ENCLOSURE II — NOAA APPROVAL FINDING CHART FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM

APPROVAL CRITERIA	NOAA's FINDINGS
The state must explain how land and water uses will be managed, and define enforceable polices and other governing authorities. 15 CFR § 923.11(a)(3).	NOAA finds that the ACMP adequately explains how land and water uses will be managed, and the ACMP adequately describes enforceable policies and other governing authorities. The uses to be managed by the ACMP are described on pages 34-41of the June 2, 2005, ACMP Amendment Document (June 2 ACMP Document) and 11 AAC 110.010(b). The subject uses are those uses requiring either state agency authorization or federal consistency review, as described on pages 35 and 36 of the June 2 ACMP Document. As described on page 45 of the June 2 ACMP Document, the enforceable policies of the ACMP are comprised of the policies included in the State resource agency authorities incorporated into the ACMP; the ACMP statewide standards at 11 AAC 112; and the coastal district policies developed and approved under 11 AAC 114.
The program must include sufficient detail to enable affected parties to determine whether an area is designated an area of particular concern. 15 § CFR 923.21(d).	NOAA finds that the ACMP description provides for the designation of areas of particular concern and are adequately described in the June 2 ACMP Document, Chapter 7, and that it includes sufficient detail to enable affected parties to determine whether an area is designated as an APC.
The Inland boundary must include areas where uses are managed, areas of particular concern, waters under saline influence, salt marshes and wetlands, beaches, transitional and intertidal areas, and islands. 15 CFR § 923.31(a)(1) - (a)(7).	NOAA finds that the ACMP inland boundary has not changed as a result of this amendment and therefore includes all of the areas required by the CZMA and 15 C.F.R. part 923. This boundary includes those areas included within the original program approved by NOAA and additional areas added by districts as part of the district plan approval process in place prior to this amendment. The boundary is adequately described in the June 2 ACMP Document, Chapter 2. Detailed maps of the boundary are available from the AK DNR.
The program must identify the means by which the state proposes to exert control over the permissible uses, including a list of relevant constitutional provisions, laws, regulations, and judicial decisions. 16 USC § 1455(d)(2)(D); 15 CFR § 923.41(a)(1) and (b).	NOAA finds that the authorities are both adequately described and of sufficient scope to manage the use subject to the program. These authorities are described primarily in the June 2 ACMP Document, Chapter 4. The authorities include the Alaska coastal management statute (Chapter 46 Alaska Statutes or the "ACMP statute"), the Alaska resource agency authorities and rules listed on pages 36-39 of the June 2 ACMP Document; the ACMP statewide standards at 11 AAC 112; and, the procedures of developing revised district plans and policies at 11 AAC 114. District plans and policies that had been approved prior to the submittal of this amendment to the ACMP sunset on March 1, 2007, at which time only those revised plans and policies which have been approved by DNR, pursuant to this amendment, will be enforceable. Finally, the List of Expedited Consistency Reviews and State Authorizations (the "ABC List"), as modified on May 25, 2004, provides guidance on the level of ACMP review for various projects subject to such review.

ENCLOSURE II — NOAA APPROVAL FINDING CHART FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM	
APPROVAL CRITERIA	NOAA's FINDINGS
Technique A - Local implementation –The program must include criteria and standards for local implementation, subject to administrative review and enforcement. 16 USC § 1455(d)(11)(A).	NOAA finds that the ACMP provides sufficient criteria and standards regarding district plan and enforceable policy development in Section 5.3 in the June 2 ACMP Document Chapter 5 (pp. 68-108). The development of district plans is voluntary, and is intended to complement, but not replace the statewide policies at 11 AAC 112.
Technique A – The state must have the ability to ensure coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the CMP can be implemented directly by the State; 15 CFR § 923.42(b)(3).	NOAA finds that the procedures discussed in Section 5.3 of the June 2 ACMP Document provide adequate guidance to ensure that district plans and enforceable policies are consistent with the statewide standards. Furthermore, the State is responsible in all cases for directly implementing the statewide standard directly through the State and Federal consistency process.
Technique A – The state must have a procedure where the State reviews and certified the local programs compliance with State standards and criteria including opportunities for the public and governmental entities (including Federal agencies) to participate and make their views know in the development of local programs; and 15 CFR § 923.42(b)(4).	NOAA finds that the procedures for the development, review, and approval of district plans and enforceable policies is sufficiently described in 11 AAC 114 (*see* p. 26 in the June 2 ACMP Document) and provides adequate opportunity for public and Federal agency review.
Technique A – The state must have the ability to assure implementation and enforcement of a local program once approved. 15 CFR § 923.42(b)(5).	NOAA finds that 11 AAC 114.365 and .375 provide adequate authority and procedures to assure implementation and enforcement of approved district plans (*see* pp. 20-30 in the June 2 ACMP Document).
Technique B – The state must have requisite direct authority to plan and regulate land and water uses subject to the CMP 15 CFR § 923.43(b).	NOAA finds that the ACMP statute, as amended, when combined with existing State authorities (State permit, lease, and other authorizations) listed on pp. 36-39 of the June 2 ACMP Document provide adequate authority to manage the identified uses to be managed.

