

**COASTAL IMPACT ASSISTANCE PROGRAM
DRAFT GUIDELINES**

**The Department of the Interior
Minerals Management Service
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ABBREVIATIONS AND ACRONYMS

Act	Energy Policy Act of 2005
CFR	Code of Federal Regulations
CIAP	Coastal Impact Assistance Program
CPS	eligible coastal political subdivision
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Program
EA	Environmental Assessment
FONSI	Finding of No Significant Impact
FY	fiscal year
MHW	mean high water
MMS	Minerals Management Service
NEPA	National Environmental Policy Act
OCS	Outer Continental Shelf
Plan	Coastal Impact Assistance Plan
Secretary	Secretary of the Department of the Interior
State	eligible producing State
U.S.	United States
U.S.C.	United States Code

1. INTRODUCTION

The Energy Policy Act of 2005 (**Act**) has created the Coastal Impact Assistance Program (**CIAP**) by amending Section 31 of the Outer Continental Shelf Lands Act (*43 U.S.C. 1356a*; **Appendix A**). 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 (**CPS**). The funds allocated to each State are based on the proportion of qualified outer continental shelf (**OCS**) revenues offshore the individual State to total qualified OCS revenues from all States. 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. All funds shall be disbursed through a grant process.

This guidance has been developed by MMS to provide the information necessary for States to develop a Plan and submit it to MMS. States should develop Plans in coordination with their CPS's. Pursuant to the Act, a State must submit its Plan no later than July 1, 2008. The MMS's goal is to ensure Plans are approved and funds disbursed in the most efficient and expeditious manner possible. To facilitate this goal, MMS encourages States to submit their Plans by July 1, 2007. The MMS, however, will not accept Plans before October 2, 2006.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

Third paragraph: We remain concerned about the timeline for the Minerals Management Service's (MMS) publication of final CIAP guidelines (September 29, 2006). The State intends to begin implementing, with State funds, some of the projects to be included in Louisiana's CIAP Plan, well ahead of the initial CIAP funding allocations. Our expedited implementation schedule reflects the urgency of addressing Louisiana's severe coastal wetland losses, which were substantially accelerated by Hurricanes Katrina and Rita. We had planned to submit our CIAP Plan in June 2006, and to use the MMS Plan-review process to obtain reasonable assurances that the projects we would build prior to receipt of CIAP funds would very likely be reimbursable once MMS allocates the initial funding (provided that all other approval requirements are met). Thus, the October 2, 2006, initial plan-acceptance date is expected to delay submittal of our plan by approximately 4 months. That delay will impede our early implementation of high priority projects, unless we can mutually agree on an alternative means of obtaining reasonable assurances that a set of identified, CIAP eligible projects are likely to be approved for CIAP funding once MMS determines the initial allocations.

Mississippi:

No comment.

Texas:

No comment.

2. ELIGIBLE PRODUCING STATES AND COASTAL POLITICAL SUBDIVISIONS

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 CPS's (*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*)) 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 61 CPS's are eligible to receive CIAP funding (**Appendix B**).

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

3. COASTAL IMPACT ASSISTANCE PROGRAM ALLOCATIONS

The MMS shall determine CIAP funding allocations to States and CPS's using the formulas mandated by the Act (*Section 31(b)*). The Act directs that the funds allocated to States and CPS's for FY 2007 and 2008 be determined using qualified OCS revenues received for FY 2006; FY 2009 and 2010 funds shall be determined using the amount of qualified OCS revenues received for FY 2008.

The MMS intends to publish the allocations for each State and CPS on or before April 15, 2007, for FY 2007 and 2008 distributions and on or before April 15, 2009, for FY 2009 and 2010 distributions. The Act requires a minimum annual allocation of 1 percent to each State. The Act also provides that 35 percent of each State's share shall be allocated directly to its CPS's.

Alabama:

No comment.

Alaska:

No comment.

California:

We would appreciate publication of state and local political subdivision allocations as early as feasible. In addition, we would like to know what opportunities we may have to review MMS' methods to calculate the allocations to the states and political subdivisions. It would be preferable that we would have this opportunity prior to any formal and final announcement of the allocations.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

4. COASTAL IMPACT ASSISTANCE PROGRAM FUNDS

The CIAP funds will be disbursed to States and CPS's through a grant process. The MMS is currently developing this process. Upon completion, each State and CPS will receive guidance on the administrative and programmatic requirements of the grant process and how to access CIAP funds. The MMS will hold a workshop to review these requirements.

For planning purposes, grant recipients shall comply with 43 CFR Part 12, *Administrative and Audit Requirements and Cost Principles for Assistance Programs*.

Alabama:

No comment.

Alaska:

Based on this section, it is clear that MMS has not yet developed the CIAP grant application or disbursement process. Recognizing this, the State requests participation in and looks forward to working with MMS on developing the CIAP grant process. There are many issues and concerns the State has with regard to the CIAP grant process, and looks forward to a collaborative forum to discuss and resolve those issues.

California:

Aside from a workshop, please offer eligible recipients the opportunity to comment on the financial assistance process prior to finalizing it.

Louisiana:

We realize that the CIAP grant process is still being developed; we have some grant-specific questions and comments that we would like addressed during that process:

Will the grants have to be submitted (and maintained) online through the grants.gov website?

We recommend, in the development of the CIAP grants guidance, that MMS not require separate grants for each project. We can envision significant delays and administrative costs added to CIAP projects if grants would have to be amended if construction bids exceed grant budgets; we also foresee having to amend multiple grants to increase funding for a specific project. On the other hand, a programmatic grant could allow for funding adjustments administratively among multiple projects covered by the same grant. Please carefully consider the significant implications this has on the timely implementation of projects and on the administration of the entire CIAP program.

Finally, at your proposed grants workshop, we recommend including hands-on sessions for both administrative and accounting personnel from each state and CPS.

Mississippi:

No comment.

Texas:

Please specify a target date by which the MMS will provide information on the grant process.

Please specify a drawdown date for funds for each fiscal year to assist entities in establishing administrative procedures.

4.1. AUTHORIZED USES OF FUNDS

The Act (*Section 31(d)(1)*) stipulates that a State or CPS shall use CIAP funds only for one or more of the following purposes:

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 CIAP;
4. implementation of a federally-approved marine, coastal, or comprehensive conservation management plan; and
5. mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs.

The MMS shall require that all CIAP funds be used to directly benefit an authorized use. The use of CIAP funds to conserve, restore, enhance, and protect renewable natural resources is an action that would result in a direct benefit. An example of an action that would not result in a direct benefit would include but not be limited to the use of CIAP funds to support litigation or to fund publicity or lobbying efforts for purposes of influencing or attempting to influence a member of the U.S. Congress or an agency of the Federal Government (*43 CFR Part 18*).

Alabama:

Will expenditures towards educational efforts be authorized under any of the five stated uses?

We recommend that states be given the latitude to plan such activities provided that they can make an adequate link to the authorized uses.

Under use # 4, will acceptable federally approved plans include, but not be limited to, the following: Coastal Zone Management, National Estuarine Research Reserves, Comprehensive Conservation Management Plans developed by National Estuary Programs, Comprehensive Wildlife Conservation Strategy, Coastal Estuarine Land Conservation Program, Forest Legacy Program and U.S. Army Corps of Engineers coastal projects?

If a plan has been approved by a federal agency, we recommend that CIAP funds be eligible for implementing provisions of that plan.

