

WHY DID ALASKA ELIMINATE THE ALASKA COASTAL
MANAGEMENT PROGRAM?

By

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Abstract

In 1972, the federal government passed the Coastal Zone Management Act. The federal government recognized that there is a national interest in effective management of the nation's coasts. The act created a program that made it possible for states to collaborate with the federal government to manage the nation's coastal areas and resources. In July of 2011, after thirty-two years of active participation in the program, Alaska became the only eligible state or territory to choose to no longer take part in the program. This action significantly affected Alaska's ability to manage the state's coastline and resources. This research is a qualitative case study that documents the events leading up to the establishment of the Alaska Coastal Management Program, its implementation, its elimination, and the initiative regarding its possible reinstatement. The research evaluates the current form of Alaska's coastal management practices to determine if it meets Elinor Ostrom's design principles for effective common property resource management, as well as theories on decentralization/devolution, polycentric governance, and adaptability and resilience. The research concludes that Alaska's choice to eliminate the Alaska Coastal Management Program was influenced by the interests of natural resource extraction agencies and a consequence of divisive party politics. The research finds that the effect of eliminating the Alaska Coastal Management Program was that the State of Alaska took a significant step away from what science recommends as prudent ways to manage common property resources.

Table of Contents

	Page
Abstract.....	iii
Table of Contents.....	v
List of Tables.....	vii
1. Introduction.....	1
2. Methods.....	5
Methods for objective 1:.....	6
Methods for Objective 2.....	7
3. Review of Previous Investigations.....	11
3.1.0 Introduction.....	11
3.1.1 The Tragedy of the Un-Managed Commons.....	12
3.1.2 Governing the Commons.....	14
3.1.3 Decentralization/Devolution.....	17
3.1.4 Polycentric Governance.....	19
3.1.5 Adaptability and Resilience.....	21
4. Results.....	25
4.1.0 An analysis of the events and circumstances in Alaska that led to the adoption of the Coastal Zone Management Plan.....	25
4.1.1 Whales.....	25
4.1.2 Sea otters.....	26
4.1.3 Salmon.....	28
4.1.4 Timber.....	31
4.1.5 Coastal Zone Management Act of 1972.....	35
4.2.0 An examination of the ACMP in Alaska from 1979 – 2011.....	38
4.2.1 Alaska Politics.....	38
4.2.2 Alaska Coastal Management Program (ACMP).....	40
4.2.3 Alaska’s Coastal District.....	43
4.2.4 Consistency Review Process.....	44
4.2.5 Federal Evaluation of the ACMP.....	49
4.2.6 State Review of the ACMP.....	55
4.2.7 ACMP Challenges 1979 -2011.....	57
4.2.8 Federal Challenges to the ACMP.....	62

4.3.0 The Alaska Legislature’s decision to eliminate the ACMP	63
4.3.1 Maximum Local Self-Government	63
4.3.2 Stakeholders	66
4.3.4 Local Governments in Alaska	69
4.3.5 Resource Development Industries	70
4.3.6 Introduction of House Bill 106 & Senate Bill 45	72
4.3.7 House Bill 106	72
4.3.8 Senate Bill 45	81
4.4.0 An analysis of the citizens’ initiative to reinstate the ACMP in Alaska	83
4.4.1. Alaska’s Initiative Process	83
4.4.2. An Act Establishing the Alaska Coastal Management Program	86
4.4.3 The Sea Alaska Party	92
4.4.4 Vote No on 2	96
4.4.5 Ballot Measure 2	98
4.5.0 Why did Alaska Eliminate the ACMP?	98
5. Discussion	101
5.1.0 Ostrom’s (1990) design principles for effective CPR management	101
5.1.1 Congruence between appropriation and provision rules and local conditions	102
5.1.2 Collective choice agreements	103
5.1.3 Conflict resolution mechanisms	103
5.1.4 Minimal recognition of the rights to organize	103
5.1.5 Nested enterprises	104
5.2.0 Elimination of the ACMP - devolution/decentralization	104
5.2.1 Elimination of the ACMP – polycentric governance	105
5.2.2 Elimination of the ACMP – adaptability and resilience	106
6. Conclusion	109
6.1.0 Purpose of the Research	109
6.1.1 Key Findings	110
6.1.2 Significance of the Research	111
6.1.3 Implications of Findings	111
6.1.4 Limitations of the Study	111
6.1.5 Recommendations for Future Research	112
7. Literature Cited	113

List of Tables

	Page
Table 2.0: List of archived documents to date	6
Table 2.1: Eight Principles for Managing Common Property Resources	8
Table 4.0: ACMP Objectives	43
Table 4.2: List of elements of the revised ACMP in 2003 considered controversial	59

List of Figures

	Page
Figure 4-0: Alaska Coastal District Boundaries	44
Figure 4.1: Consistency review process & corresponding timeline	47

1. Introduction

In 1972, the federal government passed the Coastal Zone Management Act. The federal government recognized that there is a national interest in effective management of the nation's coastal areas and resources. It was clear that the nation's expanding population and the subsequent demand for food, minerals, recreation, transportation, energy, waste disposal, and industrial activities required additional management of coastal environments. The nation's coastal zones are rich in a variety of natural, commercial, recreational, ecological, industrial and aesthetic resources of immediate and potential value to the present and future well-being of the nation. The biomes of the coastal zone are among the most productive ecosystems on Earth, but are ecologically fragile and consequently vulnerable to destruction by man's influence. The increasing and competing demands on these resources required a comprehensive management approach and collaboration between federal, state, and local governments (Coastal Zone Management Act, 1972).

The coastal zone is arguably more important to the State of Alaska than any other state. Alaska has more than double the coastal area of the entire continental United States. In addition, according to a study conducted by the National Oceanic and Atmosphere Administration (United States National Oceanic Atmosphere Administration, 2009):

- Alaska has the largest percentage (82.5%) of its population residing in coastal zone areas of all the states;
- Alaska derives an estimated 88% of its gross domestic product from the coastal zone (second only to Hawaii);
- Alaska derives almost \$1 billion annually worth of value from coastal zone tourism and recreation;
- 85.2% of Alaska's people are employed in a coastal zone area; and
- an estimated 2,210 businesses are dependent on Alaska's coastal and ocean resources.

From July of 1979 until July of 2011, the State of Alaska had an active Alaska Coastal Management Program (ACMP). For thirty-two years the State of Alaska had a coastal management program, tasked with managing and coordinating efforts to sustain coastal environments and mitigate the impacts of use and extraction of resources. Specifically, the ACMP required the state to:

- provide a common basis for coastal decisions which must be made with reference to policies and rules which govern all actions in coastal areas;
- substantially improve the protection of coastal land and water habitats;
- provide a capability to anticipate and manage impacts of large resource developments such as energy, timber, mining and commerce;
- provide local and state implementation of guidelines and standards, which clearly defines the division of responsibility for management of coastal resources;
- establish a process for resolving conflicts;
- provide a role for local units of government in coastal decisions of local as well as statewide and national significance;
- provide for more certainty about state and local desires to entrepreneurs concerned with locating development sites;
- form districts in unorganized areas of the state to manage coastal resources and grant large measures of local control to unincorporated communities (villages);
- provide a special process for heightened and specific management attention to geographic areas with extraordinary coastal value; and
- guard against unreasonable exclusion of coastal uses of statewide and national significance.

Clearly the coast is vital both economically and ecologically to the State of Alaska. Alaska's interest in coastal management was spurred by coastal conservation and development pressures. In the midst of the national exploration and development of oil and gas on its continental shelf and elsewhere, the harvest of timber, fisheries expansion, the extraction of minerals and the increasing pace of development along its coast, coastal management problems emerged and required attention. These included limited waterfront space for development, the need to protect fish and wildlife habitats, the impacts of timber harvest, transportation, mining, extensive coastal hazards, the impacts of western culture on Native culture, and the need to protect subsistence cultures which compete with other users for the resources (United States Department of Commerce, 1979). These issues still exist, and arguably are at least as significant as they were in 1979.

Participation in the federal CZMP is voluntary. Thirty-three other states and territories in the U.S. currently participate in the program. In July 2011, after thirty-two years of active participation in the program, Alaska became the only eligible state or territory to choose to no longer participate. Without a federally recognized coastal management plan, the State of Alaska and local governments have no authority over federal agencies, federal lands or federal waters.

Federal waters extend from 3 miles off shore to 200 miles off shore. The federal government is the largest landowner in Alaska with approximately 60% of the total area (222 million acres). The CZMA is unique in the level of influence it gives states over federal actions (regardless of location); without the CZMA federal consistency authority, the State of Alaska does not have the influence or authority to reject federal actions, even when those actions have a direct impact on Alaska's coast and or resources (D. Kaiser, personal communication, February 10, 2016). This information poses two distinct questions. Why did the State of Alaska choose to eliminate the ACMP despite its obvious benefits? And what are the implications of eliminating the program on the state's ability to effectively manage coastal resources and zones in Alaska?

The purpose of this study is to 1) document what led to the state's departure from Alaska's coastal management program and 2) analyze the impact of the loss of the Alaska Coastal Management Plan (ACMP). My thesis meets the purposes of this research by providing a rich and thick description of the events, circumstances, and influences that led to the state's departure from the ACMP. Starting with the motivations behind the enactment of the ACMP. From early harvest of Alaska's coastal resources and the extirpation of pacific salmon in the 1950's, to Alaska's constitutional convention and point of emphasis on populist resource management. The research moves on to explore the application of the ACMP in Alaska from its early history in 1979, to its subsequent development and substantial reconfiguration in 2003, all the way through its sunset in 2011. Followed by an in-depth exploration of both the struggles to retain the ACMP and the efforts to eliminate the program by the state legislature. And finally, an examination of the failed initiative to reinstate the ACMP. In the final portion of my research I analyze the impacts of eliminating Alaska's coastal zone and resource management, to see if the management of Alaska's coastal areas and resources meet the principles identified by Elinor Ostrom regarding how to effectively manage common property resources. The research then moves on to consider if Alaska's current form of coastal management meets more contemporary principles of effective resource management which include, devolution/decentralization, polycentric governance, and adaptability and resilience.

2. Methods

In order to meet both objectives of this study I utilized a case study approach. A case study is a comprehensive investigation of a subject, as well as its related conditions and environments (Flick, 2009). A case study is defined as an in-depth study of a single unit, where the scholar's aim is to elucidate features of a larger class of phenomenon (Gerring, 2004). The goal of case study research is to understand the complexities of a case in the most complete way possible (Stake, 1994). In 2007, Elinor Ostrom and Amy R. Poteete make the following statement about case studies, "A researcher's in-depth knowledge about a case can generate high-quality data and build confidence in the internal validity of the analysis as well as inspiration regarding processes that may not have been posited in prior theoretical work." I conducted in-depth research about the decision to depart from the coastal zone management program in Alaska. The case study research method illuminated the decision-making process to eliminate the ACMP and provided detailed knowledge on why Alaska chose to depart from the federal coastal zone management program and what factions played a role in that decision.

Scholars have argued that a single case study approach is limited in its ability to generalize and therefore the case study cannot contribute to scientific development. This understanding of the case study is oversimplified to the point of being misleading. Flyvbjerg (2006), points out that the case study method forms the backbone of a Harvard Business School, where executives of the most powerful corporations are trained. Gerring found that the case study method is "solidly ensconced and perhaps, even thriving" in the field of social science (2004). In a study conducted by Poteete and Ostrom in 2008, the researchers identified articles related to natural resource management by using the Academic Search Premier, the world's largest multidisciplinary bibliographic database of scholarly articles, and found that from 1990-2004, 40% of all scholarly articles related to natural resource management submitted to the database were presented as single unit case studies.

I used two qualitative research methods to conduct the case study:

- 1) Collection and review of artifacts and text (Tracy, 2013; Edmunds and Wollenberg, 2004; Meek, 2012; Dell'Angelo et al., 2015); and

- 2) Qualitative interviews (Tracy, 2013; Edmunds and Wollenberg, 2004; Dell’ Angelo et al, 2015; Meek, 2012).

Methods for objective 1: Document the events leading up to the elimination of the ACMP and the referendum regarding its possible reinstatement.

Archival research was used to illuminate and establish a historical context for the events that led up to the elimination of the ACMP, and the referendum regarding its possible reinstatement (Edmunds & Wollendberg, 2004). This effort will include an analysis of over 200 documents. The archival work was also useful in providing empirical evidence for my interpretation of events leading up to the elimination of the ACMP and the vote regarding its possible reinstatement. A list of archival documents used for the above-mentioned objective are provided in table 2.0 below:

Table 2.0: List of archival resources identified to date

-
- Newspaper and other periodicals
 - Legislative Audit Reviews of Ocean and Coastal Management
 - Legislative meeting minutes
 - Legislative supplemental documents
 - Legislative research analysis
 - State of the State addresses
 - State of Alaska email correspondence
 - Power point presentation and materials presented to the state legislature
 - Conference Committee action notes
 - Environmental Impact Statements
 - Election/Campaign materials
 - Campaign fundraising financial disclosure forms
 - Letters of support for the CZMP in Alaska
 - Letters of opposition for the CZMP in Alaska
 - Municipal government resolutions in support of the CZMP
 - Coastal Zone Management Act Performance Measurement Report (NOAA)
 - Federal Register Summary
 - Local government meeting minutes
 - DNR Fact Sheets
 - Federal Audit Reviews of ACMP in Alaska
 - Alaska Coastal Management Program Initiative Sectional Analysis
-

The analysis of events leading to the elimination of the ACMP were done in four sections. The first section is an analysis of the events and circumstances in Alaska that led to the adoption of the ACMP. The second is an examination of the ACMP in Alaska from 1979 – 2011, including an investigation of the ACMP and its effectiveness. The third section focuses on the state legislature’s decision to eliminate the ACMP. The fourth is an exploration of the citizens’ initiative to reinstate the ACMP.

The effort to document the events leading up to the elimination of the ACMP were supplemented by qualitative interviews. My in-depth semi-structured interviews followed an interview guide that provided an opportunity of the interviewee to elucidate their view of events that led to the elimination of the ACMP. Directly proceeding the structured portion of the interview, I asked additional questions meant to expand on information learned during the structured portion of the interview.

Unfortunately, I was unable to interview as many participants as I would have liked to. I repeatedly contacted six members of the state legislature who were assigned to the conference committee to negotiate elements of the failed house bill and senate bill to reinstate the ACMP in 2011. Only one former member of the senate agreed to be interviewed. I contacted two key members of the Sea Party campaign, who worked on the initiative to reinstate the ACMP in 2012, and only one member agreed to be interviewed. I contacted two key members of the Vote No on 2 campaign, and neither of them returned any of my phone calls or emails. I tried soliciting an interview with former Governor Sean Parnell, and after several back and forth emails and a request to preview the questions I intended to ask, the correspondence unexpectedly stopped. Ultimately, I was only able to interview two people who were willing to participate in the research. The two interviews played a crucial role in guiding my research.

Methods for Objective 2: Assess the management of Alaska’s coastal zones and resources

The management of Alaska’s coastal zones and resources, both before and after the demise of the ACMP, were evaluated to see if the management of Alaska’s coastal areas and resources meet the principles identified by Elinor Ostrom regarding how to effectively manage common property resources (1990). Ostrom identified 8 design principles that characterize best practices and describe rules and structures of robust institutions associated with sustainable

governance of common property resources. These principles (listed in Table 2.1) include clearly defined boundaries; congruence with local conditions; opportunities for collective choice and local self-determination; methods for monitoring; sanctions; conflict resolution; and incorporation of multiple, nested layers of organization (Dell'Angelo et al., 2015).

Table 2.1: Eight Principles for Managing Common Property Resources

1. Clearly defined boundaries

Individuals or households who have rights to resource units from the common property resource must be clearly defined, as must be the boundaries of the common property resource itself.

2. Congruence between appropriations and provision rules and local conditions

Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, material, and/or money.

3. Collective-choice arrangements

Most individuals affected by the operational rules can participate in modifying the operational rules.

4. Monitoring

Monitors, who actively audit common property resources conditions and appropriators behavior, are accountable to the appropriators or are the appropriators.

5. Graduated sanction

Appropriators who violate operational rules are likely to be assessed graduated sanctions (depending on the seriousness and context of offense) by other appropriators, by officials accountable to these appropriators, or by both.

6. Conflict-resolution mechanisms

Appropriators and their officials have rapid access to low-cost local arenas to resolve conflicts among appropriators or between appropriators and officials.

7. Minimal recognition of rights to organize

The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.

8. Nested enterprises

Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layer nested enterprises.

Source: Ostrom 1990 pg. 90

These principles have been used by a large number of authors as an evaluation tool for analyzing policies on the governance of common resources. For example, authors Michael Cox, Gwen Arnold and Sergio Tomas (2010) evaluated 91 different studies, all of which dealt with the complexities and challenges involved in the application of common pool resource management as delineated by Ostrom in 1990. Their research found good empirical support for Ostrom's principles as a diagnostic baseline to understand outcomes resulting from socioecological systems in the management of common-pool resources. For example, Murombedzi (1999) assessed the management and devolution policies of wildlife conservation initiatives in Zimbabwe as a common pool resource. Meek (2012) applied the concepts of common pool resource management, as defined by Ostrom, to the complexities of the polar bear as part of a social-ecological system of the indigenous communities of the north and how the common pool resource management and overlapping authorities of local, state, and federal policies affected that resource. Dell'Angelo et al., (2015) uses the presence of Ostrom's 8 design principles for effective CPR management, to assess water governance regimes on Mount Kenya.

This research will attempt to provide "rich, thick description" of the events that led to the momentous decision to eliminate the ACMP and its aftermath. As described by Geertz (1983) "rich, thick description" presents considerable detail regarding both the context and the meanings of events to those directly involved in them. In essence, it tells the complete story, something that is often missing in scientific publications. Joshua Schimel, in his book, *Writing Science* (2011), contends that the best scientific writing does a good job of telling a story, not just reporting sterile results. Harvard Professor Edward O. Wilson (2001) argued that science should be taught through the power of story:

Storytelling is not something we just happen to do. It is something we virtually have to do if we want to remember anything at all.... Facts presented in stories, as opposed to lists, are much easier to remember. Likewise, facts that stir up intense emotions are quickly and easily stored in our brains, and well-told stories are a great way to tie emotions to facts. Researchers have also demonstrated that the common marks of good storytelling – metaphors and analogies that draw the audience in – work because they allow the audience to tie the story to previous knowledge and experience.

3. Review of Previous Investigations

3.1.0 Introduction

This study focuses on coastal zone management, which is a classic common property resource (CPR). Alaska's coastal areas and resources fit the definition of a CPR because it is difficult to exclude users from Alaska's expansive coastline and its resources; and because the overuse of these resources and coastal zones can subject them to degradation or collapse (Ostrom 1990). Because CPRs present unique management challenges, this literature review focuses on the current state of knowledge regarding best management practices for CPRs. Here I review the development of theory on how CPRs should be managed. Based on this review, I will develop a set of criteria to evaluate whether the State of Alaska's coastal zone management is in line with current theory on CPR management, both before and after it stopped participating in the CZMP.

The issue at hand is how to best govern CPRs to ensure their long-term sustainability. There is widespread agreement that the mechanisms to resolve this issue should be institutional, (Acheson 2006). In other words, if we have the right policies and laws in place to govern these resources, the human race may be able to save these ecosystems from overuse of their resources and services. Therein lies the dilemma; we have not come to a consensus on the "right" rules and policies to govern CPRs in a sustainable manner. However, we can take comfort in the fact that this dilemma is not new. For decades, successful examples of CPR management from around the world have contributed to a better understanding of how to govern CPRs.

We obtain knowledge through empirical observation, trial and error, and hypothesis testing, and have for some time been applying that knowledge to a more comprehensive theoretical understanding of the most appropriate ways to govern CPRs (Ostrom 1990). However, despite the efforts of policy specialists and academics to find a solution to the world's CPR problems, there is no consensus on the best approach. Like many of the ecologist and social scientists that have tried to tackle this issue, I don't believe there will be a one-size-fits-all solution. These are complex systems with dozens if not hundreds of variables. Agrawal (2003, p. 243) emphasized that these systems have "...far more variables that potentially affect resource management than is possible to analyze." Nevertheless, we do have some exceptional examples of well-managed CPRs whose governance for long term sustainability have been successful. We

can look to academic theories based on examples of successful CPR management to find possible solutions to the problems we currently face.

3.1.1 The Tragedy of the Un-Managed Commons

Prior to the 1960's environmental movement, little credence was given to environmental issues. The indifference led to a lack of prudent management of many CPRs. Most people were unaware that the exploitation of CPRs could lead to degradation or elimination of those resources. The oceans, freshwater bodies, the atmosphere and even forests were considered inexhaustible, and if not infinite then unmanageable. At the end of WWII there was a race to develop in industrialized countries, and the consequences of that development highlighted problems with this apathy towards the environment and the lack of natural resource management.

As I will demonstrate, salmon in Alaska were once considered an inexhaustible coastal resource. By the late 1950s, salmon in Alaska had been overharvested to the point of extirpation (Clark et al., 2006). This had a significant effect in Alaska and created a paradigm shift from salmon as an infinite resource that could be indiscriminately harvested, to salmon as a resource that required prudent management to sustain.

Early theories of CPR management reflected the belief that common property resources were unmanageable. H. Scott Gordon (1954, p. 124), in his examination of common-property resource management of fisheries, stated "what was considered open access to all is owned by no one." He pointed out that few would try to conserve a resource if another user was likely to overuse and degrade it. For example, the fish unharvested by the fisherman are valueless, because there was no way to assure that the fish would be there tomorrow. Therefore, a rational fisherman should harvest as much as possible now, for there is no guarantee of the future harvest.

In 1965 this theory was reinforced by the work of Mancur Olson in *The Logic of Collective Action*, where he argued that unless a system was quite small, or unless there was some mechanism for "coercion" to make individuals act in their common interest, then the self-interested man will not achieve the greater good for the group. This article was significant in the sense that it provided an academic prospective for managing CPRs with a "coercive" approach.

Garrett Hardin strengthened this theory in his famous 1968 article "The Tragedy of the Commons". The tragedy of the commons is a theory of a situation within a communally-owned resource system where an individual user gains 100% of the benefit of a resource, but everyone shares the costs of its maintenance. If a fisherman harvests far more than their sustainable quota,

they get 100% of the profits from that overharvest, while the entire group shares the cost and consequences of the exploitation. In this hypothetical, each fisherman will be tempted to overharvest. Why should one use restraint when the next fisherman is overharvesting and reaping a profit? Another example is water and air pollution. If one company dumps their pollution into the river or air, it gets all of the benefit of free waste disposal, while the entire community shares the cost of either enduring or cleaning up the pollution.

A decade after publishing his initial theory on the tragedy of the commons, Garrett Hardin (1978, p. 314) wrote "...if ruin is to be avoided in a crowded world, people must be responsive to a coercive force outside their individual psyches..." According to Hardin that coercive force took shape in one of two ways, 1) privatizing the commodity/service, or 2) strong central government to enforce the rules and regulations of use.

Hardin's theory wasn't solely intended for CPR management, in fact his initial analysis was meant to address the issue of overpopulation (Hardin 1968). After his banner article in 1968, the tragedy of the commons theory was used by a large spectrum of academics to explain a myriad of different issues such as the inability of the U.S. Congress to limit its capacity to overspend (Shepsle and Weingast 1984); to the problem with urban crime rates (Neher 1978); and the organization of the Mormon Church (Bullock and Baden 1977). The popularity of the tragedy of the commons theory strengthened its position in the formulation of policy concerning CPR management.

William Ophuls (1973, p. 229) wrote "because of the tragedy of the commons, environmental problems cannot be solved through cooperation... and the rationale for government with major coercive powers is overwhelming... even if we avoid the tragedy of the commons, it will only be by recourse to the tragic necessity of Leviathan." Heilbroner (1974 p. 322) built on this argument and asserted that "iron governments" would be necessary to regulate and seize control over ecological problems. Ehrenfield (1972) suggested that the public interest in CPRs would inevitably clash with the interest of privatization, and in most cases, the use of a strong public agency would be needed. Academics went so far as to argue that the tragedy of the commons should be recommended reading for all public school students (Nebel 1987).

Privatization of a CPR or a strong central government was largely considered the only ways to avoid the tragedy of the commons. Elinor Ostrom (1990, p. 9) noted, "The policy advice to centralize the control and regulation of natural resources, such as grazing lands, forests, and

fisheries, has been followed extensively.” The commons model strongly influenced a number of CPR management policies in the U.S. For example, the Clean Air Act of 1973, the Clean Water Act of 1977, the Environmental Protection Act of 1970, and the Endangered Species Act of 1973 (Acheson 2006).

3.1.2 Governing the Commons

The tragedy of the commons theory wasn’t universally accepted. Godwin and Shepard (1977 p. 265) made a potent analogy for this, suggesting that policy advisors and scientists were doing the equivalent of “Forcing Squares, Triangles and Ellipses into a Circular Paradigm” by using the commons model without giving attention to all the real-world variables that go into the management of CPRs.

The most popular rebuttal to the tragedy of the commons dilemma was made by Nobel Laureate Elinor Ostrom (1990). Ostrom argued that neither state control nor privatization of CPRs have been universally successful in solving CPR problems. In contrast to the theories that come from the tragedy of the commons model, Ostrom argued that CPR problems can be solved by local organizations and users of the CPRs.