ENCLOSURE II — NOAA APPROVAL FINDING CHART FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM	
APPROVAL CRITERIA	NOAA's FINDINGS
Technique C - 15 CFR § 923.44.	N/A
The Program must incorporate by reference or otherwise all requirements established by the Clean Water Act (CWA), or the Clean Air Act (CAA), or established by the Federal Government or by any state or local government pursuant to such Act. 16 USC § 1456(f); 15 CFR § 923.45.	NOAA finds that the ACMP incorporates the statutes and regulations of the DEC with respect to the protection of air, land and water quality identified in AS 46.40.040(b). These have been adequately described in the June 2 ACMP Document, Chapter 5. The State standards at 11 AAC 112.310 contain the ACMP air and water quality requirements, as administered by DEC.
State must be organized to implement the CMP, and the organizational structure must be fully described. 16 USC § 1455(d)(7) and (d)(2)(F); 15 CFR § 923.46.	NOAA finds that the ACMP organizational structure including the DNR as lead agency, other State agencies and local government responsibilities necessary to implement the ACMP, as described in the June 2 ACMP Document, Chapter 3 and Chapter 6, is adequate to implement the revised ACMP.
The state must hold at least two public hearing during the course of program development, one of which will be on the total scope of the CMP, covering the substance and content of the proposed CMP. 15 CFR § 1455(d)(4); 15 CFR § 923.58(a).	NOAA finds that the Alaska legislative scheduled hearings on HB 191, SB 143, HB 69 and HB 86, which allowed the committee members to hear public testimony on the program development of the ACMP, and the public hearing on the total scope of the ACMP on held on May 20, 2005 meet this requirement. *See* June 2 ACMP Document, Chapter 8.
The state must provide a minimum of 30 days public notice of hearing dates and locations 15 CFR § 923.58(b).	The State provided a 30-day notice for the May 20, 2005, hearing.

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APPROVAL CRITERIA	NOAA's FINDINGS
The state must make available for public review, at the time of public notice, all agency material pertinent to the hearings. 15 CFR § 923.58(c).	Same as above. All material was available on the ACMP web site: http://www.alaskacoast.state.ak.us/ . Therefore the State has met this requirement
The state must include a transcript of summary of the public hearing(s). 16 USC § 1455(d)(4); 15 CFR § 923.58(d).	Transcripts of the hearings can be found at http://www.legis.state.ak.us/basis/start.asp. Therefore the State has met this requirement
The state must contact relevant federal agencies, allow for their full participation, and adequately consider their views. 16 USC § 1456(b); 15 CFR § 923.51(a) and (d)(1).	NOAA finds that the ACMP provided for sufficient contact with Federal agencies and that these criteria have been adequately met. *See* June 2 ACMP Document, Chapter 8. (page 164)
The State must provide for Federal agency input on a timely basis as the program is developed. 16 CFR § 923.51(d)(2).	Same as above.
The state must solicit statements from the head of Federal agencies as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature. 15 CFR § 923.51(d)(3).	These statements were obtained as part of original program approval. As noted above, Alaska coordinated with Federal agencies and the national interest statements were not revised by review of this amendment.

ENCLOSURE II — NOAA APPROVAL FINDING CHART FOR AMENDMENT TO THE ALASKA COASTAL MANAGEMENT PROGRAM	
APPROVAL CRITERIA	NOAA's FINDINGS
The state must summarize the nature, frequency, and timing of contact with relevant Federal agencies. 15 CFR § 923.51(d)(4).	The State described contact with Federal agencies. *See* June 2 ACMP Document, Chapter 8. (page 164).
The state must evaluate Federal comments received during the program development process. 15 CFR § 923.51(d)(5).	Same as above. In addition, Federal agency comments on the DEIS can be found in Appendix E, and responses to those comments, can be found Attachment F of the FEIS.
The State must describe the public notice procedures for Federal License and permit activities and, where appropriate, OCS plans. 15 CFR §§ 930.42, 923.53(a)(4), 930.61, 930.62, 930.78.	NOAA finds that Alaska's description of public notice procedures for federal license or permit activities and, where appropriate, OCS plans, are adequate. *See* June 2 ACMP Document Chapter 6 (pp. 110/111 and 138.)

Enclosure III: Enforceable Policies Identified in the June 2, 2005 Amendment to the Alaska Coastal Management Program

The enforceable policies of the Alaska Coastal Management Program (ACMP) include: 1) the substantive standards contained within State resource agency authorities incorporated into the ACMP; 2) the ACMP statewide standards at 11 AAC 112; and 3) coastal district enforceable policies developed and approved under 11 AAC 114.

1) State Resource Agency Authorities

The substantive standards contained within the following State resource agency authorities, permit, or lease programs as of June 2, 2005

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

- Permit to apply pesticides to waters of the state, aerial application on public or private land, and right-of-way applications for pesticide use which fall under the purview of the DEC permit to apply pesticides. (AS 46.03.320, 18 AAC 15, 18 AAC 90.500, 18 AAC 90.505).
- Transfer, storage, and disposal (TSD) Resource Conservation and Recovery Act (RCRA) Hazardous Waste. (AS 46.03.302, 18 AAC 63).
- Air quality control construction permit that approves air emissions. (AS 46.14.120, AS 46.14.130, 18 AAC 15, 18 AAC 50).
- Air quality control operating permit that approves air emissions. (AS 46.14.120, AS 46.14.130, 18 AAC 15, 18 AAC 50).
- Solid waste disposal permit. (AS 46.03.020, AS 46.03.100, AS 46.03.110, AS 46.03.120, 18 AAC 15, 18 AAC 60).
- Reclassification of state waters. (AS 46.03.020, 18 AAC 15, 18 AAC 70.230).
- Waste disposal permit (wastewater discharge). (AS 46.03.020, AS 46.03.100 & 110, AS 46.03.120 & 710, 18 AAC 15, 18 AAC 70, 18 AAC 72).
- 401 Certification-Certificate of Reasonable Assurance Section 401. (AS 46.03.020, 18 AAC 15, 18 AAC 70, 18 AAC 72).
- Oil discharge contingency plans for offshore facilities and onshore fuel storage facilities with a capacity of 10,000 barrels or greater. (AS 46.04.030, AS 46.04.050, 18 AAC 75.400 – 496).
- Oil discharge contingency plans for oil tankers and oil barges. (AS 46.04.030, 18 AAC 75.400 – 496).

