

within new and expanded units of the Coastal Barrier Resources System upon enactment of CBIA on November 16, 1990. The ban on Federal flood insurance on "otherwise protected areas", as defined in the CBIA, went into effect on November 16, 1991.

ADDRESSES: Comments should be directed to U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Washington, DC 20240 (703-358-2201)

FOR FURTHER INFORMATION CONTACT: Linda Kelsey (703-358-2201)

SUPPLEMENTARY INFORMATION: On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act (CBIA) into law (Pub. L. 101-591). The CBIA amends the Coastal Barrier Resources Act (CBRA) in several significant ways. It expanded the Coastal Barrier Resources System (System) from 183 to 560 units and from 143,000 acres to 1.25 million acres. The System now includes units in Puerto Rico, the U.S. Virgin Islands, Great Lakes States, New Jersey, Maryland, and the Florida Keys, as well as many new areas in States that already contained units within the System. The CBIA also established a new category identified as "otherwise protected areas" where Federal flood insurance for new construction not in conformance with the purposes of the area is banned. The Federal Emergency Management Agency is issuing revised Flood Insurance Rate Maps that reflect the changes. Separate codes are used on the maps depicting areas where the ban went into effect on October 18, 1983, November 16, 1990, and November 16, 1991.

These guidelines reiterate the guidance provided in 1983 on the definition of expenditures and financial assistance. Unless specified that the guidance has been modified by the CBIA, the requirements of CBRA remain unchanged since passage of the Act in 1982. The guidelines for consultation with the Fish and Wildlife Service (Service) are also outlined.

1. Environmental Effects

These guidelines describe the procedures Federal agencies should follow in consulting with the Service prior to making an expenditure on or providing assistance to activities excepted under section 6 of CBRA, as amended by CBIA. Such activities generally continue the status quo, provide localized environmental benefits or localized emergency disaster assistance. Therefore, the Department of the Interior (Department) has

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

43 CFR Subtitle A

Coastal Barrier Improvement Act: Advisory Guidelines

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Rule-related notice and request
for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is revising its rule-related document of October 6, 1983 to reflect changes in the Coastal Barrier Resources Act (CBRA), as amended by the Coastal Barrier Improvement Act of 1990 (CBIA). This document sets forth the Service's general statement of policy and advisory guidelines regarding the provisions of the CBIA that address limitations on Federal expenditures and financial assistance, and exceptions to the limitations.

DATES: Comments on this document will be accepted through January 4, 1993. The prohibitions on new Federal financial expenditures and assistance, including Federal flood insurance, were effective

determined that these guidelines will have no significant impact on the environment.

2. Statement of Effects

The Department has determined that these interpretive guidelines are not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. These guidelines will result in minimal cost to Federal agencies and some economic effects on local firms and businesses to the extent that they are engaged in activities covered by the expansion of the System and paid for, or assisted by Federal funds. The guidelines do not require preparation of a federalism assessment under Executive Order 12812. Further, these guidelines do not have any taking implications that would require preparation of an assessment under Executive Order 12830.

3. Paperwork Reduction Act

These interpretive guidelines do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

4. Authorship Statement

This document has been prepared by Frank McGilvrey of the U.S. Fish and Wildlife Service.

5. Public Participation

Interested persons, organizations, Federal agencies and other entities are encouraged to submit comments on these guidelines. Comments will be accepted until January 4, 1993.

Coastal Barrier Resources System—Prohibition on New Federal Expenditures and Procedures for Consultation

I. Financial Assistance

CBRA, as amended by CBLA, with certain exceptions, prohibits Federal expenditures and financial assistance for development within the System. Section 3(3) of CBRA defines "financial assistance" as any form of loan, grant, guaranty, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance.

Section 5(a) provides the general prohibition on new Federal expenditures and financial assistance in System units. Section 5(a) states that except as provided in Section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier

Resources System. CBRA, as amended by CBLA, excepted certain specific activities from this prohibition. They will be discussed under the Exceptions section. "Otherwise protected areas" identified on maps of the System, dated October 24, 1990, are not affected by these prohibitions. They are only affected by the Federal flood insurance program.