Will land acquisition be subject to the 23% spending cap if it is attached to authorized uses 1,2 and 4?

We recommend that land acquisition, restoration and preservation activities not be subject to the spending cap.

Will MMS require use of federal 'yellow book' appraisal standards for appraisals associated with land acquisitions which are a component of a state CIAP plan?

We recommend use of such standards.

Will public access and capital improvement projects (i.e. boat ramps, boardwalks, parks, educational facility construction, etc.) be allowed under any of the stated authorized uses? We support the use of funding for such activities, provided that the necessary linkage is made to the authorized uses. Further, we understand that these kinds of projects, if they are contained in an approved federal plan as outlined in authorized use #4, will be allowable under the CIAP.

When a plan is submitted to MMS for review, is it acceptable to identify potential land acquisition targets by geographic area, habitat type or both, instead of identifying specific tracts?

Given the dynamic nature of land acquisitions, we recommend that states be given flexibility to target geographic areas or habitat types rather than specific tracts in the planning process. Specific tracts would be identified as part of the actual grant application for such an acquisition. We also advise that the process allow for inclusion of alternative tracts in the event that a primary target falls through.

Alaska:

The eligibility criteria for both coastal states and coastal political subdivisions are tied to the Coastal Zone Management Act of 1972 and the respective state's coastal zone. However, Section 4.1 includes terms such as "coastal areas," "fish, wildlife, or natural resources," "comprehensive conservation management plan," and "onshore infrastructure projects," but does not define the terms. The MMS draft guidelines do not appear to limit the uses of CIAP grant monies to outer Continental Shelf (OCS) activity impacts, or to projects or activities that are specifically within the State's coastal zone (and by extension, the coastal zone boundaries of the eligible coastal political subdivisions). The State believes that this is the correct approach, and recommends that MMS revise Section 4.1 to clarify that authorized uses of CIAP grant funds are not limited to OCS activity impacts or to projects, activities, or initiatives solely within the coastal zone. In addition, it should be clarified that funding may be authorized for projects, activities, and initiatives that affect the coastal zone or its resources, and that may be located interior to the State's coastal zone, but within a coastal resource district's political boundary.

California:

No comment.

Louisiana:

No comment.

Mississippi:

A listing of sample projects that would likely be eligible for funding by CIAP for each authorized use should be included in this Chapter. This would be helpful for the designated state agency before the Request for Proposals process is initiated.

Are we going to get any guidance on reasonable and acceptable administrative costs?

Texas:

Please provide a more detailed description of what constitutes a "*direct benefit*."

State programs should be allowed to apply for and receive an allocation from CIAP funds to conduct pre-planning work for potential state CIAP projects.

4.2. RESTRICTIONS ON THE USE OF FUNDS

4.2.1. Cost Sharing or Matching of Funds

As a general rule, unless provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant (43 CFR Part 12). Thus, the standard on whether CIAP funds can be used to meet a cost sharing or matching requirement under another Federal grant program is set by the other granting agency, the agency that originated the cost-sharing requirements.

States and CPS's will be required to submit a letter with their grant application authorizing the use of CIAP funds for the required non-Federal cost share or match. This letter must be obtained from the agency that originated the cost sharing or matching requirement.

Alabama:

No comment.

Alaska:

The State understands the general restrictions on the cost sharing and matching requirements of other Federal grant funds under 43 C.F.R. 12. However, recognizing that the CIAP grant monies are generated through the revenues of qualified outer Continental Shelf activities off the producing state's coastline, the State would like to see the CIAP grant monies eligible for cost sharing and matching requirements for certain projects and programs. With approximately 44,500 shoreline miles, 179,071 square miles of coastal zone upland, and 73,615 square miles of seaward coastal zone, there is a wealth of land/water but only a fraction of the money needed to inventory and manage those lands/waters. There are a number of valuable and relevant Federal grant sources that are available for projects throughout Alaska. However, many of those Federal grant sources require some sort of non-Federal cost sharing or match requirement, which becomes the limiting factor in accomplishing important resource inventory and management initiatives. The State recommends that MMS revise section 4.2.1. to allow greater flexibility in using the CIAP grant monies for cost sharing and matching requirements, amend the Federal statute to allow such, and as appropriate identify those other Federal grant programs that allow CIAP grant monies to meet the cost sharing and matching requirements.

California:

No comment.

Louisiana:

The issue of using CIAP funds as a match/cost-share for federally funded activities is key to Louisiana's Plan development and implementation process. We strongly recommend that MMS not require a new letter from the involved Federal agency each time a grant request is made for a similar type of project with identical restrictions/allowances. We recommend that MMS, instead, accept copies of generic approval letters from the involved Federal agency regarding the use of CIAP funds for certain types of projects. For instance, the Corps of Engineers might issue such a letter from their national or division headquarters, indicating that they authorize the use of CIAP funds as a non-Federal match for specified types of coastal restoration projects, and the State could provide a copy of that letter with each CIAP grant applications involving such projects.

Consolidated comments from PACE (Parishes Against Coastal Erosion) indicated that the guidelines should provide as much information as possible regarding the use of CIAP funds for the required non-federal match. The coastal parishes want to leverage their CIAP allocations by using them as matching funds for such federal programs or grants, and the State endorses that approach.

Mississippi:

No comment.

Texas:

No comment.

4.2.2. Funds Distribution Limitation

Pursuant to the Act, not more than 23 percent of the amounts received by a State or CPS for any one fiscal year shall be used for the following authorized uses: planning assistance and the administrative costs of complying with CIAP, and mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs. For the latter purpose, States should describe in their project description how the project will mitigate the impact of OCS activities (**Chapter 5.2.7**). The 23

percent spending restriction only applies to onshore infrastructure and public service needs, not offshore infrastructure.

For CIAP purposes, *infrastructure* shall be defined as public facilities or systems needed to support commerce and economic development; it may include, but is not limited to, buildings, roads, trails, parks, bridges, utility lines, wastewater treatment facilities, detention/retention ponds, seawalls, breakwaters, piers, and port facilities. Funding of infrastructure projects encompasses land acquisition, new construction, and upgrades and renovations to existing facilities or systems, but does not include maintenance or operating costs for the facilities or systems.

For purposes of distinguishing between onshore and offshore infrastructure, any infrastructure constructed entirely above mean high water (MHW) shall be considered as *onshore infrastructure* while any infrastructure or portion of infrastructure constructed below MHW shall be considered as *offshore infrastructure*. The MHW is the average elevation of high water recorded from a rising tide at a particular point or station over a considerable period of time, usually 19 years.

Alabama:

No comment.

Alaska:

Within this section, the phrase "...and mitigation of the impact of OCS activities through ...and public service needs." The State recommends that MMS define or otherwise clarify what projects and activities would qualify as a "public service need."

California:

We believe the proposed definition of *infrastructure*, for purposes of CIAP, is too broad. We recognize that a definition is useful to ensure compliance with Section 31(d)(3), specifying that only 23% of CIAP funds may be used for planning assistance and the administrative costs of complying with this section, and for mitigation of the impact of OCS activities through funding of onshore infrastructure project and public service needs. However, trails, roads, and parks often are associated with authorized uses of the CIAP that carry no such restrictions; i.e., 1) projects and activities for the conservation, protection, or restoration of coastal areas, including wetland; and 2) mitigation of damage to fish, wildlife, or natural resources. Consider, for example, bridge replacement (or replacing an Arizona crossing with a bridge) solely or primarily for purposes of providing steelhead access to historic upstream breeding waters. Trails often accompany restoration projects as a means of protection, keeping the public away from sensitive areas. Roads, particularly temporary roads, are often used in habitat restoration projects. Accordingly, we ask that the MMS more generally define *infrastructure* more consistently with the intent of the enacting legislation.

