Evaluation Findings for the Alaska Coastal Management Program From November 1998 to September 2002

February 2004

Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

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I. INTRODUCTION

Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct a continuing review of the performance of States and Territories with Federally approved Coastal Management Programs. This document sets forth the evaluation findings of the Director of OCRM with respect to the Alaska Coastal Management Program (ACMP) for the period from November1998 through September 2002. This document includes an Introduction, Program Review Procedures, Accomplishments, Review Findings and Recommendations, and a Conclusion.

The recommendations made by this evaluation appear in **bold** type and follow the section of the findings in which the facts relative to the recommendation are discussed. The recommendations may be of two types:

(1) **Necessary Actions** address programmatic requirements of the CZMA regulations and of the ACMP approved by NOAA, and must be carried out by the date(s) specified. There are no Necessary Actions within this document.

(2) **Program Suggestions** denote actions which OCRM believes would improve the management and operations of the Program, but which are not mandatory at this time.

The findings contained within this document will be considered by NOAA in making future financial assistance award decisions relative to the Alaska Coastal Management Program.

II. PROGRAM REVIEW PROCEDURES

The Office of Ocean and Coastal Resource Management (OCRM) evaluation staff began review of the ACMP in April 2002. This included an analysis of the approved ACMP, previous and current award documents and performance reports, previous evaluation findings, correspondence relating to the ACMP, and other relevant information.

The OCRM Director's Office and the Coastal Programs Division (CPD) staff coordinated to determine the issues of focus for the evaluation. These included:

* The effectiveness of the Division of Governmental Coordination (DGC) and the State resource agencies in monitoring and enforcing the core authorities which form the legal basis of the ACMP;

* Implementation of Federal consistency by DGC and other networked agencies;

* The provision of technical assistance to local governments on coastal issues, and development and implementation of district coastal management plans;

* The role of the Coastal Policy Council in the ACMP;

* The status of State legislative actions which may affect the ACMP;

* Public and local participation, public education and outreach efforts;

* The manner in which the ACMP coordinates with other State, local and Federal agencies and programs;

* The status of Federal financial assistance awards and adherence to their programmatic terms and conditions; and,

* Changes to core statutory and regulatory provisions of the ACMP.

John H. McLeod, Senior Program and Policy Analyst, Masi Okasaki, Coastal Management Specialist, CPD, and Shamus Malone of the Pennsylvania Coastal Zone Management Program, conducted a site visit September 9 through 16, 2002. The Evaluation Team met with representatives of State and local governments, Federal agencies, interest group representatives, and private citizens during the site visit.

A public meeting was held on Thursday, September 12, 2002 at 7:00 P.M. in the Anchorage Legislative Information Office, 716 West 4th Avenue, Suite 200, Anchorage.

Teleconference connections were provided to Legislative Information Offices in: Ketchikan, Sitka, Juneau, Cordova, Valdez, Homer, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow. **(Appendix A** lists persons contacted in connection with the evaluation; **Appendix B** lists persons who attended the public meeting; **Appendix C** contains written comments received regarding the Alaska's performance during the review period; and **Appendix D** contains the response to the previous findings.)

The ACMP staff were instrumental in setting up meetings and arranging transportation. Their support is gratefully acknowledged.

I11. PROGRAM ACCOMPLISHMENTS

During the period of time covered by this evaluation, November 1998 through September 2002, the Alaska Coastal Management Program has made many significant accomplishments. The details of the most noteworthy of these accomplishments are listed below. It was clear from comments received during the site visit that the ACMP staff maintains a positive rapport with the coastal community at large. As a result, the following accomplishments may be cited.

A) Outreach Activities.

The ACMP views outreach as a dynamic process supporting an ongoing effort to: identify issues; understand operating environments; understand audiences; develop goals, objectives, budgets and schedules; create excellent communication products; and, solicit feedback. The importance and quality of the work provided by this element of program implementation was mentioned throughout the site visit. The networked State agencies, Federal agencies, local governments and the private sector all mentioned the value of the outreach services of DGC. The oil industry emphasized the quality of the work done by the DGC in this regard as good and helpful, noting the annual conference as an excellent opportunity to communicate their interests. CONOCO-Phillips, particularly, has been involved and gave a presentation at the last conference on consistency reviews, specifically from the industry's perspective.

In the last evaluation, DGC was encouraged to establish the position of publication specialist as a permanent full-time classification. Further, the DGC was encouraged to continue its proactive approach in providing tools for ACMP education and outreach, including the completion of the guidebook series and other key components of the ACMP communication plan. Key components of the ACMP Communication Plan are: excellence in communication products; providing training and technical support for ACMP participants; providing outreach support during ACMP processes; stewardship; and strategic proactivity.

Communication products include the *Alaska Beach Cleanup Coordinator's Kit*, a *Pocket Guide to the Alaska Coastal Management Program Project Review Process*, the Guidebook series, a *Handbook of Statutes and Regulations*, a book on the *Enforceable Policies and Standards*, and the *Coastal Currents* publications. In addition, the program has embraced technology to develop on-line database applications predicated on GIS, Web Development, and Document Management processes. An example of training and technical support is the Alaska Coastal Conference which brings together all elements of the program, State, Local, industry, non-profit and other individuals to exchange information on Alaska's coastal matters. The new on-line public notice system and list-serve not only provide outreach support for ACMP processes, but bring technology to the forefront to provide information to Alaska's public.

Stewardship is fostered through a formal recognition system and through working with Alaska's youth in the support of the 1st annual Student Ocean Conference with Coastal America and the "Discover the Zone" game. In summation, the outreach program fully recognizes that "wise coastal stewards are not born, they are the result of education and outreach."

B) Use of Computer Technology.

Currently under development, the DGC Information System is being designed to coordinate information technology initiatives within the organization. Functionally it will support:

> Administrative functions through tracking contacts, generating distribution lists and labels, managing publication distribution, and automating public notices. This improves participation, expands contacts and increases efficiency.
>
> Grant management through supporting online grant applications, online performance reporting, and grant tracking. The result is consistent grant applications and reports, improved efficiency and analysis, and satisfied grantees and grantors.
>
> Outreach with timely, accurate, and complete ACMP information online; readily available presentations and tutorials; and interactive queries and project collaboration tools and information. This provides greater access to coastal information and education tools.
>
> Consistency reviews with the automated coastal project questionnaire, informative project location maps, automated document templates, and online public notices and commenting, thus providing integrated support of the review process, consistent application of administrative rules, and improved public participation.
>
> Coastal program development through process and milestone management, geographically linked enforceable policies, and online commenting. This results in improved programs, public participation, and program implementation.
>
> Coastal Policy Council activities with online meeting minutes and online resolution and decisionmaking which documents policy decisions.

The system is not yet fully developed, however, ACMP staff have made strides in developing and implementing some of the information system components. The system as described above is not fully in place at this time.

C) Consistency Review.

The previous evaluation of the ACMP recommended that resources be directed to the completion of regulations and the single-agency review process. While the consistency review process remains admittedly complicated, the actions to address these recommendations served to strengthen the process and further knowledge of the processes among the networked agencies. During the time of the last review, the U.S. Department of Agriculture Forestry Service, Alaska Region (FS), felt that standards used for timber harvest reviews were vague and that it was being held to a higher standard than other timber sale proponents in the private sector or associated with State timber practices. There were continuing differences of opinion between State and FS over what information needed to be provided for timber sale reviews. On March 2, 2000, FS and DGC executed a memorandum of understanding which describes the process both agencies will follow in making and reviewing consistency determinations for FS initiated activities. This successful negotiation of the MOU completed a 14-year effort. The MOU lists information that FS will provide to the State for timber sale reviews, lists the procedures for dispute resolution, and also revised the FS permit for activities on Federal lands.

This, however, represents only a part of the accomplishments of ACMP implementation over this period. An array of products from the *Guidance Document on Consistency Review*, the updated enforceable policy documents *Handbook of Statutes and Regulations* and *Enforceable Policies and Standards*, and the updated *ACMP Handbook* were completed during this review period. In concert with the evolution of computer technology, these documents are available on-line as well as in hard copy. Public notice also went on-line. A memorandum of understanding was also developed to guide interaction with the U.S. Minerals Management Service and a highly successful Federal Consistency Workshop was staged.

D) Regulation Development.

