OCS EIS/EA
MMS 2007-025

Coastal Impact Assistance Program

Final Programmatic Environmental Assessment
May 2007

MMS U.S. Department of the Interior
Minerals Management Service

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U.S. Department of the Interior
Minerals Management Service
Environmental Division

Herndon
May 2007

FINDING OF NO SIGNIFICANT IMPACT

Programmatic Environmental Assessment and Planning Document for the Coastal Impact Assistance Program

In accordance with the National Environmental Policy Act (NEPA), a Programmatic Environmental Assessment (EA) has been prepared for the Coastal Impact Assistance Program (CIAP) established in Section 384 of the Energy Policy Act of 2005. The EA addresses the effects of this program based on existing information. The EA is attached to this document and incorporated by reference.

The proposed action in the EA is the establishment of procedures for MMS and guidelines for States and Coastal Political Subdivisions (CPSs) to follow when applying for CIAP funds. The guidelines address the information to be submitted for review of plans and for grant applications. The establishment of procedures and guidelines is necessary to carry out the mandate of the Energy Policy Act and does not involve any activities that affect the natural or human environment.

Section 384 outlines five authorized uses for the CIAP funds which are intended to enhance the environment through conservation, protection or restoration of coastal areas; mitigation of damage to fish, wildlife, or natural resources; and mitigation of the impact of OCS activities. In the aggregate, these projects are expected to be beneficial to the environment with no significant adverse impacts. In addition, we expect Federal agencies will perform environmental reviews on individual projects as they deem appropriate.

Having reviewed the EA and the available information relating to the proposed action, I have determined that there are no significant adverse environmental impacts resulting from the management of the CIAP, and the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of NEPA. Accordingly, preparation of an environmental impact statement (EIS) is not required.

(Acting)

Gregory Gould
Chief, Environmental Division

5-24-2007

Date

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1.0 INTRODUCTION

This chapter provides background on the Coastal Impact Assistance Program (CIAP), explains the purpose for the program, and identifies the authorized uses that qualify for CIAP funding.

1.1 BACKGROUND AND CIAP OVERVIEW

The Energy Policy Act of 2005 (Act) created the CIAP by amending Section 31 of the Outer Continental Shelf Lands Act (*43 U.S.C. 1356a*; Appendix A). The purpose of the CIAP is to provide funds to conserve, protect, and restore coastal areas; to mitigate damage to fish, wildlife, and natural resources; to implement a federally-approved marine, coastal, or comprehensive conservation management plan; and to mitigate the impact of OCS activities through funding of onshore infrastructure projects and public service needs. Under the provisions of the Act, the authority and responsibility for the management of CIAP is vested in the Secretary of the Department of the Interior (Secretary). The Secretary has delegated this authority and responsibility to the Minerals Management Service (MMS).

Under Section 384 of the Act, MMS shall disburse $250 million for each fiscal year (FY) 2007 through 2010 to eligible producing States (State) and coastal political subdivisions (CPSs). A *producing State* is defined in the Act (*Section 31(a)(9)(A) and (B)*) as having a coastal seaward boundary within 200 nautical miles of the geographic center of a leased tract within any area of the OCS. This does not include a State with a majority of its coastline subject to leasing moratoria, unless production was occurring on January 1, 2005, from a lease within 10 nautical miles of the coastline of that State. States eligible to receive funding are Alabama, Alaska, California, Louisiana, Mississippi, and Texas.

The Act also specifies eligibility criteria for CPSs (*Section 31(a)(1) and (8)*). A *political subdivision* is defined as "the local political jurisdiction immediately below the level of State government, including counties, parishes, and boroughs." The term *coastal political subdivision* is further defined in the Act as "a political subdivision of a coastal State any part of which political subdivision is (A) within the coastal zone (as defined in Section 304 of the Coastal Zone Management Act of 1972 (*16 U.S.C. 1453*)) of the coastal state as of the date of enactment of the Energy Policy Act of 2005 [August 8, 2005]; and (B) not more than 200 nautical miles from the geographic center of any leased tract." Given these criteria, MMS, in consultation with the States, has determined 67 CPSs are eligible to receive CIAP funding.

The MMS shall determine CIAP funding allocations to States and CPSs using the formulas mandated by the Act (*Section 31(b)*). The Act requires a minimum annual allocation of 1 percent to each State and provides that 35 percent of each State's share shall be allocated directly to its CPSs. In order to receive CIAP funds, States are required to submit a coastal impact assistance plan (Plan) that MMS must approve prior to disbursing any funds; States should develop Plans in coordination with their CPSs. All funds shall be disbursed through a grant process.

For MMS to comply with the Energy Policy Act of 2005 and effectively manage the CIAP, it must establish procedures for the submission and approval of State plans and the grant application process for individual CIAP projects.

1.2 PURPOSE AND NEED

The purpose of this action is to establish procedures and guidelines for States and CPSs to follow when applying for CIAP funds. The need for the action is established by the Act, which requires MMS to disburse $250 million for each fiscal year 2007 through 2010 to eligible producing States and CPSs, in accordance with all applicable Federal and State law, to be used only for one or more of the following purposes (*Section 31 (d)(1)*):

(1) projects and activities for the conservation, protection, or restoration of coastal areas, including wetland;
(2) mitigation of damage to fish, wildlife, or natural resources;
(3) planning assistance and the administrative costs of complying with this section (i.e. CIAP);
(4) implementation of a federally-approved marine, coastal, or comprehensive conservation management plan; and
(5) mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

The procedures and guidelines MMS is developing will facilitate its compliance with the Act and the proper disbursement of CIAP funds.

Table 1.1 shows the level of OCS oil and gas production activity in planning areas encompassing the producing States. To achieve the significant benefits to the Nation from offshore oil and gas production, infrastructure must be developed and maintained in coastal areas to support OCS oil and gas activities. This infrastructure includes vessel support bases, airfields, marine terminals, pipelines, and oil and gas processing facilities. While coastal States and communities benefit economically in terms of jobs and revenues generated by oil and gas industry activities, they also experience some adverse impacts to the natural and human environment.

Table 1.1. General Level of OCS Oil and Gas Production Activity

	PLANNING AREA			
	CENTRAL GULF OF MEXICO	**WESTERN GULF OF MEXICO**	**SOUTHERN CALIFORNIA**	**BEAUFORT SEA**
Active leases as of May 2006	5,283	2,713	79 active 43 producing 36 nonproducing	181*
2005 oil production (million barrels)	376	89	26.5	3.99
2005 natural gas production (trillion cubic feet)	2,206	906	0.054	0
Production platforms as of May 2006	3,318	486	22	0
CIAP-affected state(s)	Alabama Mississippi Louisiana	Louisiana Texas	California	Alaska

*183 if Cook Inlet is included.

2.0 PROPOSED ACTION AND ALTERNATIVES

This chapter describes the proposed action and the no action alternative, as required by Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA).

