

Introduced in the Senate: 2/12/03  
 Referred: State Affairs, Resources

Introduced in the House: 2/12/03  
 Referred: State Affairs, Resources

### EXECUTIVE ORDER NO. 106

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, I order the  
 2 following:

3 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
 4 to read:

5 FINDINGS. As governor, I find that the transfer of the Alaska Coastal Policy Council  
 6 from the Office of the Governor to the Department of Natural Resources would be in the best  
 7 interests of efficient administration. Additionally, I find that the transfer of the functions of  
 8 the office of coastal management within the office of management and budget to the  
 9 Department of Natural Resources would be in the best interests of efficient administration.  
 10 These transfers will permit (1) better access to scientific information and state personnel with  
 11 technical expertise on projects affecting the coastal zone; and (2) closer coordination to  
 12 improve the planning process for projects affecting the coastal zone of this state.

13 \* **Sec. 2.** AS 16.43.160(e) is amended to read:

14 (e) For an entry permit or an interim-use permit issued for calendar year 2002  
 15 and following years, the annual base fee may not be less than \$10 or more than \$300.  
 16 The annual base fee must reasonably reflect the different rates of economic return for  
 17 different fisheries. The fee for a nonresident entry permit or a nonresident interim-use  
 18 permit shall be higher than the annual base fee by an amount, established by the  
 19 commission by regulation, that is as close as is practicable to the maximum allowed by  
 20 law. The amount of the fee for a nonresident entry permit or a nonresident interim-use  
 21 permit may reflect

22 (1) the costs incurred by the state that are directly attributable to  
 23 participation of nonresidents in the commercial fisheries of the state;

24 (2) the costs incurred by the state for

1 (A) direct operating expenditures for ongoing management,  
2 support, and regulation of the commercial fishing industry, including relevant  
3 expenditures of the

4 (i) [OFFICE OF THE GOVERNOR - ALASKA  
5 COASTAL MANAGEMENT PROGRAM;]

6 (ii) Department of Environmental Conservation - air  
7 and water quality permitting activities and seafood inspection activities;

8 (iii) Department of Community and Economic  
9 Development - commercial fishing loan program, Alaska Seafood  
10 Marketing Institute, and community development quota program;

11 (iv) Department of Fish and Game - division of  
12 commercial fisheries, division of habitat and restoration, board support  
13 section, division of administrative services, division of sport fish,  
14 commissioner's office, and Alaska Commercial Fisheries Entry  
15 Commission;

16 (v) Department of Labor and Workforce Development -  
17 wage and hour enforcement, mechanical inspections, occupational  
18 safety and health activities, and fishermen's fund;

19 (vi) Department of Law;

20 (vii) Department of Natural Resources, including the  
21 Alaska coastal management program;

22 (viii) Department of Public Safety - commercial  
23 fisheries enforcement;

24 (ix) Department of Revenue - fisheries business tax  
25 program, fishery resource landing tax program, salmon enhancement  
26 tax program, salmon marketing tax program, and dive fishery  
27 management assessment program;

28 (x) University of Alaska - Fisheries Industrial  
29 Technology Center, Institute of Marine Science, Marine Advisory  
30 Program, Sea Grant College Program, and School of Fisheries and  
31 Ocean Sciences;

1 (xi) Legislature;

2 (xii) Alaska Court System;

3 (B) indirect operating expenditures for general overhead  
4 attributable to supporting the commercial fishing industry, including  
5 expenditures for general overhead attributable to components of agencies that  
6 have direct operating expenditures identified under (A) of this paragraph and to  
7 components of agencies for which direct operating expenditures related to the  
8 ongoing management, support, and regulation of the commercial fishing  
9 industry cannot be readily determined;

10 (C) general government expenditures for government services  
11 that are used by a portion of the population attributable to the presence of the  
12 commercial fishing industry, including government services provided by the  
13 Department of Administration, Department of Corrections, Department of  
14 Education and Early Development, Department of Health and Social Services,  
15 Department of Military and Veterans' Affairs, and Department of  
16 Transportation and Public Facilities;

17 (D) capital expenditures to support the commercial fishing  
18 industry as measured by annual depreciation of public facilities and  
19 infrastructure; and

20 (E) expenditures to subsidize the construction and operation of  
21 salmon hatcheries; and

22 (3) the amount of revenue foregone by the state due to the current  
23 management system for commercial fisheries in the state.