DEPARTMENT OF FISH AND GAME

- Permit to operate a clam dredge. (5 AAC 38.050).
- Aquatic farm and hatchery permit. (AS 16.40.100, 5 AAC 41).
- Special Area Permit. (AS 16.20, 5 AAC 95).
- Hatchery permit (Private Non-Profit). (AS 16.10.400 – 430).

DEPARTMENT OF NATURAL RESOURCES

Division of Agriculture

- Lease of cleared or drained agricultural land. (AS 38.07).
- Disposal of agricultural interest. (AS 38.05.321, 11 AAC 67.167 – 188).
- Approval of application for clearing or draining of agricultural land in vicinity of state land. (AS 38.07.030).

Division of Forestry

- State timber sale and personal use contract of more than 10 acres in the spruce-hemlock coastal forests (OPMP Southeastern region and Prince William Sound) and more than 40 acres in interior forests south of the Alaska Range (OPMP Southcentral region excluding Prince William Sound), and any timber sale which includes timber lands within 90 meters from anadromous and high value resident fish waters. State timber sale and personal use contract of more than 160 acres north of the Alaska Range (OPMP northern region), and any timber sale that includes timber lands within 30 meters of anadromous and high value resident fish waters. Negotiated Timber Sales to Local Manufacturers. (AS 38.05.110, AS 38.05.118, AS 38.05.120, AS 38.05.123, 11 AAC 71).
- Log salvage sales. (AS 38.05.110, AS 38.05.118, AS 38.05.120, 11 AAC 71.400 – 430).

Division of Mining, Land and Water

- Aquatic farming and hatchery lease. (AS 38.05.083, 11 AAC 63).
- Coal lease sales. (AS 38.05.150, 11 AAC 85).
- Coal prospecting permit. (AS 38.05.145, AS 38.05.150(c), 11 AAC 85.110).
- Disposal of land by auction or lottery. (AS 38.05.050 – 057, 11 AAC 67).
- Grazing lease. (AS 38.05.070, AS 38.05.075, 11 AAC 60).
- Homestead Disposal. (AS 38.09, 11 AAC 67.138 – 155).
- Lease, sale, grant, or other disposal. (AS 38.05.070-075, 11 AAC 58, 11 AAC 60).
- Lease of Tidelands. (AS 38.05.070-075, 11 AAC 62).
- Material Sales, except sales from approved upland sources and personal use contracts. (AS 38.05.110 – 120, 11 AAC 71).
- Offshore mining lease and sale. (AS 38.05.145, AS 38.05.250, 11 AAC 86.530 – 580).
- Offshore mining prospecting permit. (AS 38.05.250(a), 11 AAC 86.500 – 535).
- Oil and natural gas pipeline right-of-way leasing. (AS 38.35, 11 AAC 80.005 – 055).
- Phosphate lease. (AS 38.05.145, AS 38.05.155, 11 AAC 84.200).
- Potassium compound prospecting permit and lease. (AS 38.05.145, AS 38.05.175, 11 AAC 84.600).

- Right of way or easement permit for roads, trails, ditches, pipelines, drill sites, log storage, telephone or transmission lines, outfall lines, or access corridors. (AS 38.05.850, 11 AAC 51).
- Sodium compound prospecting permit and lease. (AS 38.05.145, AS 38.05.165, 11 AAC 84.400).
- Sulphur prospecting permit and lease. (AS 38.05.145, AS 38.05.170, 11 AAC 84.500).
- Tideland Conveyance. (AS 38.05.820, AS 38.05.821, AS 38.05.825, 11 AAC 62).
- Upland mining lease. (AS 38.05.185, AS 38.05.205, 11 AAC 86.300 – 350).
- Water use permit. (AS 46.15, 11 AAC 93).
- Approvals subject to the Alaska Surface Coal Mining Control and Reclamation Act (SMCRA), other than Notices of Intent to Explore. (AS 27.21.030, AS 27.21.060, 11 AAC 90.001).
- General land use permits, except for those classified as categorically consistent (A List) or generally consistent (B List) approvals. (AS 38.05.850).
- Miscellaneous land use permit for mining activity or mineral exploration. (AS 38.05.020, AS 38.05.035, AS 38.05.850, 11 AAC 96).
- Mining reclamation plan approval. (AS 27.19, 11 AAC 97).
- Approval of plan of operations or plan of development on leased lands (Deadline does not apply when the plan is included in the lease at the time of the sale). (AS 38.05.035, AS 38.05.070 – 075, 11 AAC 62.700).
- Plans of operations on leased lands or land subject to an offshore prospecting permit. (AS 38.05.020, AS 38.05.035, 11 AAC 96).
- Material mining reclamation plan approvals. (AS 27.19, 11 AAC 97).
- Temporary water use permits for water withdrawals, except for withdrawals from sources classified as categorically consistent or generally consistent approvals. (AS 46.15.155, 11 AAC 93).
- Tideland use permit. (AS 38.05.850, 11 AAC 96).