In concert with consistency review issues, the revisions to consistency review regulations at 6 AAC 50, "Process for Consistency Determination, Review, and Petition for Coastal Management," represent a significant ACMP activity. The 6 AAC 50 regulation revisions represent a 3-year process or interaction with the networked agencies and the public and private sectors to get the regulations to the point of final review by the State Attorney General's Office and the CPC and submitted to and approved by OCRM. Specific milestones in the process were:

December 1999	The first draft of the regulatory revision was developed and provided to the ACMP Working Group members, DGC staff, and interested members of the public.
September 2000	A re-draft of the proposed regulatory revisions predicated on the work of the working group was released. This, in turn, went to the ACMP Working Group members, DGC staff, and interested members of the public.

November 15, 2000	The draft regulatory revisions were submitted to the CPC who approved the package for formal public review and comment.
December 10, 2000	A formal draft of the regulatory revisions was released for public review and comment.
February 28, 2001	The comment period ended.
October 1, 2001	After public meetings in August and September 2001 to discuss a comprehensive response to all comments received, a second formal draft of the regulatory revisions was released for public review and comment, allowing a 75-day comment period.
June 19-21, 2002	Proposed consistency review regulations were presented to the CPC for review. Reacting to substantial public testimony, the draft regulations were re-crafted.
July 22-24, 2002	A public hearing was held by the CPC to consider and take action on the proposed consistency review regulations. The CPC offered and approved 18 amendments to the language and then unanimously approved the proposed regulations as amended.
October 9, 2002	(Although beyond the time frame of the evaluation) The CPC adopted the regulatory amendments to 6 AAC 50.
October 11, 2002	DGC submitted 6 AAC 50 "Consistency Review Regulations" to OCRM as a Routine Program Change.

DGC also amended the regulations at 6 AAC 80 and 6 AAC 85 "Guidelines for District Coastal Management Programs." On May 1, 1997, the CPC gave DGC approval to revise both 6 AAC 80 and 6 AAC 85. To assist in amending these regulations, ACMP staff put together a working group which included representatives from costal resource districts, members of the Alaska State Legislature, the Departments of Law, Natural Resources, Environmental Conservation, Fish and Game, Community and Regional Affairs, Transportation and Public Facilities, consultants, industry and interested members of the public. On January 13, 1999, the CPC approved the revised regulations at 6 AAC 80 and 6 AAC 85.

These revisions to 6 AAC 50, 6 AAC 80, and 6 AAC 85 were submitted and approved by OCRM. As part of OCRM's approval of 6 AAC 50, "Consistency Review Regulation," OCRM clarified the application of six approved sections to the CZMA and NOAA regulations. The

submittal of the guidelines for district coastal management programs directly responded to a necessary action from previous evaluation findings.

One of the by-products of the regulation development process was that it acted as a training process for the regulations and their implementation among the networked agencies.

E) Program Development.

Responding, in part, to the previous findings which suggested improvement and maximization of district responsibility and authority in ACMP implementation and a continuation of the proactive approach to outreach and education to district planning, outreach activities (including training, tools, mapping plan updates, and special projects) were developed in support of the district planning effort. Outreach activities included community visits to assist the districts with presentations and support their consistency determination efforts; teleconferences; working group meetings; and collaboration with project reviewers to address district training needs.

A highly successful ACMP training program was staged for district planners and leaders. Specific tools, such as the guidebook series, which is available in both hard copy and CD-ROM, *Coastal Currents*, and district web pages, were developed. The Bering Sea Ecosystem Project led to the Bering Sea Partnership Agreement, a declaration of partnership to protect the Bering Sea among 10 coastal districts. This establishes seven collaborative priorities with recommendations for action to move the districts to joint efforts.

Community visits to Kotzebue, North Slope Borough, Kenai Peninsula Borough, Nome, Kodiak, Unalaska, Whittier, and others took staff directly to the districts to provide technical support for their ongoing work in updating local coastal plans. At the time of the site visit, plan updates were completed for:

Thorne Bay
Cenaliulriit
St. Paul
Yakutat
Hoonah
NW Arctic Borough

Plan updates were underway in:

Aleutians West
Cordova
Haines
Ketchikan
Nome
North Slope Borough
Yakutat.

Special projects included regulations update support, aerial photography, the Bering Sea Ecosystems Project, the Kenai River Access Management Plan, the Haines Tourism Management Plan and the development of GIS protocols for funding support for GIS development. The nine GIS protocols establish the minimum requirements that a district must meet to receive funding for projects which include a GIS or CAD component.

F) Alaska Clean Water Action Plan.

The Department of Environmental Conservation (DEC) and Division of Governmental Coordination (DGC) developed the Alaska Coastal Clean Water Plan (ACCWP) under Section 6217 of the Coastal Zone Management Act. In 1998, the ACCWP received conditional approval from NOAA and U.S. Environmental Protection Agency (EPA). The ACCWP was developed to protect the coastal areas from polluted runoff by building enforceable policies into district plans that address nonpoint source pollution. The ACCWP furthers ACMP goals to: strengthen education and outreach and coastal district plans; and address cumulative impacts of development.

DGC and DEC have continued to work on meeting the remaining conditions for full approval of the ACCWP. One DGC task was to award grants to coastal districts to address coastal nonpoint source pollution within their communities. In July 2001, Alaska submitted a response to the NOAA/EPA June 30, 1998 conditional approval findings of the ACCWP. However, due to NOAA/EPA lengthy response time and EPA lack of participation, the State continued to negotiate and work on a few remaining conditions.

To assist in the collaboration and in leveraging approval of the ACCWP, the State has implemented the Alaska Clean Water Action (ACWA). This is another interagency approach to coordinate Alaska's water resource management programs. The ACWA team members are the Departments of Fish and Game (aquatic habitat), Environmental Conservation (water quality), Natural Resources (water quantity), and Division of Governmental Coordination (coastal management). ACWA is a unified approach among these state resource agencies and DGC to protect Alaska's waters.

The policies in the ACWA plan take a comprehensive look for the first time at water programs in the State to unify efforts to protect and improve water quality, water quantity, and fish habitat by:

✔Prioritizing water bodies so that funding can be directed to where it is most needed;

✔Assessing and improving the effectiveness of the state's water and habitat stewardship programs;

✔Prioritizing how the State applies existing programs & regulatory authority - not creating new ones; and

✔Coordinating the State's resource agencies to develop unified budgets for ACWA water programs.

ACWA also accomplished a single application for several grant programs that address water resources or aquatic habitat and increased coordination and communication among State agencies. The ACWA group is currently working on a stewardship report card that will include measures to evaluate ACWA program effectiveness and identify accomplishments and gaps.

G) Work With Federal Agencies.

Coordination with Federal agencies has resulted in mutually beneficial implementation of respective programs, regulations, and requirements. The MOU with U.S. Forestry Service, discussed above, has served to further define responsibilities and needs in addressing forestry practices. DGC has also developed MOU's with the U.S. Army Corps of Engineers (Corps) and the Minerals Management Service (MMS). The 30-page Corps MOU deals with in-house modifications and the 15-day review modification. Discussions with the U.S. Fish and Wildlife Service (FWS) during the site visit indicated a close working relationship. Field offices of FWS were contacted and an overwhelmingly positive response in support of ACMP activities was received.

Programmatic activities, such as the mid-February Forum for the Environment, a State-wide conference in Juneau every other year, and its Coastal Wetland Program are examples of additional opportunities for training and exchange with the Federal agencies beyond the basic implementation activities related to permitting. Another example is the creation of a student oriented website and the student National Ocean Sciences Bowl in Seward where NOAA's Marine Fisheries Service and Alaska Sea Grant worked with DGC on the project funded through National Geographic to provide an educational opportunity for Alaska's youth. Teams consisting of four students, plus one alternate and a coach compete in pairs in a timed contest using multiple-choice or short answer questions within the broad category of the oceans.

Oil and Gas permit reviews are another example of DGC working collaboratively with Federal agencies. Pre-application meetings provide a forum to identify and resolve resource management issues and to coordinate mitigation measures to reduce the impacts of projects. In this setting the coastal districts are involved, and there is opportunity for public involvement. Though issues remain, the process of working together has been established as a norm for addressing many development process issues.

There is a close working relationship with the Kachemak Bay National Estuarine Research Reserve (KBNERR). ACMP funds were used for developing a planning tool for the

lower Kenai peninsula using ArcView that provides land use planners, managers and property owners with a means for understanding wetland functions from a watershed perspective. As the program grows and expands for this new Reserve, ACMP intends to provide ongoing support and encouragement.