According to Ostrom, Hardin’s theory rests on false assumptions about the nature of CPR dilemmas. Hardin’s tragedy of the commons presented an over simplified scenario where the consideration of one’s interest was the sole concern. The dynamics of a CPR dilemma are far more complex than that. The tragedy of the commons was being considered without the use of monitoring, collaboration, the application of penalties for miss-use or overuse of the resource, local knowledge of the resource, resource boundaries, etc. The complex and dynamic nature of how people resolve problems was not being considered by most scholars or policy analysts who advocated that the only way to avoid the tragedy of the commons was to privatize the resource, or the use of strong government agency regulation to protect the resource.

Ostrom (1990) cites hundreds of examples of local resource users collaborating, with the use of very dynamic management schemes, to sustain CPRs. With the use of contemporary, ancient, foreign and domestic examples of local resource users who crafted successful management of CPR schemes, Ostrom and her colleagues successfully demonstrated that in certain circumstances, neither strong-centralized government control, nor privatization is needed to successfully manage CPRs. From fisheries in Turkey (Berkes, 1986); forests in Switzerland (Netting, 1981), high mountain meadow ecosystems in Japan (McKean, 1986); irrigation systems

in Spain (Mass and Anderson, 1986) and the Philippines (Lewis, 1980); and watershed governance in the U.S. (Ostrom and Walker, 1990), there are hundreds of examples of CPRs being managed and sustained across the world without the use of a coercive government agency, or privatization of the resource. Scholars throughout the world praised her work. In 2016 Obeng-Odom wrote:

These case studies were principally important because they covered different countries, and they were carried out by people from different disciplinary backgrounds with detailed contextual and site-specific knowledge. After screening and narrowing down the selection to the most detailed existing research, Ostrom and her team then investigated deeper into the cases by doing additional fieldwork to understand the selected cases better in order to determine why they were successful, how their successes evolved, and the principles/attributes that made them successful.

In 2015 Gunn states:

The lessons derived from her work are that management of the commons must be by rules established by those who use it, and that there is a collective private property alternative to individual private property or government regulation that has worked over time.

It is important to note that Ostrom never opined that she had identified a perfect solution to all CPR problems. In fact, Ostrom and other like-minded social scientists make it a point to argue against the notion of some form of panacea for the commons dilemma. Ostrom realized that privatization of a CPR, and/or the necessities of strong government regulation were credible means to resolve problems with CPR management; but she made it a point to show other examples of CPR management that did not require privatization of the resource or a strong coercive government agency.

In addition to the contributions mentioned previously, Ostrom provided eight design principles, shown in Table 2.1, that characterize essential elements or conditions that help account for the success of CPR management schemes. These design principles can be thought of as rules/structures/practices that characterize capable institutions that maintain sustainable governance of CPRs (Ostrom, 1990; Cox et al, 2010; Dell'Angelo et al., 2015).

Principle 1, clearly defined boundaries refers to the need to define both the physical extent of the resource and the group of individuals with the right to use the resource. Principle 2, congruence between appropriations and provision rules and local conditions, requires that rules

concerning the time, place, method and amount of resource extraction must be appropriate to local conditions. Principle 3, collective-choice arrangements, requires that resource users affected by the rules governing the resource should participate in making and modifying those rules. Principle 4, monitoring, requires that users' behavior be monitored, and that the monitors either are accountable to the users or are themselves users. Principle 5, graduated sanctions, requires that the severity of the sanctions should reflect the character and frequency of violation of rules governing the resource. Ostrom found that harsh punishments can actually increase the number of violations. Principle 6, conflict resolution, states that systems with conflict resolution mechanisms are more likely to survive. Principle 7, minimal recognition of rights to organize, requires that there be recognition of the right of a community of users to self-organize and establish rules that are appropriate for local conditions. Principle 8, nested enterprises, states that governance activities that are organized in multiple layers are more likely to be associated with successful outcomes (Ostrom, 1990; Cox et al., 2010; Dell'Angelo et al., 2015). See table 2.1 on page 8 for more information.

There has been substantial support for the principles over the years since their publication, but there has also been some criticism. Scholars have argued that the principles are overly precise given the many circumstantial conditions for which they apply. I don't believe Ostrom meant to be rigid in her application of these principles, and I believe this is evident in the continued development of the principles and the broader context in which she applied the principles (Ostrom, 2007; Ostrom, 2009a; Ostrom, 2009b; Ostrom & Basurto, 2011).

In 2010, twenty years after publishing *Governing the Commons*, Cox et al reviewed 91 different academic studies that inherently or expressly evaluated the eight design principles. The results of that study suggest that the principles are empirically supported and hold considerable value in developing successful CPR management schemes today. Scholars of natural resource management have found a correlation between the success and sustainability of CPR systems and the 8 institutional characteristics/principles noted above (Ostrom, 1990; Cox et al., 2010; Dell'Angelo et al., 2015).

In 2015, an assessment was conducted on the governance of water as a CPR in communities on and around Mount Kenya. The assessment focused on whether local communities' water governance regimes were consistent with Ostrom's design principles of CPR management. I will be conducting a similar study, using Ostrom's design principles, to evaluate

whether the State of Alaska's decision to stop participating in the ACMP is in line with current theory on CPR management.

Ostrom's book, *Governing the Commons*, and her eight design principles for effective management of CPRs shaped an enduring legacy on academics around the world that study natural resource management. Over the course of a couple decades, those eight design principles have been refined and expanded to incorporate a broader and more comprehensive understanding of the tenets that lead to more effective natural resource management. In the following sections I explore those developments to better understand how those design principles have evolved and how that might influence my use of those eight design principles for my research.

3.1.3 Decentralization/Devolution

Devolution/decentralization denotes a transfer of authority from one central government authority to lower levels of the same government. Over the last several decades a convergence of different influences encouraged governments to decentralize natural resource management to local governments. Strained governments were looking for ways to reduce costs and environmentalists advocated for resource management that tied local knowledge and proximity to the resource with more effective management. Development specialists demonstrated that bottom-up, locally-responsive measures based on self-determination were more effective means to the development of natural resources. Politically there was a shift away from colonial governments and authoritarian regimes that naturally gave more influence over natural resources to local governments, while sociologists and other scholars in the field of natural resource management provided empirical evidence to support a correlation between sustainable management regimes and devolution practices. All of these stimulated a transformation in natural resource management towards more self-determination, or local control over CPRs (Agrawal & Ostrom, 2001; Manor, 1999; Edmunds & Wollenberg, 2004).

In theory, the logic surrounding the principle of devolution/decentralization of authority to local regimes in the context of natural resource management is rather simple. Collaborating with local governments to manage resources allows local officials to participate in the decision making. This inclusion fosters local participants' understanding of the complexities of policy making processes and outcomes, which increases the likelihood that local users will adhere to the policies and regulation concerning CPR management, while decreasing the cost of monitoring

and increasing the efficiency of the management regime (Tanz and Howard 1991). In 1990, Ostrom and Walker suggest that CPR regimes that devolve rights to local users/governments are more capable of tailoring their rules and regulations to fit the local circumstance. Local users concern for the maintenance of their CPRs stems from a deep-rooted concern about their relationship with those resources. Devolving authority to local users to formulate regulations and rules for governing CPRs is a way to make use of a natural proclivity some local users have to sustain CPRs.

While there are many instances in which local users have been able to develop successful management regimes for CPRs, many others have failed to do so. Local users fail to conserve resources because the people of those communities either cannot devise successful rules to manage CPRs or because the rules fail after they are established (Acheson, 2006). There is a growing belief that the failure to get rules is linked in large part to the characteristics of communities. A number of characteristics have been considered as influential in the process of devising and enforcing effective rules for sustaining CPRs: a sense of community, social capital, social homogeneity, dependence on the resource, leadership, and an ability to secure boundaries (Ostrom 1990; Acheson, 2006; Edmunds & Wollenberg, 2003). Communities that have been able to establish rules and regulations to support sustainable CPRs, occasionally lack the ability to enforce those rules, some lose interest in management of CPRs after finding work in different areas, some small communities have a deep-rooted sense of injustice that make it difficult for people to trust one another so they cannot implement the rules (Singleton & Taylor, 1992). In many instances, efforts to manage resources locally fail because of a combination of an inability to devise successful rules or because the rules they do formulate fail after they are established. Another problem exists when decentralization/devolution formulates as an extension of centralized control over the locals' decision making process and resource (Bixler, 2014).

Many scholars believe that even though devolution policies fail to deliver on many of the expected benefits, they are a better alternative than centralized management (Edmunds & Wollenberg, 2004). This sets up a paradigm of sorts, wherein the notion of decentralization is thought to be a principle characteristic of successful CPR management regimes, and yet it sometimes fails to deliver the prescribed benefits.

3.1.4 Polycentric Governance

Another theory of successful CPR management principles seemed to evolve from the idea of decentralization/devolution. This is the theory of polycentric governance. Polycentric governance systems have multiple centers of authority, which create opportunities for CPR management institutions to evolve by “recognizing and building on existing networks, markets, and hierarchies of organization, while also recognizing that decision making is a complex process that includes various political, economic, scientific, and administrative considerations” (Bixler, 2014). Polycentric governance systems refer to the coexistence of multiple centers of decision making that operate independent of each other, whereas devolution/decentralization refers to the dispersion of power from one centralized authority to another. These are not mutually exclusive ideas; polycentric governance includes the idea of dispersing authority from a central government agency to that of a more localized government agency, it just takes that idea several steps down the road by including linkages to a wide range of government, nongovernment and private entities. Polycentric governance is not singularly concerned with cooperation of public institutions at different levels of government. “It is about governance, not governments, and encompasses private as well as public entities” (Cole, 2015). Polycentric governance emphasizes a co-management and collaborative approach to CPR management which involves intuitional linkages among user groups, communities, government agencies, and nongovernmental organizations. Using the term polycentric governance draws consideration to “institutional linkages between quasi-autonomous decision-making units operating at multiple scales, complemented by modest overlaps in authority and capability” (Folke et al., 2005).

Lemos and Agrawal (2006) argued that a purely market, state, or civil-society based governance (such as non-governmental organizations) are ineffective in comparison to models of polycentric environmental governance. This analysis takes into account and heavily emphasizes the many variables that encompass CPR management problems, and concludes that a diversity of institutions at different levels would more appropriately understand and be able to deal with the multitude of variables than the vast majority of single institution, or decentralized governance systems.

According to Cole (2011, p. 406) polycentric governance approaches provide a greater opportunity for:

... experimentation, choice and learning across levels of different organizations, with a tendency to enhance innovation, learning, adaptation, trustworthiness, levels of cooperation of participants and the achievement of more effective, equitable, and sustainable outcomes at multiple levels.

One of the key tenets of polycentric governance is the ability to learn from the mistakes and successes of other institutional linkages. Ostrom (2009b) noted that all policies are bound to have problems, but with “trial and error” learning can occur in a polycentric system. A polycentric system necessarily entails a greater number of policy experiments from which policymakers at various levels of governance might learn valuable lessons, and because of the linkages and collaborative effort to preserve the integrity of the CPR in question, they have the ability to learn from one another.

Polycentric governance of CPRs presupposes a condition of collaboration and communication on the entities involved: non-government, government, and private entities alike. There must be a degree of communication in order to establish the collaborative efforts to sustainably manage CPRs. In a literature review of common-pool resource studies, Ostrom (2003) analyzed six potential reasons that communication naturally increased cooperation. They...

- 1) facilitate the development of optimal strategies;
- 2) allow for exchanges of promises;
- 3) increase the mutual trust, and expectation of others' behavior
- 4) add value to payoffs;
- 5) reinforce norms; and
- 6) promote development of the group identity.

The collaboration inherent in polycentric governance systems increases the cooperation and learning capacity of the entities involved, which in turn creates a more comprehensive CPR management regime.

The idea of polycentric governance becomes even more relevant depending on the magnitude of the problem. Ecological problems that require a global response cannot be resolved by a single government entity. Global environmental problems are characterized by the magnitude, complexity and interconnectivity of multi-nation's activities that can exacerbate or

improve the problem. Due to the scale of these problems there must be a polycentric and collaborative approach to choosing methods appropriate to these challenges.

Scholars of natural resource management have found a correlation between the success and sustainability of CPR systems and the use of polycentric governance regimes (Cole 2015, Bixler 2014, Lemos & Agrawal 2006, Ostrom 2009c)

3.1.5 Adaptability and Resilience

Sustainable management of common property resources is a challenging endeavor that may involve complex and dynamic institutions with different levels of authority/jurisdiction. Good CPR management requires rules and policies that reflect local knowledge and understanding of the resources. Effective CPR management necessitates collaboration between those making the rules and those affected. And while we have been able to understand and develop core design principles for effective management of CPRs, there is no perfect solution for all the problems associated with CPR management. In large part, because effective CPR management is not a stagnate process. Recognition of the constantly changing dynamics of both the human population and our ecosystems is a fundamental tenet of effective CPR management. Dietz, Ostrom and Stern (2003, p. 1907) point out that:

Devising ways to sustain the earth's ability to support diverse life, including a reasonable quality of life for humans, involves making tough decision under uncertainty, complexity, and substantial biophysical constraints as well as conflicting human values and interests. Devising effective governance systems is akin to a co-evolutionary race. A set of rules crafted to fit one set of socioecological conditions can erode as social, economic, and technological developments increase the potential for human damage to ecosystems and even to the biosphere itself. Furthermore, humans devise ways of evading governance rules. Thus, successful commons governance requires that rules evolve.

Humans have largely adapted to changing environmental and human conditions that effect the utilization of resources through a process of domestication and or alteration of the environment in order to increase or control the resource output. Human activities are globally interconnected, and with new technology, growing markets, and changing governance systems, decisions in one place have the ability to affect people and the environment in another. With the changing nature of our world here on earth, there is no guarantee that CPR systems will maintain the goods and services they provide to humans (Folke et al., 2005).

This knowledge has engendered a shift in theories of CPR management, anchored in adaptation and resilience. A shift that recognizes there is a need to protect and strengthen CPR systems' ability to sustain the resources/services they provide in a changing world.

Resilience is the extent to which a CPR system can absorb disturbance/perturbations and still retain essentially the same functions (Folke et al., 2005). Adaptation is the extent to which a CPR system will change in the face of disturbances/perturbations (Wong-Parodi et al, 2015). Both of these terms are reflective of a need to support the CPR systems in the face of change.

Prior to this shift in theories, CPR management was focused on single issues or resources and based on a standard of managing the system solely to provide the most value to resource users. We now know this strategy does not address many of the issues surrounding CPR systems, wherein the capacity of many CPR systems to generate resources and ecosystem services is vulnerable to different types of variables across different scales. In reference to this change in CPR management theory, Carl Folke et al., (2005) point out that:

The basis for such an approach is developing and includes recognition of ecosystems as complex adaptive systems and the necessity to address uncertainty and surprise. It is moving from the conventional approach based on assessment of the maximum sustainable yield of individual species at a single broad scale to a more general focus on managing essential ecological processes that sustain the delivery of harvestable resources and ecosystems services at multiple scales.

Change in ecosystems and society can be slow or incremental, or fast and abrupt. Virtually all ecosystems, whether terrestrial or aquatic, are vulnerable to both slow variables and fast variables that effect CPRs. The questions around the management of CPR systems shift from how to manage a CPR system so that it provides the most value, to a CPR system management approach that is concerned with sustainability and keeping the services and resources in tact through change, with recognition that CPR systems are part of a larger socio-ecological system.

In her 2011 study that highlights the theoretical change in CPR management regimes, Meek produced an examination of the current institutions protecting the polar bear. She opines that the ecological and social change in the Arctic challenge conventional methods of management and suggests that the current policies protecting the polar bear have only dealt with short-term disturbances, and do not necessarily address slow ecosystem processes such as oceanographic conditions or sea ice habitats. Meek suggests that the policy concerning the polar bear should “foster resilience.” In this study, resilience refers to the ability of the population of

bears to weather disturbances and maintain viability through successful recruitment of new generation, which also inherently refers to the ability of human communities to sustainably harvest bears. The lack of an effective management regime to mitigate climate change, which influences oceanographic conditions and sea ice, makes any policy focused on polar bears incomplete. She goes on to suggest that the changing climate will require a re-conceptualization of the problem, and a focus on creating management policies that concentrate on the landscape and environmental conditions affecting the polar bear in a way that allows for “maximum adaptation” of the polar bear to its changing environment.

This change in approach to how we manage CPR systems is recognition that resources are part of a larger interconnected system. Looking through the lens of polar bear management regimes, we can easily see that polar bears cannot be managed without addressing the many interconnected variables that influence the population.

This research will explore whether the decision to stop the utilization of the ACMP is in line with current theory on CPR management. Based on this review, current theory on CPR management will include Ostrom’s 8 design principles, and expanded theory on effective CPR management.

4. Results

The sections of this chapter focus in on the story of common property resource management of Alaska's coastline. I start this chapter by providing a detailed description of the historical context and impetus that led to the creation of the ACMP. I then provide an examination of 32 years of ACMP implementation in the State of Alaska. Followed by an exploration of the actions and interests that led to the ACMP elimination by the Alaska legislature in 2011. And finally, I provide a description of the ensuing failure of an initiative to reinstate the ACMP in 2012.

4.1.0 An analysis of the events and circumstances in Alaska that led to the adoption of the Coastal Zone Management Plan

In the first section of this chapter, I outline the early history of overharvest and exploitation of Alaska's coastal resources, the historical role different industries and regulatory authorities have played in the management of Alaska's coastal resources, and the impacts of omitting local interests in coastal zone and resource management in Alaska. I end this section with an introduction to the Coastal Zone Management Act (CZMA) of 1972.

4.1.1 Whales

Anglo-Americans began to realize the importance of Alaska's natural resources in the early 1840's when whalers from New England pursued their prey off the coastal waters (Naske & Slotnick, 2011). In July of 1848, a group of New England whaling ships discovered a healthy population of bow headed whales or "new-fangled monsters" off the coast of Alaska. In the following year that group of whaling ships blossomed to 50 ships, including 2 ships from Germany and 2 ships from France. The pressure continued to mount until 1852 at its peak harvest, 220 ships killed approximately 2,682 whales. The fleet of ships moved on as the population of whales succumbed to the pressure of hunting. The process of harvesting whales until the population dropped significantly and whales could no longer be easily found or harvested was a common problem of the 19th century whaling industry (Bockstoce, 1986). The whalers would come back to Alaska's shores in 1860, but the population of whales couldn't naturally rebound fast enough to continue the commercial whaling trade (Bockstoce, 1986). In the 1800's during the whaling industry's peak exploitation, there was no sustained yield

management of marine species and the population of whales in Alaska, and throughout much of the world, suffered from unfettered harvests.

The overharvest of whales wasn't the only problem that occurred from the whaling industries advance in Alaska's coastal waters. The presence of American whalers had a disastrous effect on the lives of Natives who lived on Alaska's coastline. Whalers brought with them drunkenness, disease, weaponry, resource exploitation technology, and greed that significantly affected coastal Alaskan native populations. Alaska's first census taker, Ivan Petroff, reported the devastation of Saint Lawrence Island Eskimos that occurred in 1874, when four hundred or more of the islands native population succumbed to famine and disease. Petroff wrote, "living directly in the track of vessels bound for the Arctic for the purpose of whaling and trading, this situation has been a curse to them; for as long as the rum lasts they do nothing but drink and fight amongst themselves" (Naske & Slotnick, 2011 pg. 106). In addition, Alaskan Native's acquisition of modern firearms, which came from the trade with whalers, significantly increased their capacity to hunt and kill caribou. This new capacity to hunt caribou and other fauna drove local populations to near extinction. American whalers and Native Alaskans competed for bowhead whales and walruses, which resulted in significantly reduced numbers and ultimately led to famine and starvation for Native populations along Alaska's coastline. It was estimated that nearly two hundred thousand walrus were killed between 1860 and 1880 (Jensen, 1975). Caribou, bow head whales, and walruses were all part of the northern coastal Alaskan Natives diet. The presence of Native Alaskans in the wake of whaling ships on their way to coastal Alaska's rich natural resources left a lot of local populations impoverished, to the point of starvation for some.

4.1.2 Sea otters

More than a hundred years prior to the exploitation of Alaska's coastline by New England whalers, Russian explorer Sargent Emelian Basov brought back to Russia 1,600 otter pelts, 2,000 fur seal and many blue fox pelts from an expedition to Alaska's coastline 1745 – 1746. Basov's voyage demonstrated to his country that riches could be obtained from Alaska's bountiful coastal resources (Naske & Slotnick, 2011). Though it wasn't the key species exploited at first, the world's heaviest member of the weasel family, the sea otter, soon became the economic catalyst for the Russian colonialization of Alaska. The sea otter has the most

attractive fur of any animal, with more than 150,000 hairs for every square centimeter, nearly one million hairs for every square inch (Riedman & Estes, 1990). Pre-contact, there may have been 150,000–300,000, sea otters in Alaska, but they were hunted extensively for their fur between 1741 and 1911, when Alaska’s population of sea otters fell to 1,000–2,000 individuals living in a fraction of their historic range (Riedman & Estes, 1990). The overharvest of sea otters didn’t just affect the sea otter population. Sea otters are a keystone species, which prey on sea urchins. If this predator prey dynamic is disrupted by taking the sea otter out of the equation, then an overabundance of sea urchins will wreak havoc on the kelp forest ecosystem. Kelp forests are a significant part of Alaska’s coastal environment, and provide habitat for several juvenile species of fish in Alaska. Without the juvenile habitat of kelp forests, fisheries suffer (Riedman & Estes, 1990).

The overharvest of sea otters wasn’t the only significance of the Russian expansion into Alaska. Similar to the consequences associated with American expansion of the whaling industry into Alaska’s coastal waters, Russian expansion into coastal Alaska had comparable implications on indigenous populations. Unlike the seasonal migratory patterns of whales, sea otters do not migrate away from Alaska’s coastline. The relatively static nature of the sea otter allowed for yearlong exploitation by Russian entrepreneurs. For matters of convenience, Russians preferred to stay in or near existing Native villages along the coast of Alaska in proximity to Native establishments. In the winter of 1761-62, a group of Russian sea otter hunters committed ‘unspeakable and apparently unprovoked atrocities’ against an Aleut village. The Aleut’s retaliated and killed several members of the hunting party. After this, the leaders of this Russian hunting expedition made it a point to kill all able men in any Aleut village they encountered. Up and down the coastline of the Aleutian Archipelago Russian sea otter hunting expeditions took it upon themselves to destroy the Aleuts ability to conduct warfare by first killing all able-bodied men, then destroying all their weapons, kayaks and large skin boats. This destroyed the people’s ability to subsist in the harsh Alaskan environment. Anthropologist Lydia Black has noted that these events became part of the Aleutian folk memory, recalled as a time of destruction and the ending of Aleut independence (Black, 2004).

Whaling and the pursuit of sea otter pelts introduced two of the world’s current super powers (Russian and the US) to Alaska’s bountiful, coastal resources. The mismanagement of

these two species had far reaching implications beyond the near extirpation of the two populations. It also had severe consequences for the people and the habitat in coastal Alaska. This was a precursor of things to come.

4.1.3 Salmon

For thousands of years Native Alaskans have subsisted off the salmon resources abundant in Alaska's coastal waters. All five species of pacific salmon; chinook, sockeye, coho, pink and chum, were and continue to be a primary source of sustenance by Alaska's indigenous populations.

In 1867 Russians sold Alaska to America. Approximately one year later, the first commercial salmon saltery was established, followed quickly by the first cannery in 1869. During this period, there was a very small effort made to manage the Alaskan salmon fisheries. One U.S. Treasury agent and an assistant were tasked with enforcement of law and monitoring the salmon fishing along 34,000 miles of the Alaskan coastline (Clark et al., 2006). By 1898, 59 canneries were operating in Alaska, by 1920 there were 160 canneries. Between 1900 -1910 the commercial harvest of salmon was roughly 30 million salmon per year, by 1920 the annual harvest of salmon was 65 million.

From 1867 to January of 1960 the federal government had full authority to regulate the salmon fisheries in Alaska. The U.S. Fisheries Commission conducted a few general studies on Alaska fishery resources, but resisted attempts by the territorial government to take over management authority. Even after U.S. Fisheries Commission investigators "predicted the collapse of the Alaskan salmon fisheries if left unregulated and showed a particular concern over the use of barricades for harvest" (Clark et al., 2006. pg. 2), the federal government continued to resist the inclusion of territorial government authority over Alaskan salmon fisheries. The federal government prohibited the use of salmon traps to harvest Alaskan salmon in 1889, but the practice remained for several decades. The federal government did not provide any meaningful management or enforcement authority (Clark et al., 2006). Certain types of salmon traps prevent salmon from migrating upriver to spawn, and can potentially eliminate an entire run of salmon.

Between 1906 and 1924, 42 bills were introduced in Congress to address concerns that Alaskan salmon fisheries were being depleted. All 42 were defeated or significantly altered and

weakened by the lobbying efforts of the Alaskan salmon canning industry. In 1912, Congress gave Alaska territorial government authority for self-governance with stipulations that the territorial legislature could not alter, amend, modify or repeal any federal laws relating to the fisheries in Alaska (Clark et al., 2006).

In 1924 Congress adopted the White Act. The White Act of 1924 tried unsuccessfully to limit the harvest of salmon to 50% of the wild population. The idea was to have enough salmon escapements to re-populate the salmon fishery from year to year. The White Act did not limit the number of participants in the salmon fishery, and in fact it was expressly forbidden to do so. The White Act attempted to reduce the number of harvested salmon by closing weekend salmon fisheries and setting gear restrictions. Essentially the Act's purpose was to decrease commercial salmon fishing efficiency. However, the federal agencies tasked with enforcement were once again limited in their capacity and inconsistent with enforcement. The prohibition on enacting legislations that limited entry into the Alaskan salmon harvest and the unenforced policies of the federal government were due to the influence of cannery companies on the federal government (Clark et al., 2006).

