305(b)(2).	We are unable to determine the basis in the CZMA or program approval regulations (15 CFR 923) for EPA's understanding of OCZM's interpretation of the requirements of Section 305(b)(2) of the Act. We are unable to locate any requirement or implication in the cited regulations that serve as a basis for EPA's assumption that an all-inclusive list of uses is required by reference, as those affecting significant coastal resources. The use standards simply add specific additional criteria for major uses or activities likely to have specific controllable impacts. See 15 CFR 923.11.

EPA (cont'd.)

Comment	Response
Under EPA interpretation of the OCZM requirements for definition of permissible uses, as in the preceding comment, district programs must comment, district programs must demonstrate that additional uses to be managed [beyond those cited in the State use standards] must meet the "impact criteria" of OCZM's regulations prior to DPDP approval.	OCZM restates its position that an exhaustive list of subject uses is not required at the State or district level, and that incorporation by reference of any use affecting the protected habitats or subject to the coastal development standards is an acceptable approach. If we understand the reference to the "impact criteria" of OCZM's regulations, since the State has already acceptably defined uses affecting coastal waters as those affecting the protected habitats, those listed as major development uses, and those subject to the coastal development standards, it is unnecessary for the districts to justify again that management of such uses is acceptable under the Federal statute and regulations.
EPA believes that CZMA §305(b)(8) requires that an approved state CZM program have an energy facility planning process which is "fully integrated" with the coastal management program. Alaska and various other states do not attempt to integrate their energy facility administration in the coastal zone with the remainder of the coastal management program.	We disagree with this interpretation of the requirements of the cited section of the CZMA, which specify that programs contain " a planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone, including, but not limited to a process for anticipating and managing the impacts from such facilities." Alaska, unlike many other states, has elected to more closely integrate its energy facility management with its other coastal management efforts by including the legislatively approved energy facility standards as permitted activities associated with such facilities will have to be consistent with those standards.
If the above concerns cannot be resolved prior to program approval, we urge that OCZM grant preliminary approval of the program under CZMA §305(d). Although funding for 305(d) expires at the end of FY-79, we believe Congress would respond favorably to a Department of Commerce request for additional funding to resolve these problems if they were not resolved prior to the end of the fiscal year.	As indicated in the responses above, OCZM does not consider the concerns raised in the EPA comments as reflecting serious deficiencies in the ACMP that would warrant a "preliminary approval" approach. We also disagree with the assessment of the Congressional inclination to extend funding.

Environmental Protection Agency/Specific Comments

Comment	Response
Compliance with the habitat protection standards would be easier to demonstrate if standards were established for those specific characteristics of the habitat(s) which must be maintained in order to protect the living resources which they support. The State standards for each habitat type need not differentiate within geographic area. If State standards are not established, district standards should be required subject to State guidance.	As noted in our response to EPA general comments, we feel that there is little to be gained in management effectiveness by setting quantitative standards for such parameters as water flow, nutrient levels and oxygen levels for each habitat type when the chemical, biological and physical base characteristics of the protected habitats are bound to vary widely within any individual habitat type. To suggest that these standards would be useful without discriminating within types by geographic area further clouds any perceptible advantage to be gained by such standards.

EPA (cont'd)

Comment	Response
The proposed energy facility planning process does not meet the intent of CZMA §305(b)(8) because it is not fully integrated with the ACMP.	See response to EPA general comments.
The burden for energy facility site suitability analysis and site designation is placed largely on local governments. Such a burden is beyond their fiscal and technical capabilities, in most cases, without substantial state assistance.	The requirement for site identification in the energy facilities standard (6 AAC 80.070) states that "sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts." The sense of this standard is that the facility site identification will occur through the district program development (or amendment) process. As in other district program development efforts, state agency expertise and CZM funding will be available to the districts to achieve this objective.
The burden on local governments for energy facility site identification is aggravated by the fact that no areas scheduled for OCS leasing have been designated by the Council as Areas Meriting Special Attention, though such sites would be eligible under the ACMA.	We are uncertain as to the meaning of this comment. Council designation of AMSA's is only authorized in the unorganized borough. AMSA's in the district are designated using the district program approval process.
The statutory framework for energy facility siting and regulations, as with the remainder of the program, is only the ACMA. The energy facility process describes the statutes which will be used in the process but does not specifically incorporate these statutes in the ACMP.	Although the regulatory processes will serve as the mechanism through which the Program policies and standards will be applied to energy facility siting, these mechanisms are not accurately described as parts of the program that must be incorporated. Please see response to the EPA general comment on the statutory basis of the ACMP.
(Several permits, licenses and assistance programs administered by EPA were inappropriately identified in the ACMP as subject to consistency review and were clarified or corrected in the EPA letter.)	Inaccurate or outdated citations have been revised. Until experience proves that review is unnecessary or inappropriate, Alaska has elected to review the identified permits, licenses and assistance programs.
OCZM regulations (15 CFR 930) require public notice by a state whenever it receives a permit applicant consistency certification for review. Alaska has indicated an interest in issuing joint public notice with EPA for EPA administered programs. We have reviewed regulations governing the two EPA programs of interest and found that joint public notice will not be possible.	OCZM regulations encourage joint public notice by State and Federal agencies whenever possible. We commend EPA for pursuing the possibility so thoroughly.
The ACMP discussion of Federal activities and developments subject to consistency review is largely unnecessary. As noted in our general comments, OCZM's interpretation of the requirements of CZMA §305(b)(2) means that uses to be managed must be listed all-inclusively and that unlisted uses are not subject to the program or Federal consistency.	Our response to EPA's general comment on permissible uses rejects EPA's understanding of OCZM's interpretation of the requirements of CZMA §305(b)(2). We agree that the discussion that clarifies the Federal activities subject to the program for consistency review may be unnecessary for Federal agencies to fully understand their responsibilities under the CZMA. The discussion is provided for the convenience of the affected agencies and their staffs.

EPA (cont'd.)

Comment	Response
The ACMP's lists of resources and facilities in which there is or may be a national interest should be expanded to include the following applicable legislation: Toxic Substances Control Act, Federal Insecticide, Fungicide and Rodenticide Act, Safe Drinking Water Act, and the Resource Conservation and Recovery Act.	The lists have been so revised.
Our principal concern with regard to the DEIS and program documentation is the absence of graphics, illustrations, diagrams and other illustrative devices. The final program/EIS document should include a separately bound appendix of the coastal zone boundary maps and explanations of their use; maps in the main volume showing the boundaries of the coastal districts and unorganized borough, diagrams illustrating the coastal management decision-making process and the organizational structure of the ACMP management network.	A compendium of 64 coastal zone boundary maps is available upon request from the Alaska Office of Coastal Management in Juneau. Maps and diagrams with the requested information are included in this document.

Department of Housing and Urban Development
(Robert C. Embry, 3/16/79)

Comment	Response
The ACMP and DEIS have been reviewed by our staff and sufficient concerns have been raised about various deficiencies in its present form to withhold approval until these concerns are alleviated. We recognize that the state of development in Alaska and the nature of its environment may require special treatment and consideration. We also recognize that the State possesses limited agency manpower and budget resources to properly complete CZM assessment at this time. Our concerns are detailed below.	We disagree that HUD's concerns are sufficient to withhold approval as indicated in our responses below to the Department's comments on the ACMP/DEIS. Whatever the special nature of Alaska's environment, state of development, or budget constraints, a coastal program developed by a State must meet Federal regulations prior to approval by the Department of Commerce. OCZM has determined that the Program meets the requirements of those regulations.
The ACMP exhibits a general lack of clarity and specificity in dealing with standards, performance by the State in carrying out the program, and definition of terms dealing with zoning, subsistence, wetlands, boundaries, and similar terms of reference.	OCZM has found the Guidelines and Standards adopted by the legislature to be adequately specific to guide officials in resource management decisions. The program document serves to detail coastal management policy and standards of review for proposed activities in such a way as to serve as a basis for consultation on specific proposals. The ACMP need not, and is not intended to, provide such site-specific predictability as to substitute for such consultation. We believe that the organization of the State to implement the Program is adequately detailed in Part II, Chapter 6, and that essential terminology is defined adequately in the ACMA, the Guidelines and Standards, or the text. See the enclosed maps and General Response A for clarification regarding boundaries.

Department of Housing and Urban Development (cont'd.)

Comment	Response
The Program is inadequate because of the lack of local programs and adequate procedures and guidelines for their future development and adoption with participation by State and Federal agencies concerned with coastal zone management.	Provided the State program is adequate to control uses affecting coastal waters at the time of approval, local programs need not be in place at the time of approval. A similar program structure underwent judicial review in the case of the California coastal program and was upheld (API v. Knecht, 456 F. Supp. 889 (C. D. Cal. 1978)). The Program document explains in detail the State's ability to manage its coastal resources prior to development of district programs. Considerable portions of Part II, Charters 3 and 8 of the document are devoted to a discussion of opportunities for Federal participation in the development of the ACMP, and in the development and review of district programs. Incorporation of local programs into the Federally approved ACMP will occur subject to Federal regulations (15 CFR 923.80 et seq.). For details, see General Response E.
The P/DEIS lacks a sufficient description of the relationship of HUD programs to CZM programs and efficient delivery of services as well as the consistency requirements within various categories of services. The state will use this program to effectuate a permit review system which, apart from environmental concerns, may severely delay or stop the delivery of HUD or related programs in the coastal areas.	The suggestion that the ACMP may "severely delay or stop" HUD programs is speculative and unfounded if one assumes the Department intends to comply with the requirements of the CZMA for Federal agencies to conduct their programs consistently with approved coastal programs. The ACMP includes review process for the consistency of Federal assistance programs that is within the limits of the A-95 review period specified in Federal regulations (15 CFR 930.90 et. seq.) as the appropriate forum for review. The ACMP lead agency has been attempting since fall 1978 to negotiate with HUD and other affected Federal agencies memoranda of understandings that would treat specific issues related to particular agency programs.
There is concern regarding regulations for local land or water use and the land use planning requirement through HUD's assistance programs.	In accordance with the MOU between HUD and OCZM, this Office encourages states to develop land use policies in their coastal programs that are responsive to both HUD requirements and those under the CZMA. The relationship between the ACMP Standards and those required under HUD's programs are referenced in Part II, Chapter 8 of the P/DEIS. We encourage further close coordination between the State and HUD towards the resolution of any aspects of the policies that do not respond to HUD interests.
There should be a better determination of the areas of significant concern and a more definitive discussion of the probable impacts of the Program on Federal, State and local costs.	(1) Areas which Merit Special Attention may be designated either directly, by the Council in the Unorganized Borough, or through the approval of local district coastal programs. Also available to meet the requirements of Federal regulations regarding areas of particular concern (15 CFR 923 Subpart C) are other State authorities for the designation and reservation of land and water areas to protect their special values. Alaska cites four examples of these

Comment	Response
	special areas in the coastal zone in fulfillment of this special area protection capability. (2) The discussion of probable impacts of the Program on Federal, State and local costs is an adequate description of expected qualitative impacts on costs. Clearly, Federal and State costs will exist for as long as both levels of government support a program which aims to manage resources from a comprehensive perspective, coordinating not only State, local and Federal levels of government, but also competing interests served at each level. There is a significant cost attributable to lack of coordination and inconsistencies among government programs. We believe that the Congress and Alaska Legislature sought anticipated savings in Government operations and the benefits of comprehensive resource management as at least partial compensation for the costs of coastal management implementation. Site-specific project cost impacts are not predictable at this time, nor is speculation on such costs warranted or useful in a programmatic analysis of the ACMP under CEQ regulations.
We believe our concerns should be brought forcefully to the attention of the State coastal staff and be reflected in the final program and EIS. We encourage discussions directly with our field staff to clarify these issues and resolve these reservations.	OCZM repeats its assertion that the comments raised by the Department do not represent substantive deficiencies in the ACMP. We will pursue, and suggest that Alaska OCM staff pursue discussions with HUD field staff regarding the Department's comments and attached field-office ACMP review. We feel that such discussions are essential to correct what appears to be serious misunderstanding of the State program, the relationship of Federal agencies to state coastal programs under the CZMA, and the approval of coastal management programs. In addition, we feel that certain issues raised as objections to the ACMP, in fact, represent matters that should be the subject of policy discussions between OCZM and the Department. We will attempt to arrange such a session in the near future.

Federal Insurance Administration
(Richard W. Krimm, 3/13/79)

Comment

It is our opinion that the ACMP could be improved by compliance with Executive Order 11988, Floodplain Management. Coastal floodplains in Alaska pose a unique hazard and environmental sensitivity. The State's population is mainly concentrated in the coastal plain and is exposed to severe tsunami hazards, as in Seward in 1964. Additionally, the location of petroleum extraction, storage and shipment activities in the coastal floodplain poses a catastrophic loss potential. Compliance with E.O. 11988 requires (1) avoidance of the floodplain unless it is the only practicable alternative for a proposed action; and, (2) adjustment to the floodplain if it cannot be avoided in order to: (a) reduce the hazard and risks of flood loss, (b) minimize the impact of floods on human health, safety and welfare, and (c) restore or preserve the natural and beneficial values served by floodplains. The Executive Order requires that Federal agencies evaluating water and land use plans assure that such plans specify land and water resource uses which are appropriate to the degree of hazard involved. There is very little evidence in the ACMP of compliance with requirements of this order. While floodplains are addressed in Geophysical Hazards standard of the ACMP, the Program fails to address other floodplain values besides hazards, and fails to mention the specific provisions of the Order. These provisions and guidance to assist the ACMP in compliance therewith, are discussed in the remainder of this letter.

Response

OCZM acknowledges that the P/DEIS inadequately discussed the requirements of the floodplain management executive order. We believe, on on the other hand that the ACMP authorities contain adequate provisions to meet the requirements of E.O. 11988. The first compliance requirement is the identification of floodplains. The "geophysical hazard areas" standard of the ACMP (6 AAC 80.050) specifies that "districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that hazards may occur." Elsewhere in Standards (6 AAC 80.090(10)) flooding is listed among the subject hazards. Despite the fact that this provision is focused on floodplains as hazards areas, the desired objective -- identification of floodplains -- must occur. The second provision of the Order is the avoidance of the floodplain whenever practicable. Again we can find the necessary guidance in the Standards. 6 AAC 80.050(b) states that "development in areas identified under [the section cited above] ... may not be approved by the appropriate state or local authority until siting, design and construction measures for minimizing property damage and protecting against loss of life have been provided." Under this provision, the best "siting ... measure" to achieve the specified end is avoidance of the floodplain altogether. The third provision of the Order, minimization of harm to life and property, addresses cases in which avoidance of the floodplains is not practicable. In such a case, "design and construction measures" to minimize risk must be pursued, and the State Office of Coastal Management, with the support of the Federal Insurance Administration, can provide guidance pursuant to the Executive Order. Finally, the order speaks to restoration or preservation of the natural and beneficial values served by floodplains. Water Resources Council (WRC) Floodplains Management Guidelines (43 CFR 6030) make clear that "natural and beneficial floodplain values" with the exception of flood moderation, are not so much values of the floodplain itself, but rather are valuable resources or activities that occur in

FIA (cont'd.)

floodplains. By including standards in the ACMP for water quality, wetlands protection, estuarine plant and animal habitats, timber harvesting, and historic, prehistoric and archeological resources, the Program meets the WRC guidelines for protection of these values, whether in or out of floodplains. In order to clarify how each of the above objectives of E.O. 11988 are met, text has been added in appropriate locations in Part II, Chapter 2 of the P/FEIS.

We are available to meet with OCZM staff to discuss floodplain management needs for the ACMP.

OCZM staff met with FIA staff to discuss compliance with the Executive Order. We are grateful for their assistance.

Department of the Interior/General Comments (DOI)
(Larry E. Meierotto, 3/15/79)

Comment	Response
We have completed our review of the ACMP-DEIS this review follows similar reviews of preliminary drafts of the ACMP and a variety of meetings with OCZM and Alaska coastal management staff. We appreciate the efforts of OCZM and the ACMP in discussing our questions and concerns.	Comment accepted.
The ACMP is potentially an excellent program. The ACMA and ACMP standards, including the proposed modifications that are before the Legislature, provide guidance to management of coastal activities and resource uses. Your staff and the State have prepared a well-organized and readable program document. The definition of land and water uses of regional benefit and the program to assist districts develop their local programs could serve as models for other states.	Comment accepted.
We are pleased to note that some of our previous concerns have been proposed for incorporation into the program, including the proposed energy facility siting policies; a definition for "feasible and prudent;" and a mechanism to allow Federal agencies to nominate areas which merit special attention, among other changes.	Comment accepted.
We strongly support Alaska's efforts and will work closely with OCZM and the State in the future, but we believe the Program is still in need of further clarification and strengthening.	OCZM looks forward to coordination with and assistance from the Interior Bureaus. Responses to particular concerns are provided below.
Since the district programs when developed will serve as the major implementing elements of the ACMP, each district program must be incorporated into the State Program by the amendment process with a full discussion of alternatives if an EIS is required.	See General Response E.
The sections on control of uses in and protection of wetlands and floodplains should be considerably strengthened. The relationship of Federal and State authorities in this regard should be clarified. Prior to program approval and during implementation, the State should work towards a more comprehensive approach to protect these areas.	See General Response D and our response to comments submitted by HUD's Federal Insurance Administration.
A number of substantive changes to the Guidelines and Standards have been adopted by the Alaska Coastal Policy Council but have not been approved by the Legislature. We support OCZM's position that Legislative approval should precede preparation of the FEIS.	The subject revisions were approved by the Alaska Legislature in April 1979.

DOI (cont'd.)

Comment	Response
Before the FEIS is released, we request opportunity for a timely review of the manual of standards.	We believe that widespread misunderstanding exists regarding the significance of the manual of standards to the ACMP. See General Response C.
Since our February 23 meeting, we have noted that recently issued final amendments to the regulations governing protection of historic and cultural properties may apply to approval and subsequent ACMP activities. We will be in contact with OCZM staff regarding this issue.	OCZM staff has been in contact with personnel of HCRS and the Advisory Council on Historic Preservation regarding the subject regulations. The Program has been revised accordingly, and consultation concerning the application of the new ACHP regulations to CZM activities will continue.
We believe it important that the location of Federal lands be adequately described in the final document.	Alaska OCM staff have provided a map of major permanent Federal holdings to accompany the FEIS.

Department of the Interior/Specific Comments

NOAA proposes to approve the ACMP prior to completion of the district programs. Because the Department knows little of the substance and only some of the process that will be included in these district programs, and because in many cases it may be difficult to reconcile the local State and Federal viewpoints on these programs, it is imperative that full opportunity be provided to all levels of government and to private interests for a discussion of critical issues. In order to assure this support and participation, we believe that districts should be incorporated into the ACMP by the amendment process as described in OCZM proposed amendment regulations (15 CFR 923.80(d)). We also believe that substantial changes to district programs must be incorporated by the amendment process.	The Coastal Zone Management Program Final Development and Approval Regulations, including program modification procedures, have been issued since the DEIS was circulated. See General Response E , which addresses district program incorporation as under the new regulation.
The ACMP should clarify the minimum substantive content of district policies and controls, especially regarding conflict resolution, consistency review of Federal activities and consideration of State and national interest. The ACMP does not indicate the level of detail required.	See General Response C.
We base our comments on the ACMP standards on the assumption that they will be approved in total by the Alaska Legislature. We feel that approval is needed to provide the requisite specificity to the Program.	The subject revisions in the Program standards were passed by the Legislature in April 1979.
We are concerned about the precedent set by the passage of the Forest Practices Act. Since the regulations that will be developed pursuant	Although the regulations developed pursuant to the Forest Practices Act will supersede the Timber Harvest and Management Standards

DOI (cont'd.)

