"An Act establishing the Alaska Coastal Management Program
Short-form Description of Initiative

This initiative would establish a coastal management program for Alaska. Alaska is the only coastal state without an approved coastal management program. The initiative seeks a balanced approach to development and protection of coastal resources.

Coastal Policy Board: This initiative would create a thirteen-person coastal policy board that would be responsible for overseeing the coastal management program. The board would approve local coastal district plans and coastal management regulations and coordinate the implementation of the coastal management program.

Coastal Districts: The program would allow municipalities and regions of the unorganized borough to organize as local coastal districts. Approved coastal district plans may include local enforceable policies so long as those policies do not unreasonably or arbitrarily restrict a use of state concern. Districts in effect on 6/30/11 are re-established.

Project Reviews: The program includes a coordinated process for review of development projects in the coastal zone to ensure they are consistent with statewide standards and local coastal district enforceable policies, but would exclude individual reviews of routine activities that do not have a significant impact on coastal resources or uses.

Federal Consistency: Once the program receives federal approval, the State of Alaska will once again be able to participate in the federal Coastal Zone Management Act.
AN ACT ENTITLED

"An Act establishing the Alaska Coastal Management Program."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

* Section 1. AS 46 is amended by adding a new chapter to read:

Chapter 41. Alaska Coastal Management Program

Sec. 46.41.010 Coastal Policy Board

(a) There is created in the Department of Commerce, Community and Economic
Development the Alaska Coastal Policy Board. The board consists of the following:

(1) nine public members and alternates appointed by the governor from a list
composed of at least three names from each region, nominated and submitted by the coastal
districts of each region; one public member shall be appointed from each of the following
regions:

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

(B) Bering Straits, including, generally, the area of the Bering Straits regional
educational attendance area and the City of Nome;

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

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

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

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

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

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

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

(2) each of the following:

(A) the commissioner of environmental conservation;

(B) the commissioner of fish and game;

(C) the commissioner of natural resources; and

(D) the commissioner of commerce, community, and economic development.

(b) Public members serve staggered terms of three years. Except as provided
by (c) of this section, each member serves until a successor is appointed. A public member
may be reappointed.

(c) The alternate for a commissioner serving under (a)(2) of this section shall be a
deputy commissioner or the director of a division in the commissioner's department. The
names of alternates shall be filed with the board.

(d) The board shall designate co-chairs, one of whom shall be selected from among
the public members appointed under (a)(1) of this section and one from among the members
designated in (a)(2) of this section.

(e) The board may recommend that the governor remove a public member for cause.

(f) Five public members and two designated members of the board constitute a
quorum, but the board may delegate to one or more of its members the power to hold
hearings. All decisions of the board shall be by a majority vote of the members present and
voting.

(g) The board shall meet at least four times a year and as often as necessary to fulfill
its duties under this chapter. Meetings may be held and members may vote telephonically,
except one board meeting a year shall be held in person.

(h) Public members of the board or their alternates are entitled to per diem and travel
expenses authorized by law for members of boards and commissions.

(i) Administrative support for the board shall be provided by staff of the department.
The department, under the direction of the board shall contract with or employ personnel or
consultants the department considers necessary to assist the board in carrying out the board's
duties and responsibilities.

Sec. 46.41.020. Powers and duties of the board.
(a) The board shall
(1) review and approve regulations necessary to implement the coastal management
program in conformity with this chapter and 16 U.S.C. 1451 - 1464 (Coastal Zone
Management Act of 1972);
(2) direct the department to seek approval of the Alaska coastal management
program by the National Oceanic and Atmospheric Administration, Office of Ocean and
Coastal Resource Management in conformity with 16 U.S.C. 1451 - 1464 (Coastal Zone
Management Act of 1972);
(3) initiate an interagency program of strategic coastal and ocean planning for each
geographic region of the state;
(4) review and approve coastal district management plans after receiving the
department's recommendations, including local enforceable policies, that meet the provisions
of this chapter and the district plan criteria.
(5) establish continuing coordination among state agencies to facilitate the
development and implementation of the Alaska coastal management program;
(6) evaluate the effectiveness of district coastal management plans; and
(7) direct the department to apply for and accept grants, contributions, and
appropriations, including application for and acceptance of federal funds that may become
available for coastal planning and management.
(b) The board may
(1) contract for necessary services;
(2) take any reasonable action necessary to carry out the provisions of this chapter.