The Service has identified additional specific examples of Federal program expenditures and financial assistance prohibited within the System. These activities include, but may not be limited to, the following programs:

Department of Agriculture

Farmers Home Administration

—Loans for rural disaster relief, water systems, wastewater systems, commercial development, community services, and subdivision development.

Rural Electrification Administration

—Loans for new or expanded electrical systems that would encourage development.

Department of Commerce

Economic Development Administration

—Grants for planning and administering local economic development programs.

National Oceanic and Atmospheric Administration

—CEIP grants (Coastal Energy Improvement Program).

Department of Defense

U.S. Army Corps of Engineers

—Construction and financial assistance involving beach erosion control, hurricane protection, and flood control works. Under CBRA, new or expanded navigation projects were prohibited. However, section 6(b) of CBLA allows expansion if the project was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

Department of Energy

—Energy development programs.

Department of Housing and Urban Development

—Block grants for community development.
—Mortgage insurance, housing assistance or rehabilitation subsidy programs.
—Urban Development Action Grants.

Department of Transportation

Federal Aviation Administration

—Grants for airport planning and development.

Federal Highway Administration

—Federal assistance to States for highway construction. CBLA specified two exceptions: U.S. route 1 in the Florida Keys and highways in a System unit in Michigan in existence on the date of the enactment of the CBLA.

Urban Mass Transportation Administration

—Capital improvement and operating grants.

Environmental Protection Agency

—Grants for wastewater treatment construction (Sec. 201 grants), water quality management planning (Sec. 208 grants).

Federal Emergency Management Agency

—Federal National Insurance Program.
—Disaster assistance program.

Federal Home Loan Administration

—Guaranteed housing loans.

General Services Administration

—Construction or reconstruction of Federal property.
—Exchange or sale of Federal property for development purposes.

Small Business Administration

—Loans to small businesses for disaster relief, upgrading of water treatment systems, and other purposes.
—Disaster assistance to homeowners.

Veterans Administration

—Guaranteed housing loans.

This list may not be all inclusive. Each Federal agency is responsible for review of its programs to assure compliance.

II. Exceptions

Section 6 of CBRA, as amended by CBLA, outlines the specific exceptions to the general prohibition on new Federal expenditures or financial assistance. There are two categories of exceptions: expenditures allowed if they meet the requirements of the specific exception, and expenditures allowed if they meet the requirements of the specific exception and also meet the purposes of CBRA. Most of the exceptions remain the same as under CBRA as originally enacted. The few changes are noted in the detailed discussion.

Section 6(a) requires the appropriate Federal official to consult with the

Secretary of the Interior before making any Federal expenditures or financial assistance available under the provisions of Section 6. The Secretary's consultation responsibilities have been delegated to the Service. Procedures for consultation follow the discussion of exceptions.

Expenditures Allowed for Specific Activities

(1) Energy projects (Section 6(a)(1)). Federal assistance may be made available for energy projects in or adjacent to coastal areas for any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body. The legislative history (House Report 97-841) states that "this provision is intended to be read broadly in terms of energy projects. However, the provision should not be interpreted to allow assistance for projects primarily designed to encourage development which might be carried out in the guise of energy development."

(2) Navigation channel improvements (Section 6(a)(2)), as amended by CBRA section 6(b)). The CBRA exception that allowed only maintenance of existing navigation channels was amended to allow maintenance or construction of improvements of existing Federal navigation channels and related structures (such as jetties). CBRA section 6(b) provides that for purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or part of the System unit was included within the System. The use of disposal sites for dredge materials is included under this exception, so long as the sites are related to, and necessary for, the maintenance or construction of an existing project. House Report 97-841 also stated "that because of the unstable nature of barrier islands, existing channels can be relocated periodically."

(3) Roads, Structures or Facilities (Section 6(a)(3)) as amended by the CBRA in this subsection and section 6(c). Maintenance, replacement, reconstruction, or repair, but not expansion (except for U.S. Highway 1 in the Florida Keys and highways in Michigan that run through System units),

of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system can continue. The legislative history indicates the Congressional intent to include drains, gutters, curbs and other related roadworks under this exception. The Service interprets "structures or facilities" to include public utilities. Section 6(a)(6)(F) is also applicable to public utilities that are not essential links in a larger system.