2.1 PROPOSED ACTION

The proposed action is the establishment of procedures for MMS and guidelines for States and CPSs to follow when applying for CIAP funds and disbursement of funds pursuant to the five authorized uses in the Act. This programmatic Environmental Assessment (EA) is being prepared pursuant to NEPA and CEQ regulations.

As described in Section 1.1, above, under Section 384 of the Act, MMS shall disburse $250 million for each fiscal year (FY) 2007 through 2010 to eligible producing States (State) and coastal political subdivisions (CPS). The purpose for the CIAP and the authorized uses of these funds are summarized in Section 1.2. Table 2.1 lists the eligible coastal political subdivisions for the six States.

Once the CIAP is in place, each State, in coordination with its CPSs, must submit a Coastal Impact Assistance Plan to MMS for review and approval. Once State plans have been approved, grant applications for specific projects will be submitted by States or CPSs (Table 2.1) to MMS for review and approval. The MMS shall not disburse any CIAP funds to a State or CPS until MMS has approved the State's Plan and the grant application for specific projects.

The MMS is revising the CIAP State Plan Guidelines, originally published in September 2006, which explain the programmatic requirements of the Coastal Impact Assistance Program. The Guidelines, which will facilitate MMS's management of CIAP, describe the authorized uses of the Program and the required components of the Coastal Impact Assistance Plan. The Guidelines also include an appendix which contains the project narrative attachment form that States and CPSs must complete and submit with their grant application. This form is composed of two parts. The first part, the Project Information, provides the required descriptive elements an applicant must submit for their proposed project. The second part of the Form, the Environmental Checklist (Checklist), has been provided as an aid to the applicant and may be submitted, although not required, with the grant application. The MMS developed the Checklist to help applicants identify the environmental laws (Appendix B) that may apply to their projects and the environmental documents they may need to submit. The MMS will use submitted documents to record the applicant's assertion that they have complied with applicable environmental laws.

2.2 NO ACTION ALTERNATIVE

Because the Act mandates the management of the CIAP and specifies precisely how funds will be disbursed, there are no reasonable alternatives to the proposed action, and it would require an act of Congress to adopt the no-action alternative. Theoretically, however, if MMS did not develop procedures for the disbursement of CIAP funds, no funds would be disbursed to the

States and CPSs, and the States and CPSs would have to find alternative funding sources for projects being considered for the CIAP, or the projects would have to be canceled.

Table 2.1 Eligible Coastal Political Subdivisions*

Alabama Counties	Alaska Boroughs	California Counties	Louisiana Parishes	Mississippi Counties	Texas Counties
Baldwin	Anchorage	Alameda	Assumption	Hancock	Aransas
Mobile	Bristol Bay	Contra Costa	Calcasieu	Harrison	Brazoria
	Kenai Peninsula	Los Angeles	Cameron	Jackson	Calhoun
	Kodiak Island	Marin	Iberia		Cameron
	Lake & Peninsula	Monterey	Jefferson		Chambers
	Matanuska-Susitna	Napa	Lafourche		Galveston
	North Slope	Orange	Livingston		Harris
	Northwest Arctic	San Diego	Orleans		Jackson
		San Francisco	Plaquemines		Jefferson
		San Luis Obispo	St. Bernard		Kenedy
		San Mateo	St. Charles		Kleberg
		Santa Barbara	St. James		Matagorda
		Santa Clara	St. John the Baptist		Nueces
		Santa Cruz	St. Martin		Orange
		Solano	St. Mary		Refugio
		Sonoma	St. Tammany		San Patricio
		Ventura	Tangipahoa		Victoria
			Terrebonne		Willacy
			Vermilion		

*Note: These CPSs are eligible for FY 2007 and 2008 CIAP allocations. Future lease sales and/or lease tract relinquishments, terminations, and expirations after FY 2006 may affect this list for the FY 2009 and 2010 CIAP allocations.

3.0 ENVIRONMENTAL EFFECTS

3.1 SCOPE OF THE PROGRAMMATIC ANALYSIS

The Minerals Management Service is responsible for managing the CIAP pursuant to the Energy Policy Act of 2005. Allocating agency resources to implement a specific statutory program, such as CIAP, is a Federal action for which an agency may prepare an EA (40 CFR 1508.18(b)(3)). To carry out this responsibility, the MMS is establishing guidelines to manage the program (see: www.mms.gov/offshore/CIAPmain.htm). The MMS is also establishing procedures for review of plans and grant applications. These procedures and guidelines are essential first steps to ensure the success of the CIAP. These functions are necessary to carry out the mandate of the Act and do not involve any activities that affect the natural or human environment. Therefore, this programmatic EA does not seek to explicitly evaluate potential environmental impacts of these administrative and procedural actions. Instead, the scope of this programmatic analysis is limited to a general discussion of the environmental effects of the CIAP.

3.2 ENVIRONMENTAL EFFECTS OF THE PROGRAM

As discussed in Chapter 1, the proposed CIAP projects must meet one of the five authorized uses stipulated in Section 384 of the Energy Policy Act of 2005. The projects are intended to be environmentally beneficial and to enhance the environment through restoration and mitigation. Some projects will require permits or grants from other Federal agencies and will undergo a thorough environmental review. Language in Section 384, however, does not give MMS control over the specific nature of the projects beyond identifying that they meet one or more of the authorized uses. Accordingly, MMS is not required to conduct a detailed NEPA analysis of the potential effects of the individual projects. MMS can, however, generally describe the expected environmental effect of the program by reference to its predecessor program, which was administered by NOAA in 2001.

Historically, the CIAP has resulted in many projects that produced environmentally beneficial effects, in accordance with the mandate for the program (NOAA, 2001). The current reauthorization is for similar projects that will ameliorate negative environmental impacts; restore and protect wetlands and other habitats; control erosion and stabilize shorelines; and mitigate the impact of OCS activities through funding of onshore infrastructure. Examples of these types of projects include wetland creation, beach nourishment, shoreline or river bank stabilization, removal of exotic species, waste or debris removal, and land acquisition. Overall, based on the existing information, the management of the program is expected to have no significant adverse impacts on the environment.

3.3 NO ACTION ALTERNATIVE

To take “no action” would mean that the CIAP would not be implemented and funds would not be disbursed to the six producing coastal States or CPSs. The States would have to find alternative funding sources for projects that would have qualified for CIAP funding, or the projects would have to be abandoned.

Any adverse impacts that could result from these projects would be avoided if no action is taken. However, the authorized uses defined in Section 384 are intended for conservation, protection and restoration of coastal environments or to mitigate damage to fish, wildlife, and natural resources or impacts of OCS activities. Thus, if the CIAP is not implemented, the intended benefits will not be realized. The benefits that would be forgone include the conservation, protection, and restoration of coastal areas, and mitigation of impacts to fish, wildlife, and other coastal resources.