Sec. 46.41.030. Division of Coastal Management.
(a) There is created in the department the division of ocean and coastal management.
(b) The division shall
(1) render, on behalf of the state, all federal consistency determinations and
certifications authorized by 16 U.S.C. 1456 (Sec. 307, Coastal Zone Management Act of
1972), and each conclusive state consistency determination when a project requires a permit,
lease, or authorization from the department or from two or more state resource agencies.
(2) adopt regulations approved by the board necessary to implement this chapter
under the provisions of AS 44.62 (Administrative Procedure Act).
(3) assure continued provision of data and information to coastal districts to carry
out their planning and management functions under the program.

(4) develop and maintain a program of financial assistance to aid coastal districts in
the development and implementation of district coastal management plan.

Sec. 46.41.040. Development of Alaska coastal management program.

(a) The regulations developed under this chapter shall include

(1) statewide coastal program standards;
(2) the criteria and process for the preparation and approval of district coastal
management plans; and
(3) consistency review procedures in accordance with this chapter, including
provisions for

(A) review of activities proposed or permitted by a state or federal agency;
(B) the types of activities that will trigger a consistency review;
(C) review of phased activities and uses;
(D) public notice and opportunities for public comment;
(E) elevation of proposed consistency determinations to the resource agency
commissioners;
(F) establishment of review timelines;
(G) exclusion from an individual project review aspects of activities that are
covered by a general permit previously found consistent with the Alaska coastal
management program;

(H) exclusion of routine activities with insignificant effects to coastal uses or
resources from an individual consistency review.

b) The coastal districts, coastal district boundaries and approved coastal management
plans that were in effect as of June 30, 2011 are in effect and are incorporated into the Alaska
coastal management program.

Sec. 46.41.050. Objectives.

The Alaska coastal management program shall be consistent with the following objectives:

(1) the use, management, restoration, and enhancement of the overall quality of the
coastal environment for this and succeeding generations;
(2) the development of industrial or commercial enterprises that are consistent with
the social, cultural, historic, economic, and environmental interests 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 that are economically or physically dependent on a coastal location are given higher priority when compared to uses that 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 a 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; and

(8) the full and fair evaluation of all demands on and uses of the land and water in the coastal area.

(9) the coordination of planning and decision-making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(10) the participation of the public, local governments, and agencies of the state and federal governments in the development and implementation of a coastal management program; and

(11) the requirement that state resource agencies carry out their duties, powers and responsibilities that affect the use of coastal area resources in accordance with the coastal program adopted pursuant to this Act.

Sec. 46.41.060. Development of district coastal management plans.

(a) Coastal districts shall

(1) develop and adopt district coastal management plans in accordance with the provisions of this chapter. The plan adopted by a coastal district shall be based upon a municipality's existing comprehensive plan or a new comprehensive resource use plan or comprehensive statement of needs, policies, objectives, and standards governing the use and conservation of resources within the coastal area of the district. The plan must meet the district plan criteria adopted under AS 46.41.040 and must include

(A) a delineation within the district of the boundaries of the coastal area subject
(B) a statement, list, or definition of the land and water uses and activities
subject to the district coastal management plan;
(C) a designation of any special management areas;
(D) enforceable policies to be applied to all the land and water uses subject to
the district coastal management plan as well as policies that apply to special
management areas.
(b) The board shall approve an initial or amended district coastal management plan if
the
(1) district coastal management plan meets the requirements of this chapter and the
district plan criteria in regulation adopted by the department; and
(2) enforceable policies of the district coastal management plan
(A) do not duplicate, restate, or incorporate by reference state or federal
statutes or regulations;
(B) are not preempted by federal or state law;
(C) do not arbitrarily or unreasonably restrict a use of state concern;
(D) are clear and concise as to the activities and persons affected by the
policies and the requirements of the policies;
(E) use prescriptive or performance-based standards that are written in precise
and enforceable language; and
(F) address a coastal use or resource of concern to the residents of the coastal
resource district as demonstrated by local knowledge or supported by scientific
evidence
(c) In (b)(2)(B) of this section, an enforceable policy of the district coastal
management plan is preempted
(1) by federal statutes or regulations if the United States Congress expressly
declares that local law or regulation is preempted, if the United States Congress demonstrates
the intent to occupy the field exclusively, or if there is an actual conflict between federal and
local law or regulation;
(2) by state law if it is prohibited, either by express legislative direction or direct
conflict with a state statute or regulation, or where a local law or regulation substantially
interferes with the effective functioning of a state statute or regulation or the underlying
purposes of a state statute or regulation.