From 1920 – 1929, approximately 70 million salmon were harvested annually in Alaska. From 1930 – 1938 estimates averaged around 90 million salmon a year (Clark et al., 2006). The commercial salmon industry was thriving. Prices were increasing, annual harvest numbers were on the up and up, and more and more commercial salmon operations were entering the fishery. Then in 1939, the annual harvest decreased to about 75 million salmon (Clark et al., 2006). This would have been significant cause for concern had it not been for WWII. The need for food production during the war caused a loosening of commercial salmon regulations, and the federal government went from very little enforcement, to virtually no enforcement. Coastal areas that had been closed due to the White Act were now open and the virtually unregulated harvest of Alaskan salmon was exacerbated.

From 1940 – 1949, the unabated commercial harvest of Alaskan salmon continued its march, and annual harvest numbers stayed relatively consistent with averages around 75 million salmon a year (Clark et al., 2006).

From 1950 – 1959, the annual harvest of salmon declined dramatically. The average annual take from this time period was 40 million salmon. In 1959, this reached a tipping point with approximately 25 million salmon harvested. By 1959 there were 4 times as many fishermen in the industry, yet the total harvest was roughly 1/3 of what it had been between 1940 -1949. Approximately 27 percent of what it was at peak harvest in the 1930's (Clark et al., 2006).

Alaska was granted statehood in 1959. The lack of self-determination to manage the Alaskan salmon fishery was at the forefront of the argument for statehood. Alaskans were tired of the cannery's influence on federal regulators, lack of resolve by the federal government to enforce salmon fisheries regulation, diminished salmon harvest, the disregard for local knowledge in management decisions, and the relentless overexploitation of the salmon fishery. In the 1950's, the Alaskan cannery lobbyists maintained a permanent office in Washington D.C. and sustained a powerful voice in the unregulated management of Alaska's salmon fisheries. Even after statehood, the canneries operated 245 fish traps, even though traps had been prohibited in all other salmon fisheries in British Columbia and on the west coast of the continental U.S (Clark et al., 2006). The lack of self-determination in salmon management; the influence of 'lower 48' canning companies on federal salmon management; and the mismanagement by the federal government, were the primary forces driving Alaska towards statehood.

In January of 1960, just days after formal statehood in Alaska took effect; Governor William A. Egan addressed the issue of the depleted fishing industry, the failed management of the federal government, and cautiously surmised that the efforts to restore the industry would be trying:

On January 1 of this year, Alaska's Department of Fish and Game was handed the depleted remnants of what was once a rich and prolific fishery. From a peak of three-quarters of a billion pounds in 1936, production dropped in 1959 to its lowest in 60 years. On these ruins of a once great resource, the department must rebuild. Our gain is that we can profit by studying the destructive practices, mistakes and omissions of the past. The revival of the commercial fisheries is an absolute imperative. The livelihood of thousands of fishermen and the very existence of many communities scattered along thousands of miles of continental and island coastline depends upon improvement of the fisheries. To this end we will give our best effort.

4.1.4 Timber

The story of the timber industry in coastal Alaska has notable differences from, and similarities to, the story of the salmon fisheries. A generation of salmon will renew itself, depending on the species, every 2-5 years. Most trees harvested for saw-timber require at least a century in order to grow to merchantable size and multiple centuries to reestablish the forest characteristics of old growth. Salmon are a rather predictable species congregating in large swaths in front of streams, lakes, estuaries, and other aquatic habitat where they spawn, making it easy to identify locations for harvest. High value forest product locations are not easy to identify, and are often found in places that are inaccessible for harvest. The federal government seemed to lack any clear mission or effective management of the salmon resource; however, the United States Forest Service (USFS) laid out a clear mission and provided a more formidable force in management and enforceable policies.

The most notable similarity between salmon and timber is the fact that after the purchase of Alaska, from Russia, the federal government was the prevailing authority over the two resources and very little regard was given to local and state authorities to manage the resources.

Before the purchase of Alaska from Russia in 1867, the timber industry was virtually nonexistent. Indigenous populations cut trees for shelter, tools, and ceremonial displays. The Russians cut timber for similar reasons, shelter and the cultivation of their settlements.

For much of the timber industries' history in Alaska, the target was high-value and large old growth trees. Before technological innovation was able to conquer the rugged terrain that is coastal forests in Alaska, the coastal areas were the only practical area for harvest. "Trees were cut along the shoreline by hand loggers using axe and saw. The technique required that trees be felled directly into the water or on slopes near the shore so that gravity could assist the logger in sliding a limbered tree to the water. The logs were then towed by boat to sawmills" (Sisk 2005 pg. 2). Much of the early timber used in Alaska was for the infrastructure associated with the mines and salmon canneries. The needs of most communities were being met by the harvest. Beach logging selected the biggest trees, and then let the rest stand (Sisk 2005). A lot of the logging was targeted at single trees along the shoreline. During this time, there were virtually no regulatory obstacles and standard procedure was to pick the best tree and biggest tree and cut it (Rakestraw 1981).

In 1909, more than 75% of the Tongass National Forest, located throughout Southeast Alaska's entire panhandle, was brought under the jurisdiction of the United States Forest Service (USFS). This was done without consultation of the Indigenous populations, or the other residents of Southeast Alaska (Dauenhauer & Dauenhauer 1994). Initially this had little impact on the timber industry. Operations continued as they had for decades. After engagement in WWI by the U.S. in 1917, the demand for high quality spruce for airplane construction grew. The Alaska timber industry responded, and at the same time a new technology called the donkey engine enabled the timber industry to harvest trees that would have been otherwise inaccessible. Donkey engines extended the logger's reach from a boat to about 4000 feet above the tideline (Sisk 2005). To reach their objective, loggers had to remove the timber between the select harvest and the beach. So they did. Then they were able to harvest large swaths of select old-growth.

During WWII, the demand for harvest again increased. By this time technological innovations made it possible for loggers to access even larger areas of previously inaccessible old growth forests (Sisk 2005). Their practice of harvesting the best trees (called "high grading" a stand) had serious consequences that would not be realized for decades.

In 1910, the USFS conducted two surveys of the Southeast Alaska regional forests. Both of the surveys advocate for the 'rapid liquidation' of the Tongass old growth forest for pulp (Sisk 2005). These surveys, along with the Territorial Governor Frank Heintzman (1927) report asserting that pulp mills would be the basis for permanent development in Alaska, initiated what would be a long standing policy of the USFS to advocate, support, subsidize, and cultivate a large number of regulations and policies in favor of the pulp mill industry in Alaska (Sisk 2005).

The initial effort to recruit pulp mills to Alaska was met with resistance on the part of the timber industry. The reasons for the failed recruitment of the pulp mill industry to Alaska were outlined by the USFS: low export prices, high transportation costs to market, high energy costs, and poor market value (Sisk 2005). In the face of these problems the USFS offered incentives for the pulp mill industry in order to come to Alaska. The USFS allowed the pulp mill industry to take the lead in identifying priority harvest areas; contracts were negotiated on a noncompetitive basis; the federal government would deduct the cost of logging and

manufacturing depending on the value of the logs being sold; and the cost of building logging roads would be credited against the timber sale payments (Sisk 2005).

George Rogers was an economist, professor, and one of the main advisors to the state of Alaska constitutional convention, occasionally credited as the architect of Alaska statehood, author of the book *'The Future of Alaska: The Economic Consequences of Statehood'*, wrote this in 1960 about the USFS policy at the time:

Whether this be mercantilist folly, the most thoroughgoing under the American flag, or whether it be wisdom of a far-reaching sort, has been and still is being heatedly debated... Forcing construction of new physical plants at great cost in one part of the nation when existing plants in other areas accessible to the Region's forest resources are operating below capacity, fostering location of the processing of the raw materials in a high-cost area remote from the markets, these and a whole list of other consequences could be brought forth to prove the policy guilty of creating misallocation of capital and labor resources with corresponding costs to the economy of that nation as a whole.

If the geographic boundaries of our primary concern are drawn to embrace only the local area, the proponents of the policy are able to counter with all the familiar protectionist arguments plus the added argument that long ago it had been decided (on political rather than economic grounds) that the further settlement and economic development of Alaska is to be an established national policy (Rogers 1960).

The federal control of Alaska's coastal areas and resources was challenged when Congress passed the Tlingit and Haida Jurisdictional Act of 1935, which authorized native Alaskans to pursue land and resource claims in federal court and sought to give authority to Alaskan Natives to manage and control some of Alaska's lands and resources (Sisk 2005). Both the USFS and the salmon canneries opposed the Native land claims. Ostensibly the USFS and their mission to incentivize the pulp mill industry into Alaska would be jeopardized, because the land and its resources would no longer be solely in the hands of the federal government. The salmon canneries also made it a point to contest the act, because it might reduce their ability to influence federal management of the salmon resources in Alaska (Sisk 2005).

In 1947, Congress passed the Tongass Timber Act, which authorized up to five pulp mill timber sales in the Tongass and placed revenue from the sales in escrow pending the outcome of the Tlingit and Haida Jurisdictional Act. Ultimately, the Tlingit and Haida would receive a \$7.5 million dollar verdict in their favor for the rights of the timber that sold under the Tongass

Timber Act of 1947 (Sisk 2005). Actual land ownership would not be awarded to Alaskan Natives until 1971. The passage of the Tongass Timber Act allowed 4 timber sales to pulp mill companies to take place. Ketchikan Pulp Corporation signed a 50-year contract with the USFS in 1951. Alaska Lumber Company, a Japanese company, signed a similar contract in 1953. A third sale was made near Wrangell, but no pulp mill was ever constructed.

A fourth and final 50-year timber sale was made on Admiralty Island in 1964. However, opponents of the Admiralty sale included Alaskan hunting guides, fisherman, Native residents of the island (in the City of Angoon), and local and national conservation groups. The sale was ultimately defeated through the court system. The court battle illuminated a few very important and consequential aspects of the timber industry in Alaska. Wildlife research revealed that Sitka black-tailed deer, a major source of food for residents on Admiralty Island, rely heavily on old-growth forest. This is particularly important during winter, when old growth forest stands provide foraging areas with the lowest snow accumulations. Black-tailed deer prefer the rare, low elevation (close to the coast line), large, old growth trees that had been targeted for decades by the logging industry. These large, old growth trees are some of the most valuable ecologically, and have been harvested in greater proportion than any other forest resource. Only about 5% of the Tongass was logged between 1954 - 1988, but most of that harvest occurred in the areas along the coast that had the highest volume of old-growth tree stands (USFS, 1995). The results of the studies indicated that there would be long-term impacts to wildlife populations in the Tongass (Schoen & Kirchoff, 1988). The wildlife research was then supplemented by research on salmon streams that indicated the importance of forest habitat alongside salmon streams in providing shade and food and preventing erosion (Murphy & Koski, 1989).

Eventually concerns about logging in Alaska increased in many of the communities in the Tongass. They objected to the continued subsidies to the timber industry to build logging roads for access into areas the communities wanted protected. Many Native residents and some rural communities began to question the logging in their areas and the impacts on wildlife and other important resources for subsistence. The tourism industry began to expand in the Tongass, and businesses that relied on healthy ecosystems, scenery, fish and other wildlife experiences began to voice their opposition to the timber industry. The USFS was challenged by a number of different local interests, yet continued to pursue their development strategy of the Tongass.

The timber development strategy, which was originally proposed as an alternative to the mismanagement of the depleted salmon fisheries in Alaska, started to take on the appearances of exploitation that previously frustrated Alaskans from the federal management of the salmon harvest. Federal regulators favored the timber industry, as they had the salmon cannery industry, and allowed the two industries to help cultivate regulations favoring their interests. The federal government moved forward with these regulations and policies, without giving the people living amongst these resources the ability to influence those actions, and ultimately the impacts of the federal regulations had significant effects on the sustainability of these resources and the people living in proximity to these resources, namely Alaskans.

4.1.5 Coastal Zone Management Act of 1972

Outside of Alaska a number of things were happening nationally that spurred the federal government to make significant changes to how the feds implemented laws and regulations that governed natural resources. In 1962 Rachel Carson's *Silent Spring* raised the national consciousness about the negative environmental effects of DDT, a potent insecticide that had been used in the American agricultural system since the start of WWII. This is also believed to be the common marker for the beginning of the modern American environmental movement. Relatively unknown conservation groups at the time, like the Sierra Club, garnered a huge spike in membership in the 1960s. Between 1963 and 1968 President Lyndon Johnson signed into law nearly three hundred environmental laws, the most noteworthy of which was Wilderness Act of 1964, which set aside certain federal lands to protect them from commercial development and to preserve their natural state (Geary, 2003).

In 1966 the US Congress passed the Marine Resources and Engineering Development Act that authorized President Lyndon Johnson to appoint a 15 member commission to make recommendations on the coast and marine environment of the nation. The 15 member commission drafted a report titled: *Our Nation and the Sea: A Plan for National Action: Report of the Commission on Marine Science, Engineering and Resources*. This report would later be recognized as the Stratton Commission Report. The report had 126 recommendations in 17 categories.

One of the more notable recommendations is a call to action to change the management strategies of the nation's coast. A call to create a more collaborative approach to coastal

management, one that incorporates the rights of state and local governments to assist in the management of their respective coastal resources.

The coast of the United States is, in many respects, the Nation's most valuable geographic feature. It is at the juncture of the land and sea that the greater part of this Nation's trade and industry takes place. The waters off the shore are among the most biologically productive regions of the Nation.

The uses of valuable coastal areas generate issues of intense State and local interest, but the effectiveness with which the resources of the coastal zone are used and protected often is a matter of national importance. Navigation and military uses of the coasts and waters offshore clearly are direct Federal responsibilities; economic development, recreation, and conservation interests are shared by the Federal Government and the States.

Rapidly intensifying use of coastal areas already has outrun the capabilities of local governments to plan their orderly development and to resolve conflicts. The division of responsibilities among the several levels of government is unclear, and the knowledge and procedures for formulating sound decisions are lacking.

The key to more effective use of our coastland is the introduction of a management system permitting conscious and informed choices among development alternatives, providing for proper planning, and encouraging recognition of the long-term importance of maintaining the quality of this productive region in order to ensure both its enjoyment and the sound utilization of its resources. The benefits and the problems of achieving rational management are apparent. The present Federal, State, and local machinery is inadequate. Something must be done (National Oceanic Atmosphere Administration, 1966 pg. 49).

Before any of the recommendations of the Stratton Commission were adopted by the federal government, a significant event off the coast of California helped spur the federal government into action. The Santa Barbara oil spill occurred in January of 1969. At the time, it was the largest oil spill in United States waters (it now ranks third behind the 2010 Deepwater Horizon and 1989 Exxon Valdes spills). Within a 10 day period, approximately 80,000 to 100,000 barrels of crude oil spilled into the ocean off the coast of California. It killed an estimated 3,500 sea birds, and thousands of sea mammals including dolphins, elephant seals and sea lions. The adjacent coastline had established itself as a tourist destination with dramatic natural scenery, unspoiled beaches, and an impeccable climate. Economic effects of the spill were severe. All commercial fishing in the area was suspended for a year. Property damage for beach side residents was dramatic. The constant noisome nuisance of the oil spills' toxic aromas left locals feeling nauseous. The public outrage engendered by the spill, which received mass

media coverage in the U.S, resulted in numerous pieces of environmental legislation (D. Kaiser, personal communication, February 10, 2016).

In response to the 1969 Santa Barbara oil spill, the Stratton Commission Report on the Sea, the 1960's environmental movement, and mounting pressure from local and state governments for more inclusive management of coastal areas and resources, the federal government passed the Coastal Zone Management Act (CZMA) of 1972. The federal government recognized that there is a national interest in effective management of the nation's coastal areas and resources. The U.S. coastal area represent just 11 percent of the nation's land mass, but is home to more than 50 percent of the nation's population. The coast generates 80 percent of all U.S. tourism, and hosts approximately 180 million visitors annually. The Nation's coastal zones are rich in a variety of natural, commercial, recreational, ecological, industrial and aesthetic resources of immediate and potential value to the present and future well-being of the Nation. The increasing and competing demands on these resources required a comprehensive management approach from the federal government, state governments, and local governments. The habitat areas of coastal zones are ecologically fragile and consequently extremely vulnerable to destruction by man's influence. The increase in the nation's population and the subsequent demand for food, minerals, recreations, transportation, energy, waste disposal, defense needs, and industrial activities required additional management of these sensitive ecological environments. And finally, because the coastal states rely heavily on the ocean and its resources, coastal management was and continues to be a priority of the nation (Coastal Zone Management Act 1972).

The most significant aspect of this legislation wasn't the realization that the coastal environments and their resources are significant. The CZMA allowed the State of Alaska and by proxy local governments in Alaska to object to federal activities, licenses and permits through the consistency review process. Essentially the CZMA allowed the state and local governments to play a more significant role in the management of federal activities. This was a major change for the federal government that for over a century had exploited Alaska's fish, wildlife and timber indiscriminately with little to no significant ability to influence those actions on the part of the people living amongst those resources.

4.2.0 An examination of the ACMP in Alaska from 1979 – 2011

In this section, I begin with a short analysis of the political thought and history that shape natural resource management in Alaska. I then provide an overview of the organizational structure of the Alaska Coastal Management Plan (ACMP), followed by an analysis of the ACMP from its inception in 1977, to its sunset in 2011.

4.2.1 Alaska Politics

In the winter of 1955 – 1956 delegates met in the University of Alaska Fairbanks to formulate a constitution for Alaska. At the time, Alaska was still a U.S. territory, managed and owned by the federal government. Alaskans were predominantly concerned with natural resource extraction industries that were controlled and regulated by the interests of outside corporations, the federal government and politicians in Washington, D.C. Many Alaskans felt like these entities were simply exploiting the huge territory and its abundant resources. Alaskans wanted self-determination and statehood, and challenged the federal government's ability to manage the vast resources in Alaska.

A key concern of the delegates to the constitutional convention was the management of salmon fishing. Alaskans were dependent on fishing and a battle over federal management of the fishing industry had been brewing for years. Drafters of the state constitution emphasized managing resources for the interest of the state's residents. The constitutional delegates believed the prosperity of Alaska depended primarily upon the successful development of its natural resources. Statehood for Alaska meant that the new state would acquire more than 100 million acres of land from the federal government, and the state would assume some of the management responsibility for the fish, wildlife and other resources within the state (Coyne and Hopfinger, 2011).

In his keynote address to the constitutional convention, Bob Bartlett, Alaska's Territorial delegate to Congress, used the opportunity to showcase the significance of natural resource management in Alaska, stating that the people of Alaska will judge the convention by its efforts to manage natural resources, "Fifty years from now, the people of Alaska may very well judge the product of this Convention not by the decisions taken upon issues like local government, apportionment, and the structure and powers of the three branches of government, but rather by the decisions taken upon the vital issue of resource policy" (Bartlett 1955).

The delegates to the constitutional convention were in a position to learn from the other 48 states that had come before them, and the development and realization of Alaska's constitution reflected this advantage. Unique among all the states, Alaska's constitution champions the ideas of collective ownership and management of Alaska's natural resources. These constitutional principles stood in stark contrast to the perceived exploitation of Alaska's resources under federal control. Natural resources in Alaska would now belong to Alaskans, to be managed and developed for the common and continued use and benefit of Alaskans (Harrison, 2012). These principles are listed below from the AK Const. art. VIII. § 1, 2, 3, 15, & 17:

§1. Statement of Policy ~ It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

§2. General Authority ~ The Legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

§ 3. Common Use ~ Wherever occurring in their natural state, fish wildlife, and waters are reserved to the people for common use.

§ 15. No Exclusive Right of Fishery ~ No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State...

§ 17. Uniform Application ~ Laws regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Sections 1 and 2 of the Alaska's Constitution encourage the enhancement of Alaska's land and resources, but in a manner that recognizes the common interest of the people of the state as the owners and beneficiaries of these lands and resources. Particularly relevant to this study, Sections 3, 15, and 17 are commonly referred to as the "equal access clauses" of the natural resource article, which guarantees rights of access to these resources to all Alaskans with no exclusive right to the government, private persons or industry (Harrison, 2012).

Even after Alaska was granted statehood on January 3, 1959, there was still a huge impediment to managing and controlling the state's resources. The State of Alaska has exclusive rights to approximately 27 percent of the land mass in Alaska, while 60 percent is under federal control, 12 percent is owned by tribal corporations, and 1 percent is privately held (State of Alaska. Alaska Department of Natural Resources, 2015). The State of Alaska does not have the

authority to manage land and resources on approximately 73 percent of the state's total land mass. The federal government is the largest landowner in Alaska with 222 million acres of land under its authority. This land mass under federal authority includes wildlife refuges, national forests, national parks, defense reservations and the North Slope National Petroleum Reserve. The National Park Service and Fish and Wildlife Service manage approximately 119.3 million acres of the federal land. The primary purpose of their management is for resource protection and fish and wildlife conservation. The Forest Service and the Bureau of Land Management manage approximately 97.7 million acres, which are managed for multiple use purposes including timber production, fish and wildlife, recreation, water, mining, etc. (State of Alaska. Alaska Department of Natural Resources, 2000).

The State of Alaska has marine jurisdiction over an area extending 3 nautical miles seaward from the shoreline, but the federal government retains the power to regulate commerce, navigation, power generation, national defense, and international affairs throughout these state waters. In addition, the federal government has exclusive rights to the marine environment extending from 3 miles off shore to 200 nautical miles seaward, commonly referred to as the Exclusive Economic Zone (United States Commission on Ocean Policy, 2004). Therefore, the federal government is the predominant authority over both the terrestrial and marine environments in Alaska.

The idea of federal overreach and Alaska's right to self-determination was the impetus behind Alaska statehood and the development of Alaska's constitution. These ideas still weigh heavily in the politics in Alaska today.

4.2.2 Alaska Coastal Management Program (ACMP)

The federal government enacted the CZMA on October 27th, 1972. The CZMA was part of a larger effort on the part of the Nixon Administration to protect the nation's environments. This included the establishment of the Environmental Protection Agency (1970), the National Oceanic Atmosphere Administration (1970), and also included the adoption of the National Environmental Policy Act (1969), Clean Air Act (1970), Clean Water Act (1972), the Endangered Species Act (1973), the Marine Mammal Protection Act (1972), etc. The principle reason for adoption of the CZMA was to promote more effective management, beneficial use, protection and development of the nation's coastal areas and resources through collaboration with the states. The federal government encourages state participation by granting states the right

to review federally permitted activities occurring in coastal zones, and/or affecting coastal areas and their resources, regardless of the location of that activity. The federal government also provides financial assistance for states to participate in the CZMA (16 U.S.C. 1451-1456).

Alaska's Governor Hammond proposed legislation creating a coastal management program in 1976. In order to participate in the federal program, on June 4, 1977, the State of Alaska enacted the Alaska Coastal Management Program (ACMP). In recognition of federalist tenets, states were given the right to manage their coasts, so long as their programs were approved by the National Oceanic Atmosphere Administration (NOAA). The ACMP was approved by NOAA on July 8, 1979. The ACMP was a collaborative program driven by the participation and cooperation of the federal government, various state agencies, local governments, private industry, and the public (State of Alaska. Alaska Legislature/Legislative Budget and Audit Committee Report, Part 1, 2010).

From 1979 – 2003 (24 years) the ACMP was administered by the Coastal Policy Council (CPC), in the Office of the Governor under the Division of Governmental Coordination (DGC). The CPC was a 15-member council, consisting of 6 state officials and 9 municipal representatives appointed by the Governor. The CPC's responsibilities included providing leadership for the program, adopting guidelines and standards, reviewing and approving district coastal management plans and boundaries, coordinating consistency review, and hearing petitions regarding compliance with and implementation of district coastal management plans. The guidelines and standards governed the management of uses and areas in Alaska's coastal zone, and directed the development of district coastal management programs by local governments. All state agencies were required to apply the guidelines and standards in their planning and regulatory activities. From 1977 – 2003 the CPC was assisted by the Alaska Office of Coastal Management (OCM) in the DGC.

In 2003, the state legislature, under the guidance of the Murkowski administration, substantially changed the ACMP. Changes included: eliminating the CPC and replacing the administrative function of the CPC with the Department of Natural Resource (DNR), and the OCM with a new Division of Coastal and Ocean Management (DCOM) within the DNR; revising ACMP standards and regulations; removing the Department of Environmental Conservation (DEC) permits (air, land and water quality standards) from the consistency review

process; and requiring coastal resource districts to rewrite their district coastal management plans to reflect the changes in the ACMP guidelines and standards (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010). I will discuss the reasons the Murkowski Administration and the state legislature gave for making these changes to the ACMP in greater detail below and in upcoming sections of this chapter.

From 2003-2011 the ACMP was administered by the DNR, through the DCOM. The administration of the program included:

- Reviewing and approving district coastal management plans.
- Coordinating ACMP consistency review process.
- Proposing statutory and regulatory changes to improve coastal management
- Funding grants and offering technical assistance to coastal resource districts.
- Coordinating regular working group and district meetings.
- Encouraging participation of coastal resource districts and the general public.

The ACMP's mission was to provide stewardship for Alaska's rich and diverse coastal resources to ensure a healthy and vibrant Alaskan coast that efficiently sustains long-term economic and environmental productivity. The ACMP objectives revolve around the effective management of coastal zones by focusing on balancing the protection and development of coastal uses and resources (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010). The eight objectives of the ACMP are listed in Table 4-1 below.