Comment	Response
to that Act will supersede the Timber Harvest and Management Standard of the ACMP, we believe the ACMP will be weakened by this action. Our concern is twofold: (1) how can the State prevent major erosion of the integrity of the ACMP by future supersession of its standards? and (2) what mechanisms can be built into the ACMP to assure Federal input at appropriate stages in the evolution of significant changes in the ACMP initiated by actions beyond the purview of the Council?	of the ACMP, under the ACMA those regulations must be consistent with the other standards of the Program, including those that protect habitats and water quality. As these regulations become available in draft form, the State OCM can bring the availability of the regulations to the attention of Federal interests through its coordination mechanisms. Furthermore, if the new regulations represent a significant change in the program policies, the State or OCZM may decide that the ACMP should be amended to include the new regulations, particularly if the integrity of the program, and its continued approvability under Federal law would be threatened. The OCM and Council, in addition, should be reviewing and commenting or testifying to the Legislature on proposed legislation of which they are aware that would affect the Program. While the Legislature is by no means bound by such counsel, the Council's expert opinion would undoubtedly exert influence on legislation that might threaten or weaken a program created by Legislative action. Change is bound to occur in the course of the administration of the ACMP, and no absolute guarantees of perpetual popular and legislative support are available. The State and Federal processes for reviewing program changes, and the effective implementation of the ACMP as approved by the Legislature, are probably the strongest safeguards available for the continued viability of the program.
We believe further elucidation of allowable upland practices is necessary. The U. S. Fish and Wildlife Service proposed an upland habitat standard, as part of its August 1978 comments, that was rejected by the ACMP staff. The existence of adequate controls over upland activities or assurance that the effects of such activities will be consistent with the ACMP, should be demonstrated in the FEIS.	" Important upland habitats" are listed in the ACMP standards as among the habitats in the coastal area that are subject to the ACMP. As a coastal program, the ACMP does not seek to protect all upland habitat, but specifically that upland habitat that has been or will be identified as important for the protection or sustenance of coastal species. The values to be protected will vary according to the type of habitat and the particular species to which it is important. A single standard that went beyond that of 6AC 80.130(a) was not considered useful across such an array of systems, especially until such habitats could be reliably identified and their values described.
The State's approach to incorporating "uses of national interest" into its "uses of State concern" requirement is commendable and an indicator of the State's sensitivity to the national significance of its resources.	Comment accepted.
While the "uses of State concern" (USC) approach is good, its implications should be more clearly articulated. Also needed is guidance to local governments in order to help them to be responsive to the USC requirements.	Uses of State concern are discussed in General Response B. Guidance to local governments is discussed in General Response C.

DOI (cont'd.)

Comment	Response
We fully support Alaska's definition of uses of regional benefit to be "uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural or economic benefits or burdens beyond a single coastal resource district."	Comment accepted.
We are concerned about the method Alaska proposes to use to assure that USC's are not arbitrarily excluded before district programs are approved. We believe the method valid but rather slow and inefficient.	See General Response B.
Please clarify that if a use which is neither water-dependent nor water-related is proposed for shoreline area, the use may be permitted only if it meets all other ACMP standards, as well as all other State and Federal requirements.	The text has been revised to reflect the reviewer's understanding.
The ACMP has only generally treated the subsistence issue. This comment is not offered in criticism, but only in recognition that State subsistence regulations are being drafted, and Federal subsistence regulations will be forthcoming once the (d)(2) land issue is resolved. Such changes in State and Federal regulations may require the preparation of a supplement to the DEIS.	We commend the ACMP for being among the first state agencies to attempt to address the matter of subsistence as a use of coastal resources to receive broad consideration in the face of other competing uses. The referenced "State subsistence regulations" are simply provisions by which staff experts on subsistence needs in the Department of Fish and Game may advise the Board of Fish and the Board of Game about the likely impact that any proposed bag limits, season restrictions and the like may have on subsistence users of the resource. If the Federal government proposes to issue regulations affecting subsistence activities in the Alaska coastal zone, Federal activities undertaken under those regulations will have have to be consistent with the ACMP. We suggest that such regulations may warrant separate USDOI EIS rather than a supplement to this EIS. Finally, we are unaware of any authorization, other than the Alaska Native Claims Settlement Act, to issue such regulations, and since the Interior Department suggests that such regulations "will be forthcoming," we and the State look forward to discussing this issue with Interior staff.
We believe that the ACMP should explicitly state that districts may specify dominant uses other than subsistence for particular geographic areas, and that these uses may include uses of State or national interest.	While the ACMP explicitly recognizes the districts' authority to designate subsistence zones, the very nature of the district program development approach of the ACMP demonstrates that the districts may designate areas within their jurisdiction for particular activities or uses, consistent with the limitations of the Act and Guidelines and Standards.

DOI (cont'd.)

Comments	Responses
We believe that the State should take the initiative in identifying additional AMSA's. Other highly productive areas, some subject to development in the near future, warrant protection as AMSA's.	AMSA's can be designated either explicitly by the Alaska Coastal Policy Council or by the districts through the desingation of such areas in their programs before submittal to the Council. In either case, the Department of the Interior may contribute suggestions and supporting information to the districts or the Council in order to bring these areas to the State's attention.
We feel that the statement on page 110 of the DEIS, to the effect that "AMSA's may be proposed in the initial district program or in later amendments to the district program suggests the possibility that some districts may operate programs for indefinite periods without ever designating AMSA's. We believe the Act requires AMSA designations in district program submissions.	The pertinent language in the ACMA is that, for the Council to approve a district program, "The program shall be adopted consistent with the guidelines and and standards adopted by the Council under Section 40 of this chapter and shall include ...(7) a designation of, and policies which will apply to use of, areas within the coastal resource district which merit special attention." (AS 46.40.030(7)) While this language calls for protection of special areas by district programs, the possibility exists that, within a given district, there may not be areas which merit special management attention beyond that afforded by the State Act and standards, and normal district program provisions. In such a case, a district would not be required to give special attention in areas where it is not warranted.
We recommend that the Council propose to the Legislature that the State and the districts be able to designate generic APC's. We believe wetlands would be appropriately so designated.	We do not consider such generic designations to be beyond the Districts, or Council's authorities, provided the proposed areas can be designated in accordance with the appropriate procedures of the Act and guidelines and standards. The reviewers may want to work with the OCM to devise approaches that would simplify certain of the information requirements in the instance of a generic designation.
The management of activities in wetlands and floodplains should be clarified and strengthened. It is not clear, as presently proposed, how the state will insure that the national interest in wetlands and floodplains, as expressed in Executive Order 11990 and 11988, respectively, will be incorporated, with other State and Federal authorities, into an effective overall coastal management scheme.	For the management of wetlands, see General Response D, and revised text in Part II, Chapter 2, of the ACMP-FEIS. Floodplain management considerations also benefit from revised text. Compliance with the Floodplain Management Executive Order is treated in the response to concerns raised by HUD's Federal Insurance Administration.
Final amendments to existing regulations for Protection of Historic and Cultural Properties place certain new requirements on both OCZM and the State. The DEIS portion of the document should be revised to reflect the new requirements of these regulations (36 CFR 800, January 30, 1979).	The reviewer is referred to the response to the comment by the Advisory Council on Historic Preservation.

DOI (cont'd.)

Comments	Response
The land and water uses subject to the District Programs, identified on pp. 89 and 90, should also include historic, prehistoric and archeological resources, as listed on pp. 53 and 54.	The listing on pp. 53 and 54 was in error in including these resources as uses subject to the program for which standards have been promulgated; the listing has been revised. As noted on p. 75 of the DEIS, historic resources are recognized as resources to be protected, rather than uses to be managed, and have been addressed by a specific ACMP protective standard (6 AAC 80.150).
The table of resources in which there may be a national interest should be expanded to include recreation resources and related major Federal legislation.	Table 2 has been so revised.
Please describe coordination between the ACMP and the State Comprehensive Outdoor Recreation Program (SCORP) and the State Historic Preservation Planning Program SHPPP) in the final document.	See revised text in Chapter 8.
We support Alaska's program standards that provide for new and continued mining to serve the State's and Nation's economic future provided such mineral development provides adequate environmental protection.	Comment accepted.
Mineral development along extensive portions of Alaska's coast can only be undertaken by approaching the coast from the sea, since land-based transportation does not exist. This may be particularly important to recover Beluga coal deposits and the Lost River tin-beryllium-flourite deposits on the Seward Peninsula. Ports and attendant facilities will be needed.	The Interior Department's Bureau of Mines is encouraged to work closely with the State ACMP and Department of Transportation and Public Facilities, as well as with the Maritime Administration in the Department of Commerce, to identify port development needs in Alaska and appropriate sites for such facilities.
What is the status of the "Coastal Land and Water Uses Guide?" Will we get a chance to review it? How will it be applied?	The referenced "Guide" is another name for the Manual of Standards. See General Response C.
Please update the status of the one-stop permitting system. How will it relate to the ACMP management system of using the A-95 clearinghouse for review of proposals requiring a consistency finding?	The one-stop permitting system is available now for those who wish to use it for coordinating State permit review. The A-95 clearinghouse will be used to coordinate State review of Federal consistency findings.
We understand that the State Agency Coastal Coordinating Team (SACCT) is inactive or has been disbanded. How will the Team's proposed activities be carried out?	The SACCT and its predecessor the Regional Planning Team, did not live up to the standard of effectiveness expected of them at the time they were organized. Recognizing this fact, the Alaska OCM disbanded the

DOI (cont'd.)

Comment	Response
	committee and will be accomplishing the envisioned objectives through other means. See General Response C and changes in Part II, Chapter 9.
Do the guidelines on Federal participation apply to regional planning as well as district planning?	While Federal input will be welcome throughout district program development, the regional planning effort will serve principally a coordination function, unlike the formal review, approval and implementation procedures associated with district programs.
The term "energy resource development impacts" on p. 34 of the DEIS uses the term "impacts" in a negative sense, though it, in fact, is a neutral word. This should be reflected in the text.	The cited text is discussing management problems and issues that led to the need for a coastal management program in Alaska. Clearly the negative impacts were the ones of interest in this context.
The document should explicitly state which agency has final responsibility for State/Federal consistency concurrence, the Office of Coastal Management or the Council.	The Division of Policy Development and Planning, which houses the Office of Coastal Management, is the lead agency for the ACMP. OCM serves as staff to the Council and will be making consistency determinations, subject to Council review.
The proposed energy facility siting policies should be part of the ACMP before Federal approval. The USGS should be consulted in the development of proposed regulations concerning these policies.	The Energy Facilities standards amendments were approved by the Legislature in April, 1979. These standards have the force of regulations themselves, and will not be accompanied by further regulations at the present time.
Reference in the habitat standards (6 AAC 80.130(a)) to the protection of habitats for living resources should include human life.	We expect that the Council will recognize the importance of these living resources to human life in administering the ACMP.
Most offshore areas should not be managed as a single use zone; activities such as recreation and mineral extraction should be recognized as legitimate uses.	The State is within its prerogatives to identify its offshore areas as a fisheries conservation zone. While not excluding other appropriate activities, the ACMP puts other users on notice that their activities must not jeopardize the State's priority management objective for the offshore areas: fishery conservation.
Permits and licenses for drilling and mining on the OCS are the responsibility of the Geological Survey and not the Bureau of Land Management as the document	Listing has been revised.
The review procedures which exist between the USGS and the State on OCS plans should be described in Chapter 8.	The State has attempted to develop coordination agreements with most major Federal agencies operating in Alaska. The details of these agreements are not of general interest. Text has been added, however to provide better insight into the State's review of OCS activities.
The program should address, at least briefly, the occurrence of ground water and how impacts on ground water resources are to be managed.	Water quality and geophysical hazards standards of the program would be applicable review areas for groundwater withdrawal that would lead to saltwater intrusion and subsidence. Further-

DOI (cont'd.)

Comment	Response
	more, in the review of the growth of the development projected in a district program, the State DNR, which has authority over State waters, may ask a district to demonstrate that its projected groundwater needs do not exceed supply unless other water sources are available.
It is our understanding that State consistency objections must suggest ways that a proposed activity could be brought into conformance. The DEIS Appendix 7 (Energy Facilities Planning Process) should be reviewed for conformance with the standard 6 AAC 80.070.	The DEIS uses the term "may" in this context in presentng alternative ways to meet the requirement that objections must be accompanied by suggested alternative approaches, if they exist. Comment accepted.
The parties to the MOU on Procedures and Practices Affecting Oil and Gas Leasing in the Beaufort Sea should be identified.	Text revised to identify parties.
While the Program document identifies mining mineral processing as land uses subject to district program planning, the State does not include minerals as resources the districts must inventory. We believe the districts should identify known mining activities as well as known and potential deposits based on available information. Bureau of Mines Alaska Office has provided pertinent information and maps to the OCM and will gladly provide assistance to local governments.	We commend the Bureau of Mines for its assistance and urge the State and districts to take advantage of the Bureau's offer of future information. The Bureau may desire to present its case to the Council for requiring this information in district programs as the basis of possible future revisions to the Program guidelines.
There is a need for planning that considers reasonable mineral development. The State should make provision in the ACMP for continuing mineral resource evaluation and future development for national needs.	Mineral activity that is within the realm of uses of state concern is protected from arbitrary restriction or exclusion under the ACMA. Planning support from the Bureau of Mines to the State would be appreciated.
We believe the inland boundary of the coastal zone is adequate but is not described in enough detail. We recommend: new Program maps that depict Federal lands and the boundaries developing district programs; district pro- and, deletion of the zone of indirect influence from existing maps.	Maps of the coastal boundary, Federal lands, and districts accompany the ACMP-FEIS. District programs will include maps of an appropriate scale for management. The zone of indirect in- the full set will clarify the status of this zone.
While conflict resolution is adequately treated in various places throughout the ACMP documents, consolidation of conflict resolution mechanisms would add clarity.	A table referencing text locations of various treatments of resolution of different types of conflicts has been provided in Part II of the final document.
The requirements of the ACMA and the proposed Administrative Order that State agencies exercise all their authorities consistent with the State's coastal policies and standards are to be commended and will help assure an effective bases for implementing a sound program.	Comment accepted.
The fact that Federal consistency requirements do not apply to Native trust lands should be made clear in Chapter 6.	As lands held in trust by the Federal government, Native trust lands are excluded Federal lands under the CZMA.

DOI (cont'd.)

Comment	Response
What Federal input was involved in the development of the OCS policies?	In the final review stages for those standards in late 1978, before Council approval, the proposed energy facilities standards were circulated for Federal review and comment. The policies were originally drafted as part of a State initiative to develop management policies to address offshore oil development in the Gulf of Alaska. While that effort was principally a State one, under the auspices of the Department Community and Regional Affairs, the project review committee included Federal, State and local government representatives, as well as representatives of native organizations and the petroleum industry. The policies were modified somewhat in preparation for their adoption by the Council as enforceable statewide energy facilities policies.
The provisions for subsistence use, including allowance of snow machines, should be included in this discussion of public access.	We do not understand how the discussion recommended would contribute to the discussion of shoreline access provisions of the program.
The statement in the DEIS (p. 415) that 40 to 80 million acres will be classified as wilderness is not accurate. How much land, if any, will be classified as wilderness is presently unknown and is dependent on Congressional action.	The text has been revised to note the variety of possible management designations of Federally-withdrawn lands.

Advisory Council on Historic Preservation
(Louis S. Wall, 2/5/79)

The P/DEIS does not contain information concerning Section 106 of the Natural Historic Preservation Act of 1966 and ACHP implementing regulations, 36 CFR Part 800.	Comment accepted. Consultation over the general requirements of section 106 and the approval of state CZM programs has begun. OCZM intends to negotiate a memorandum of understanding with the Council as provided for in the ACMP implementing regulations.

Department of Transportation (DOT)
(Aubrey Davis, 3/2/79)

Comment	Response
DOT acknowledges the full participation which the Department's agencies had in the program development.	Comment accepted.
Reinforces 17th Coast Guard District recommendation that new language concerning a Federal determination of consistency be added to p. 151.	Comment accepted. New language has been added as suggested.

DOT - Federal Aviation Administration

States that much of the content of DEIS is familiar to agency due to consultation efforts of the Office of Coastal Management.	Comment accepted.
Finds agency's interest to be adequately considered.	Comment accepted.
Finds Federal consistency provisions to be reasonable and states that agency can comply without difficulty.	Comment accepted.

DOT - Federal Highway Administration

States that intra-state highways are needed for defense, resource development and Federal government activities.	Comment accepted. No change in text required. The State of Alaska recognizes that there may be a national interest in the siting of intra-state highways.
Requests an explanation concerning a non-excluded use of State concern vis-a-vis consistency determinations for Federal assistance.	Federal consistency determinations for Federal assistance for uses of State concern will be based on findings addressing the binding authorities of an approved district program and guidelines and standards.
States that agencies other than OCZM must have the opportunity to initiate reconsideration of excluded uses in light of changing conditions.	The program does provide such opportunity in that: (1) agencies can request changes through legislation; (2) agencies can request changes through the Council; (3) districts will be required to continually consider the national interest during their participation in the Federal coastal zone management program.
Expresses understanding that program <u>will not</u> monitor applications in zone of indirect influence for purposes of Federal consistency.	The program text reflects that applications in this zone will be monitored.
Expresses understanding of consistency review recommends that Council review also be included in 45-day period. Suggests that Council's role be one of monitoring.	The Council will monitor the Office of Coastal Management consistency reviews and will provide review when the Council sees it is necessary. The Council review will not necessarily be in-included in the total 45-day period. Although the State intends to expedite consistency determinations, as reflected in its voluntary decision to limit the initial review to 45 days, the Council review may require a period allowable under Federal regulations in unusual circumstances.

DOT - Federal Highway Administration (cont'd)

Comment	Response
Suggests the addition of 20.205 Highway Research, Planning and Construction to the list of Federal Assistance Programs on p. 159.	Comment accepted; Alaska has added this program to the list.

DOT - U.S. Coast Guard

States that Program strikes a fair balance between local, State and Federal concerns.	Comment accepted.
States the Coast Guard understanding that their future activities are well-protected due to the priority afforded to water-dependent and water-related uses under section 6 AAC 80.040 of the Alaska Coastal Management Act.	Comment accepted. The Coast Guard's understanding is correct.
Recommends the addition of information in Chapter 6, Section (e) concerning Federal agency initial consistency determination procedures.	Comment accepted. Clarifying language appears in Chapter 6, Section (e) in response to this comment.
Expresses concern over the approval process for district programs and the application of Federal consistency.	See General Response E.
Compliments both Alaska and the Office of Coastal Zone Management on the publication of the DEIS; states that the District has been actively involved in the development of the Program; expresses appreciation for the time and effort expended by Alaska to satisfy District concerns.	Comment accepted.

DOT - Federal Rail Administration

Expresses overall satisfaction with the content of the DEIS and the implementation.	Comment accepted.
Recognizes the Program's process for Federal agency participation and for Federal consistency.	Comment accepted.
Expresses the Administration's understanding concerning existing and new licenses and permits vis-a-vis the Federal consistency procedures, i.e., that existing licenses and permits can be continued and extended, and that new licenses and permits are subject to the procedures on p. 152.	This understanding is incorrect. As described in 15 CFR 930.51, the term "Federal license and permit" includes renewals and major amendments which cause significant coastal zone effects. Therefore, the Administration's management of existing Federal licenses and permits falls subject to the procedures on p. 152 also.

Nuclear Regulatory Commission
(Robert G. Ryan, 3/5/79)

Notes that uses of state concern includes uses of national and regional interest, e.g., energy uses, and that districts may not arbitrarily or unreasonably restrict same.	Comment accepted.

NRC (cont'd)

Comment	Response
Recommends addition of the Nuclear Regulatory Commission to Table 1, page 209.	Comment accepted.
Requests opportunity to review and comment on more detailed regulations for energy facility siting.	Should the Program develop more detailed regulations for energy facility siting, the Office of Coastal Management will consult with the Nuclear Regulatory Commission as requested.

