

CHAPTER 4

Implementation

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CHAPTER 4 IMPLEMENTATION

INTRODUCTION

This chapter presents the actions necessary to implement the land use policies proposed by the plan. Included is information about land selections and relinquishments, land use classifications, mineral closing orders, coastal management coordination, instream flow study recommendations, and procedures for plan modification and amendment.

PERMIT REVIEW PROCEDURES

The plan does not establish a new DNR authorization process. The guidelines and land use designations of the plan will be implemented through permitting and leasing procedures in place when a decision is made. The DNR land manager will use the management intent statement, the designated uses, and the guidelines to adjudicate a request for a DNR authorization. The land manager will use interagency review to assist in making the decision. Interagency review will occur according to procedures in place when a decision is made.

During the interagency review, or at the request of the applicant, DNR may schedule a coordinated site visit. All agencies and/or land owners willing to participate and considered necessary participants by DNR or OMB would be invited. This may include but is not limited to: ADF&G, DEC, USFWS, NMFS, EPA, COE, USFS, Native corporations, and local governments. The site visit will, if possible, occur during the public notice review of the Corps of Engineers permit application and the ACMP consistency review/interagency review of the application for a DNR authorization. The purpose of the site visit is to augment information gathered through interagency review, locate the best site for the activity, and determine which of the plan guidelines or additional mitigative measures are applicable.

LAND SELECTIONS & RELINQUISHMENTS

The June 1985 version of the Southwest Prince of Wales Island Area Plan did not evaluate new areas for selection. The Prince of Wales Island Area Plan identified land the state should acquire under the National Forest Community Grant land entitlement within both the Prince of Wales Island and the Southwest Prince of Wales Island planning areas. This section provides an overview of the state's National Forest Community Grant land entitlement. It describes the priority system used, and presents the selections proposed. Previous selections that will be relinquished are described.

Although the plan uses a 20-year planning period for land management, selections must be treated differently. Land selections provide the base for the state's land ownership and management forever. Because the state cannot make land selections after January 2, 1994, today's selections must be sufficient to meet the needs of many generations of Alaskans.

SELECTION ENTITLEMENT OVERVIEW

Section 6(a) of the Alaska Statehood Act entitles the state to select 400,000 acres of vacant, unappropriated land from the national forests (Tongass and Chugach). The national forest selections are commonly referred to as National Forest Community Grant lands (NFCG).

After making few selections between Statehood and 1977, the state made two large sets of applications to the Forest Service, in 1977 and 1983. Both sets of selections followed an elaborate selection process that included public meetings in communities throughout the forests.

The Prince of Wales planning team examined all vacant, unappropriated Tongass National Forest lands within the plan boundaries for possible selection and examined existing state selections for retention or relinquishment. Selections for Prince of Wales Island and Southwest Prince of Wales Island planning areas were filed for approval with the U.S. Forest Service June 30, 1989. While there will inevitably be some adjustment before 1994, this process is likely to be the last comprehensive selection review for NFCG areas before the 1994 selection deadline.

Between the time the Prince of Wales Island Area Plan was adopted and the 1994 selection deadline, some overlapping state and Native selections will be resolved, more information will be available for state selected lands, new selection needs may become apparent, or old reasons may become obsolete. Some boundary adjustments and possibly even new selections or relinquishments will be necessary. New selections, relinquishments, and boundary adjustments may occur without a plan amendment. Any new land selection will be managed according to the intent for that management unit and the guidelines of the plan. A plan amendment would be required to allow a use the plan lists as prohibited. For example, a boundary adjustment may be made in any of the selections for settlement without a plan amendment, but an amendment will be required before any post-plan selection is made available for land disposal. Any wholesale change in the overall selection pattern will also require a plan amendment.

ALLOWABLE SELECTION PURPOSES

Section 6(a) of the Alaska Statehood Act provides the purposes for which the state may select land within National Forests:

For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within thirty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land . . . all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas

The U.S. Forest Service's interpretation of the statehood act, as reviewed by the courts, is that the act allows three valid purposes for state selections. To be approved by the Forest Service state selections must be: (1) adjacent to established communities; (2) suitable for community centers; or (3) suitable for prospective community recreation areas. Selections for other purposes will not be approved. This interpretation was the subject of litigation between the state and federal governments. The litigation was eventually appealed to the U.S. Supreme Court, and the Court approved the Forest Service's administrative discretion to interpret the act in this fashion.

