North Slope Borough Coastal Management Plan: Policy Analysis Table

Reviewer **Sara Hunt** *Agency/Department* **DNR/OPMP** *Phone* **465-8788** *Email* **Sara_Hunt@dnr.state.ak.us** *Date:* **May 11, 2005**

Each policy was reviewed relative to each question below. Comments and discussion is provided only for those policies that do not satisfactorily meet all of the requirements of 11 AAC 112 and 11 AAC 114.

1. Does the policy address a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? *(OPMP will make this determination)*

2. Is the policy a matter that the Department of Environmental Conservation has the authority to regulate? *(DEC only)*

3. Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? If Yes, please provide citation and summary of relevant law:

4. Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?

5. Does the policy use precise, prescriptive and enforceable language?

6. Does the policy address a matter regulated or authorized by state or federal law? If Yes, please provide the citation and brief summary of the law:

7. If Yes to #6, discuss the sufficiency of the following (to establish that it is a "matter of local concern," per AS 46.40.070(a)(2)(C)):
   a. Does the policy relate to a specific coastal use or resource within a defined portion of the district's coastal zone? Is the area defined in narrative or on a map?
   b. Does the policy relate to a coastal use or resource that is sensitive to development?
   c. Does the policy address a coastal use or resource that is not adequately addressed by state or federal law?
   d. Does the policy relate to a coastal use or resource that is of unique concern to the district through documentation of local usage or scientific evidence?
   e. Are the criteria to establish that the policy addresses a matter of local concern (above) documented?

8. Does the policy arbitrarily or unreasonable restrict a use of state concern as defined at 46.40.210(12), referenced in 46.40.060, 114.260 and 114.270(e)(4) and discussed in CPC Resolution #13? (See http://www.alaskacoast.state.ak.us/Plans/PlanAmendmentResources.htm)

9. Does the Resource Inventory describe, in a manner sufficient for plan development and implementation,
   - natural resources and those habitats listed in 11 AAC 112.300, including important habitats proposed for designation;
   - major cultural, historic, prehistoric, and archeological resources;
   - recreational resources; and
   - coastal resources important to subsistence uses

   If No, identify necessary information in the resource inventory and analysis needed to support the policy.

10. Does the Resource Analysis describe the impacts of uses and activities, in a manner sufficient for district plan development and implementation,
    - the present and reasonably foreseeable needs, demands, and competing uses for coastal zone habitats and resources;
    - the reasonably foreseeable direct and indirect impacts of uses and activities;
    - the suitability of habitats, natural hazard areas, and resources for development;
    - the sensitivity of habitats, natural hazard areas, and resources to development; and
    - potentially or reasonably foreseeable conflicts among coastal zone uses and activities.

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11. Is there sufficient documentation of local usage or scientific evidence regarding a use or resource of unique concern that is the subject of an enforceable policy?

12. Does the policy allow or disallow a use or activity per 11 AAC 114.270(g)? If so, does the policy only apply to a designated area, AMSA or a SAMP?

13. Does the policy only apply to a designated area? If so, are federal lands excluded? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?

14. Are the maps adequate to support the enforceable policy they relate to? Is the scale sufficient to discern if a project is in or out of the area? Are labels, legends and references accurate?

15. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?

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POLICY TEXT:	*COMMENTS / DISCUSSION:*
Policy A-1: Subsistence Use Priority Subsistence use of plants, fish and wildlife, including marine mammals, is the highest priority use of the lands and waters in the coastal area. ***Subject Use:*** This policy applies to areas designated for subsistence use. ***Rationale:*** Subsistence use of coastal resources of the land and waters in the NSB has been the priority use of coastal resources for thousands of years. State and federal laws are inadequate because they do not establish a subsistence use priority.	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), already provides subsistence use prioritization and protection, disallowing a policy declaring a subsistence use priority. The rationale for the proposed policy, that existing state and federal laws are "inadequate," impermissibly sidesteps the regulatory prohibition against a policy written on a matter already addressed by state law.
Policy A-2: Subsistence Access Project activities shall maintain traditional access to subsistence resources unless the applicant: i. provides alternative access that is acceptable to the borough, or ii. improves access to subsistence resources, or ***Subject Use:*** This policy applies to areas designated for subsistence use. ***Rationale:*** This policy is necessary because state and federal laws do not adequately address this issue of local concern. These laws do not ensure access to subsistence resources.	The state standard for Subsistence at 11 AAC 112.270 does not address "access." Therefore the proposed policy does not flow from the standard. The district could address access to, from, or along areas designated for subsistence use under the state standard for Coastal Access, if the designated areas are in or along coastal waters.
Policy A-3: Appropriate Safeguards to Protect Subsistence a) The coordinating agency and the borough shall determine that the subsistence effects analysis required by 11 AAC 112.270: i. Adequately assesses potential impacts of the project on subsistence uses using scientific information and local knowledge, and ii. Sets forth appropriate mitigation measures to ensure no unmitigable adverse impact to the availability of subsistence resources for taking for subsistence use at the level necessary to meet community need.	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), already provides adequate subsistence use prioritization and protection. While the state standard addresses the steps required in conducting an "avoid or minimize" sequencing process analysis, the terms "adverse impacts" and "impacts" from 11 AAC 112.990(34) are not defined in the ACMP regulations. If the term "adverse impacts" is not already defined, addressed or regulated by the Boards of Fish and Game, it could be defined by the district, in a manner that describes, in clear, concise and prescriptive terms, what "adverse impacts"