Louisiana:

The list of authorized CIAP fund uses (Section 4.1) does not mention *infrastructure* except in authorized use 5. (i.e., mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs), to which the 23% limitation on CIAP expenditures applies. **Paragraph 2** defines infrastructure as "... public facilities or systems needed to support commerce and economic development" **Paragraph 1**, however, indicates that the 23% limitation does not apply to offshore infrastructure. The final guidelines should be revised to clearly indicate whether (and what types of) any infrastructure-related expenditures are authorized under uses 1. (conservation, protection and restoration of coastal areas), 2. (mitigation of damage to fish, wildlife, or natural resources), and 4. (implementation of a federally approved marine, coastal, or comprehensive conservation management plan), and, if so, whether they are subject to the 23% limitation.

A coastal parish contact recently questioned whether “protection . . . of coastal areas . . .” as included in authorized use 1. might allow CIAP funding of hurricane protection infrastructure to prevent flooding of coastal communities.

We recommend that the final guidelines define “*public service needs*.” For instance, would providing flood protection to developed areas or improving road service to public port facilities meet that definition? The guidelines should also clarify whether projects to mitigate the impact of OCS activities on “public service needs” must be located onshore, and should confirm whether those projects must have linkage to OCS impacts.

A large majority of Louisiana’s more-than 3 million acres of coastal wetlands is located below the mean high water line. Using the definition in **paragraph 3** of this section, none of those lands would be considered “*onshore*.” Thus, we are concerned that the definition of “*onshore*”, as included in this section, might rule out CIAP expenditures for infrastructure projects, such as hurricane protection levees, floodgates, highways and port facilities, needed to mitigate OCS-caused impacts, if such projects are located below the mean high water line. This might not be a concern if such projects are deemed by MMS to qualify as “*public service needs*” under authorized use 5, and do not have to be located “onshore”, as defined in the draft guidelines. Depending on MMS’s responses to these questions, we may provide additional recommendations regarding the definition of onshore infrastructure in the final guidelines.

PACE requested further definition of “*infrastructure*.” Several parishes are planning “bricks and mortar” projects which they believe will contain an infrastructure component but will also have significant habitat restoration and environmental protection aspects. PACE also requested that, for projects which meet multiple authorized CIAP uses, costs for each such project be distributed proportionally to each applicable authorized use. This should include clarification of how the 23% funding cap would apply in such cases.

The draft guidelines state that: “Funding of infrastructure projects encompasses land acquisition, new construction, and upgrades and renovations to existing facilities or systems, but does not include maintenance or operating costs for the facilities or systems.” We suggest that the final guidance clarify that land acquisition (fee title or easements) is only considered infrastructure if it is related to the implementation of an infrastructure project, and that land acquisition could be part of a conservation project (or its implementation) as defined by CIAP authorized uses of funds definitions 1, 2 or 4 as listed in Section 4.1.

Mississippi:

Any percent restrictions on offshore infrastructure projects?

Texas:

Please clarify how the 23 percent limitation will apply to specific awards. The limitation should apply to individual awards, not individual fiscal years. Projects funded under CIAP grants may run for four years and combined funding for individual awards may total more than 23 percent during a single fiscal year.

Please exclude from the definition of “*onshore infrastructure*” the following activities: beach nourishment and similar activities, restoration of dunes without a structural core, construction of parks, recreational piers, walkways, trails and land acquisition.

If such activities are excluded from the *onshore infrastructure* definition, the guidelines should clarify how the cost of constructing facilities that are both onshore and offshore should be prorated to determine the 23 percent limitation on onshore infrastructure.

If more than 50 percent of a project is located below mean high water, the entire project should be considered *offshore* for the purposes of the 23 percent limitation.

In the event that beach nourishment, dune restoration, construction of parks, recreational piers, walkways, trails and land acquisition are excluded from the *infrastructure* definition, funding for operating costs of such facilities should be excluded as well.

If the projects described in **paragraph 2**, above, are excluded from the definition of “*onshore infrastructure*,” please provide that recurring funding required for the operating costs for the continuing upkeep of such projects will also be excluded from the definition of “*onshore infrastructure*”.

If the projects described in **paragraph 2**, above, are included in the definition of “*onshore infrastructure*,” please clarify how the costs of constructing piers and walkways that might be partially onshore and partially offshore should be prorated in determining the 23% limitation. It is suggested that if more than 50% of the area of a pier or walkway is below mean high water, the entire project should be considered *offshore infrastructure*.

Please provide a definition of “*mean high water*.”

4.3. COMPLIANCE WITH AUTHORIZED USES OF FUNDS

If MMS determines that any expenditure made by a State or CPS is inconsistent with the uses authorized under the Act (**Chapter 4.1**), MMS shall not distribute additional CIAP funds to that State or CPS until such time as all amounts obligated for unauthorized uses have been repaid or reobligated to authorized uses.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

Please consider providing alternative remedies to enforce the authorized use provisions. For example, MMS may find that an entity has expended funds for an unauthorized use while the grant recipient disputes that finding. Rather than suspending all funding to the entity until the dispute has been resolved, the guidelines should provide a mechanism for dispute resolution such as mediation or arbitration before cutting off funds for other undisputed CIAP grants.

4.4. INCURRING COSTS BEFORE PLAN 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 a project. If a State or CPS chooses to begin work on a proposed

project prior to approval, they do so at their own risk. Only those costs incurred after August 8, 2005, the Act's enactment date, for projects, which are in compliance with the Act and these guidelines, shall be considered for funding.

Alabama:

If we hire dedicated program staff, prior to plan and grant application approval, will those costs be reimbursable once the funding is available in 2007?

This is our understanding and recommendation.

Alaska:

No comment.

Louisiana:

We recommend that the words "for projects" be removed from the **third sentence** of this section. This would allow CIAP plan preparation costs to be recouped by states and their political subdivisions.

Mississippi:

We do not find this Chapter consistent with Section 31(b)(2) of the Act. To be consistent with the Act, the **first sentence** of this Chapter should be rewritten as follows:

The MMS shall not disburse any CIAP funds to a State or CPS until MMS has approved the State's Plan.

How will costs incurred after August 8, 2005 and before Plan approval be handled?

Texas:

No comment.

4.5. ESCROW ACCOUNT

As authorized in the Act (*Section 31(b)(5)(B)*), MMS shall hold all CIAP funds in escrow. Funds disbursement will be contingent upon Plan and grant approval. If a State is not making a good faith effort to develop, submit, or revise its Plan (**Chapter 5.1**), MMS may allocate those funds to the remaining States and CPS's. Any interest generated from a CIAP escrow account shall accrue to the benefit of the Federal Government (43 CFR 12.61(h) (i)).

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

We do not find this Chapter consistent with Section 31(b)(2) of the Act. To be consistent with the Act, the **second sentence** of this Chapter should be rewritten as follows:

Funds disbursement will be contingent upon Plan approval.