To gain USFS approval as a selection "adjacent to established communities," the selected land must be within or adjacent to an existing community. Selections in this category are usually for the purpose of community expansion. Under the second USFS selection criteria, "suitable for prospective community centers," selections may be made throughout the planning area as long as they are physically suitable for that purpose and the state indicates that a prospective community is the purpose of the selection.

To gain USFS approval as a "community recreation area" selection, the land must be physically suitable for this purpose and must generally be within 25 miles of an existing community.

Selections made for other purposes are not likely to be approved by the Forest Service. Specifically, the Forest Service has and will continue to disapprove selections made only for fish hatcheries, timber harvest, or mineral extraction. These resource development activities can occur on National Forest land and are not within the three allowable purposes outlined above.

SELECTION PRIORITY SYSTEM

A four-level priority system was used to rank selections based on an assessment of public benefits and potential federal management. To rank selections, the state considered public opinion, potential land use conflicts, the capability and suitability of the land, and the size of the proposed selection.

1. Public Benefit Criteria. Public benefits are defined as (a) meeting community expansion or other land use needs for national forest communities; (b) an increase in jobs or income to a segment of the public; (c) an increase in the amount or quality of public use; (d) an increase in revenue (or a decrease in fiscal costs) to the state or municipal government; or (e) protection for the natural or human environment.

2. Federal Management Intent Criteria. If a use will occur if the land is left in federal ownership, there may not be a reason for the state to select it. Therefore, the state gave a high priority to selecting land for uses that will not occur if the land remains federal and a low priority to those that are being routinely accommodated under federal management. Uses or locations that fall between these two extremes receive an intermediate priority.

The paragraphs that follow describe the four priority levels and the type of selections that are within them.

PRIORITY A AREAS

Priority A areas were those required to implement the land management recommendations of the plan. The activities planned for these lands provide significant public benefits and are consistent with DNR's statewide goals for the management of state lands. Priority A areas include settlement areas; areas adjacent to established communities; areas where active parks management is required or areas recommended for state parks; and important community expansion and industrial sites.

PRIORITY B AREAS

Land selections provide the pattern for state land management not just for the 20-year planning period, but forever. Therefore, it is appropriate for the state to select land to hold for possible future land management needs that may not be apparent today. For this reason, the planning team reviewed existing and proposed selections to ensure that some state land with the physical capability to support a variety of uses would exist in

all of the broad regions of Prince of Wales Island. These were selected as "suitable for prospective community recreation areas" or "suitable for prospective community centers." These future management selections are ranked as Priority B because the public benefits are more speculative than Priority A areas. The eventual need for the land may not become clear for generations.

PRIORITY C AREAS

Generally, this category included parcels that would provide only moderate public benefit. It includes those state purposes that might be achieved if the parcel remained in federal management. This priority includes only boundary adjustments to existing selections that consolidate land ownership or increase land management efficiency. For example, where the existing selection includes only the land physically capable of supporting settlement or a high-use recreation area, the Priority C addition to the selection might include the adjacent land up to the watershed boundary.

NONSELECTED OR RELINQUISHMENT AREAS

This category included lands that should not be selected by the state because the use would create few public benefits, is routinely accommodated under federal management, would create significant land-use conflicts, or is not an allowable selection purpose under the USFS interpretation of the Statehood Act. A selection that has not been conveyed to the state may be relinquished without a plan amendment if the adjacent USFS land is designated by Congress for wilderness or another designation incompatible with the management intent of the selection. A land exchange with the USFS may be considered if the state has received tentative approval or patent to a selection.

PRIORITIZED LAND SELECTIONS & RELINQUISHMENTS

This section presents the state's selections and relinquishments in the Southwest Prince of Wales Island planning area. It contains a table that lists the individual selections and relinquishments. A map showing the location of the parcels is also included. More information about individual selections, including selection purpose, management intent, and guidelines is given in the management units in Chapter 3.