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b) For projects with a potential to significantly impact subsistence, as determined by the borough, the applicant shall: i. Circulate the subsistence effects analysis to stakeholder peer review, and ii. Include a provision in the project description for annual stakeholder peer reviewed monitoring of proposed alternative measures to ensure the measures are effective in meeting the enforceable policies. ***Subject Use:*** This policy applies to areas designated for subsistence use. ***Rationale:*** This policy is necessary because state and federal laws do not adequately address this issue of local concern. The statewide subsistence standard requires an analysis or evaluation of reasonably foreseeable impacts to subsistence, but there is no provision to determine adequacy of the analysis.	would affect precisely what subsistence uses in the designated area. Note that overly general phrases like "depletion of resources below the level needed to sustain sufficient harvest" would be disallowed as vague and lacking predictability of application. The study must tie to the subsistence uses for which the area was designated. This policy flows from 11 AAC 112.270(b)(1)and (2) which requires an analysis or evaluation of reasonably foreseeable adverse impacts to the subsistence resources or uses for which the area was designated The policy must be reworded to clarify that the analysis must be submitted with the consistency review packet, or the consistency evaluation, in accordance with the state standard. The coastal district, along with the state resource agencies, would review the information during the consistency review process. This change is necessary to conform to the consistency review process, and to provide some certainty as to when the assessment is required.
Policy A-4: Project Disturbance to Subsistence a. Project activities shall not have an unmitigable adverse impact on the availability of subsistence resources for taking for subsistence use at the level necessary to meet community need. Specific measures to avoid or minimize effects to subsistence may include, but are not limited to, the following: i. Scheduling flights and other noise-producing activities to avoid disturbance to subsistence hunting activities, ii. Imposing height and distance buffers for aircraft in areas used for subsistence, and iii. Coordinating project schedule with subsistence hunters and fishers to avoid conflicting uses in the project area, and iv. Scheduling activities at times when subsistence resources are not present or subsistence taking of resources is not occurring.. b. When a project would significantly affect subsistence uses and there is a public need for the project, as determined by the borough, mitigation may be necessary to maintain the subsistence priority. The project may be approved if the applicant adopts alternative measures into the project description that are	Because the state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), already provides subsistence use prioritization and protection., the policy is impermissible. "Level of need" does not flow from 11 AAC 112. 270, therefore the policy is not allowed. This policy does not appear to link to the requirement for an analysis or evaluation, so the statement in the rationale is confusing. Further, the district's stated rationale contravenes the regulations in amending the "avoid or minimize" sequence by adding a mitigation component. Under 11 AAC 114.270(g) a district may specify whether a use or activity is allowed in designated areas. The district could rewrite this policy to specifically disallow development or flights or other noise disturbing activities either year round or during specific times of the year. The district must show that the impacts of these activities are not adequately addressed by other state or federal law. Also, the impacts must tie to the uses or resources for which the area is designated.

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acceptable to the district. ***Subject Use:*** This policy applies to areas designated for subsistence use. ***Rationale:*** This policy is necessary because state and federal laws do not adequately address this issue of local concern. The statewide subsistence standard requires an analysis or evaluation of reasonably foreseeable impacts to subsistence, but there is no provision to determine adequacy of the analysis. The statewide standard does not include a provision for mitigation, however, there may be instances where public need would make mitigation necessary to ensure the ongoing availability of subsistence resource for taking to meet community need. In addition, the statewide standard does not include this level of specificity.	
Policy A-5: Visual Compatibility To the extent practicable with consideration of social, cultural and environmental factors, facilities and structures shall be designed to blend in with the surrounding landscape. Applicants shall consult with the NSB Planning Department when designing facilities that are proposed to be sited in areas important for subsistence use. ***Subject Use:*** This policy applies to areas designated for subsistence use. ***Rationale:*** This policy is necessary because state and federal laws do not adequately address this issue of local concern. Specifically, these laws do not address the subject of visual compatibility of development with subsistence.	See general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of social and environmental factors". The district must articulate clearly how visual compatibility ties to subsistence uses or resources in the resource inventory/analysis, in order to justify the policy. If the district could show the adverse impacts of visual incompatibility with subsistence uses or activities or to the resources which are used, then it may be possibly to allow/disallow certain types of structures, colors, building size or height, etc. Otherwise, the policy is impermissible due to the avoid, minimize sequence in the Subsistence standard, 11 AAC 112.270.
Policy A-6: Subsistence Whaling Offshore activities shall not have an unmitigable adverse impact on the availability of bowhead whales for taking for subsistence use to meet community need in the subsistence hunting areas identified on Map 16 for the communities of Kaktovik, Nuiqsut, Barrow, and Point Hope. Activities in areas	Use of the term, "unmitigable adverse impact" in a district policy is impermissible, as the mitigation of adverse impacts to subsistence use amends the "avoid or minimize" sequence by adding a mitigation component. The borough would be allowed to allow or disallow specific activities during a specified period that would have unacceptable impacts in designated subsistence use areas. For example, the policy could be written to disallow

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labeled as "quiet areas" on the map shall not produce noise at levels that would deflect bowhead whales from their migration path. The coordinating agency shall consider both local and scientific knowledge when determining whether project activities have a potential to deflect whale migration. Activities shall not have an unmitigable adverse impact on the availability of beluga whales and other marine mammals in offshore areas for taking for subsistence use to meet community need. Measures to ensure that activities do have an unmitigable adverse impact on the availability of whales and other marine mammals for taking for subsistence use to meet community need may include, but are not limited to, one or more of the following options: i. Area deferrals from oil and gas lease sales, ii. Limitations on development of permanent facilities, iii. Use of bottom-founded drilling structures, and iv. Timing activities to occur outside of the subsistence hunting periods. ***Subject Use:*** This policy applies to areas designated for subsistence use. It also includes geographic location descriptions for subsistence whaling, including areas of pursuit and harvest. ***Rationale:*** This policy is necessary because state and federal laws do not adequately protect subsistence resources and uses in these areas. Map 15 identifies areas within state waters as designated subsistence use areas. Federal waters used by subsistence hunters are identified as a "geographic location description" for subsistence. A larger geographic location description includes all federal waters.	activities that produce a noise level above a specified decibel amount during specified months of the year (or year round). The second part of the policy, which redefines the measures required to demonstrate that a project has avoided, minimized or mitigated adverse impacts to the availability of whales and other marine mammals for taking for subsistence use, is impermissible for the same reasons stated above. Again, the district could disallow any of the activities listed under i-iv by allowing or disallowing certain activities during specified time periods. However, as oil and gas lease sales are uses of state concern, the district would have to document that such deferrals, or disallowance of oil and gas meet the requirements of AS 46.40.060(a) and 11 AAC 114.270(e) (See the Responses to the October 2004 Workshop Questions, answer no. 30, posted on the ACMP website. *Note*: Maps 15, 16 (or maps 1-31) were not provided with the public review draft.
B. Cultural Resources **Policy B-1: Consultation and Surveys** Evaluation of potential impacts to cultural, historic resources and archaeological resources shall be the responsibility of the applicant. Applicants proposing to conduct activities that have a potential to disturb historic or archeological resources shall consult with the State Historic Preservation Officer (SHPO) and the NSB Planning Department prior to submission of a	As written, this policy is not enforceable. For language that might work, see AWCRSA policies I-1 and I-2 and OPMP's comments, and Haines policy 5.10.3 and OPMP's comments.