H) Alaska's Coastal Impact Assistance Program (CIAP)

Congress authorized the Coastal Impact Assistance Program (CIAP) in fiscal year 2001 by amending §31 of the Outer Continental Shelf Lands Act (OCSLA). The purpose of the CIAP is to assist states and local communities in mitigating the impacts of Outer Continental Shelf oil and gas development and production. Congress appropriated $150 million under the CIAP to the seven offshore oil and gas producing states of Alabama, Alaska, California, Florida, Louisiana, Mississippi and Texas.

On July 2, 2001, Governor Knowles submitted the Alaska CIAP Plan to NOAA. The NOAA reviewed Alaska's CIAP plan against the requirements of the OCSLA to ensure that the requirements of the National Environmental Policy Act and other relevant statutes were met. On December 4, 2001, NOAA approved Alaska's CIAP plan.

The CIAP funding allocation formula was set out in the law and based on the following factors: revenues derived from offshore oil and gas taken from each state's offshore waters; distance of the offshore oil and gas leases from each state's coastline; length of coastline of each coastal county; and population of each coastal county. Alaska received $12,208,723 in CIAP funds. Collectively, the State and local governments are undertaking more than 75 projects. They will spend more than half of the funds on management tools, much of that to enhance local coastal management plans. The state will spend approximately 21 percent on data collection and research, 11 percent on habitat conservation and restoration, and 2-3 percent on education and community outreach, coastal access improvements, and project planning.

Of the $7,935,670 in CIAP funds that DGC has received, the program will focus and provide funding in the following categories:

✓Alaska competitive grant program for Coastal Conservation, Protection, Enhancement & Education ($3,300,000);

✓Grant funds for Coastal Resource Districts ($200,000);

✓Ocean, Coastal, and Watershed Information System ($1,700,000);

✓Coastal Resource Inventory ($800,000);

✓Regional Coastal Program Planning ($750,000); and,

✓Cataloguing Anadromous Fish Streams ($1,000,000).

The competitive grant program was broken down into two categories: 1) Coastal conservation, restoration, enhancement, or protection; and, 2) Education to develop an understanding and appreciation for Alaska coasts. The CIAP program received an overwhelming number of proposals. From the 150 applications reviewed, 56 grants were awarded. The following are some of the projects that received competitive CIAP funding:

→ marine debris removal in Craig and the Pribilof Islands;

→ whale observation station in Kodiak;

→ coastal trail reconstruction in Sitka;

→ restoration, enhancement and protection of streams and lakes in Anchorage, Cordova, Homer, Juneau, Kenai, King Salmon, Kodiak, the Mat-Su Valley, Sand Point and Sitka; and,

→ coastal education projects from Ketchikan to Barrow.

The grant funds for coastal districts will allow them to conduct special projects, e.g., updating coastal district management plans. The regional coastal program planning funds are to develop regional coastal management plans for Prince William Sound, Northern Southeast Alaska and Southern Southeast Alaska (contingent on community support). Alaska Department of Fish and Game will continue field efforts to inventory and list anadromous fish streams with the cataloging anadromous fish stream funds. The initial goal of the ocean, coastal and watershed information system is to develop an information delivery system for coastal development permitting and planning for coastal districts and state resource agencies. The coastal resource inventory funds will compile a catalogue of existing coastal resource data, identify resource data gaps, and develop a strategy to maintain and add to existing information.

As called for in the CIAP legislation, 35 percent of Alaska's allocation was awarded directly to the individual coastal communities. North Slope Borough received $1,939,680, and the remaining 17 coastal boroughs and coastal resource service areas (CRSAs) received approximately $20,000 to $600,000. North Slope Borough will use its CIAP funds to conduct projects managed by the Borough's Department of Wildlife Management, including: documentation of the continued importance of subsistence hunting, fishing, and trapping; conducting studies critical to the survival of subsistence-use animals; implementing management programs for subsistence-use animals; operating the Borough's Arctic Research Facility (ARF); developing educational activities to increase public awareness regarding subsistence-use wildlife; and increasing capabilities of departmental personnel.

Several boroughs and CRSAs will acquire baseline maps, photography, or other information to improve their coastal management decision-making. The City and Borough of

Sitka will acquire aerial photography of Sitka Sound to assess current and future development. Matanuska-Susitna Borough will obtain and make available an on-line database of new satellite imagery of the borough, focusing on areas of high coastal resource value, and where significant impacts and hazards to coastal resources exist.

Kodiak Island Borough will obtain vitally needed aerial photography and digitized maps for identification, conservation, and protection of wetlands and floodplains. The Northwest Arctic Borough will use CIAP funds for a study of traditional knowledge of the ecology of the Port Site area, and the observed and predicted impact of the Port Site facilities and expansion. The project will compile a set of maps and narratives concerning the biology and ecology of the region.

DGC is commended for completing and receiving NOAA approval on the Alaska's CIAP plan, completing the competitive grants process and awarding the grants to the cities and boroughs. The State and the coastal communities are also commended for undertaking an extensive public process to develop this consensus plan to guide the CIAP expenditures. However, it is the understanding of the evaluation team that the DGC CIAP funds will not be available to the cities and boroughs until January 2003. The Alaska Legislature has indicated that this is when they will release the CIAP funds for expenditure.

IV. REVIEW FINDINGS AND RECOMMENDATIONS

The Office of Ocean and Coastal Resource Management (OCRM) finds that the ACMP is adhering to its approved coastal management program; implementing and enforcing the ACMP in a satisfactory manner; and adhering to the programmatic terms of the NOAA financial assistance awards. The State continues to address national coastal management needs identified in CZMA Section 303 (2) (A) through (K). The following discusses areas of the ACMP and contains some program suggestions as described in the Introduction.

A) Changes After the Evaluation Site Visit.

At the time of the review of the ACMP, the review team developed draft recommendations to:

- better define and clarify the consistency review process;
- address regulatory issues regarding public notice;
- review the consistency review process with the U.S. Forestry Service (FS);
- address the phasing of large projects and single agency review;
- address cumulative and secondary impacts;
- provide continues support for the district programs;
- support continued technology development; and,
- assure that regulation development involves stakeholders in the process.

This was crafted with the concept that the consistency review process (6 AAC 50) would be the fulcrum to drive ongoing openness and change.

Shortly after the evaluation, however, an executive order was issues that changed the organizational structure and administration of the ACMP, moving the program to the Department of Natural Resources. In addition, the Alaska Legislature passed House Bill 191 which further changed the program and required the ACMP to revise 6 AAC 50 Project Consistency with the Alaska Coastal Management Program; 6 AAC 80 Standards for the Alaska Coastal Management Program; and 6 AAC 85 Guidelines for District Coastal Management Programs. Based on the

revisions to 6 AAC 85, it is OCRM's understanding that all of the district coastal management programs will need to be revised and submitted to ACMP and OCRM for program approval. The result is that many issues discussed during the site visit and review have been rendered moot, subtly in some ways and substantially in others. Ongoing discussion between OCRM and the State are necessary to assure ongoing CZM program compliance.

Public input into the development of this is encouraged at appropriate times in the development of the revised ACMP. Furthermore, the overall implementation of the new ACMP will be addressed in the next ACMP evaluation. It should be noted, however, that many of the accomplishments of the period from November 1998 through September 2002, discussed earlier in this document, remain valid.

PROGRAM SUGGESTION:

> **The changes to the implementation of the ACMP resulting from House Bill 191 need to be addressed in the next evaluation of the ACMP to assure compliance with the CZMA and its implementing regulations. In the interim, there needs to be ongoing discussion between OCRM and the State regarding substantive and procedural changes to the ACMP. Public input into this process is encouraged at appropriate times in the development of the new ACMP.**

B) Response to Comments CZMA § 923.133(b)(8).

As above, many comments have been rendered inappropriate or no longer relevant as a result of legislative changes occurring after the evaluation site visit. OCRM encourages the cementers and the members of the public to participate in the Alaska Coastal Zone Management Program approval process and the OCRM program change approval process. The public is encouraged to monitor the following web site for information regarding this process:

- http://www.alaskacoast.state.ak.us

V. CONCLUSION

Based on OCRM's review of the federally approved Alaska Coastal Management Program and the criteria at 15 CFR Part 923, Subpart 1, I find that Alaska adhered to its federally approved coastal zone management program for the period from November 1998 to September 2002. These evaluation findings contain one Recommendation which the State in consultation with OCRM should address before the next regularly scheduled program evaluation.