Sec. 46.41.070. Submission of district plans by coastal districts.

(a) Within one year after the effective date of regulations implementing this chapter, coastal districts shall review their coastal management plans and if changes are necessary to meet the requirements of this chapter and implementing regulations, submit to the department a revised district coastal management plan.

Sec. 46.41.080. Implementation of district coastal management plans.

(a) A district coastal management plan approved under this chapter for a coastal district that does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives, and standards adopted by the district.

(b) A coastal district that has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management plan. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives, and standards adopted by the district.

Sec. 46.41.090. Compliance and enforcement.

(a) Municipalities and state resource agencies shall administer land and water use regulations or controls in conformity with district coastal management plans approved under this chapter and in effect.

(b) The superior courts of the state have jurisdiction to enforce lawful orders of the board and the department under this chapter.

Sec. 46.41.100. Coastal management plans in the unorganized borough.

(a) A coastal resource service area incorporated into the coastal management program under this chapter shall exercise those authorities and perform those duties required under this chapter.

Sec. 46.41.110. Coastal resource service areas.

(a) Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the department may, after public hearings held in the affected area, consolidate two or more regional educational attendance areas as a single
coastal resource service area
(1) if a substantial portion of the coastal area contains land and water area owned by
the federal government over which it exercises exclusive jurisdiction or land held in trust by
the federal government for Alaska Natives over which the state would not exercise control as
to use; or
(2) if, after giving due consideration to the standards applicable to incorporation of
borough governments and the likelihood that a borough will be incorporated within the area,
the commissioner determines that the functions to be performed under this chapter could be
undertaken more efficiently through the combination of two or more regional education
attendance area as a single coastal resource service area.
(c) A determination under (b) of this section shall be made before the organization of
the coastal resource service area.
(d) or purposes of coastal management only, the commissioner of the department
may, after public hearings held in the regional education attendance area affected, divide an
existing regional education attendance area into no more than three coastal resource service
areas according to geographic, cultural, economic, environmental, or other features relevant
to coastal management planning. However,
(1) each coastal resource service area formed by dividing an existing regional
education attendance must contain at least one first class city or home rule city; and
(2) a city within a coastal resource service area formed by dividing an existing
regional education attendance area may not elect to exclude itself from the coastal resource
service area.
Sec. 46.41.120. Organization of a Coastal Resource Service Area.
(a) Organization of a coastal resource service area may be initiated by
(1) submission to the coastal policy board of a petition signed by a number of
registered voters equal to 15 percent of the number of votes cast within the coastal resource
service area at the last state general election; or
(2) by submission to the board of a resolution approved by the city council or
traditional village council of not less than 25 percent of the number of cities and villages
within the coastal resource service area.
(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor
more than 90 days after receipt of a proper petition under (a)(1) of this section, a proper
resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this
section, shall conduct an election on the question of organization of a coastal resource service
area.
Sec. 46.41.130. Coastal resource service area boards
(a) Each coastal resource service area shall have an elected board representing the
population of the service area. The board shall have the powers and duties and perform the
functions prescribed for or required of coastal districts.
(b) A coastal resource service area board shall contain seven members. Board
members shall be elected at large by the qualified voters of the coastal resource service area.
(c) The term of office of a member of a coastal resource service area board is three
years. Members serve until their successors are elected and have qualified. This section does