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inadvertent discovery of skeletal remains, work that would further disturb the remains shall cease immediately. The discoverer shall then contact a law enforcement officer (to determine if the remains are part of a crime scene), the landowner, SHPO, and the NSB, to be advised how to proceed. ***Subject Use:*** This policy applies to areas designated for the study or understanding of historic and prehistoric resources. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy. The State Historic Preservation Act does not have the enforceability of this policy.	
C. Habitat **Policy C-1. Bowhead Whale Habitat** Activities in offshore areas shall not significantly affect bowhead whales including effects from noise. ***Subject Use:*** This policy applies to offshore areas designated for important habitat and for subsistence. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not allowed. However, the district could allow or disallow specific activities during a specified period that would have unacceptable impacts in designated subsistence use areas. Areas designated for important habitat and for subsistence may not include federal lands or waters and may only reach to the 3 mile offshore limit (measured from mean high water of the shoreline). However, as the OCS is designated as a geographic location description, federal activities or activities subject to federal licenses and permits that would foreseeably affect the uses, resources or activities within the designated area would be subject to the state standards and all applicable district policies, under the proposed revisions to 11 AAC 110 and 112 currently under public review.
Policy C-2: Specific Habitat Protection This policy addresses management measures for specific habitat types the statewide Habitats standard. Projects shall avoid, minimize or mitigate significant adverse impacts to the biological, physical and chemical productivity of in the following habitats for coastal species: i. Offshore areas including effects to habitat for species using this habitat including sea ice (for species depending on offshore habitats including bowhead whales, other marine mammals and fish), ii. Estuaries including nutrient, oxygen and silt levels including the	All provisions of this policy that do not flow from one of the delineated uses or activities identified in 11 AAC 112.200-112.240, 112.260-280 or 11 AAC 114.250 (b)-(i)are not permissible. Additionally, a district cannot redefine terms or processes already defined by state law. As such, the district cannot require consideration of additional factors in implementing the avoid minimize, mitigate sequence.

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relationship with fresh water sources (for species that depend on estuaries during an important life stage), iii. Wetlands, including nutrients and oxygen levels and the destruction of critical habitat (for migratory birds and other fish and wildlife that depend on wetlands during important life stages), iv. Tideflats including nutrient (for species dependent on tideflats habitats), v. Exposed high-energy coasts including coastal erosion (for species dependent on this habitat type), vi. Rivers, streams and lakes, including maintenance of instream flow in quantities needed to maintain productivity of species that use this habitat (for anadromous and resident fish and other species dependent on this habitat type), and v. Upland habitat including natural drainage patterns, natural groundwater recharge, and habitat characteristics important for coastal species (for caribou, moose, muskox, bear, and other species dependent on upland habitat). Applicants shall identify specific measures in their project description that will meet this policy, and the coordinating agency shall require additional alternative measures, as necessary, to meet this policy. ***Subject Use:*** This policy applies to areas designated as important habitat or for subsistence. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy. The statewide Habitats policy does not include management measures for coastal species for the habitats listed in this policy.	
Policy C-3. Water Withdrawal Criteria Water intake pipes used to remove water from fish-bearing waters shall use a screened enclosure so as to prevent fish entrainment and impingement. Pipes and screening will be designed, constructed, and maintained so that the maximum water velocity at the surface of the screen enclosure is not greater	A policy must meet the criteria for all the designated areas to which the policy applies. This policy does not flow from 114.250 (g) or (h). Due to the avoid, minimize, mitigate sequence used in 11 AAC 112.300 and the avoid or minimize sequence in 11 AAC 112.270 the matter is adequately addressed for areas designated for important habitat or subsistence. See *Applicability of Policies* section in Comments and Findings document. Hence, this policy is not

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consistency certification to determine if a resource survey is necessary. SHPO or the NSB Planning Department may require the applicant conduct a resource survey by the request for additional information deadline. ***Subject Use:*** This policy applies to areas designated for the study or understanding of historic and prehistoric resources. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy.	
Policy B-2: Site-Specific Measures The NSB or the SHPO may require an applicant to adopt site-specific measures into the project description for protection of historic, prehistoric or archeological resources. ***Subject Use:*** This policy applies to areas designated for the study or understanding of historic and prehistoric resources. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy.	As written, this policy is not enforceable. For language that might work, see AWCRSA policies I-1 and I-2 and OPMP's comments, and Haines policy 5.10.3 and OPMP's comments.
Policy B-3: Previously Undiscovered Resources If previously undiscovered artifacts or areas of cultural, historic or archaeological importance are encountered during development, the applicant shall cease all further activities that could disturb the site and notify the NSB and the SHPO. SHPO, or another qualified cultural resource specialist, shall evaluate the resources in a timely manner. ***Subject Use:*** This policy applies to areas designated for the study or understanding of historic and prehistoric resources. ***Rationale:*** State and federal laws are inadequate because they do not include the specificity of this policy.	OPMP defers to SHPO on whether this policy is adequately addressed by other state or federal law.
Policy B-4. Graves Applicants shall avoid disturbance to all obvious graves. In the case of an	OPMP defers to SHPO on whether this policy is adequately addressed by other state or federal law.

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than 0.1 foot per second. Screen mesh size will not exceed 0.04 inch. Other technology and techniques may be used if the applicant demonstrates, to the satisfaction of the district, that these techniques will prevent the entrainment and impingement of fish may also be utilized. ***Subject Uses:*** This policy applies to areas designated for important habitat and subsistence. ***Justification:*** This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity water intake pipes.	permissible.
Policy C-4. Anadromous Fish Streams a) Facilities, other than crossings, shall be sited the following distances from specific types of waterbodies: i. 500-feet from anadromous water bodies, ii. 250-feet from headwater streams creeks and tributaries, and iii. 100-feet from all other water bodies. b) These setbacks may be adjusted by the coordinating agency, with agreement of the borough, and with consideration of the following criteria: i. Existence of a significant public need for the project activity, ii. Sensitivity of fish to the proposed activity, iii. Characteristics and function of the habitat including existing instream and riparian vegetation, iv. Slope, soil type, and potential for erosion, and v. Other potential effects of the project on the physical, biological and chemical characteristics of the habitat. c) Project activities, including instream activities and ice road crossings, shall not adversely affect fish passage or pools used by over-wintering fish. ***Subject Uses:*** This policy applies to fish streams in areas designated for subsistence use and important habitat. ***Justification:*** This policy addresses local concerns not adequately	Because a policy may allow or disallow specific uses or activities within a designated area, Section (a)would be permissible if the 500 feet on either side of the streams were designated as important habitat. A designation within a designation is acceptable. The policy would need to be rewritten to disallow facilities, other than crossings, within the specified distances. The policy will need to specify the mark from which the distance is measured (typically ordinary high water for rivers lakes and streams, and mean high water for the ocean or sea). The policy must reference the specific maps or descriptions to which the policy applies. Section (b) is not permissible, as it redefines the avoid, minimize or mitigate sequencing criteria at 11 AAC 112.300 and 11 AAC 112.