Texas:

The guidance document should clarify the amount of funding that an entity may draw down in advance of a project.

Clarification on the treatment of interest earned on escrowed funds should be provided.

4.6. SUB-GRANTS AND PROJECT FUNDING

Only States and CPS's shall receive CIAP funds. States and CPS's, however, may issue sub-grants to other State or local agencies, universities, or other entities so long as such sub-grants and their respective projects are explicitly described in its Plan.

All projects do not need to be undertaken solely within a State's coastal zone. States and CPS's may also combine their allocations to fund mutually beneficial projects. The location of all such projects and the funding combinations for the project must be described in the State's Plan.

A State or CPS may not receive less than its authorized allocation unless MMS finds that the proposed uses of funds are inconsistent with the Act or if a State or CPS chooses to relinquish some or all of its allotted funds.

Alabama:

While the guidance clearly states that projects do not need to be undertaken solely within a State's coastal zone, we intend to limit the program boundary in the plan that we submit to MMS for review. We will likely limit the program boundary to the "coastal watersheds" defined by NOAA in its 1992 Coastal Zone Boundary Review as those 8-digit hydrologic cataloguing units that contain head of tide. Applying this boundary to the state CIAP would be consistent with our coastal and estuarine land conservation program. Is this acceptable?

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

4.7. TIME LIMITATION OF FUNDING

The Act does not provide a time limit for the use of CIAP funds. However, a MMS grant to a State or CPS will need an end date. The MMS will issue grants for a 4-year award period in which funds should be obligated. A no-cost extension of the award may be requested by a State or CPS; MMS will approve these requests on a case by case basis.

Alabama:

No comment.

Alaska:

[Comment applies to both Section 4.7 and Section 5.2.6]

The guidelines establish that projects be funded with specific fiscal year allocations, and that the grant shall be issued for a 4-year award, with the possibility of a no-cost extension. The State of Alaska expects to receive at least the minimum CIAP allocation, or approximately \$2.5 million annually. Based on the allocation formula, 35% of that money will go directly to the eligible coastal political subdivisions, or approximately \$875,000, with 50% of that amount going to only two of the eligible coastal political subdivisions, leaving approximately \$437,500 to be split between all eight of the eligible coastal political subdivisions based on the formula related to coastal population and number of miles of coastline. If these approximate numbers hold true, six of the eight eligible coastal political subdivisions may be eligible for an annual CIAP grant of ~\$50,000. While this is important, that amount may not be enough to secure or fund certain projects on an annual basis. The State recommends that MMS revise Section 5.2.6. and/or other sections to clarify that grant monies from multiple fiscal years can be combined for a single project. As well, in the case where grant monies from multiple fiscal years can be combined for a single project, the State recommends that MMS clarify whether, how, and when the CIAP grant monies are distributed, and the details of how the State or an eligible coastal political subdivision would establish and place those grant monies in an interest bearing trust fund account, as identified in Section 31(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a).

California:

No comment.

Louisiana:

No comment.

Mississippi:

Can DMR put a time limit on CPS's different from the State?

Texas:

No comment.

5. COASTAL IMPACT ASSISTANCE PLAN

In order to receive coastal impact assistance, the Governor of each State must submit a Plan to MMS for review and approval. In preparing the Plan, a Governor must solicit local input and provide for public participation in the development of the Plan.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

5.1. PLAN SUBMITTALS

States are requested to submit both a draft and final version of its Plan to MMS. Pursuant to the Act (*Section 31(c)(1)(A)*), a final Plan must be submitted no later than July 1, 2008. To facilitate the distribution of funds, MMS encourages States to submit their final Plan by July 1, 2007; however, MMS will not accept final Plans prior to October 2, 2006. States that are unable to submit their final Plan by July 1, 2008, are instructed to send a letter to MMS describing their Plan development process and a target date for Plan submittal. Based on the information supplied in this letter, MMS will consider granting a waiver to the July 1, 2008 submittal date if it determines that the State is making a good faith effort to develop and submit, or update, its Plan.

All Plans (draft and final) and correspondence should be sent to both the National CIAP Coordinator and the State's Regional CIAP Representative:

All States:

MMS National CIAP Coordinator
Minerals Management Service
381 Elden Street
Mail Stop 4041
Herndon, Virginia 20170

Alaska:

MMS Regional CIAP Representative
Minerals Management Service
Alaska OCS Region
3801 Centerpoint Drive
Suite 500
Anchorage, Alaska 99503

Alabama, Louisiana, Mississippi, and Texas:

MMS Regional CIAP Representative
Minerals Management Service
Gulf of Mexico OCS Region

1201 Elmwood Park Boulevard
MS 5400
New Orleans, Louisiana 70123

California:

MMS Regional CIAP Representative
Minerals Management Service
Pacific OCS Region
770 Paseo Camarillo
Camarillo, California 93010

Draft Plans should be submitted to MMS when they are made available for public review (**Chapter 5.3.2**); one hard copy (unbound) and one digital copy on compact disk (in Microsoft Word) should be sent to both the National CIAP Coordinator and the State's Regional CIAP Representative.

Final Plans must be submitted to both the National CIAP Coordinator and the State's Regional CIAP Representative. States are directed to send one hard copy (unbound) and one digital copy on compact disk (in Microsoft Word) to each of these contacts.

For further information on Plan submittals, contact the National CIAP Coordinator at (703) 787-1717 or CIAPcoordinator@mms.gov.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

Please clarify whether a final plan must include any substantive elements not required in a draft plan and whether a final plan could be submitted without the prior submission of the draft plan. For clarification, the term "draft" could be replaced with the word "proposed" in reference to the first plan submission. The proposed plan would thus be released for public comment and MMS review and the final plan would be the version incorporating the state's response to comments.

Additional information on the timeframe for an MMS response to the submission of a state plan is needed.

Additional information on the length of time a state will have to submit a final plan following MMS review and response is also needed.

5.2. PLAN REQUIRED COMPONENTS

The Act (*Section 31(c)(2)(b)*) lists five elements that must be included in a Plan. The MMS recommends States follow the format and instructions provided in **Appendices C, D, and E**. **Appendix C** presents a recommended table of contents, while **Appendix D** includes a recommended format for

project lists (**Chapter 5.2.6**) and **Appendix E** includes a recommended format for proposed project descriptions (**Chapter 5.2.7**). The submittal of standardized Plans will expedite the review process.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

It appears that a project will be submitted in three different formats (Appendix E. Proposed Project Description – 6 pgs; Appendix F. Additional Information Required in the Grant Application – 20 pgs; and the final grant application that will be used for final approval by MMS for the individual CIAP projects). Can this entire process be condensed with use of one application process?

Texas:

No comment.

5.2.1. Designated State Agency

A Plan must provide the name of the State agency that will have the authority to represent and act for the State in dealing with MMS for CIAP purposes. A point of contact for the designated agency and their contact information (title, address, telephone number, fax number, and e-mail address) must also be provided.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

5.2.2. Designated Contact for Coastal Political Subdivisions

For each CPS, a Plan must provide the name of a point of contact and their contact information (title, address, telephone number, fax number, and e-mail address). Each Plan must also include a description of how each CPS shall use its CIAP funds (**Chapter 5.2.5**).

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

5.2.3. Governor's Certification of Public Participation

A Plan must include a certification by the Governor that sufficient opportunity has been provided for public participation in the development and revision of a Plan. The certification is to be included in the Plan and can be provided in the form of a letter or other document signed by the Governor.