Table 4.0: ACMP Objectives

<p>Alaska Statute 46.40.020 (2010). The Alaska coastal management program shall be consistent with the following objectives:</p> <ol style="list-style-type: none">(1) the use, management, restoration, and enhancement of the overall quality of the coastal environment;(2) the development of industrial or commercial enterprises that are consistent with the social, cultural, historic, economic, and environmental interest of the people of the state;(3) the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles;(4) the management of coastal land and water uses in such a manner that, generally, those uses which are economically or physically dependent on a coastal location are given higher priority when compared to uses which do not economically or physically require a coastal location;(5) the protection and management of significant historic, cultural, natural, and aesthetic values and natural systems or processes within the coastal area;(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;(7) the recognition of the need for continuing supply of energy to meet the requirements of the state and the contribution of a share of the state's resources to meet national energy needs;(8) the full and fair evaluation of all demands on the land and water in the coastal area.

Source: State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010.

4.2.3 Alaska's Coastal District

The ACMP divided Alaska's coastline into 35 coastal resource districts. Coastal resource districts participated in the ACMP through the implementation of district coastal management plans, which include district coastal policies and designated areas, and through participation in the consistency review process.

The state had two major types of coastal resource districts: organized municipalities (boroughs, first and second class cities), which have planning capabilities and authority; and coastal resource service areas (CRSAs), which have been created under the ACMP to develop coastal management plans for the unincorporated areas of the state (see Figure 4-4). Communities that do not assume the authority for land management and planning, and are not within an organized borough, are represented as CRSAs. CRSAs do not have land use and zoning authority and must rely on the ACMP and state agencies to enforce their coastal district management plans (Alaska Legislative Budget and Audit Committee Report, 1994).

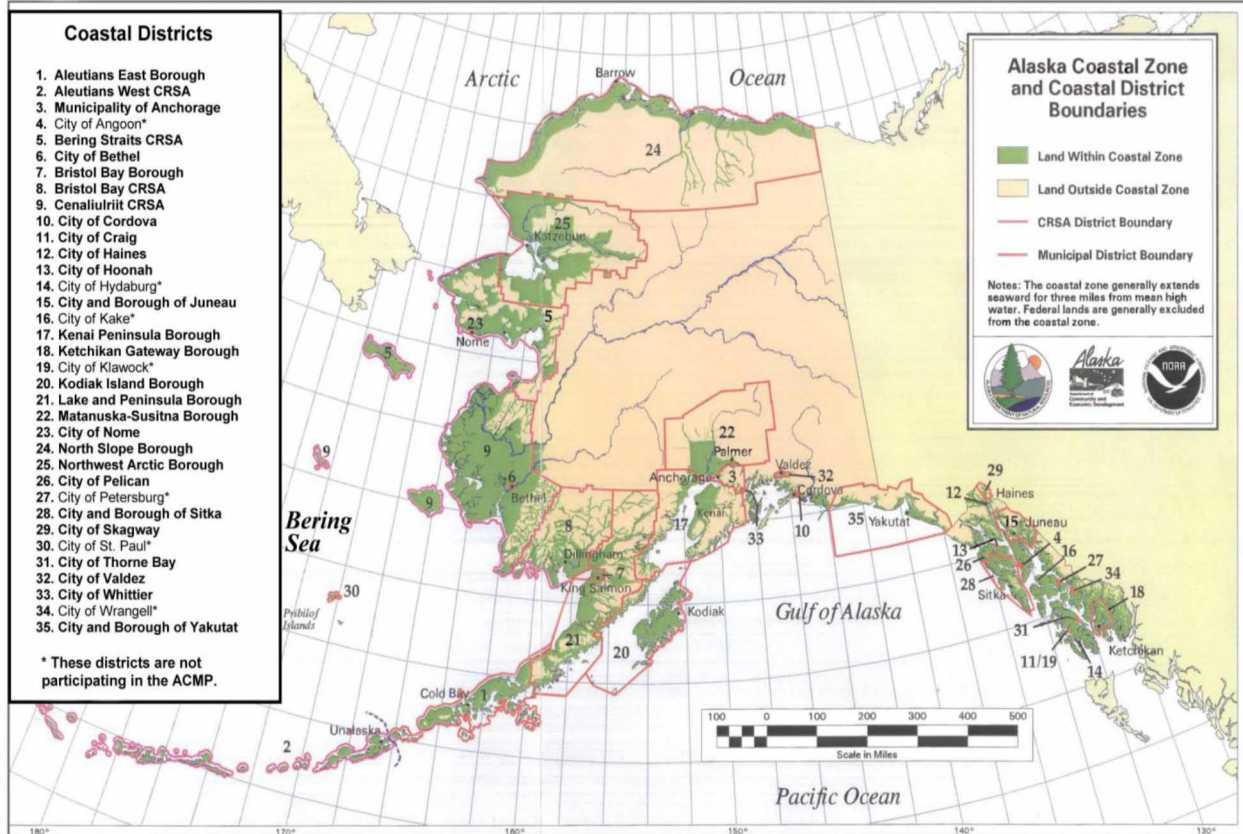


Figure 4-1. Alaska Coastal District Boundaries. (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010)

Prior to the changes made to the ACMP in 2003, there were 33 coastal resource districts that voluntarily participated in the ACMP. After the changes made in 2003 there were 28 coastal districts that participated in the ACMP. The other five coastal districts opted not to continue participation after the changes in 2003 were implemented (Alaska Legislative Budget and Audit Committee Report, Part 1, 2010).

4.2.4 Consistency Review Process

The most essential element of the ACMP is the consistency review process. It is a powerful tool that the State of Alaska and coastal districts in Alaska used to manage coastal uses and resources and to facilitate cooperation and coordination with federal, state, and local agencies and private industry. The federal consistency provision requires that federal agency activities, permits, and licenses that may have a reasonably foreseeable effect on any resource in the coastal zone “must be consistent to the maximum extent possible with the standards,

guidelines, and policies of a state's and coastal district coastal management program" (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010 p. 17). Participants in the consistency review process include resource agencies, state agencies, affected coastal resource districts, applicants, and interested members of the public. The process is applicable to activities that require a state, local, or federal resource agency authorization, and or federal authorization of federal agency activities (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010).

The significance of this is that the State of Alaska and local governments representing coastal districts have the ability to object to the permitting of activities that do not meet their standards and policies. The standards and guidelines of the ACMP for both state and coastal districts address coastal development, geophysical hazards, recreation, energy facilities, transportation and utilities, fish and seafood processing, timber harvesting and processing, and subsistence and coastal habitats. Under the authority of the ACMP, all state agencies were required to apply these standards and guidelines in their planning and regulatory activities, and all district programs must be consistent with them before they can be approved (U.S. National Oceanic Atmospheric Administration/Office of Ocean and Coastal Resource Management, 1984). Activities that would jeopardize the integrity of a coastal ecosystem and/or use of that coastal ecosystem's resources could be altered in order to meet the state or coastal district standards and policies, or rejected outright. After the coastal district plans are implemented, it would be the applicant's responsibility to meet the standards and guidelines of the statewide coastal plan and any coastal district(s) the activity may affect in some way. This gives the State of Alaska and local governments in Alaska the authority to collaborate with the federal government in order to manage their coastal zones and resources. This is in sharp contrast to the situation before 1979, when the federal government had the exclusive right to manage the majority of Alaska's land and marine environments without input from state and local governments (U.S. National Oceanic Atmospheric Administration/Office of Ocean and Coastal Resource Management, 2008; State of Alaska. Alaska Legislature/Alaska Legislative Budget Audit Committee, Part 1, 2010).

State and local governments are the prevailing authority over the state's coast, with or without the CZMA. But states and local governments have no authority over federal agencies,

federal lands or federal waters. The CZMA is unique in the level of influence it gives states over federal actions, regardless of location. Without the CZMA federal consistency authority, states have limited ability to influence and have no authority to reject federal actions. In Alaska, the federal government is the predominant authority over both the terrestrial and marine environments, therefore the CZMA and ACMP gave Alaska and local jurisdictions their only mechanism to collaborate in management decisions of their coastal resources and areas that would be effected by federal management. For example, currently without the ACMP, if the federal government were to permit offshore oil and gas exploration in federal or state waters off the coast of Alaska (say in Bristol Bay) something that could lead to deleterious effects on the coastal areas and resources of the state; the state would only be able to review and comment under the Outer Continental Shelf Lands Act and National Environmental Protection Act, but would have no authority to require conditions or to object to federal actions or permits.

The DCOM coordinated consistency reviews for activities that require an authorization from two or more resource agencies or divisions within DNR. DCOM also coordinated reviews of federal agency activities and activities that required a federal consistency determination or certification. If an activity requires an authorization from only one DNR division, that division coordinates the consistency review and determination process. If a project requires an authorization from a single state resource agency, that agency coordinates the consistency review and determination process.

When a project was submitted for review, if requested, the coordinating agency would provide information about the consistency review requirements to the applicant. A pre-review assistance meeting may be held among the participants including the resource agency, applicant, and potentially affected coastal resource districts. A consistency review application was scheduled for completion within 30-50 days depending on the authorizations that were needed. As part of the review, the coordinating agency:

- Publicly notices the consistency review;
- Distributes the consistency review packet to the review participants;
- Accepts comments on the consistency of the project from the review participants and general public, and distributes the comments to the applicant and other review participants;
- Facilitates discussion among the review participants to attempt to achieve consensus;

- Renders a proposed consistency determination with any alternative measures; and
- Renders a final consistency determination.

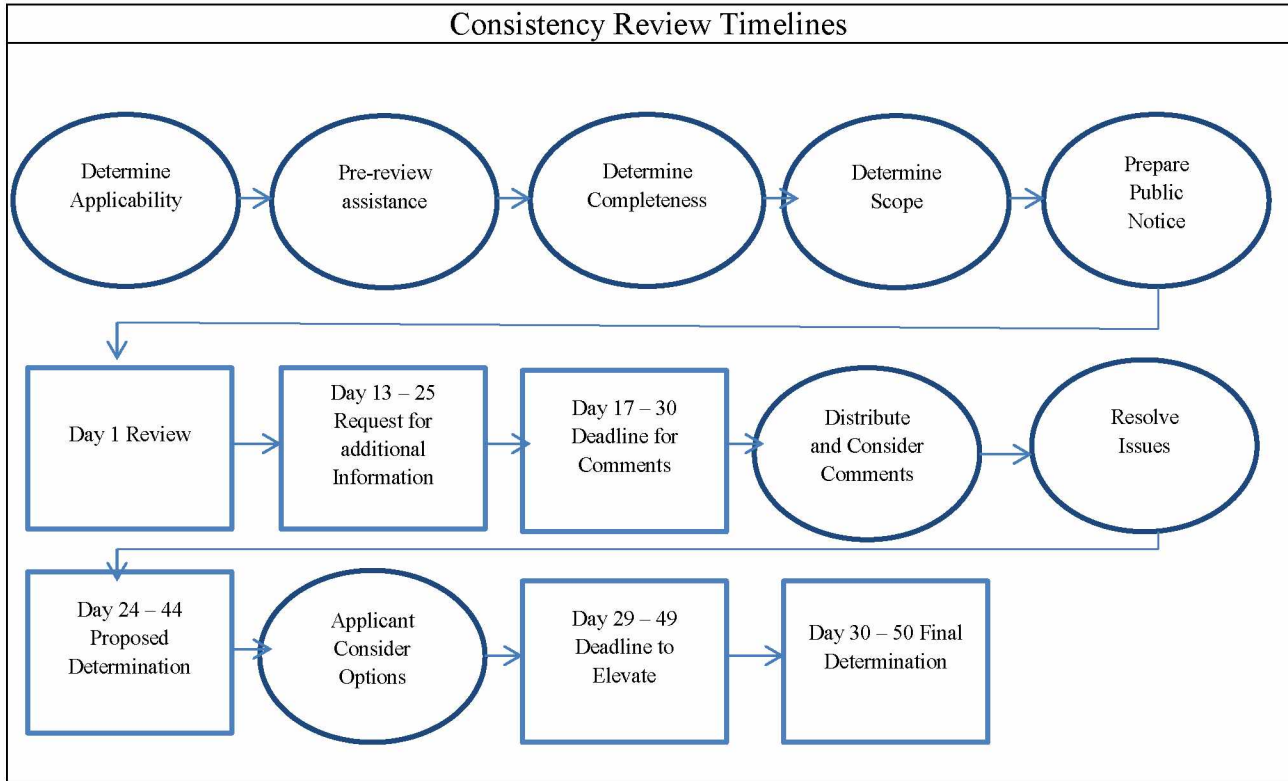


Figure 4.1. Consistency review process and the corresponding timeline (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010).

The consistency review process allowed participants to object to activities that could influence their coastal resources and or environments. State agencies, coastal districts, and the public are not necessarily competing factions, but the process could get convoluted if there wasn't a way to define what entity should have the authority to weigh in on the consistency review process depending on the issue at hand. In order to rectify this issue, the process involves identifying a participant's 'due deference'. Per 11 Alaska Administrative Code 100.990 (a) (25), "Due deference means that deference that is appropriate in the context (A) of the commenter's expertise or area of responsibility, and (B) all evidence available to support any factual assertion of the commentator. Deference is the respectful submission or yielding to the judgment, opinion, will, etc., of another." For example, the Department of Fish and Game would be given due deference with issues involving fish habitat standards, whereas a coastal district would be given due deference for issues with subsistence use.

For consistency reviews that agree with a coastal district or a state agency's coastal management plan, the determination explained how the proposed activities were consistent with the plan(s). For objections to the project, the determination identified the policies and reasons why the proposed project is inconsistent with those policies. The determination also included any changes made by the coordinating agency between issuing the proposed consistency determination and the final consistency determination. The coordinating agency then provided the final consistency determination to the applicant, each resource agency and or coastal district, and each agency or member of the public who submitted comments. In addition, if the applicant disagrees with the consistency review finding they can ask for an elevated consistency review by the commissioner of the coordinating agency (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010).

A good example of the consistency review process can be found in the Big Lake Dock Expansion Project of 2010. The 2010 project proposed an expansion to an existing private use dock on Big Lake, in the coastal district of the Matanuska-Susitna Borough. The activity required a U.S. Army Corps of Engineers permit and an Alaska Department of Fish and Game Habitat permit. Because both a state permit and a federal permit were required, the review was coordinated by the DCOM. Review participants included three state resource agencies and the Matanuska-Susitna Borough. The review was completed in 38 days and the final consistency determination was that the project was consistent with the ACMP policies, both state agency policies and the coastal district (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee Report, Part 1, 2010).

If the project had been rejected, the applicant and participants had two options. One option is the participants could have asked the applicant to adjust the project to meet the policies and standards of the state and the coastal district. Examples of project stipulations include requirements such as conducting activities only at certain times of the year, restoring land when the project is finished, or a variety of measures to ensure that nominal damage is done to the coastal area and its resources.

The other option allowed for the applicant or participants to request an elevated decision. After a consistency determination was reached, sometimes disagreements remained over the consistency decision, or the stipulations that were attached to the project. In these

circumstances, the applicant or any participant may have requested that the determination be elevated. The first elevation decision was made by a panel of state agency division directors. After the director-level elevation, the same parties had the right to elevate the consistency determination to the commissioner level. In very rare circumstances, the elevation could have requested that the Governor weigh in on the consistency determination. This process allowed the parties several opportunities to reconsider the determinations (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Report, 1994).

The review process was one of consensus building. After a project is submitted, reviewing agencies, coastal districts, and the applicant strive to reach agreement on project specifics that adhere to the guidelines and standards provided in the ACMP, and the policies in the coastal resource district management plan.

A Legislative Research Services report on the ACMP in 2011, suggested that the consistency review program was the most significant aspect of the ACMP, and the state's only program that provides the authority to object to federal activities, licenses and permits in Alaska, the state's only formal authority to reject to federal overreach. A NOAA (1998) evaluation of the ACMP provided the following statement about the consistency review program:

Because of the huge Federal landholdings in Alaska, Federal consistency is very important, perhaps more important than to any other state. In many cases, it is the only tool that state agencies, coastal districts and citizens have to provide input on Federal actions that affect Alaska's coastal zone (p. 25).

4.2.5 Federal Evaluation of the ACMP

From 1979 to its sunset in 2011, the ACMP was evaluated fifteen times. Twelve of the fifteen were conducted by NOAA's Office of Ocean and Coastal Resource Management (OCRM) the federal agency tasked with the implementation of the CZMA. And the other 3 were conducted by the State of Alaska.

Section 312 of the CZMA requires NOAA's OCRM to conduct intermittent evaluations of the performance of state and territories with federally approved coastal management programs. The evaluation's purpose was to make sure that the ACMP is implementing and enforcing its federally approved coastal program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303 of the

CZMA. Section 303 of the CZMA anticipated that the implementation of state and territorial approved coastal management programs would lead to the following improvements in the areas of coastal management:

1. Protection of natural resources;
2. Management of coastal development to minimize loss of life and property;
3. Priority consideration for existing uses of coastal areas and resources
4. Increased public access to the coasts for recreation;
5. Protection and assistance in preserving and developing historic, cultural, and aesthetic coastal features;
6. Expedited governmental decision-making for the management of coastal areas and resources;
7. Consultation and coordination with, and the giving of adequate consideration to the views of affecting Federal agencies;
8. Opportunities for public and local government participation in coastal management decision-making; and
9. Comprehensive planning for the use and conservation of coastal resources and improved coordination between state and Federal coastal zone management agencies and State fish and wildlife agencies.

In the first five of twelve evaluations of the ACMP provided by the OCRM, each of the above listed improvement areas are emphasized. The first evaluation for the ACMP for the period of July 1979 through March 1980, noted that all of the criteria were met and provides detailed examples of each. For example, protection of natural resources occurred through the development of fisheries management due to the implementation of the ACMP. The evaluation states: “Through the ACMP, the State has committed to the development of a fisheries planning element including a fisheries management strategy, a subsequent study of the bottom fish industry in the Aleutian Islands Chain, and a salmon habitat demonstration project for the City of Sitka” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1980, p.5).

The second evaluation, for the period of April 1980 through May of 1981, highlights improvement in wetlands management as a means to better protect natural resources. The evaluation provides the following, “The ACMP has made significant progress in promoting improved wetland management” and goes on to cite several district plans throughout the state that have addressed planning and land management for wetland areas as a mechanism to protect natural resources (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1981, p.4).

The third evaluation, for the period of June 1981 through March 1982, cites development in the management of timber harvesting as a means to the protection of natural resources, specifically citing the City of Yakutat's district coastal management plan, "Timber harvesting of the forests in Yakutat region is of particular concern... The program classifies timber harvesting as a permissible land use as long as it is demonstrated that adverse effects on fish and wildlife habitats and population will not result..." (U.S. National Oceanic Atmosphere Administration/Office for Coastal Management, 1982, p.5). This is cited as a development that will result in the protection of natural resources.

The fourth evaluation, for the period of April 1982 through September of 1983, suggests that the ACMP has led to the Alaska Department of Fish and Game (ADF&G) and the Department of Environmental Conservation collaborating with local governments to produce "more comprehensive district plans that identify important natural resources, habitat needs, and vulnerabilities of these resources" as a means to the protection of natural resources (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1984, p.6).

I only mention the element of improved protection of natural resources, but the first four evaluations touch on every one of the above listed areas of improvement, and each concluded that the State of Alaska adhered to the programmatic requirements of the CZMA, was implementing regulation in the operation of its approved coastal management plan, and meeting the conditions of the Federal financial assistance awards.

The review process changed significantly for the fifth through twelfth evaluations. There was no longer an emphasis given to the listed areas of improvement in section 303 of the CZMA. Issues like the protection of natural resources, improved public access to coasts, and priority consideration for existing uses of coastal areas and resources, were no longer emphasized. The evaluations took a dramatic shift away from an emphasis on the implications and results of the ACMP implementation, and focused instead on evaluating the organizational management of the ACMP, or how to improve the ACMP governance structure and implementation.

The next seven evaluations provided recommendations like: "State of Alaska should review the ACMP regulation for project consistency review governing elevations of consistency

reviews to allow greater and more direct applicant involvement in the elevation process, particularly better participation in the actual resource agency meetings” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1998, p.9). And “OCRM encourages the State of Alaska to revisit the requirements for designated areas, particularly those relating to important habitat and subsistence use, and to provide technical assistance to districts that are interested in applying them” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008, p.12). In seven evaluations, for the time period covering October 1983 through August 2007, the OCRM offers 55 recommendations for improvement of the ACMP. In addition to the 55 recommendations, the OCRM provided 3 necessary actions. Necessary actions address programmatic requirements of the CZMA’s that are necessary for the state to be considered in compliance with the CZMA.

For the most part, the evaluations were very positive, highlighting areas of improvement and complimentary of how the State of Alaska was implementing the ACMP. Only one of the evaluations was explicitly critical of how the State of Alaska was implementing the ACMP. In the evaluation period from December 1985 – October 1987, the following statements were made in the summary findings section of the evaluation:

The OCRM finds that during the period covered by this review, the Alaska Division of Governmental Coordination (DGC) failed to completely carry out its leadership role in implementing the Alaska Coastal Management Program. Additionally, Federal consistency review have not always been conducted pursuant to the Federal regulations... The State, in complying with its grant, is accomplishing work tasks, but making less than satisfactory progress towards meeting benchmarks of its significant implementation tasks. The State is only satisfying some of the special award conditions in a timely manner (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1988, p.1).

While this is a scathing evaluation, it was also an anomaly. Every other evaluation provided by the OCRM was explicitly positive in its outlook towards the implementation of the ACMP. In fact, most of the evaluations have several noted sections about the ACMP accomplishments. The evaluations are peppered with statements like “The ACMP has worked diligently to get streamline government procedures involved in the review of projects” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1992, p.5), and “...DGC has made commendable progress in public education and outreach efforts during this review

period.” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1996, p.14), or “Support for the ACMP was impressive and many districts expressed that the program has enabled local communities a way to participate in decision affecting their resources and coastline” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1998, p. 11). In the evaluation covering the period of July 1995 through May 1998, an entire section was devoted to the notable accomplishments of the ACMP, which included a description of eight significant accomplishments that have been made by the ACMP.

In two separate evaluations, the OCRM suggested that the ACMP was in the upper echelon of states and territories with federally approved coastal management plans. In the evaluation period covering September 1991 through June 1995, the OCRM suggested that the State of Alaska implementation of the ACMP reached a very high level and went on to compare Alaska’s implementation of the ACMP to that of California and Massachusetts coastal management programs (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1995). In the following evaluation for the period of July 1995 through May 1998, the evaluation concludes by stating:

Based upon this evaluation of the Alaska Coastal Management Program (ACMP)... I find that the State of Alaska is adhering to its approved coastal zone program and is implementing the program in an exemplary manner. The ACMP has made noteworthy accomplishments in the areas of program administration; program assessment and regulatory change; Federal-State coordination; public outreach and education; and financial management and performance reporting (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1998, p.32).

The following evaluation for the period of November 1998 through September 2002 presented some unique challenges. Shortly after the evaluation, an executive order was issued by then Governor Murkowski that changed the organizational structure and administration of the ACMP, moving the program from the DGC to Department of Natural Resources (DNR). Soon after, the Alaska Legislature passed House Bill 191, which significantly altered the ACMP. The combined changes from the executive branch and the state legislature were considerable and included: transferring responsibility for the program to the Department of Natural Resources, modifying the State’s consistency review process, and adopting new statewide standards.

Further, it required revisions of all coastal district plans so that district policies were related to matters of local concern that did not duplicate any existing federal or state requirements (Alaska Legislative Budget and Audit Committee Report, Part 1, 2010). The latter effectively negated local government jurisdiction over much of their coastal resources. The OCM still provided an evaluation of the ACMP, but noted that the changes to the program resulted in many of the assertion and issues discussed in the evaluation to be “rendered moot, subtly in some ways and substantially in others” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2004 p. 15).

According to the State of Alaska, the reason for the changes was to streamline the ACMP process to avoid redundancies in federal, state, and local standards and policies. The process of implementing the ACMP and the consistency review invariably led to delays. However, it is important to note that in all eleven of the OCRM evaluations of the ACMP up to this point, the issue of redundancy in federal, state, and local standards and policies was only briefly mentioned and never formally addressed as a need. In other words, the federal and state governments never recognized this as a significant problem with the ACMP.

The OCRM provided a review of the amended ACMP program from October 2002 through August of 2007. The evaluation concludes that the ACMP was meeting its programmatic obligations; however, the evaluation addresses some of the problems associated with changes made to the amended ACMP program.

One problem in particular stood out in the evaluation. The OCRM provided a lengthy description of the problems local communities were having with the amended ACMP and their ability to collaborate and function as a meaningful player in the efforts to manage their coastal resources. The OCRM evaluation asserts that local districts felt the changes were too severe and restrictive. According to the new standards and guidelines, coastal district policies had to be clear and succinct, using precise, rigid and enforceable language. In addition, coastal district policies could no longer cover air, land and water quality issues. In the amended ACMP, air, land, and water quality issues were now the sole responsibility of the Department of Environmental Conservation and no longer part of the consistency review process (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008).