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addressed by state or federal law. Subsection (b) of the statewide Habitats standard is vague and does not address this level of specificity. This policy is necessary to protect fish habitat and associated uses including subsistence and recreational fishing.	
Policy C-5: Erosion a) To the extent practicable and with consideration of social and environmental factors, habitats shall be managed to minimize excessive runoff which will cause accelerated hydraulic or thermal erosion and to retain natural drainage patterns, surface water quality, and natural groundwater recharge areas. b) Development activities shall minimize removal of existing vegetative cover in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plants or by other appropriate erosion control measures. c) All stream or lake bank cuts, fills or exposed earthwork adjacent to anadromous and resident fish streams, wetlands or marine waters shall be stabilized, to the extent practicable with consideration of environmental factors, to prevent erosion or sedimentation into adjoining waters during construction, operation and following abandonment of development activities. d) Other options for preventing and controlling erosion include, but are not limited to the following: i. Minimizing and limiting areas of ground disturbance near waterbodies, ii. Siting facilities away from areas subject to erosion, iii. Stabilizing disturbed areas as soon as possible after disturbance, iv. Scheduling activities to avoid high winds, waves, and seasonal flooding, and v. Using best management practices identified in the Alaska Department of Transportation and Public Facilities January 1997 publication, *Best Management Practices for Construction, Erosion and Sediment Control and Maintenance and Operations Activities.* ***Subject Uses:*** This policy applies throughout the coastal area in areas	This proposed policy is misplaced in the "habitats" section, and is consequently impermissible, as it does not flow from any habitat or subsistence standard. Portions of the proposed policy could be allowable as pertaining to a designated erosion designated area, if that designation complied with the area designation criteria. See *Applicability of Policies* section in Comments and Findings document. Moreover, surface water quality is a matter regulated by DEC and is not allowed to be included within the enforceable policy. May want to specify that re-vegetation shall be done with native species. See general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of social and environmental factors".

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designated for subsistence use, important habitat, and natural hazards. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy. In addition, the definition of "practicable" under the statewide standards is limited to economic factors.	
Policy C-6: Migration Projects shall not significantly affect migrations of coastal species. Applicants may adopt and the coordinating agency may require measures to prevent effects to migration including but not limited to: i. Locating activities outside of major migration routes, ii. Scheduling activities during times when migrations are not occurring, and iii. Reducing noise from activities. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use, important habitat and natural hazards. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to migration.	Migration is not a "use or activity" about which a district enforceable policy can be written under 11 AAC 114.250. Moreover, the state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.
Policy C-7: Marine Mammal Haulouts and Seabird Colonies Project activities shall not significantly affect species using marine mammal haulouts or seabird colonies including effects that would result in disturbance, injury or mortality to these species. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to marine mammal haulouts and seabird colonies.	Unless the district can demonstrates to the contrary in its resource inventory, analysis, and justification, seabird colonies and haul-outs and rookeries used by marine mammals are all habitats presently and adequately protected in the habitats standards at 11 AAC 112.300 (1)-(8). The management of those areas is limited to the aspects addressed in the regulations. As such, this policy is not approvable. Alternatively, if it meets all applicable tests for designation, the district may designate an important habitat area for Marine Mammal Haulouts and Seabird Colonies under 11 AAC 114.270(h), and then write a policy that allows or disallows specified uses or activities in the designated area, within specified time periods, per 11 AAC 114.270(g). The policy could be written to not allow development structures and facilities within a scientifically defensible distance from designated seabird colonies and marine mammal haul-outs.
Policy C-8: Nesting Areas	See comment disallowing proposed Policy C-7.

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Where practicable, with consideration of environmental effects, project activities shall not result in significant disturbance to nesting and molting birds. Alternative measures to meet this policy include avoidance of nest sites and timing of activities outside the nesting and molting period. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to nesting and molting birds. Birds are exceptionally vulnerable to disturbance during nesting and molting periods.	Also, see general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of social and environmental factors"
Policy C-9: Caribou Calving Areas Project activities shall not significantly affect caribou calving areas during periods of calving. Measures to meet this policy include, but are not limited to, timing of activities outside of calving periods (generally between April 15 and May 15), location of activities away from calving areas, and use of convoys during calving periods. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to caribou calving areas. Female caribou and calves are extremely vulnerable to disturbance during this period.	See comment disallowing proposed Policy C-7.
Policy C-10: Disturbance from Aircraft, Marine Watercraft and Other Noise-Producing Activities When conducting activities with reasonably foreseeable impacts to sensitive habitats while species are present, applicants shall implement the following measures. Fixed-wing and helicopter aircraft shall maintain a minimum altitude of 2,000 feet and aircraft, marine watercraft and other activities producing high-levels of	See comment disallowing proposed Policy C-7. Recommend deleting the first sentence, and rewriting the second sentence to disallow fixed wing and helicopter aircraft within the specified distances, and specifying the level of noise that is allowed/disallowed. Additionally, the term "sensitive habitats" is not defined and is thus impermissible.

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noise shall maintain the following horizontal distances: i. a 1.5-mile horizontal distance from important seabird colonies and rookeries (generally between April 15 and September 30), ii. a 0.5-mile horizontal distance from marine mammal haul-out sites for walrus (generally between May 1 and December 31), iii. a 0.5-mile horizontal distance from identified haul-out sites for seals (generally between March 1 and September 30), and iv. a 0.5-mile horizontal distance for polar bear dens. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to marine mammal haulouts and seabird colonies.	
Policy C-11: Kasegaluk Lagoon Project activities occurring on the barrier islands or in the marine and estuarine waters of the Kasegaluk Lagoon shall not interfere with the annual harvest of beluga whales, usually occurring the first week of July, or cause displacement of the whales. ***Subject Uses:*** This policy applies in the Kasegaluk subsistence use area. ***Justification:*** Existing state and federal law does not address the beluga subsistence hunt in Kasegaluk Lagoon.	See comment disallowing proposed Policy C-7.
Policy C-12: Storage of Petroleum Products Other than temporary storage of small quantities of petroleum less than 500 gallons for periods of less than seven days, applicants shall not store petroleum or petroleum products within 100 feet of any water body. This policy does not apply to storage of fuel on frozen water bodies. ***Subject Uses:*** This policy applies throughout the coastal area in areas	Policies may not address air, land or water quality issues, therefore, as written, this policy is impermissible.

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designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law does not address the specificity of this policy in regard to storage of petroleum products.	
Policy C-13: Siting of Solid Waste Disposal Facilities Solid waste disposal sites shall be: i. located a minimum of 1,500-feet from domestic water supplies or anadromous water bodies and a minimum of 200-feet from any other water bodies unless a surface hydrological soils and drainage analysis justified another distance, and ii. designed, constructed and operated to avoid creation of an attractive nuisance for wildlife. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law does not address the specificity of this policy in regard to siting of solid waste disposal facilities.	See comment disallowing proposed Policy C-12.
Policy C-14: Air and Water Quality Monitoring Monitoring facilities for project effects to habitat, including air and water quality, shall be located away from other sources of emissions or effluent to ensure that accurate measurements can be obtained. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal law does not address the specificity of this policy in regard to siting of air and water quality monitoring. The improper siting of air quality monitoring equipment near Nuiqsut has raised concerns about the source of emissions.	See comment disallowing proposed Policy C-12.