24 \* **Sec. 3.** AS 39.50.200(b)(38) is amended to read:

25 (38) Alaska Coastal Policy Council members and their alternates  
26 (AS 46.39.020) [(AS 44.19.155)];

27 \* **Sec. 4.** AS 41.21.492(b) is amended to read:

28 (b) Nothing in AS 41.21.491 - 41.21.495 affects the responsibilities of

29 (1) the Department of Fish and Game, the Board of Fisheries, or the  
30 Board of Game under AS 16 and AS 41.99.010;

31 (2) the Department of Environmental Conservation under AS 46.03; or

1 (3) state agencies and municipalities under AS 46.39.010  
 2 [AS 44.19.145(a)(11)] and AS 46.40.100.

3 \* **Sec. 5.** AS 41.21.504(b) is amended to read:

4 (b) Nothing in AS 41.21.500 - 41.21.514 affects the applicability of

5 (1) AS 41.99.010 and AS 16 regarding the responsibilities of the  
 6 Department of Fish and Game or the Board of Fisheries or the Board of Game;

7 (2) AS 46.03 regarding the responsibilities of the Department of  
 8 Environmental Conservation; or

9 (3) AS 46.39.010 [AS 44.19.145(a)(11)] and AS 46.40.100 regarding  
 10 the responsibilities of state agencies and municipalities.

11 \* **Sec. 6.** AS 41.23.420(d) is amended to read:

12 (d) The provisions of AS 41.23.400 - 41.23.510 do not affect the authority of

13 (1) the Department of Fish and Game, the Board of Fisheries, the  
 14 Board of Game, or the Department of Community and Economic Development under  
 15 AS 08.54, AS 16, or AS 41.99.010;

16 (2) the Department of Environmental Conservation under AS 46.03; or

17 (3) state agencies and municipalities under AS 46.39.010  
 18 [AS 44.19.145(a)(11)] and AS 46.40.100.

19 \* **Sec. 7.** AS 44.62.800(1) is amended to read:

20 (1) "agency" means a department, an institution, or a division or other  
 21 administrative unit of the executive branch of state government authorized or required  
 22 by law to make regulations, except that "agency" does not include

23 (A) a board; a commission; a council, except the Alaska  
 24 Coastal Policy Council established in AS 46.39.020 [AS 44.19.155]; an  
 25 authority; or a public corporation of the executive branch of state government  
 26 authorized or required by law to make regulations; or

27 (B) the Department of Corrections;

28 \* **Sec. 8.** AS 44.62.800(2) is amended to read:

29 (2) "agency head" means

30 (A) the commissioner or other head of an agency who has the  
 31 authority to adopt regulations for the agency; or

1 (B) for the Alaska Coastal Policy Council established in  
 2 AS 46.39.020 [AS 44.19.155], the co-chair of the council designated under  
 3 AS 46.39.020(c) [AS 44.19.155(c)] from the members listed in  
 4 AS 46.39.020(a)(2) [AS 44.19.155(a)(2)];

5 \* **Sec. 9.** AS 46 is amended by adding a new chapter to read:

6 **Chapter 39. Coastal Management Administration; Alaska Coastal Policy Council.**

7 **Article 1. Coastal Management Administration.**

8 **Sec. 46.39.010. Coastal management duties.** (a) The Department of Natural  
 9 Resources shall render, on behalf of the state, all federal consistency determinations  
 10 and certifications authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management  
 11 Act of 1972), and each conclusive state consistency determination when a project  
 12 requires a permit, lease, or authorization from two or more state resource agencies.

13 (b) In this section,

14 (1) "render" means to coordinate and issue;

15 (2) "resource agency" means

16 (A) the Department of Environmental Conservation;

17 (B) the Department of Fish and Game; or

18 (C) the Department of Natural Resources.

19 **Article 2. Alaska Coastal Policy Council.**

20 **Sec. 46.39.020. Alaska Coastal Policy Council.** (a) There is created in the  
 21 Department of Natural Resources the Alaska Coastal Policy Council. The council  
 22 consists of the following:

23 (1) nine public members appointed by the governor from a list  
 24 comprised of at least three names from each region, nominated by the municipalities  
 25 of each region; the nominees shall be the mayor or member of the assembly or council  
 26 of a municipality; one public member shall be appointed from each of the following  
 27 general regions:

28 (A) northwest Alaska, including, generally, the area of the  
 29 North Slope Borough and the Northwest Arctic Borough;