Any selection is subject to valid existing rights (existing USFS roads, campgrounds, administrative sites, mining claims, etc.). After approval by the U.S. Forest Service, the selections are filed with the Bureau of Land Management, the federal agency responsible for transferring land to the state. It may take many years for the BLM to transfer these lands to the state.

Table 4.1 State Land Selections & Relinquishments			
LAND STATUS	UNIT	LOCATION	ACRES
Relinquishments	12	Port Refugio (NFCG 247)	580
	31	Kaigani Harbor (NFCG 259)	475
New Selections	11	Trocadero Bay	2,761
	13	Port Dolores	1,205
	14	Hook Arm	1,027
	15	Soda Bay	1,100
	19	Mabel Bay	1,350
	21	Dunbar Inlet	610

State Land Selections & Relinquishments

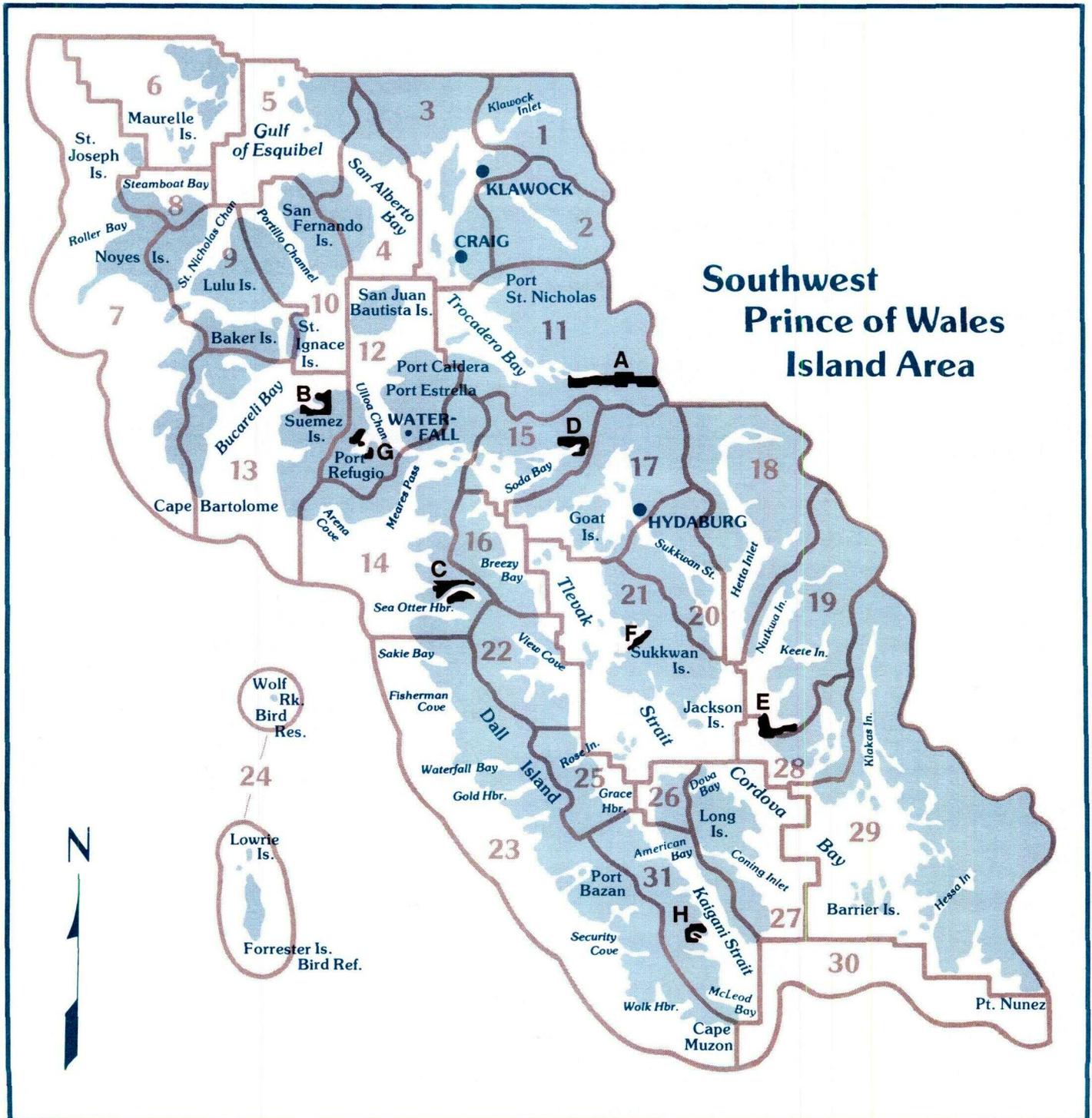
NEW SELECTIONS

- A Trocadero Bay
- B Port Dolores
- C Hook Arm
- D Soda Bay
- E Mabel Bay
- F Dunbar Inlet