The newly amended program required that localities receive DNR approval of special area designations before any local policies could be enforced in that area. Special area designations are defined as important habitat areas and subsistence use areas. Before the amendments to the ACMP, special area designation could be established using local knowledge and demonstrated use of the area. After the 2003/2004 amendments to the ACMP, special area designation required strict standards for mapping, and scientific information. According to the OCRM evaluation, districts felt that the State did not provide the funding and technical assistance necessary to establish these special area designations. And in most cases, coastal districts were unable to adopt policies to cover the designated areas because of the constraint that district policies not “adopt, duplicate, repeat, restate... a State standard or other State or federal law” (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008, p.11). Many of the local governments felt like this policy was being arbitrarily implemented by the State.

The amendments to the ACMP led to a significant drop in the number of coastal districts participating in the ACMP, and their policies that guide the development of coastal areas and resources. Prior to the amendments to the ACMP in 2003, there were 34 coastal districts that participated in the ACMP with more than 1,300 policies. After the amendments to the ACMP, 28 coastal districts participated in the ACMP with approximately 210 policies to guide development (State of Alaska. Alaska Legislature/Alaska Legislative Budget and Audit Committee, Part 1, 2010). The most significant result of the amended ACMP was the decline in local government participation and their ability to influence management decisions affecting their coastal areas.

4.2.6 State Review of the ACMP

During the enactment of the ACMP the State of Alaska evaluated the program three times. Two of the three were conducted by the Alaska State Legislature’s Legislative Budget and Audit Committee (LBAC). In the ACMP’s final year of implementation, 2011, the Legislature’s Legislative Research Services (LRS) provided a short overview of the ACMP that highlighted the likely consequences of eliminating the program.

The first audit was completed in 1994, by the Alaska Legislature, LBAC. The audit had four purposes, three of which dealt with the organizational structure of the ACMP and cost. The

main objective of the evaluation was to determine if the ACMP provides any unique benefits to the State that are not duplicated by other federal or state programs. That portion of the audit concluded that it did have important benefits and should be sustained:

The ACMP provides unique benefits to the State and coastal districts. Among these are the ability to influence direct federal actions and the mechanism for the coastal districts to participate in the decision making process through their approved coastal plans. Most importantly, the ACMP allows the State the ability to review projects on state and federal land in coastal districts (State of Alaska. Alaska Legislature/Legislative Budget and Audit Committee, 1994, p.11).

The 2003 amended version of the ACMP included a “sunset date” of June 30, 2011 that would repeal all ACMP statutes unless the ACMP statutes were re-authorized by the Alaska Legislature by that date. In advance of this date, the State Legislature commissioned the LBAC to audit the ACMP for the primary purpose of determining if the ACMP was operating in the public’s interest and if the program should be reauthorized. The audit findings were very explicit and straight forward. The report strongly favored reauthorization:

The legislature should reauthorize the ACMP program. The ACMP serves the public interest through coordinated consistency reviews by the State and coastal districts evaluating certain activities occurring in or having an effect on the state’s coastal zone (State of Alaska. Alaska Legislature/Legislative Budget and Audit Committee Report, 2010, Part 1. p. 2).

In 2011, State Senator Bill Wielechowski asked the Legislative Research Services to provide information about the potential consequences of the sunset of the Alaska Coastal Management program. The resulting four page research memo pointed out that the state would lose: 1) federal funds that helped implement the program; 2) coordinated permitting processes; 3) state employment positions, and 4) local input. Most notable, the memo emphasized the loss of the state’s ability to review and influence federal activities that affect Alaska:

The most significant consequence to the ACMP’s sunset would be the loss of Alaska’s ability to review and to object to federal activities, licenses and permits through the consistency review process. The ACMP gives the state a formal role in the review of federal activities, including those occurring on the Outer Continental Shelf (OCS). Without the ACMP, the state could still comment directly to federal agencies on their activities permitting actions; however, the state could no longer ensure those activities comply with the ACMP statewide and district policies (State of Alaska. Alaska Legislature/Legislative Research Services, 2011, p.3).

The federal government provided 12 evaluations of the ACMP, all but one of them explicitly states that the ACMP was adhering to the programmatic obligations of the CZMA, and several of them suggested that the ACMP was functioning at a high level - in the upper echelon of states and territories that have approved coastal management plans. All three of the state audits/evaluations of the ACMP unequivocally assert that the State benefits from the ACMP. One of the evaluations goes so far as to suggest that the ACMP fits a unique and important function for the state that contributes to the public interest. All three speak at length about the ACMP's unequalled ability to influence federal actions in the management of the state's natural resources. The ability to influence federal management of the state's natural resources was the rallying cry behind the efforts to formalize statehood in 1949, yet the state forfeited this right when it repealed the ACMP in June 2011.

This is a difficult paradox to reconcile. However, opposition to the ACMP was continuous, from its inception to its end. It is essential to understand why.

4.2.7 ACMP Challenges 1979 -2011

It didn't take long after the approval of the ACMP in 1979 for opposition to surface. In a March, 1981 periodical provided by the Alaska Resource Development Council, titled the "Resource Review", a short section of the journal gives details into the early opposition to the ACMP by stating the following:

The Resource Development Council wants repeal of the state plan because it creates more layers of government at the taxpayer expense without any corresponding benefit, a council spokesman said. Alaska's coast can be properly managed and developed by means other than the present program, according to the council. A bill introduced in the state legislature sponsored by eight senators, would pull the state out of the federal program (p.2).

At this point, the nascent program was just beginning. Of the 35 coastal districts, only the Municipality of Anchorage had an approved plan and the consistency review process had not yet been implemented.

A bill was introduced in Alaska's 12th legislative session, 1981-1982, to repeal the ACMP. House Bill 568 was introduced in the state legislature, titled; "Repeal the Alaska Coastal Management Program". The bill was assigned to the Community and Regional Affairs Committee and died without being heard.

In the following Alaska legislative session, 1983-1984, there was again a bill introduced to repeal the ACMP. House Bill 92, also titled; “Repeal the Alaska Coastal Management Program,” and assigned to the Community and Regional Affairs Committee. The bill was heard twice in the committee. In the first meeting on March 4, 1983, the primary sponsor of the bill Rep. Bob Bettisworth, read a prepared statement to the committee in favor of the repeal. The statement suggested that he was in favor of less government, not more government. He claimed the program was unconstitutional because it gave more authority to communities in the unorganized borough than the constitution had intended. There were five public testimonies taken during the committee meeting; all five were in opposition of the bill to repeal the ACMP. The bill died in committee without passage.

In the 14th (1985-1986) and 15th (1987-1988) Alaska legislative sessions, legislators introduced bills that would have significantly changed the ACMP, but not repeal the program. Senate Bill 185 & Senate Bill 114, both titled; “Legislature Disapproval of Alaska Coastal Management Program,” were introduced in the 14th and 15th Alaska Legislative sessions and would have given the state legislature administrative authority over the program, granting the legislature the authority to alter consistency determinations and district management plans with state legislative approval. Both of these bills died in their first committee assignments.

After Alaska’s 15th legislative session there were some structural changes to the ACMP that were legislated, but no significant challenges to the ACMP until Alaska’s 20th legislative session (1997-1998). House Bill 28 was titled, “An Act Repealing the Alaska Coastal Management Program.” The bill’s sponsor, Representative Gene Therriault from the Mat-Su region, suggested that the Federal Clean Air Act, Clean Water Act, wetland protection and other laws now offer much of the same protections as the ACMP, which creates unnecessary duplication of effort and stretches the permit process out over a longer period of time. He also suggests that the ACMP is being used to restrict people from hunting and fishing, although that is regulated by the Department of Fish and Game, not the ACMP.

The state legislature held numerous hearings on the bill and was met with opposition from a large number of coastal communities, environmental groups, and members of the public. Coastal communities from the North Slope Borough to Ketchikan Gateway Borough testified,

wrote letters, and submitted resolutions in opposition to the bill. Public support for the ACMP far outweighed the support for House Bill 28.

During deliberations, the bill was amended and instead of repealing the ACMP, a later version of the bill proposed modifications to the ACMP. The amendments to the bill still resulted in significant opposition to the bill. The bill was tabled and died in committee.

In 2003, the Murkowski Administration introduced legislation that dramatically changed the ACMP. House Bill 191, titled, “Alaska Coastal Management Program” was argued by its proponents as a means to streamline the ACMP process by avoiding redundancies in federal, state, and local standards and policies. The opposition to the bill was still significant; however, the bill did not try to eliminate the program and a lot of the opposition to the bill found common ground in the notion that the bill would streamline the regulatory process.

On May 7, 2003, the House of Representatives passed House Bill 191 with a vote of 25 in the affirmative, 10 in opposition and 5 excused. On May 14, 2003, the State Senate passed the House Bill 191 with a vote of 11 in favor, and 9 in opposition. The bill was signed into law by Governor Murkowski on May 21, 2003. According to a federal review of the ACMP in 2008, several aspects of the revisions were found to be controversial, as shown in table 4-4. These changes seem innocuous, but a closer examination of these issues and their implications highlights the controversy. In the following four paragraphs, I give a brief description of the controversy associated with each of the elements listed in table 4-4.

Table 4.2 A list of elements of the revised ACMP in 2003 that were considered controversial.

Controversial Elements of Revised ACMP in 2003
(1) Eliminating the Coastal Policy Council and transferring its authority for the Development of statewide standards of the ACMP and the approval of district management plans to DNR;
(2) developing new statewide standards of the ACMP and new guidelines for district coastal management plans;
(3) requiring all districts to develop and submit new district coastal management plans by a set date or face a sunset of their plans; and

(4) changing protocol so that the requirements and implementing regulation for the Alaska Department of Environmental Conservation became the sole enforceable policies for the ACMP for the purposes of air, land, and water quality.

Source: U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management 2008

(1) Eliminating the CPC and transferring its authority to DNR, gave direct influence over the administration of the program to the governor. The CPC was an independent body appointed by the governor, but not directly overseen by the state's administration. The organizational changes to the ACMP in 2003, gave the state's administration more direct control of the program to the governor through the commissioner. DNR's commissioner works at the discretion of the governor, giving the governor a greater influence on how the ACMP was administered. In addition, the 2003 changes to the ACMP gave the DNR sole decision-making authority. The new organizational structure decreased the ability of the ACMP to act as a tool to drive consensus building. There was no need to build a consensus, because there was only one agency with the authority to approve or disapprove projects. There was nothing in the form of a check or balance to the power/authority of the state.

(2) The new statewide standards and guidelines restricted the ability of coastal districts to participate in the process of governing their coastal resources. According to the OCRM evaluation of the ACMP in 2008, coastal districts felt the new standards and guidelines were too stringent and limiting. The new standards and guidelines required coastal districts to create policies that were "clear and concise...using precise, prescriptive and enforceable language" (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008, p. 11). According to federal review, these new standards were beyond the local capacity of many of the coastal districts. The terminology was purposefully ambiguous to allow full discretion of the state in approving or disapproving coastal management plans. In addition, the coastal districts were required to establish special area designated for their policies. Many of the coastal districts cited problems obtaining DNR approval of special area designations for important habitat areas and subsistence use areas. The new standards and guidelines required districts to map areas for special designations, which required high standards for proof, mapping and scientific information. The new ACMP standards also mandated that coastal district policies not duplicate a state or federal policy. According to federal review of the ACMP in 2008, the most common reasons cited by DNR for denying area designations and subsistence use areas for

coastal districts was insufficient data and mapping and that the state standards already sufficiently managed the resource/area. The 2003 amendments to the ACMP led to a significant drop in the number of coastal districts participating in the ACMP and their ability to enforce policy regarding their coastal resources. As noted previously, prior to the amendments to the ACMP in 2003, there were 34 coastal districts that participated in the ACMP with more than 1,300 coastal district policies. After the amendments, 28 coastal districts participated in the ACMP with 210 coastal district policies (State of Alaska. Alaska Legislature/Legislative Budget and Audit Committee, Part 1, 2010).

(3) The State of Alaska put a timeline on the creation of coastal district plans that required them to create and receive approval for their amended district management plans by a certain date (September 1, 2007), or their plans would be eliminated. Some of the coastal districts felt they did not have the capacity to create policies that adhered to the amended ACMP standards and guidelines, and because the state did not offer enough technical assistance to support coastal districts in this capacity, the truncated timeline to create a new coastal district management plan was seen as a prohibitive burden by some coastal districts (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008).

(4) After air, land and water quality and protection became the sole responsibility of the DEC, districts were no longer able to write policies in their coastal management plans relating to air, land and water quality. In a federal review of the ACMP in 2008, coastal districts noted that their involvement in the permit process relating to air land and water quality and protection was now equivalent to that of a member of the public, who may provide comments, but no actual authority to implement change regarding the governance of their respective resources (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008).

The 2003 amended version of the ACMP included a section that repeals all ACMP statutes unless the ACMP statutes were re-authorized by the Alaska Legislature before June 30, 2011. Between 2003 and 2011 the state legislature introduced several bills to amend the ACMP and deal with some of the controversial elements. Very few of those bills passed, and most died in committee. Companion bills in the 2010 legislative session, Senate Bill 4 and House Bill 74, reintroduced a statewide appointed board to oversee the ACMP, eliminated the “DEC carve out”, and gave localities more leeway to adopt enforceable polices. The Parnell administration and

resource developers actively opposed the bills, and the bills died at the end of the 2010 legislative session. In the 2011 legislature, companion bills were introduced by the Governor to extend the ACMP past the 2011 sunset date, House Bill 106 and Senate Bill 45. Throughout the course of the 2011 legislative session a number of committee substitute bills were introduced and amendments added to address the problems of the 2003 changes to the ACMP. Ultimately, the ACMP statutes were not re-authorized and the ACMP was eliminated on June 30, 2011.

4.2.8 Federal Challenges to the ACMP

The Alaska legislature wasn't the only entity challenging the ACMP. Early in the Reagan administration, in response to the 1970's oil embargo by the Organization of Petroleum Exporting Countries (OPEC), the administration proposed to offer ten million acres for oil and gas leasing in federal waters. The issue of whether the states had the authority to apply the CZMA consistency provision to federal oil and gas lease sales came to a head when the administration announced its intention to conduct an oil and gas lease sale covering 115 tracts of submerged land off the central coast of California. In response to the lease sale, the State of California applied the consistency review process and determined that oil and gas development in those tracts would threaten a sea otter sanctuary, grey whales, and other endangered species. The Reagan Administration disagreed, argued that the consistency review did not include oil and gas lease sales because that activity did not have a direct impact on a states coastal resource and zones.

The federal government did not comply with the state's consistency review requirements and proceeded with the sale of all 115 tracts of land. The State of California brought suit against the federal government, and won in both District Court and the Court of Appeals. Eventually the law suit found its way to the U.S. Supreme Court where the State of California argued that a federal oil and gas lease sale sets in motion a chain of events that may lead to impacts on their coastal zone and resources. In January, 1984, the Supreme Court decided in favor of the federal government, handing down a 5-4 decision, which stated that the federal government's oil and gas lease was not a federal activity that "directly affects a state's coastal resources or zones within the meaning of the CZMA" (Kitsos, Magnuson & Lewis, 2013, p.2).

This was a significant blow to the CZMA. Congressional representatives who supported the CZMA wanted to immediately strengthen the act through legislation and provide for a consistency review process that incorporated oil and gas lease sales.

The Reagan Administration wanted to get rid of the CZMA in its entirety and with majority support in both legislative bodies it seemed unavoidable. However, in 1987 there was a growing concern about the increase in pollution in coastal states. In response to a congressional request, the Office of Technology Assessment produced a 1987 report entitled “Wastes in the Marine Environment.” The report found that the condition of U.S. marine waters was threatened and faced certain continued degradation unless the federal government acted. At the same time the report was being publicized, serious coastal pollution events were unfolding before the public, underscoring the need for more comprehensive management of the nation’s coasts. Coastal communities were facing increased red tide events, hundreds of swimmers and tourists were getting sick due to pollution off the coasts of New York and New Jersey; and 742 bottlenose dolphins and 14 deceased humpback whales washed up on the beaches from New Jersey to Florida — likely a result of coastal environmental toxins associated with pollution. A change in the political environment in the 1988 national election allowed for not only the continuation but a strengthening in the CZMA, which was authorized by the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 and included explicit legislation that tied oil and gas lease sales of the federal government to the consistency review requirement in the CZMA (Kitsos, Magnuson & Lewis 2013).

4.3.0 The Alaska Legislature’s decision to eliminate the ACMP.

In the third section of this chapter, I examine the history of local government authority in Alaska, then provide a short analysis of the different stakeholder perspectives on the ACMP. I end this section with a description on the legislative process and decision making that led to the ACMP sunset in 2011.

4.3.1 Maximum Local Self-Government

Around the time of statehood, Alaska had about forty cities and twenty special districts. Less than half of the cities had a population of one thousand or more. Fairbanks and Anchorage had populations of thirteen thousand and forty-four thousand respectively, approximately one fifth the entire population of the state. Most of the local government units were underdeveloped.

Scattered around the state were small cities and villages, a few independent school districts and public utility districts. During the development of Alaska's Constitution, the constitutional delegates had the opportunity to design a system of local government for Alaska before most areas of the state required or had a local government, which allowed the delegates to create a system of local government without having to navigate existing local government's entitlements (Harrison, 2012; Naske & Slotnick, 2011).

Alaska's constitutional delegates looked to existing states on how to create a system of local government, but there was a sense that the local government organization in the lower 48's wasn't ideal, or didn't necessarily reflect the realities of the State of Alaska. The delegates realized that the vast differences across Alaska - differences in population, geology, available resources, existing infrastructure, concentration of taxable wealth, tradition, and experience with local governments would require local variations. This presented a problem, because there was a traditional understanding of local government authority that had been strengthened through common law, which defined local government authority as powerless to act in the absence of delegated authority from the state. This is commonly known as Dillon's rule. Dillon's rule was established in the opinion of the court in *City of Clinton v. Cedar Rapids and the Missouri River Rail Road Company*, wherein Justice John Dillon spelled out the terms of his philosophy on municipal government authority in the majority opinion:

A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation-not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation (Russell & Bostrom, 2016, p. 2).

The Dillon Rule was later echoed by the United States Supreme Court in *Hunter v. Pittsburgh* when the courts stated, "Municipal corporations owe their origin to, and derive their power and rights wholly from, the legislature. It breathes into them breath of life, without which it cannot exist" (Russell & Bostrom, 2016, p. 3).

This municipal government philosophy presented some significant challenges to the constitutional delegates. In accordance with Dillon's Rule, the state government would have to spell out, through statute, all powers and authorities of municipal governments in Alaska. How could they possibly create policies that would encompass the needs of island communities in

Southeast Alaska, with a combination of timber, mining, fishing and subsistence economies, a burgeoning tourism industry, and without a connecting road system; that would also work for villages in the Arctic, with largely subsistence economies, on the verge of huge oil and gas deposits, and roads that were only viable in the summer months; or sparsely populated coastal communities in the Aleutian Islands; or the vast differences of communities that align the large braided river systems in the Interior; let alone the urban populations of Anchorage and Fairbanks? On top of this was the fact that the constitutional delegates had suffered their own misfortunes as a consequence of far off politicians creating and implementing policies to organize the structure of government in Alaska, manage their resources, and establish laws in a place very few of them had ever visited, or even knew much about.

There was an alternative to the traditional model of local government. Before Alaska statehood, there were a small number of states that had implemented a different more progressive model of municipal government called Home Rule. This model provides more autonomy to local governments and gives municipalities the authority to act and express powers not explicitly prohibited by state or federal law. This local government philosophy provides municipalities with the authority to set up their government organization and express powers as they see fit, with limitation depending on the classification of their incorporation. This philosophy was adopted by the Alaska's constitutional delegates, and came to fruition in AK Const. art X, § 1, which states: "The Purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units." In effort to shore up any confusion that might stem from the interpretation of these constitutional principles, the Alaska State Legislature reaffirmed these principles through statute. The Construction of Powers Act of 1985 states:

(400) A liberal construction shall be given to all powers and functions of a municipality conferred in this title.

(410) Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily implied in or incident to the purpose of all powers and function conferred in this title.

(420) Specific examples in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

The State of Alaska is one of 11 states in the U.S. that provide for Home Rule municipal governance in their constitution and through statute. The delegates created a municipal government structure that reflected what the State wanted from the federal government; a hands off approach that allowed municipal governments the authority to govern themselves. This constitutionally delegated municipal government authority seemed to fall in line with the lessons learned from pre-statehood; lessons learned from the lack of management, or distant management of Alaska's coastal resources. The people in Alaska believed they were in a better position to manage the resources in Alaska due to proximity and an intimate reliance on those resources, just like the people living in their respective jurisdiction were in a better position to decide how to manage their resources and what government structure and authorities were in their best interest.

And so it went, 1977-1979, during the development of the ACMP, the State of Alaska embraced the idea of having local input on the outcome of coastal resource management decisions. From 1979 – 2003, the ACMP was a direct reflection of maximum local self-government in the form of coastal resource management. Local input was at the very foundation of the ACMP. Local governments were not only given a seat at the table through the consistency review process, municipalities had the ability to reject or refine development projects that had an impact on their coastal areas and resources.

In 2003, under the Murkowski administration, this authority of municipal governments was severely curtailed. Eight years later, in 2011, the state legislature chose to get rid of the ACMP entirely. In large part because legislators could not agree on what role local governments should have in the management of the state's coastal resources.

4.3.2 Stakeholders

There were a number of different factions involved in the ACMP, from its beginning in 1979 to its eventual elimination from state government in 2011. For the purpose of this research, I want to focus on 3 stakeholder groups involved in the ACMP: the State of Alaska, local governments, and resource development industries in Alaska.

4.3.3 State of Alaska

On January 19, 1976, Governor Jay Hammond gave the State of the State address to a joint session of both the Alaska State House and Senate. Governor Hammond introduced the topic of coastal management, stating that he would be introducing a new bill which would enable the state to protect, use, and manage the immensely valuable coastal areas without doing harm to the interests of local governments and the people that lived near those resources. While this was just a small glimpse into the beginnings of the ACMP, it was introduced in a much broader assertion by Governor Hammond about the role of state government and the public. The central theme of the State of the State address was that his administration would ask the public what they wanted from state government, rather than tell them what they were going to get. The Governor was searching for alternative views of the future of Alaska, with the mindset that no one person has the best road map for the direction of the State. The State of Alaska is just as diverse in public opinion as it is geographically huge, and the Governor was calling for people to voice their opinions and be part of the decision making process (Hammond 1976).

In 1979, the State of Alaska and the federal government released the Environmental Impact Statement (EIS) for the ACMP. In the summary section of the EIS, the statement illuminates the original and shared role of local governments and the state in the implementation of the ACMP. The EIS states:

Alaska's coastal management program establishes new coastal policies, rules, responsibilities, obligations and relationships, but relies primarily on existing state and local authorities and controls for implementation. The program is based on the Alaska Coastal Management Act of 1977 which established an approach of shared local and state coastal management responsibility. The Act requires coastal program development with a specified period by local government units or districts in organized areas, and in unorganized areas when the area is faced with large scale resource development. It also sets up relationships between the districts and state agencies, and provides basic objectives and policies for coastal management (State of Alaska. Office of Coastal Management, 1979, p. 17).

Upon development and implementation of the ACMP, the State of Alaska created a system of shared authorities with local governments a collaborative effort that reflected what Governor Hammond advocated for in his State of the State address. This was a system of government that relied on the shared interests of the people of Alaska in order to decide what

was in their best interest, rather than a state government telling the people/municipalities what was in their best interest.

After more than two decades of ACMP implementation, the State's prerogative changed under the Murkowski Administration. In March of 2003, an article published by the Juneau Empire described the intentions of the Murkowski Administration to change the ACMP. The article was titled: "Bill would cut local say on coastal development." State officials who were cited in the article talk about how local policies in the ACMP duplicate state laws; how the proposed changes to the ACMP would streamline the process and reduce regulations for industries looking to develop Alaska's resources (Inklebarger 2003). The changes that were legislated by this bill ultimately reduced the role of local governments in the ACMP, just like the title of the article succinctly noted (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008).

Approximately 6 weeks before the termination of the ACMP, On May 12, 2011, Governor Parnell wrote a letter to State Senator Hoffman expressing his administration's position concerning the ACMP. In the letter, Governor Parnell suggests there are four principles that must be met in order for the State to support legislation that would sustain the ACMP. The administration writes:

...the Administration made clear the program must meet certain principals that could not be compromised. These principles are too important to the viability of the program and to the State's interest in not creating unnecessary barriers or expense to responsible resource development. These four principles are:

- ACMP must maintain a predictable process;
 - ACMP must be maintained as a strong State program, where community input is valued;
 - ACMP standards and enforceable policies must be objective, and must not duplicate or redefine existing authorities; and
 - Coastal resource districts should be afforded a meaningful role for input on projects, but should not possess a "veto" decision over projects.
- (Parnell 2011 p.1).

Governor Parnell goes on to suggest that the legislature's desire to negotiate additional roles and authorities for municipalities in the ACMP is "...clearly incompatible with the principles cited above" (Parnell 2011 p.3). In other words, the State's position concerning the role of local governments in the ACMP was set in stone. The State did not want to give municipalities any

more authorities than what had been in place since 2003. The State of Alaska wanted full authority to control the coastal resource management decisions and was so staunchly opposed to negotiating additional authorities for local governments that the Administration was willing to eliminate the program entirely.

4.3.4 Local Governments in Alaska

Local government participation in the ACMP is voluntary. Prior to the changes made to the ACMP in 2003, 34 of 35 (97%) coastal districts were participating in the ACMP. In 2011, 28 of 35 (80%) of the coastal districts were participating.