Public participation can be achieved through a variety of means, e.g., use of advisory committees; commission meetings; informal public workshops; and formal public hearings. At a minimum, States should provide adequate public notice of Plan availability and provide a 30-day public comment period on the Plan. It is recommended that States involve relevant Federal, State, and local agencies in their review and comment process.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

What level of public participation is acceptable? Are we going to get more guidance on this issue?

Texas:

No comment.

5.2.4. Coordination with Other Federal Resources and Programs

A Plan must describe the measures taken to determine the availability of assistance from other relevant Federal resources and programs for proposed Plan projects. Examples of other Federal resources and programs include, but are not limited to the following: Coastal Zone Management Programs (CZMP); National Estuarine Research Reserves; U.S. Army Corps of Engineer programs for shoreline

protection and conservation of coastal resources; National Marine Sanctuaries; federally funded conservation, development, or transportation projects; and federally mandated activities such as wetlands or endangered species protection.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

Does this mean in the review process we would have to determine if there are other suitable means of funding for a project? If so, would we be responsible to see that the applicant take the necessary steps to obtain these funds? Or could we simply take the applicants statement that all other applicable resources have been reviewed and applied?

Texas:

No comment.

5.2.5. Plan Implementation Program

The Act (*Section 31(c)(2)(B)(ii)(II)*) requires that each State Plan contain a program for the implementation of the Plan, describing how CIAP funds will be used. The State and its CPS's should ensure that the goals and objectives identified in the State Plan do not create conflict between statewide and local program implement. The implementation program description should include:

- a description of the State/CPS goals and objectives under the Program;
- a description of how the State/CPS will manage, implement, and monitor the Program;
- a description of the State/CPS public participation process including: the dates and periodicals in which notices are placed; the locations, dates, and times of meetings and the number of attendees; and a summary of public comments on the draft Plan;
- a discussion of the State/CPS decisionmaking process for selecting projects;
- a discussion of how the State/CPS plans to ensure compliance with all relevant Federal, State, and local laws including each State's Coastal Zone Management Program (**CZMP**);
- a description of the major activities and/or categories to be funded under the Program (e.g., infrastructure, habitat restoration, mitigation, etc.); and
- an estimate of the amount of funds, by State and CPS, that will be spent annually on each authorized use.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

5.2.6. Proposed Project Lists

Each State must include in its Plan a list of projects the State and its CPS's anticipate submitting for CIAP grant funding. To minimize the number of Plan amendments (**Chapter 5.4**), States may provide a list of proposed State and CPS projects for FY 2007, 2008, 2009, and 2010 allocations. At a minimum, the Plan must identify all proposed projects to be funded with FY 2007 allocations. States will be required to submit to MMS (**Chapter 5.1**) an annual updated proposed State and CPS project list. This list can differ from the original submittal but may constitute a Plan amendment.

Each State must submit the above list of State and CPS projects showing costs by authorized use to demonstrate compliance with the 23 percent spending limitation (**Chapter 4.2.1**). The format provided in **Appendix D** should be followed.

The MMS recommends proposed projects be prioritized into two tiers. Tier 1 projects would be submitted by States and CPS's for grant funding and would be anticipated to utilize 100 percent of CIAP allocation. If a Tier 1 project is cancelled, scaled back, or deferred, States and/or CPS's may then submit a Tier 2 project for grant funding without having to amend the Plan (**Chapter 5.3**). Proposed project lists should be submitted by Tier 1 and Tier 2 projects (**Appendix D**).

Alabama:

No comment.

Alaska:

[Comment applies to both Section 4.7 and Section 5.2.6]

The guidelines establish that projects be funded with specific fiscal year allocations, and that the grant shall be issued for a 4-year award, with the possibility of a no-cost extension. The State of Alaska expects to receive at least the minimum CIAP allocation, or approximately \$2.5 million annually. Based on the allocation formula, 35% of that money will go directly to the eligible coastal political subdivisions, or approximately \$875,000, with 50% of that amount going to only two of the eligible coastal political subdivisions, leaving approximately \$437,500 to be split between all eight of the eligible coastal political subdivisions based on the formula related to coastal population and number of miles of coastline. If these approximate numbers hold true, six of the eight eligible coastal political subdivisions may be eligible for an annual CIAP grant of ~\$50,000. While this is important, that amount may not be enough to secure or fund certain projects on an annual basis. The State recommends that MMS revise Section 5.2.6. and/or other sections to clarify that grant monies from multiple fiscal years can be combined for a single project. As well, in the case where grant monies from multiple fiscal years can be combined for a single project, the State recommends that MMS clarify whether, how, and when the CIAP grant monies are distributed, and the details of how the State or an eligible coastal political subdivision would establish and place those grant

monies in an interest bearing trust fund account, as identified in Section 31(d) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a).

California:

No comment.

Louisiana:

PACE requested clarification regarding the difference between *Tier 1 and Tier 2 projects*. The current text indicates that Tier I projects are anticipated to use 100 percent of the CIAP allocation. We agree that greater clarity is needed, as the State and parishes will share in the costs of some proposed projects. Thus, it is likely that some parishes will include all of their funds, and some funds from the State, other parishes, and possibly other entities, in their list of Tier 1 projects.

PACE has also asked whether is it desirable or mandatory to include all such shared costs in the State's and parishes' Tier 1 list. Please confirm that a state's or parish's Tier 2 list is basically a "fallback" list for use if one or more of the Tier 1 projects for the state or that particular parish cannot proceed.

Also, please verify that elevation of a Tier 2 project to Tier 1 for such reasons constitutes a minor change and will not require an amendment to the State's approved CIAP Plan.

Mississippi:

No comment.

Texas:

No comment.

5.2.7. Proposed Project Descriptions

For each proposed project, the Plan should include:

- a brief summary (1-2 pages) of the project including goals and objectives;
- a brief explanation (1-2 pages) of how the project is consistent with one or more of CIAP's authorized uses (**Chapter 4.1**); if funding onshore infrastructure projects or public service needs, include how the project will mitigate the impact of OCS activities; and
- a brief description of intent to use CIAP funds for cost sharing or matching purposes with acknowledgement that the State and/or CPS will be required to submit a letter with their grant application authorizing the use of CIAP funds for the required non-Federal cost share or match; this letter must be obtained from the agency that originated the cost sharing or matching requirement (**Chapter 4.2.1**).

Appendix E provides a recommended format for the individual State and CPS project descriptions to be included in the Plan. **Appendix F** provides a format for submitting additional information that will be required in the grant application. States should include this information in their Plan if available at the time of submittal.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

PACE asked if the State would prepare the necessary documentation (Appendices E and F) required by MMS for each coastal political subdivision's initial project submittal. They noted that the form that the State requested from the parishes for project proposals is different from what MMS is requesting. The State hereby confirms that DNR's technical staff will continue to work closely with the coastal parishes to help ensure that the information contained in Louisiana's CIAP Plan will meet MMS's requirements.

Mississippi:

No comment.

Texas:

No comment.

5.3. MINOR CHANGES AND AMENDMENTS TO A PLAN

Section 31(c)(3) of the Act states that any amendment to the Plan shall be prepared according to the requirements and procedures of the Plan. The MMS shall have 90 days from receipt of a Plan amendment to approve or disapprove it.