RELINQUISHMENTS

- G Port Refugio (NFCG 247)
- H Kaigani Harbor (NFCG 259)

 MANAGEMENT UNIT BOUNDARY & NUMBER



RELINQUISHMENTS

Unit 12 - Port Refugio: The selection was relinquished because of significant resource conflicts. During site investigation for a land disposal, six previously unknown anadromous fish streams were discovered. Because of the buffers necessary to protect these streams, the amount of remaining developable land was determined impractical for disposal purposes.

Unit 31 - Kaigani Harbor: The selection was relinquished because the anchorage is unsuitable for settlement and there are resource use conflicts. The anchorage at Kaigani Harbor was found to be less protected than previously believed. The area also has productive habitat and cultural sites that reduce the acreage suitable for settlement.

NEW STATE SELECTIONS

Unit 11 - Trocadero Bay: 2,761 acres were selected near Trocadero Bay for a prospective community. The selection is located approximately ten miles north of Hydaburg, at the junction of the Hydaburg road with the road to Twelvemile Arm. This is one of the narrowest east-west points on the island. The land is suitable for settlement because of access, terrain, and strategic location. Community development is expected based on nearby resource development, potential commercial recreation, and potential for cross-island transportation facilities development. This is a Priority A selection. The west part of the parcel is selected by Sealaska.

Unit 13 - Port Dolores: 1,205 acres were selected at Port Dolores on northern Suemez Island for a prospective community. The selection is suitable for settlement because of good anchorage, good land, and strategic location near commercial fishing grounds. Settlement is expected to occur based on resource development and commercial fishing and recreation.

The ADF&G opposed the selection because of concerns about impacts on the commercial crab fishery, local anadromous fish streams, increased human-bear encounters, and cumulative impacts to fish and wildlife harvest on the communities of Craig, Klawock, and Hydaburg. Port Dolores has fewer resource use conflicts than other areas considered for selection. Management will address ADF&G concerns to minimize impacts. This is a Priority A selection.

Unit 14 - Hook Arm: 1,027 acres were selected at Hook Arm (Sea Otter Harbor) on Dall Island for a prospective community. Hook Arm is suitable for settlement because of good anchorage, good terrain, and strategic location near commercial fishing grounds. Settlement is expected to occur based on commercial fishing and recreation. This is a Priority A selection.

Unit 15 - Soda Bay: 1,100 acres were selected at Soda Bay for community recreation and a prospective community. Residents from Hydaburg (15 miles) use Soda Bay and the soda springs of Soda Creek for recreation. The land is suitable for settlement because of good land and good anchorage. Settlement is likely to occur based on commercial fishing and recreation. This is a Priority A selection. The selection is part of a selection by Sealaska.

Unit 19 - Mabel Bay: 1,350 acres were selected at Mabel Bay for community recreation and a prospective community. Residents from Hydaburg (18 miles) recreate, fish, hunt, and trap at Mabel Bay. Mabel Bay is suitable for settlement because of good anchorage and good terrain. Settlement is expected to occur based on commercial fishing and recreation. The selection may be considered for relinquishment or land exchange if adjacent U.S. Forest Service land is congressionally designated Wilderness (or another designation not compatible with settlement). This is a Priority A selection.

Unit 21 - Dunbar Inlet: 610 acres were selected at Dunbar Inlet for community recreation and a prospective community. Residents from Hydaburg (12 miles) recreate and harvest herring, mink, and land otter in Dunbar Inlet. Dunbar Inlet is suitable for settlement because of good anchorage, good terrain, and strategic location near commercial fishing grounds. Settlement is expected to occur based on commercial fishing. This is a Priority B selection. The area is also selected by Sealaska.