Federal Energy Regulatory Commission (FERC)
(Carl N. Shuster, Jr., 3/8/79)

Alaska has adopted an approach to coastal management, similar to other west coast states, that involves eventual management through local programs. While differences in environmental economic and social conditions may warrant extensive local involvement, we feel that local programs should be developed before OCZM approval.	As noted by the reviewer, other states have elected to use a local program approach in implementing their management program. The key issue is not whether local governments will develop documents that clarify how a set of statewide policies apply to the local environmental and social-economic setting. The key issue in reviewing a state coastal program for approval is whether, in fact, the state has developed and defined a program that can be implemented immediately following program approval. A state using a similar local program approach -- California -- has been approved by the Secretary of Commerce, and that approval has been supported on judicial review. (See 456 F. Supp. 889 (C.D.Cal. 1978).
Local district programs may amend the presently-defined Statewide coastal boundary. This possibility for change results in a decrease in the predictability of coastal zone decisions made by State policy makers. Such predictability is required under the CZMA.	See General Response A.
The State bases its control mechanism over national interest facilities on the "Uses of State Concern" requirement of the ACMA. The procedure for assuring that these uses are not arbitrarily excluded appears long and cumbersome. For example, resolution of a disagreement between the Alaska Coastal Policy Council and a local district requires mediation and then a public hearing.	See General Response B.

FERC (cont'd)

Comment	Response
The ACMP should specify how compliance will be met with the Alaska Natural Gas Transportation Act of 1976 (P.L. 94-586). The legislation provides a role for the President and Congress in the planning and expeditious construction of a system to supply natural gas to the contiguous United States. This legislation also limited pertinent administrative and judicial review processes.	The cited legislation indeed provides a role for the President and Congress in the process of selection of a delivery system for natural gas. We acknowledge that this legislation should be a factor in energy planning for the State, and further note the Congressional findings that "the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest." (15 U.S.C. 719(3)). This provision of the Act would make any project authorized under the ANGTA subject to the "uses of state concern" provisions of the ACMA in coastal areas of the State. In addition, OCZM staff has been in contact with Mr. Russell A. Soulen, Acting Executive Director of the Executive Policy Board for the Alaska Natural Gas Transportation System, and has provided copies of the ACMP-DEIS for the Board's review. Furthermore, Mr. Soulen has contacted the Alaska (State) Pipeline Coordinator to assure that he has been in contact with Alaska Coastal Policy Council. Mr. Soulen, in noting that the alignment of the proposed pipeline is still under review, and that questions of financing and product rates must still be considered, suggested that construction may be as much as three years away. In any case, Mr. Soulen, in a telephone conversation on 3/30/79, indicated his confidence that ACMP did not conflict with Congressional intent under the ANGTA. We have added text in Part II, Chapter 8 of the ACMP-FEIS to address the Act and its implications and suggest that the Alaska Coastal Policy Council continue to keep in close contact with the State Pipeline Coordinator.
The State has proposed the identification of energy facility sites as part of the ACMP, but appears to give the lead in this task to the districts. The task should be a State function to preclude local political issues from influencing siting. Consultation with the districts would provide adequate local involvement, while assuring a balanced Statewide planning process.	The role of energy facility site identification is assigned to the districts because it is expected that the sites would be identified as part of the district program development process. Local planning and political concerns are appropriate considerations in site identification, as long as the district programs also give adequate consideration to the national interest that may be associated with such facilities. Council review of the district programs prior to approval will assure that adequate consideration has been given. It is the responsiblility of the Federal agencies to participate in the district program development process in order to assure that the districts are aware of any national-facility-facility needs in their area of planning.

Comment	Response
The document states that OCM will be making individual agreements with Federal agencies concerning the procedures which will be used to determine consistency. These procedures should have been established before publication of the draft ACMP.	States and Federal agencies are bound by the consistency review procedures of 15 CFR 930. The State is attempting to complement these procedures with written understandings with each Federal agency that will simply clarify the permits, licenses activities or assistance projects that the State wishes to review and the points of contact on both State and Federal sides to avoid uncertainty. These understandings represent an excellent effort effort on the part of the State to set up their management system and to assist the Federal agencies to be prepared to meet their obligations under the CZMA. The State OCM has been attempting voluntarily to establish these relatively straightforward understandings with FERC and other Federal agencies since fall of 1978. Several have been signed.
While the document notes that the consistency determination will be based on comments from State agencies and local governments, there is no indication of the standard of review, nor of the role of DPDP staff in the decision.	As in any coastal program, the standard of review is the Program itself. In the case of Alaska, this means the Act, the Guidelines and Standards approved pursuant to the Act, and the district programs once they are approved and made part of the State program. DPDP staff will seek comment on Federal licenses and permits from interested State agencies and the affected local government and will make a recommendation to the Director of DPDP, who makes the final decision, subject to Council review.
The licenses and certificates issued by FERC and subject to consistency review should be revised. (A substitute listing was provided.)	Listing revised.
The energy facility planning process does not appear to be adequately specific. We cannot determine what the planning process would be for a hydroelectric project in the coastal zone. The energy faciliities discussion deals primarily with oil and gas facilities. A number of potential hydroelectric sites may be located in Alaska's coastal zone, or affecting it.	Hydroelectric facilities are subject to the energy facilities standards applicable to other energy facilities. In addition, the coastal development and habitat standards apply to all coastal uses, including hydroelectric facilities. The recently revised definition of "major energy facilities" (6 AAC 80.900) acknowledges the application of the energy facility standards to hydroelectric facilities.
The 65 maps produced by ACMP to depict the boundaries of Alaska's coastal zone should be included as appendices of the final ACMP. These maps are needed for the review of Federal consistency and energy facility siting.	OCZM believes that the noted set of maps are not necessary to review the adequacy of the ACMP-FEIS. The expense of reproducing these maps dictates against their distribution as an "extra" with the 2500-3000 documents distributed as part of the NEPA review of the ACMP/EIS. Copies may be obtained by parties who need them from the Office of Coastal Management. The P/FEIS does contain maps of the coastal zone boundary and major Federal landholdings in Alaska.
We would like to receive three copies of the Manual of Standards as soon as it becomes available.	General Response C explains the manual of standards in greater detail than the DEIS, perhaps clearing up some misunderstandings as to the intent of the manual. FERC will be provided copies for their consideration.

Alaska Department of Environmental Conservation (DEC)
(Ernst W. Mueller, 3/5/79)

Comment	Response
States that the discussion of the manual of standards, pp. 48 and 49, should be revised and DEC's assistance noted.	Clarification concerning the content and proposed use of the manual of standards is provided in this document and DEC's assistance is appreciated. Also, please see General Response C.
Recommends language to explain state air quality control authority on p. 136.	The recommended language is adopted in full.
States that spending decisions are not subject to AS 46.35.090, 100, and 200.	The statutory citations were incorrect and have been corrected in the P/DEIS. They should read "AS 46.40.090, 100 and 200."
Recommends that the new USGS regulations governing the review and submission of exploratory and development plans be discussed in the text on p. 155.	Changes in USGS regulations do not affect the responsibilities of leases and USGS to assure that their activities are consistent with the ACMP, once approved. The effect of revised USGS regulations on the coordination agreements between that agency and the ACMP are uncertain as of this writing.
Recommends change in title of EPA program 66.432, p. 160.	Comment accepted. The recommended change is made.
Recommends change in text, p. 193, concerning the "208" study in Alaska.	Comment accepted. The recommended language is adopted in full.
Recommends change in title of Act, p. 210.	Comment accepted. The recommended change is made.
Raises question concerning the applicability of the standards in the "zone of indirect influence" before and after district program approval.	Please see General Response A.
Requests further elaboration on definition of feasible and prudent.	Comment accepted. Responses to other comments explain the Council's intent concerning "feasible and prudent," i.e., that the use of the word "avoid" is to be interpreted so as to limit strictly, and, that "feasible and prudent" deviations from the normal standards should be narrow in interpretation and result only where the public good outweighs the public costs.

Alaska Department of Natural Resources (DNR)
(Jeff Haynes, 2/28/79)

Comment	Response
The P/DEIS refers several times to responsibilities, activities, and operations of the State agency Coastal Coordinating Team (SACCT) when, in fact, OCM has ceased funding SACCT and has allocated no program implementation funds to it. This misrepresents the adequacy of accomodation of state and federal concerns by the ACMP, and casts doubt on the seriousness of OCM's intention to implement the ACMP as described. The failure of OCM to fund SACCT and the regional program leaves a serious gap in the ACMP, and makes questionable its capacity to satisfy state and federal requirements. Because a primary purpose of the regional program is to identify uses of state concern, its elimination hinders fulfillment of such federal requirements as those concerning national interest facilities and uses of regional benefit. DNR strongly recommends that an interagency team and regional planning function be retained in the ACMP, and described in detail in the P/FEIS.	See General Response C. Text has been changed in Part II, Chapters 8 and 9 to show current plans and arrangements for regional concerns.
In the third paragraph of P/DEIS page 56, the statement that "the requirements of the coastal development standard would preclude the siting of public or commercial facilities" of various types is incorrect. The standard actually requires only that districts and state agencies give priority to water dependent and water related uses. Because there must be two or more competing uses or activities before questions of "priority" can arise, districts and state agencies are required to give priority to water-dependent uses only when faced with competing applications or when choices of use. Uses that are non-water-dependent or non-water-related need not be denied automatically.	While giving priority to water-dependent uses does not necessarily involve total prohibition of any non-water-dependent use from the waterfront, we disagree with the view that this standard requires prioritization only among competing uses for which applications have actually been submitted. The responsible local, state or federal agency must also assess possible uses of the area in question for which applications have not yet been submitted, and consider denial of all pending applications if granting them would preclude a prospective water-dependent use for which the area in question is especially suited. Assessment of potential uses will be best carried out through the district program development process. The term "preclude" has been changed to "inhibit" to better portray this planning function.
P/DEIS, p. 59, the statement that "the decision to designate an area for recreation is a choice among other possible land and water uses and must be left to the local governments ...," is untrue. It conflicts with the statutory mandate of DNR to "plan for and develop a system of state parks and recreational facilities, to be established as the Legislature authorizes and directs.	This recognition of local authority under the recreation standard is not intended to deny DNR's authority under other provisions of law to perform similar functions. Text changes have been made to eliminate this possibility for misunderstanding.

DNR (cont'd.)

Comment	Response
P/DEIS, p. 59 contains the statement: "Large-scale recreational resources, or those covered by existing or potential state designations, such as state parks are uses of state concern and will be subject to consideration by the Regional Planning Team (discussed in Chapter 7)." Is the "large scale" of these resources measured by the size (acreage) or level of significance? An area that is small in size could have highly significant resource values and serve significant user groups. There is no reference to the Regional Planning Team in Chapter 7. As noted above, the regional planning function is no longer being funded.	"Large-scale" in this context refers primarily to the number and geographic distribution of the people served by the recreational resource. This would be the prime factor in determining whether the resource is "of more than local concern." Concerning the regional planning team, please see General Response C.
At P/DEIS pages 96-100, there is no mention of the fact that the Alaska Coastal Policy Council has asked the Legislature to delete the ACMA requirement of legislative approval of district programs. In contrast, the discussion does mention the Council's proposed amendment to the ACMA that would extend the deadline for sub-submitting district programs until December 1981.	Since issuance of the P/DEIS, the Legislature has declined to change the requirement that it approve all district programs. The proposed extension of the deadline for submitting district programs would be on a case-by-case basis, subject to compliance schedules.
On P/DEIS p. 125, in the fifth paragraph there is a statement that "until further experience is gained in implementing ACMP in [areas for which district programs have not been approved] it is desirable to extend program management to all of the land and water uses that are subject to state agency approval." This is based neither on the ACMA nor the Guidelines and Standards, and has not been addressed by the Council.	This is based on AS 46.40.200, requiring all state agencies to take whatever action is necessary to facilitate full compliance with and implementation of the ACMP; and on 6 AAC 80.010(b), requiring uses and activities conducted by state agencies in the coastal area to be consistent with the applicable district program and the ACMP standards. Because these obligations, particularly the second, appear to govern all state agency activities in the coastal area without distinction, it can be said that, in the broadest sense, all of those activities, and all private activities depending on state agency approval, are "subject to management" under the ACMP.
In the first paragraph of P/DEIS p. 135, the statement that "the uses subject to management under ACMP in areas for which district programs have not been approved are defined as all uses for which the approval of a state agency is legally required" is untrue and has no legal basis. State agencies are obliged to apply the ACMP policies only to the uses and activities and resources identified in the guidelines and standards.	See the preceding response. The habitat standards, of course, govern all activities affecting the subject habitats, whether or not those activities are individually discussed elsewhere in the Guidelines and Standards.
On P/DEIS p. 137, the last two sentences in item (7), "Under recently ... of wetlands.", should be deleted. This provision is no longer in DNR's regulations.	The statement has been deleted in the revised discussion of wetlands. See, also, General Response D.

DNR (cont'd.)

Comment	Response
On P/DEIS p. 139, the statement that DNR must now "consider such matters as whether the use depending upon the appropriation is water-dependent or water-related, and whether it would eliminate opportunities for subsistence usage of local resources ...," is erroneous. DNR is not obliged to deny a permit for appropriation simply because the intended use is not water-dependent. It need only give priority to a water-dependent use in the event of two or more competing applications. DNR is required to consider subsistence usage only in subsistence zones identified by districts.	Concerning the water-dependency standard, please see second response to DNR comments. The quoted statement regarding subsistence relates to 6 AAC 80.120(a), which reads: "Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources." This rule applies now, and is not dependent upon designated subsistence zones in district programs.
On P/DEIS p. 141, it is stated that DNR must deny leases and permits which would violate the ACMP policies. The Alaska Constitution guarantees a mining lease upon discovery of minerals. Thus, mining leases cannot be denied by DNR on on the basis of the ACMP policies.	While DNR's discretion to deny leases may be limited by constitutional provisions, conditions could be imposed on leases that are granted to assure compliance with the ACMP. Revision has been made in the referenced sentence to clarify this.
In the second full paragraph of P/DEIS p. 147, the statement that adherence to an approved district program might, in certain circumstances, result in actions that would have conflicted with the Guidelines and Standards is contrary to AS 46.40.070. This allows approval of a district program in the first place only if it is "substantially consistent" with the ACMA and the Guidelines and Standards.	Even if "substantially consistent" is interpreted to mean "perfectly consistent," a matter concerning which there is some doubt, it would be unreasonable to expect the members of the Council and of the Legislature as to be able to determine that every standard of every district program will yield results in all cases that would have been arrived at under the Guidelines and Standards alone.
The first full paragraph of P/DEIS p. 165, implies that a district would resolve a conflict between two or more uses of state concern competing for the same site within the coastal zone of that district. 6 AAC 80.130(b), however, provides that the regional programs established under an interagency program of comprehensive resource management "will assist the council and districts in identifying uses of state concern ... and assist the council and districts in identifying, avoiding or minizing existing or potential conflicts." Other parts of the P/DEIS discuss the role of SACCT in resolving disputes among state agencies as to proper uses. Thus, any conflict between uses of state concern competing for the same site must be resolved by the state agencies involved rather than by the concerned district. The last four paragraphs on on P/DEIS p. 166 should be deleted.	Any resolutions of these matters arrived at regional program must be reviewed and considered by the districts, subject to among the state agencies through the final resolution by the Council. 6 AAC 80.030(c). No change in the cited P/DEIS language is necessary. The state agencies are not the only entities capable of resolving conflicts of this type, although their state-wide perspective will be a useful basis upon which to make such decisions.

DNR (cont'd)

Comment	Response
The suggestion on P/DEIS pp. 167-69 and 283 that the state's eminent domain authority can be exercised to prevent unreasonable restriction or exclusion of uses of state concern in district programs is naive and politically unrealistic. There is no guarantee that the Council or the Legislature will follow the described procedure, and there is no provision for the several months of the year that the Legislature is not in session. The procedure would drag out the inevitable conflicts between the districts and the state under the ACMP.	See General Response B.
In the third full paragraph of P/DEIS p. 219, it is stated that program implementation funds will not be provided to coastal resource service areas because implementation in these areas will be by state agencies, and that those agencies will receive funding "in some degree" for this purpose. It will be impossible for DNR to implement CRSA district programs unless it is fully funded for this effort by OCM.	We encourage DNR's full participation in the ACMP. OCM will provide funds at appropriate scales, within budget limitations, to assure effective implementation of the ACMP.
The statement on P/DEIS p. 251, that much of the coastal zone will not be subject to development pressure because of such existing environmental management units as parks and refuges, is incorrect. In southern Alaska, very few existing or proposed national parks will have significant coastal acreage, and the majority of the shoreline will be under BLM, National Forest, or state and private management allowing a wide variety of multiple uses. Even Natural Wildlife Refuges established in southwest Alaska would be open to a wide range of resource development activities.	We agree with this comment. The statement in question has been changed.
On P/DEIS p. 274, the statement is made that the final coastal zone boundary established by a district must include the areas covered by the zones of direct interaction and direct influence. This contrary to 6 AAC 85.040(c), which states that the final boundary may diverge from the zones of direct interaction and direct influence if two criteria are met and does not constitute a minimum area for inclusion in the final coastal zone.	This statement has been revised. See general response.
The proposed administrative order presented at P/DEIS pp. 371-76 has not yet been approved.	This is correct. It will be approved before issuance of the P/FEIS.
In the third line of P/DEIS p. 374, delete "and", change the period to a comma, and add "and with state agency authorities.	The change has been made.
State agencies should not be required, as they would be under paragraph 14 on P/DEIS p. 375, to carry out the consultation and analysis required of local governments under AS 46.60.070(c). While it is necessary to consult with other agencies, the proposed process would be unwieldy.	We disagree. Exclusion of a use of state concern by a state agency can be just as harmful as such exclusion by a local government. The same level of consultation with other agencies should be required in each case.

DNR (cont'd.)

Comment	Response
DNR strongly objects to the requirement proposed in paragraph 15 on P/DEIS p. 375, that state agencies give notice after the fact of actions that would have only insignificant effects on coastal resources. DNR requires pre-issuance notification for each water permit or certificate, and after-the-fact notice would also frustrate the intent of the paperwork reduction and one-stop permitting legislation recently passed by the Alaska legislature.	The order will be changed to make an exception for proceedings in which there has been adequate prior notice.
On P/DEIS p. 417, in the shoreline access and protection element, the ACMP definitions of beach, coastal water, and wetlands are not sufficient by themselves to define "those areas subject to the shorefront access and protection process." Upland areas that may effect access to the shoreline from a highway or trail should also be subject to the process. Historically, many states have acquired ownership of or rights to the beach and wetlands, but have had difficulty protecting or acquiring access from the uplands to the beach.	The new subsection (b) of the recreation standard, 6 AAC 80.060, addresses this concern. It requires that high priority be given to increasing and maintaining public access to coastal waters. This would include access from upland areas.
On P/DEIS p. 418, paragraph V.A. should reference 6 AAC 80.060, requiring districts to designate areas for recreational use.	We agree. The change has been made.
In section VII on P/DEIS p. 423, the authority of the Director of Lands to reserve easements and rights-of-way on state lands under 11 AAC 70.080 should also be mentioned as a legal authority "that can be used to meet management needs" pursuant to 15 CFR 923.25(5).	We agree. Reference to this authority has been added.
DNR submitted a recommended revised draft of the shoreline erosion planning element.	We thank DNR for the revised draft, and have incorporated many of its suggested changes.