The MMS recognizes that not all revisions to a Plan shall constitute an amendment but may involve minor changes. For CIAP purposes, MMS has developed definitions and processes for minor changes and amendments to a Plan.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

Please clarify the process that will be followed in cases where a state submits a minor change that MMS determines is a plan amendment or otherwise objects to the submission.

Please clarify how MMS will inform the designated state agency of approval of a minor change submission.

Please clarify that the submission of a Tier 2 project listed on a state project list will, in all instances, be a minor change.

Please clarify that the addition or removal of any project, including a previously unlisted Tier 2 project, to the project list is a plan amendment.

5.3.1. Minor Changes to a Plan

A *minor change* is defined as a revision to a Plan that does not affect the overall scope or objective of an approved Plan. Minor changes may be undertaken by notifying MMS (**Chapter 5.1**) in writing of the proposed change; within 30 days of receipt, MMS shall acknowledge in writing the notification for a minor change.

Minor changes include, but are not limited to

1. changing the contact person for the State or CPS (**Chapters 5.2.1-2**) and
2. submitting a Tier 2 project for grant funding (**Chapter 5.2.6**).

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

Please clarify whether a budget amendment of up to 10% of an individual grant will be considered a minor change to a plan, or whether there will be separate guidelines for individual grant administration.

Please provide additional information on the extent to which changes to individual grants will be considered minor changes or amendments to a plan.

5.3.2. Amendments to a Plan

An *amendment* is defined as a revision to an approved Plan that alters the overall scope or objectives of an approved Plan. States must submit to MMS all amendments to a Plan; amendments may be submitted once a calendar quarter.

Amendments include, but are not limited to

1. a change to the Implementation Program (**Chapter 5.2.5**) and
2. an addition and removal of a project from the Proposed Project Lists (**Chapter 5.2.6**).

Alabama:

No comment.

Alaska:

No comment.

California:

Sub-item two under this section appears to conflict with the third paragraph of section 5.2.6, wherein the latter allows cancellation or removal of a project from the list and replacement with another project from Tier 2 without having to amend the plan. The former characterizes removal of a project as an amendment. Please reconcile.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

6. COASTAL IMPACT ASSISTANCE PLAN REVIEW AND APPROVAL

The MMS will determine within 20 days after receipt of a Plan or Plan amendment whether additional information is needed. If no deficiencies are identified and the required number of copies has been received, the Plan or amendment will be deemed complete. Once a Plan or amendment is determined complete, MMS has 90 days to approve or disapprove it (*Section 31(c)(4)*). If a Plan or amendment is not approved, the State may revise and resubmit it. The MMS will then have 20 days to determine completeness; once completeness has been attained, MMS will then have 90 days to approve or disapprove the revised Plan or amendment.

The MMS's approval of a Plan should not be construed as final funding approval of the individual State and CPS projects incorporated in that Plan. As part of the Plan approval process, MMS will review those projects identified in a Plan for overall consistency with the requirements set forth in Section 31(d)(1) of the Act, *Authorized Uses (Chapter 4.1)*. However, individual CIAP projects will be given final funding approval by MMS independently of Plans through the grant application and approval process (**Chapter 4**). States should be aware that MMS, as the Federal funding agency, is also responsible for verifying compliance with all Federal, State, and local authorities (**Chapter 8**) prior to disbursement of funds.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

Per PACE's request, please clarify how a project could be approved (by MMS) as part of the state Plan and consistent with the requirements set forth in Section 31(d) (1) of the Act (*Authorized Uses*) and not be approved during the grant application and approval process.

Will different criteria apart from the authorized uses be used to determine if projects are approved during the grants application and approval process?

PACE has noted that the previous CIAP program, implemented through NOAA, worked very well overall, allowing projects to be constructed in a timely manner. They asked that steps be taken to mimic that program as much as possible; the State also encourages continued discussions between NOAA and MMS to make use of streamlining mechanisms that may have been developed during the administration of the previous CIAP program.

Mississippi:

We would suggest that **paragraph two** of this Chapter be rewritten as follows:

The MMS's approval of a Plan should not be construed as final funding approval of the individual State and CPS projects incorporated in that Plan. As part of the Plan approval process, MMS will review those projects identified in a Plan for overall consistency with the requirements set forth in Section 31(d)(1) of the Act, *Authorized Uses (Chapter 4.1)*. *Individual CIAP projects will be given final funding approval by MMS independently of Plans through the grant application and approval process (Chapter 4)*. *However, for those state plans that do include APPENDIX F., plan approval*

does constitute final funding approval. States should be aware that MMS, as the Federal funding agency, is also responsible for verifying compliance with all Federal, State, and local authorities (**Chapter 8**) prior to disbursement of funds.

Texas:

No comment.

7. PERFORMANCE AND FINANCIAL REPORTS

Performance and financial reports shall be required in accordance with 43 CFR Part 12. The MMS will provide further information on these reports through the CIAP grant program announcement.

Alabama:

We recommend that performance and financial reporting requirements be established on an annual basis (i.e. once per year). Given that the overall process includes plan review and approval, along with grant application review and approval, it seems that annual reporting should be more than sufficient for MMS to determine if expenditures are within the scope of any particular project.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

As the designated state agency, our preference would be for annual formal performance reports to MMS with the option that the individual states may require additional semi-annual performance reports from grantees when deemed necessary.

Texas:

Please provide that performance reviews are required semiannually, rather than quarterly.

Please indicate whether MMS will use www.grants.gov for reporting activities.

8. COASTAL IMPACT ASSISTANCE PLAN COMPLIANCE WITH FEDERAL, STATE, AND LOCAL AUTHORITIES

The approval of Plans and disbursement of funds are Federal activities subject to authorities such as, but not limited to, the National Environmental Policy Act (**NEPA**), Endangered Species Act, Coastal Zone Management Act (**CZMA**), and equivalent State and local authorities. As the Federal funding agency, MMS is responsible for verifying compliance with these and other relevant authorities before disbursing funds. Therefore, only those proposed projects that meet all Federal, State, and local authorities will be approved for CIAP funding (e.g., all NEPA and CZMA requirements must be met prior to grant application submission for projects). States will be required to document compliance with these and other relevant authorities before funds are disbursed.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

No comment.

8.1. ENVIRONMENTAL REVIEW

The MMS is developing a programmatic Environmental Assessment (**EA**) on the Coastal Impact Assistance Program. The EA will evaluate the types of projects to be financed under CIAP; MMS will consult with States to determine the types of projects likely to be proposed by the States and CPS's. The EA will assess the types of projects proposed and define the levels of NEPA determination (i.e., categorical exclusion, Finding of No Significant Impact (**FONSI**), or further environmental review). The EA will also include an Environmental Review (ER) form that States and CPS's will be required to submit with their grant application. During the grant process MMS will review each proposed project's ER form along with other relevant information to verify compliance with NEPA. If MMS determines that additional information or NEPA evaluation is required, the grant recipient (the State or CPS) will be required to provide it. The MMS will not disburse funds until all NEPA requirements have been satisfied.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

For the reasons cited below, we are very concerned that MMS would require National Environmental Policy Act (NEPA) compliance prior to CIAP grant submission, and that MMS will not disburse any CIAP funds until all NEPA requirements are met.