This is a programmatic evaluation of the ACMP that may have implications regarding the State's financial assistance award(s). However, it does not make any judgments on, or replace any financial audit(s) related to, the allocability of any costs incurred.

_____

Date

Eldon Hout
Director

APPENDIX A
ALASKA COASTAL MANAGEMENT PROGRAM
312 EVALUATION

PERSONS CONTACTED DURING THE EVALUATION

State of Alaska Governmental Coordination Division:

Kerry Howard
Sara Hunt
Sydney Mitchell
Sylvia Kreel
Chas Dense
Glenn Gray
Jen Garland
Randy Bates
Beth Potter
Lorraine Marshall
Lisa Weissler
Ed Christian
Sally Gilbert

Department of Environmental Conservation:

Kurt Fredriksson
David Rogers
Lynn Kent
Mary Siroky
Jim Baumgartner
Chris Foley
Jonne Slemons
Gretchen Keiser
Fran Roche

Department of Natural Resources:

Janet Burleson Baxter

Department of Fish and Game:

Chip Dennerlein

Janet Hall Schempf
Wayne Dolezal

Department of Regional and Community Affairs:

John Gliva
Peter McKay
Christy Miller

Federal Agencies:

Randy Coleman	U.S. Forest Service
Cindy Hartman	National Marine Fisheries Service
John Kurland	National Marine Fisheries Service
Jeanne Hansen	National Marine Fisheries Service
Larry Reeder	U.S. Army Corps of Engineers
Don Kohler	U.S. Army Corps of Engineers
Doug Mutter	U.S. Department of the Interior
Paul Stang	U.S. Minerals Management Service
Tom Warren	U.S. Minerals Management Service
Beverly Sires	U.S. Minerals Management Service

Local Government:

Susan Dickenson	Ketchikan Gateway Borough Planning Department Planing Director
Susan Round	Current Planner
Stephen Reeve	Long Range Planner
Chuck Degnan	Bering Straits Coastal Service Resource Area (BS CRSA)
Johnson Eningowuk	Chairman BS CRSA Board
Jim Dory	Coastal Coordinator, City of Nome Coastal District
Randy Romenesko	Nome City Manager
Robbie Fagerstrom	Public Member, Coastal Policy Council, Nome Assemblyman

Others:

Owen Graham	Alaska Forest Association Alaska Oil and Gas Association
Richard Beneville	
Rebecca L. Bernard	Trustees for Alaska
Nancy S. Wainwright	

APPENDIX B

ALASKA COASTAL MANAGEMENT PROGRAM
312 EVALUATION

PERSONS ATTENDING THE PUBLIC MEETING

The Public Meeting for the Alaska evaluation was held on Thursday, September 12, 2002 at 7:00 P.M. in the Anchorage Legislative Information Office, 716 West 4th Avenue, Suite 200, Anchorage. Teleconference connections were provided to Legislative Information Offices in: Ketchikan, Sitka, Juneau, Cordova, Valdez, Homer, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow

No one spoke.

APPENDIX C

ALASKA COASTAL MANAGEMENT PROGRAM
312 EVALUATION

WRITTEN COMMENTS RECEIVED

Three written comments were received during the course of this evaluation from:

John Goll
Regional Director
U.S. Department of the Interior
Mineral Management Service
Alaska Outer Continental Shelf Region Dated September 26, 2002

Rebecca L. Bernard
Staff Attorney
Trustees for Alaska Dated September 30, 2002

Nancy S. Wainwright
Attorney at Law
on behalf of
Page Else
Research Director
Sitka Conservation Society

Tom Atkinson
Executive Director
Alaska Conservation Voters
Alaska Conservation Alliance

Bob Shavelson
Executive Director
Cook Inlet Keeper Dated September 30, 2002

These comments are reproduced below:

United States Department of the Interior
Minerals Management Service
Alaska Outer Continental Shelf Region
949 East 36th Avenue, Suite 300
Anchorage Alaska 99508-4363

Dear Mr. McLeod:

The following Comments are submitted as part of the Alaska Outer Continental Shelf (OCS) Region's participation in the subject review. In addition to these comments, we participated in a meeting September 13, 2002, in Anchorage with representatives from your office. We very much appreciate the opportunity to participate and interact with your staff and other Federal agencies in Alaska regarding the State's implementation of their coastal management program. While we maintain a good relationship with State staff who implement the program, we continue to have concerns over the issues presented below.

Air, Land and Water Quality (6 AAC 80.140). This policy incorporates in their entirity the State's regulations for air, land, and water quality. The State has used the coastal zone management process and this standard to regulate OCS oil and gas activities. For instance, denying consistency concurrence if spilled oil cannot be recovered using only mechanical means during broken-ice periods in the Beaufort Sea. Spilled oil is difficult to retrieve in broken-ice conditions using only mechanical means. The State has not allowed other methods such as in-situ burning. The State's regulations themselves allow for other methods, but recent OCS plans have been found to be inconsistent if they do not include an effective means for mechanical clean up of spilled oil in broken ice or for a halt of operations during the State identified broken-ice period. The result can very easily threaten the feasibility of projects in the Beaufort Sea where climate conditions create an already very short seasonal window for specific operations.

The State is imposing their water quality procedural regulations on OCS oil and gas activities. We disagree, as this goes beyond imposing the State's water-quality standards. As long as OCS activities meet the standards, the procedures for attaining them is under the authority of MMS.

6 AAC 80.050 Geophysical Hazard Areas. Requires state agencies to identify known geophysical hazard areas. It states that development in these areas may not be approved until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. The related district policy states that offshore structures must be able to withstand geophysical hazards and forces that may occur while at the drill site. Design criteria must be based on actual measurements or conservative estimates of geophysical forces. In addition, structures must have monitoring programs and safety systems capable of securing wells in case unexpected geophysical hazards or forces are encountered. These standards and policies have been used to object to the location of an OCS exploration activity in the Beaufort Sea.

We disagree with this approach. An example will help clarify why - MMS received an exploration plan that proposed to sue an ice-island structure located in an area identified by the district as being subject to low ice ridging. The scale ranges from none to severe with low being just below none. The project was designed to withstand the forces present in the area (based on historical information) and had in place safety systems for unexpected events. The MMS regulations on platforms and structures are rigorous and comprehensive, and require a certified verification agent (third party) of the structure. The MMS concluded the location and structure were well within the regulatory requirements and standards. This conclusion considered the historical ice data for the area and the conclusions of the certified verification agent. However, the State objected to the location of the ice island based on its own analysis, relying heavily on the traditional knowledge of residents in the area.

The State ultimately objected to the exploration plan, but found a subsequent exploration plan for the same location, submitted by a different company, using a Mobil Offshore Drilling Unit, to be consistent. Both structures were subjected to and passed a third party technical review in accordance with MMS regulations. The difference was that the second plan was not objected to by residents near the project. In both cases, neither the State nor residents presented any credible engineering evidence to support their decision. The State Division of Governmental Coordination consistently states that they give deference to the experts in the State, but in the case of offshore structure design review, the State doesn't maintain or contract for any expertise, yet they are making decisions about structures' ability to withstand geophysical hazards and forces.

The State Division of Governmental Coordination makes decisions that normally require a professional engineer. Again, the State doesn't maintain or contract for any engineering expertise in offshore structures.

The State's requirement for necessary data and information to support a consistency certification is not clearly and consistently applied. The State's regulations restate the requirements of NOAA's implementing regulations and provide no further guidance. As a result, the consistency review process in the recent past has resulted in numerous requests for additional information beyond that required by MMS regulations for OCS plans and beyond that previously required by the State. Some of the information requested is very technical in nature, and we question its value to the consistency review process. If the State is going to continue to routinely require this information, it should be specified as necessary data and information.

If you have questions regarding these comments, you may contact Tom Warren at 907-271-6691 or Beverly Sires at 907-271-6419.

Sincerely

Signed
John Goll
Regional Director

TRUSTEES FOR ALASKA

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September 30, 2002

SENT VIA FACSIMILE AND FIRST CLASS MAIL

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Re: Section 312 Review of the Alaska Coastal Management Program; Comments on Scope of Project Review

Dear Section 312 Review Team Participants:

Thank you for taking the time earlier this month to meet with members of the Alaska conservation community to hear our input on problems with the Alaska Coastal Management Program ("ACMP"). We hope that the Section 312 review process results in some improvements to the ACMP that will provide for greater protection of Alaska's

coastal resources, in accordance with the original intent of both the ACMP and the Coastal Zone Management Act ("CZMA").