City of Kupreanof, Alaska
(Mrs. Dixie Baade, 3/11/79)

Comment	Response
Expresses concern that the Program gives priority to coastal-dependent development.	The Program gives priority to coastal-dependent development vis-a-vis other kinds of development. It does not give priority to development over preservation and protection. Rather, it works to balance and management the short and long-term needs for preservation and development.
Expresses concern that areas important for fish, wildlife, waterfowl, recreation and scenic beauty be identified and lassified for protection and conservation.	The Program will protect and preserve these areas through direct regulation and enforcement throughout the coastal area. In "areas which merit special attention," (AMSA's), additional management can be employed.
Expresses concern over the treatment of uses of state concern in the context of district programs.	Please see General Response B.
Raises question regarding the Manual of Standards	Please see General Response C.
Expresses concern over the enforcement of state authority to protect natural resources in Alaska, and in southeast Alaska in particular.	The Program authorities will be enforced by the State of Alaska after approval. Program funds will be afforded to state agencies for this purpose.
Expresses concern that amendments to the Timber Harvest and Processing standards have not yet been approved.	The Program will not be approved if it is determined to be nonenforceable or it its authorities are not sufficient to protect the coastal resources.
States that the DEIS lacks specificity and leaves doubt as to the effectiveness of the standards.	While the P/DEIS is general in many respects, this is due, in part, to the fact that this is a program as opposed to a project DEIS, and, in part, due to the size of Alaska and its relatively undeveloped status. The effectiveness of the standards must be evaluated during program administration.
Expresses concern over the definition and practical application of the phrase "feasible and prudent," and over weighs the public costs and benefits of nonconformance.	See discussion of this term in the text and in responses to comments of Trustees for Alaska.
States in conclusion, that: living marine resources need to be given priority and to be identified as uses of state concern; provisions need to be made to allow communities to decide if they want to have large industrial development; the DEIS needs to be more specific in outlining impacts.	Living marine resources are "uses of national interest" and therefore "uses of state concern". The approval process for district programs provides for district submission after public hearing, Council approval in whole or in part, final approval by the district and then approval by the legislature; the DEIS addresses a program and not a specific project. The proposed action is an approval that will initiate a program to manage coastal resources in the future. The impacts of the proposed management are described generally, because site specific impacts can not be identified.

Alaska Oil and Gas Association
(Testimony. E.D. Hillyard, 2/28/79 - William W. Hopkins, 3/1/79)

Comment	Response
On P/DEIS p. 163, paragraph (c) does not contain "activities pursuant to a state oil and gas lease" as contained in AS 46.40.210(6)(c) as amended.	The codified version of the ACMA used in the P/DEIS predated the 1978 amendments that added a specific reference to "activities, pursuant to state oil and gas leases" as uses of state concern. The Amendatory Act of 1978 appears in full immediately following the original ACMA.
Between P/DEIS pp. 346 and 347, 6 AAC 85.150(h) appears to be missing.	The missing material is restored in the P/FEIS.
Between P/DEIS pp. 346 and 347, there is no statement of the time limit within which the district must comply with the decisions of the adjudicatory hearing held under 6 AAC 85.150(h). A 30-day maximum is suggested.	It would, in our view, be within the discretion of the Council to set a reasonable time limit, such as the suggested 30-day period, for resubmission of the district program in accordance with its decision. Because the legal obligation of districts to have submitted their programs to the Council will mature upon expiration of the December 1979 deadline, injunctive relief would be available against a district that failed to resubmit its program in a timely manner.
With reference to P/DEIS p. 388, discussing information needed from major energy facility developers, the contractors and subcontractors for all or portions of the project cannot be identified at the time of permit application.	Duly noted, a change has been made to reflect this.
Between P/DEIS pp. 346 and 347, 6 AAC 85.900 (Definitions) is missing.	This material has also been added to the P/FEIS.
With reference to P/DEIS p. 309, AS 46.40.020(2) and (4) ("Objectives"). Legislation currently being considered would amend these paragraphs by adding, "fisheries related activities are given the highest priority ... if the priority is adopted within a district by the Coastal Reserve District." Section 305(b)(5) of the Federal CZMA requires that a program include "broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority." The proposed legislation, by introducing specific use priorities, would render the ACMP unacceptable.	This legislation was still pending at the time these responses were prepared. We do not believe the proposed legislation would impair ACMP's federal approvability. Districts already have the right to emphasize fishing, and this legislation does not eliminate districts' responsibilities for uses of state concern. The requirement of "broad guidelines" on use priorities sets a minimum standard; specific guidelines would, as a rule, be considered more desirable by OCZM.
(a) Use of eminent domain would require the Governor to classify the alleged use of state concern as a state agency undertaking, and to make a finding of "overriding public needs" under AS 35.10.020.	This would not be necessary. The cited statute is a voluntary limitation by the state of the normal effect of its eminent domain authority on local land use regulations when exercised by the Department of Transportation and Public Facilities or the University of Alaska. It requires compliance by these agencies with local comhensive plans unless the Governor makes a finding of "overriding public need." Because eminent domain, as utilized in the uses of state concern procedure described in the P/DEIS, would be exercised on behalf of the state by those undertaking the use of state concern and not by DOTPF or the University, the basic

Alaska Oil and Gas Association (cont'd.)

requirement of compliance with local comprehensive plans would not apply, and there would be no need for an overriding finding by the Governor.

(b) Reliance on eminent domain is a single method of control. The Federal CZMA calls for "a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions.

The quoted requirement does not preclude reliance on a single method of control. In any event, as is discussed in General Response B, the eminent domain procedure is not the only, or even necessarily the most important means for assuring reasonable treatment of uses of state concern during the "interim." Probably of greater importance are enforcement of the legal obligation of districts to initiate the district program review process by submitting their programs to the Council. Also significant are the legal limitations on adoption by local governments of ordinances that conflict with statutes. This obligation matures in December 1979, only months after the proposed time of program approval.

(c) Invoking eminent domain authority is time consuming, and could seriously delay state or Federal lease sales.

See General Response B.

(d) Reliance on eminent domain would cast a cloud over the ability of a successful bidder to undertake exploratory efforts in its lease, and would substantially reduce the bonus bid monies committed by industry at lease sales, thereby reducing state and local revenue.

Any decisional process will involve some uncertainty pending arrival at a final decision, and the level of uncertainty that would be associated with the eminent domain approach does not appear unreasonable to OCZM. To the extent that state and local revenues were reduced through loss of lease bid monies, this would be a cost that the state and local governments would have to bear for the absence of complete certainty.

In view of the great economic benefits that the oil industry has brought to the state and the nation with a minimum environmental impact, it is in their best interest that the ACMP be designed to assist the industry in the expeditious discovery and development of oil.

We, too, hope that the ACMP will provide a process that will vindicate the national interest in expeditious energy development while minimizing the adverse impact of that development on other valuable features of the coastal area.

Arco Oil and Gas Company
(J. P. Johnson, 3/2/79)

Comment

Although the ACMP fails to resolve many issues of importance to the oil and gas industry, it represents a reasonable implementation, superior to most programs that have been submitted.

The development of local programs, which will take about two years, must be completed before it can be known how the national interest in the siting of energy facilities will be recognized, how unreasonable local exclusions of uses of regional benefit will be prevented, and how AMSA's will be identified and regulated. Like other CZM programs, the ACMP provides only a process for the creation of the program, and there is no real program to approve prior to the delineation and resolution of these matters in the local program.

Response

We hope that, as the ACMP is implemented, oil and gas companies will find that it provides an effective process for satisfactory resolution of matters affecting their interests.

This argument was rejected by the court in American Petroleum Institute v. Knecht, 456 F. Supp. 889 (C.D. Cal. 1978).

Arco Oil and Gas Company (cont'd.)

The significance of the "zone of indirect influence" for permit application and consistency review is unclear. The third paragraph of P/DEIS p. 107 seems to elevate this zone to the status of an AMSA and to place it within the coastal zone for use permits purposes. This might violate the requirement of Section 304(1) of the Federal CZMA that the coastal zone extend inland only to the extent necessary to control shorelands - the uses of which have a direct and significant impact on the coastal waters.

See General Response A. The zone of indirect influence is definitely not part of the initial coastal zone. The paragraph in question recognizes that some districts may find it necessary to add parts of the zone of indirect influence in establishing their final coastal zone boundaries on the ground that this is necessary to control shorelands the uses of which have a direct and significant impact on coastal waters. Such extensions of the coastal zone would have to be approved by the Council and the Legislature. It is possible that activities outside the coastal zone, either within or without the zone of indirect influence, may have significant effects on the coastal zone itself. Under both the state and the federal consistency requirements, these effects would have to be managed so as not to violate the standards of the ACMP.

Some provisions of the Guidelines and Standards, like the definition "feasible and prudent" and the energy siting policies, have not yet been legislatively approved. It appears, however, that legislative approval is contemplated as occurring before final OCZM approval of the ACMP.

The Alaska Legislature approved the proposed amendments to the Guidelines and Standards in April 1979, subsequent to the review and comment period on the P/DEIS.

In some cases, facility sharing as a method of reducing the impact of facility siting would be subject to legal limitations imposed by such Federal agencies as the ICC and FTC. In such instances, legal propriety, as well as feasibility and prudence, must be considered. The definition of "feasible and prudent" might be amended to incorporate the concept of legal propriety.

While such an amendment might be a useful addition, nothing in the ACMP can, under the federal supremacy clause of the United States Constitution and section 307(e) of the federal CZMA override federal regulatory limitations like those mentioned. The ACMP standards must, therefore, be read subject to these federal provisions. Facility sharing would not be required where it would violate such federal restrictions.

The ACMP does not seem to address specifically Section 305(b)(3) of the Federal CZMA on "areas of particular concern." Is this the purpose of AMSA procedure? In any event, designation of APC's should be required prior to program approval.

The AMSA procedure was designed to meet the requirements of section 305(b)(3). Because AMSA's are designated principally through the district program approval process, however, none will be designated at the proposed time of federal approval of the ACMP. The AMSA procedures are only a part of the ACMP procedures responsive to the requirements of CZMA §305(b)(3). Alaska has elected to use existing State mechanisms for designating special areas to meet the APC criteria. Four areas were identified, as examples, in the P/DEIS. The AMSA processes, including direct designation by the Council and identification of AMSA's through district programs, provides the continuing process for special area designation.

Among the "Information Needs" presented on P/DEIS pp. 387-89 are some items that would most suitably be provided by government agencies, rather than applicant. These include population, public services, economic implications (beyond the proposed project's direct impacts), and arrangements for reducing social, economic, and environmental conflicts.

Where such information is available from government agencies, applicants are strongly encouraged to obtain it from those agencies through information requests. They are not expected to develop such information on their own. OCM will assist applicants having difficulty in locating or obtaining information developed by state agencies.

SOHIO - BP
(James K. Barnett, III, 2/27/79)

Comment	Response
The ACMP provides a sound and workable planning process and establishes a positive framework for the development of a state coastal zone program.	We agree, and thank the Sohio-BP Alaska Production Division for the contribution it has made to the ACMP's development.
The oil and gas industry interprets AS 40.070(c)(2) to require that a district insure that there are reasonable alternative sites which may be developed in a feasible and prudent manner before it may restrict or exclude a use of state concern. Some, however, appear to interpret the provision to require only consideration of other sites. Therefore, the Guidelines and Standards should be amended to define a process for determining the availability of reasonable alternative sites. Only if, after reviewing all alternative sites, the district can identify one that would be feasible and prudent to develop, should it be allowed to restrict or exclude the use of state concern.	OCZM is confident that the "strict" interpretation is the correct one, and does not believe that further clarification of this criterion is necessary. In our view, the contention that only "consideration" of alternative sites is required is plainly incorrect. The criterion specifically requires that the restriction or exclusion be "based ... on the availability of reasonable alternative sites ...". The district must, in relying upon this provision, demonstrate that such sites are reasonably available for the proposed use, or the Council will be unable to make the necessary findings of fact.
The state's eminent domain authority is inadequate to protect uses of state concern from unreasonable restriction and exclusion. Eminent domain allows governmental confiscation of private property for fair monetary compensation. It does not apply with any certainty to confiscation by the state of regulatory authority exercised by a local government. Adequate testing of such a theory in the Alaska courts could take much time and create uncertainty.	Please see General Response B. With respect to this particular comment, we must emphasize that the eminent domain procedure described in the P/DEIS would involve override of local zoning regulations as an incident to the taking of real property for the proposed development: local regulatory authority itself would not, as the commenter appears to believe, be treated as the thing being taken. The latter approach would, indeed, be a radical departure from established law.
Federal approval of the ACMP should be delayed until the necessary state authorities (for uses of regional benefit) are established. Guidelines and Standards for identifying alternative sites for uses of state concern would accomplish this result.	Once again, we do not believe the "reasonable alternative sites" criterion to be in need of strengthening.
Resolution 13 of the Alaska Coastal Policy Council, defining a series of uses of state concern, has no binding force since it was not submitted to the Legislature. The council must develop the use of state concern concept further to give necessary guidance to the districts.	We agree that Resolution 13 has no binding force. OCZM considers the definition of uses of State concern to be sufficiently specific to guide the districts, and to form a basis for further specification on a case-by-case basis. The state has indicated that it will look into these matters further, however.
In addition to its duty to assist in development of district programs, the Council is required under AS 46.40.040(4) to "initiate a process for identifying and managing uses of state concern within specific areas of the coast." Accordingly, the Council should establish a program of coastal management dealing with the OCS oil and gas lease sales that will be conducted in the near future, as well as continued development at Prudhoe Bay. This will serve national as well as local interests.	We agree that such a program would be useful. You may wish to pursue this idea directly with OCM and the Council.

SOHIO - BP
(James K. Barnett, III, 3/2/79)

Comment	Response
The discussion of uses of regional benefit in districts for which district programs had not yet been approved, appearing at pp. 282-83 of the P/DEIS, is deficient in failing to discuss the possibility that these districts will refuse to submit district programs to the Council. They might base such refusal on the "home rule" powers conferred by Article X of the Alaska Constitution, contending that the ACMA requirements infringe unconstitutionally upon these powers. Such a claim could be resolved only through extensive litigation.	If a district refused to submit a program to the Council after the statutory deadline for such submission had passed, injunctive relief would be available to State agencies and other aggrieved persons to require the district to comply with this legal obligation. OCZM does not consider this result to be precluded by Article X of the Alaska Constitution.
It is not true, as the discussion at pp. 282-83 of the P/DEIS assumes, that uses of regional benefit and of state concern will be adequately protected upon the approval by the Council of a district program. This is due to the ease with which a district can meet the three requirements for establishing that a restriction or exclusion of a use of state concern is reasonable. Specifically, (a) the requirement that the district has "consulted with and considered the views of appropriate federal, state or regional agencies" is a simple procedural requirement with no substantive impact. The ACMA or Guidelines and Standards should be amended to make the views of such agencies dispositive on these matters; (b) the requirement that the district base its restriction on the "availability of reasonable alternative sites" is also primarily procedural, and any substantive impact can be avoided. Without further definition, "reasonable alternative sites" could be interpreted to include distant areas or areas not truly useful for the purpose. The ACMA or Guidelines and Standards should be amended to define such sites and establish a process to assure their availability; (c) the requirement that the district base its restriction or exclusion on "an analysis showing that the proposed use is incompatible with the proposed site" is, given the discretion of local governments in Alaska generally and under the ACMA, a simple one to meet. Additional procedural and substantive guidelines are needed.	We disagree. Both individually and in combination, the three criteria impose substantial limits on the ability of districts to restrict or exclude uses of State concern. (a) The requirement that the views of the agencies in question be "considered" would have substantive impact. It specifically adds those views to the factual material that a reviewing court must assess in determining whether approval of a district program by the State, including approval of the restriction or exclusion, was so irrational as to require reversal under the State equivalent of the Federal "arbitrary and capricious" standard. (b) The "reasonable alternative site" criterion is extremely potent. Under this requirement, the district must identify specific alternative sites that would be useful for the purpose under consideration. If distant sites would not be useful for the purpose they could not be used by the district to meet this criterion. It would of course, be up to the Council and Legislature to determine on a case-by-case basis whether alleged "reasonable alternative sites" were, in fact, reasonable alternatives. (c) We disagree that the requirement of a showing that the proposed use is "incompatible" with the proposed site would be an easy one to meet. It would not, in our view, be satisfied by a mere showing of adverse impacts on the site, since these would be a dealt with under the Guidelines and Standards. What would be required would be a demonstration that dedication of the site to the proposed purpose would render it unusable for a purpose for which it is particularly or uniquely suited; or that use of the site for the proposed purpose would cause major problems and expenses that are out of reasonable proportion to the burden of selecting another site.
The eminent domain analysis relied upon in the P/DEIS to remedy these deficiencies in the protection of uses of regional benefit or of state concern is inappropriately applied. The uses for which eminent domain may be employed under the Alaska Statutes do not include the limitation of local government authority.	Please see General Response B.

SOHIO - BP (cont'd.)

An appropriate theory for remedying these deficiencies would normally be a principle limiting the authority of inferior governments to act contrary to conflicting enactments of superior governments (as exemplified in state or Federal relations by the theory of Federal "preemption"). While some states adopt this theory in dealing with municipalities, however, it has been disapproved by the Alaska Supreme Court, which limits its inquiry to whether a particular municipal action is expressly prohibited by the state. This results from the liberal terms of Article X of the Alaska Constitution concerning home rule municipalities. A substantial discussion of the legal problem is needed.	Please see General Response B.
Through the ACMA, the state has delegated to local governments substantial authority to control the future economic and environmental development of Alaska without providing for sufficient control by the state of municipal actions taken under this authority.	OCZM believes that the district program approval process gives ample authority to the State to prevent local actions from adversely affecting the economy and environment of Alaska. More to the point, local governments have had substantial authority to control future economic and environmental development by virtue of their current planning and zoning powers. If anything, ACMP has limited this power in the coastal area through the local program approval process, state standards, and the protection for uses of state concern.

Alaska Conservation Society, Taku Chapter
(Frederick F. Wright)

Comment	Response
Compliments the quality of the DEIS.	Comment accepted.
States that the Program appears to be balanced and workable.	Comment accepted.
Request clarification in the document of (1) the federal consistency requirement, including examples of it application to district programs; and (3) a tabulation of excluded federal lands not subject to the consistency clause.	Comment accepted. Clarifying information on federal consistency including examples of its application in district programs have been added to the document. Also, a map of excluded federal lands is now included. Federal activities on excluded federal lands significantly affecting the coastal area are subject to the federal consistency requirements.
Express desire to see Program adopted.	Comment accepted.

American Institute of Fisheries Research Biologists
(Bruce L. Wing, 3/5/79)

Comment

AIFRB supports the concept of providing leave strips of standing timber along streambanks to protect fishery values from the impacts of logging. In appended correspondence, dated 5/5/79, the Institute objected to removal of a streambank management requirement in the ACMP regulations by the Legislature in 1978.

Response

The Alaska Legislature did indeed delete a streambank management requirement from the original ACMP regulation when the original set was presented for approval in the Spring of 1978. In Fall of 1979, the Council reinstated the requirement with different language and it was approved by the Legislature in the Spring of 1979. While the ACMP standards do not specify how much timber must be left standing or how wide the special management strip should be, the new regulation does require that timber harvest and management activities be planned so as to protect streambanks and shorelines and to prevent impacts on fish resources and habitat. We strongly recommend, furthermore, that the AIFRB participate actively in the public review and comment periods associated with the forthcoming regulations under the State Forest Resources and Practices Act.

Alaska Conservation Society Upper Cook Inlet Chapter
(M. Pat Wennekens, 2/28/79)

Comment

States that the document is an unofficial draft because (1) it is not approved by the State legislature; (2) the Administrative Order is unsigned.