30 (B) Bering Straits, including, generally, the area of the Bering  
 31 Straits regional educational attendance area;

1 (C) southwest Alaska, including, generally, the area within the  
2 Lower Yukon, Lower Kuskokwim, and Southwest regional educational  
3 attendance areas and the Lake and Peninsula and Bristol Bay Boroughs;

4 (D) Kodiak-Aleutians, including the area of the Kodiak Island  
5 and Aleutian East Boroughs and the Aleutian, Adak and Pribilof regional  
6 educational attendance areas;

7 (E) Upper Cook Inlet, including the Municipality of Anchorage  
8 and the Matanuska-Susitna Borough;

9 (F) Lower Cook Inlet, including, generally, the area within the  
10 Kenai Peninsula Borough;

11 (G) Prince William Sound, including, generally, the area east of  
12 the Kenai Peninsula Borough to 141 W. longitude;

13 (H) northern Southeast Alaska, including the area southeast of  
14 141 W. longitude and north of 57 N. latitude, including the entirety of the City  
15 and Borough of Sitka; and

16 (I) southern Southeast Alaska, including that portion of  
17 southeastern Alaska not contained within the area described in (H) of this  
18 paragraph;

19 (2) each of the following:

20 (A) the director of the office of management and budget;

21 (B) the commissioner of community and economic  
22 development;

23 (C) the commissioner of environmental conservation;

24 (D) the commissioner of fish and game;

25 (E) the commissioner of natural resources; and

26 (F) the commissioner of transportation and public facilities.

27 (b) Each public member appointed by the governor under (a)(1) of this section  
28 serves a term of two years and until a successor is appointed and qualified. A public  
29 member may be reappointed.

30 (c) The council shall designate co-chairmen, one of whom shall be selected  
31 from among the public members appointed under (a)(1) of this section and one from

1 among the members designated in (a)(2) of this section.

2 (d) Each member of the council shall select one person to serve as a  
3 permanent alternate at meetings of the council. If a member of the council is unable to  
4 attend, the member shall advise the alternate who may attend and act in the place of  
5 the member. The alternate for a public member appointed under (a)(1) of this section  
6 shall, at the time of the alternate's designation and throughout the period of service as  
7 a permanent alternate, be the mayor or member of the assembly or council of a  
8 municipality within the region from which the permanent member is appointed. The  
9 alternate for the director of the office of management and budget, serving under  
10 (a)(2)(A) of this section, shall be the director's designee within that office. The  
11 alternate for a designated member serving under (a)(2)(B) - (F) of this section shall be  
12 a deputy commissioner of the department or the director of a division in the  
13 department. The names of alternates shall be filed with the council.

14 (e) Four public members and three designated members of the council  
15 constitute a quorum, but one or more of the members designated by the council may  
16 hold hearings. All decisions of the council shall be by a majority vote of the members  
17 present and voting.

18 (f) Members of the council or their alternates are entitled to per diem and  
19 travel expenses authorized by law for members of boards and commissions.

20 (g) If an incumbent public member ceases to meet the qualifications  
21 prescribed in (a)(1) of this section for nomination to the council or if a vacancy exists  
22 among the public members for any other reason except for a vacancy due to the  
23 expiration of the term of a public member, the governor shall, within 30 days of the  
24 establishment of the vacancy by lack of qualification or other reason, make an  
25 appointment, to be immediately effective, for the unexpired portion of the term. An  
26 appointment by the governor made under this subsection to fill an unexpired term of a  
27 public member shall comply with the requirements of (a)(1) of this section; however,  
28 the governor may appoint from qualified persons without soliciting from  
29 municipalities nominations of persons to fill the unexpired portion of the term.

30 **Sec. 46.39.030. Powers of the council.** The council may

31 (1) apply for and accept grants, contributions, and appropriations,

1 including application for and acceptance of federal funds that may become available  
2 for coastal planning and management;

3 (2) contract for necessary services;

4 (3) consult and cooperate with

5 (A) persons, organizations, and groups, public or private,  
6 interested in, affected by, or concerned with coastal area planning and  
7 management;

8 (B) agents and officials of the coastal resource districts of the  
9 state, and federal and state agencies concerned with or having jurisdiction over  
10 coastal planning and management;

11 (4) take any reasonable action necessary to carry out the provisions of  
12 AS 46.39.020 - 46.39.050.