Note: The state puts a high priority on selecting land near communities. Additional state land selections may be made in the planning area if lands suitable for community development or community recreation are identified prior to 1994. Appropriate selections would include land for long-term community expansion, solid-waste disposal, or community recreation adjacent to selections made in this plan. Selecting areas not near existing selections would require public and agency involvement to address specific concerns. If the state selects additional land, the land will not be offered for sale without a plan amendment.

SELECTION NAME	SELECTION PURPOSE	SHORT-TERM MANAGEMENT	LONG-TERM MANAGEMENT	CLASSIFICATION
Trocadero Bay	Prospective Community, Community Recreation	General Use, Community Recreation	Prospective Community, Community Recreation	Resource Management, Community Recreation
Port Dolores	Prospective Community	Prospective Community	Prospective Community	Settlement
Hook Arm	Prospective Community	General Use	Prospective Community	Resource Management
Soda Bay	Community Recreation, Prospective Community	Community Recreation	Community Recreation, Settlement	Public Recreation
Mabel Bay	Community Recreation, Prospective Community	General Use	Community Recreation, Prospective Community	Resource Management
Dunbar Inlet	Community Recreation, Prospective Community	General Use	Community Recreation, Prospective Community	Resource Management

OVERLAPPING LAND SELECTIONS

Some lands proposed for state selection are also selected by native corporations under the Alaska Native Claims Settlement Act (ANCSA). Sealaska Corporation is the regional Native corporation formed under ANCSA in the planning area. The village corporations are Haida Corporation, Klawock-Heenya Corporation, Klukwan, Inc., and Shaan-Seet, Inc.

The areas where state and Native Corporation selections overlap include:

- Unit 11** Part of Trocadero Bay with Sealaska Corporation
- Unit 15** All of Soda Bay with Sealaska Corporation
- Unit 21** All of Dunbar Inlet with Sealaska Corporation

Some of these selections will be conveyed to the Native corporations and some may become state owned. Overlapping state-Native selections are adjudicated by the federal Bureau of Land Management. The plan specifies how these lands will be managed if they are conveyed to the state.

STATE LAND CLASSIFICATION

Under state regulations (11 AAC 55), land classification is the formal record of primary uses for which state lands will be managed. Classifications will be recorded on state land status plats, with a reference to this plan. Although classifications identify primary uses, all classifications are intended for multiple use.

Once the classification is determined from the status plat, this plan is the source for more detailed information. The DNR manager uses the plan's Land Use designations, with the Management Intent and Management Guidelines, to make decisions on proposed activities. There might be several different land use designations within any given classification. The breakdown of land use designations within classifications is shown in Table 4.4.

PRIMARY, SECONDARY & OTHER USES

The plan designates primary and secondary land uses. Section 11 AAC 55.040(c) of the Classification Regulations addresses primary uses by stating: "A classification identifies the primary use for which land will be managed. All other uses are initially presumed as compatible with the primary use."

Certain uses are determined in the plan to be "incompatible" with the primary use. They are those uses specifically prohibited in the individual Management Units or described as incompatible in the management intent or guidelines. All other uses are initially determined to be compatible regardless of whether they are primary, secondary, or other (non-designated) uses.

To implement the plan on state lands, DNR must classify state lands to reflect the intent of land use designations made by the plan. State law requires that classification precede leasing of state tidelands or submerged lands or disposal of state uplands.

The possible land classifications for state land under the department's regulations (11 AAC 55) are as follows:

RELATIONSHIP OF CLASSIFICATION & DESIGNATION

The land use designations in the plan are intended to communicate clearly the allowable uses of an area. Translating the terms used for designations into classification terms is necessary because classification terms are broader and were originally written to fit upland and not tideland situations. For example, the term "forestry" designates log transfer sites and related timber harvest support facilities as the intended use; however, in the classification regulations "forestry" is defined as forested land. Consequently, "settlement land" rather than "forested land" is the classification category which corresponds to the forestry land use designation of the plan. Future updates will use the Waterfront Development classification in these situations. The following lists display the plan land use designation and the corresponding classification category.