Response

Comment rejected as incorrect. The P/DEIS includes an official program document submitted by the Governor of Alaska to the U. S. Assistant Administrator for Coastal Zone Management for federal approval. The Assistant Administrator's decision concerning approval will be based on findings as to whether the Alaska Coastal Management Program meets the requirements of Section 306 of the Coastal Zone Management Act of 1972, as amended (P. L. 92-583). He will

States that the incorporation of forest practices regulations after the submission of the document for approval is totally unacceptable; that the document must not be accepted until iron-clad guarantees are provided that new laws have been fully reviewed by all agencies and the public for approval.

The Program as proposed for approval contains acceptable timber harvest and processing standards. When regulations under the Forest Practices Act are adopted they will be reviewed to determine if they constitute a substantial change and then treated as either an implementation measure or as an amendment. Please refer to 15 CFR 923.80.

Concluding comments reiterate the above comments and add two new comments. The first is that the document does not state how the districts will be consistent with the Laws of the Land. The second is that the document does not address itself to the implementation of Estuarine Sanctuary provisions of the Federal Act.

District programs that are not consistent with the "Laws of the Land" will not be approved. The federal consistency provisions of the Program discussed in pages 149-161 of the DEIS, will cause federal agencies to be consistent with the Program. The State of Alaska may apply for a grant for an estuarine sanctuary as provided for in section 315(1) of the Act. Because an estuarine sanctuary award is not the proposed action being considered in this DEIS, the document is silent on this particular section of the Act which is completely voluntary.

Alaska Conservation Society
Upper Cook Inlet Chapter (cont'd.)

Comment	Response
	make these findings after the close of the 30-day period following issuance of the P/DEIS, and his decision to approve, to delay approval, or to deny approval will be based upon the complete record as of that time.
States that present and future changes in the Alaska Program must be considered as amendments.	See General Response E.
States that public hearings procedures of the State CZM office have been deficient by their dearth of notices and lack of emphasis involving the bush communities.	The public participation activities carried out by the OCM during program development are described in Chapter 8 of the DEIS. In addition to including a description of mailings, newsletters, press releases, movies, slide shows, speakers, 6 workshops in the spring of 1977, 20 workshops in the fall, a newspaper supplement including a simple pull-out questionnaire, a 30-minute T.V. program; 15 public meetings in the winter of 1978 preceded by notice and draft document availability, conducted with assistance of translators where appropriate, and succeeded by a 60-day comment period, the text contains descriptions of specific efforts to reach rural areas in particular.
States that the Program caters mostly to development, with only passing considerations given to integrated, regional or coastwide management of coastal environment/natural resources.	Comment rejected. The Program is operated in accordance with the authority of the Alaska Coastal Management Act of 1977 and directed by a Coastal Policy Council comprised of 9 local and 7 state agency representatives responsible for reviewing and approving district coastal programs and developing specific standards and guidelines for managing coastal land and water resources. The district programs and the standards and guidelines require legislative approval. Coastal standards have been approved for coastal development, geophysical hazards, recreation, energy facilities, transportation and utilities, fish and seafood processing, mining and mineral processing, subsistence, air, land and water quality, historic, prehistoric and archaeological resources, and coastal habitats including offshore areas, estuaries, wetlands and tideflats, rocky islands and seacliffs, barrier islands and lagoons, exposed high energy coasts, rivers, streams and lakes, and important upland habitat. Government process standards for state agency consistency are included in the Program, as are approved guidelines for the preparation, review and implementation of district programs. In addition, state agencies are identifying "uses of state concern" and "areas which merit special attention" within Alaska's coastal area.

Alaska Conservation Society
Upper Cook Inlet Chapter (cont'd.)

Comment	Response
States that the Program does not comply with the intent and requirements of Section 305(b)(2),(3),(5),(7) of the Act; that acceptance of the Program must be held in abeyance until district program can be incorporated into the DEIS.	Comment rejected as incorrect. The Office of Coastal Zone Management has made a determination that the Alaska Program satisfies the intent and requirements of 305(b)(2), (3), (5), (7) of the Act by virtue of the information presented in the P/DEIS including in particular: Chapter 2: Policies Objectives and Standards, Chapter 4: Areas Subject to Management; Chapter 5: Uses Subject to the ACMP; Chapter 6: the ACMP Management System; Chapter 7: Uses of State and National Concern; Appendix 1. The Alaska Coastal Management Act; Appendix 2, Amendments to the Alaska Coastal Management Act; Appendix 3, Guidelines and Standards. Furthermore, judicial review of the approval of the California coastal program contradicts the reviewer's position that the State program approval must be held in obeyance until district programs are available (456 F. Supp. 889 (C. D. Cal. 1978).
Questions how districts' plans will be integrated cohesively into regional plans.	Please see General Response C.
States that the expenditures required to complete the first phase of the program and the cost of plan completion should be the subject of public review and comment.	Approximately $4.7 million of federal funds have been expended towards Program development during the past five years; program implementation can be federally funded up to $4.5 million per annum. All grant applications will be submitted through the A-95 Clearinghouse and the Coastal Policy Council for review.
Questions the will of the State to implement and enforce the CZM laws on the book; requests that the Program not be accepted until public representation on the Council is implemented.	While the State's existing enforcement record is not the subject of review in this DEIS, the Federal Coastal Zone Management Act requires that the authorities in the Alaska Coastal Management Program be enforced fully after program approval if funding and consistency is to be expected. The composition of the Alaska Coastal Policy Council is prescribed in the Alaska Coastal Management Act. The legislature refers to the members from local governments as "public members."
States that the lack of demonstrated balance between development and environmental resources management mandates that the program not be accepted.	Comment rejected. The Office of Coastal Zone Management has determined that the Program has sufficient enforceable policies to manage the coastal areas as required under the Federal Coastal Zone Management Act and that the State Legislature has provided for a balanced program which considers Alaska development needs as well as protecting its unique resources.
States that the State of Alaska has no demonstrated program for the protection of wetlands.	Please see General Response D.
Recommends change in language of the standard for mining and mineral processing because it is not compatible with the language for the standard for barrier islands.	Uses and activities involving barried islands must comply with all the policies and standards in the Program.

Alaska Miners Association
(Richard C. Swainbank, Leo J. Kerin, 2/28/79)

Comment	Response
The P/DEIS fails to satisfy the CEQ requirement for description of the proposed action. Description of the provisions of the ACMP alone is not sufficient: there must also be description of the actions that will result as a consequence of the ACMP's implementation.	We disagree. A cataloging of the ACMP's effects on every conceivable action in or affecting the coastal zone is not required by the CEQ guidelines and would be impossible to prepare. Analytical summaries of the effects of the ACMP requirements on local, state, and federal decision-making appear at appropriate points in P/DEIS Part II. The probable impacts of the ACMP are described in P/DEIS Part IV.
It is impossible to assess the impact of the Guidelines and Standards (such as the energy facilities standard of proposed 6 AAC 80.080) because the seemingly concise statements of which they are composed are, in fact, vague foundations of endless litigation.	We disagree. The Guidelines and Standards, as a group, provide clear direction for agency decision-making.
It is doubtful that the Legislature will approve regulations [the proposed Guidelines and Standards] that will allow individuals and special interest groups to block through endless litigation the very lifeblood of the state's economy.	The Legislature did, in fact, approve the changes to the Guidelines and Standards.
The description of the environment affected (P/DEIS, Part III) reads more like a travel brochure than a summation of technical data. The source material is not documented and no "technical and specialized analyses and data" have been "attached as appendices or footnoted with adequate bibliographic references," as required by CEQ guidelines.	A description of the affected environment need not be highly technical and, in the case of the ACMP, would be so voluminous as to be totally unusable. The "technical and specialized analyses" requested are composed, besides the materials already cited in the EIS, of the work products of four years of ACMP resource inventory and policy analysis. These are, generally, unpublished works that would be available to the reviewer to peruse at the offices of OCM or OCZM.
The environment of the area affected has not been succinctly described as it exists prior to the proposed action.	We disagree. Please see the preceding responses.
The interrelationships and cumulative environment impacts of the action and other related Federal projects have not been presented in P/DEIS Part III.	These subjects are addressed in other parts of the P/DEIS: they are not appropriately included in "Description of the Environment Affected."
P/DEIS Part III does not identify population and growth characteristics of the affected area and any population and growth assumptions used to justify the project.	The comment is incorrect. See P/DEIS pp. 239-242.

Alaska Miners Association (cont'd)

While the current distribution of regulatory authority among state and federal agencies results in a balance between the conservation and development needs of the nation, ACMP will create a lead agency that is dominated by conservation advocates. Despite platitudes about balanced develoment, this new super-authority will have considerable adverse impact on the economic and social environment. By its lack of quantitative analysis and distortions of proposed qualitative impacts, P/DEIS Part IV clearly demonstrates lack of equal consideration for all aspects of the environment.

We disagree. The ACMP will be implemented under the leadership of a Council composed of state agency heads and local government officials, none of whom are "conservative advocates" in the sense intended by the commenters. Supervising the efforts of the Council will be the Alaska Legislature, which must affirmatively approve all regulatory elements of the ACMP. Probably negative impact of the ACMP's implementation are described in P/DEIS Part IV. The suggestion that an attempt be made to quantify all the impacts that the ACMP will have on Alaska in the coming years would require the ability to predict every public and private decision affecting the environment of the Alaska coastal zone during that time period as well as the precise manner in which each such decision would be modified in light of the ACMP. This is simply not possible, and is not required by NEPA.

The only study of realty values mentioned in P/DEIS Part IV did not have a citation and was not appended. If this study is the one included in the sparse bibliography in P/DEIS, Part X, it is not readily available to the public for informed comment within the allotted period.

If it had been requested, this study would have been readily supplied through OCM or OCZM.

P/DEIS Part V, on the relationship of the proposed action to land use plans, policies, and controls of the area, is only one page long, making statements too general to conform to the CEQ guidelines or to discuss how the proposed action may conform or conflict with the specific terms of federal, state, and local plans, policies, and controls. P/DEIS Part II, Chapter 8, to which the reader is referred for further information, contains no significant discussion of relationships among the plans, policies, and controls that are briefly described there.

P/DEIS Part V adequately describes the ACMP and other local, state, and federal land use plans, policies, and controls. The relationships are rather simple ones. Under state law, all state and local plans, policies, and controls must conform to the ACMP. Under federal law, all federal plans, policies, and controls affecting the coastal area must be consistent with the ACMP to the extent prescribed in §307 of the federal CZMA. Programs carried out under the federal Clean Air and Clean Water acts are incorporated into the ACMP for federal purposes. We reiterate that P/DEIS Part II, Chapter 8 contains ample information on the relationship of the ACMP to a number of federal programs.

P/DEIS Part VI, on alternatives to the proposed action, considers, with prima facia validity, the only alternative to approval of the ACMP to be delay or denial of approval. It then, however, considers only the reasons why approval of the ACMP in its present form might be delayed or denied, rather than presenting "a vigorous objective evaluation of the probably [sic] enhancement of quality of the 'human environment' should this regulatory nightmare be denied."

Because approval and delay or denial of approval are the only two options open to OCZM, the description of probable impacts of approval set forth in P/DEIS Part IV also provides sufficient information on the impact of maintenance of the status quo through delay or denial of approval, which will be avoidance of the described impacts of approval.

Alaska Miners Association (cont'd.)

Comment	Response
Based on the justification for creating a "super-agency," one would expect there to be more probable adverse environmental effects than those set forth in the 1-1/2 pages of P/DEIS, Part VII. It can only be surmised "that the need of such a regulatory super-agency is not in effect needed," and that "a denial of this EIS based on 'no action' being the best alternative action is a valid alternative."	P/DEIS Part VII identifies and discusses a wide range of adverse environmental impacts that cannot be avoided if the ACMP is implemented. This is in addition to the discussion of such impacts in P/DEIS Part IV. It is these adverse impacts resulting from Program implementation that must be described in an EIS, not, as the commenter appears to believe, the environmental problems that justify the ACMP in the first place.
P/DEIS Part VIII, on the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, is too short to address the CEQ requirements realistically. It should also contain a discussion of the extent to which the action forcloses future options.	This discussion meets the requirements of NEPA: its quality is not dependent upon its length. As the discussion states, the ACMP will tend to preserve future options, rather than to foreclose them.
P/DEIS Part IX, on irreversible and irretrievable commitments of resources, is mistaken in maintaining that approval of the ACMP will not in itself lead to a loss of resources as a site specific project would. This assumes a static concept of technology, disregarding the fact that, if development of a natural resource is delayed, technolog may develop in a way that renders that development useless or unprofitable when it is finally allowed.	It is true that, if the use of certain resources is slowed as a result of approval of the ACMP (a proposition which we do not necessarily believe to be accurate), technological developments may render exploitation of that resource obsolete or unprofitable. In such a case, however, the "commitment" of the resource would not have been rendered "irreversible" and irretrievable" by approval of the Program, but by the later technological development.
While P/DEIS Part X maintains that various Federal agencies have contributed to development of the P/DEIS, these contributions are neither identified nor identifiable.	The commenter is referred to P/DEIS Part II, Chapter 8, and to the other comment summaries and the responses thereto set forth in this section of the P/DEIS.
While the P/DEIS maintains that the ACMP has been well publicized, its own figures (699 in attendance at workshops, 1,963 returning questionaires, out of state population of about 400,000) refute this. DPDP has fostered only favorable public comment through selective announcement procedures and planning of workshops in areas favorable to the ACMP. The small public input demonstrates the selectivity of this process.	Comment rejected. In addition to prominent notices in statewide media that have preceded each meeting of the Council, notice was mailed directly to the more than 2,000 persons, agencies, and organizations on the OCM mailing list, including the commenter. The commenter has, in fact, actually participated in past decision-making proceedings of the Council. The commenter fails to specify the "areas favorable to ACMP" to which workshops and hearings were limited. Such proceedings were held widely throughout the State, in "bush communities" and in major cities and industrial centers. While only limited numbers of people may have chosen to attend certain meetings and hearings on the ACMP, this has not been because others were denied the opportunity to attend and participate actively. We note that Sohio-BP and other energy organizations have participated actively and productively at every Council meeting.

Alaska Miners Association (cont'd.)

Comment	Response
The views of state agency experts seem more representative of the membership of local environmental activist groups. DNR representatives do not include a single mineral industry expert from the Division of Geological and Geophysical surveys. Also, no representative of the Mineral Industry Association was queried for input.	Each state agency had the opportunity to participate, and each determined the content of its input and the employees through whom it would be delivered. No specific "query" was necessary for the named Association to be able to participate in the ACMP's development. Such participation could easily have been undertaken at the suggestion of the commenter which, as was noted before is on the OCM mailing list and thus received notice of ACMP proceedings.
"This EIS statement is then little more than Sierra Club litany coming from a policy group within the office of the Governor that is attempting an end run around the legislative mandate of pre-existing state regulatory agencies."	Every regulatory element of the ACMP is subject to affirmative approval by the Legislature, which passed the ACMA and has approved Guidelines and Standards.
The regulations described in the P/DEIS have, for the most part, not been approved by the State Legislature.	This is incorrect. When the P/DEIS was issued, all but the recent group of amendments to the Guidelines and Standards had been approved by the Legislature. The Legislature has since approved the amendments.
At what cost was the ACMP achieved?	Approximately $4,700,000 has been supplied to the state by OCZM in the program development effort.
Identify the "intense pressure" for development of the Federal CZMA that is mentioned on P/DEIS p. 15, line 1; and also the segment of the public in whose eyes there was "need for the coastal management program" (P/DEIS p. 288).	In both instances, pressure for the adoption of management legislation was, at least in the first instance, generated by environmental groups, but supported by broad enough segments of the rest of the public to obtain majority votes in the United States Congress and the Alaska Legislature. In Alaska, the role of the organized environmental groups has actually been somewhat less prominent than in the case of the federal legislation or of coastal management in other states. The support of local governments and state agencies other than the lead agency, on the other hand, has been greater.
How much money can the state expect to gain annually by implementation of this program?	The state would receive approximately $4.5 million in program implementation funds during the first two years following program approval, and similar levels of funding for future years as Congress extends the authorization for Section 306 of CZMA.

Alaska Miners Association (cont'd.)

Comment	Response
The remark on P/DEIS p. 35 that mining has had adverse impacts on other coastal values seems to be considered axiomatic. In Juneau, the mine arguably provided the very foundation for parts of the town. Was this an adverse impact?	The observation that mining has adverse effects is not a denial that it also has beneficial effects. In Juneau, the most obvious beneficial effect was probably the increase of the area of the townsite through the discharge of tailings into the Channel. The price of this benefit consisted of certain adverse effects, particularly the loss of habitat for commercially exploited species of sea life. To recognize these adverse effects is not to say that this filling should not have been performed. It is simply to obtain a more accurate assessment of the true costs of development against which to balance the benefits.
The inland boundary of the zone of indirect influence is not illustrated, and P/DEIS p. 105 addresses the possibility that activities in any part of Alaska might have an effect on coastal waters. The habitat provisions on important upland habitats, rivers, streams, and lakes, and wetlands do not appear to be restricted to the coastal zone, meaning that they could be used in beyond the original intent. A comment period for the public, including those who are "pro-developmental," should be initiated if and when the boundaries of the program are defined.	Uses outside the coastal zone, particularly those of federal agencies, may be subject to the ACMP standards if they affect areas, especially habitats, within the coastal zone. All interested persons and organizations will have and have had full opportunity to comment on proposed elements of the ACMP, including district programs.
There is apparently no specific intent to inform impacted pro-developmental parties of public hearings. Such notice must be given at the Council, district, state, and federal levels.	All notice of public hearings to date, and all procedures for future public hearings, meet the extensive requirements for public participation provided in the Federal CZMA.
The Alaska Coastal Policy Council should include a representative of the private development sector in mining, oil and gas, and timber.	This would be a matter for the Legislature to consider. As currently composed, the Council contains no representatives of private interest groups, and consists solely of state agency heads and local government representatives.

Alaska Miners Association (cont'd.)

The sixteen points of the proposed energy facility development standard "could preempt any port development, since this list is inclusive of most, if not all, envir ons and constitutes a step-by-step litigation guide for the layman." A similar "self-help" guide is provided in the AMSA definition on P/DEIS p. 110-111.	Since the incomprehensibility of many regulations to the public has recently been a ground for criticism of state and federal agencies, the statement that the energy policies and AMSA definition constitute "guides for the layman" can only be regarded as a compliment. These standards would not prevent port development, especially where such development constituted a a use of state concern.
The Beluga project is the target of the proposed energy facility standard.	This statement is incorrect.
A statement on P/DEIS p. 140 concerning possible expansion of DNR regulatory authority over mining must be viewed with alarm by an already over-regulated industry.	This is a matter for consultation between the commenter and DNR.

Fairbanks Environmental Center
(Cynthia Marquette, 3/3/79)

Comment	Response
With only a few reservations, the FEC believes that approval and implementation of the ACMP will be beneficial in the decision-making process regarding Alaska's coastal resources. The ACMP is explicit on certain management aspects, but vague in the guidance of development. Several areas of the program need strengthening, as will be noted in the following comments.	Comment accepted. Response provided below to specific concerns.
The FEC commends the ACMP approach of control divided between State and local levels. It will be important, however, for State and Federal agencies to assist the local resource districts as much as possible, since many localities lack experience in resources management.	We agree. Information on guidance to the districts may be found in General Response C.
Comments and recommendations from local residents should be included as part of the habitat identification process.	Local residents of districts will have an opportunity to contribute their special knowledge of local wildlife, habitats, and geographic characteristics during program development in the districts or coastal resource service areas. Areas of special importance may be designated Areas which Merit Special Attention (AMSA's) through the district program development process.
In the DEIS, the statement is made that there are strong safeguards built into the coastal management program system because the CZMA requires that the intent of NEPA be met. FEC encourages strict enforcement of NEPA standards through the ACMP, since agency compliance has been a problem in the past.	We believe that FEC has misinterpreted the intent of the referenced statement. The CZMA, by providing the means to help states develop processes for the careful management of their resources, and by requiring a program development process that calls for broad public participation and review from the inception of the program development effort, is responsive to the intent of NEPA. The ACMP cannot "enforce NEPA standards," but will be authorized and funded to assure that State and Federal agencies are in compliance with the ACMP policies and standards.