not prohibit the reelection of a board member.
(d) The lieutenant governor shall provide for the election of the members of coastal
resource service area boards.
(e) Election of members of coastal resource service area boards shall be held annually
on the date of election of members of regional educational attendance area boards under AS
14.08.071(b). If no candidate files for election to a seat on the coastal resource service area
board, the seat is considered vacant at the time a newly elected member would have taken
office.
(f) A seat on a coastal resource service area board shall be declared vacant by the
board if the criteria under AS 14.08.045 (a) apply to the person elected. A vacancy on a
coastal resource service area board shall be filled by appointment as provided in AS
14.12.070 for vacancies in the membership of regional educational attendance area boards.
(g) Members of coastal resource service area boards are subject to recall on the same
grounds and in the same manner as provided for recall of municipal officials in AS 29.26.240
- 29.26.350. The lieutenant governor functions in place of the assembly or council and
municipal clerk for receipt and review of recall petitions and the conduct of recall elections.
(h) Members of a coastal resource service area board are entitled to per diem and
travel expenses authorized by law for members of boards and commissions and for
honorary boards for meetings attended in person.
Sec. 46.41.140. Elections in coastal resource service areas.
Elections under AS 46.41.100 - 46.41.160 shall be administered by the lieutenant
governor in the general manner provided in AS 15 (Election Code). In addition, the
lieutenant governor may adopt regulations necessary to the conduct of coastal resource
service area board elections. The state shall pay all election costs.
Sec. 46.41.150. Preparation of district coastal management program by the Department
of Commerce, Community and Economic Development
(a) If residents of a coastal resource service area reject organization of the service
area at an election called for the purpose and the coastal policy board finds, after public
hearing, that major economic development activity has occurred or will occur within the
service area, the board may direct the department to prepare and recommend for
consideration by the council and for submission to the legislature a district coastal
management plan for the service area.
(b) At the request of the coastal policy board, the department shall complete the
district coastal management plan in accordance with this chapter and the guidelines and
standards adopted by the board for a coastal resource service area that has been organized but
that has failed to make substantial progress in the preparation of an approvable district coastal
management program within 18 months of certification of the results of an organization
election or that has not submitted for approval to the board a program within 30 months of
certification of the results of its organization election. Preparation of the program shall be
conducted in consultation with the coastal resource service area and shall, to the maximum
extent consistent with this chapter, reflect the expressed concerns of the residents of the
service area.
(c) Before requesting the department to complete the district coastal management
plan under (b) of this section, the board shall meet with members of the coastal resource
service area board to determine whether the board is able to complete a district coastal
management program within the time limitations established in this section.
Sec. 46.41.160. Approval of plans in coastal resource service areas.
(a) Before adoption by a coastal resource service area board, a district coastal
management plan shall be submitted for review to each city or village within the coastal
resource service area. The council of a city or traditional village council shall consider the
plan submitted for review. Within 60 days of submission, the council of a city or traditional
village council shall either approve the plan or enter objections to all or any portion of the
plan.
(b) If a city or village within a coastal resource service area fails to approve a portion of the district coastal management plan prepared and submitted for approval under (a) of this section, the governing body shall advise the coastal resource service area board of its objections to the proposed plan and suggest alternative elements or components for inclusion in the district coastal management plan. New matter submitted by a city or village that meets the district plan criteria adopted under this chapter may be accepted by the district and the district coastal management plan modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal resource service area board may adopt the district coastal management plan as initially offered.