Because the CIAP is mandated under Section 384 of the Energy Policy Act of 2005, it would take an act of Congress to adopt the no action alternative.

4.0 RESPONSE TO COMMENTS ON DRAFT EA

The draft Programmatic EA was made available for review by the public on December 15, 2006. Numerous comments were received from the affected States, CPSs, and MMS regional staff. Many comments were considered editorial in that they clarified language, added basic information, or were typographical errors, and the document was revised accordingly. The major changes and substantive comments are summarized below.

Comment 1: Descriptions of the affected environment are not complete.

Response: As a result of the revisions, the description of the affected environment was deemed too detailed for the programmatic level of analysis contained in this EA.

Comment 2: The beneficial impacts from the potential projects should be discussed in this EA.

Response: The EA has been revised to incorporate the beneficial impacts from the program.

Comment 3: A complete listing of threatened and endangered species should be included in this EA for each State.

Response: As a result of the revisions, the description of the affected environment was deemed too detailed for the programmatic level of analysis contained in this EA, including all references to endangered species.

Comment 4: Requirements regarding compliance with NEPA and other environmental laws needs clarification. The following issues were considered between the draft and final EA:

1. Identification of more projects that may qualify as categorical exclusions
2. Removal of environmental analysis of specific project types – Section 4.2 in the draft
3. Clarification of projects and grant applications to note that environmental analysis need only be done at the project level even if the project includes multiple grant applications
4. Clarification of responsibilities of MMS and the States and CPSs to note that the Federal agency (MMS) remains responsible for ensuring compliance with laws such as NEPA, but responsibility for various activities such as preparing appropriate documents has been delegated to the applicants
5. Clarification of the use of environmental documents prepared by other Federal or State agencies to note that this is appropriate and permissible (and encouraged) consistent with CEQ (40 CFR parts 1506.3 and 1506.5(b))
6. Clarification of the preparation of an EA for projects not categorically excluded and for which there exists no other environmental document

Response: One of the major issues considered during the development of CIAP procedures and guidelines was the application of NEPA requirements to CIAP-funded State and CPS projects. The draft Programmatic EA was written based on the assumption that MMS would require a NEPA analysis of individual CIAP projects.

During the revision process, the MMS reassessed its role, responsibilities, and authority in administering the program and determined that requiring the preparation of NEPA documents for individual projects was beyond the responsibility given in Section 384 of the Energy Policy Act of 2005. Specifically, MMS determined that individual CIAP-funded projects are not "subject to federal control and responsibility" (40 C.F.R. § 1508.18). Based on comments received on the draft EA and an analysis of the application of NEPA requirements, MMS concluded that it lacks discretion to make decisions based on NEPA analyses of CIAP projects. MMS's role is defined by the Energy Policy Act and limited to review of State Coastal Impact Assistance Plans for certain statutorily enumerated components, distribution of funds in accordance with a statutorily prescribed formula, and review of expenditures for violations of the Act. Without discretion, NEPA analysis does not serve to inform MMS decision making. Consequently, MMS will not require completion of NEPA documents for individual CIAP projects based solely on the receipt of CIAP funds. This EA has been revised accordingly. Appendix B, Federal Environmental Compliance Procedures for Approval of State Projects, of the draft EA and all discussion about preparation of NEPA documentation on specific projects have been deleted.

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6.0 REFERENCES

NOAA, 2001. National Oceanic and Atmospheric Administration. 2001. Programmatic Environmental Assessment: Coastal Impact Assistance Program – Federal Approval of Plans to Mitigate Impacts from Outer Continental Shelf Oil and Gas Production. Office of Ocean and Coastal Resource Management National Ocean Service. 71 pp.

APPENDIX A

ENERGY POLICY ACT OF 2005

SECTION 384

SEC. 384. COASTAL IMPACT ASSISTANCE PROGRAM.

Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a) is amended to read as follows:

SEC. 31. COASTAL IMPACT ASSISTANCE PROGRAM.

(a) Definitions— In this section:

(1) COASTAL POLITICAL SUBDIVISION- The term `coastal political subdivision' means a political subdivision of a coastal State any part of which political subdivision is—

(A) within the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the coastal State as of the date of enactment of the Energy Policy Act of 2005; and

(B) not more than 200 nautical miles from the geographic center of any leased tract.

(2) COASTAL POPULATION- The term `coastal population' means the population, as determined by the most recent official data of the Census Bureau, of each political subdivision any part of which lies within the designated coastal boundary of a State (as defined in a State's coastal zone management program under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.)).

(3) COASTAL STATE- The term `coastal State' has the meaning given the term in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

(4) COASTLINE- The term `coastline' has the meaning given the term `coast line' in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(5) DISTANCE- The term `distance' means the minimum great circle distance, measured in statute miles.

(6) LEASED TRACT- The term `leased tract' means a tract that is subject to a lease under section 6 or 8 for the purpose of drilling for, developing, and producing oil or natural gas resources.

(7) LEASING MORATORIA- The term `leasing moratoria' means the prohibitions on preleasing, leasing, and related activities on any geographic area of the outer Continental Shelf as contained in sections 107 through 109 of division E of the Consolidated Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 3063).

(8) POLITICAL SUBDIVISION- The term `political subdivision' means the local political jurisdiction immediately below the level of State government, including counties, parishes, and boroughs.

(9) PRODUCING STATE-

(A) IN GENERAL- The term `producing State' means a coastal State that has a coastal seaward boundary within 200 nautical miles of the geographic center of a leased tract within any area of the outer Continental Shelf.

(B) EXCLUSION- The term `producing State' does not include a producing State, a majority of the coastline of which is subject to leasing

moratoria, unless production was occurring on January 1, 2005, from a lease within 10 nautical miles of the coastline of that State.

(10) QUALIFIED OUTER CONTINENTAL SHELF REVENUES-

(A) IN GENERAL- The term `qualified Outer Continental Shelf revenues' means all amounts received by the United States from each leased tract or portion of a leased tract—

(i) lying—

(I) seaward of the zone covered by section 8(g); or

(II) within that zone, but to which section 8(g) does not apply; and

(ii) the geographic center of which lies within a distance of 200 nautical miles from any part of the coastline of any coastal State.

(B) INCLUSIONS- The term `qualified Outer Continental Shelf revenues' includes bonus bids, rents, royalties (including payments for royalty taken in kind and sold), net profit share payments, and related late-payment interest from natural gas and oil leases issued under this Act.

(C) EXCLUSION- The term `qualified Outer Continental Shelf revenues' does not include any revenues from a leased tract or portion of a leased tract that is located in a geographic area subject to a leasing moratorium on January 1, 2005, unless the lease was in production on January 1, 2005.

(b) Payments to Producing States and Coastal Political Subdivisions-

(1) IN GENERAL- The Secretary shall, without further appropriation, disburse to producing States and coastal political subdivisions in accordance with this section $250,000,000 for each of fiscal years 2007 through 2010.