13 **Sec. 46.39.040. Duties of the council.** In conformity with 16 U.S.C. 1451-  
14 1464 (Coastal Zone Management Act of 1972), as amended, the council shall

15 (1) through the public hearing process and the recording of the minutes  
16 of the hearings, develop guidelines and standards for the preparation of, and approve,  
17 in accordance with AS 46.40, the Alaska coastal management program;

18 (2) establish continuing coordination among state agencies to facilitate  
19 the development and implementation of the Alaska coastal management program; in  
20 carrying out its duties under this paragraph, the council shall initiate an interagency  
21 program of comprehensive coastal resource planning for each geographic region  
22 described in AS 46.39.020(a)(1);

23 (3) assure continued provision of data and information to coastal  
24 resource districts to carry out their planning and management functions under the  
25 program.

26 **Sec. 46.39.050. Council staff.** The council shall use the staff of the  
27 department in discharging its powers and duties. The department, under the direction  
28 of the council co-chair who is selected from among the members designated in  
29 AS 46.39.020(a)(2), may contract with or employ personnel or consultants the  
30 department considers necessary to carry out the powers and duties of the council.

31 **Article 3. General Provisions.**



1           **Sec. 46.39.900. Definition.** In this chapter, unless the context requires  
2 otherwise, "department" means the Department of Natural Resources.

3 \* **Sec. 10.** AS 46.40.010(a) is amended to read:

4           (a) The Alaska Coastal Policy Council established in AS 46.39.020  
5 [AS 44.19.155] shall approve, in accordance with this chapter, the Alaska coastal  
6 management program.

7 \* **Sec. 11.** AS 46.40.094(d) is amended to read:

8           (d) In this section, "agency responsible for the consistency determination"  
9 means the Department of Natural Resources [OFFICE OF MANAGEMENT AND  
10 BUDGET], for a consistency determination required to be made under AS 46.39.010  
11 [AS 44.19.145(a)(11)]; and the commissioner of the resource agency that coordinates  
12 a consistency review for a proposed use or activity, or for a proposed phase of a use or  
13 activity, when required by this chapter for which a permit, lease, or authorization is  
14 required to be approved or issued only by that resource agency.

15 \* **Sec. 12.** AS 46.40.096(b) is amended to read:

16           (b) If a consistency review is not subject to AS 46.39.010  
17 [AS 44.19.145(a)(11)] because the project for which a consistency review is made  
18 requires a permit, lease, or authorization from only one state agency, that state agency  
19 shall coordinate the consistency review of the project. The state agency shall  
20 coordinate the consistency review according to the requirements of the regulations  
21 adopted by the council under this section.

22 \* **Sec. 13.** AS 46.40.096(h)(2) is amended to read:

23           (2) "reviewing entity" means the  
24           (A) Department of Natural Resources [OFFICE], for a  
25 consistency review subject to AS 46.39.010 [AS 44.19.145(a)(11)];  
26           (B) state agency identified in (b) of this section, for a  
27 consistency review not subject to AS 46.39.010 [AS 44.19.145(a)(11)].

28 \* **Sec. 14.** AS 46.40.210(9) is amended to read:

29           (9) "resource agency" has the meaning given in AS 46.39.010  
30 [AS 44.19.152].

31 \* **Sec. 15.** AS 44.19.145(a)(11), 44.19.152(3), 44.19.152(4), 44.19.155, 44.19.160,

1 44.19.161, 44.19.162; and AS 46.40.210(6) are repealed.

2 \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 **TRANSITION.** (a) Litigation, hearings, investigations, and other proceedings  
5 pending under a law repealed by this Order, or in connection with functions transferred by  
6 this Order, continue in effect and may be continued and completed notwithstanding a transfer  
7 or repeal provided for in this Order.

8 (b) Regulations adopted to implement the Alaska coastal management program and in  
9 effect on April 14, 2003, remain in effect and may continue to be implemented and enforced,  
10 consistent with the changes made by this Order, until amended or repealed.

11 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed by  
12 this Order, and in effect on April 14, 2003, remain in effect notwithstanding this Order's  
13 taking effect. Records, equipment, appropriations, and other property of an agency of the  
14 state whose functions are transferred under this Order shall be transferred to implement the  
15 provisions of this Order.

16 (d) Members of the Alaska Coastal Policy Council serving on April 14, 2003,  
17 continue to serve as members until their terms expire under law.

18 \* **Sec. 17.** This Order takes effect April 15, 2003.

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DATED: \_\_\_\_\_

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Frank H. Murkowski  
Governor