Division of Oil and Gas

- Oil and gas licenses and leases. (AS 38.05.131 – 134, AS 38.05.135, AS 38.05.145, AS 38.05.180, 11 AAC 83).
- Geothermal lease sales. (AS 38.05.145, AS 38.05.181, 11 AAC 84.700 – 790).
- Oil shale lease. (AS 38.05.145, 11 AAC 84.300).
- Application to drill geothermal wells. (AS 41.06.050).
- Plan of operations on lease lands. (AS 38.05.135, AS 38.05.145, AS 38.05.180, 11 AAC 83.158).
- Geophysical exploration permit. (AS 38.05.020, AS 38.05.035, AS 38.05.180, 11 AAC 96).
- Geothermal prospecting permit. (AS 38.05.145, AS 38.05.181(g), 11 AAC 84.700 – 790).

Office of Habitat Management and Permitting

- Fish habitat permit. (AS 41.14.840, AS 41.14.870).

Division of Parks and Outdoor Recreation

- Authorization to construct structure in state parks. (AS 41.21.020, 11 AAC 12.140, 11 AAC 18.010).
- Authorization to use explosives in state parks. (AS 41.21.020, 11 AAC 12.195, 11 AAC 18.010).
- Permit for access across state parks. (AS 41.21.024, 11 AAC 18.010).
- Special use permit. (AS 41.21.020, 11 AAC 18.010).
- Archaeological Permit for the excavation of historic or archeological resources. (AS 41.35.080, 11 AAC 16.030 – 080).

2) The Statewide Standards of the Alaska Coastal Management Program at 11 AAC 112, effective June 25, 2005.

- 11 AAC 112.200. Coastal development.
- 11 AAC 112.210. Natural hazard areas.
- 11 AAC 112.220. Coastal access.
- 11 AAC 112.230. Energy facilities.
- 11 AAC 112.240. Utility routes and facilities.
- 11 AAC 112.250. Timber.
- 11 AAC 112.260. Sand and gravel extraction.
- 11 AAC 112.270. Subsistence.
- 11 AAC 112.280. Transportation routes and facilities.
- 11 AAC 112.300. Habitats.
- 11 AAC 112.310. Air, land, and water quality.
- 11 AAC 112.320. Historic, prehistoric, and archeological resources.
- 11 AAC 112.900. Sequencing process to avoid, minimize, or mitigate.
- 11 AAC 112.990. Definitions.

3) The enforceable policies contained in Approved Coastal District Management Plans.

Coastal districts are currently revising their plans including enforceable policies to meet the requirements of the amended ACMP. Over the next several years, the enforceable policies of district plan will be will be revised as each district coastal management plan is reviewed, and approved under 11 AAC 114, and is reviewed, and approved by OCRM at the federal level. .The districts with approved plans as of June 2, 2005, include:

- Aleutians East Borough
- Aleutians West Coastal Resource Service Area
- Bering Straits Coastal Resource Service Area
- Bristol Bay Borough
- Bristol Bay Coastal Resource Service Area
- Cenaliulriit Coastal Resource Service Area

- City and Borough of Juneau
- City and Borough of Sitka
- City and Borough of Yakutat
- City of Angoon
- City of Bethel
- City of Cordova
- City of Craig
- City of Hoonah
- City of Hydaburg
- City of Kake
- City of Klawock
- City of Nome
- City of Pelican
- City of St. Paul
- City of Skagway
- City of Thorne Bay
- City of Valdez
- City of Whittier
- Kenai Peninsula Borough
- Ketchikan Gateway Borough
- Kodiak Island Borough
- Lake and Peninsula Borough
- Matanuska-Susitna Borough
- Municipality of Anchorage
- North Slope Borough
- Northwest Arctic Borough

ATTACHMENT 2

APPENDIX H: Essential Fish Habitat Assessment; Alaska Coastal Management Program Amendment

Essential Fish Habitat Assessment
Alaska Coastal Management Program Amendment

This assessment of Essential Fish Habitat (EFH) for the proposed action to approve a program amendment to the Alaska Coastal Management Program (ACMP) is being provided to the National Marine Fisheries Service (NMFS) by the Office of Ocean and Coastal Resource Management (OCRM) in conformance with the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The North Pacific Fishery Management Council has amended its five Fishery Management Plans accordingly to designate EFH necessary to support federally-managed fisheries in the Gulf of Alaska and the Bering Sea/Aleutian Islands. The MSA in turn requires federal agencies to consult with NMFS on all proposed actions permitted, funded, or undertaken by the agency that may adversely affect EFH.

Proposed Action

In 2003 the State of Alaska adopted legislation and regulations that resulted in a comprehensive set of changes to the federally-approved ACMP. The overall purpose of the amendment was to improve the State's consistency review process both in timing and predictability and thereby reduce duplication of permit review. Legislative actions included: the elimination of the original Program's Coastal Policy Council and transferal of its duties to the Alaska Department of Natural Resources (DNR); replacement of the current statewide standards and coastal district plans with standards and local enforceable policies that were considered less susceptible to subjective interpretation and non-duplicative of existing requirements; and clarification that matters regulated or authorized by state or federal law were not subject to local enforceable policies, unless the policy relates specifically to a matter of local concern. Details of the program amendment can be found in the Final Environmental Impact Statement (FEIS) posted on OCRM's website at http://coastalmanagement.noaa.gov/pcd/up.html and the Alaska Coastal Management Program's website at http://www.alaskacoast.state.ak.us.

Several program changes have been highlighted for this assessment because of their potential to have a direct, indirect, or cumulative effect on EFH. They include: significant revisions to policies for mining, habitat, and mitigation; changes to the consistency review process involving matters regulated by the Department of Environmental Conservation; and the diminished level of involvement by coastal district governments in the federal consistency review process.