FEC (cont'd.)

Comment	Response
FEC feels that ACMP jurisdiction should be exercised in the zone of indirect influence, rather than limiting enforcement to the boundary of the zone of direct influence. Activities outside the zone of direct influence may affect it.	See general response A.
AMSA's should be a valuable management tool for identifying unique coastal areas. This guideline may alleviate some of FEC's reservations concerning program generalities.	Comment accepted.
FEC suggests that the State Department of Environmental Conservation strictly monitor pesticide permits to decrease their negative impacts.	Comment accepted. Pesticide application permits must be consistent with the ACMP Guidelines and Standards to the extent that the permitted activities affect either the habitats or water quality protected by the program.
The document states that the OCS leasing process prior to issuance of the lease is exempt from consistency review. Please clarify.	The status of lease sales as opposed to issuance of OCS leases, as a subject for consistency review is a matter of dispute between affected Federal agencies and is presently under discussion. The text has been changed.
FEC suggests more specific and stronger policies regarding energy, particularly providing for an evaluation of present and proposed technology.	OCZM believes that the ACMP's energy facilities standards, recently approved by the Alaska Legislature, represent a major step in the management of energy facility siting and its impacts. The reviewer should note that the ACMP's other standards, including those for coastal development and habitat protection, are also applicable to energy facilities. Should an alternative for a proposed facility offer a possible "feasible and prudent" alternative to a facility that would fail to comply with the present standards, utilization of that technology would have to be considered.
FEC is concerned that, with the OCS lease sale in the Beaufort Sea fast approaching, there is question about the technological capabilities to handle the problems attendant to OCS development in the Beaufort. Stringent program guidelines are needed.	OCZM believes that the recently promulgated energy facility standards will strengthen the State's ability to manage OCS impacts in the Beaufort and elsewhere as needed. We note in addition that prior to the proposed sale, the U.S. Department of the Interior will issue an EIS on the sale. We encourage the FEC to participate in NEPA process by notifying the USDOI of its concerns. In addition, under §308 of the Federal CZMA, coastal communities that will be affected by OCS energy activities are eligible for Federal grant and loan support to plan for and manage the impacts of such activities. Finally, as the reviewers note, the Beaufort has been nominated as a marine sanctuary under the Marine Research Protection and Sanctuaries Act of 1972 (P.L. 92-532). Should the scheduled sale in the Beaufort be significantly delayed for any reason, it is conceivable that action under the sanctuary program might influence a rescheduled sale.

FEC (cont'd.)

Comment	Response
Energy facility planning requirements contain no reference to consideration of renewable energy resources other than hydropower.	The most immediate energy facility management need in Alaska, that is, petroleum and natural gas development, is the main focus of the ACMP's policies. We suggest that the FEC work closely with the Alaska Office of Coastal Management for elements of the energy standards that FEC believes need amendment. Any analysis of a major facility, would include a consideration alternatives under the requirements of NEPA. Renewable resources would be among the considered alternatives.
FEC states that the opinions of local residents, and not the pressure for serving other than local needs, must be the primary factor in making transportation decisions.	The ACMP provides considerable deference to local opinions in impleting a program that eventually will make State agency actions subject to local intent as expressed through an approved district program. The Federal CZMA, however, speaks quite strongly to the issue of local exclusion of activities that may serve greater than local needs. The principal theme of the CZMA is that the Nation's coasts are national resources. While State and local governments have been called upon to manage those resources, good management includes consideration of the stake of the State, and the Nation in our coastal areas.
The guidelines regarding enforcement of regulations to insure the full utilization of fallen timber to mitigate against any mass wasting should be strengthened.	The State Forest Practices Act of 1978 requires development of regulations by the Alaska Departments of Natural Resources and Environmental Conservation. The State Administrative Procedure Act requires open review of such regulations before they are adopted. FEC should participate in the review process to see that their views are considered. In addition, the ACMA requires all State regulations to conform to the coastal program. Regulations that do not protect coastal habitats and water quality would not be permissible under State law.
A stronger policy would insure the free passage and movement of fish in streams and coastal waters.	OCZM is pressed to conceive of a policy statement stronger than "free passage and movement of fish in coastal water must be assured," as the Standards presently read. "Coastal water" is defined to include all water bodies in the coastal zone (6 AAC 80.900(2)).
FEC suggests a strict code of regulations for mining and mineral processing.	The ACMP presently includes a mining and mineral processing standard. These activities are also subject to the coastal development and habitat standards as well as State and Federal water quality regulations.

FEC (cont'd.)

Comment	Response
We concur with the ACMP's conclusions that the Program should have positive effects for cultural groups seeking to retain subsistence lifestyles.	Comment accepted.
The Program EIS notes that the ACMP guidelines in certain cases may lead to increased development costs. FEC considers this cost one that must be paid to protect floral and faunal habitats and subsistence lifestyles from irreversible destruction.	We concur.
FEC questions the purpose of a one-stop permit system that the ACMP document notes is being developed. A thorough review and approval of coastal development projects is not a task to be rushed.	A one-stop permit system is not intended to rush projects through without adequate review. The process is intended to simplify procedures for developers for coordination with State agencies; to help coordinate State review; and to reduce processing time and costs that arise from lack of coordination and inefficient handling of permit requests. Efficiency and coordination are unrelated to the standards of review, which would remain unchanged.
FEC suggests that the results of the Spring 1977 workshop be used as conflict resolution standards under the ACMP: (1) protection and development of renewable resources should take precedence over non-renewable resources; (2) local control in coastal planning should be maintained; (3) cooperative planning on a regional basis should be established; (4) regional priorities expressed in the workshops should be respected.	In response, OCZM notes respectively, that: (1) the ACMP generally seeks to protect living resources from non-renewable resource activities unless no alternative exists; (2) local governments are given considerable opportunity to express their local management priorities through district programs; (3) cooperative planning on a regional basis among local governments is a objective that will be assisted by OCM and DCRA; (4) the priorities expressed in the workshops should be reflected in the local district programs.
The FEC supports the local resource districts and the State in the establishment of the ACMP. The ACMP establishes a method to reconcile competing demands for environmental protection and economic development that can work provided there is strong enforcement of regulations.	We agree that conscientious enforcement of regulations will be one key to the success of the ACMP. The other will be active public participation in the State and district management processes.
FEC is concerned that the ACMP act to provide policy guidance rather than to encourage development.	OCZM expects the ACMP to manage coastal resources in accordance with the guidelines and standards.

Resource Development Council for Alaska, Inc. (RDC)
(Lee E. Fisher, 2/21/79)

Comment	Response
As the DEIS reads, it appears more to be a procedures manual for the Coastal Zone Management Council than an environmental impact statement. More specifically, the DEIS is not in accordance with §102(C) of Public Law 91-190. Specifically, where is the "environmental impact of the proposed action" listed? Where are the "adverse environmental effects which cannot be avoided should the proposal be implemented? Where is the list of "alternatives to the proposed action?" Where is the list of the "relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity?" And, specifically, where is the list of "any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented?"	Please read Parts IV, VII, VI, VIII, and IX of the P/DEIS, respectively.
The implementation of a Coastal Zone Management Council is, in our opinion, a duplication of services presently being supplied by other State and Federal agencies. Section 6 AAC 80.010 clearly states that "nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area." Why, then, are taxpayers being asked to pay for yet another level of State and Federal regulation?	The Council, with the approval of the Legislature, is empowered to adopt standards for activities affecting the coastal area that prescribe the manner in which existing authority of federal, state, and local agencies shall be exercised. No other federal or state agency has the authority to prescribe standards directed specifically at coastal activities and resources that have this legally binding effect. Thus the Council does not duplicate the work of other agencies and the authority of these other agencies is neither displaced nor diminished in scope.
The DEIS is not site-specific but makes broad, general statements which allows for little flexibility. Such lack of specificity will make it exceedingly difficult for any developer to appropriately plan expenditures for any construction in a zone under the jurisdiction of the Council.	Site-specificity is not required for Federal approval of a state CZM program. American Petroleum Institute v. Knecht, 456 F. Supp. 889, 919 (C.D. Cal. 1978). The comment seems internally inconsistent in referring to lack of flexibility and difficulty in planning for future expenditures, which would seem to become easier as flexibility was reduced. The usual argument is that the lack of site-specificity results in too much flexibility which, in turn, complicates planning by private developers.
The DEIS is couched in vague terms. Please define the following selection of terms both specifically and quantitatively: on p. 65, "adverse impacts;" on p. 65 "minimize;" on p. 66, "unrestricted passage (free passage and movement) of fish;" on p. 67, "dominant;" on p. 71, "fisheries conservation zone;" on p. 72, "natural circulation patterns;" on p. 73, "harrassment of wildlife;" on p. 74, "discourage activities;" on p. 74, "adequate mix;" on p. 74, "avoiding redirection;" on p. 74, "important fish."	OCZM understands these terms as used in the Guidelines and Standards to have their usual, meanings, subject to interpretation by the Council and the Legislature either through application to specific situations or by formal resolution or rule. Concerning in particular, if the term "minimize" means the reduction of the impact in question to the smallest magnitude consistent with the pursuit of the subject activity - the level beyond which reduction of the impact would render the activity physically impossible.

RDC (cont'd.)

Comment	Response
On the ERRATA SHEET there is a correction involving the length of the Alaska shoreline. The revision is from 47,000 miles to 33,904 miles. This is approximately a thirty percent drop. Please cite your sources and justify use of the lower figure.	OCM and OCZM have relied upon different sources in arriving at the figure each considers to represent the length of Alaska's shoreline. OCZM uses the smaller figure which was determined at by its fellow NOAA component, the National Ocean Survey, and which it has, by regulation, used as a basis for calculating grants under section 305 of the Federal CZMA, 15 CFR §923. OCM has agreed to the use of the NOAA figure in the P/DEIS.
On p. 18, it is stated that "The final boundary will be the same as the initial boundary, except where redefined in district programs." Yet on p. 274, it is stated: "Districts may redefine the initial coastal zone boundary, but the final boundary must always include those areas which the initial boundary, that is, the zones of direct interaction and direct influence, aims to cover." Besides being incredibly confusing, these two statements appear to be contradictory. Please comment.	The second quoted passage is incorrect, and has been revised in the P/FEIS. The boundaries set forth in district programs may exclude areas that were encompassed by the initial boundary, provided that they extend landward and seaward to the extent necessary to manage uses and activities that have or are likely to have a direct and significant impact on marine coastal water, and include all transitional and intertidal areas, salt marshes, saltwater wetlands, islands, and beaches. 6 AAC 85.040(c).
On p. 34, it states that despite Alaska's lengthy coastline, "only limited area is for commercial and industrial use." Alaska, by the DEIS's testimony, has 33,904 miles of shoreline. Please comment.	The paragraph from which this quote is taken goes on to mention lack of population and overland linkage and adverse topographic and geologic hazard conditions as factors that eliminate most of the coastline from consideration for the uses in question.
On p. 35, it states that "the possibly heavy impact of transportation facilities on other coastal values is a source of concern to many Alaskans." Please define "other coastal values" and comment on the alleged "concern."	"Other coastal values" are other features or qualities of the coastal area that cause it to be of interest or value to people. These include economic, recreational, scenic, historic, and subsistence values, among others. Evidence of the "concern" that is noted in the text can be found in some of the other sets of comments that are summarized and responded to here.
On p. 48, it states that "The Council will prepare a manual of standards for the management of land and water uses in the coastal area." Also on the same page it states "The Manual of Standards is still under production as of the time of circulation of this DEIS, but it will be available for examination near the end of the DEIS review period." Where is this document? Why has it not been sent to sent to interested parties? And even if the Manuals of Standards had been received as of the date of this letter, there would not be adequate time to give the Manual a comprehensive analysis. Please comment. Furthermore, if the Manual of Standards has <u>not</u> been completed, why should the DEIS be approved <u>without</u> inclusion of this critical document?	Please see General Response C.

RDC (cont'd.)

Comment	Response
On p. 49, it states that the Manual of Standards is being prepared by the Departments of Fish and Game and Natural Resources. The State Act calls for the input of many departments, specifically five other commissioners, nine public members as well as the public at large. Why has the Department of Law been excluded? Why has the Department of Commerce and Economic Development been excluded?	Initial work on the Manual was done by the Departments of Fish and Game and Natural Resources under contract to OCM. The first full draft will be made available by OCM in July of 1979. It will be a guide to local resource managers to existing laws and regulations applicable to coastal activities and coastal resources and it will not contain new policies and/or new standards. Department(s) comments will be welcome. (See General Response C.)
On the January 4, 1979, MEMORANDUM from Robert R. Kifer, Chief NEPA Compliance Unit, it is stated that presentations may be limited to "ten minutes." This is not sufficient time to adequately discuss the weaknesses in the DEIS.	We disagree. Matters that cannot be dealt with satisfactorily in ten minutes are probably best treated in written comments. OCZM's review of written comments is not affected by whether the points raised therein were also made orally at the public hearings.
On page one there is a list of "important Federal concerns." Although substantial portions of the DEIS deal with economic matters, there is no direct reference to economic concerns as one of the important federal concerns in the DEIS.	Two of the concerns mentioned are "whether the Alaska program is consistent with the objectives and policies of the national legislation" and "whether there will be a net environmental benefit as a result of program approval and implementation." Both of these involve a recognition of economic concerns.
On p. 2, the DEIS states that there will be some "short-term economic impacts" as a result of the Coastal Zone Management Program. Yet, on p. 133, is the statement: "For many areas, however, district programs will not be approved for a number of months, even years." And, on p. 252, is the statement: "Some lost expectations will be encountered, but gains elsewhere should offset these losses." However, on p. 252, "in most instances the short-term effects of the program cause a redistribution of assets." How short will the "short-term effects" be? Who will oversee this "redistribution of assets?" What economic or environmental justification is there for not approving a development program for months, even years?"	The "short-term" referred to cannot be predicted with great accuracy, since it reflects the time needed by private investors to recognize the changes in comparative costs that various components of the program will have caused, and to change their investment patterns accordingly. It would probably include at least the period of local program development and approval. This redistribution of assets would not be "overseen" but would, like other activities in a market economy, be decided upon by private investors in accordance with their perceptions of the comparative patterns of investment. In the Unorganized Borough, development of district programs will occur mainly in response to forthcoming major economic activity that may trigger the organization of a "coastal resource service area." Such economic activity and organization may be years away in parts of the State.
On p. 3, it is stated that all alternatives wo uld delay or deny approval of the Alaska Coastal Management Program. The next paragraph describes the consequences. This is not a statement of alternatives as required by Public Law 91-190, §102(C)(iii).	Thorough reading of the P/DEIS reveals that the cited statement is merely part of the DEIS summary sheet, and does not purport to fulfill the NEPA requirement in question. This requirement is satisfied by Part VI of the P/DEIS, which is entitled, "Alternatives to the Proposed Action."
On p. 16, it is stated that "The state has received ... $50,182,000 in loans for financing new or improved public facilities and public services." Please detail these expenditures.	Credit in this amount has been extended to Alaska under the Coastal Energy Impact Program. It has not yet been drawn upon by the state or by local governments, although applications for this credit are being processed by OCZM.

RDC (cont'd.)

Comment	Response
Why, on p. 55, does the act speak of "water-dependent" and "water-related" uses when this is an Act which deals with "coastal," not inland, waters? This DEIS is designed for coastal management and thus specifically excludes fresh water habitats. Secondly, what is the justification for including "Important Upland Habitat" on p. 75? Furthermore, if this category is truly important, why is no sstandard included? Why should this DEIS be accepted with a significant portion of the jurisdiction of the Act listed as "No special standard has been promulgated?"	The statement that the P/DEIS (and thus, by implication, the ACMP) excludes freshwater habitats is incorrect. Under the Federal consistency requirements of §307 of the Federal CZMA, for example, a federal action taking place on or near fresh water would have to comply with ACMP standards if that activity would directly affect the coastal zone. The coastal zone itself includes many bodies of fresh water in the zone of direct influence, because salinity alone is not determinative of coastal interrelationships. Furthermore, "coastal water " is defined in the Guidelines and Standards as meaning "all water bodies in the coastal area." "Important upland habitat" is a residual term encompassing a variety of habitats, other than those for which standards have been formulated, that are important for the protection or sustenance of coastal species. The values to be protected will vary according to the type of habitat and the species to which it is important. Uses within the important upland habitats are subject to the Guidelines and Standards on uses and resources, the overall standard for habitats (6 AAC 80.130(a), and, to the extent that they affect the other habitats, to the habitat standards.
Why are there no quantifying measurements in the sections on "geophysical Hazard Areas" on p. 57 and 58. Depending on the definition of a "hazard area" there may be no place in Alaska where development would be safe.	Under the geophysical hazard standard, districts and state agencies compare the hazards associated with development in certain areas with countervailing economic, environmental, and social considerations on a case-by-case basis to avoid the inequities than can result from blanket requirements or prohibitions concerning hazards.
On p. 69, it states that the Council has "identified and promulgated standards for certain coastal habitats and resources." Where, specifically, are these standards?	These standards are in Part II, Chapter 2, Section (e) of the P/DEIS.
On p. 71, the Standard for Offshore reads: "Offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial and subsistence fishery." How is it possible to introduce any man-made structures into these areas? Furthermore, on the same page, is the sentence: "The term 'avoid' is used to apply a strict limitation on impacts, to the point of prohibition." Specifically, where are these prohibitions going to be? Under what statute does the Council have the authority to limit development "to the point of prohibition?"	The reference was intended to refer to oil and gas development which is introducing man-made structures into these areas. The prohibitions embodied in the requirement of "avoidance" will appear in individual permit decisions of federal, state, and local agencies under the AMCP standards. The Council has the authority to adopt such strict limitations on coastal activity, subject to legislative approval, under the ACMA (AS 46.40.040(1)). The Legislature has the authority to approve such limitations under the Alaska Constitution.

RDC (cont'd.)

Comment	Response
On p. 74, it states that "Rivers, streams and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow." What legislation gave jurisdiction for the management of non-salt water habitats to the Council?	The ACMA contains no limitation of Council jurisdiction based on water salinity. It should be noted, in addition, that the standard in question was approved affirmatively by both houses of the Alaska Legislature.
On pp. 88 and 89, under Resource Inventory and Resource Analysis the word "resources" is used frequently. What is a "resource?"	"resource" is used here as defined in the dictionary.
On p. 105, the DEIS indicates that the zone of indirect influence extends to the "200-foot land contour." On the biophysical maps submitted with the Cook Inlet area the jurisdiction of the Council extends up to the 1000-foot contour. Why is the Cook Inlet area subject to this arbitrary contour? Further, according to the biophysical maps, the Susitna dam project would be subject to review by the Council. However, it should be noted that the Wantana Dam begins at 1,385 feet which places it above the jurisdiction of the Council. The Devil's Canyon powerhouse is at 907 feet. One must assume that the penstocks are above the one thousand foot level. Does this mean to imply that the Council will also have substantial input into the regulation of waterflow, electric generation and architectural decision-making powers for Susitna?	As noted in General Response A, the state coastal boundaries are drawn according to identifiable coastal ecosystems that exhibit a significant relationship to their coastal locations. The contours cited are not "arbitrary" but rather reflect the upland extent of these coastal ecosystems. In the Cook Inlet area, with its considerable relief, the upland impact on coastal waters may be felt from a higher elevation than the 200-foot elevation in the Beaufort Sea area, a region of very low relief. Regarding the hydroelectric facilities, any new Federal permits and licenses, influence hydroelectric project construction and operation, must be consistent with the ACMP after approval to the extent that such operations affect land and water uses in the coastal zone.
On p. 111, there is a reference to "areas with special scientific values or opportunities." Please define "special scientific values or opportunities."	"Areas with special scientific values or opportunities" are areas having characteristics that make them particularly suitable subjects or locations for scientific investigation. These areas will be identified by districts, state agencies, the Council, and the Legislature on an individual basis.