A significant amount of engineering and design is required to obtain the project-specific information needed to adequately evaluate the likely impacts for many coastal restoration projects. Those tasks require a substantial amount of funding, which we consider to be an integral part of the implementation costs for CIAP-funded projects. For larger restoration projects, we also believe that it is more appropriate to evaluate design alternatives before assessing likely impacts, rather than preparing NEPA documents for such projects with a relatively small amount of project-specific information at an early phase of the project development process. Therefore, we recommend that MMS modify the proposed approach to issue grants including engineering, design and permitting costs (including the costs of developing appropriate NEPA documentation), but prohibit expenditures for actual construction until MMS has been provided copies of the completed NEPA documents. One variation of this approach is to issue separate grants for engineering/design and actual construction, but that approach will result in far greater administrative costs (in both time and money).

We urge MMS to consult with grant administrators for other Federal programs, such as the U.S. Fish and Wildlife Service's North American Wetlands Conservation Act and the National Coastal Wetlands Conservation Grant Program; the NOAA Community-Based Grant Program; and others who have successfully implemented coastal conservation projects in Louisiana, in compliance with NEPA and other key regulatory requirements.

Consistent with PACE's enclosed comments, we urge MMS to continue to explore and utilize mechanisms to streamline NEPA compliance for CIAP projects to the greatest extent possible. This will help reduce compliance costs and implementation delays, while meeting the intended purposes of NEPA.

Mississippi:

MMS will consult with States to determine the types of projects by the States and CPS's. At what point in the process will this take place?

Texas:

Please clarify whether and under what conditions MMS will reimburse funds for permitting costs prior to the final issuance of the required permits.

Please provide additional information listing the categories or types of projects that will be assigned to three National Environmental Protection Act categories: categorical exclusion, finding of no significant impact (FONSI), or further environmental review.

8.2. CONSISTENCY FOR FEDERAL ASSISTANCE

State agencies and CPS's responsible for preparing the grant applications and managing the subsequent CIAP funding shall be subject to the Federal consistency guidelines under Subpart F of the CZMA regulations, *Consistency for Federal Assistance to State and Local Governments* (15 CFR 930.90–930.101). Under Subpart F, each State's coastal agency shall review the application for Federal assistance (i.e., the grant application) to determine if the application is consistent with its CZMP.

Alabama:

No comment.

Alaska:

No comment.

California:

No comment.

Louisiana:

No comment.

Mississippi:

No comment.

Texas:

Please provide clarification on whether MMS approval of a state's final plan is a federal agency activity requiring a federal consistency determination that a state coastal management agency must concur with or object to. The federal Coastal Zone Management Act would require a consistency determination upon the decision to provide federal assistance for a particular project. It is unclear whether a federal consistency determination is required for the federal approval of the final plan, which contains a list of the Tier 1 and Tier 2 projects but does not authorize MMS to disburse funds. Suggested language to clarify this matter is provided below:

The approval of Plans and disbursement of funds are subject to authorities such as, but not limited to, the National Environmental Protection Act (NEPA), Endangered Species Act, Coastal Zone Management Act (CZMA) and equivalent State and local authorities. The actions of MMS in approving Plans or disbursing funds are Federal activities within the meaning of each applicable federal statute. As the Federal funding agency, MMS is responsible for verifying compliance with these and other relevant authorities before approving Plans or disbursing funds. Only those proposed projects that meet all Federal, State and local authorities would be approved for CIAP funds (e.g. all NEPA and CZMA requirements must be met in connection with grant application submissions and disbursement of funds for projects). States will be required to document compliance with these and other relevant authorities before funds are disbursed.

General Comments

Alabama:

It has been stated that individual program funding amounts will not be available until April 2007. While we understand that these funding amounts are based on revenues accruing in this current year, we are struggling with the concept of putting a plan together without some idea of the funding that will be available. As such we recommend that program funding estimates be provided to each state and coastal political subdivision for purposes of plan development. Estimates could be derived from utilizing FY2005 revenues, or from utilizing revenue earned in the 1st half of the FY2006 and projecting those numbers out to a full year. We understand, of course, that any estimate provided may be substantially different from actual funding amounts that a state or coastal political subdivision may receive.

Once a plan has been approved and exact funding amounts disclosed to each recipient, we understand that we will then be able to submit grant applications for projects we intend to implement under an approved plan. As such, we strongly recommend that grant applications be used to cover multiple projects. In other words, we request approval to bundle certain similar projects together into one grant application as opposed to individual grant applications for each similar project. Approving this request will afford greater efficiency and reduce redundancy and unnecessary paperwork.

Alaska:

Appendix A. Section 384 of the Energy Policy Act of 2005: Coastal Impact Assistance Program
Within Section 31(b)(4)(B)(ii)(I) and (II), page 12, the phrase “the number of miles of coastline” is used to determine a portion of the allocation formula for payments to the coastal political subdivisions of the State. While Section 31(a)(4) provides the definition to mean “... the term ‘coast line’ in section 2 of the Submerged Lands Act(43 U.S.C. 1301)”, it is not clear how the coastline will be measured. Certain measuring schemes or assumptions can result in drastically different calculations. The system or procedure used to calculate the coastline mileage for the coastal political subdivisions should take advantage of the recent advances in measurement systems and schemes, and should provide an accurate and objective measurement. The State would like to participate in the discussion and selection of the coastline mileage measurement system.

Appendix B. Eligible Coastal Political Subdivisions

The draft guidelines identify only two eligible coastal political subdivisions. However, as included in my letter to you dated March 22, 2006, there are eight eligible coastal political subdivisions in the State of Alaska. They include the North Slope Borough, Northwest Arctic Borough, Municipality of Anchorage, Bristol Bay Borough, Kenai Peninsula Borough, Kodiak Island Borough, Lake and Peninsula Borough, and Matanuska-Susitna Borough. The State recommends that MMS revise Appendix B to incorporate these municipalities as eligible coastal political subdivisions.

California:

We note that the recommended format for proposed project descriptions is very similar to the format that California used in its first Coastal Impact Assistance Plan. State agencies and the counties found this format straightforward to use. In addition, feedback from the general public indicated that the project descriptions were easily understood and conveyed the majority of the pertinent project details. Consequently, we support this format.

Louisiana:

PACE also directed questions and comments to the State; those included: 1) whether parish CIAP allocations can be used for interaction with the bond commission, i.e., to leverage parish funds and to allow larger projects to be started and built without having to wait until all 4 years of CIAP fund allocations had been disbursed; 2) having the State prepare a map depicting the 1927 shoreline, delineating State and local government ownership, and helping parishes to determine potential project sites based on ownership and by locating key

environmental features historic ridges and waterways; 3) having the Department of Natural Resources provide funding to parishes to assist with CIAP planning; and 4) extending the deadline for submitting CIAP project proposals for inclusion in the CIAP Plan. We are working with PACE and the individual coastal parishes to address those issues.

Mississippi:

Appendix A: Sec 31 (4) Payments to CPS (B) Formula (iii) 50%. When will this be determined by the Secretary and relayed to our agency?

Appendix D: Table 1: Funding Request (\$) by Year – does this mean the CIAP allocation year or the year(s) in which the funds are drawn down?

Texas:

No comment.

APPENDIX A.