Background on Proposed Changes Having the Potential to Effect EFH

Elimination of the mining and mineral processing standard

The mining and mineral processing standard, pertaining mainly to hard rock and placer mining has been removed as a use subject to the ACMP, and replaced with a narrower standard that addresses sand and gravel extraction in barrier islands and saltwater areas. The State has indicated that existing state and federal law and regulations are sufficient to address any environmental impacts from mining and mining activities that were originally covered by the state and district standards.

The effect of the original mining standard was to ensure that mining activities either taking place in the State's coastal zone, or having effects on the State's coastal resources would have to be "regulated, designed and conducted" so that it met all of the other standards in the State's coastal program, including the state's habitat and subsistence standards, and any district program policies that included mining policies. Under the CZMA and its federal consistency provisions, this included mining activities that occurred on federal lands, if they affected the State's or a district's coastal resources. With the removal of mining as a specific use of concern to the ACMP, while other state and federal laws may apply to mining-related activities, federal agencies are no longer required to ensure that their direct mining activities or permits are in compliance with state and district coastal standards.

Three federal permits are required for conducting mining activities in Alaska: the U.S. Environmental Protection Agency's National Pollution Discharge Elimination System permit for discharge of water into stream, river, wetland, or any other natural body of water; the U.S. Army Corps of Engineers' Clean Water Act Section 404 and general permits for activities in wetlands and River and Harbors Act Section 10 permits for any structure or work that could obstruct traditionally navigable waters; and an ESA section 7 consultation and authorization from the appropriate land management agency, such as the U.S. Forest Service or Bureau of Land Management if a project is on federal lands. None of these federal permit programs include policies that are specific to local district resources or issues.

In terms of mining on state lands, the removal of mining from the ACMP standards will have a similar effect. While general state laws will continue to apply to mining-related activities, previously, mining activities themselves were required to be consistent with the State's coastal standards and district program policies. Some district programs had specific mining policies, many of which included being involved in the siting and planning process. These assurances have been removed.

The State offers several approaches to district programs in order for them to compensate for the loss of mining as a use subject to the ACMP. First it suggests that districts may address mining-related activities through other standards such as utility routes and facilities, transportation routes and facilities, energy facilities, or subsistence, and district enforceable policies approved under 11 AAC 114. Yet the State has changed several of these standards, making it unclear whether the redundancy that led to the removal of the original mining policy still exists. Secondly, the State has established new requirements for the development of district plans under 11 AAC 114 that may make it difficult for a district to include enforceable policies in its plan that addresses mining-related activities. Ultimately, the districts that currently have mining standards in place will lose their ability to apply them and may experience difficulty adopting other compensatory standards.

Changes to the habitat policy

The State made several significant changes to the habitat standards. The largest change is the

removal of introductory language to the section requiring that each type of habitat be managed to "maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources." The standard was felt to be "vague and unrealistic...and contained no level of predictability as to how the test was to be applied." The State rewrote the habitat standard so that, with the exception of rocky islands and sea cliffs and barrier islands and lagoons, each type will now be managed for very limited habitat values. (See Section 5.3.2.12 in the EIS for a description of the changes that were made to the remaining eight habitat areas).

As part of the overall amendments to the ACMP, the State is placing a new emphasis on the other existing state resource agencies' authorities and their coverage of habitat management, including the components of habitats that contribute to biological productivity. Those state resource agency authorities are applicable throughout Alaska. Besides the state's Water Quality Standards, handled and enforced separately through the Department of Environmental Conservation, the most relevant statutes pertaining to the protection of fish and wildlife habitat include the Fishway Act and the Anadramous Fish Act.

In addition, the State has built into the ACMP several mechanisms for designating "important habitats" to account for any resource that may be inadequately addressed through other state or federal laws or regulations. The districts can identify habitats that are of local importance and significance (i.e., as a matter of local concern) and develop additional enforceable policies to further manage those habitats. In addition, the State can designate important habitats on a case-by-case basis during a project's consistency review. Important habitats are part of the habitat standard and bolster the general habitat standard by managing those "important habitats" to "avoid, minimize, or mitigate significant adverse impacts of the special productivity of the habitat." With the exceptions noted above, the only time a particular habitat receives more holistic review is if it is designated an "important habitat." Finally, upland habitat was dropped as a habitat directly subject to management, although a rather cumbersome process is provided for the designation of uplands as important habitat.

Changes to the mitigation policy

Changes have been made to the state's sequencing process to avoid, minimize, or mitigate adverse impacts to affected coastal resources from development projects. The mitigation policy is an element of the habitat, utilities, and transportation standards. As described in the previous section on habitat, the original standard was the "maintain or enhance" requirement. The process of "to avoid, minimize, or mitigate" involves avoidance of impacts where practicable, minimization of impacts where avoidance is not practicable, and compensating for impacts to the extent appropriate and practicable. According to the state's mitigation policy, deference will be given to federal mitigation requirements.

In the course of modifying this requirement, the State further clarified that the current mitigation standard does not involve monetary compensation (or fee in lieu) of impacted resources, nor does the standard require a no net loss of coastal resources. Further, the terms "restore" and "replace"

impacted coastal resources were replaced with the term "rehabilitate." It was determined that rehabilitation, or the return of at least some ecosystem function and some original species, would be a more realistic goal for large-scale projects.