(2) DISBURSEMENT- In each fiscal year, the Secretary shall disburse to each producing State for which the Secretary has approved a plan under subsection (c), and to coastal political subdivisions under paragraph (4), such funds as are allocated to the producing State or coastal political subdivision, respectively, under this section for the fiscal year.

(3) ALLOCATION AMONG PRODUCING STATES-

(A) IN GENERAL- Except as provided in subparagraph (C) and subject to subparagraph (D), the amounts available under paragraph (1) shall be allocated to each producing State based on the ratio that—

(i) the amount of qualified outer Continental Shelf revenues generated off the coastline of the producing State; bears to

(ii) the amount of qualified outer Continental Shelf revenues generated off the coastline of all producing States.

(B) AMOUNT OF OUTER CONTINENTAL SHELF REVENUES- For purposes of subparagraph (A)--

(i) the amount of qualified outer Continental Shelf revenues for each of fiscal years 2007 and 2008 shall be determined using

qualified outer Continental Shelf revenues received for fiscal year 2006; and

(ii) the amount of qualified outer Continental Shelf revenues for each of fiscal years 2009 and 2010 shall be determined using qualified outer Continental Shelf revenues received for fiscal year 2008.

(C) MULTIPLE PRODUCING STATES- In a case in which more than 1 producing State is located within 200 nautical miles of any portion of a leased tract, the amount allocated to each producing State for the leased tract shall be inversely proportional to the distance between--

(i) the nearest point on the coastline of the producing State; and

(ii) the geographic center of the leased tract.

(D) MINIMUM ALLOCATION- The amount allocated to a producing State under subparagraph (A) shall be at least 1 percent of the amounts available under paragraph (1).

(4) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS-

(A) IN GENERAL- The Secretary shall pay 35 percent of the allocable share of each producing State, as determined under paragraph (3) to the coastal political subdivisions in the producing State.

(B) FORMULA- Of the amount paid by the Secretary to coastal political subdivisions under subparagraph (A)--

(i) 25 percent shall be allocated to each coastal political subdivision in the proportion that--

(I) the coastal population of the coastal political subdivision; bears to

(II) the coastal population of all coastal political subdivisions in the producing State;

(ii) 25 percent shall be allocated to each coastal political subdivision in the proportion that--

(I) the number of miles of coastline of the coastal political subdivision; bears to

(II) the number of miles of coastline of all coastal political subdivisions in the producing State; and

(iii) 50 percent shall be allocated in amounts that are inversely proportional to the respective distances between the points in each coastal political subdivision that are closest to the geographic center of each leased tract, as determined by the Secretary.

(C) EXCEPTION FOR THE STATE OF LOUISIANA- For the purposes of subparagraph (B)(ii), the coastline for coastal political subdivisions in the State of Louisiana without a coastline shall be considered to be 1/3 the average length of the coastline of all coastal political subdivisions with a coastline in the State of Louisiana.

(D) EXCEPTION FOR THE STATE OF ALASKA- For the purposes of carrying out subparagraph (B)(iii) in the State of Alaska, the amounts allocated shall be divided equally among the 2 coastal political subdivisions that are closest to the geographic center of a leased tract.

(E) EXCLUSION OF CERTAIN LEASED TRACTS- For purposes of subparagraph (B)(iii), a leased tract or portion of a leased tract shall be excluded if the tract or portion of a leased tract is located in a geographic area subject to a leasing moratorium on January 1, 2005, unless the lease was in production on that date.

(5) NO APPROVED PLAN-

(A) IN GENERAL- Subject to subparagraph (B) and except as provided in subparagraph (C), in a case in which any amount allocated to a producing State or coastal political subdivision under paragraph (4) or (5) is not disbursed because the producing State does not have in effect a plan that has been approved by the Secretary under subsection (c), the Secretary shall allocate the undisbursed amount equally among all other producing States.

(B) RETENTION OF ALLOCATION- The Secretary shall hold in escrow an undisbursed amount described in subparagraph (A) until such date as the final appeal regarding the disapproval of a plan submitted under subsection (c) is decided.

(C) WAIVER- The Secretary may waive subparagraph (A) with respect to an allocated share of a producing State and hold the allocable share in escrow if the Secretary determines that the producing State is making a good faith effort to develop and submit, or update, a plan in accordance with subsection (c).

(c) Coastal Impact Assistance Plan-

(1) SUBMISSION OF STATE PLANS-

(A) IN GENERAL- Not later than July 1, 2008, the Governor of a producing State shall submit to the Secretary a coastal impact assistance plan.

(B) PUBLIC PARTICIPATION- In carrying out subparagraph (A), the Governor shall solicit local input and provide for public participation in the development of the plan.

(2) APPROVAL-

(A) IN GENERAL- The Secretary shall approve a plan of a producing State submitted under paragraph (1) before disbursing any amount to the producing State, or to a coastal political subdivision located in the producing State, under this section.

(B) COMPONENTS- The Secretary shall approve a plan submitted under paragraph (1) if--

(i) the Secretary determines that the plan is consistent with the uses described in subsection (d); and

(ii) the plan contains--

(I) the name of the State agency that will have the authority to represent and act on behalf of the producing State in dealing with the Secretary for purposes of this section;

(II) a program for the implementation of the plan that describes how the amounts provided under this section to the producing State will be used;

(III) for each coastal political subdivision that receives an amount under this section--

(aa) the name of a contact person; and

(bb) a description of how the coastal political subdivision will use amounts provided under this section;

(IV) a certification by the Governor that ample opportunity has been provided for public participation in the development and revision of the plan; and

(V) a description of measures that will be taken to determine the availability of assistance from other relevant Federal resources and programs.

(3) AMENDMENT- Any amendment to a plan submitted under paragraph (1) shall be--

(A) developed in accordance with this subsection; and

(B) submitted to the Secretary for approval or disapproval under paragraph (4).

(4) PROCEDURE- Not later than 90 days after the date on which a plan or amendment to a plan is submitted under paragraph (1) or (3), the Secretary shall approve or disapprove the plan or amendment.

(d) Authorized Uses-

(1) IN GENERAL- A producing State or coastal political subdivision shall use all amounts received under this section, including any amount deposited in a trust fund that is administered by the State or coastal political subdivision and dedicated to uses consistent with this section, in accordance with all applicable Federal and State law, only for 1 or more of the following purposes:

(A) Projects and activities for the conservation, protection, or restoration of coastal areas, including wetland.

(B) Mitigation of damage to fish, wildlife, or natural resources.

(C) Planning assistance and the administrative costs of complying with this section.

(D) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(E) Mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

(2) COMPLIANCE WITH AUTHORIZED USES- If the Secretary determines that any expenditure made by a producing State or coastal political subdivision is not consistent with this subsection, the Secretary shall not disburse any additional amount under this section to the producing State or the coastal political subdivision until such time as all amounts obligated for unauthorized uses have been repaid or reobligated for authorized uses.