In 1996, the federal OCRM Evaluation Team met with community representatives from 7 coastal resource districts and concluded that the local governments felt the program was beneficial and currently working in favor of their interests. According to the evaluation, the listed parties involved showered the ACMP with glowing compliments. Below is a small excerpt from the evaluation:

The Evaluation Team met with parties involved with local programs in Anchorage, Juneau, Pelican, Kenai, Hoonah, Bristol Bay and Kodiak Island. It was noted that the ACMP funding was instrumental in undertaking the work involved in these programs, and that the district plans were critical for maintaining local control of coastal development and resource protection efforts. The local official in Pelican also emphasized the importance of Pelican's coastal program in meeting the overall needs of the community or region. Particularly in small, isolated coastal communities like Pelican, the coastal program provides not only the only voice for community concerns in state decision-making, but also one of the few sources of funds and technical assistance for making public access improvements and supporting community infrastructure needs (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1996, p. 35).

In 1997, the Alaska State Legislature introduced a bill, entitled House Bill 28, "An Act Repealing the Alaska Coastal Management Program". The legislature held numerous hearings on the bill and was met with opposition from a large number of the coastal districts. Coastal districts from Barrow to Ketchikan testified, wrote letters, and sent resolutions in opposition to the bill. Those testifying raised concerns about the implications of eliminating the ACMP including: reducing local government authority; not having a voice in management decisions that affect their resources and local communities; and relinquishing constitutional rights. Support for the ACMP was impressive and many districts pointed out once again that the program enabled

local communities a way to participate in decisions affecting their coastline (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1998). House Bill 28 was eventually defeated, in large part because of local government's advocacy for the ACMP.

Not long after the legislative attempt to eliminate the ACMP in 1997, the Murkowski Administration introduced legislation that significantly altered the ACMP. According to its supporters, House Bill 191, was a means to simplify the ACMP process by avoiding redundancies in federal, state, and local standards and policies. The opposition to the bill was still noteworthy; however, the bill did not try to abolish the program and a lot of the resistance to the bill found common ground in the notion that the bill would streamline the regulatory process. After the bill passed, and the new ACMP regulations were implemented, coastal resource districts across the state were unsatisfied with the results. In a 2008 evaluation of the ACMP, the federal OCRM noted that coastal resource districts were almost universally unhappy with the ACMP, citing many reasons, including the following: dissatisfaction with new organization and lead agency administration of the ACMP; no voice in lead agency decisions; the requirement to develop new coastal management plans and the restrictive timeline; lack of technical assistance provided by the state to develop management plans and meet statewide standards; no clear direction on what it meant to duplicate existing state or federal laws; new area designation regulations that were broad, vague, and too limited in subject matter; not enough funding or technical assistance to meet area designations standards; DNR approval of area designation was arbitrary and there was no recourse if a district disagreed with their determination; lack of outreach and communication by the state; important habitat and subsistence use designations were reduced; standards and regulations diminished the role of the districts and led to reduced protection for resources (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 2008). There was also a great deal of dissatisfaction with the number of local policies being accepted by the lead agency administering the ACMP. For example, Juneau's number of district policies was reduced from 93 to 5. Aleutian West went from 60 policies to 10.

4.3.5 Resource Development Industries

In an earlier section of this research, I provided an example of a March, 1981, periodical published by the Alaska Resource Development Council, titled the "Resource Review", which

provided a short glimpse into the perspective of resource development agencies on the ACMP. The short of it is, they didn't like it. Before the program was fully developed they had already expressed a dissatisfaction with the program's excessive bureaucracy, additional red tape, and lack of corresponding benefits. The article goes on to suggest that the resource agencies supported a bill that would pull the state out of the federal program.

In a 1984 evaluation of the ACMP, provided by the federal OCRM, the conclusion section noted that the ACMP was, "...subject to intense scrutiny by industry", but does not go into further detail about the origins or features of that scrutiny (U.S. National Oceanic Atmosphere Administration/Office of Coastal Resource Management, 1984, p. 14).

In the appendix sections of many of the federal OCRM evaluations of the ACMP, it is noted that the OCRM evaluation teams contacted individuals from the private sector, which was mainly individuals that represented resource development industries, but very rarely if ever do the evaluations say anything of substance concerning the resource industries' perspective on the ACMP.

An Alaskan Dispatch News article, published in April of 2011, says that the 2003 changes to the ACMP were done at the "urging of mining, oil and other development interests who argued that they were sometimes subject to duplicative permitting regimes, one at the state level and another at the local level" (Epler, 2011, p. 1).

On March 23, 2011, the Alaska Oils and Gas Association (AOGA) submitted comment to the House Resource Committee during their consideration of a bill to sustain the ACMP. The AOGA is a private, nonprofit trade association whose member companies account for the majority of oil and gas exploration, development, production, transportation, marketing and refining activities in Alaska. The document suggested that the AOGA was an advocate of legislation that balances resource development with environmental protection and goes on to list principles what they believe to be in the best interest of the ACMP:

- Provide benefit for all Alaska residents by development of Alaska's resources
- Contain clear and concise requirements
- Be unambiguous and avoid opportunities for misinterpretation
- Provide predictable and firm timelines
- Provide predictability regarding applicable requirements and scope

- Avoid duplication of other state and federal permitting programs
- Contain clear limits so that district policies not require agencies to implement authorities that were not granted them by the legislature or that contradict agency regulations (Alaska Oil and Gas Association, 2011 p. 1-2).

The letter goes on to suggest that the AOGA supports the ACMP as it exists in 2011, and advocated for continuance of the program in its current form (Alaska Oil and Gas Association 2011).

These principles are very similar to the principles that the Parnell Administration laid out in its letter to Senator Hoffman. This is not particularly surprising, the State of Alaska receives 90% of its funding from resource development industries, and it makes sense that the State of Alaska is at least partially aligned with the resource development industries in Alaska.

4.3.6 Introduction of House Bill 106 & Senate Bill 45

On January 18, 2011, House Bill (HB) 106 was transmitted by the governor to the House floor for consideration. A day later, the governor introduced a companion bill on the Senate floor, Senate Bill (SB) 45. Legislation is often introduced in bicameral bodies to maximize chances of moving the legislation forward and eventually passing one of the two bills. The two pieces of legislation were exactly the same. There were no substantive changes to the ACMP being introduced by the governor, just simple legislation to delay the termination date past its deadline of July 1, 2011. A simple message was attached to the bills, urging the two bodies to promptly and favorably pass the bills. Speaker of the House, Mike Chenault, referred HB 106 to the House Resource Committee, and House Finance Committee. Senate President, Gary Stevens, referred SB 45 to the Senate Community and Regional Affairs Committee, Senate Resource Committee, and Senate Finance Committee.

4.3.7 House Bill 106

From January – April 2011, HB 106 collected dust waiting to be considered in the House Resource Committee. Members of the Alaska State Legislature who also belonged to the Bush Caucus (group of Alaska State Legislators who live in or represent rural communities in Alaska), complained that governor's legislation ignored their proposals to change the ACMP in line with its pre-2003 form, and they were willing to allow the program to lapse instead of continuing the program as it was - with little if any substantive representation of local concerns. To back that

up, Senator Lyman Hoffman, a member of the Bush Caucus, who at the time co-chaired the Senate Finance Committee, stripped funding for the program from the governor's proposed operating budget, which eliminated 33 jobs and cut \$4.6 million out of the budget. This caught the attention of the administration, and members of the House Resource Committee.

In response, Co-Chair of the House Resource Committee, House Representative Paul Seaton, crafted a substitute bill, which among other things established the Alaska Coastal Policy Board that included one member from 4 coastal district regions around the state. The Alaska Coastal Policy Board (ACPB) was not the pre-2003 version of the Alaska Coastal Policy Council. The ACPB members would have been appointed by the governor from names put forward by coastal districts (Epler April 5, 2011). The members of the board could be removed "for cause" by the governor. There was no indication of what the term "for cause" meant. The ACPB would have been an advisory board with only the authority to make recommendations to the DNR, unlike the Alaska Coastal Policy Council, which was a 15 member board with the authority to apply for grants, adopt regulations dealing with the guidelines, standards and constancy reviews, and approve coastal district plans. In other words, the Alaska Coastal Policy Council administered the ACMP, the ACPB was an advisory body only. On April 5, 2011, the House Resource Committee passed the committee substitute (CS) for HB 106 out of committee. The bill passed the House Resource Committee with a message describing the intent of the legislation, which was noted in the Alaska House Journal letter of intent for CSHB106 (Seaton & Feige 2011):

It is the intent of the Legislature that the changes made to the Alaska Coastal Management Program under HB 106 will increase the ability of Alaska Coastal Districts and Coastal Resource Service Areas to draft strong coastal district plans with enforceable policies that will be approvable by the State of Alaska Department of Natural Resources. It is the intent of the Legislature that these changes will allow the Alaska Coastal Management Program to meet the concerns of coastal residents while developing Alaska's diverse coastal resources.

The House Finance Committee received CSHB106 on April 11, 2016, only days before the end of the regular session. The House Finance Committee did not add substantive language to CSHB 106, but did include fiscal notes from the DEC and DNR. The fiscal notes provide the funding estimates for the program. On April 15, 2011, the House Finance Committee passed the bill from committee.

Late in the evening on April 15, 2011, the same day the House Finance Committee passed HB106, the Alaska State House considered HB 106 on the House Floor. The House Floor session took place at 11:41pm in the twilight of the regular session. The debate on the floor reflected the late hour and the approaching deadline. Of the forty member body, only five of the members chose to speak on the bill.

Representative Feige (2011), Co-Chair of the House Resource Committee, introduced the bill by saying that the committee had done its due diligence, and suggested that everyone who has a stake in this bill came to the table to negotiate its formulation. He went on to suggest that there were no major objections to the bill, and that the House Resource Committee had received strong letters of support from the resource development council and the mining industry.

Representative Kerttulla (2011), mentioned that there were still concerns about the DEC carve out. That the bill still gives total control of the program to state agencies; allowing state agencies to reject coastal district policies if the policies conflict with local objectives or priorities. She ended her comments with the statement, “If what we are trying to do is allow districts to have a say, while balancing good strong development for the state, we are going to have to respect the districts more.”

Representative Seaton (2011), Co-Chair of the House Resource Committee, mentioned that the bill is progress, but there was more work that needed to be done. He had concerns about the bill’s vague language and authority given to the State. He cited a portion of the bill that says any changes for the development of resources that were negotiated in the consistency review process would have to employ the “least restrictive means” to achieve the objective. He believed that portion of the bill would lead to a lot of coastal district policies being invalidated.

Representative Edgmon (2011), said he felt like the bill was a product of compromise, and that the creation of the Alaska Coastal Policy Board was a positive step for bringing back local concerns into the ACMP.

Representative Joule (2011) made mention of the fact that in 2010 the house was completely divided on the issue of extending the ACMP, and this bill, which maintained the ACMP, represented a positive step in the right direction.

At 12:01 am, on the morning of April 16, 2011, the Alaska House passed CSHB106 with a unanimous vote of 40 yeas, 0 nays, to move this bill forward to the senate for consideration.

Local coastal districts were not uniformly in favor of this. Some local districts felt the interests would be better served if the program ceased to exist. In a letter of support for the House Resource Committee Substitute Bill 106 to sustain the ACMP, Mayor Edward S. Itta (2011) of the North Slope Borough noted this discrepancy when he wrote:

“On coastal zone management, the North Slope Borough has tried to play by ever-changing rules since 2003. We have nothing to show for it. Now it’s up to the Administration and the Legislature. If you are going to leave the program as it is, and let coastal management work for everybody except those coastal communities who clearly have most at stake, it probably makes more sense to go ahead and let the program sunset.”

The Alaska Municipal League (AML) a voluntary, nonprofit, nonpartisan, statewide organization of 164 cities, boroughs, and unified municipalities passed a resolution (#2011-22) that also highlighted this discrepancy. In the resolution, AML asserted that their organization supports the extension of the ACMP, but only an extension that establishes a coastal policy board, brings back air and water quality issues into the ACMP consistency reviews, eliminates requirements for designation of subsistence use areas, and allows for more meaningful local policies. HB 106 did not meet of these criteria.

Even with this discrepancy noted, most local districts felt the ACMP should be sustained and submitted support for the House Resource Committee Substitute Bill 106. Many of the local coastal districts had expressed frustration with their diminished role in the ACMP since the 2003 changes, but without the ACMP, coastal district and the general public would have even less input into the management decisions that effected their resources. In addition, each coastal district had a coastal coordinator who was employed by the municipality. Because these employees are partially funded by the ACMP, those positions would be cut if the ACMP was eliminated (State of Alaska. Alaska Legislature/Legislative Research Services, 2011). Many coastal districts felt they needed to support this version of HB 106, or lose the ACMP in its entirety. At the time, that was a realistic consideration.

The Alaska Senate introduced HB 106, on the same day it was transferred from the House, and immediately referred the bill to the Senate Finance Committee. Before the bill could

be considered in the Senate Finance Committee, the first regular session of the 27th Alaska State Legislature ended, April 17th, 2011.

Governor Parnell called the Legislature back into session on April 18, 2011, and in accordance with Article 2, § 9. of the Alaska Constitution the Alaska State Legislature was limited to subjects designated in the governor's proclamation to call the legislature back into special session, which included the ACMP legislation and 9 other bills.

On May 10, 2011, the Senate Finance Committee introduced a Senate Finance Committee Substitute for HB106. The changes to the bill reflected favor towards increasing the authority of local governments to manage their respective coastal resources. The changes to the bill are as listed below:

- 1.) Provides for the removal of a public member of the Alaska Coastal Policy Board for cause and gives the public member an opportunity to appeal. This replaces the provision that public members serve at the pleasure of the governor.
- 2.) Lists three factors that may be considered in determining if a districts policy proposal employed the least restrictive means to achieve the objective for a consistency review.
- 3.) Provides that the department may require additional information for coastal resource districts plan approval or part plan approval. This replaces the provision that the department may require coastal districts employ the least restrictive means to achieve the objective.
- 4.) Prohibits special/habitat area designation requirements for coastal policies.
- 5.) Deleted definitions of local knowledge and scientific evidence, because current regulatory definitions "are sufficient."
- 6.) Requires a January 1st, 2015 report by the Alaska Coastal Policy Board on the effectiveness of the program to the governor and legislature.
- 7.) Terms designee and deputy were replaced with deputy commissioner throughout the bill for the purposes of adjusting the Alaska Coastal Policy Board makeup.

It was noted by two separate newspaper articles that the main difference between the Senate Finance Committee Substitute for HB106 and the House version of HB106 is that the

senate's version gave local communities more authority in respect to the ACMP (Epler, May 10, 2011, Forgey, May 11, 2011).

On May 13, 2011, the Senate Finance Committee Substitute for HB106 was passed out of committee. That same day, the Alaska Senate introduced the bill on the floor. There were two vocal opponents of the bill on the Senate floor. Senators Coghill and Higgins verbally objected to the bill, but not for reasons of substance. Senator Coghill said his primary objections to the bill were because he understood the House version better, but also noted that he was concerned that the bill fell back on the statutory definition of local knowledge and scientific evidence, and would rather see the bill codify the definition of local knowledge and scientific evidence in respect to the ACMP. Senator Huggins supported those objections.

During the floor session, Senator Donny Olson made an impassioned plea to his colleagues to accept Senate's version of HB106. On May 13, 2011, at 1:25pm Senator Olson presented an argument in favor of the bill. He said that prior to 2003, the ACMP had been working for more than 2 decades as a collaborative effort of the state, local governments and the feds. He said that changes made to the ACMP, in 2003, gave absolute authority to the state through the DNR, which eliminated the voice of local people. The Senate's version of HB 106 reinstates the local's position and authority to collaboratively manage their resources with the state and federal governments. Senator Olson suggested that the people who are hunting and fishing in these coastal areas, for hundreds maybe even thousands of years, were in a better position to manage their resources and they wanted to have more input into what they believe are things critical to the harvesting of their protein sources. He also mentioned that he had met with the White House and people from NOAA to see what would happen if the ACMP did sunset; and reminded his colleagues that the authority to manage their respective resources is what led the State of Alaska to transform from a territory to a state in the battle to end fish traps in the 1950's and the mismanagement of the salmon resources in the state. And that without the ACMP the State of Alaska would be in a similar position as they were prior to statehood.

Directly after Senator Olson's plea to pass the Senate's version of HB106, Senate President Gary Stevens asked the Senate the question of whether to pass the bill. At 1:39 pm Senate Finance Committee Substitute for HB 106 passed the Senate with 13 yeas, 5 nays, and 2

excused. A reconsideration vote was held at 1:46 pm. Senate Finance Committee Substitute for HB106 was passed from the Senate with 18 yeas, 0 nays, 2 excused.

On the same day that the Senate passed its version of HB 106, the House failed to concur with the Senate's version of HB106, with a vote of 17 yeas, 20 nays, and 3 excused. Immediately after failure to pass the Senate version of HB106, the House appointed three State Representatives to a conference committee to collaborate with members of the Senate and see if they can resolve disagreements on the bill. The Senate did the same. The conference committee consisted of 3 members from both bodies. House: Rep. Craig Johnson, Rep. Beth Kerttula and, Rep. Bob Herron. Senate: Sen. Donny Olson, Sen. Bill Wielechowski, and Sen. Albert Kookesh.

After a day and a half of conference committee deliberations, a new version of the HB106 was brought to the floor of the House and to the Senate. The contention of the two bodies remained on one particular sticking point. In the House's version of HB 106, local knowledge could be undermined if it was contradicted by scientific evidence. That particular section was taken out in the Senate's versions of HB 106. The Conference Committee Substitute for HB 106, created a procedural requirement, which suggested that the department would determine the relevant strengths of the scientific evidence and the evidence supporting the local knowledge and solidify a written decision.

At 9:36 pm, while introducing the Conference Committee Substitute for HB 106 on the Senate floor, Senator Bill Weilechowski (2011) described the changes made and provided the following argument for the change:

The main dispute was over five words in the definition of local knowledge. Section C was taken out, not contradicted by scientific evidence. Basically what the local knowledge is, if an organizational developer wants to put a mine in for instance, or some kind of development project, in a certain place, and there is a 1,000 years of generational knowledge that putting it in that place would be bad for Alaska. What the House bill would have done is allow a single scientist, maybe not even from Alaska, maybe spent very limited time in Alaska, to overturn generations of that knowledge. And so we took that out. Added a provision on page five, allowing for the department to basically weigh that evidence.

Approximately five minutes after making this statement, Senator Fred Dyson asked if Senator Weilechowski would clarify his sentiments about local knowledge and scientific evidence and the changes made to the bill. Senator Wielechowski (2011) made the following statements:

...I think it is pretty clear, there can be cases where you have groups, teams of scientists that come in and do peer review studies. That is one of the things that could be scientific evidence, but you could also, the way I read this, and I think the way many of the conference committee members read this, you could have one scientist come in and conduct these studies, actually not even come into Alaska, conduct this study outside of Alaska, come to a conclusion that is contradictory to local knowledge, and completely undermine generations of local knowledge. And we felt that was inappropriate. What we did though was to give the department, give the administration the authority/the ability to weight that. To weigh the local knowledge vs. the scientific evidence that is out there...

Directly after Senator Wielechowski's clarifying remarks about the changes made in the Conference Committee Substitute for HB106, Senate President Gary Stevens called for a vote to adopt Conference Committee Substitute for HB106. With 14 yeas, 4 nays, and 4 excused votes Conference Committee Substitute for HB106 passed the State Senate.

Directly after the vote, the Alaska Senate adjourned and officially ended the senate portion of the special session.

The 40 member State House of Representatives had a much more spirited debate about the last version of HB106. On the same night that the senate adopted Conference Committee Substitute for HB 106, May 14, 2011, the house was in the throngs of a lengthy discussion on whether to do the same. The Conference Committee Substitute for HB106 was introduced on the house floor with an opposition to it by the Co-Chair of the Conference Committee, Representative Craig Johnson (2011), who introduced the bill with the following statement,

...I think at this point everyone has to vote their conscience and their constituency. I understand that. I brought this bill forward on behalf of the body and the State. When it comes to pushing the button I have to vote with by constituency, I certainly cannot support the version that has been passed now. And with that we will let the games begin.

The debate on the house floor never wavered far from the concepts of scientific evidence vs. local knowledge. The idea for many of the people opposed to the Conference Committee Substitute for HB106, was that local knowledge shouldn't get in the way of development

interests. That the State and resource extraction industries should not have to abide by the concerns of local districts if it meant that the development would be impeded by them. The interests of the state and the interests of industry were more important than that of local interests. In a statement in opposition to the bill, Representative Charisse Millett (2011) noted that the issue of scientific evidence vs. local knowledge was really about allowing local governments the ability to weigh in on development projects:

...Today as the coastal management program has evolved, it has become transformed into something that I don't believe that it was ever intended to do... Where we allow individual coastal communities to have as much input, in a position where they could actually stop development or stop a project, any individual project. What we find is that the coastal zone management program opens up the state to a lot of disparity for communities to arbitrarily say based on something other than scientific knowledge that they oppose a certain project, or they want more information, or the project studied further...

The debate went back and forth like this for more than an hour on the House floor. There was a lot of concern from advocates of the program that if the bill failed the State would lose its ability to influence federal management of the State's coastline and resources. Representative Alan Austerman (2011) made that point when he provided the following statements,

I rise in support of a coastal zone management or coastal zone management plan. I've been around just long enough to probably get myself in trouble in some of the conversations I have had, but I was here during the subsistence battles that we have fought. And we as a state decided that we didn't want to be part of the federal government program. So we gave up those rights. And so today we are running into situations all through federal lands where we as a state, we as residents of this state, are not allowed access to a lot of our lands, not access to our fish and game sometimes. And we are arrested for going through a park, just because we are going through the park. Today we are going to, sounds like from listening to all the negative discussion today in reference to the coastal management program that we are going to do the same thing.

Alaska is a beautiful, beautiful state. It has environment out there that we all love and enjoy. It has an environment that is very rich in resources. We are known as a resource extraction state. Consequently, we are having a lot of pressure on the state of Alaska by resource development people who want to come in and develop and extract those resources. So today by voting no, we take out one more layer of the ability to protect our resources, to protect our environment...

One final comment, if we don't have coastal zone management we don't have a voice period. If we keep it, at least next year we can sit down and talk about it again. We can look at what we have done. We can look at it over the

next couple of years, as to what this program is, if we have a law on it. By saying no, we remove that ability to have any voice at all, and I think that is doing damage to the State of Alaska in the long term.

At 7:33pm, House Speaker Mike Chenault asked for a vote on Conference Committee Substitute for HB106. The initial vote was 20 yeas, 15 nays, 5 excused. The vote failed to reach its minimum threshold of 21 votes necessary to pass. For more than two hours after the vote, the house floor remained in recess. After returning to the floor, Representative Beth Kerttula made one final plea to her colleagues in the house. She pleaded with them to reconsider their vote and adopt the bill for the sake of keeping the program. Representative Kerttula (2011) provided the following statements:

The hour is late, and I would not ask for this, but without this bill we are going to lose our state coastal zone program, we are going to lose the state's ability to take any action on federal permits, on federal lands or federal waters. It is important state's right, we use it as much to negotiate against the federal government as we ever do against industry. And really truly it will be industry and small communities that are going to lose if this bill goes away. It's not a perfect piece. I don't like it as much as anybody else. But this is our last chance to save this program. From the bottom of my heart I hope we do it.

The bill again failed with a reconsideration vote of 20 yeas, 15 nays, and 5 excused. A day after failing to pass the bill, the House adjourned ending its portion of the special session.

4.3.8 Senate Bill 45

Senate Bill (SB) 45 was sidelined when HB 106 received more traction in the House during the legislative session. Senate Community and Regional Affairs Committee did pass a Committee Substitute for SB45, but the bill was for the most part forgotten with the emphasis on HB106. After HB 106 failed on May 14, 2011, and the special session ended, there was still a push from within the legislature to make sure that the ACMP did not sunset, and 33 jobs of the state were not lost. In accordance with the Alaska State Constitution, the Alaska Legislature has the ability to initiate another special session and deal with the impending demise of the ACMP, but it would require a vote of two thirds of the state legislators.

Little more than a week after the first special session in 2011 had ended, Governor Parnell met with the Juneau Chapter of the Alaska Miners Association and gave details on his perspective on why legislation to extend and change the ACMP failed. Governor Parnell did not

mince words when he attacked the integrity and legislative abilities of the Senate. He likened the State Senate members to snakes, and suggested that they failed to negotiate fairly, and repeatedly changed the terms of the debate. He said that the conference committee was stacked in favor of the Senate, and there was little if any balance towards the House and Administration's position on the ACMP. He also mentioned that the major contention to the bill was the issue of local knowledge vs. scientific evidence (Forgey May 23, 2011). On May 25, 2011, Governor Parnell posted commentary on his Facebook page, defending his position on the Senate and the demise of the ACMP. He mentioned that the Conference Committee Substitute for HB 106 would give the Coastal Policy Board what he believed to be too much authority, with a lack of accountability. He also bemoaned the application of local knowledge, saying it needed to be grounded and or checked with science (Governor Parnell May 25, 2011).