I am writing on behalf of Cook Inlet Keeper and the Alaska Conservation Alliance to supplement comments submitted by Nancy Wainwright addressing the ACMP inadequacies in the areas of cumulative impacts review and public participation. This letter will focus solely on another big problem area for the ACMP – the inadequate scope of project review.

In 1999, Trustees for Alaska filed a lawsuit in state court on behalf of Cook Inlet Keeper, challenging the coastal consistency review for the Osprey oil and gas exploration project on the ground, among others, that the review failed to evaluate the entire project. The review excluded the wastewater discharges because these discharges were authorized by the Cook Inlet general NPDES permit, which had already undergone its own review for consistency with the coastal standards. In May 2002, the Alaska Supreme Court issued a unanimous decision in favor of Cook Inlet Keeper, holding that the scope of review under the ACMP must include the whole project, even though some aspects of the project had already undergone a separate, isolated consistency review. *See Cook Inlet Keeper v. State, DGC*, 46 P.3d 957 (Alaska 2002). The obvious rationale for this conclusion is that unless all aspects of a project are evaluated together, the cumulative effects of the project taken as a whole may be overlooked. A copy of the Supreme Court decision is attached as additional documentation of the problem of limited scope of review under the ACMP.

Unfortunately, our oil industry opponents responded to the Supreme Court decision by taking their case to the Alaska Legislature, which passed a bill substantially gutting the court decision. S.B. 371 granted reviewing agencies the discretion to exclude from a consistency review any aspects of the project that are covered by a general or nationwide permit that has already been reviewed for consistency. S.B. 371 also provided a blanket exception from coastal review for permits and authorizations issued by the Alaska Oil and Gas Conservation Commission. This latter provision affects primarily permits to drill, an unfortunate exclusion given that it is well-established that oil and gas drilling activity is not consistent with the ACMP habitats standard. A copy of S.B. 371 is attached for your convenience. As a result of this new legislation, oil and gas projects and many other development projects in the coastal zone will never be reviewed for consistency as a whole, but will only be reviewed piecemeal – directly contrary to the original intent of the ACMP.

The situation has only worsened since then. In July, the Alaska Coastal Policy Council adopted revised ACMP regulations that further narrow the scope of project review. These regulations are currently being reviewed by the Department of Law and

are not yet effective. The proposed regulations codify S.B. 371 with the following provision:

> When an activity that is part of a project is authorized by a general or nationwide permit that was previously evaluated and found consistent with the enforceable policies of the ACMP, the scope of the project subject to review may exclude the activity authorized by the general or nationwide permit in accordance with AS 46.40.096(h).

50 AAC 50.700(a) (proposed). This language falls far short of Governor Tony Knowles' request, upon signing S.B. 371 into law, that the Coastal Policy Council "exercise its authority over the ACMP consistency review process by requiring the [DGC] to include activities covered by a general or nationwide permit within the scope of review for projects that require a DGC coordinated review." A copy of the press release announcing Governor Knowles' signing of S.B. 371 is attached for your convenience.

Another provision of the proposed regulations requires that the reviewing agency include in its project review only those activities that require a state or federal authorization listed elsewhere in the regulations, and all federal activities and associated facilities. 50 AAC 50.025(b) (proposed). By excluding from a project review all activities that don't require any authorization, this regulation ensures that the project will be subject only to the kind of piecemeal and fragmentary review that the ACMP and CZMA were originally intended to remedy. We believe this proposed regulation is inconsistent with the ACMP, and it is certainly inconsistent with the Supreme Court decision in *Cook Inlet Keeper v. State, DGC.*

Unfortunately, we already see consistency reviews that embody this problem, even though the proposed regulations are not yet in effect. One good example of this problem is the Redoubt Shoal oil and gas development project review, which Trustees for Alaska has challenged in state court, again on behalf of Cook Inlet Keeper. One aspect of the project is construction of a 200-person work camp on the western shore of Cook Inlet near Kustatan, where the production facility will be built. The only authorizations required for the work camp are U.S. Army Corps of Engineers Nationwide Permit #12 and the Alaska Department of Environmental Conservation General Permit 9940-DB001 (Wastewater Treatment and Disposal System). Because these general permits had already been reviewed for consistency, DGC entirely excluded all activities and impacts associated with the work camp from its consistency review for the Redoubt Shoals project, despite the likely inconsistency with coastal standards of this sizeable operation. *See* Final Consistency Determination, Redoubt Shoal Oil and Gas Development Project at 3 (May 1, 2002), attached.

One final problem with the proposed regulations is that they worsen the provisions governing the so-called "ABC" list. The ABC list of categorical approvals and general concurrences that are excused from consistency review was already overly inclusive and of questionable statutory authority. Under the proposed regulations, the "A" list of categorical consistency determinations and the "B" list of general consistency determinations identify those activities that generally do not need to be included in the scope of a project review. The "C" list identifies those activities that are subject to individual project review. Under the current version of the regulations, we have argued that if an activity is not on any of the lists, then it is by default subject to individual project review. The proposed regulation takes away that argument and makes it explicit that only those activities found on the "C" list (and that meets additional requirements) are subject to individual review:

> (a) DGC, in consultation with the resource agencies and affected coastal resource districts, shall develop and maintain a list of authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource (the "C" list).
> (b) An activity that requires an authorization that is on the C list and that meets the requirements of 6 AAC 50.005(a)(2) shall be subject to an individual consistency review in accordance with the procedures in this chapter, except as provided for in 6 AAC 50.700.
> (c) An activity requiring a resource agency authorization that is not identified on the C list shall not be subject to an individual consistency review.

6 AAC 50.750 (proposed) (emphasis added). This change shifts the burden to the agencies to identify ahead of time every conceivable activity that could affect coastal resources, whereas it is relatively simple for a project proponent to presume that its coastal zone project must be reviewed unless it is found on the A or B list of exemptions. This presumption also makes consistency review of projects in the coastal zone the exception instead of the rule; this, in turn, will not ensure consistent planning and management for coastal resources as is required by the CZMA and the ACMP.

In summary, the trend in Alaska has been that the scope of the consistency review for projects in the coastal zone has been whittled away over time, to the point where the reviews are piecemeal and full of holes. If the whole project is not evaluated for consistency with the coastal standards, then the reviewing agency cannot legitimately conclude that the project is consistent with the ACMP standards. This trend represents an illegal movement away from the original intent of the ACMP and CZMA to ensure that development in the states' coastal zones is undertaken only after full and adequate consideration is given to protecting coastal resources.

We urge the review team to address the diminishing scope of project review in its report and to require changes to the ACMP that will repair this problem. Thank you for considering our comments.

Sincerely,
Signed
Rebecca L. Bernard
Staff Attorney

cc: Kerry Howard, Division of Governmental Coordination
Nancy Wainwright

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Anchorage, Alaska September 30, 2002

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Re: **Inadequate Notice and Opportunities for Public Comment**
ACMP section 312 review

Dear OCRM:

We want to thank each member of the evaluation team, and Ms. Howard for taking the time to meet with members of the public in Anchorage on September 12, 2002, concerning the OCRM 312 evaluation of the Alaska Coastal Management Program. The face-to-face discussion with knowledgeable coastal zone managers such as yourselves was very productive, and helped us to understand the OCRM role.

We hope both OCRM and DGC will accept these additional comments as constructive criticism of the most pressing problem that continues to undermine the ACMP. These comments are submitted on behalf of Cook Inlet Keeper, Sitka Conservation Society and Alaska Conservation Alliance/Voters (representing 42 groups and 35,000 Alaskans). We have included recommendations for change at the conclusion

of the letter. As groups and individuals who have, collectively, spent years working with the ACMP on working groups, on regulations, and on project reviews, we have come to the unfortunate conclusion that the public is excluded from participating in the ACMP project reviews due to the restrictive and arcane public participation requirements. Even if the public can negotiate the requirements, the DGC notice and comment procedures preclude participation. Given the importance of the involvement of the public under the CZMA, it is recommended that NOAA conduct more frequent reviews of the ACMP, until DGC demonstrates marked improvement in the public notice and comment procedures. It is requested that OCRM review the program every 12 months until effective notice and opportunities to comment are provided.