(3) LIMITATION- Not more than 23 percent of amounts received by a producing State or coastal political subdivision for any 1 fiscal year shall be used for the purposes described subparagraphs (C) and (E) of paragraph (1).

APPENDIX B

RELEVANT FEDERAL ENVIRONMENTAL LAWS AND EXECUTIVE ORDERS

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FEDERAL ENVIRONMENTAL LAWS AND EXECUTIVE ORDERS

The following Federal environmental laws and Executive Orders may be applicable to specific CIAP projects. This list is not intended to be exhaustive.

NATIONAL ENVIRONMENTAL POLICY ACT

The NEPA of 1969 (42 U.S.C. 4321 *et seq*.) provides a national policy that encourages "productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man . . ." The NEPA requires that all Federal agencies use a systematic, interdisciplinary approach for protection of the human environment; this approach will ensure the integrated use of the natural and social sciences in any planning and decision-making that may have an impact upon the environment. The NEPA also requires the preparation of a detailed Environmental Impact Statement (EIS) on any major Federal action that may have a significant impact on the environment.

In 1979, the Council on Environmental Quality (CEQ) established uniform guidelines for implementing the procedural provisions of NEPA. These regulations (40 CFR parts1500 to 1508) provide for the use of the NEPA process to identify and assess the reasonable alternatives to proposed actions that avoid or minimize adverse effects of these actions upon the quality of the human environment. "Scoping" is used to identify the scope and significance of important environmental issues associated with a proposed Federal action through coordination with Federal, State, and local agencies; the public; and any interested individual or organization prior to the development of an impact statement. The process is also intended to identify and eliminate, from further detailed study, issues that are not significant or that have been covered by prior environmental review.

COASTAL ZONE MANAGEMENT ACT (16 U.S.C. §1451 et seq.)

The Coastal Zone Management Act (CZMA) provides for a state-federal partnership to manage the nation's coastal land and water resources, including the Great Lakes, and balances economic development with environmental conservation. This is achieved through enforceable State policies and procedures, including State and local regulatory controls and non-regulatory incentive programs. The CZMA establishes an extensive Federal grant program within the U.S. Department of Commerce to encourage coastal States to develop and implement coastal management programs (CMPs). Activities that affect coastal zones must be consistent with approved State CMPs.

State coastal zones include the coastal waters and adjacent shorelands that extend inland to the extent necessary to control activities that have a direct, significant impact on coastal waters. For Federal approval, a CMP must: (1) identify the coastal zone boundaries; (2) define the permissible land and water uses within the coastal zone that have a direct and significant impact on the coastal zone and identify the State's legal authority to manage these uses; (3) inventory and designate areas of particular concern; (4) provide a planning process for energy facilities siting; (5) establish a planning process to assess the effects of, and decrease the impacts from, shoreline erosion; and (6) facilitate effective coordination and consultation between regional, State, and local agencies. The National Oceanic and Atmospheric Administration (NOAA)

provides the requisite Federal approvals for CMPs and oversees subsequent implementation of the programs.

Under **section 307**, Federal agency activities that affect any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the State CMP. Federal license or permit activities that affect any land or water use or natural resource of the coastal zone must be fully consistent with the enforceable policies of the CMP. Federal agencies and applicants for Federal approvals must provide the State with a determination or certification that the activity is consistent with the CMP's enforceable policies. The State can either concur or object to the applicant's certification. The Secretary of Commerce, however, can override a State's objection to an applicant's certification if the Secretary finds that the Federal license or permit activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990 (16 U.S.C. § 1455b) requires States with federally approved coastal management programs to establish **Coastal Nonpoint Pollution Control Programs** to restore and protect coastal waters. Section 6217 requires States to implement management measures based on best available, economically achievable technology to address the impacts of five major sources of nonpoint pollution to coastal waters: agricultural runoff, silvicultural runoff, urban runoff, dams and shoreline erosion controls, and marinas and recreational boating. The program must include enforceable policies and mechanisms to ensure implementation of the measures. The program is jointly administered at the Federal level by NOAA and EPA, and at the State level by coastal management and water quality agencies.

Section 315 of CZMA establishes the **National Estuarine Research Reserve System** (NERRS). States may seek Federal approval and designation of certain areas as NERRS sites if the areas qualify as biogeographic and typological representations of estuarine ecosystems and are suitable for long-term research and conservation. Once an area is designated as a NERRS site, Federal financial assistance is available for acquisition of property and management, research, and education related to the NERRS.

The MMS adheres to the Department of Commerce Coastal Zone Management Act Federal Consistency Regulations, 15 CFR part 930, subpart F, when determining Federal Assistance eligibility such as CIAP.

The CZMA may be viewed at: http://coastalmanagement.noaa.gov/czm/czm_act.html

ENDANGERED SPECIES ACT (16 U.S.C. §1531 et seq.)

The Endangered Species Act (ESA) establishes a national program for the conservation of threatened and endangered species (T&E species) of fish, wildlife, and plants, and the ecosystems upon which they depend. It is administered by the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior (DOI) and the National Marine Fisheries Service (NMFS) of the U.S. Department of Commerce (DOC). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine species such as salmon and whales.

Under the ESA, species may be listed as either "endangered" or "threatened." "Endangered" means a species is in danger of extinction throughout all or a significant portion of its range. "Threatened" means a species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Threatened and endangered species for the coastal areas of the six CIAP States are discussed in Chapter 3. The ESA makes it unlawful for a person to take a listed animal without a permit. To "take" is defined for the ESA's purposes as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." The term "harm" is defined as "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." Listed plants are not protected from take, although it is illegal to collect or maliciously harm them on Federal lands.

Section 7 of the ESA requires Federal agencies to consult with the FWS or NMFS to ensure that actions they authorize, fund, or carry out will not jeopardize listed species or destroy or adversely modify the critical habitat of a listed species. Critical habitat includes geographic areas that contain the physical or biological features that are essential to the conservation of the species and that may need special management or protection. Critical habitat designations affect only Federal agency actions or federally funded or permitted activities. Critical habitat may include areas not occupied by the species at the time of listing but essential to its conservation.

Most consultations are conducted informally with the Federal agency or a designated non-Federal representative. Informal consultations determine: (1) whether listed species and critical habitat are in the area, (2) whether they may be affected and, if so, how the action could be modified to avoid adverse effects, and (3) whether a formal consultation is required.

As part of a formal consultation, FWS or NMFS provides a threshold examination and a biological opinion on the likelihood that the proposed activity will jeopardize the continued existence of the resource and on the effect of the proposed activity on the endangered species. The biological opinion may include recommendations for modification of the proposed activity. The FWS or NMFS may require the Federal agency to provide additional information or conduct appropriate biological studies if there is insufficient information to conclude that the proposed activity is not likely to jeopardize the species or its habitat. In the relatively few cases where the FWS or NMFS determines that the proposed action will jeopardize the species, FWS or NMFS must offer "reasonable and prudent alternatives" about how the proposed action could be modified to avoid jeopardy.