(c) Objection by a city council under (b) of this section is limited to objection to elements of the plan affecting resources or the use of resources within the corporate limits of the city. Objection by a traditional village council under (b) of this section is limited to objection to elements of the plan affecting resources or the use of resources within the village or within two miles of the village.

(d) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Commerce, Community, and Economic Development.

Sec. 46.41.170. Cooperative administration.

(a) A city within the coastal area that is not part of a coastal resource service area shall be included for purposes of this chapter within an adjacent coastal resource service area unless its governing body, by resolution adopted by a majority of its membership, chooses to exclude the city from an adjacent coastal resource service area and a copy of the resolution is filed with the commissioner of commerce, community, and economic development.

(b) This chapter does not restrict or prohibit cooperative or joint administration of functions between a municipality and a coastal resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose.

Sec. 46.41.180. Construction with other laws.

Nothing in this chapter shall be construed to

(1) diminish state jurisdiction, responsibility, or rights in the field of planning, development, or control of land or water resources, submerged land, or navigable water;

(2) affect in any way any state requirement imposed under a federal authorization or
federal waiver of sovereign immunity; or
(3) diminish the zoning or planning authority of municipalities under AS 29.

Sec. 46.41.900. Definitions.
In this chapter, unless the context otherwise requires,
(1) "affected coastal district" means a coastal district with a publically reviewed draft or
approved plan in which a project is proposed to be located or that may experience a direct
and significant impact from a proposed project;
(2) "board" means the Alaska Coastal Policy Board established in AS 46.41.010;
(3) "coastal district" means each of the following that contains a portion of the coastal
area of the state:
   (A) unified municipalities;
   (B) organized boroughs of any class that exercise planning and zoning authority;
   (C) home rule and first class cities of the unorganized borough or within boroughs
that do not exercise planning and zoning authority;
   (D) second class cities of the unorganized borough, or within boroughs that do not
exercise planning and zoning authority, that have established a planning commission,
and that, in the opinion of the commissioner of commerce, community, and economic
development, have the capability of preparing and implementing a comprehensive
district coastal management plan under AS 46.41.030;
   (E) coastal resource service areas established and organized under AS 29.03.020 an
AS 46.41.100 - 46.41.160;
(4) "coastal use or resource" means any land or water use or natural resource of the
coastal zone. Land and water uses include, but are not limited to, public access, recreation,
fishing, historic or cultural preservation, development, hazards management, marinas and
floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration
projects. Natural resources include biological or physical resources that are found within a
State's coastal zone on a regular or cyclical basis. Biological and physical resources include,
but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers,
streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish,
shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of
national significance;
(5) "coastal zone" means the coastal water including land within and under that water,
and adjacent shoreland, including the water within and under that shoreland, within the
boundaries approved by the former Alaska Coastal Policy Council and by the United States
Secretary of Commerce under 16 U.S.C. 1451 - 1465 (Coastal Zone Management Act of
1972, as amended); "coastal zone" includes areas added as a result of any boundary changes
approved by the board and by the United States Secretary of Commerce under 16 U.S.C.
1451 - 1465; "coastal zone" does not include
(A) those lands excluded under 16 U.S.C. 1453(1); or
(B) areas deleted as a result of any boundary changes by the board in conformance
with 16 U.S.C. 1451 - 1465;
(6) "consistency review" means the evaluation of a proposed project against the
statewide standards and the approved enforceable policies of an affected coastal district
under the process developed by the board;
(7) "department" means the Department of Commerce, Community and Economic
Development;
(8) "direct and significant impact" means an activity which proximately contributes to a
material change or alteration in the natural or social characteristics of a part of the state's
coastal area and in which
(A) would have a net adverse effect on the quality of the resources of the coastal
area;
(B) would limit the range of alternative uses of the resources of the coastal area;
or
(C) would, of itself, constitute a tolerable change or alteration of the resources
within the coastal area but which, cumulatively, would have an adverse effect;
(9) "district coastal management plan" means a plan developed by a coastal district,
including enforceable policies of that plan, setting out policies and standards to guide public
and private uses of land and water within that district and approved by the board as meeting
the requirements of this chapter and the regulations adopted under this chapter;
(10) "enforceable policy" means a policy established by this chapter or approved by the
board as a legally binding policy of the Alaska coastal management program applicable to
public and private activities;
(11) "local knowledge" means a body of knowledge or information about the coastal
environment or the human use of that environment, including information passed down
through generations, if that information is

(A) derived from experience and observations; and

(B) generally accepted by the local community;

(12) "project" means all activities that will be part of a proposed development and includes all federal agency activities as defined in 15 C.F.R. 930.31, including lease sales and development projects affecting a coastal use or resource;

(13) "resource agency" means

(A) the Department of Environmental Conservation;

(B) the Department of Fish and Game; or

(C) the Department of Natural Resources;

(14) "scientific evidence" means facts or data that are

(A) premised upon established chemical, physical, biological, or ecosystem management principles as obtained through scientific method and submitted to the department to furnish proof of a matter required under this chapter;

(B) in a form that would allow resource agency review for scientific merit; and

(C) supported by one or more of the following:

(i) written analysis based on field observation and professional judgment along with photographic documentation;

(ii) written analysis from a professional scientist with expertise in the specific discipline; or

(iii) site-specific scientific research that may include peer-review level research or literature.

(15) "special management area" includes areas meriting special attention and means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition;

(16) "use of state concern" means a land and water use that would significantly affect the long-term public interest; a "use of state concern" includes

(A) uses of national interest, including the use of resources for the siting of ports
and major facilities that contribute to meeting national energy needs, construction and
maintenance of navigational facilities and systems, resource development of federal
land, and national defense and related security facilities that are dependent upon
coastal locations;

(B) uses of more than local concern, including those land and water uses that
confer significant environmental, social, cultural, or economic benefits or burdens
beyond a single coastal district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas
lease, a state gas only lease, or a federal oil and gas lease, or large-scale industrial or
commercial development activities that are dependent on a coastal location and that,
because of their magnitude or the magnitude of their effect on the economy of the
state or the surrounding area, are reasonably likely to present issues of more than
local significance;

(D) facilities serving statewide or interregional transportation and
communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.21
or as state game refuges, game sanctuaries, or critical habitat areas under AS 16.20.