1. DGC's Onerous and Arbitrary Comment Requirements

The DGC interpretation of it regulation relieves the requirement that the applicant demonstrate consistency and, instead, DGC presumes consistency for all projects. DGC requires the commenting public to demonstrate inconsistency with the ACMP, rather than having the applicant and agencies demonstrate consistency. This is accomplished by holding a citizen or agency that alleges inconsistency to a stricter comment standard than the applicant, and those who claim the project is consistent. DGC's interpretation of the public comment requirements are so onerous as to inhibit public participation. DGC's interpretation is also inconsistent with the statutory requirement that the use or activity for which the permit, license, or approval is granted may not be approved unless it is consistent with ACMP. Under the ACMP, the burden is supposed to be on the applicant to demonstrate consistency with ACMP.

Yet, under DGC's interpretation, an applicant merely has to sign a summary coastal project questionnaire statement affirming consistency. The applicant is not required to establish how the project is consistent with each ACMP or district policy. No consistency analysis is required. DGC accepts the following unsupported conclusion from the Coastal Project Questionnaire that the project is consistent:

> " I certify that the proposed activity complies with, and will be conducted in a manner consistent with, the Alaska Coastal Management Program."

Likewise, any commenter who believes the project is consistent, does not have to provide any justification for that recommendation of consistency, DGC simply accepts that assertion without requiring any consistency analysis.

DGC, in its consistency analysis only provides a brief consistency determination, and "a brief statement of the reasons for that determination." 6 AAC 50.990(6). (emphasis added.) Those alleging inconsistency are not afforded the same leeway. The public must

meet the stringent comment requirements of identifying each enforceable policy explaining how the project is inconsistent. 6 AAC 50.100 states:

> "If a person contends that the project is inconsistent with an enforceable policy of an affected coastal resource district's approved program or a standard set out in 6 AAC 80.040-6 AAC 80.150, the oral or written testimony must identify the enforceable policy or standard and explain how the project is inconsistent."

DGC improperly interprets this policy to exclude comments that do not specifically identify and analyze ACMP or District CMP policies. Thus DGC holds the public or agency asserting inconsistency, to a higher standard than the applicant, DGC, and those who assert (with no analysis) that the project is consistent. In adopting this approach, DGC has failed to properly place the burden on the applicant to demonstrate project consistency; and illegally shifted the burden to the public to demonstrate inconsistency.

It is also DGC's practice is to ignore the "plain English" comments concerning project consistency. Citizen comments in plain English, without detailed policy analysis are routinely rejected or ignored by DGC. DGC requires citizen comments on inconsistency to be detailed, lengthy and specify each district policy and how it applies to the project-specific facts. Yet the applicant's unsupported assertion of consistency is accepted. DGC thus arbitrarily interprets this regulation to eliminate, rather than foster, public participation and a reasoned consistency analysis.

Despite the fact that DGC created this onerous public comment system, some citizens made the effort to submit comments to meet DGC's stringent interpretation.[1] In response, last April, DGC reacted to the citizen effort, citing the "problem" of the citizen comments being too long, and taking up too much staff time to analyze, as another basis for eliminating citizen project petitions to the CPC. Now that citizen project petitions have been eliminated, DGC no longer has to answer to the CPC on the issue of "fair consideration" and DGC has entirely abandoned the detailed analysis of public comments.

2. DGC's Has Faulty and Conflicting Notice Procedures

The best way to describe DGC's faulty notice procedures, is to provide an example. There are numerous such examples in DGC's files. As background, many who desire notice have asked to be on DGC's list of "interested persons" to automatically receive

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[1]See DGC response to comments in AK 0110-05OG. DGC had finally -- after years of ignoring, or refusing to analyze public comments -- begun to actually respond to citizen comments in writing, because DGC had to demonstrate that "fair consideration" of the comments was given for the CPC petition hearings.

notice of projects in certain locations, or of a certain type. However, DGC does not integrate those requests into its notice system, and individuals have been inexplicably and regularly "forgotten" on these notices. Being on the "interested person" lists means one may or may not get notice of the project, depending on DGC staff turnover, staff resources and staff effort. DGC has been unsuccessful at carrying out this function, to the detriment of public notice and public participation.

The most recent project in which this happened was the Thetis Oil and Gas Exploration Project: AK 0208-1OG. While the following information is project-specific, it points out the numerous chronic DGC notice problems that plague the program. We can provide other examples if OCRM desires.

The interested party did not get notice of the Thetis (North Slope) project despite a pending, regularly reaffirmed, written request to receive notice of all North Slope projects. Upon learning that the project was undergoing review, the party immediately wrote to DGC to again request notice of the project and was told:

> "It looks like Sam left you off the cc list by mistake. By copy of this email, I will remind Nina and Kaye that you wish to receive correspondence for all North Slope Projects."[1]

Thereafter, August 26, DGC sent a copy of the notice of the Thetis startup, which was apparently issued August 8, therefore, nearly half of the 34 day public comment period had elapsed. DGC advised the interested party to check the DGC Oil and Gas Report website, and the new DGC ACMP notice website for updates on the project.

Subsequently, Sept. 6, DGC's e-mail notice of suspension of review of Thetis due to a request for additional information (RFAI) was sent. The interested party requested a copy of the RFAI and copies of documents submitted in response to the RFAI. The interested party was instructed by DGC to ask another agency (Department of Environmental Conservation) for those documents.[2] DGC's referral of such requests to a different agency is the ordinary way DGC handles such requests. DGC's refusal to provide requests for RFAI documents inhibits public participation. As the "coordinating agency" it is DGC's responsibility to send the RFAI and those documents to interested parties. The public should not have to write to multiple agencies to get documents or copies of an RFAI, if it is a DGC coordinated review.

Checks of both the new DGC notice website and the DGC Oil and Gas Report

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[1]Email Glenn Gray to Nancy Wainwright 8/26/02.
[2]Email Nina Brudie to Nancy Wainwright 09/09/02.

revealed that neither site contained accurate information or reflected any review suspension. As of Sept. 13 both sites are still inaccurate and outdated. There is no notation of suspension of review. On the new DGC ACMP notice website it says: "This page was updated on August 7,2002." So obviously, the new site has seriously outdated information on it. It is noteworthy that DGC affirmed to OCRM on September 12, that this new DGC website "is always accurate and up to date"[3] Likewise, the DGC "Alaska Oil and Gas Report" had only the outdated deadlines, and no notice of review suspension.

The State of Alaska Online Public Notice Website (the official public notice website in Alaska.) was also checked. A search of the "Active Public Notices" for the word "Thetis" and got "No results". A search of notices "by Department" was also conducted. DGC is not listed as a "Department", so a member of the public not familiar with the state bureaucracy would not find the website. [It would be very helpful to have DGC as a separate category on that website, since DGC coordinates more publicly noticed project reviews than most other agencies listed on the site.] However the interested party was aware that DGC is in the Office of the Governor, and to find the project, the interested party checked the "Office of the Governor Public Notices."

But, under the Office of the Governor public notices, there is no notice of the Thetis Project, nor is there notice of Thetis on any other portion of the State of Alaska Online Public Notice website. So by all publicly available indications, the project comments are due, and there is no project review suspension.

It may be that DGC originally noticed the Thetis project in the newspaper but by law, every administrative order of the Governor's office must be noticed on the Online Public Notice Website. So, DGC is currently out of compliance since there is no notice on the Alaska Online Public Notice Website at all of this project. DGC's inconsistent and inaccurate notice for Thetis is not an exception. There have been other projects with the same notice defects.

DGC's pattern of non-compliance with both CZMA and ACMP notice mandates, has increased significantly over the past eight years. DGC has received a great deal of funding to provide new websites, with the goal of improving public outreach. But DGC fails to meet its responsibilities, despite this funding. And, the problem is not helped by multiple public notice sites. DGC's approach has systematically resulted in the public, being denied the ability to have notice on or comment on projects (one lawsuit is currently

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[3]Remarks of Acting DGC Director, Kerry Howard, 9/12/02; OCRM meeting with public interest groups.

pending in superior court on this specific issue.) This notice does not inform the public of the review schedule, and violates DGC regulations. 6 AAC 50.070(e).