The ESA may be viewed at: http://www.fws.gov/endangered/esa.html

FISHERY CONSERVATION AND MANAGEMENT ACT (16 U.S.C. §1801 et seq.)

The Magnuson-Stevens Fishery Conservation and Management Act (FCMA) is the governing authority for all fishery management activities that occur in Federal waters within the United States's 200 nautical mile limit, or the Exclusive Economic Zone (EEZ). A primary purpose of the FCMA is to conserve and manage the fishery resources off the U.S. coasts and U.S. anadromous species and Continental Shelf fishery resources. The FCMA created eight Regional Fishery Management Councils (RFMCs) to protect fishery resources through preparation, monitoring, and revision of plans that allow for participation of States, the fishing industry, and

consumer and environmental organizations. The CIAP States are covered by three RFMCs: Gulf of Mexico Fishery Management Council (Texas, Louisiana, and Alabama, Mississippi); Pacific Fishery Management Council (California); and the North Pacific Fishery Management Council (Alaska).

In 1996 Congress passed the Sustainable Fisheries Act (Public Law 104-297) which amended the FCMA and refined the focus of fisheries management by emphasizing the need to protect fish habitat. Specifically, the Act required that fishery management plans identify as essential fish habitat (EFH) those areas that are necessary to fish for their basic life functions. EFH is defined as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish. "Substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities. "Necessary" means the habitat that is required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

An **EFH consultation** is required to provide an opportunity for NMFS to recommend ways for Federal agencies to avoid or minimize the effects of their actions on habitat that supports federally-managed commercial and recreational fisheries. The consultation provisions require: (1) Federal agencies to notify NMFS regarding a proposed action that may adversely affect EFH; (2) Federal agencies to consult with NMFS if they determine their actions may adversely affect EFH for federally managed species of fish; (3) NMFS to provide EFH conservation recommendations for any Federal or State agency action that would adversely affect EFH; and (4) Federal action agencies to respond to those recommendations in writing; if the action agency disagrees with NMFS advice, it must explain why.

The FCMA may be viewed at: http://www.nefsc.noaa.gov/magact/

MARINE MAMMAL PROTECTION ACT (16 U.S.C. §1361 et seq.)

The Marine Mammal Protection Act (MMPA) was enacted in 1972 to ensure that marine mammals are maintained at, or in some cases restored to, healthy population levels. The FWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus. The NMFS has jurisdiction over all other marine mammals. The agencies' responsibilities includes maintaining populations of marine mammals at optimum levels and developing conservation plans for populations that fall below this threshold level.

The MMPA establishes a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. The Secretary (of either DOI or DOC, depending on jurisdiction) may issue permits for taking and importation for scientific research, public display, photography for educational or commercial use, enhancing the survival or recovery of a species, or importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. To "take" is defined for the MMPA's purposes as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal."

The MMPA sets out procedures for the Secretary to allow unintentional taking of small numbers of marine mammals incidental to activities other than commercial fishing in a specified

geographic region, upon certain findings and with protective restrictions. This authorization requires public notice in the affected local communities.

The Secretary may issue permits which authorize the taking or importation of a marine mammal. A permit must be consistent with applicable regulations and specify the number and kind of animals authorized to be taken or imported, the location and manner in which they may be taken or imported, the period for which the permit is valid, and any other terms or conditions the Secretary deems appropriate. Additional requirements apply for specific types of permits. The Secretary may modify, suspend or revoke permits.

The Act does not apply to the taking of marine mammals by an Indian, Aleut, or Eskimo who resides in Alaska and dwells on the coast of the North Pacific Ocean or the Arctic Ocean, if the taking is done in a nonwasteful manner and is for subsistence purposes or for creating and selling authentic Native handicrafts and clothing. These takings may be regulated by the Secretary, however, if the population of the marine mammal is depleted.

The MMPA may be viewed at: http://www.nmfs.noaa.gov/pr/laws/mmpa/text.htm

CLEAN WATER ACT (33 U.S.C. §1251 et seq.)

The purpose of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. It is the principal law governing pollution of the Nation's surface waters. The Act has been termed a technology-forcing statute because of the rigorous demands placed on those who are regulated by it to achieve higher and higher levels of pollution abatement under deadlines specified in the law. Early on, emphasis was on controlling discharges of conventional pollutants (e.g., suspended solids or bacteria that are biodegradable and occur naturally in the aquatic environment), while control of toxic pollutant discharges has been a key focus of water quality programs more recently.

Subchapter III of the CWA requires the U.S. Environmental Protection Agency (EPA) to establish national effluent limitation standards for point sources of discharges that reflect the application of the best available control technology economically achievable. **Section 311** prohibits the discharge into the navigable waters of the United States of oil or hazardous substances that may affect natural resources, except under limited circumstances, and establishes civil penalty and enforcement procedures to be administered by the U.S. Coast Guard.

The National Estuary Program was established by Congress in 1987 as per **Section 320** of the CWA. This section enables EPA to develop plans that aid in improving estuarine water quality. There are currently 28 National Estuary Programs nationwide, and each has developed a Comprehensive Conservation and Management Plan (CCMP) to meet the goals of Section 320. Each CCMP addresses all aspects of environmental protection for the estuary. These include land use within the watershed, water quality, ecosystems and habitat, and living resources. These plans prioritize and plan research and actions to help improve or maintain health within each estuary (USEPA, 2007).

Section 401 of the CWA requires a water quality certification from the State in which the discharge originates or, if appropriate, from the interstate water pollution control agency with jurisdiction over navigable waters at the point the discharge orginates prior to the issuance of any Federal license or permit for activities that may result in any discharge into the navigable waters,

including all wetlands, watercourses, and natural and man-made ponds. Any conditions contained in a water quality certification become conditions of the Federal permit or license.

To achieve its objectives, the CWA embodies the concept that all discharges into the Nation's waters are unlawful, unless specifically authorized by a permit. Thus, more than 65,000 industrial and municipal dischargers must obtain permits from EPA (or qualified States) under the Act's National Pollutant Discharge Elimination System (NPDES) program (authorized in **section 402** of the Act). An NPDES permit requires the discharger (source) to attain technology-based effluent limits. Permits specify the control technology applicable to each pollutant, the effluent limitations a discharger must meet, and the deadline for compliance. Sources are required to maintain records and to carry out effluent monitoring activities. Permits are issued for 5-year periods and must be renewed thereafter for continued discharge to be allowed.

A separate type of permit is required to dispose of dredge or fill material in the Nation's waters, including wetlands. Authorized by **Section 404** of the Act, this permit program is administered by the U.S. Army Corps of Engineers, subject to and using EPA's environmental guidance. Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices that do not alter the use or character of the land; some construction and maintenance; and activities already regulated by States under other provisions of the Act. EPA may delegate certain section 404 permitting responsibility to qualified States but has done so only twice, in Michigan and New Jersey.