Table 4.3 Designation Conversion to Classification	
LAND USE DESIGNATION	CLASSIFICATION
Forestry	Settlement Land
Mining	Settlement Land
Shoreline Development	Settlement Land
Settlement	Settlement Land
Recreation	Public Recreation Land
Fish and Wildlife Habitat and Harvest	Wildlife Habitat Land
Resource Management	Resource Management Land
General Use	Resource Management Land
<p>* Note: Waterfront Development is a new classification, added to the regulations after the SWPOW area plan was completed. It has not been used in this plan, but it is likely to be incorporated in the next plan</p>	

The classification regulations allow up to three classifications to be made for any parcel "where the dominance of a particular use cannot be determined."

STATE LAND DISPOSALS

The plan designates state uplands that may be sold through the state's land disposal program. The Department of Natural Resources uses the Land Availability Determination System (LADS) to identify general areas available for possible disposal, evaluate land capability and suitability, design the disposal, select a method of disposal, survey the project, advertise the sale, and finally, sell the land. At various points in the LADS process, public comment on the proposed disposal is requested. State land disposals will be subject to the area-wide guidelines in Chapter 2 and the LADS process.

MINERAL CLOSINGS

The plan is the basis for closing all fish and wildlife habitat and harvest areas rated crucial (H1a) to upland mining claims that extend below mean high water (Mineral Closing Order 466). Alaska Statute 38.05.185 requires the Commissioner of DNR to determine that mineral entry and location is incompatible with significant surface uses in order to close state-owned lands to mineral entry. Through the plan, the determination was made that crucial fish and wildlife habitat and harvest areas are areas of significant surface use of or by fish and wildlife. The department determined mining is incompatible with crucial fish and wildlife habitat and harvest areas until site specific analysis has been done and the department has approved the locations, lease stipulations, and plan of operation for the proposed mining activity. The department will use offshore prospecting permitting procedures to make the site specific determination on whether siting, lease stipulations, or a plan of operation can make offshore mining compatible with crucial fish and wildlife habitat and harvest areas and the requirements of the Alaska Coastal Management Program (see Chapter 2, Subsurface Resources Guidelines F and G). Valid existing rights are not affected by mineral closings.

COASTAL MANAGEMENT COORDINATION

Most of the Southwest Prince of Wales Island planning area is within the coastal zone. State actions within the coastal zone, including implementation of the area plan must be consistent with the provisions of the Alaska Coastal Management Plan (ACMP), including approved local districts plans. Craig, Klawock, and Hydaburg have approved local district plans.

State actions affecting the coastal zone, or local permits or regulation of private land within the district boundaries must be consistent with the respective coastal management programs. Districts with approved programs review most of DNR's decisions within their boundaries to determine consistency with the district plan. DNR must notify a district with an approved plan of proposed activities outside their boundaries that would directly or significantly affect resources within the district.

This plan makes no land use designations on state tidelands within the boundaries of the three coastal districts because: (1) there are few, if any, state tidelands or submerged

lands within the Hydaburg coastal district boundary; (2) the City of Klawock has patent to all tidelands and submerged lands the original city limits, (3) there is a relatively small amount of state tidelands and submerged lands within the Craig district boundaries; and most important, (4) all three cities have approved district coastal management programs with site-specific management policies. All DNR actions will be consistent with the approved district programs.

Outside of the approved district program boundaries, all uses and activities in the planning area must be consistent with the ACMP standards.

AREAS MERITING SPECIAL ATTENTION

Six Areas Meriting Special Attention (AMSAs) within the planning area were designated by the Coastal Policy Council in July 1983.

Table 4.4 Areas Meriting Special Attention	
UNIT	NAME
14	Meares Passage - Arena Cove
21	McFarland Islands - Dunbar Inlet
21	Jackson Island
17	Hydaburg River - tidelands
20	Saltery Point - Crab Trap Cove
18	Hetta Cove - Eek Inlet

Management of all state lands and waters within these areas must be consistent with the AMSA plans. For additional information, refer to the AMSA plans in the approved Hydaburg Coastal Management Program.

ACMP CONSISTENCY REVIEW PROCESS

The ACMP consistency review process coordinates review of DNR authorizations, as well as other state permits, with the ACMP consistency determination review. Additionally, the process should coordinate the review of the Army Corps of Engineer's Section 10 and Section 404 permits with the ACMP consistency review and state authorization process.