OCRM is requested to require DGC to demonstrate that there is a single, accurate, accessible source of information on each project review schedule, that is up to date and provides information on the review startup, review suspension, review re-start, the public comment deadline, the draft DGC determination, and the final DGC determination. Since the public is familiar with the Online Public notice system, this should be the primary website for notice, with DGC highlighted as a separate category on the website, with possibly with an automatic link to DGC's new website, if that website is updated daily, with project review information.

3. The "Programmatic Petition" Does Not Afford Public Participation

Faulty public notice is not the only contraction of the public's right to participate in the ACMP in recent years. DGC has also eliminated (or contributed to the elimination of) the protections of citizens' rights to petition; and the citizens' ability to participate through public interest groups who submit comments (by advocating the elimination of public interest groups in the definition of "citizen.") DGC supported the elimination of the petitions, disingenuously telling the Alaska Legislature that DGC spends "200-300 hours" per petition, and claiming it was just too costly for the agency to process these petitions. It is highly doubtful that DGC was being truthful since and a petition must be heard in 30 days, and the "200-300 hour per petition" figure is the equivalent to 5 to 8 eight 40-hour weeks of staff time. Moreover DGC processed very few petitions after taking <u>ten years</u> to adopt its onerous petition and restrictive public comment regulations. DGC's delay in adopting regulations was a constant source of frustration to the public and demonstrated staff reluctance to allow the citizens to have a meaningful, clear petition process, despite repeated OCRM recommendations. DGC staff delayed the regulations, made the regulations so onerous as to preclude most petitions, and resisted working on <u>any</u> petitions, no matter how few were filed, by claiming it was too time consuming to process petitions.

Assuming DGC's 200-300 hour staff time (per petition) figure was correct, since citizen project petitions have now been eliminated, DGC will now have significant cost savings, in terms of staff time, to devote to public notice and participation in project reviews. DGC should apply the cost savings from the elimination of petitions toward public notice of projects.

It would be helpful for DGC to analyze just how much of the staff time is devoted to public participation on specific projects; How much staff time is spent on reviewing

project applications (including agency comments) relative to the time spent on reviewing public comments? How much staff time is spent in meetings with the applicant or other agencies about a project, as opposed to meeting with the public who live near, or are directly or indirectly impacted by the project? We believe that DGC's funding spent on informing and meeting with the public about projects, is a tiny fraction of money spent on DGC's meeting with the applicant and other agencies. In this way DGC's role in "governmental coordination" has eclipsed is role in "coastal zone management."

DGC's efforts to eliminate the "workload" of administrative appeals by citizens has been successful. The remaining hollow right of a 6 AAC 50.360 "programmatic" petition is beyond the capability of any individual citizen. DGC cites the 6 AAC 50.360 programmatic petition as evidence that the public still has an avenue of administrative appeal. Yet, DGC is well aware that <u>such a petition has never been filed in the 22 years of the ACMP</u>. Since DGC has been unsuccessful at educating the public about the arcane ACMP program and procedures, it is highly doubtful any individual member of the public will have sufficient knowledge of the program, to bring a "programmatic" petition. This results in an elimination of all effective administrative appeal avenues for the public. This is contrary to the ACMP, as approved in 1979, and contrary to the CZMA. It affords the applicant a right of administrative appeal (through elevation) but not the public, again reflecting a bias for the applicant, and against the public.

Nor does the right of citizens to ask their coastal district to elevate afford public protection. Very seldom. if ever, has a district brought a petition on behalf of a private citizen. DGC should be required to disclose how many district elevations have been filed; and the percentage of those that were filed at the behest of a citizen. It is likely that the record will reveal that citizens have no real access to elevations, they are not even allowed in the room for elevations filed by others; and there is currently no effective or available administrative appeal for the public, and this should be remedied.

4. DGC Does Not Grant Public Hearings on Projects

DGC's public hearing process for projects is also restrictive of public participation. DGC will only hold a public hearing if DGC "finds that the request for a hearing is based on concerns regarding the project's consistency with the ACMP that would not otherwise be adequately addressed in the consistency review. 6 AAC 50.100(d)(2). Yet, there are no standards or other measures of how DGC would make this determination, and it is left to DGC "discretion." DGC should disclose how many public hearings (for projects) DGC has held since 1994. DGC should be required to enumerate the conditions under which it will grant a public hearing request, and the standards it applies to determining whether

comments “would otherwise be addressed.”

5. DGC Does Not Publish or Post Notices in Affected Regions

One of the most telling comments that reflects DGC's lack of commitment to public participation, occurred in the OCRM meeting September 12, 2002 with representatives of Alaska public interest groups. DGC was asked why DGC notices can't be posted in the *Arctic Sounder* or other local village or town papers, or posted in the local post offices where many citizens get their mail. The DGC response was to the effect that "since some of those local papers are only weekly, and we are under deadline to get the project review going, we have to use the *Anchorage Daily News*, which is in general circulation and comes out daily." DGC regularly declines to notice in local newspapers; and claims that it meets the minimum notice requirements of publishing in "a newspaper of general circulation" The “circulation” of the Anchorage and Fairbanks newspapers in the north slope (population) is less than 200 per paper. And, not every village is served (the villages of Nuiqsut, Wainwright Kaktovik, Pt Hope have no subscription service and only, sporadically, receive a very few copies mailed to the general store.) The Arctic Sounder has a much wider circulation (over 1000). Relying on the *Anchorage Daily News* for notice of a project in Kaktovik is akin to requiring someone impacted by a project in a rural New Hampshire town, that has no subscriptions to the *Washington Post*, to rely exclusively on the legal notices in the *Washington Post*. Both are about 650 miles from the newspaper’s publication venue, and residents in both would have difficulty accessing any such notice. There is probably far greater circulation of the *Washington Post* in New Hampshire, than of the *Anchorage Daily News* in the North Slope. DGC deems the *Anchorage Daily News* as newspaper of general circulation in any part of the state, for DGC’s own convenience, even though it is not available, or subscribed to by most of the population in the rural areas.

DGC also stated that the districts have the responsibility to inform DGC of the best place for posting. But DGC does not routinely even ask the district for its posting recommendation. One DGC staffer has suggested that the a person in the villages should volunteer to post the notice, rather than DGC making arrangements to have the notices posted.[4] The foisting of this critical DGC function onto the public is not permitted under the ACMP. Other agencies routinely notify the post offices in an affected region of impacts from permits. For example, the Department of Natural Resources requires that “the notice also will be mailed to the postmaster of each permanent settlement of more than 25 persons located within six miles of the proposed [project].”11 AAC 83.311.

[4]See email of Glenn Gray to Nancy Wainwright 1/29/01.

There is no reason that DGC could not adopt such a procedure.

Finally, the DGC regulations are inconsistent with the ACMP and CZMA because they allow DGC to give inadequate notice. Pursuant to 6 AAC 50.070(e)(5) DGC is given the option of making documents available either in the district, **or** in an area that the project might affect outside a district. Allowing DGC the option to provide documents only outside the district does not promote public participation. DGC should be required to give notice in the district **and** outside the district, if there are reasonably foreseeable impacts outside the district.

At the OCRM meeting of September 12, DGC claimed that the reason it did not implement the enhanced public notice procedures mandated by the 1994 Legislature, was that DGC did not receive Legislative funding for adequate notice.[5] First, the advertisements in the *Anchorage Daily News* are far more costly than those in the *Arctic Sounder*. Second, posting costs nothing. But, if the coastal program is failing in its responsibilities for notice, because the legislature refuses to provide sufficient funding, then DGC and OCRM have three options: (1) OCRM can provide the state sufficient funding to make up for the legislative shortfall; (2)OCRM can deny the state the coastal program funding because the program is out of compliance with the CZMA; (2) DGC could reallocate federal funds or state funds to this function from some other less important DGC initiative (such as DGC's glossy brochures and elaborate yearly conferences that DGC holds in Juneau, which the public in the vast majority of Alaska is unable to attend.)

The ACMP is founded on the concept of effective public notice. Without effective public notice, the program fails, and the money spent on brochures, conferences, websites and other aspects of the program are wasted government dollars.

If timing of project review is a limiting factor for publication of notice in local newspapers, as DGC staff claims, then a solution would be for DGC to start the project review only after it deems the project application "complete"; with an element of "completeness" being readiness and preparation of a local newspaper notice and local posting, as well as mailing to those who have requested notice. The time to publish and post could be factored into the pre-application process, that way the applicant would not be delayed in the project review. The project application would not be deemed complete until the day before it was ready for posting in a local newspaper, in a local venue, and on the state's online public notice website. All of the posting, publication, online notices

[5]Remarks of Kerry Howard 9/12/02.

should be accurate, and coordinated.