The CWA may be viewed at: http://www.epa.gov/region5/water/cwa.htm

CLEAN AIR ACT (42 U.S.C. §7401 et seq.)

The purpose of the Clean Air Act (CAA) is to protect public health and welfare. In compliance with the CAA and the 1977 and 1990 Clean Air Act Amendments (CAAA) EPA has promulgated the National Ambient Air Quality Standards (NAAQS) for the protection of the public health and welfare, allowing for an adequate margin of safety. EPA defines ambient air in 40 C.F.R. §50.1(e) as "that portion of the atmosphere, external to buildings, to which the general public has access." To date, EPA has issued NAAQS for six criteria pollutants: carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter with a diameter less than or equal to a nominal 2.5 microns ($PM_{2.5}$), particulate matter with a diameter less than or equal to a nominal 10 micrometers (PM_{10}), ozone (O_3), nitrogen dioxide (NO_2), and lead (Pb). An area that has air quality as good as or better than the NAAQS is termed as being in "attainment." An area with air quality poorer than the NAAQS is termed as being in "nonattainment." An area may be an attainment area for one pollutant and a nonattainment area for others.

Any Federal agency responsible for an action in a nonattainment area is required under EPA's general conformity rule (40 CFR 93) to determine that the action either is exempt from a conformity determination or conforms to the applicable State Implementation Plan (SIP) (40 CFR 52). Actions (40 CFR 51) are exempt when the total of all reasonably foreseeable direct and indirect emissions would be: (1) less than specified emissions rate thresholds, known as *de minimis*, and (2) less than ten percent of the area's annual emissions budget. If these conditions are met, then the requirement to demonstrate conformity is not applicable (i.e., conformity of the project is presumed). This process is to ensure that Federal agency actions will not cause or contribute to new violations, increase the frequency or severity of any existing violations, or delay the timely attainment of ambient air quality standards.

The CAA may be viewed at: http://www.epa.gov/oar/caa/

NATIONAL HISTORIC PRESERVATION ACT (16 U.S.C. §470 et seq.)

The National Historic Preservation Act of 1966 (NHPA) is the Nation's central historic preservation law. Oversight of the NHPA is provided by the Advisory Council on Historic Preservation (ACHP).

Under **Section 106** of the NHPA, Federal agencies are to consider the effects of their undertakings (including the issuance of permits, the expenditure of Federal funds, and Federal projects) on historic resources that are either eligible for listing or listed on the National Register of Historic Places. If an agency's undertaking could affect historic properties, the agency must determine if any historic properties are in the area of potential project effects. Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the State historic preservation officer (SHPO) and any Indian tribe that may attach religious or cultural importance to them.

If the agency finds that no historic properties are present or affected, it provides documentation to the SHPO and, barring any objection in 30 days, proceeds with its undertaking. If historic properties are present or affected, the agency, in consultation with the SHPO, makes an assessment of the adverse effects on the historic properties based on criteria found in ACHP regulations.

If the SHPO and agency agree that there will be no adverse effect**,** the agency proceeds with the undertaking and any agreed-upon conditions. If they find that there is an adverse effect**,** or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

The NHPA may be viewed at: http://www.achp.gov/NHPA.pdf

THE RIVERS AND HARBORS ACT (43 U.S.C. §403)

Section 10 of the Rivers and Harbors Act of 1899 authorizes the U.S. Army Corps of Engineers (USACE) to regulate virtually all structures or work within navigable waters of the United States (see 33 CFR Part 328.3 for definition of navigable waters). Virtually all projects in navigable waters must comply with Section 10.

Section 10 of the Rivers and Harbors Act may be viewed at:
http://www.epa.gov/owow/wetlands/regs/sect10.html

COASTAL BARRIER RESOURCES ACT (16 U.S.C. §3501 et seq.)

The purpose of the Act is to minimize the loss of human life, wasteful expenditure of Federal funds, and damage to fish, wildlife, and other natural resources of the coastal barriers by: restricting future Federal financial assistance for development of these areas; establishing a

Coastal Barrier Resources System; and considering ways in which long-term conservation of these resources may be achieved.

The Coastal Barrier Resources System consists of undeveloped coastal barriers and other areas in the coastal United States as identified on maps on file with the Secretary of the Interior. With limited exceptions, no new Federal expenditures or financial assistance may be used for any purpose within the System, including the construction or purchase of any structure, road, airport, boat landing facility, or bridge, or the stabilization of a shoreline area (except for emergencies threatening life, land, or property). Exceptions where Federal funding may be provided include facilities for the development of energy resources; projects for the study, management, and protection of fish and wildlife resources and habitats; scientific research; road maintenance and repair; and nonstructural projects to restore natural stabilization of shorelines. Each Federal agency affected by the Act must promulgate regulations to assure compliance with the Act and must annually report and certify to Congress and the Secretary that it is in compliance.

The Coastal Barriers Resources Act may be viewed at:
http://www4.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_55.html

RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. §6901 et seq.)

The purposes of the Resource Conservation and Recovery Act (RCRA) are to protect health and the environment and to conserve valuable material and energy resources by measures that include: providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation) to promote improved solid waste management techniques; prohibiting open dumping on land; assuring that hazardous waste is managed in a manner that protects human health and the environment; minimizing the generation and land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment; and establishing a viable Federal-State partnership to carry out the purposes of the Act.

This Act provides for comprehensive cradle-to-grave regulation of hazardous waste and authorizes environmental agencies to order the cleanup of contaminated sites. Since 1984, it has also called for the extensive regulation of underground storage tanks and the cleanup of contamination caused by leaking tanks. Federal facilities are required to comply with Federal, State, and local regulations and requirements for solid and hazardous waste and underground storage tanks to the same extent as private parties.

The Act establishes three distinct, yet interrelated, programs:

- *Solid Waste Program (Subtitle D)* – encourages States to develop comprehensive plans to manage nonhazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibits the open dumping of solid waste.
- *Hazardous Waste Program (Subtitle C)* – establishes a system for controlling hazardous waste from the time it is generated until its ultimate disposal – in effect, from "cradle to grave."
- *Underground Storage Tank Program (Subtitle I)* – regulates underground storage tanks containing hazardous substances and petroleum products.

RCRA may be viewed at:
http://www.law.cornell.edu/uscode/uscode42/usc_sup_01_42_10_82.html

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (42 U.S.C. §6901 et seq.)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), popularly known as "Superfund," provides for the cleanup of sites contaminated by hazardous substances. It authorizes the Federal government to clean up sites using the Hazardous Substance Superfund or other designated agency funds. It also imposes liability for cleanup on responsible parties and requires them to perform the cleanup, reimburse others for their cleanup expenses, or reimburse the fund when the fund is used to pay for cleanup. The Act requires that responsible parties pay damages to the Federal, State, or tribal government for the destruction or loss of, or injury to, natural resources.