SECTION 384 OF THE ENERGY POLICY ACT OF 2005: COASTAL IMPACT ASSISTANCE PROGRAM

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.
ELIGIBLE COASTAL POLITICAL SUBDIVISIONS

**Coastal Impact Assistance Program
Eligible Coastal Political Subdivisions***

Alabama Counties	Alaska Boroughs	California Counties	Louisiana Parishes	Mississippi Counties	Texas Counties
Baldwin	North Slope	Alameda	Assumption	Hancock	Aransas
Mobile	Northwest Arctic	Contra Costa	Calcasieu	Harrison	Brazoria
		Los Angeles	Cameron	Jackson	Calhoun
		Marin	Iberia		Cameron
		Monterey	Jefferson		Chambers
		Napa	Lafourche		Galveston
		Orange	Livingston		Harris
		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 CPS's 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.

APPENDIX C.

**COASTAL IMPACT ASSISTANCE PLAN
RECOMMENDED
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 - 5. COORDINATION WITH OTHER FEDERAL RESOURCES AND PROGRAMS**
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- APPENDIX A. GOVERNOR LETTER DESIGNATING STATE AGENCY**
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APPENDIX D.

COASTAL IMPACT ASSISTANCE PLAN RECOMMENDED FORMAT FOR PROPOSED PROJECT LISTS

STATE OF (Insert Name of State)

PROJECTS PROPOSED by (Insert Name of State or Coastal Political Subdivision) for
FISCAL YEAR (Insert 2007, 2008, 2009, or 2010)
COASTAL IMPACT ASSISTANCE PROGRAM ALLOCATIONS

TIER (Insert 1 or 2) PROJECTS

TABLE 1

Project Title	Total Estimated Cost (\$)	Funding Request (\$) by Year (insert as many columns as needed)						
		2007	2008	2009	2010	2011	2012	2013
Authorized Use 1: Projects and activities for the conservation, protection, or restoration of coastal areas, including wetland.								
1								
2								
Subtotal:								
Authorized Use 2: Mitigation of damage to fish, wildlife, or natural resources.								
1								
2								
Subtotal:								
Authorized Use 3: Planning assistance and the administrative costs of complying with CIAP.								
1								
2								
Subtotal:								
Authorized Use 4: Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.								
1								
2								
Subtotal:								
Authorized Use 5: Mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs.								
1								
2								
Subtotal:								
Total of all Authorized Uses:								

STATE OF (Insert Name of State)

PROJECTS PROPOSED by (Insert Name of State or Coastal Political Subdivision) for
 FISCAL YEAR (Insert 2007, 2008, 2009, or 2010)
 COASTAL IMPACT ASSISTANCE PROGRAM ALLOCATIONS

TIER (Insert 1 or 2) PROJECTS

TABLE 2

Total Estimated Cost Subtotals (from Table 1)	Funding Request by Year Subtotals (from Table 1)						
	2007	2008	2009	2010	2011	2012	2013
Authorized Use 1							
Authorized Use 2							
Authorized Use 3							
Authorized Use 4							
Authorized Use 5							
Total:							
23 % Limitation:							
Authorized Use 3							
Authorized Use 5							
Total:							
Total Estimated Cost Subtotals (from Table 1) as a Percentage of Total	Funding Request by Year Subtotals (from Table 1) as a Percentage of Total						
	2007	2008	2009	2010	2011	2012	2013
Authorized Use 1							
Authorized Use 2							
Authorized Use 3							
Authorized Use 4							
Authorized Use 5							
Total:	100%						
23 % Limitation:							
Authorized Use 3							
Authorized Use 5							
Total:	23%						

APPENDIX E.

**COASTAL IMPACT ASSISTANCE PLAN
RECOMMENDED FORMAT FOR
PROPOSED PROJECT DESCRIPTIONS**

**STATE OF (Insert Name of State)
COASTAL IMPACT ASSISTANCE PLAN**

DESIGNATED STATE AGENCY OR COASTAL POLITICAL SUBDIVISION

PROJECT TITLE

PROJECT CONTACT

Contact Name
Address
Telephone Number
Fax Number
E-mail Address

PROJECT SUMMARY

Location
Duration
Total Estimated Cost
Funding Request by Year

- Provide a brief summary (1-2 pages) of the project including goals and objectives.

AUTHORIZED USES

- Provide a brief explanation (1-2 pages) of how the project is consistent with one or more of CIAP's authorized uses; if funding onshore infrastructure projects or public service needs, include how the project will mitigate the impact of OCS activities.
- Provide a brief description of intent to use CIAP funds for cost sharing or matching purposes with acknowledgement that the State and/or CPS will be required to submit a letter with their grant application authorizing the use of CIAP funds for the required non-Federal cost share or match; this letter must be obtained from the agency that originated the cost sharing or matching requirement.

APPENDIX F.

**COASTAL IMPACT ASSISTANCE PLAN
RECOMMENDED FORMAT FOR
ADDITIONAL INFORMATION REQUIRED IN THE
GRANT APPLICATION FOR PROPOSED PROJECTS**

**STATE OF (Insert Name of State)
COASTAL IMPACT ASSISTANCE PLAN**

DESIGNATED STATE AGENCY OR COASTAL POLITICAL SUBDIVISION**PROJECT TITLE****PROJECT CONTACT**

Contact Name
Address
Telephone Number
Fax Number
E-mail Address

PROJECT SUMMARY

Location
Duration
Total Estimated Cost
Funding Request by Year

- Provide a brief summary (1-2 pages) of the project including goals and objectives.

AUTHORIZED USES

- Provide a brief explanation (1-2 pages) of how the project is consistent with one or more of CIAP's authorized uses; if funding onshore infrastructure projects or public service needs, include how the project will mitigate the impact of OCS activities.
- Provide a brief description of intent to use CIAP funds for cost sharing or matching purposes with acknowledgement that the State and/or CPS will be required to submit a letter with their grant application authorizing the use of CIAP funds for the required non-Federal cost share or match; this letter must be obtained from the agency that originated the cost sharing or matching requirement.

PROJECT DESCRIPTION

- Describe the project in sufficient detail (up to 10 pages) to allow a project reviewer to understand: how the project's goals and objectives will be obtained; the tasks that will be undertaken; the timeline for completing those tasks; and the intended results, products or services that will be provided upon project completion.
- Describe the duration of the project and any factors that could expedite or disrupt the project schedule.
- Describe any controversial aspects associated with the project and the level of local support or objection to the project.

DESCRIPTION OF ENVIRONMENTAL IMPACTS

- Briefly describe any environmental resources (e.g., marine biology, air quality, water quality, etc.) that may be impacted by the project and reference any environmental documents that analyze these environmental impacts.
- Briefly describe the mitigation measures that will be implemented to eliminate or minimize any harmful impacts the projects may have on environmental resources.

REGULATORY STATUS AND CONSISTENCY WITH STATE COASTAL ZONE MANAGEMENT PROGRAM

- If applicable, describe the current status of Federal, State, and local permits necessary for the project and describe whether the project has been determined to be consistent with the approved State Coastal Zone Management Program.
- If applicable, describe the status of National Environmental Policy Act environmental reviews and State environmental reviews required for the project.

RELATIONSHIP TO OTHER FEDERAL PROGRAMS

- Describe other Federal programs that are currently providing funding support or contributing resources to the project, and describe measures that are or will be taken to secure additional assistance from other relevant Federal resources and programs.

TABLE SHOWING ESTIMATED PROJECT COST BREAKDOWN

- Provide itemized list of projected expenses including personnel costs, travel costs, contracting costs, equipment purchases, supply and material costs, legal expenses, etc.