Exclusion of Alaska Department of Environmental Conservation (DEC) Permits and Authorizations

In a change to the ACMP consistency process, the Districts may no longer adopt policies that address any air, land, or water quality issue potentially regulated by DEC. HB 191 mandates that issuance of DEC permits, certifications, approvals, and authorizations in and of themselves establishes consistency with the ACMP for those activities of a proposed project subject to those permits, certifications, approvals, and authorizations. In other words, activities regulated by DEC will no longer be reviewed for consistency with other statewide standards. While HB 191 has deliberately and explicitly carved DEC out of the consistency process, the statutory and regulatory provisions of DEC for air, land, and water quality are still incorporated into the ACMP which is a requirement for approvability under the CZMA.

Changes to District plan guidance

A hallmark of the ACMP has been the balance in decision-making between the state and district programs and the strong representation by districts on the now defunct Coastal Policy Council. Decision-making has been centralized at the state level and the end effect has been to greatly reduce the ability of coastal districts to manage coastal resources and uses. In addition, many of the state-level changes to policies can no longer be easily addressed at the district level. This is because the new process will constrain the districts from setting policies and impose a cumbersome process for designating important habitats and identifying matters of local concern.

Essential Fish Habitat Affected by the Proposed Action

EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The rule triggers mandatory consultations by federal agencies on proposed actions that may adversely affect EFH for federally-managed species so that NMFS can suggest measures for conserving and enhancing the habitat necessary for these species to carry out their life cycles. An adverse effect on EFH is any impact that reduces the quality and/or quantity of EFH. Adverse effects may be site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. In a related effort, Fishery Management Councils (FMCs) are encouraged to identify Habitat Areas of Particular Concern within EFH based on four considerations: ecological importance, sensitivity to environmental degradation, susceptibility to stress from development, and/or rarity.

Five FMPs exist for fisheries in Alaska. They cover groundfish in the Gulf of Alaska, groundfish in the Bering Sea and Aleutian Islands (BSAI), crab in the BSAI, and salmon and scallops statewide. Those relating to the proposed action would include the shallow water flatfish component of the groundfishery in GOA and BSAI, crab in the BSAI, and statewide salmon and

scallop plans.

As elsewhere, EFH in Alaska is closely interconnected with other aquatic and terrestrial environments. While the NMFS EIS issued in 2005 mainly reexamined the effects of fishing on EFH, there was also a section included on the diverse array of non-fishing activities that may adversely affect EFH in the State. Appendix G is instructive because it demonstrates the degree of potential overlap that exists between these types of activities and the scope of the amended portions of the ACMP that are the subject of this EFH assessment. The broad categories of these activities include, but are not limited to mining, dredging, fill, impoundment, discharge, water diversions, actions that contribute to nonpoint source pollution and sedimentation, introduction of potentially hazardous materials, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. These are activities that would be subject typically to a variety of regulations and restrictions designed to help avoid or minimize adverse effects to EFH under federal, state, and local laws.

The activities have been grouped into four systems in which the activities usually occur: upland, river or riverine, estuary or estuarine, and coastal or marine. Each of these systems contains important habitat types that support one or more functions in the life cycle of managed species. For each activity, the processes or mechanisms that may cause the adverse effect and what that potential effect on EFH may entail are described. Finally, this section of the document contains generic lists of conservation measures that may be appropriate for each activity to avoid, offset, or mitigate impacts to EFH.

According to NMFS, the upland activity posing the greatest potential threat to aquatic habitat is urban and suburban development. Adverse impacts can range from physical and biological changes to changes in hydrology and water quality. Land runoff and particularly runoff from impervious surfaces is the most widespread source of pollution in aquatic systems. Road building and maintenance can be another significant source of adverse impacts on aquatic systems.

Notable activities occurring in riverine systems with the potential to adversely impact EFH includes mining, organic and inorganic debris, dam operations, and commercial and domestic water use. Mining can be surface or underground mining. Materials being removed can be sand and gravel, metals, minerals, or coal. Potential impacts from mining include increased erosion of habitat from changes to hydrology, removal of substrates that serve as habitat for fish and invertebrates, habitat conversion, and harmful levels of turbidity. The placement of tailings and leaching of extracted chemicals can be a particularly serious threat to EFH. Naturally occurring organic debris contributes to habitat complexity and its removal can alter the ecological conditions of EFH. Land and ocean-based sources of inorganic debris can cause a range of impacts. Dams impede migration and affect flow rates and current patterns and thermal conditions. Increasing demands for water will lead to greater reliance on water diversions and impoundments with attendant impacts on habitat structure and function.

Estuarine activities with the potential to adversely affect EFH include: dredging and the disposal of dredged material; vessel operation and the infrastructure needed to support marine

transportation; overwater structures; structural approaches for flood control and shoreline protection; installation of utility lines, cable, and pipelines; and the commercial use of habitat.

Activities of potential concern in coastal and marine systems range from point-source discharges of municipal sewage or storm water to oil and gas exploration, development, and production. The most significant pollution threat to marine waters in Alaska is the atmospheric transport and deposition of persistent organic pollutants from remote sources.

There are over 100 federally-managed species in Alaska that are dependent on EFH for at least a portion of their lifecycle. Table 1 contains a list of the principle target species that may be affected by the proposed action due to potential effects on EFH. More detailed information on these species can be found in the individual EFH assessment reports for the various fisheries included in the final EFH EIS for Alaska. More general information from that source is excerpted below. Loss of prey and prey habitat also can have an adverse effect on EFH, although the effect of the proposed action on forage fish and other species is beyond the scope of this assessment.