RDC (cont'd.)

Comment	Response
On p. 108, it states that the biophysical boundaries are only "interim boundaries." How long is the "interim?"	The "interim" for any portion of the Alaska coastal zone is the period of time before a district program for that area is approved by the Council and the Legislature. In some areas, such a program may not be approved for many years, meaning that the biophysical boundary is, for all practical purposes, permanent.
On p. 109, it states that any entity may assert that an area merits special attention. If individuals are permitted to propose areas to be designated as areas meriting special attention, it would seem that a special interest could prevail by merely designating several key areas in a given location. By sheer weight of numbers this could delay any land action or use.	While any person may assert that an area merits special attention, the authority to designate AMSA's rests solely with the districts, the Council, certain state and federal agencies, and the Legislature. The usual checks of the political and administrative processes upon "special interests" and "sheer weight of numbers" will thus be operative.
On p. 110 and p. 111, reference is made to an "area which merits special attention." Once approved, can an area which "merits special attention" later be taken out of this special category and, if so, under what time frame?	An AMSA designation can be revoked through amendment of the relevant district program. This would require approval of the Legislature, meaning that there could be substantial delay between action by the Council and the time the revocation takes effect, but normally not more than one year.
On p. 140, please provide the rationale for the following statement: "If it were to prove necessary, the Department of Natural Resources could explore an expansion of its regulatory activities on the basis of this very broad statutory language." What specific legislation gives the Department of Natural Resources this jurisdiction.	As specifically stated, possible expansion of DNR's activities would be on the basis of broad language of AS 27.05.010.
On p. 163, why has no paragraph on activities of major oil and gas siting and extraction been included?	Major oil and gas siting and extraction facilities are included within the term "major facilities which contribute to meeting national energy needs." (Alaska Coastal Management Act Section 46.35.210(6)) Agency employees normally normally acquire a body of knowledge of the activities that they regulate on behalf of the state. This knowledge cannot be given conclusive weight in the administration of the AMCP. There tends to be a presumption that the facts necessary for determination of consistency with the ACMP are most efficiently provided by the agency that usually has responsibility for the activity in question.
On p. 201, please comment on the meaning and intent of the term "within the agency's area of expertise."	

RDC (cont'd.)

Comment	Response
On p. 237, specifically detail where the "exploration activities are under way" in the Lower Cook Inlet.	We suggest that you contact DNR and the United States Geological Survey for detailed information on the location of oil and gas exploration activities in Cook Inlet. According to the Oil and Gas Journal, February 26, 1977, operations are probing in tracts #318, 572, 668 and 2 in Lower Cook Inlet.
Also on p. 237, is the statement: "Commercial logging also has been an important contribution to the decline of fish production in thousands of salmon streams of Southeast Alaska." Please verify this statement quantitatively.	This statement is drawn from a logging policy study prepared by K. Kaski of the National Marine Fisheries Service for the ACMP. The study is unpublished, but available from the Alaska Office of Coastal Management, Pouch AP, Juneau, Alaska 99811.
On p. 238 is the sentence: "After 80 yeaars, tourism in Alaska is only beginning to develop toward economic maturity." Please justify this sentence.	This sentence has been revised. Please refer to Alaska Economy, Year-End Performance Report, 1976, published by the Alaska Department of Commerce and Economic Development, for information on tourism.
On p. 241 is the sentence: "The acute shortage of flat land necessitates the filling of tidelands and wetlands to accommodate expanding industries, housing and local roads." Please verify where this "filling" is taking place. Furthermore, please cite the economic impact of these adverse economic effects of not doing so. Without an anchorage, there would be no Anchorage. Please comment.	Filling is currently taking place with some visibility in Juneau and Anchorage. It obviously allows certain economic activities for which it is carried out to be undertaken in areas that previously would not have supported those activities. A major adverse economic effect is the destruction in certain instances of habitats that support Alaska's commercial fisheries. OCZM neither agrees nor disagrees with the comment.
On p. 242 is the allusion to the "greatly increased sense of confusion." Please document this statement.	The existence of increased confusion was a finding based on the cited opinion study of 1976.
On p. 243 is the statement: "The trend in resource management today is the growing realization that conservation policy and practrice must be based on sound ecological theory and must be directed towards entire ecosystems." Where does the economic basis of development fit into this scheme?	The economic manifestation of this idea is probably the concept of "internalizing externalities." Under this concept, damage to the environment is recognized as a cost of development activities that should be borne by those who stand to profit by such ventures. If this cost is too great to be passed on by the entrepreneur to ultimate users through the market system, the proposal is recognized to be economically unsound.

RDC (cont'd.)

Comment	Response
On p. 248, how would Alaska qualify for "additional funding for interstate coordination" considering Alaska does not share a border with another state of the United States?	Should Alaska choose to participate with other states to develop processes for regional issues like energy facility siting or fisheries management, it could qualify for additional funding for interstate coordination.
On p. 252, how is it possible to have "increased property values" and at the same time "lower taxes?" How can the DEIS justify and document the following sentence: "Some lost expectations will be encountered, but gains elsewhere should offset these losses?" How can the DEIS document the supposition that "reduced property taxes could help offset severe losses?" Further, the statement "However, lower financing costs or improved marketing outlook could result in a decision to ultimately go ahead with a deferred project despite the costs of complying with coastal zone regulation," is highly speculative.	Reduction of the tax rate can result in lowering of property taxes even if property values are rising. The passage in question hypothesizes that, by increasing government efficiency, the ACMP might make it possible to lower state taxes and local property tax rates, or at least to keep them constant in situations that would previously have required them to be increased. "Lost expectations" resulting from the ACMP would be caused by the imposition of regulatory limitations on coastal activities, precluding efforts that might previously have been permissible. It is proposed that such benefits as increased efficiency, certainty, and heightened opportunity in certain coastal dependent economic activities, will make this initial loss of expectations worthwhile to the public at large. Reduced property taxes will obviously help offset any financial losses, severe or otherwise. While the last quoted statement is broad, it is correct: in a market economy, if a reduction of financing costs or increase in potential revenue is sufficiently great to negate a rise in costs of compliance with coastal standards, the likelihood that the regulated activity will be undertaken remains equal at a minimum and may be increased.
On p. 253 is the statement: "The extent of the impact in each district will have to be weighed against increases in allowable development in other areas." Please comment.	The impact referred to is restriction of allowable development.
On p. 255 is the statement: "If the delays can be minimized, most industries and developers can accept the adverse economic impacts normally associated with environmental regulation." Please justify.	This has been demonstrated by a decade of environmental protection regulation by the federal and state governments.
On p. 256 there is the statement that there is "the need for a continuing supply of energy to meet the requirements of the state and the contributing of a share of the state's resources to meet national energy needs." Yet, on p. 261 is the statement: "The private cost of energy facility development will increase, in proposed development or displacing it to other areas." In addition to the fact that these two sentences are not in accord, does the second statement imply that there is a necessity to remove "private" industry from the field of energy production? Please comment on both statements and the apparent conflict between them.	There is no contradiction. The first statement recognizes a need. The second statement recognizes potential complications in meeting that need that the ACMP may introduce. There is no implication that energy production should be withdrawn from private enterprise.

RDC (cont'd.)

Comment	Response
On p. 258 it is stated that "Competition for limited waterfront space among competing and conflicting uses will be reduced." This is in error. Limiting the supply of land merely increases competition for available land which drives up its value and thus its price. As the DEIS states on p. 34, the limited land "results in competition among users for the limited sites which meet the market, physical and transportation requirements of commerce and industry."	The comment is incorrect in assuming that implementation of the ACMP will necessarily "limit the supply of land." By limiting the range of uses that will be permissible on waterfront land, the ACMP should correspondingly reduce the number of individual commercial competitors for such property.
On p. 259 is the statement: "Public access to coastal waters generally will be maintained and increased." On what percentage of the "coastal waters" will public access be "increased?"	This will ultimately depend upon the provisions of district programs and upon the efforts of state and federal agencies pursuant to the ACMP recreation standard.
On p. 282 is the statement that because of Chapter 6 in Part II "it has been concluded that the state does have the authority necessary to implement the program in the wetlands." This statement is in error. The cited sections deal with the Alaska Coastal Management System. Wetlands may not necessarily be coastal lands. Furthermore, wetlands along fresh water streams may not necessarily within the jurisdiction of the Council. Please justify the statement quoted on p. 282 and comment on the jurisdiction over wetlands.	See General Response D. No claim is made that all wetlands are subject to the program regardless of their relationship to coastal waters.
On p. 283 is the sentence: "Briefly, the state's right of eminent domain may be exercised for public uses authorized by the legislature of the state." Does this mean that any project will be at the mercy of local organization? If a local community stops a project, it would be necessary for the developer to press the legislature for an order or eminent domain. This could take years.	See General Response B.
On pp. 346-347, there is a page of the code missing.	The page has been restored in the P/FEIS.
Another major question which has yet to be resolved is that of authority. In a jurisdictional dispute over a select parcel of coastline, who has supremacy, the Coastal Zone Management Council or the State of Alaska?	The Council, as an agency of the State of Alaska, is subject to approval by the legislature. The Legislature, when reviewing the Council's activities speaks authoritatively for the State.

Trustees for Alaska/General Comments
(David Benton et al., 3/5/79)

Comment	Response
Alaska needs a strong coastal management program. The diversity and pristine quality of coastal Alaska, and the dependence of extensive resources on the continued integrity of the coastal ecosystem, makes the previous pattern of piecemeal reaction to development unacceptable. It is hoped that the ACMP can provide predictable, comprehensive guidance based on sound resource management principles.	We agree.
As currently approved by the Legislature, the ACMP is unacceptable, and amendments that attempt to resolve deficiencies have not yet received legislative approval. A program element on uses of State concern and the manual of standards have not yet been subjected to public review through the EIS process. Therefore, approval or disapproval of the ACMP cannot be recommended at this time, and we reserve the right to review and comment on the program after legislative action and prior to approval by OCZM.	Comments on the ACMP may, of course, be submitted to OCZM at any time. Only the comments that were submitted during the formal P/DEIS public review period, however, will, in the absence of special circumstances, be considered fully and responded to by OCZM. This is required by considerations of fairness to all commenters and administrative feasibility. Because all proposed amendments to the Guidelines and Standards were set forth in the P/DEIS, because the manual of standards makes no substantive additions to the Program, and, furthermore, because Council Resolution 13 on uses of State concern is not legally binding, OCZM does not consider the cited materials as warranting another formal review-and-comment period.
A number of issues dealt with in the attached detailed comments were listed. Among these is the statement, not elaborated upon in the detailed comments, that some of the Guidelines and Standard rely on existing State programs that have not been effective in the past.	It is a major purpose of the ACMP to increase the effectiveness of such programs. For example, the adoption of the Corps of Engineers standards on discharge of dredge and fill material as part of of the coastal development standard, 6 AAC80.040, would give the state authority to deal with alleged violations of these federal standards under the federal consistency provisions of Section 307 of the federal CZMA.

Trustees for Alaska/Specific Comments

The ACMP does not give adequate consideration to the environmental values that the Federal CZMA seeks to protect. Underlying most of the ACMP standards is the assumption that most of Alaska's coastline will be developed. They do not suggest that some areas are so valuable or fragile that they should not be subjected to any development.	We disagree. While the ACMP recognizes and provides for present or potential development needs in Alaska its implementation would not necessarily entail the development of most, or even of a very large part, of the Alaska coastline. To the contrary, the limitation of the local program development process to municipalities and unorganized areas in which major development is actually proposed derives, we believe, from the Legislature's assumption seems to assure that most of the coastline will not be developed in the near future. The AMSA designation process and the designation of other special areas can be used also to protect areas that should not be subject to any development.

Comment	Response
The ACMP inadequately provides for consideration of regional impacts. Regional planning receives little attention in the ACMP, even though a framework for such planning was provided for in the Guidelines and Standards. The original regional team was disbanded because it was ineffective, and the current mechanism described at P/DEIS 205-208 cannot be expected to produce results early enough to affect district program development. The SACCT will also not provide resource, social and economic information on a coordinated regional basis, as required by 6 AAC 80.030(b)(2).	Please see General Response C. Text has also been added to Chapter 9 in Part II to address regional considerations more thoroughly.
Although the ACMP adequately details plans for evaluating the potential of any particular site to withstand a certain activity, there is no specific capacity for cumulative impact review, either within a district, or on a regional or statewide basis. The ACMP should include a clear technique for interaction by coastal districts, stressing review of the cumulative impacts of individual activities and permit and license decisions.	Districts would attempt to anticipate cumulative impacts through the district program development process. While interdistrict and regional State agency coordination would be highly desirable, the state agencies that will, in most cases, have to issue permits for coastal activities in addition to those of the local governments, will be in a better position to assess cumulative impacts than will the districts themselves.
The ACMP inadequately provides participation of citizens outside a district in that district's planning and implementation process. While State, Federal and local agencies will be informed of developments in the various districts, private individuals will not. Either the scope of the A-95 clearinghouse should be broadened or OCM should reinforce the notification process.	While extension of the A-95 review process may be worth exploring, we think that there is sufficient opportunity for all interested persons to be notified of events in the development and implementation of districts programs, either directly by OCM (especially when this is requested) or by newspaper notice. Federal regulations (15 CFR 923.55 and 923.80-85) require such opportunities for participation, and opportunities for participation in program development cause confidence for such efforts in the future.
Under AS 46.40.100(b), a citizen outside the district in question does not have standing before the Council to complain about implementation of, compliance with, or enforcement of that district's program. This provision should be amended to confer such standing.	We agree that such a change would be desirable, but suggest in the meantime that district residents or state agencies will normally be available to press claims in which nonresidents of the district also have an interest.
The proposed definition of "feasible and prudent," 6 AAC 80.900(a), could be interpreted to allow noncompliance with certain Guidelines and Standards in order to protect a private interest, because the "environmental, social, or economic problems" being balanced against "the public benefit to be derived from compliance" might be considered to include problems of private individuals or organizations. Only public costs should be balanced against public benefits in this situation.	The taped record of the Council meeting of December 14, 1978, at which the proposed definition of "feasible and prudent" was adopted, makes it clear that only environmental, social and economic problems to the public were considered capable of overriding the public benefit to be derived from compliance with the habitat and energy standards. In fact, the language that had appeared in the hearing draft that was before the Council, and and which had been available for comment for 30 days before the December 14 meeting, was rejected precisely because OCZM representatives feared that it would allow relatively minor adverse effects on private interests to excuse compliance with the standards. Inexplicably, the present commenters seem to have ignored the hearing draft completely, leaving it to OCZM and OCM to formulate alternative language for the Council.

Comment	Response
The balancing process embodied in the current definition of "feasible and prudent" gives too much discretion to the districts. This should be replaced by a narrow definition combined with exceptions incorporated into individual standards. The narrow definition of "feasible and prudent" that should be used is that used in Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415-16 (1971): "consistent with sound engineering practice, and not causing unique problems."	We do not think that the current definition of "feasible and prudent" gives too much discretion to districts, especially when viewed in the context of Council and legislative reivew. The Overton Park definition may well be worthy of the Council's consideration. Unfortunately, this was not raised in December, 1978, when the Council had the "feasible and prudent" definition before it.
Under AS 46.40.070(b)(2), the Council may approve district programs that do not comply with the Guidelines and Standards if "strict adherence... would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district..." This provision also raises the possibility that prospective harm to a private interest would allow departure from the Guidelines and Standards. Only harm to public interests should be allowed to have this effect. The flexibility provided by this provision is also too broad. Flexibility would be better provided through exceptions to individual Guidelines and Standards.	OCZM reads the exception to require substantial irreparable harm to public interests or values in the coastal area, believing that this interpretation reflects the legislative intent. Once again, we do not consider the balancing embodied in the exception to give rise to excessive flexibility, and consider the burden of proving "substantial, irreparable harm" to be quite great.
The procedures for recommendation of AMSA's by individuals are too burdensome for these persons. Much of the information currently required from the recommending individual should be provided instead by the responsible government agencies. A two-step recommendation process should be established. In the first step, a recommendation would be made by a public agency or private person or organization. An agency would provide all information required by 6 AAC 80.160(a)(1)-(7). Private entities would have to provide only more limited information. If the Council or district receiving the recommendation considered further action warranted, it would, as the second step, prepare and circulate for comment a hearing draft containing all information required in 6 AAC 80.160 (a)(1)-(7). This, together with the comments and responses thereto, would be the basis for the "designation document" submitted for final approval by the district, the Council, and the Legislature.	The proposed changes in the AMSA designation procedure seem sound to us. We suggest that you formally bring them to the attention of the Council, which could amend the Guidelines and Standards accordingly.
If a district fails to submit a program to the Council within the statutorily prescribed period, there is no procedure by which the Council can force preparation of the program or allow another agency to prepare the program for the district. A provision similar to AS 46.40.170(b), allowing the Council to designate DCRA to prepare a CRSA program when the service area itself fails to do so, should be added to AS 46.40.055.	Unless the Legislature extends the current deadline for district program submission to the Council, all municipal districts that have not yet submitted their programs will technically be in default with respect to this obligation in December, 1979. The Council is currently considering the use of compliance schedules as a way to deal with this situation, but a district that refused to submit a program would be subject to a suit seeking a mandatory injunction to force it to do so.

Comment	Response
The requirement that all district programs be approved by the Legislature is likely to cause unnecessary delay without significantly contributing to effective management. The ACMA should be amended to provide, at most, for a legislative veto over district programs.	The Council has proposed that the Legislature reconsider the requirement of affirmative legislative approval, but the Legislature has declined to eliminate this requirement for the time being.
Because Council Resolution 13, on uses of State concern, was not addressed in the P/DEIS, adequate comment on it is not now possible.	Council Resolution 13, which was adopted by the Council in February, 1979, after the P/DEIS had been printed, is an expression of the Council's current views as to what constitutes uses of State concern. It is not, however, legally binding upon districts or upon the Council in future decisions concerning alleged uses of State concern, and thus does not approach the importance of, for example, the amendments to the Guidelines and Standards. We do not think, therefore, that meaningful comment on the P/DEIS was prevented by the absence from it of Resolution 13.
The second criterion of AS 46.40.070(c) for district restriction or exclusion of uses of State concern, "availability of reasonable alternative sites," should be interpreted to mean that districts should consider the issue of alternative sites in deciding on possible restrictions or exclusions of uses in question. It should not be read to require that a district must allow any proposed use of State concern unless there is an alternative site available. The latter criterion would go beyond Section 306 (c)(8) of the Federal CZMA, which requires only adequate consideration of certain types of uses. It would also be contrary to the local emphasis of the ACMA.	OCZM interprets this criterion to require that a district relying upon it for the restriction or exclusion of a use of State concern specifically identify alternative available sites for that use. We agree that this level of accomodation of uses of State concern is not required under the national interest provisions of Section 306(c)(8) of the Federal CZMA. In this particular instance, the requirements of State law go further than those of the Federal act.
The coastal development standard, 6 AAC 80.040, fails to limit development to areas in which it is suitable, or to promote use of previously developed areas before expansion into new areas ("in-filling"). It should be clear if, when, and under what conditions development can proceed in unacceptable areas (such as geophysical hazard areas, wetlands, estuaries) when all available areas suitable for development in the district have been used.	The coastal development standard does not currently address the desirability of "in-filling." You may wish to propose an appropriate amendment to the Council and the Legislature. We consider the current scope of the standard to be adequate. The coastal development standard was not intended to limit development within habitats or geophysical hazard areas as such. This role is played by the ACMP standards on habitats and geophysical hazard areas.
The coastal development standard fails to supply a concise mechanism for resolving conflicts among two or more competing water-dependent uses for limited waterfront space.	The coastal development standard is just that - a standard. The conflict resolution mechanisms of the ACMP involve the application of such standards through administrative proceedings of local governments, State agencies, the Council, the Legislature and Federal agencies, which are described in other portions of the P/DEIS. OCZM considers these conflict resolution mechanisms to be adequate for arriving at definitive choices among competing uses.