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Policy C-15: Habitat Studies When the coordinating agency, in consultation with the coastal district, determines a project may have reasonably foreseeable significant impacts, one or more of the following studies may be required: i. Drainage impact analyses, ii. Site-specific drainage plans, iii. Site restoration plans, iv. Erosion stabilization plans, v. Monitoring studies, vi. Cumulative effects, and vii. Other studies about project effects to fish and wildlife. Studies shall be reviewed for sufficiency by the appropriate state agency or coastal district depending on their area of expertise or responsibility. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for subsistence use and important habitat. ***Justification:*** Existing state and federal laws do not address the specificity of this policy in regard to requirement of monitoring and studies. The need for site-specific studies and monitoring is not known until a specific project is proposed.	This policy redefines the consistency review process at 11 AAC 110 and is therefore not permitted. The policy could be rewritten to require a study, analysis, or evaluation to occur prior to the consistency review process. The study, analysis, or evaluation must address the resources, uses, or activities for with the area was designated and address impacts to those resources, uses or activities. The policy must be clear as to who performs the study, analysis or evaluation and how it is implemented. See the comments on proposed policy A-3.
D. Natural Hazards **Policy D-1: Project Applications for Hazard Areas** a) Applicants for projects located in natural hazard areas shall consult with the North Slope Borough before submitting project applications to determine if there is applicable local knowledge about the hazards in the project area. b) Applicants shall provide a sufficient analysis in the project application packet about potential hazards and measures to avoid or minimize effects to the environmental from project activities that could be affected by natural hazards. The analysis shall include conservative estimates of hazard potentials. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for natural hazards. ***Justification:*** Existing state and federal laws do not address the	The study, analysis, or evaluation must address the resources, uses, or activities for with the area was designated and address impacts to those resources, uses or activities. The policy must be clear as to who performs the study, analysis or evaluation and how it is implemented. See the comments on policy A-3.

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specificity of this policy in regard to information requirements for projects located in hazard areas. The statewide standard does not address local knowledge for hazard areas.	
Policy D-2: Specific Natural Hazards a) Project facilities shall not be located in the following areas unless there is a significant public need for the facility, as determined by the North Slope Borough, and appropriate measures are proposed to avoid damage to life and the environment. i. Facilities not water-dependent or water-related that are located in areas subject to storm surges, ii. Facilities in areas subject to mass wasting or landslides, iii. Facilities subject to annual flooding that are located below the high-water mark or waterbodies, iv. Facilities subject to ice hazards including ice override, ridging, pack ice movement, ice gouging, strudel scour, or the active shear zone. b) Applicants for projects located in ice hazard areas during the time where such hazards are reasonably foreseeable shall prepare an ice management plan. This plan shall be reviewed and approved by an engineer experienced in ice hazards and by the North Slope Borough. The plan shall describe the systems for surveillance and detection of ice hazards and for reporting such hazards to appropriate agencies including the borough. Bottom-founded structures, other than ice islands, may be required in areas of extreme shear zones. c) Project activities shall incorporate the best available technologies into project descriptions to prevent disturbance to permafrost, including thermokarst. Where disturbance to the organic mat is unavoidable, the disrupted area shall be stabilized to avoid disturbance to the permafrost layer. ***Subject Uses:*** This policy applies throughout the coastal area in areas designated for natural hazards. ***Justification:*** Existing state and federal laws do not address the specificity of this policy in regard to protection to the environment and life as a result of the interaction of project activities with natural	First, policies relating to natural hazards must clearly define district-specific "natural hazards," by delineating specifically which "natural process or other adverse conditions that present a threat to life or property in the coastal area," are not already defined at 11 AAC 112.990. Thereafter, the district must designate specific areas "likely to be affected by the occurrence of a natural hazard." 11 AAC 112.210. The policy is impermissibly unclear as to the definition and process involved in determining "significant public need for the facility, as determined by the North Slope Borough." Last, the policy describes who prepares the ice management plan, and how it is implemented. See the comments on policy A-3. The policy must require the ice management plan in advance of the consistency review in part b). This policy is overly complex, as it applies to several different hazard types, each of which requires a separate designation and description or map. The policy would be permissible if divided into separate policies, specific to each type of hazard, with the appropriate map or description of the location of the natural hazard designated area included with the policy.

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hazards. The statewide standard does not address this level of specificity regarding criteria for allowing projects in the hazard areas described in this policy.	
E. Energy Facilities **Policy E-1: Oil and Gas Facilities** Oil and gas activities, including operation of facilities, shall be conducted to avoid significant impacts to subsistence, scenic, recreational, environmental, and historic and cultural resources. Facilities shall be designed and operated to be compatible with adjacent land or water uses, including subsistence. Oil and gas operations shall not preclude public access to the extent practicable. ***Subject Uses:*** This policy applies throughout the coastal area, and it applies to the statewide energy facilities standard. It also applies to areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. The statewide energy facilities standard does not address adequately address the issues covered by this policy.	The first sentence is impermissible, as the state Energy Facilities at 11 AAC 112.230 standard already describes the conditions for siting and approval of major energy facilities. The first criteria in that standard are "minimization of adverse environmental and social effects." The district could permissibly add specificity to those terms if they are fully and predictably defined. The second and third sentences are similarly impermissible as redefining the state Energy facilities standard, which already sets forth the conditions for siting and approval of major energy facilities. Alternatively, the policy could be rewritten to disallow oil and gas facilities sales in areas designated for important habitats or subsistence. However, as oil and gas lease sales are uses of state concern, the district would have to document that such deferrals, or disallowance of oil and gas meet the requirements of AS 46.40.060(a) and 11 AAC 114.270(e) (See the Responses to the October 2004 Workshop Questions, answer no. 30, posted on the ACMP website.
Policy E-2: Seismic Surveys a) To the extent practicable, with consideration of social and environmental effects, seismic surveys occurring on land or water will be located, designed, and conducted in a manner so as to avoid significant disturbances to fish and wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife. Depending on site-specific concerns, seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation used may be required by the coordinating agency with consultation with the borough.	The policy does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i) and is therefore not approvable. Also, a seismic survey is not a major energy facility as it is not included in the definition at 11 AAC 112.990(14). The district may want to consider disallowing use of explosives or specific types of transportation in association with geophysical surveys during specific times of the year in areas designated for subsistence and important habitat. However, be aware that DNR regulates the use of explosives on state land