Salmon fishery: While life history information is limited for many species, there is a significant body of information available for the five species of salmon (pink, chum, sockeye, chinook, and coho) and steelhead trout that occur in Alaska. With some important variations, all species have a similar appearance and anadromous life history (EFH FEIS 2005). Freshwater EFH for Alaska's salmon fisheries include a diverse array of accessible aquatic habitats (e.g., streams, lakes, ponds, wetlands) throughout the State. Marine EFH used by Pacific salmon species includes tidally influenced and estuarine areas to the limits of the U.S. Exclusive Economic Zone. Virtually all coastal waters in the State provide important habitat for anadromous fish and many other essential waterbodies have yet to be surveyed.

Groundfish fishery in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI): With some exceptions, flatfish under these two FMPs are managed in two groups: as "deep water flatfish" and "shallow water flatfish." The latter group is mainly relevant to the proposed action. In the GOA, shallow water flatfish include northern and southern rock sole, yellowfin sole, starry flounder, butter sole, English sole, Alaska plaice, and sand sole. The most abundant flatfish species in the Bering Sea and Aleutian Islands ground fishery is the yellowfin sole, with the center of its distribution on the eastern Bering Sea shelf. Spawning occurs primarily in shallow water at depths of less than 30 meters. Larvae and juveniles remain in shallow areas and move to the continental shelf as adults before returning to reproduce. Alaska plaice is the second most abundant and commercially important of the flatfish species. Larval development is thought to occur in shallow waters.

BSAI King and Tanner Crab Fishery: King and tanner crab species migrate seasonally to shallow inshore areas for reproduction and molting. Specifically, this habitat provides critical cover to protect crabs during these sensitive life history stages.

Weathervane Scallop Fishery: Weathervane scallops are found from intertidal waters to depths

of 300 meters, although abundance is greatest between 45 meters and 130 meters on beds of mud, clay, sand, and gravel.

Table 1. Fisheries management plans and managed species affected by the federal action

Common Name	Scientific Name	Distribution
Salmon Fisheries FMP		
Pink	*Onchorhynchus gorbuscha*	Inland rivers to off shelf
Chum	*O. keta*	Inland rivers to off shelf
Sockeye	*O. nerka*	Inland rivers to off shelf
Coho	*O. kisutch*	Inland rivers to off shelf
Chinook	*O. tshawytscha*	Inland rivers to off shelf
Steelhead trout	*O. mykiss*	Inland rivers to off shelf
BSAI and GOA Groundfish FMPs		
Shallow water flatfish		
Yellowfin sole	*Limanda aspera*	spawn in nearshore areas
Starry flounder	*Platichthys stellatus*	spawn in nearshore areas
Butter sole	*Isopsetta isolepis*	spawn in nearshore areas
English sole	*Parophrys vetulus*	spawn in nearshore areas
Alaska plaice	*Pleuronectes quadriterculatus*	spawn in nearshore areas
Rock sole	*Lepidopsetta polyxstra*	< 250 m
Flathead sole	*Hippoglossus elassodon*	larvae in shallow areas
Others		
Pacific cod	*Gadus macrocephalus*	shore to 500 m
Atka mackerel	*Pleuogrammus monopterygius*	spawn in shallow water
Sablefish	*Anoploma fimbria*	juveniles in nearshore bays
Yelloweye rockfish	*Sebastes ruberrimus*	nearshore
BSAI King and Tanner Crab FMP		
Red king crab	*Paralithodes camtschatica*	shallow inshore areas
Blue king crab	*P. platypus*	shallow inshore areas
Golden king crab	*Lithodes aequispina*	shallow inshore areas
Snow crab	*Chionoecetes opilio*	shallow inshore areas
Tanner crab	*C. bairdi*	shallow inshore areas
Weathervane Scallop FMP		
Weathervane scallop	*Patinopectin caurinus*	intertidal to 150 m

Habitat Areas of Particular Concern

The FEIS for EFH Identification and Conservation in AK issued in April 2005 also evaluated an approach for identifying Habitat Areas of Particular Concern (HAPC), leaving the redefinition of

HAPCs to a follow on environmental assessment. Since this process is still underway, effects of the ACMP program amendment on HAPCs has not been specifically addressed in this EFH assessment.

Potential effects of change to the mining and mineral processing standard on EFH

While more than 75 percent of the federal land in Alaska is closed to mining because it is located in federally-protected areas, there remain about 49.6 million acres of federal land open to mineral entry. There are 95.9 million acres of state land open to mineral entry or an area roughly equivalent to the state of California. Some of the major minerals mined in Alaska include zinc, gold, silver, lead, copper, and coal. As an industry, mining has the capacity to result in significant direct and indirect adverse impacts on EFH. Large-scale mines and the secondary forms of development that must be in place to sustain these operations can modify or eliminate fish and wildlife habitat (including wetlands and tundra), alter terrain and disrupt natural drainage patterns, and degrade air and water quality. While some level of reclamation may be possible once a mine is exhausted, the environment can never be returned to a pristine state and varying conditions of habitat degradation or loss can be permanent.

There are a number of large-scale mining projects in operation or under development in Alaska. Most are located on or near the coast, with mining activity found predominantly in the southeast region of the state and along the Bering Sea coast. The State is poised to accommodate additional mining proposals. Indeed, a number of changes to the ACMP were intended to streamline the review of mining project permits and authorizations coordinated by the State's large mine project team. The State DNR website alludes to the complex nature of these projects and their potential for environmental damage both during and after the life of a mine.