This open vitriol blaming the Senate for the demise of the ACMP engendered a barrage of published commentary on the issue. Members from the House and Senate published opinion pieces giving their side of the story. Mayor Edward Itta of the North Slope Borough blasted the Parnell Administration, suggesting that he and other leaders of the state were "wrongheaded, and ignorant of local community's needs" (Epler June 21, 2011 pg. 1). The Attorney General at the time, John Burns, submitted an opinion piece trying to assuage some of the public's concerns that had arose from the failure to sustain the ACMP. He commented that the state still had a role in coastal management, citing several federal laws that allowed for public hearings on federal actions (Burns June 22, 2011). The public was inundated with commentary and finger pointing on why the special session had failed to sustain the ACMP. In almost every one of the opinion pieces it was noted that the State Legislature still had the ability to pass legislation that would sustain the ACMP.

With increasing awareness that the state legislature had the ability to sustain the ACMP and public pressure accumulating from the opinion pieces, the State legislature scheduled a special session to continue negotiations and legislation to sustain the program in late May and early June. The first attempt to schedule a second special session failed. According to a Juneau Empire editorial piece, the attempt failed because there was not enough support in the House (Juneau Empire May 30, 2011).

Eventually, there would be enough support to hold a second special session to consider and sustain the ACMP. The two-day special session was called by the Alaska State Legislature and held from June 27-28, 2011. During the special session the House and Senate used SB 45 as the vehicle to move forward with legislation to sustain the ACMP. The amended version of SB 45 mirrored HB 106 and was largely in the form that almost made it through the Legislature in the special session that ended in May. There was a small difference between the two bills concerning scientific evidence and local knowledge. Amendments introduced on the Senate floor, added to the Community and Regional Affairs Committee Substitute for SB45, and required the DNR to aggregate both scientific evidence and local knowledge, but this was not something that would be considered a substantive difference from HB 106 (Epler June 26, 2011). The debate on the Senate floor was short, lasting less than fifteen minutes. The debate made no new arguments, jut reiterated arguments that had already played out in the drama of the previous special session. On June 27, 2011, the Senate passed the amended version of Community and Regional Affairs Committee Substitute for SB45 with a vote of 11 yeas, 7 nays, and 2 excused. At the time of passage, the House had not begun their portion of the special session.

On June 28, 2011, the House convened its portion of the special session. The House floor debate was much longer and more spirited than the Senate. The debate did not change the outcome. Prior to the floor session, the governor had weighed in strongly against the legislation, threatening to veto the bill if it passed. Amended version of Community and Regional Affairs Committee Substitute SB 45 failed in the House with a vote of 18 yeas, 18 nays, 4 excused. The ACMP was eliminated on June 30, 2011.

4.4.0. An analysis of the citizens' initiative to reinstate the ACMP in Alaska.

In this section I provide a short overview and analysis of the laws in Alaska concerning the initiative process, then provide a description of the initiative process to reinstate the ACMP. I finalize this section with an analysis of the campaign in support of the initiative to reinstate the ACMP, and an analysis of the campaign in opposition of the initiative to reinstate the ACMP.

4.4.1. Alaska's Initiative Process

Article XI. Section 1. of Alaska's constitution provides for the enactment of laws through the initiative process and Alaska statutes 15.45.010-720 provides for additional laws and regulations for the initiative process. Through the initiative process, voters in Alaska have the

ability to enact legislation. In other words, voters in Alaska can bypass the state legislature and enact law. The enactment of law through the initiative process provides Alaskans the ability to participate in a direct democracy; creating and establishing laws by a majority vote of Alaska's electorate. Enactments of law through the initiative process are similar to enactments by the state legislature, but there are limits to this power. Initiative laws may not exceed the general powers of the state's legislative bodies. For example, an initiative cannot be used to enact law contradicting or changing the state constitution. The enactment of an initiative cannot be used to dedicate revenues, or appeal appropriations, create courts, or address issues for the immediate preservation of the public peace, health, or safety. Other than these explicit limitations, the initiative is a very potent tool the public can use when the people of Alaska want to enact laws that have either been rejected by the legislature, or simply not considered (Harrison 2012).

The process to enact initiative legislation in Alaska is grueling and purposefully so. The first step is an application, which requires the signature of 100 qualified voters of the state. The application, including signatures, assures that the initiative has general support before the state goes to the cost of printing petitions, and it creates a threshold level of effort to dismay frivolous petitions (Harrison 2012).

The second step is the petition. After the application is accepted and before the petition can be circulated the lieutenant governor must write an objective summary of the proposed initiative for the petitions that are circulated for signatures. Due to the ambiguous nature of what it means to be objective, the courts often have to arbitrate the objective nature of initiative summaries. After the petition sponsors accept the lieutenant governor's summary of the initiative, the sponsors of the initiative must collect signatures of registered voters equal in number to 10 percent of the votes cast in the preceding election; in addition, the signatures must come from a minimum of 30 of 40 house districts, in which the total in each district must be a minimum of 7 percent of the votes cast in the preceding general election in that district. The requirement for signatures is to assure widespread support for an initiative before it reaches the ballot. Prior to 2004, the initiative petition only required signatures from 10 percent of registered voters. This was changed by the state legislature to require a percentage of voters from 30 house districts, because under the original provisions for initiatives, all of the required signatures could be obtained from a few urban districts. The State of Alaska wanted to give more voice in the

initiative process to rural areas of the state. This change demanded more inclusion of all the people who would be affected by the initiatives (you could swim through the irony on this one). After the petition has been circulated and the signatures obtained, the division of elections certifies the petition by counting and certifying the signatures, to make sure they come from qualified voters of the state and have met the petition requirements described above (Harrison 2012).

After the petition has been certified by the division of elections, the petition sponsors may file the petition with the lieutenant governor. After which, the lieutenant governor is obligated to prepare a ballot title and proposition summarizing the proposed law. If the legislature passes a substantially similar law during the legislative session preceding the election in which the initiative is proposed, the initiative is negated. If the legislature fails to pass a similar piece of legislation, the initiative goes before the state's electorate. Before the initiative law is considered by the public, the lieutenant governor is required to hold 2 or more public hearings concerning the ballot initiative 30 days prior to the election. If a majority of the votes cast on the proposition are in favor of the initiative, the initiative becomes law 90 days after the lieutenant governor certifies the election results.

These provisions give the Alaska legislature and the administration substantial influence over initiatives. In addition to the legislature's ability to pass a substantially similar law, Alaska's constitution gives the legislature the ability to amend the law at any time and repeal it after two years. The constitution vests broad authority in the legislature to vary the terms of an initiative law through the process of amendment. This power amounts to a check/balance on the initiative process. The administration weighs in on the initiative by overseeing the division of elections; authoring the objective summary of the proposed legislation for petition circulation; preparing the ballot title and proposition summarizing the proposed law; creating the cost assessment/fiscal note; and facilitating the requirement to hold public hearings concerning the initiative. There is limited authority on the part of the public to check this power. In the event that an administrative action was disputed, the citizens must file grievance in the Alaska court system (Harrison 2012).

4.4.2. An Act Establishing the Alaska Coastal Management Program

The next section of this chapter relies heavily on a firsthand account of the initiative process to reinstate the ACMP from the perspective of the chairman of the initiative campaign, Mr. Bruce Botelho. I interviewed Mr. Botelho and he gave his permission to use his detailed journal about the initiative effort.

After the elimination of the ACMP by the Alaska Legislature, media attention continued well after July 1, 2011. Members of the public, legislatures, and media outlets continued to voice their concern over what seemed to be the primary point of contention, which was the extent to which communities should be able to exercise their voice over proposed development in their respective localities. Legislators in support of the ACMP and members of the public continued to champion the importance of coastal management and the ability of the state and local governments to play a role in the federal management of the state's resources and coastal areas.

Mayor Bruce Botelho, in the capital city of Juneau Alaska, took particular exception to the issue. He was principally concerned with the degree of influence localities would have over federal actions and proposed development in areas that locals relied on for subsistence, recreation, wellbeing, and otherwise. He was also concerned with the 34 state jobs, principally located in Juneau, which were lost with the elimination of the ACMP. Mr. Botelho started to explore what he could do to reinstate the ACMP and bring back jobs to Juneau, while also giving Alaskans a seat at the table to manage their resources. His first idea was to try to engage legislative leadership and the administration to see if there was room for compromise in the Alaska legislature to reinstate the ACMP. A former attorney general under the Hickel and Knowles administrations, Bruce understood the nuance structure of government and could navigate the idea of engaging the governor and legislative leadership to restore coastal management in the 2012 legislative session. Mr. Botelho met with executive director of the Alaska Municipal League (AML), Kathie Wasserman, and discussed raising the issue during the league's 2011 summer meeting and she agreed (Bruce B., Personal Diary, August 2012).

During the AML summer meeting Mr. Botelho asked the board for resources to engage the governor and legislative leadership to restore the ACMP. The AML board agreed to appropriate \$5,000 for the effort. During the same AML summer meeting, Attorney General John Burns gave a presentation urging the AML and its member coalition of municipal

governments in Alaska to support the administration's effort to transfer more management authority from the federal government over the lands and waters of Alaska to the state; arguing that local Alaskans were in a better position to manage and care for the states resources. Mr. Botelho made note of the peculiar situation in his journal saying, "The irony was not lost on many in the room since those were the same sentiments expressed in support of coastal management districts" (Botelho B., Personal Diary, August 2012, p. 3). Mr. Botelho realized that the previous legislative sessions would thwart the ability for the house, senate, and the administration to find common ground on the issue to reinstate the ACMP (Botelho B., Personal Diary, August 2012).

He decided the best option for reconsideration of the ACMP was through the initiative process. The initiative route wasn't ideal. The initiative process in Alaska is arduous. The initiative campaign to reinstate the ACMP would require petitions complete with signatures from 10 percent of those who voted in the 2010 general election (25,875 signatures), and 7 percent from a minimum of 30 house districts. In order to get the initiative on the 2012 primary ballot, the signatures had to be submitted to the division of election, then reviewed and approved by the lieutenant governor before the start of the 2012 legislative session on January 16, 2012. In accordance with Alaska Statute 15.45.070, the lieutenant governor has sixty days to review and approve the initiative application. Knowing that the administration wasn't necessarily keen on the idea of reinstating the ACMP, Mr. Botelho knew the petition campaign would need to be a hurried effort.

In the early weeks of September, 2011, Mr. Botelho reached out to Representative Beth Kerttula to help decide if the effort was even possible. They concluded it was "worth a shot." Rep. Kerttula began assembling a team of people to draft the initiative language. Bruce Botelho and AML's Kathie Wasserman took charge of the application process. Wasserman suggested that the initiative reflect support from local government officials. The initiative campaign reached out to a number of elected officials representing local governments from around the state to be primary sponsors of the initiative and sign the application, and it didn't take much convincing. As the campaign gained momentum, the members began to meet weekly in the AML conference room in Juneau.

The actual language of the initiative was meant to seize on elements of the ACMP prior to the changes made to the program in 2003. Mr. Botelho describes the initiative language with the following passage:

Our initiative sought to capture important elements of the pre-2003 program. The new coastal zone management program would be overseen by a 13-member coastal policy board (4 commissioners and 9 representatives from coastal districts) which would be supported by a division of ocean and coastal management. Like both its predecessors, the new program would provide for statewide coastal program standards against which coastal activities would be reviewed for consistency. The boards would approve district coastal management plans. Citizen appeals were not authorized, but air and water quality permits were reincorporated in the coordination function (Botelho B., Personal Diary, August 2012, p. 4).

The initiative application was filed with the lieutenant governor's office on October 7, 2011 (Treadwell 2012). While the review and approval of the application was underway, the initiative campaign worked to organize the signature gathering and fundraising efforts. The signature requirement for the petition was no small task. Recruiting volunteers from around the state wasn't enough. The campaign required financial support from statewide organizations to endorse the campaign. Mr. Botelho traveled the state seeking support and financial assistance from environmental organizations, the Alaska Federation of Natives, local governments, and other power players in Alaska politics. In Mr. Botelho's own words, he had "nominal" success in fund-raising. The fundraising was meant to cover travel and a paid signature gathering effort. The campaign was confident that it could recruit volunteer efforts to cover the Fairbanks and Southeast districts. The arctic and southcentral regions were more difficult and would require a funded effort to gather the signatures. While consulting with a private contractor to circulate petitions in the aforementioned regions of Alaska, the contractor suggested that the campaign would likely need about 30 percent more signatures than the required minimum. His experience was that the Division of Elections would likely invalidate 30 percent of the gathered signatures. If that approximation was correct, the campaign would need to gather roughly 37,000 signatures (Botelho B., Personal Diary, August 2012).

Late in the afternoon of December 6th, 2011, the lieutenant governor office left a voice mail message advising Mr. Botelho that the initiative application had been approved. December 6th, 2011, was exactly 60 days after the application had been filed. In accordance with Alaska

Statute 15.45.070. the lieutenant governor has 60 days to approve or reject an application for an initiative. It is hard to know exactly why the approval of an initiative campaign would take the two full months for approval. However, given the context and political nature of the initiative campaign, it would not be a stretch to assume that the lieutenant governor's office purposefully delayed approval to reduce the chances of the campaign meeting their signature requirement to get the initiative on the 2012 ballot. Every day the campaign had to wait to start gathering signatures was another day closer to the deadline of January 16, 2012. While it might be a stretch to assume that the administration purposefully delayed approval of the application to influence chances of success for the signature campaign, subsequent actions of the administration strongly support this conclusion. Mr. Botelho described the nature of the administration's obstruction efforts in the following portion of his diary entry.

While only one petition had ever succeeded with such a short time to gather signatures, we now had forty days to accomplish our goal. Only then did we realize the length the administration would go to block our efforts. First, we were told that the initiative had to be made available to the office of management and budget (OMB) to prepare a fiscal note that would be included on the ballot. The fiscal note was a new requirement, but that did not in itself trouble us – but why hadn't this review taken place concurrent with the department of law and division of election review of the application? How long would it take? After nearly a week of waiting, I finally learned from a staffer that it had been assigned a low priority and that it could take as long as three weeks to complete the assignment. I was livid and called Gary Stevens, the president of the senate and supporter of our initiative efforts. He immediately weighed in with the governor and Lt. governor and was assured that it would be “completed shortly”. It was, though the \$5.4 million estimated annual operating expenses proposed by the OMB far exceeded our estimates. We could not afford the time to contest the numbers.

In the meantime, Attorney General John Burns called me to learn whether I wished to “edit” the proposed ballot statement. It was as lengthy as any I had seen – more than 700 words and characterizations that were troubling. Nevertheless, as with the proposed fiscal note, I decided not to contest the summary because we could not afford the loss of any additional day. Our chances, already greatly diminished, were fading rapidly.

Our attention turned to the division of election which was responsible for printing the booklets. We had asked for, and offered to pay for, expedited printing. The division demurred. In the meantime, we made repeated rounds of calls and emails to our volunteers, who had been in a stand-by mode for more than a month. As we approached the holiday season, we began to lose some of our help. Finally, on December 23rd our booklets were delivered to us in Anchorage (Botelho, Personal Diary, 2012, p. 5-6).

The initiative campaign received the petitions with exactly 24 days remaining until their January 16, 2012, deadline. In order to get the initiative on the 2012 primary ballot, the campaign would need to garner 25,875 certified signatures. This ambitious goal was unprecedented. No initiative campaign in the history of the State of Alaska had met such a daunting task (Medred 2011). The truncated timeline wasn't the only hurdle for the campaign, in December of 2011, Alaska was in the midst of an abysmal freeze. Large areas around the state were experiencing temperatures of 40 degrees Fahrenheit and below. These weren't your average fair-weather campaigners. In the icy conditions volunteers and paid signature gatherers worked tirelessly to garner signatures.

The campaign's message wasn't foreign or complicated. The initiative was ripe with Alaskan sentiment. Alaska's history is filled with distant management to the detriment of Alaska's resources and people. From the exploitation of whales, sea otters, timber, minerals, to salmon and other coastal resources, Alaskans have firsthand accounts of the failures of federal authority and management of Alaska's common pool resources to the disadvantage of the people who live amongst and utilize those resources. Self-determination is embedded in Alaska's constitutional principles and is at the heart of how we identify with the world, and why we implored the U.S. congress for statehood. Rugged individualism resonates, not only in our politics, but in the way we live, work and play. The idea of having local jurisdictions manage their respective resources; a seat at the table to negotiate and determine how these resources are managed is a political rallying cry Alaskans are accustomed to. The ACMP gave Alaskans the ability to balance competing uses and activities in places where we fish for salmon and halibut, harvest herring, shrimp, roe, crabs and shellfish. The coast is a place we pick berries, harvest timber, and hunt for subsistence. The coastline of Alaska provides opportunities to watch whales for sheer pleasure, or boost the economy by sharing the experience with tourists. A place we drill for oil and gas, mine for precious minerals, boat, kayak, and even surf. Where we stare in wonder at the stunning aesthetics of summer sunsets. The idea of giving Alaskans the authority to manage and determine how to properly balance competing interest in these resources was not a hard sale (Botelho, Personal Diary, 2012).

In 24 days, despite the holiday season, the truncated timeline, the extremely cold weather, and the unprecedented nature of the initiative campaign; the campaign was able to gather and

submit approximately 34,000 signatures to the division of election on January 16, 2012. If the division of elections certified a minimum of 25,875 of those signatures, and the state legislature did not pass a substantially similar law during the 2012 legislative session, the initiative would make it on the 2012 primary ballot in August.

On February 6, 2012, the state legislature held a committee meeting on the initiative. Mr. Botelho was invited to the committee meeting to testify on the bill. According to Mr. Botelho's journal he was asked not to use the platform to promote the initiative. This was highly unusual. Legislatures who sponsor bills use committee meetings to promote their bills. Why would an initiative campaign not be able to do the same thing? Mr. Botelho agreed not to promote the bill, but instead used the opportunity to lambast the office of management and budget's fiscal note it had prepared for the initiative. According to Mr. Botelho this was another attempt by the administration to manipulate the initiative and discourage voter support. Mr. Botelho writes the following in his diary:

I could not resist the opportunity to excoriate OMB for the fiscal note it prepared on the initiative. In my view, the numbers had been purposefully exaggerated to discourage voter support for the initiative. OMB had estimated that the total cost of the program would be approximately \$5.4 million for each of the first five years of the program. This included \$3.26 million for personnel costs for 34 full time positions. I pointed out that there was no reason to fully fund the program for at least two years because there could be no permit reviews until there was federal approval. At most only half the budgeted staff would be required in that period. Nor had OMB taken into account federal receipts that would be anticipated in the years following federal approval (estimated at \$2 million annually). It had estimated the cost of \$700,000 for support of the coastal policy board, including one staff member. Allowing for a staff position of \$150,000 (substantially more than any staff position would be authorized), the \$550,000 remaining for travel and per-diem was over-the-top excessive. Using board of game as a template because of its frequent and lengthy meetings throughout the state, I calculated the costs of its meetings (travel, per diem, space rental and supplies) at \$6,000 a day... Using the per person costs, but including the space rental and supplies budget, I calculated the coastal policy board cost at \$7,740 a day. There were sufficient funds for nearly 2 ½ months of non-stop meetings in its first year, a completely implausible scenario (Botelho, Personal Diary, 2012, p. 8).

The office of management and budget released a statement accompanying the fiscal note. According to the statement, the estimated total cost of the ACMP, for the first 5 years, was \$27 million at a cost of \$5.4 million per year. As mentioned above, the cost of the program included

a fully-fledged staff from day one of implementation through five years. The cost of the Coastal Policy Board at \$700,000 was exceedingly high in comparison to similar state boards. The federal funds to offset the cost of implementation, were included in the fiscal note, but were represented in a surreptitious manner. Unless a reader of the fiscal note is willing to get into the nitty and gritty of the information, one would assume that \$27 million is a cost burden of the state. Roughly \$6.7 million, or 25 percent of that financial burden would be appropriated by the federal government. The OMB also included \$56,000 for office equipment and commodities. While this isn't exceptionally high, the OMB seemed to dismiss the fact that the Division of Ocean and Coastal Management was in existence 6 months prior to the creation of the fiscal note, office equipment and all (Office of Management and Budget, 2012). If nothing else, the appearance of exaggerating the fiscal note to discourage voter support is noteworthy.

The Alaska House of Representatives did introduce a substantially similar bill. On February 17, 2012, House Bill 325, titled, "An Act establishing an Alaska coastal management program" was introduced by house majority leader Rep. Alan Austerman. Introduction is about all the action the bill would see. After introduction and committee assignment the bill was heard once by the house resource committee. The bill died in committee after the initial hearing. Before the legislature adjourned in 2012, it appropriated start-up funds for the coastal zone management program in the event that the initiative passed in August.

On March 5, 2012, the division of elections sent a memo to the lieutenant governor's office stating the initiative campaign had gathered 29,991 certified signatures, and that the petition contained signatures of qualified voters in 37 of 40 house districts that equaled at least seven percent of those who voted in the preceding general election. The initiative campaign's petitions had met the constitution and statutory requirements of the state. On March 9, 2012, the lieutenant governor sent a letter to Mr. Botelho approving the initiative for the 2012 primary ballot. In blue pen at the bottom of the letter Lieutenant Governor Mead Treadwell wrote the word 'congratulations' (Treadwell 2012, Fenumiai 2012).

4.4.3 The Sea Alaska Party

The Sea Alaska Party was established shortly after the Alaska coastal management initiative was approved by the lieutenant governor's office. According to the Alaska Sea Party website, the party was a "statewide grassroots organization comprised of state & municipal

leaders and concerned citizens allied for the purpose of promoting the re-establishment of a coastal management program for Alaska” (Alaska Sea Party 2012). The campaign was a proletarian campaign formulated by the energy of volunteers. There was a lot of established support for the Alaska Sea Party, including: the Alaskan Federation of Natives, former Alaska Governor Tony Knowles, Representative Beth Kerttula, Representative Bryce Edgmon, State Senator Lyman Hoffman, Senate President Gary Stevens, Mayor of Kodiak Island Borough Jerome Selby, Alaska Native Federation President Byron Mallott, North Slope Borough Mayor Edward Itta, and the Juneau League of Women Voters. It was important to the campaign to showcase the fact that their supporters were established and prominent Alaskans.

The Alaska Sea Party relied heavily on the free marketing technique of authoring local newspapers op-eds. Several prominent members of local governments and state officials who had joined the party, or agreed with the efforts to reestablish the ACMP, utilized published media in the state to send the party’s message out to the voters. Mr. Botelho authored a couple of articles in January of 2012, but by his own account, didn’t start publicly campaigning until early July of 2012. After approval of the initiative the Alaska Sea Party spent most of their time and effort fundraising and organizing their message (Botelho, Personal Diary, 2012).

The campaigns message was straight forward. The op-eds throughout the state had a similar message: the State of Alaska has the most extensive coastline in the U.S and is the only eligible state not participating in the federal coastal management program; the ability to affect federal management of Alaska’s coastline and resources relies on the state’s enactment of a coastal management program; Alaskans should have control over the state’s coastal lands, waters and resources, and without a program that authority does not exist; the ACMP had operated for three plus decades and did not obstruct resource development in Alaska, there was no reason to believe it would prevent resource development now; and resources in Alaska should be managed by Alaskans.

Near the end of the campaign, the message switched in two ways. The first was to emphasize the role of outsiders in the opposition to the initiative. The second, was to suggest that the ACMP helped reduce red tape and bureaucracy for development projects. The Alaska Sea Party suggested that the ACMP was the only program that allowed for a coordinated review among resource agencies, providing for a more efficient permitting process. The message switch

tried to invoke Alaskans anti-outsider ideology, and assuage the fear of the initiative being labeled anti-development. The campaign message also tried to emphasize the relative number of individual campaign contributors in support of the initiative, to the relative few individual campaign contributions of the opposition.

Early efforts to campaign for the initiative decided not to pursue “outside” money or environmental money for fear of the public viewing the campaign as non-Alaskan and or anti-development. Late in the campaign, after a meeting with a group of prominent lobbyists and hearing their assessments that the campaign would have to come up with \$400,000 - \$500,000 to run a formidable campaign against resource extraction industries, this prerogative changed (Botelho B., Personal Diary, 2012). The campaign would accept money from whoever was willing to give.

The Alaska Public Office Commission (APOC) requires campaigns to disclose campaign donations. According to the campaign disclosure reports, the Alaska Sea Party accumulative fundraising efforts totaled \$219,479.12. The vast majority of these donations were small individual donations from Alaskans. Most of the campaign contributions were one time contributions of \$100 from Alaskan residents. Whether or not the initial effort to steer clear of “outside” and environmental money affected the campaign financially is unclear (Alaska Public Office Commission, 2014).

The campaign’s fundraising efforts didn’t accrue enough money to create regular TV ads, or to poll the public to see if their message was resonating. Instead, the campaign tried to create YouTube spots that they hoped would go viral and appeal to the Alaskan electorate. The YouTube ads never caught on. In total, all of the campaign’s YouTube ads combined have less than 500 views.

Throughout the month of July, 2012, the lieutenant governor set up 9 public hearings to consider the initiative. The public hearing took place in: Soldotna, Wasilla, Kotzebue, Kodiak, Fairbanks, Barrow, Anchorage, Ketchikan, and Juneau. The public hearings were set up in a debate like format, allowing for the initiative support and opposition to present their side of the issue to the public. The hearings allowed for each side to present their position using a power point presentation. The power point presentations echoed the message the Sea Alaska Party had

sustained throughout the campaign, and tried to rebut what they believed to be mischaracterizations of the coastal management program initiative engendered by the opposition. The opposition's campaign, the Vote No on 2 Party, continued to develop their message throughout the public hearings. The opposition initially characterized the initiative campaign as anti-development and pro big government. The opposition later evolved to portray the initiative as a threat to the economy, deceptive, and challenged the idea of just simply reestablishing a government program that had worked effectively for 30 years.