Comments	Responses
Paragraph (b) of the coastal development standard fails to identify the agencies responsible for administering the cited Federal discharge standards. The Corps of Engineers, which currently administers these standards, has been reluctant to manage and regulate activities in coastal waters. If the State has a wetlands management program, this should be described clearly in the P/FEIS. If it does not have such a program, the P/FEIS must identify the agencies responsible for wetlands management. Under ACMP in the districts and the UOB, describe explicitly the regulatory powers of these agencies for wetlands management and the relationship this will have to ACMP activities of districts and other agencies; and describe agency and district responsibilities for enforcing and monitoring compliance with wetlands regulations.	As was noted above, a major reason for incorporating the cited Federal discharge standards into the coastal development standard was to allow the State to use the Federal consistency requirements to monitor compliance of the responsible Federal agencies with their own standards. Please see General Response D for a discussion of your other concerns.
It is unclear whether the second subsection of the geophysical hazard areas standard, 6 AAC 80.050(b), means that development in areas identified under the first subsection shall not proceed, or that development is at the discretion of the district.	Development may not be approved by State or local agencies until protective measures of the prescribed level have been undertaken. Development in hazard areas is thus not at the discretion of the district. The Council would decide whether sufficient protective measures were being taken through the district program approval process and the program enforcement procedure.
Proposed 6 AAC 80.060(b), giving high priority to public access to coastal waters, is desirable. There is, however, a question whether the "Shorefront Access and Protection Planning Process" really isn't just a collection of potential, not necessarily coordinated, tools. Does the ACMP have a mechanism to anticipate, evaluate, and manage present and future threats to and opportunities for access, particularly from a Statewide perspective?	The legally binding quality of the public access provision of the recreation standard provides a unifying criterion for all local, State, and Federal efforts that may affect access. The primary component of the shorefront access and protection element, as of the ACMP in general, is the district program development process. Because of its comprehensive approach to planning, this process does allow anticipation, evaluation, and management of present and future threats to access at the local level. While activation of a Statewide planning program for State agencies would enhance the ability to do this at the State and regional levels, individual agencies undertaking activities affecting access are also in a position to take this comprehensive approach to the issue.
Subsection (a) of the proposed energy facilities standard, 6 AAC 80.090, should not be interpreted to imply that every district primarily contains sites suitable for the development of major energy facilities.	We agree.
Optimal siting of energy facilities in Alaska requires a statewide perspective in order to account for differences among districts. 6 AAC 80.070(a) refers to the State, as well as the districts, but it is unclear if State-level evaluation will be carried out and used.	See General Response C. Individual State agencies responsible for energy facilities are obliged by the standard to identify suitable energy facility sites within the scope of their statutory authority, even if interagency coordination is at a minimum.
While it has an impressive array of authorities that could be used for that purpose, the State has not demonstrated that it has a coherent process for "anticipating and managing the impacts" of energy facilities. The Agency Advisory Committee	We disagree. The development, approval and implementation of district programs, in particular, constitutes a process for "anticipating and managing the impacts" of energy facilities.

Comment	Response
on Leasing, mentioned as a coordinating mechanism on P/DEIS page 397, has not been established formally and has ceased to function meaningfully as an ad hoc body.	
The State oil and gas leasing program, on which the energy facility planning process partially relies, fails to provide for analysis of social or environmental costs; does not require analysis of its longterm efforts and goals; and does not provide for adequate public review and comment. Only industry comment was sought on the recently released five-year leasing program.	Any person may comment on the State's five-year plan. Analyses of the type suggested are performed, and can be performed by local governments as well as through ACMP.
Subsection (b) of the transportation and utilities standard, 6 AAC 80.080, should require that routes and facilities sited along the coast should be designed and sited to minimize impacts on wetlands, estuaries and other productive or vulnerable habitats.	These concerns are addressed in the habitat policies, which would also apply to transportation and utility routes and facilities.
The fish and seafood processing standard, 6 AAC 80.090, should require that plants be sited and designed to minimize water pollution from the dumping of wastes.	This concern should be addressed by vigorous enforcement of State and Federal water quality standards, which are incorporated into the ACMP under Section 307(f) of the Federal CZMA and 6 AAC 80.140.
The Forest Practices Act regulations should be required to be consistent with the timber harvest and processing standard, 6 AAC 80.100, which these regulations will supersede upon their promulgation. If the FPA regulations are not consistent with the current standard, they will constitute an amendment to the ACMP requiring public review prior to OCZM approval of their incorporation.	OCZM will evaluate the new timber harvest and processing regulations in light of its own recently promulgated regulations on changes to programs before deciding whether or not they would be treated as amendments to the ACMP. The Forest Resources and Practices Act has been incorporated, however, as part of the ACMP authority base.
Subsection (b) of the mining and mineral processing standard, 6 AAC 80.110, allows sand and gravel extraction from coastal waters when there is no "feasible and prudent" alternative to meet the public need for sand and gravel. It should explicitly state that this exception is limited to narrowly-defined cases.	OCZM considers this exception to be a narrow one by virtue of the definition of "feasible and prudent" discussed at P/DEIS page 77. The offsetting economic, social and environmental problems caused the public by acquisition of sand and gravel from other sources would have to be very great in order to overcome the great public interest in nondisturbance of coastal waters, intertidal areas, barrier islands, and spits.
Some coastal habitat types, such as floodplains, coastal forests, tidewater glacier, and glacial moraine areas, are not distinguished in the habitat standards. Arctic and subarctic high energy coasts should also be distinguished because of the extreme differences in the coastal processes related to each.	OCZM concurs in the judgment of the Council and the Legislature that additional standards directed specifically at these habitats are not required for Federal approval. They could well be valuable additions to the ACMP, however, and the commenter should consider proposing such standards to the Council for its consideration.
It is undesirable to weaken the already broad habitat standards with the exception provided in 6 AAC 80.130(d). Strict interpretation of these provisions is necessary to realize their protective intent.	We disagree. As noted on P/DEIS page 71, OCZM interprets several of the standards requiring "avoidance" of certain effects as strict prohibitions. 6 AAC 80.130(d), with its "feasible and prudent" criterion, is necessary to allow for consideration of countevailing factors, though with a strong presumption in favor of adherence to the prescribed standard.

Comment	Response
The approach of the habitat standards is not comprehensive enough. No provisions relate activities in one habitat to impacts in other habitats.	An activity taking place in one habitat, but having an effect on a second habitat, would be subject to the standards applicable to each of the two habitats.
There are no provisions for maintaining scenic quality in such habitats as rocky islands and seacliffs, high energy coasts, and forested areas. These could be included in sections dealing with areas of high scenic value, if not in the habitat standards.	Specific provisions on scenic quality may be desirable additions to the ACMP but are not required for Federal approval.
In order to better protect marine birds and mammals, and non-commercial fish, the standard on offshore areas, 6 AAC 80.130(1), should require that these areas be managed as a "living resource conservation zone," rather than a "fisheries conservation zone" maintaining or enhancing only sport, commercial and subsistence fishing.	The decision to ascribe paramount importance to the commercial, subsistence, and sport fisheries appears to have been made deliberately, and is consistent with the overwhelming economic and social importance of these activities for many Alaskans. OCZM believes that management of the offshore areas for their commercial, subsistence, and sport fishing values will, by and large, promote the interests of wildlife other than the target fish species. It will, for example, require the maintenance of water quality and of the integrity of habitats common to wide varieties of species. In many cases, marine mammals and other species are protected through other federal regulations, such as the Marine Mammal Protection Act.
The standards on estuaries and wetlands, 6 AAC 80.130(2)-(3), should be amended to require explicitly the minimization of dredge and fill activities. This would recognize the fragility of these areas and their biological importance.	While this might be a useful clarification, the existing standards would apply to dredging and filling to the same extent as to all other activities affecting estuaries and wetlands.
The standard on rocky islands and seacliffs, 6 AAC 80.130(4), should require protection of the scenic qualities of such features.	While not essential, this, too, might be worthy of Council consideration in the future.
The standard on barrier islands and lagoons, 6 AAC 80.130(5), should specifically mention protection of the quality of important fish and wildlife habitat.	Another possibly useful clarification, although the underlying concern seems to be addressed indirectly but effectively by the existing language.
The standard on high energy coasts, 6 AAC 80.130 (6), should specifically require minimization of disruption of the scenic quality of the area.	Not essential for Federal approval, but worthy of future consideration.

Dale Stirling
2/5/79

Comment	Response
Expresses pleasure with overall quality of information in the document.	Comment accepted.
States that public participation is of the utmost importance and stresses that the Program should continue to keep the public in mind.	Comment accepted.

Nunam Kitlutsisti
(Anthony Vaska, 2/2/79)

Comment	Response
The P/DEIS states on p. 68 that districts that have designated subsistence areas may not interfere with the resource management authority of the Department of Fish and Game, ignoring the requirement that the Department conform its policies to the district programs. In a designated subsistence area, the resource must be managed for subsistence users, and competing uses that damage or inhibit subsistence activity must be prohibited. Accordingly, the Department must prohibit sport fishing or hunting that would damage subsistence in a designated subsistence area.	Outright prohibition of activities that compete with subsistence would not be required in all, or even most cases, provided that they were made subject to safeguards that protect subsistence uses as the uses of high priority.
The last sentence in the discussion of the relationship of the subsistence standard to requirements for accommodation of uses of state concern appearing on P/DEIS p. 69, paraphrases the three criteria which, when met, require the Council to find that a restriction or exclusion of a use of state concern is reasonable. The paraphrase is inaccurate in stating that the first criterion requires "consultation with affected interests" when, in fact only federal, state, and regional agencies need be consulted; and in implying that, under the second criterion, districts must prove that reasonable alternative sites exists.	We agree that the paraphrase of the first criterion should be revised. As to the second criterion, however, we must reaffirm our conclusion that it does, in fact, require the district to demonstrate the availability of specific reasonable alternative sites. We believe that any interpretation that did not require such a demonstration would render this criterion meaningless.

DEFINING ALASKA'S COASTAL ZONE

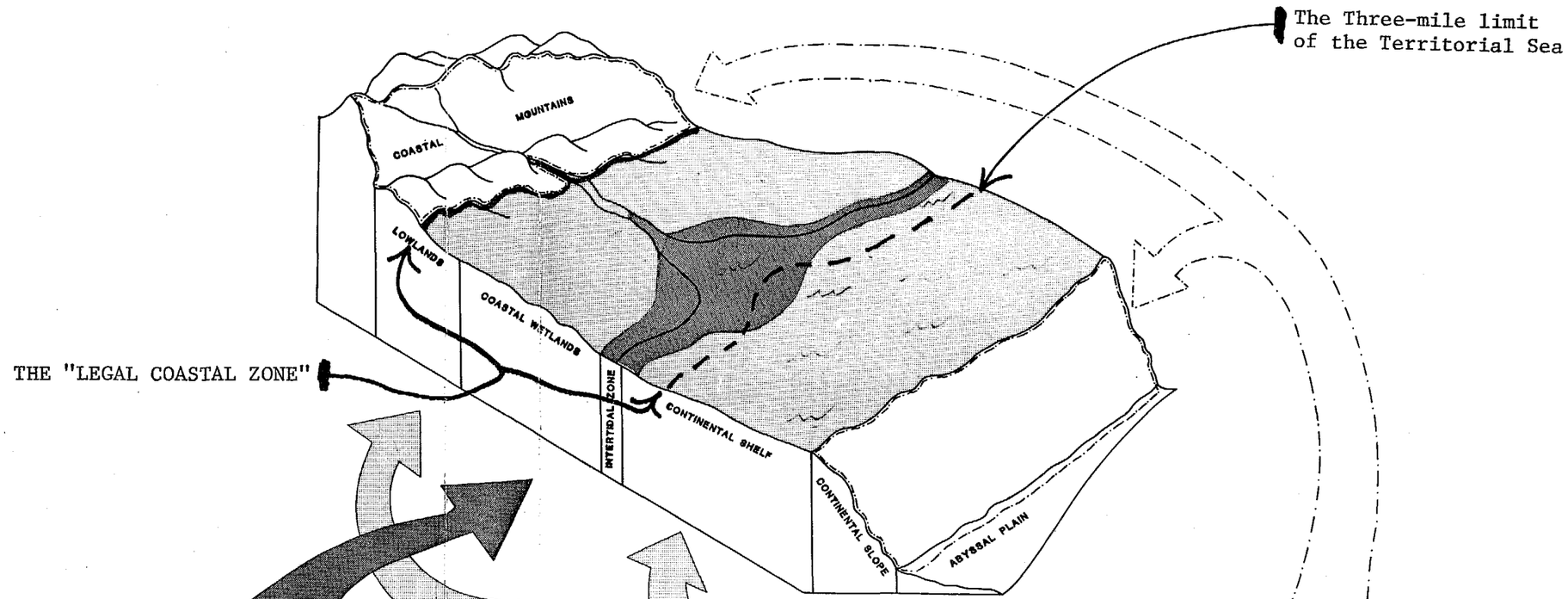
The first step in the formulation of an effective coastal management plan is to determine how much area must be managed to make the plan work. In fact, the amount of area necessary to provide sound management has been defined as the "coastal zone" in the Coastal Zone Management Act of 1972. In compliance with Section 305 of the Act, the Department of Fish and Game, Marine/Coastal Habitat Protection Section, has undertaken the task of defining coastal boundaries for Alaska's extensive shoreline. Definition of coastal zone boundaries in environmental/ecological terms has been performed without attempting to actually draw or define boundaries for land-use, political, or legislative purpose. Rather, the objective of our program is to identify and define the landward and seaward limits of coastal physical and biological processes which must be considered for effective long-term coastal resource development, management, and conservation. It must be emphasized that these boundaries have not been arbitrarily drawn. Coastal zone boundaries are based on a comprehensive review of available information concerning the geology, oceanography, and biology for each segment of coastline.

The rationale used to develop boundaries can be best explained by visualizing the coast itself. A basic principle essential to our concept of coastal boundaries is that the relationship between the land and sea is continually changing. These changes occur daily, seasonally, or in some cases over much longer geologic periods. In addition the coastline is viewed as a continuous feature; however, it varies from area to area. Broad sand beaches alternate with steep, rocky cliffs, wide gently-sloping river deltas contrast with the shear rocky shores of a narrow coastal fjord. Open bays contrast with protected barrier island lagoons. And possibly of greatest importance, we are aware that the coastal zone is a very productive, yet very fragile transitional zone where terrestrial and marine processes merge.

We must recognize that the influence of biological and physical processes occurring along the coast can extend far beyond the immediate area of the shoreline. For example, the influence of the saltiness of the ocean can extend for miles inland via wind carried salt spray and will have a significant regulating effect on plant communities as well as on the corrosive deterioration of human structures and machinery. Particular attention was also given to the patterns of distribution and behavior of fish and game populations which are of great importance to both the commercial and subsistence needs of many of Alaska's citizens. The majority of these fish and game populations are totally dependent on nearshore/coastal habitats during some phase of their life history but must migrate away from the coastline over wide areas to carry out their life's functions. In order to protect these resources, landward and seaward boundaries of the coastal zone include coastal lands larger in extent than those immediately adjacent to the shoreline.

These biologically- and physically-based boundaries are modified by two specific requirements of the Federal Coastal Zone Management Act. First, the Federal statute limits the seaward boundary of any state's coastal management jurisdiction to the limits of the territorial sea, that is, three miles. Even in cases in which the zone of direct interaction or zone of direct influence extends beyond that limit from a physical or biological basis, the seaward extent of the "coastal zone" is limited to three miles from shore. Secondly, all Federal lands are excluded from the defined coastal zone, although Federal agencies are bound by the Federal CZMA to conform their activities and programs as much as possible to the State's Program.

The rationale developed for determining boundaries views the coastal zone as a highly dynamic and often complex continuum in which the intensity of biological and physical land/sea exchange can be visualized as a gradient which decreases landward and seaward from the coastline. The total landward and seaward extent of this gradient has been divided into three subzones, each reflecting the respective degree of biological and physical interaction between the land and sea occurring within it.



DIRECT INTERACTION

The portion of the coastal zone where physical and biological processes are a function of direct contact between land and sea has been defined as the zone of direct interaction.

This zone extends landward to the limit of waves, surf, tides, storm surges, and tsunami energy dissipation; to the limit of active calving of tidewater glaciers, coastal erosion, and mass wasting; to the limit of ice shove onto beaches; to the limit of critical shorpline habitat (e.g. seabird rookeries, marine mammal hauling out and pupping areas) and to the limit to which man-made structures along the shore are directly impacted by the dynamics of oceanic processes.

The zone extends seaward to the outer limit of the breaker zone generated by large waves, to the nearshore limit of initial mixing of land runoff and sea water, to the nearshore area within which benthic algae are anchored to the sea floor, to where ice scours the nearshore sediments, to where pack ice grinds against fast ice, to the seaward limit of seasonal beach drift and to the seaward extent of concentrated utilization of nearshore waters by nesting seabirds and marine mammals. This zone also includes nearshore rearing areas for anadromous fish, and nearshore spawning and rearing areas for marine fish and invertebrates.

DIRECT INFLUENCE

The portion of the coastal zone extending seaward and landward from the zone of direct interaction has been termed the zone of direct influence. While this zone is not subjected to the dynamics of land/sea energy dissipation characteristic of direct interaction, it is closely affected and influenced by the close proximity between land and sea.

Landward, the zone extends to areas where coastal plant communities directly reflect the saltiness, high precipitation, or moderate temperatures of the ocean (e.g. wet tundra, marshes, Sitka spruce-hemlock forests and highbrush and floodplain alder and willow thickets), where shorebirds and waterfowl nest and feed in coastal wetlands, where certain marine mammals (e.g., belukha whales, harbor seals) frequently range inland via river systems, where anadromous fish such as salmon migrate up rivers to spawn, and where breakup conditions along the shore will induce extensive flooding of coastal lowlands.

Seaward, the zone extends to the offshore lands and waters of the continental shelf where waves begin to "feel bottom" and refract in response to bathymetric features, where the brackish water initially formed nearshore seasonally controls the density structure of nearshore waters, where nutrient rich deep waters are "upwelled" along the coast, and to the extent marine species such as king crab, herring, pollock, or halibut will migrate seasonally or during a portion of their life history after utilizing the shoreline or nearshore environment for spawning or early rearing.

INDIRECT INFLUENCE

The area immediately landward and seaward of the coastal zone (the combined zones of direct interaction and direct influence) is termed the zone of indirect influence. This zone extends to the limit where land/sea biological and physical processes are still identifiable. Within this region, major human use activities may significantly impact coastal processes, but the likelihood is considerably less and would be dependent on the magnitude of the activity. It is because the relationships are so indirect that this area is excluded from the State's legally-defined coastal zone.

Landward, this zone extends to the limit of overwintering in riverine springs by fish stocks which utilize the nearshore brackish waters in summer, and the extent of coastal watersheds which support stream habitats for anadromous fish and control the chemical and physical nature of estuaries.

Seaward, the zone of indirect influence is not easily delineated as the migrations of many coastal species are of hemispheric or global proportions. Natural phenomenon, such as the shoreward edge of oceanic boundary currents from which the net transport is directed towards the coast, and the seaward extent of a freshening of oceanic surface waters marking the transition between brackish/oceanic planktonic forms are taken as transitional criteria delineating the seaward extent of this outer zone.

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