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b) Seismic surveys in fresh and marine waters shall prevent effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques, other than blasting, that do not significantly effect fish and wildlife. Seismic surveys shall be timed to avoid impacts to subsistence hunting and fishing, marine mammal migrations, and migrating fish smolts. ***Subject Uses:*** This policy applies throughout the coastal area, and it applies to the statewide energy facilities standard. It also applies to areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law about seismic surveys do not address this level of specificity or protection for coastal resources and uses. Noise from seismic surveys has been shown to affect fish and wildlife, including bowhead whales. Timing of surveys and use of survey techniques can minimize impacts to coastal uses and resources, including juvenile salmon and commercial and subsistence fishing.	under 11 AAC 96.010. DNR, Division of Oil and Gas issues a Miscellaneous Land Use Permit for Geophysical Exploration Permits under 11AAC 96.005.
Policy E-3: Dismantlement, Restoration and Rehabilitation a) Applicants shall include a plan for the dismantlement, restoration and rehabilitation (DRR) of oil and gas facilities as part of the project description. This plan shall include measures to return the area to pre-project conditions to the extent practicable with consideration of social and environmental factors. b) Upon abandonment, project completion or expiration of permit authorizations, whichever occurs first, permitting agencies may amend required measures identified in the original plan if: i. there is a demonstrated future use for the site, or ii. the original measures would cause greater adverse effects than the other measures. ***Subject Uses:*** This policy is established pursuant to the statewide Energy Facilities standard and applies throughout the coastal area ***Justification:*** As demonstrated in the 2002 report by the General Accounting Office on North Slope oil and gas activities, state and federal law is inadequate regarding DRR requirements.	In order to be permitted, this policy must specify from which state standard(s) it flows, and (assuming that it flows from the state Energy standard at 11 AAC 112.230), must specifically designate the areas suitable for siting and approval of the facility using that state standards. If any term within the existing state standards can be supplemented with additional specificity, this would be allowed. The district must also document whether another state or federal law adequately addresses the matter. The DNR regulation 11 AAC 83.158. states that "an application must include statements and maps or drawings setting out the following (3) plans for rehabilitation of the affected leased or licensed area after completion of operations or phases of those operations;". Interestingly, (4) of the same regulation states, " a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased or licensed area and adjacent areas, including fish and wildlife habitats, historic and archaeological sites, and public use areas."

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	See general comments section on Enforceable Policies and comment on proposed policy E-1.
F. Mining and Mineral Processing **Policy F-1: Effects of Mining and Mineral Processing** Mining and mineral processing activities shall avoid or minimize significant adverse effects to coastal resources and uses, including effects from noise, dust and disposal of mine tailings to extent these activities are not regulated by the Alaska Department of Environmental Conservation. To the extent practicable, mining facilities shall be sited to avoid conflict with competing uses. Measures to minimize or avoid impacts include restrictions to timing of operations, noise control, setbacks and buffers, and erosion control. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.
Policy F-2: Disposal of Excavation Spoils To the extent disposal of excavation spoils and mine tailings is not regulated by the Alaska Department of Environmental Conservation, these materials shall not be disposed of in lakes, ponds, and wetlands unless upland disposal sites are not practicable, with consideration of social and environmental effects. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence or important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not permissible. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods. The district policy must include predictability, and may not use unpredictable vague language such as "to the extent not regulated by DEC." The district should simply submit its policies, and DEC can comment in its public review draft whether the proposed policy intrudes upon DEC's regulatory purview.
Policy F-3: Sand and Gravel Excavation Areas This policy establishes a priority for location of sand and gravel mining sites. Applicants must demonstrate, and the borough must approve, that all higher	The word "mining" must be changed to "extraction" to conform to the language in the state standard Sand and Gravel Extraction.

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preference alternatives have been considered and are not practicable, with consideration of environmental and social effects. The following list of sites begins with the most preferable. i. Existing, approved upland sand and gravel pits. ii. Reuse of sand and gravel from areas where facilities are no longer used. iii. New upland sand and gravel sites. iv. Rivers, streams and lakes that do not support fish or critical habitat for biological resources. v. Marine shoreline and offshore sand and gravel sources, and vi. Floodplain sites or from small streams. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence or important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	See the OPMP's preliminary comments on the use of the term "with consideration of environmental and social effects"
Policy F-4: Coastal Sand and Gravel Extraction When a finding pursuant to Policy F-3 supports sand and gravel mining in coastal waters, intertidal areas, barrier islands and spits, and there is a significant public need for the materials, the applicant shall: i. Avoid significant adverse effects to anadromous fish spawning and rearing habitat and waterfowl habitat, ii. Mine from river types in the following order or preference: braided, split channel, meandering, sinuous, and strait, and use exposed large gravel bars in these river types when available, iii. Avoid or minimize alterations to channel hydraulics and water diversion, iv. Maintain buffers between active channels and areas to be mined, v. Avoid in-stream, unnecessary clearing of riparian vegetation and disturbance to natural banks, vi. Design configuration of site to blend with natural features and avoiding use of straight, long lines, vii. Construct temporary dikes for areas with a potential for inundation from river during mining operations,	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.

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iv. At the completion of mining activities, all disturbed areas will be stabilized, and areas previously vegetated will be re-vegetated with native species, except for areas used for fish enhancement. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	than the director, in his discretion, will require the purchaser of material to rehabilitate the area, and the contract will include special provisions requiring the rehabilitation. These requirements apply to all sites five acres and larger or where 50,000 cubic yards of material is removed or if the operation has a cumulative disturbed area of five or more acres. While DNR requires rehabilitation, rehabilitation practices vary depending on the size of the site and location. State laws do not prescribe rehabilitation practices; therefore more specific measures are acceptable. Statutes pertaining to material (sand and gravel) are found at AS 38.05.110-120; AS 38.05.810. The regulations at 11 AAC 71 relate to sale of material rather than methods for extracting. See the OPMP's preliminary comments on the use of the term "with consideration of environmental and social effects"
G. Coastal Development **Policy G-1. Priority Use for Coastal Development** a) To the extent practicable, with consideration of environmental and social effects, activities adjacent to coastal waters shall be compatible with adjacent land and water uses, including subsistence uses. Where a potentially conflicting or incompatible use is proposed, priority shall be given to subsistence uses and maintenance of sensitive habitat. b) Where uses or activities would displace subsistence activities or adversely affect important habitat, an applicant must demonstrate to the satisfaction of the borough: i. There is a significant public need for the proposed use or activity, ii. There are not practicable alternatives, and iii. The use will avoid significant effects to subsistence use and important habitat, or the applicant has received approval from the borough for measures to mitigate the adverse effects. ***Subject Uses:*** This policy applies throughout the coastal area for areas	As written, policy does not flow from 11 AAC 112.200. It could be tied to 112.200(c) if following changes were made. In part a), replace "[activities adjacent to coastal waters]" with "<u>the placement of structures in coastal waters</u>".... The second sentence of part a) and part b) are not permissible because the mitigation sequence in the habitats and subsistence state standards adequately address the matter. The justification that "The statewide coastal development standard does not address this type of priority use" is an improper justification, as it contravenes the requirement that a district policy must flow from a state standard; if there is no applicable state standard that addresses a given use, then a district policy cannot create one to cover that subject.