FEDERAL LAND MANAGEMENT

Most uplands in the planning area are within the Tongass National Forest and are managed by the U.S. Forest Service. The Southwest Prince of Wales Island Area Plan makes decisions only for state lands. The plan does not direct the use of federal, Native, or other private lands. However, DNR coordinated state management with that of the USFS. Representatives of the Forest Service were a part of the Planning Team and actively participated in the state planning process.

COOPERATIVE MANAGEMENT AGREEMENTS

In many cases cooperative management agreements can achieve purposes similar to land exchanges. They can ensure compatible land management among various owners, or create efficiencies that increase the cost effectiveness of state management.

CONSOLIDATION & JOINT USE OF RESOURCE TRANSFER SITES

To reduce impacts to fish and wildlife habitat the plan requires consolidation and joint use of resource transfer sites to the extent feasible and prudent.

INSTREAM FLOW STUDIES

The following streams should have instream flow studies done to determine the fish habitat needs.

TABLE 4.5 Instream Flow Study Recommendations

UNIT	NAME
1	Black Bear Creek
2	Half Mile Creek
2 & 3	Crab Creek
17	Hydaburg River

PROCEDURES FOR PLAN REVIEW, MODIFICATION, & AMENDMENT

The land-use designations, policies, implementation actions, and management guidelines of this plan may be changed if conditions warrant. The plan will be updated periodically as new data and new technologies become available and as changing social or economic conditions place different demands on state lands. This section discusses three topics concerning plan modification: periodic review, changes to the plan, and discretion within guidelines.

PERIODIC REVIEW

The planning team should be consulted annually to determine problems and concerns with the plan or its implementation. The plan will be reviewed approximately once every five years to determine if revisions are necessary. An interagency planning team will coordinate this review.

CHANGES TO THE PLAN

There are three types of changes to a plan: amendments, special exceptions, and minor changes. Amendments and special exceptions are plan revisions subject to the planning process requirements of AS 38.04.065; minor changes are not. The director determines what constitutes an amendment, special exception, or a minor change. Changes to the plan may be proposed by agencies, municipalities, or members of the public. Requests for changes should be submitted to the Southeast Regional Office of the Division of Land and Water Management, Alaska Department of Natural Resources. Definitions and procedures for plan modification and amendment are set forth in regulations for 11 AAC 55.030 and explained in greater detail below.

1. PLAN AMENDMENT

An amendment permanently changes the land use plan by adding to or modifying the basic intent of the plan. Changes to the management intent for a subunit; changing the allowed or prohibited uses, policies, or guidelines; reclassification; and changing some implementation actions constitute amendments.

The following actions are examples of changes that would require an amendment:

- a proposal to prohibit a use that is now a designated use, or, conversely to allow a prohibited use;
- a proposal to close an area to mineral entry; or
- a new land offering in an area designated for retention.

Amendments must be approved by the commissioner. The Department of Natural Resources will convene the planning team as needed to make recommendations on plan amendments. Management plans developed by the Department of Natural Resources may amend this plan.

Procedures for Plan Amendments

A. Taking into account the requirements of AS 38.04.065(b), the commissioner will prepare a written decision that specifies:

- the alternative course of action (what the plan is being changed to);
- the reasons for the amendment such as changed social or economic conditions; and
- why the plan amendment is in the best public interest.

B. Where practical, the decision should be part of or circulated with a finding required by AS 38.05.035(e).

C. Before making the final decision, the commissioner will request comments and give public notice consistent with AS 38.04.065(b)(8) and AS 38.05.945 to affected local governments, state and federal agencies, adjacent landowners, and the general public. This notification will include the points described in A and may be combined with the public notice required by the applicable permitting procedure. If warranted by the degree of controversy, the commissioner may hold a public meeting before making a decision.

2. SPECIAL EXCEPTIONS

A special exception does not permanently change the provisions of the plan. Instead, it allows a one-time limited-purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. Special exceptions may be made if complying with the plan is excessively burdensome, impractical, or inequitable to a third party; and if the purposes and spirit of the plan can be achieved despite the exception.