6. DGC Does Not Provide Project Documents to the Public

As the "coordinating agency" it is DGC's responsibility to send project documents to the public. DGC's practice is that copies are not automatically provided if requested, but instead a member of the public must travel to DGC offices to review documents, mark the pages desired, and then later return to pick up the copies. This policy inhibits public notice of project specifics, and public participation. In addition, as mentioned above, DGC does not provide the RFAI information ,or even the RFAI itself, for public review. The public should not have to write to multiple agencies to get documents or copies of an RFAI in a DGC coordinated review. It appears, in some instances, that DGC is not providing this information, because DGC does not have the information. However, if DGC does not have it, the review cannot proceed since DGC is supposed to render the final decision, based upon all information. DGC cannot properly carry out this duty if it does not even have copy of the information. DGC interprets its public notice regulations to improperly allow DGC **the option** of not providing copies at all. The regulation states notice of the availability of documents must be provided "**if** the coordinating agency makes them available under 6 AAC 50.070(e)(5)." 6 AAC 50.100(b)(4). DGC's practice is to opt not to provide documents in many instances.

We recommend that all project application packets and RFAI information be copied and mailed upon request. If there is a cost, the public could pay for the copies. Or, in an effort to demonstrate its commitment to the public, DGC could provide the documents free of charge. To determine if free document provision is economical, DGC should be required to disclose how much money DGC received for copying public documents (from the public who has requested and paid for such documents) in the past few years. If that amount is not high, DGC could adopt a public-friendly policy that it will absorb the copying costs.

Conclusion and Recommendations

I. INFORMATION FROM DGC

It is requested that OCRM gather the following information from DGC in order to assess whether the claims in this comment letter are correct, and whether DGC is satisfactorily fulfilling its obligation to involve the public in ACMP decisions.

1. Require DGC to document where and how it provides public notice (as opposed to

notice to those on DGC's interested person list) of:

Project Review Startup
Review Suspension
Review Re-Start
Proposed Decision
Final Decision

2)Require DGC to analyze and provide documentation of how it allocates its staff time on project review.

(a)How much staff time is spent on reviewing project applications (including agency comments)
(b) How much staff time is spent on reviewing public comments.
(c) How much staff time is spent in meetings with the applicant or other agencies.
(d) How much staff time is spent meeting with the public who live near or are affected by the project.

(3) Require DGC to document how it will allocate the savings since it no longer has to process petitions. Given the 200-300 hour (per petition) figure, DGC staff should have significant staff time and funds freed up to work on improving public notice.

(4) Require DGC to document the percentage of public comment letters it receives meet its stringent commenting regulation, such that DGC will consider the comments. [i.e. what percentage are only "plain English" comments which DGC rejects vs. policy analysis comments, which DGC accepts.] Require DGC to document whether public comments have declined since 1999, when the restrictive comment regulation was adopted.

(5) Require DGC to document how many public hearings it has held since 1994, [not including those that were held by another agency, with DGC participation.]

(6)Require DGC to document how much money DGC received for copying public documents in the past few years; and the amount of staff time devoted to that task.

(7) Require DGC to document how much money it spends on newspaper notices in (1) Anchorage Daily News; (2) Fairbanks News Minor (3) Juneau Empire (4) Local newspapers.

II. CHANGES TO DGC NOTICE and COMMENT PROCEDURES

DGC would foster better public involvement, notice and comments by adopting the following:

(1) Eliminate DGC's three (ineffective and conflicting) online notice processes, and establish one reliable, up-to-date online notice process. Preferably this would be on the State's Online Pubic Notice, with a possible link to DGC. The public is most familiar with the Online Public Notice, so that should be used, rather than the two DGC websites, that are inaccurate.

(2) Establish effective and cost-efficient notice procedures in each coastal district DGC should not foist the notice responsibility on the coastal districts. DGC should be proactive in ensuring that notices are properly posted in the area of a district impacted by the project, published in local newspapers, and posted on a single accurate online system.

(3)Publicly notice suspension and restart of reviews, and any revised comment deadlines, in the same way as the original posting of the project notice.

(4) Change the time of comment submittal, to allow the public to submit comments after DGC releases a draft decision document.

(5) Freely provide documents to the public, upon request, using DGC funds; or require the applicant to provide copies. DEC adopts the latter approach, successfully.

(6) Redefine a "citizen" of a coastal district to include citizen or public interest groups with a documented presence in the district.

(7) Allow "plain English" comments on projects that DGC is required to consider and evaluate in its consistency review; or in the alternative; do not require public comments until after the draft DGC decision is issued.

(8) Provide a meaningful administrative review process for citizens. The "programmatic" petition is not sufficient.

(9) Eliminate the "presumption of consistency" in DGC regulations. Change the regulations to mandate an equal standard for all who submit comments, (including the applicant) whether the commenter is advocating consistency or inconsistency.

Thank you for consideration of these comments. They are intended to supplement the previous comments submitted concerning cumulative impacts, and the comments of Trustees for Alaska concerning the scope of project review, which we adopt and incorporate by reference. Please provide each of the individuals identified below notice of the OCRM evaluation, to the address listed for each commenter.

Sincerely,

Signed

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on behalf of

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APPENDIX D

ALASKA COASTAL MANAGEMENT PROGRAM
312 EVALUATION

STATE RESPONSE TO THE PREVIOUS FINDINGS

RECOMMENDATION 1. Necessary Action: DGC must dedicate the necessary resources needed to complete petition and local coastal program regulations revisions in an effort to resolve long-standing program issues identified in evaluation findings, past and present. These regulation revisions must be completed and submitted to OCRM within nine (9) months of receipt of these final findings. Additionally, DGC must report to OCRM the status of these regulation changes in semi-annual performance reports.

RESPONSE: This was accomplished.

RECOMMENDATION 2. Program Suggestion: The DGC, CPC, resource agencies and coastal districts are encouraged to continue implementation of the ACMP Assessment recommendations as funding and staff resources are available.

RESPONSE: This was done.

RECOMMENDATION 3. Program Suggestion: Following completion of the review process for the Northstar Project, DGC should provide a brief analysis of the (*sic*) how well the State's consistency review and the Federal EIS process worked together to provide for effective and efficient review of the project. This analysis should include possible improvements in State and Federal processes so as to improve governmental decision making (*sic*) regarding such large projects. The DGC should consider using the analysis found in the 1996 ACMP-funded evaluation of large project permitting in Alaska as a basis for refinements that could be pursued within existing ACMP mandates. This analysis should be included in the first preformance report submitted to OCRM, subsequent to final agency decision making (*sic*) regarding the Northstar project.

RESPONSE: The analysis was done and is ongoing.

RECOMMENDATION 4. Program Suggestion: DGC should work with the ACMP working group to strengthen the effectiveness and efficiency of the Single Agency review process. This should include discussions with ACMP coordinators and field staff to review the objectives of the ACMP and single agency process; address resource and funding limitations which are hindering

effectiveness reviews; and, refine the process to maximize on-the-ground effectiveness while minimizing necessary paperwork requirements. The State should submit a summary of the efforts no later than one year after completion of final findings.

RESPONSE: This is discussed in the Accomplishments section of this document.

RECOMMENDATION 5. Program Suggestion: The DGC is encouraged to establish the position of publications specialist as a permanent full-time classification in the best interest of the ACMP.

RESPONSE: This was done.

RECOMMENDATION 6. Program Suggestion: The DGC is encouraged to continue the proactive approach in providing tools for ACMP education and outreach, including the completion of the guidebook series and other key components of the ACMP communications plan, and seek funding opportunities for these various tools.

RESPONSE: This was accomplished.

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RECOMMENDATION 7. Program Suggestion: DGC should actively pursue a formal, thorough partnership agreement or MOU, or an informal process with EPA to discuss projects and issues of mutual interest that affect the Alaska coastal resources. (*sic*)

RESPONSE: DGC did pursue such an agreement.

RECOMMENDATION 8. Program Suggestion: The DGC, as the lead state CZM agency, should continue to pursue resolution of outstanding issues between the state resource agencies and USFS in an effort to complete the memorandum of Understanding (MOU) that has been in a draft form for a number of years. The State should submit a summary of the efforts, including the MOU, no later than one year after completion of final findings.

RESPONSE: This was done and is an ongoing task.