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viii. Use settling ponds when gravel washing operations occur on a floodplain and recycle wash water. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	
Policy F-5: Offshore Mining Extraction of sand and gravel or recoverable minerals from offshore areas shall avoid significant adverse impacts to sensitive habitats, subsistence activities, and navigation. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.
Policy F-6: Reclamation Applicants shall reclaim mined areas, including sand and gravel sites and locatable minerals, to the extent practicable, with consideration of environmental and social effects. Reclamation shall include the following practices as applicable: i. Topsoil, if present, shall be segregated from overburden and both stored above the mean annual floodline, ii. At the end of each mining operation season, all disturbed areas shall be graded to stable slopes or otherwise stabilized to minimize erosion or blend with the natural topography to avoid entrapment of fish, iii. Erosion control measures shall be implemented to stabilize the site,	The regulatory "sequencing process to avoid, minimize or mitigate" is delineated in detail at 11 AAC 112.900. Where impacts cannot be minimized to the maximum extent practicable, then "rehabilitation" is mandatory under that standard. If the district renames this section "Rehabilitation," then to the extent that the policy simply adds specificity to the term as a component in the state mitigation sequencing analysis, the specifics provided here regarding "rehabilitation" would be allowed. The district would also have to document whether the matter is adequately addressed by other state or federal law. AS 27.19.030 – 27.19.050 require reclamation of all mining operations, including sand and gravel extraction. 11 AAC 71.265 are the regulations for rehabilitation and intensive management practices which says nothing more

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designated for subsistence and important habitat and for areas covered by the statewide coastal development standard. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. The statewide coastal development standard does not address this type of priority use.	See the OPMP's preliminary comments on the use of the term "with consideration of environmental and social effects"
Policy G-2: Shoreline Setbacks Unless a use is water-related or water-dependent, facilities shall be setback a minimum of 100 feet from ordinary high water of coastlines and other water bodies. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide coastal development standard. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to setbacks.	This policy is permissible, but confusingly written. The Coastal development standard at 11 AAC 112.300(b) requires prioritization of water-dependent uses and activities, to which the first sentence appears to be responsive. But the remainder of the policy appears to flow from 11 AAC 112.300(a), which allows a management scheme for "coastal land or water uses" "that are economically or physically dependent on a coastal location." Recommend segregating the policy into two distinct sections, one accomplishing the mandates of 11 AAC 112.300(a), and one accomplishing 11 AAC 112.300(b). Also, it is not permissible to apply the standard under areas designated for subsistence or important habitats, which should have their own, independent policies and justifications.
Policy G-3: In-Water Uses, Activities and Structures Activities in fresh or saltwater areas shall not significantly interfere with subsistence activities or jeopardize the availability of subsistence resources or adversely affect other coastal resources and uses. To the extent practicable, with consideration of environmental and social effects, structures and facilities (including bridges, culverts, docks, pipelines, causeways) constructed in or over rivers, streams, lakes, wetlands, tideflats, or marine waters shall be located, designed and constructed to avoid: i. Interferences with subsistence activities and access to subsistence resources, ii. Adverse effects to the natural characteristics of coastal, marine and intertidal habitats, iii. Obstructions to fish and wildlife migration, movement, spawning and rearing, iv. Adverse effects to the direction or velocity of the stream flow or	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.

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interfering with the volume, sediment transport, or substrate characteristics of the stream, and v. Hazard or obstruction to marine transportation or navigation. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide coastal development standard. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity. The statewide coastal development standard does not address this type of priority use.	
H. Transportation and Utilities **Policy H-1: Protection of Coastal Resources and Uses** a. Transportation and utility routes and facilities shall be designed, sited, constructed, and operated to avoid, where practicable with consideration of social and environmental effects, and otherwise minimize adverse effects to: i. Subsistence resources and their habitats, ii. Natural water flow, iii. Native vegetation, and iv. Sensitive areas, including marine mammal haulouts and seabird colonies. b. Where practicable, with consideration of environmental and social effects, the routes shall be: i. Aligned parallel to surface drainage flows, ii. Designed to minimize the need to channel water through culverts, iii. Designed to minimize the need for shoreline protection structures, and iv. Constructed during times when critical life stages of coastal species can be avoided including caribou calving, fish spawning, and bird nesting and molting periods. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to siting and	The state standards at 11 AAC 112.240, 11 AAC 112.280, 11 AAC 112.300 and 11 AAC 112.270 (through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34)), already adequately protects coastal resources and uses with respect to transportation routes and utility routes and facilities. Therefore the policy as proposed is not permissible. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.

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operating transportation and utility routes and facilities.	
Policy H-2: Water Crossings Transportation and utility routes shall avoid crossing waterbodies unless the crossing is necessary to the purpose and function of the facility. To the extent practicable, with consideration of environmental and social effects, crossings shall: i. Be consolidated at a single location unless consolidation will cause more adverse effects than separate crossings, ii. Be constructed during times when significant number of fish and wildlife are present, especially during critical life stages, iii. Use elevated, open pile or pier structures or use adequately sized and placed culverts to maintain natural water flow and movement of fish and wildlife, and iv. Avoid damming of rivers by ice bridges in areas used by over-wintering fish. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to siting and operating transportation and utility routes and facilities.	See response to proposed Policy H-1.
Policy H-3: Port Facilities New port facilities and shipping routes shall be located, designed and constructed to avoid, or minimize when avoidance is not practicable, disturbance to coastal resources and uses including subsistence. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to siting and operating of ports and shipping routes.	See response to proposed Policy H-1.

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Policy H-4: Airstrips New airstrips shall be designed, located and constructed to avoid, or minimize when avoidance is not practicable, physical, visual and acoustical disturbances to subsistence uses, habitat and coastal species. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to siting of new airstrips.	See response to proposed Policy H-1.
Policy H-5: Off-Road Travel Off-road travel shall avoid disturbance to vegetation and permafrost areas. Measures to avoid disturbance include timing of activities to occur when the ground is adequately frozen or has adequate snow cover or by use of vehicles that will not leave permanent damage to the tundra. ***Subject Uses:*** This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards. ***Justification:*** This policy is necessary because state and federal law does not address this level of specificity in regard to damage from off-road travel.	See response to proposed Policy H-1. Alternatively, the policy could be written to apply specifically to disallow ORV use in designated areas. The specific times of the year when ORV use is disallowed must be included, so the policy is precise and prescriptive.
3.6 Definitions The definitions in this section apply throughout the NSB CMP, unless an alternative or contrary meaning is expressly provided. Any word or term not defined below or otherwise defined herein shall be used as it is defined in AS §	**Definitions:** An enforceable policy may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. As such, the district may not define terms in its plan that are already defined in the ACMP statue and regulations, such as