Special exceptions may also occur when the proposed activity requires only a small part of a management subunit, does not change or modify the general management intent, and serves to clarify or facilitate the implementation of the plan. A special exception cannot be used to reclassify an area. Special exceptions may apply to prohibited uses or guidelines.

The following actions are examples of changes that would be a special exception:

- allowing a prohibited use based on more detailed data in a small area on the edge of a management subunit next to a subunit where it is allowed; or
- a preference right granted under AS 38.05.035(e) where the director determines such an action is necessary to correct an injustice and will not significantly affect the intent of the plan.

Decisions concerning special exceptions will be made by the director. The director's decision may be appealed to the commissioner. Special exceptions require public notice and, if appropriate, public meetings. The Department of Natural Resources will convene the planning team as needed to make recommendations on special exceptions.

Special Exceptions to Guidelines Modified by "will"

Special exceptions to guidelines modified by the phrase "will" may be allowed for individual actions. The decision not to follow a pertinent guideline modified by the term "will" will be consistent with the procedures for special exceptions.

Procedures for Special Exceptions

A. Taking into account the requirements of AS 38.04.065(b), the director will prepare a written decision that specifies:

- the alternative action or course of action to be followed;
- the reasons for the special exception (i.e., why a variance of the plan's provisions is needed);
- why the special exception is in the best public interest; and
- how the general intent of the plan and management unit will be met by the alternative course of action.

B. Where practical, the decision should be part of or circulated with a finding required by AS 38.05.035(e).

C. Before making the final decision, the director will request comments and give public notice consistent with AS 38.04.065(b)(8) and AS 38.05.945 to affected local governments, state and federal agencies, adjacent landowners, and the general public. This notification will include the points described in A and may be combined with the public notice required by the applicable permitting procedure. If warranted by the degree of controversy, the director may hold a public meeting before making a decision.

3. MINOR CHANGES

Minor changes do not modify or change the basic intent of the plan or a management unit. Minor changes may be needed for clarification, to make technical corrections, or to facilitate implementation of the plan. Minor changes may be proposed by agencies or the public.

Minor changes are made at the discretion of the regional manager and do not require public review. Affected agencies will be notified and have an opportunity to comment; the comment period may be provided through existing inter-agency review processes for associated actions. The regional manager's decision may be appealed to the director. The director's decision may be appealed to the commissioner.

DISCRETION WITHIN GUIDELINES

Some policies in the plan, like those modified by the terms "feasible and prudent," "feasible," and "should" are written to allow for exceptions if the conditions described in the policy are met. The definitions of these terms are given in Appendix A. The procedures for allowing exceptions to these guidelines are given in this section. Allowing exceptions following these procedures are neither revisions nor changes to the plan.

1. GUIDELINES MODIFIED BY "FEASIBLE & PRUDENT" OR "FEASIBLE"

Exceptions to guidelines modified by the phrase "feasible and prudent" or "feasible" (see definitions in Appendix A) may be allowed after the steps outlined below have been taken within the time frames of the ACMP consistency review process. The land manager must also ensure that actions do not conflict with the ACMP standards or adopted coastal plans. Special attention should be given to 6 AAC 80.130(d) which outlines the steps that must be followed before exceptions can be made to the ACMP Habitat Standard.

- A.** The regional manager will prepare a written decision that specifies:
- the conditions that make compliance with the guideline not feasible or not feasible and prudent;
 - the alternative course of action to be followed; and
 - how the intent of the plan and management unit will be met by the alternative course of action.
- B.** Where practical, the decision should be part of or circulated with a finding required by AS 38.05.035(e).
- C.** Before making the final decision, the director will give notification required by the applicable permitting procedure and request comments on the proposed action. This notification will include the points described in A.

2. GUIDELINES MODIFIED BY "SHOULD"

Exceptions to guidelines modified by the word "should" can be made by the DNR Regional Manager, or his designees. The guideline does, however, state an intent of the plan that should be met, using the best managerial practices for the given situation. These exceptions require a written justification in the administrative record. The justification should briefly outline how the action meets the intent of the guideline or why the particular circumstances justify deviation from the intended action or conditions. In addition, the manager must ensure that any exceptions do not conflict with the ACMP standards including adopted coastal plans.

Changes that make the plan consistent with a final ACMP consistency determination do not require amendment of the plan.