Near the end of the campaign, the Alaska Sea Party seemed to spend their resources defending the initiative vs. spending their efforts on the offensive explaining the need for an Alaska coastal management program. The characterizations of the initiative coming from the opposition was louder and more visible to the public. The opposition purchased more air time on the radio, and cornered the TV market. It seemed to put the Alaska Sea Party on their heels defending their position, instead of on their toes fighting for the initiative.

Eleven written testimonies were submitted to the public hearings were in support of the initiative, and only a few in opposition. The written testimonies in favor of the initiative reflected the original campaign message of the Alaska Sea Party, but also tried to argue against the claims of the opposition (Arnold 2011, Gray 2012).

Editorial endorsements for the initiative were scarce. The Homer News wrote, "When it comes to coastal management, Alaska should be leading the rest of the nation to show how best to do it. It's a travesty that it's come down to voters having to re-establish a program that once did its job well. Citizens now must step up and do what elected officials failed to do and approve a program" (Say 'No' to measure 1; Say 'Yes' to measure 2, 2012 August 22, p. 2). The Kodiak Daily Mirror published an article titled, "Yes is the right vote for Ballot Measure 2" (Mills 2012). And the Sitka Sentinel also endorsed the initiative. These periodicals had relatively few readers, the larger published media outlets either supported the opposition, or gave no endorsement at all.

In a last ditch attempt to curtail the prolific media onslaught by the opposition, the Alaska Sea Party Campaign filed a lawsuit accusing the opposition of violating Alaska campaign law.

Alaska statute requires campaigns to disclose their top three largest financial contributors, both in text and audio, during ads. This tactic did little to affect the opposition's message.

4.4.4 Vote No on 2

The Vote No on 2 campaign was made up of a coalition of 3 NGOs supporting resource extraction: the Alaska Miners Association; Alaska Oil and Gas Association; and the Resource Development Council (Groups form association to fight ballot measure, 2012 June 6). The campaign was created by resource development industry groups to support the prerogative of resource development industries.

The campaign was co-chaired by Kurt Fredrickson, a former state commissioner of the department of environmental conservation, and Lorna Shaw, external affairs manager for Sumitomo Metal Mining Pogo LLC. The campaign's spokesperson and director was a reputable conservative lobbyist by the name of Willis Lyford. Mr. Lyford also served as campaign director for "Vote No" in a statewide campaign in 2014, which was a ballot measure concerning whether to repeal oil tax cuts.

There was notable support for the campaign, Republican Governor and Congressional Senator Frank Murkowski supported the campaign, several prominent industry representatives came out in support of the campaign. Governor Parnell didn't necessarily express support for the campaign, but he did suggest that he would veto funding for the initiative if it was approved by voters. Governor Parnell was noted as saying, "In our state's history, to our knowledge, we have never pre-funded an initiative" (Forgey June 9, 2012) A lot of people saw this as a suggestion that he supported the Vote No on 2 campaign.

The campaign's message wasn't anti coastal management. In fact, the campaign was seemingly pro coastal management. I can only imagine that the campaign realized that anti-coastal management wasn't something that would resonate with the Alaskan electorate. Considering the break-neck pace the initiative campaign was able to garner signatures to put the initiative on the ballot, the opposition campaign was canny not to establish their message as anti-coastal management. Instead, the campaign took a pro-coastal management stance, and a very anti-this-particular-initiative stance. Willis Lyford, spokesman and director of the campaign stated, "Our group is not opposed to all coastal zone management, we think there is a place for

responsible and effective management of our coastal resources. However, this measure is a real step backwards” (Forgey June 9, 2012).

The campaign’s message was consistent and aggressive. Rick Rogers, of the Vote No on 2 campaign, criticized the Alaska Sea Party for being “deceptive and defective, the law was written behind closed doors with no hearing or independent analysis” (Forgey June 26, 2012). Lorna Shaw, co-chairman of the opposition campaign, stated, “Oil and gas exploration slowed to a crawl last year. Now, in the midst of a mini-boom, a new program will put the brakes on investment and projects, because it adds more red tape” (Shedlock 2012). In a piece published by the Alaska Dispatch, Alaska’s most widely circulated published news outlet, Governor Frank Murkowski argued:

The initiative is being promoted by government people who want to add more government and more condition to projects that have been approved by state and federal agencies. More government stands in stark contrast to Alaskans who are saying we already have too much government in our lives. For all these reasons I urge the defeat of Ballot Proposition 2 (Murkowski 2012 p. 6).

These attacks were louder and more prolific than the Alaska Sea Party’s campaign efforts. In the weeks leading up to the ballot vote, the ads on the radio and TV were dominated by the Vote No on 2 campaign’s message and because the campaign was so well funded they were able to conduct polling, which allowed the campaign to focus their message with the public on sound bites and issues that were appealing.

According to the campaign disclosure reports, the Vote No on 2 campaign amassed a campaign war chest of \$1,618,633.91. The bulk of the donation money came in the form of large donations from resource development industries and affiliates: \$150,000 from Shell Oil; \$120,000 from Alaska Miners Association; \$100,000 from BP Exploration Alaska. The average donation was more than \$10,000.00. The Vote No on 2 campaign out spent the Alaska Sea Party by a ratio of more than 7 to 1 (Alaska Public Office Commission, 2014).

The Vote No on 2 campaign also received the bulk of the published media endorsements. The Juneau Empire, The Fairbanks Daily News-Miner, Ketchikan Daily News, and to a lesser extent the Anchorage Daily News all endorsed the Vote No on 2 campaign. The long and influential arm of the state’s largest industries were effective.

4.4.5 Ballot Measure 2

On August 28, 2012, the vast majority of the Alaska's electorate rejected the initiative to reinstate the ACMP. The final tally was 76,440 (62.09%) votes against the initiative, 46,678 (37.91%) votes in favor. Efforts to reinstate the ACMP were exhausted.

4.5.0 Why did Alaska Eliminate the ACMP?

It would be difficult to point your finger at any one thing and suggest that it was the reason the State of Alaska chose to eliminate the ACMP. But through my research I was able to identify a couple of key components, which I believe influenced why the State of Alaska chose to eliminate the ACMP. The most significant of which, is the long arm and heavy influence of natural resource extraction industries on resource policy in the State of Alaska.

From the inception of the ACMP through its entire existence there is evidence to support the notion that resource extraction industries did not want the ACMP to be part of the natural resource management regime in Alaska. For example, early evaluations of the ACMP note substantial scrutiny from natural resource extraction industry representatives. Periodicals representing the interest of natural resource extraction industries called for the elimination of the program, and natural resource extraction industries supported the legislative efforts to eliminate the program in 1981, 1998 and in 2011.

I believe that natural resource extraction industries played a substantial role in the 1998 failed attempt to eliminate the program, in which a lesson was learned about the significant support the ACMP bore from local government officials. The resource extraction industries realized that they needed to gut the program from the inside out, and used their influence on the Murkowski administration to make changes to the program in 2003. The 2003 legislative changes proposed by the Murkowski administration reduced the role local governments had in the ACMP, which effectively reduced the support local governments had for the ACMP. This assuaged public support of the program and allowed the state legislature to move forward with efforts to eliminate the program in 2011, without substantial pressure from local government officials. After the program was eliminated through the action of the state legislature, the initiative to reestablish the program was opposed by resource extraction industries. Resource extraction industries had the capacity to overwhelm the initiative campaign to reestablish the

ACMP, by outspending the initiative campaign seven to one. The primary reason the State of Alaska does not have a federally recognized coastal management plan, is because natural resource extraction industries did not want the program.

Party politics also weighed heavy on the decision to eliminate the ACMP. 2011 was during the time of the Obama administration. The divide between left and right / conservative and democrat was and continues to be deep and divisive. The critical votes in favor of sustaining the ACMP were almost exclusively democrat. The democrats argued with vigor that this was an essential program that gave the state the ability to manage its resources. The republicans framed it as an argument against big government and large bureaucracy, meant to stall and reject development projects. Republican legislators who expressed support of the program shouldered a significant burden after the vote. For example, house majority leader at the time Rep. Alan Austerman voted in favor of the legislation to extend the program, and in 2012 produced legislation to reestablish the ACMP; the following legislative session he was removed from his position as majority leader of the House Republican Party. Republican Rep. Alan Dick also voted in favor of the 2011 legislation to extend the ACMP, and in the following election cycle he lost his 2012 primary bid to retain republican support of his house seat. All four members of the House Republican party who voted in favor of the ACMP no longer serve in the state legislature. Republican Governor Parnell publicly stated that he would veto any legislation to extend the ACMP, which was an unprecedented action for his administration and ostensibly influenced the outcome of special sessions in consideration of sustaining the ACMP. He also publicly attacked the character of the senate bi-partisan working group who supported the ACMP, comparing their action to that of snakes. There is evidence that his administration put a low priority on the executive actions needed to process the initiative campaign to reestablish the ACMP, and seemingly inflated the estimated costs to reestablish the ACMP in order to suppress support of the program.

5. Discussion

In the following chapter I analyze the management of Alaska's coastal zones and resources after the elimination of the ACMP to better understand if the existing management of Alaska's coastal zones and resources is in line with current theory on CPR management. I start this section with an analysis of the implications of eliminating the ACMP based on five of Ostrom's (1990) eight design principles for effective CPR management, three principles were omitted due to limitations of this research. I then analyze contemporary coastal resource management in Alaska based on newer theories of effective CPR management including decentralization/devolution, polycentric governance, and adaptability and resilience.

5.1.0 Ostrom's (1990) design principles for effective CPR management

When we try to understand how to best manage CPRs, the central idea is to have the right policies and laws in place to ensure long term sustainable use of a resource in order to preserve the resources for future generations (Acheson 2006). For decades, successful examples of CPR management from around the world have contributed to a better understanding of how to govern CPRs. Knowledge about how to sustainably manage CPRs has been developed, refined, and galvanized to give policy makers a better understanding of how to govern these resource to ensure sustainability.

In 1990 Elinor Ostrom identified design principles that characterize essential elements that help account for the success of CPR management schemes. These design principles can be thought of as rules/structures/practices that characterize capable institutions that maintain sustainable governance of CPRs. Ostrom's design principles for effective CPR management continue to be a standard bearer for how we design effective CPR management regimes.

Several of Ostrom's design principles for effective CPR management rely on the idea of collective management, or collaborative management with the people who utilize the resources. The elimination of the ACMP meant that management of Alaska's coastline and resources would primarily be the function of the federal government. This effectively removed the central tenet of Ostrom's design principles for effective management for Alaska's coastline and resources, which is the involvement of people who utilize the coastal areas and resource to assist with developing management schemes to sustain the resource. When that lynchpin is removed from

the management of Alaska coastal zones and resources, by transferring sole authority to the federal government, the majority of the design principles no longer apply. These principles include: **congruence between appropriation and provision rules and local conditions; collective-choice arrangements; conflict-resolution mechanisms; minimal recognition of right to organize; and nested enterprises.** The elimination of the ACMP had limited effects on the other three principles, but due to the limitations of this research I will focus on the principles mentioned above.

The principle of congruence between appropriations and provision rules and local conditions requires that appropriation rules restricting time, place, technology, and or quantity of resource units are related to local conditions and to management rules/regulations (Ostrom 1990, Dell'Angelo et al 2015). Another way of thinking about this principle is that local people are given the ability to tailor management decisions to their local conditions.

5.1.1 Congruence between appropriation and provision rules and local conditions

To understand this principle in context to the elimination of the ACMP it is important to have a nuanced understanding of Alaska's jurisdictional authority over its land and marine environments. The State of Alaska has exclusive rights to approximately 27 percent of the land mass in Alaska, while 60 percent is under federal control, 12 percent is owned by tribal corporations, and 1 percent is privately held (State of Alaska. Alaska Department of Natural Resources/Division of Information Resources, 2015). The State of Alaska has marine jurisdiction over an area extending 3 nautical miles seaward from the shoreline, but the federal government retains the power to regulate commerce, navigation, power generation, national defense, and international affairs throughout these state waters. In addition, the federal government has exclusive rights to the marine environment extending from 3 miles off shore to 200 nautical miles seaward, commonly referred to as the Exclusive Economic Zone (U.S. Commission on Ocean Policy, 2004). The federal government is the predominant authority over both the terrestrial and marine environments in Alaska.

The elimination of the ACMP meant that the State of Alaska and local resource users have limited authority to tailor CPR management decision to their local conditions. Without the ACMP, local governments and the state are not part of this management machinery for much of Alaska's coastline. Local governments nor the state are given a seat at the table to cultivate

management decision governing the vast majority of Alaska's coastline, nor many inland activities that may affect the coastline and its resources. Therefore, the elimination of the ACMP meant the elimination of the principle of congruence between appropriation and provision rules and local conditions for coastal areas and resources in Alaska.

5.1.2 Collective choice agreements

The principle of collective choice agreements requires that resource user affected by the rules governing the resource participate in making and modifying the rules that govern the CPR (Ostrom, 1990; Dell' Angelo et al., 2015). In order to meet this principle for coastal management in Alaska, Alaskans would have to participate in making and modifying the rules for the management of Alaska coastal areas and resources. The elimination of the ACMP meant that the state and local governments are excluded from the management decisions regarding Alaska's coastline and resources. Without the ACMP the collective choice agreement principle is negated.

5.1.3 Conflict resolution mechanisms

The conflict resolution mechanisms principle states that common pool resource management systems with conflict resolution mechanisms are more likely to survive and provide for more effective resource management (Ostrom 1990; Dell' Angleo et al., 2015). One of the most significant elements of the ACMP was the consistency review mechanism. Consistency reviews allowed for quick and centralized conflict resolution for federal, state, local, and private actors. The main function of the ACMP consistency review process was to negotiate conflict and facilitate cooperation and coordination.

The elimination of the ACMP meant there is no formal mechanism, outside of the court systems, to resolve conflict for federal, state, local and private entities who disagree on coastal management policy, regulations, rules, or determinations in the State of Alaska. The elimination of the ACMP meant the eradication of the conflict resolution mechanism principle for coastal zone and resource management in Alaska.

5.1.4 Minimal recognition of the rights to organize

The principal of minimal recognition of the rights to organize requires that there be recognition of the right of a community of users to self-organize and establish rules that are

appropriate for local conditions (Ostrom ,1990; Dell’Angelo et al., 2015). Without the ACMP there is no recognition of the rights of locals/resource users to manage coastal resources or areas in Alaska. Without the ACMP the State of Alaska has limited ability to influence and have no authority to reject federal actions. For example, currently without the ACMP, if the federal government were to permit offshore oil and gas exploration in federal or state waters off the coast of Alaska (say in Bristol Bay) something that could lead to deleterious effects on the coastal areas and resources of the state, the state would only be able to review and comment under the Outer Continental Shelf Lands Act and National Environmental Protection Act, but would have no authority to require conditions or to object to federal actions or permits. The elimination of the ACMP meant the rejection of the recognition of the rights of local users to organize and influence CPR management decisions.

5.1.5 Nested enterprises

The principle of nested enterprises states that governance activities that are organized in multiple layers are more likely to be associated with successful outcomes (Ostrom, 1990; Dell’Angelo et al., 2015). The ACMP gave the state and local governments the authority to collaborate with the federal government, but also allowed for several layers of authority. For example, local governments were allowed to establish special and subsistence use area designation to assist in governing activities that may impact their respective areas and resources, which gave them a layer of authority separate and distinct from the state and federal government. The state was able to create their own Alaska Coastal Management Plan that set standards, guided the utilization of resources and activities on Alaska’s coastline, and provided the state with the authority to administer the ACMP, which also gave the state a layer of authority separate and distinct from federal and local governments. When the ACMP was eliminated these nested enterprises were disregarded. Therefore the elimination of the ACMP also meant the exclusion of the nested enterprise principle.

5.2.0 Elimination of the ACMP - devolution/decentralization

Ostrom’s design principles for effective management of CPRs shaped an enduring legacy on CPR management specialist around the world. Over the course of a couple decades, her design principles have been refined and expanded to incorporate a broader and more comprehensive understanding of the tenets that lead to more effective natural resource

management. The evolution of Ostrom's design principles still relies heavily on the key notion of collective management, or collaborative management as an intrinsic part of successful CPR management. When Alaska chose to eliminate the ACMP it also eliminated the involvement of people who utilize the coastal areas and resource to assist with developing management schemes to sustain the resource, a key tenet for successful CPR management.

One of the more notorious advances of Ostrom's design principle has been the idea of devolution/decentralization. CPR management specialists have demonstrated that bottom-up, locally-responsive measures based on self-determination were more effective means to the development and sustainability of CPRs. Devolution/decentralization denotes a transfer of authority from one central government authority to lower levels of government.

In theory, the logic surrounding the principle of devolution/decentralization of authority to local regimes in the context of CPR management is simple. Collaborating with state and local governments to manage resources allows locals to participate in the decision making. This inclusion fosters local participants' understanding of the intricacies of policy making processes and outcomes, which increases the likelihood that local users will abide by the policies and regulation regarding CPR management, while lessening the cost of monitoring and increasing the effectiveness of the management regime (Tanz and Howard 1991).

The impetus behind the CZMA and ultimately the ACMP was to give more control over coastal areas and resources to states and by proxy people who utilize the coastal resources. When the State of Alaska chose to eliminate the ACMP, the end result was to eliminate the principle of devolution/decentralization in context to coastal zone and resource management in Alaska. This was in direct contrast to the Stratton commission, which argued that the door to more effective and sustainable use of the nation's coast is the implementation of a management system that utilizes the knowledge and self-determination of states and local users, which will enhance the nation's ability to maintain the quality of the nation's coastal areas and resources (National Oceanic Atmosphere Association 1966). The elimination of the ACMP was a giant step in the opposite direction of the principle of devolution/decentralization.

5.2.1 Elimination of the ACMP – polycentric governance

Another principle of effective CPR management that developed from Ostrom's design principles and the idea of decentralization/devolution is the theory of polycentric governance.

Polycentric governance systems have multiple centers of authority, which create opportunities for CPR management institutions to evolve and learn lessons from the successes, failures and limitations of collaborating institutions. Devolution and polycentric governance are not mutually exclusive ideas; polycentric governance includes the idea of dispersing authority from a central government agency to that of a more localized government agency, it just takes that idea further by including linkages to a wide range of government, nongovernment and private entities.

The ACMP fostered a polycentric governance approach to the management of Alaska's resources by allocating authority to different levels of government and allowed for private entities and NGOs to be a part of the management regime through the consistency review process. The consistency review process allowed for NGOs and industries to appeal and elevate consistency review determinations. This gave additional authority to industry and NGOs to play a significant role in the management of Alaska's coastal areas and resources. The only recourse for dissatisfied parties who object to coastal resource and area management decision of the federal government is to review and provide comment in to the federal government in accordance with the National Environmental Protection Act or other laws that permit the inclusion of public sentiment. This is not the same as giving interested parties an opportunity to argue their points of interest in a consistency review determination and elevate those determination if there is a disagreement with the outcome. The elimination of the ACMP meant the termination of polycentric governance regimes to manage Alaska's coastal areas and resources, another significant step away from what CPR management specialist believe is best policy for effectively managing CPRs.

5.2.2 Elimination of the ACMP – adaptability and resilience

Another principle of effective CPR management is the notion of adaptability and resilience. Resilience is the extent to which a CPR system can absorb disturbance/perturbations and still retain essentially the same functions (Folke et al., 2005). Adaptation is the extent to which a CPR system will change in the face of disturbances/perturbations (Wong-Parodi et al 2015).

There is no perfect solution or government structure for all the problems and nuances associated with CPR management. In large part, because effective CPR management is not a stagnant process and there is no one size fits all solution for CPR management. Recognition of

the constantly changing dynamics of both the human population and our ecosystems is a fundamental tenet of effective CPR management. The idea of resilience and adaptation builds on the tenets of effective management, because it denotes a fluid/changing system. CPR management needs to be able to adapt to the ever-changing realities of both the human population and the ebb and flow of ecosystems. Formulating ways to sustain an ecosystem's ability to continually provide resources, includes making decisions under uncertainty and complexity and requires that CPR management regimes are resilient to perturbations and capable of adapting to change.

The federal government, as the sole management authority over Alaska's coastal areas and resources, is not in a good position to recognize and adapt to changes in Alaska. The ACMP allowed the federal government to collaborate with the state and local governments in Alaska. The state and local governments in Alaska, which were in a much better position to recognize and developed management strategies that were resilient and capable of adapting to change, are no longer in a position to assist with the management of Alaska's coastal areas and resources due to the elimination of the ACMP.

6. Conclusion

6.1.0 Purpose of the Research

The purpose of this research is twofold. First, document what led to the state's departure from Alaska's coastal management program. Second, analyze the impact of the loss of the ACMP.

The first objective was met by providing a rich and thick description of the events, circumstances, and influences that led to the state's departure from the ACMP. Starting with the motivations behind the enactment of the ACMP. From early harvest of Alaska's coastal resources and the extirpation of pacific salmon in the 1950's, to Alaska's constitutional convention and point of emphasis on populist resource management, this research illuminated the historical context that led to the adoption of the ACMP. The research moves on to explore the application of the ACMP in Alaska from its early history in 1979, its subsequent development and substantial reconfiguration in 2003, all the way through its sunset in 2011. Followed by an in-depth exploration of both the struggles to retain the ACMP and the efforts to eliminate the program by the state legislature. Finally, an examination of the failed initiative to reinstate the ACMP, which provide a first-hand account of the initiative process from the perspective of the initiative chairman, and included an examination of both the proponent and opposition campaigns.

The second objective was met by analyzing the impacts of eliminating Alaska's coastal zone and resource management, to see if the management of Alaska's coastal areas and resources meet the principles identified by Elinor Ostrom regarding how to effectively manage common property resources. Ostrom identified essential design principles that characterize best practices and describe rules and structures of robust institutions associated with sustainable governance of common property resources. The research looked at five of these principles and determined that the elimination of the ACMP meant the elimination of these principles from coastal resource and area management in Alaska. The research then moves on to consider other identified principles of effective resource management which include, devolution/decentralization, polycentric governance, and adaptability and resilience.

6.1.1 Key Findings

The ACMP was a political response to the problems of unregulated development and environmental degradation of Alaska's coastal areas and resources. The ACMP provided a means for local knowledge to be a part of the management strategy to deal with these problems and enabled local governments, the level of government Alaskans are most likely to be directly involved, to actively participate in management decision concerning the coastal areas and resources. The ACMP was responsible for balancing the use of coastal resources and potential development among the interest of Alaskans, the state, and private entities (Meek 2012).

One of the mechanisms most states have to influence federal land and marine use decisions along coastal areas is the federal consistency review process, where federal activities/permits are looked at in terms of their congruence with state and local policy. Without the ACMP there is no consistency review process for Alaskans to shape federal land use or marine use decisions, which may affect the coastal environments/resources. Decisions that are made by far off bureaucracies, which do not necessarily represent the interest of Alaskans (Meek 2012).

Eliminating this authority was akin to eliminating self-determination for Alaska. Self-determination of Alaska's resources is a fundamental principle engrained in the state's constitution, supported through state statute, and the impetus behind Alaska's push for statehood. Rugged individualism is part of Alaska's personification. The documentation on what led to the state's departure from the ACMP allows the reader to draw conclusions as to what circumstances, events, and or interests led to this momentous decision.

The second objective was to see what impact the elimination of the ACMP had on coastal resource management in Alaska. The key findings for this are relatively straight forward. When the element of local participation is removed from common property resource management, most design principals for effective resource management are also removed. The elimination of the ACMP meant the removal of local participation. It is possible that local people will be asked to comment on federal actions, but they will no longer have any power to *require* changes in a proposal. In terms of an academic perspective for common property resource management, the purging of the ACMP was a significant step in the wrong direction for effective management of the coastal areas and resources in Alaska.

6.1.2 Significance of the Research

Prior to this research there was no centralized information about what happened to the ACMP. Furthermore, there was no examination from an academic perspective of the effects the elimination of the ACMP had on coastal management in Alaska. This research provides both.

6.1.3 Implications of Findings

History has a tendency to repeat itself. The long arm of resource development industries has a significant influence on the outcome of natural resource management policy in Alaska and has long before Alaska was even a state. Those interests do not necessarily reflect the public interest. I believe the elimination of the ACMP is one of those instances. This research illuminates a very small piece of Alaska history in order for policy makers, academics, industry, and the public to have a more comprehensive understanding of how and why the State of Alaska makes policy decisions concerning our resources.

This research is not an attempt to demonize the heavy influence of resource extraction industries in Alaska. These industries have a right to pursue their own interest. And in a number of circumstances their interests align with the public interest. These industries directly and indirectly account for the vast majority of employment in Alaska; approximately 90% of Alaska's government funding is directly tied to the oil and gas industries. However, it is tremendously important to understand what impacts these industries have on our natural resource management policy. This is especially important in Alaska, where the state's constitution champions the ideas of collective ownership and management of Alaska's natural resources, and Alaskans rely so heavily on these resources as a way of life.

6.1.4 Limitations of the Study

A case study is defined as an in-depth study of a single unit (Gerring 2004). This research is a case study focused on the decision to eliminate the ACMP in Alaska. While the case study provides significant insight into this particular situation in Alaska, the lessons learned may not apply to other areas. Additional research is needed to determine that.

6.1.5 Recommendations for Future Research

Additional case studies on natural resource management decisions and policy formulations could provide more insight into what influences decisions such as this one. Future research could focus on policy decisions that have been influenced by resource extraction industries. This could provide more definitive understanding of the influence resource extraction industries have on policy formulation.

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