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46.40.210, 11 AAC 110.990, 11 AAC 112.990 or 11 AAC 114.990. Any terms not defined in this section or in the ACMP regulations has the meaning of common or standard usage. The following terms are defined below. 1) "avoid" means a process of preventing adverse impacts to the maximum extent practicable. 2) "active floodplain" means an area that shows evidence of periodic inundation by water, such as a lack of vegetation. 3) "applicant" means the person who submits an application for a consistency review, and that person's successors in title or interest. 4) "beach" means an area affected by wave action directly from the sea. 5) "borough" means the North Slope Borough. 6) "business day" means any calendar day, Monday through Friday, exclusive of holidays. 7) "coastal area" has the meaning given "coastal zone" in AS 46.40.210 except that "coastal area" includes federally owned land and water within the coastal zone. 8) "coastal water" means those waters, adjacent to shorelines, that contain a measurable quantity or percentage of sea water, including sounds, bays, lagoons, ponds, estuaries, and tidally influenced waters. 9) "commercial use" means use involving the storing, wholesaling, retailing, manufacturing or rental of any article, service or substance for cash, trade or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a dwelling unit or accessory building to a dwelling unit and such uses are clearly subordinate to the primary use of the dwelling for residential purposes; 10) "commercial recreational use" means use involving the commercial provision of services including overland, air, or water travel, in support of any of the following: hiking, fishing, hunting, sightseeing, or similar activities. The term includes the activities of guides, transporters, outfitters and commercial air charters for recreational purposes. 11) "consistency recommendation" means the formal comment by the NSB as to whether a proposed use is consistent with the standards of the Alaska Coastal Management Program including the applicable policies of NSB CMP, which is	proposed NSB definition #7, "coastal area," (defined at 11 AAC 112.900(5)); other state law, such as NSB definition #19, "hazardous substances," (defined at AS 18.60.105(9)), or federal law, such as definition #8, "coastal waters," (defined 16 USC 1453(3)). The district must carefully analyze each proposed definition, striking any that repeat, restate, or incorporate by reference terms defined in state or federal law.

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submitted by the borough to the coordinating state agency. 12) "coordinating agency" is the party responsible for making or concurring in a consistency determination. When a proposed use is a federal action or requires an applicable federal or state permit, a state agency will be designated the coordinating agency. 13) "dismantlement, restoration and rehabilitation" means efforts to return a disturbed site to its pre-project conditions with respect to habitat functions. 14) "estuary" means a semi-enclosed coastal body of water that has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage or glacial melt. 15) "estuarine waters" means waters associated with an estuary. 16) "existing use" means the use or uses made of a site as of the date of enactment into Alaska law of this revised CMP. 17) "federal consistency determination" refers to the determination by a federal agency under 15 C.F.R. 930.36 that an activity proposed by the federal agency is consistent to the maximum extent possible with the enforceable policies of the ACMP. 18) "habitat" means areas used by fish, wildlife or plants including, air, water and land. 19) "hazardous substances," "hazardous materials" and "toxic substances" means an element or compound which, when it enters into or upon the water or subsurface land of the state, presents an imminent and substantial danger to the public welfare or health or to the fish, wildlife, vegetation, or any part of the natural habitat in which they are found, and includes, but is not limited to: poisons, pesticides, acids, caustics, infectious or pathological wastes, chemical toilet wastes, radioactive materials, solvents, toxic heavy metals, and oil (a derivative of a liquid hydrocarbon including crude oil, lubricating oil, sludge, oil refuse, or any petroleum-related product or byproduct). 20) "important habitat" means areas designated by state agencies under provisions in 11 AAC 112.300(b)(9) or by coastal districts under 11 AAC 114.250(h). 21) "land" includes submerged land, wetlands, uplands, and interests therein, unless specifically excluded.	

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22) "local government" means any borough, city or tribal government. 23) "major facility" or "major project" means a large-scale development activity that has the potential to significantly impact coastal resources. 24) "material" means (non-negligible), definite, and demonstrable. 25) "minimize", "minimizing", and "minimized" mean to limit or reduce adverse impacts to the smallest amount, extent, duration, size, or degree by selecting the option which uses the most effective method of doing so without violating sound engineering practices or causing other adverse environmental impacts, social costs, or economic costs of unreasonable magnitude in light of the benefit to be gained. 26) "mitigate" means onsite or offsite rehabilitation or restoration of adverse project impacts to a coastal use or resource. 27) "natural hazards" means the following natural processes or adverse conditions that present a threat to life or property in the coastal area: flooding, earthquakes, active faults, tsunamis, landslides, volcanoes, storm surges, ice formations, snow avalanches, erosion, and beach processes. 28) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics. 29) "permit" means a permit, lease, authorization, license, approval, or any other authorization necessary for the completion of a project or a discrete phase of a project. 30) "person" means, without limit, any natural person, corporation, partnership, organization or association, whether incorporated or otherwise, whatsoever. 31) "petroleum" and "petroleum products" mean the same as the definition of "petroleum" found at AS § 46.03.450. 32) "plan" or "this plan" means the NSB coastal management plan. 33) "practicable" means feasible in light of overall project purposes after considering cost, existing technology, and logistics of compliance with the standard.	

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34) "public need" means a documented need of the general public and not that of a private person. When determining whether there is a material need of the general public, the NSB shall specifically consider the following factors, among others, that may apply to particular circumstances whether the use: a) improves the delivery of water, sewer, health or other community services; b) provides or materially contributes to lower-cost fuel or power; c) provides local employment; d) is related to or supports Alutiq culture and values; and e) generates local government revenues greater than the demand for local government expenditures by the use. 35) "reasonably foreseeable" means a fact-specific determination of whether something can reasonably be foreseen; "reasonably foreseeable" does not include remote or speculative consequences. 36) "recreational use" means a use undertaken primarily for pleasure, relaxation, amusement, or refreshment of mind or body, as distinguished from subsistence or commercial recreational uses. It does not include permanent construction, but may include temporary construction, such as tent platforms and lean-tos. 37) "residential use" means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses other than on a temporary basis. 38) "resource extraction" means a use involving the removal for commercial purposes of native vegetation (including timber), topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics. 39) "significant adverse impacts" means a material negative alteration or disturbance of the resource to be protected by the policy or, to disturb or cause a material negative alteration to the ability of a person to engage in the use to be protected by the policy. 40) "state consistency determination" means the formal determination by the coordinating state agency of whether a proposed use is consistent with the enforceable policies of the Alaska Coastal Management Program including the statewide standards and district enforceable policies.	

North Slope Borough Coastal Management Plan: Policy Analysis Table

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41) "structure" means anything constructed by humans which is placed, constructed, erected or located on or under the ground, or attached to something fixed to the ground, such as a floating structure anchored to submerged ground, regardless of size, purpose or whether it is temporary or permanent, including: a) A building; b) A tower, antenna, pole or similar structure; c) Drilling or excavating apparatus, pipelines, pump stations, conveyor belt and similar structures, but not including lightweight, non-permanent apparatus or construction equipment; d) A foundation, or gravel pad; e) A street, road, ice road, ice pad, parking area, or storage area. 42) "temporary use" means use of less than 30 consecutive days. 43) "toxic substances" means the same as "hazardous substances", above. 44) "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. 45) "use" means any development or other activity on a parcel of land.	