A key provision of CERCLA deals with mandatory notification requirements regarding the release of hazardous substances into the environment. Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), known as the Emergency Planning and Community Right-to Know Act (EPCRA), also requires owners/operators of facilities that release designated hazardous substances or extremely hazardous substances to report such releases to state and local authorities.

EPA can take three types of actions to deal with abandoned hazardous waste sites:

Emergency response is used at a site that requires immediate action to eliminate serious risks to human health and the environment (for example, cleaning up chemicals spilled from an overturned truck on the highway).

Early action ("time critical") is used at a site posing a threat in the near future by preventing human contact with contaminants such as providing clean drinking water to a neighborhood, removing hazardous materials from the site, or preventing contaminants from spreading. Early actions may last a few days or up to several years.

Long-term action ("non-time critical") is used at a site where cleanup may take many years or decades (groundwater cleanups are frequently in this category).

Often both early and long-term actions are performed at the same time. For example, leaking storage drums may be removed in an early action while contaminated soil is cleaned up under a long-term action.

CERCLA may be viewed at:
http://www.law.cornell.edu/uscode/uscode42/usc_sup_01_42_10_103.html

E.O. 11988 – FLOOD PLAINS

E.O. 11988 requires Federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid direct and indirect support of flood plain development wherever there is a practicable alternative. In accomplishing this objective, "each agency shall provide leadership and shall take action to

reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by flood plains in carrying out its responsibilities" for the following actions:

- acquiring, managing, and disposing of Federal lands and facilities;
- providing Federally undertaken, financed, or assisted construction and improvements;
- conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

E.O. 11988 requires agencies to follow an eight-step process as part of their decisionmaking for projects that have potential impacts to or within the flood plain. The eight steps, which are summarized below, reflect the decisionmaking process required in section 2(a) of the order.

1. Determine if a proposed action is in the base flood plain (that area which has a 1 percent or greater chance of flooding in any given year).
2. Conduct early public review, including public notice.
3. Identify and evaluate practicable alternatives to locating in the base flood plain, including alterative sites outside of the flood plain.
4. Identify impacts of the proposed action.
5. If impacts cannot be avoided, develop measures to minimize the impacts and restore and preserve the flood plain, as appropriate.
6. Reevaluate alternatives.
7. Present the findings and a public explanation.
8. Implement the action.

E.O. 11988 may be viewed at: http://www.eh.doe.gov/nepa/tools/guidance/volume1/2-2-eo_11988.pdf

E.O. 11990 – WETLANDS

E.O. 11990 directs Federal agencies to "minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands." To meet these objectives, Federal agencies, in planning their actions, must consider alternatives to wetland sites and limit potential damage if an activity affecting a wetland cannot be avoided. The order applies to:

- acquisition, management, and disposition of Federal lands and facilities construction and improvement projects which are undertaken, financed, or assisted by Federal agencies; and
- Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulation, and licensing activities.

E.O. 11990 may be viewed at:
http://www.fsa.usda.gov/dafp/cepd/epb/exec_orders/EO11990.pdf

E.O. 12898 – ENVIRONMENTAL JUSTICE

This EO requires that Federal agencies conduct their programs, policies, and activities in a manner to ensure that individuals or populations are not excluded from participation in, or denied

the benefits of, or subjected to discrimination under such programs, policies, and activities because of their race, color, or national origin. The EO requires Federal agencies to incorporate into their NEPA documents analysis of the environmental effects of their proposed programs on minorities and low-income populations and communities. Environmental justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and interrelated social, cultural, and economic effects. In August 1994, the Secretary of the Interior directed DOI's bureaus to include environmental justice in NEPA documentation, and in February 1998, the CEQ issued guidance to assist Federal agencies in addressing environmental justice.

E.O. 12898 may be viewed at: http://www.epa.gov/fedrgstr/eo/eo12898.pdf

E.O. 13089 – CORAL REEF PROTECTION

The Executive Order on Coral Reef Protection requires Federal agencies whose actions may affect U.S. coral reef ecosystems to identify those actions and utilize their programs and authorities to protect and enhance the conditions of such ecosystems and, to the extent permitted by law, ensure that actions they authorize, fund, or carry out do not degrade the condition of that ecosystem. By definition, a U.S. coral reef ecosystem means those species, habitats, and other national resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, Territorial, or Commonwealth waters).

E.O. 13089 may be viewed at:
http://www.coralreef.gov/taskforce/pdf/executive_order13089.pdf

E.O. 13112 – INVASIVE SPECIES

This EO requires all Federal agencies to: identify any actions affecting the status of invasive species; prevent the introduction of invasive species; detect, respond to, and control populations of invasive species in a cost-effective and environmentally sound manner; provide for restoration of native species and habitat conditions in invaded ecosystems; and refrain from authorizing, funding, or carrying out actions that are likely to cause or promote the introduction or spread of invasive species, unless the agency has determined that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize risk or harm will be taken. The EO defines an "invasive species" as a species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

E.O. 13112 may be viewed at: http://www.invasivespeciesinfo.gov/laws/execorder.shtml

E.O. 13175 – CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

This EO requires executive agencies to respect Indian tribal self governance and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and tribal governments. Each agency shall have an accountable process to ensure meaningful and timely tribal input in the development of regulatory policies that have tribal implications.

E.O. 13175 may be viewed at: http://ceq.eh.doe.gov/NEPA/regs/eos/eo13175.html

E.O. 13186 – MIGRATORY BIRDS

E.O. 13186 directs Federal agencies to incorporate bird conservation considerations into agency planning, including NEPA analyses; report annually on the level of take of migratory birds; and generally promote the conservation of migratory birds without compromising the agency mission.

E.O. 13186 may be viewed at: http://www.fws.gov/migratorybirds/EO/migbrdeo.pdf

The Department of the Interior Mission

As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historical places; and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The Department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

The Minerals Management Service Mission

As a bureau of the Department of the Interior, the Minerals Management Service's (MMS) primary responsibilities are to manage the mineral resources located on the Nation's Outer Continental Shelf (OCS), collect revenue from the Federal OCS and onshore Federal and Indian lands, and distribute those revenues.

Moreover, in working to meet its responsibilities, the **Offshore Minerals Management Program** administers the OCS competitive leasing program and oversees the safe and environmentally sound exploration and production of our Nation's offshore natural gas, oil and other mineral resources. The MMS **Minerals Revenue Management** meets its responsibilities by ensuring the efficient, timely and accurate collection and disbursement of revenue from mineral leasing and production due to Indian tribes and allottees, States and the U.S. Treasury.

The MMS strives to fulfill its responsibilities through the general guiding principles of: (1) being responsive to the public's concerns and interests by maintaining a dialogue with all potentially affected parties and (2) carrying out its programs with an emphasis on working to enhance the quality of life for all Americans by lending MMS assistance and expertise to economic development and environmental protection.