In short, mining will continue to be a regulated activity in the State's coastal area under state and federal law. And while the State's mining and mineral processing standard has been eliminated, the mining standard under the original ACMP simply referred to other ACMP standards, although the State was not specific regarding which of these standards would apply. Because all major activities to be conducted in coastal areas are envisioned to have some federal involvement in terms of permitting authorities mentioned above, individual projects will be required to undergo an EFH consultation. However, smaller-scale projects that don't require a federal license or permit could lead individually and cumulatively to adverse impacts to EFH if efforts are not made to apply conservation measures such as those recommended by NMFS for avoiding or minimizing impacts to habitat.

Potential effects of changes to the habitat policy on EFH

In general, the changes to the habitat policy make the State and districts more reliant on existing state laws for the protection of coastal EFH. The two state laws, the Fishway and Anadromous Fish Acts, are narrow in scope and lack associated regulations. Nonetheless, these laws, in conjunction with federal environmental statutes, will become the primary regulatory programs on which to protect EFH. However, there are some indications that the implementation of the

various changes to the habitat policy will not be necessarily straightforward or ultimately as protective for aquatic habitat. For example, the districts' ability to designate important habitat will not be particularly straightforward and local governments, which may provide more insight or a closer review of permitted activities that will impact coastal resources, may lose their opportunity to provide meaningful input. The State has, however, left open the possibility for both the State and districts to designate "important habitats" for each of these types of habitat, if they can be demonstrated to be of local importance. The elimination of upland habitat as a habitat directly subject to management could have an adverse impact on EFH if the State's ability to adequately control upland development and associated nonpoint sources of pollution were to be affected. So although additional state and federal laws will also continue to apply to habitat protection, it is not clear whether this and other changes will leave the ACMP with the same level of protection that existed previously for EFH.

Potential effects of changes to the mitigation policy on EFH

It does appear that in the course of modifying the policy to make it more realistic, the standard for the restoration and replacement of habitat has been weakened. Replacing the terms "restore" and "replace" impacted coastal resources with the less stringent "rehabilitate" could lead to the gradual decline in environmental quality in the state's coastal zone. Also, the program changes that relate to the ability of district programs to apply the state mitigation standard have been greatly restricted. This will reduce the opportunity for local influence in shaping development proposals that could have an impact on the quality and extent of EFH. Nonetheless, because federal mitigation requirements will likely continue to apply, the changes to the mitigation policy are not likely to adversely affect EFH for large-scale projects.

Potential effects of the DEC carve out on EFH

While the DEC carve-out is a change in the ACMP consistency process, it is not apparent at this point whether the DEC carve-out will affect the operation of the ACMP policies or significantly affect the human environment. The single most important process effect of this change is that districts may no longer adopt policies that address DEC authorities. While these process changes limit the scope of district policies, the DEC policies and standards remain as the air and water quality standards of the ACMP. The DEC permitting process still includes a public review and comment period. Interested members of the public, including coastal districts can comment directly to DEC on any concerns with a proposed activity. Districts also have the ability to provide comments to DEC on DEC-coordinated consistency reviews and can be afforded due deference by the reviewing agency in accordance with the process described on pages 136-138 of the ACMP program submission (see Appendix C of the DEIS).

In addition, the DEC policies will still be applied to federal lands and the OCS through the CZMA federal consistency review process. Moreover, having the DEC standards be the only air and water quality standards for the ACMP complies fully with CZMA section 307(f)(16 U.S.C. 1456(f)), that water and air pollution control requirements developed by the federal government or by any State or local government shall be the water and air pollution control requirements

applicable to a state's coastal management program. Thus, it is not apparent that this provision will result in a change in the level of environmental protection afforded by the ACMP.

Potential effects of changes to the District plan guidance on EFH

There are several possible repercussions to stem from this arrangement. The first is that the decision-making process will not be as robust since there could be less local knowledge of resources and environmental conditions being factored into land use decisions. With fewer district policies, the scope of local decision-making will be curtailed and there is the potential that state laws will not adequately compensate for those omissions. The incentive for local participation in the ACMP may gradually wane, leaving district governments and citizens less engaged in monitoring projects or activities with the potential to impact EFH. Should one or more of these circumstances occur, it is possible to conclude that under the amended ACMP, the level of protection afforded to EFH may not be as strong as it was before.

These possible repercussions, however, are not necessarily inevitable consequences of centralization at the state level, and there will still be opportunities for local participation in the ACMP at the district level. The changes to district plan guidance therefore are not likely to adversely affect the quality or extent of EFH.

Cumulative Impacts

In general, the cumulative impacts of the proposed action, when added to past, present, and reasonably foreseeable future actions, are difficult to analyze in a detailed manner because the impacts of other actions are largely dependent on future, discretionary actions. For example, the Alaska State Legislature recently passed a bill (Senate Bill 110, passed May 10, 2005) that directs DEC to seek and assume primacy for the NPDES wastewater permit program established in the Clean Water Act. If approved by the EPA, this assumption of the NPDES program could potentially result in significant effects, either positive or adverse, to water quality. Nonetheless, any attempt to factor this potential development into a cumulative effects analysis would be speculative, since DEC has not submitted an application at this time. (DEC plans to submit a primacy application to EPA for their approval before July 1, 2006 and plans to assume primacy by June, 2007 if approved by EPA). Similarly, the effects of future development projects affecting the coastal zone will depend on future discretionary actions that are largely speculative and therefore not susceptible to meaningful analysis.

Conclusion

In conclusion, depending on how the proposed amendments to the ACMP are implemented, the amendments could potentially result in some adverse effects to EFH, but such effects are not inevitable, and the amendments could result in no change to the level of environmental protection of EFH.

References

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NMFS Fishery Management Plans for the Five Relevant Alaska Fisheries. 2005.