(4) Military activities (Section 6(a)(4)). Military activities essential to national security are excepted from the ban on Federal expenditures, but not from the requirement to consult. The Defense Department will be the judge of what is essential to national security, but, as stated in Conference Report 97-828, its "determination as to whether military activities are essential to national security must be made in accordance with existing law and procedures." The Defense Department still has the responsibility to consult with the Service with respect to any expenditures or financial assistance within the System.

(5) Coast Guard (Section 6(a)(5)). Expenditure of funds or provision of financial assistance for the construction, maintenance, operation and rehabilitation of Coast Guard facilities can continue.

Expenditures Allowed for Specific Activities if They Meet the Purposes of CBRA

(6) Conservation, navigation aids, recreation, scientific research, disaster relief, roads, shoreline stabilization (Section 6(a)(6)). The following actions or projects are excepted, providing the expenditure is consistent with the purposes of CBRA, which are detailed in Section 2(b) (i.e., to minimize loss of human life, wasteful Federal expenditures and damage to fish, wildlife, and other natural resources):

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects. The legislative history states: "This exception recognizes the value of System units as fish and wildlife habitats and is in complete conformity with the purposes of the legislation. It is

intended that the full range of Federal financial assistance authorized for protecting and managing fish and wildlife habitats will continue to be available. This includes, where necessary, assistance for stabilization projects to protect valuable habitats. Federal funds for projects involving facilities for fish and wildlife-related recreation would also be allowed. It is intended by the Committee that any development of recreational facilities be consistent with the purposes of the legislation." (House Report 97-841)

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto. The legislative history indicates that, in almost every instance, placement and use of such aids and devices on undeveloped coastal barriers would be appropriate. (House Report 97-841.)

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.). The legislative history applied to Section 6(a)(6)(A) would be generally applicable to this provision as well. Recreational use of System units should be encouraged so long as it is accomplished consistent with the purposes of CBRA.

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion of publicly owned or publicly operated roads, structures, or facilities. This exception is essentially moot since the Federal Highway Administration has determined that all highways on the Federal network are essential links in a larger network or system.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems. The legislative

history cites the planting of dune grass or other beach nourishment activities as examples of these projects.

III. Consultation

Federal agencies must consult with the Service and allow the Service an opportunity to provide written comment prior to making Federal expenditures or financial assistance available for an action excepted under Section 6 of CBRA, as amended by CBLA, within a System unit. Compliance with Section 6 rests initially on the Federal officer responsible for making the funds or financial assistance available for a permitted action. The Service's responsibility is to respond to a consultation request by providing technical information and comments on the question of consistency with CBRA, as amended by CBLA. The final determination whether action permitted under this section is consistent with the purposes of the CBRA rests with the consulting agency.

Consultation Process

Consultation requests should be made through the appropriate Regional Director of the Fish and Wildlife Service (Regional Office addresses are appended).

CBRA, as amended by CBLA, provides for two levels of exception. Section 6(a)(1-5) clearly allows certain designated Federal activities. When consulting on these activities, the Service will provide technical information and register an opinion as to whether the activity is one which the clause allows.

Section 6(a)(6) provides an additional caveat for the included list of exceptions that require that the action is consistent with the purposes of the Act. For activities falling under this subsection, the Service will also comment on the consistency of the proposed action with the purposes of CBRA as stated in Section 2(b) to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife and other natural resources associated with coastal barriers.

The requirements of sections 402, 403, and 502 of the Disaster Relief Act make prior consultation impractical in responding to a national disaster. However, the Service will participate in Regional Task Forces for disasters and emergencies. Permanent replacement activities related to section 6(a)(1-5) will require consultation prior to commitment of funds.

Section 4(d) of the CBLA requires the Administrator of General Services to consult with the Service and obtain a determination as to whether a property proposed for disposal under the Federal

Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) constitutes an undeveloped coastal barrier. The Service will make a determination within 180 days. If it concludes that the property meets the definition of an undeveloped coastal barrier, the property will be added to the System subsequent to notification in the Federal Register.

Section 10 of the CBIA allows the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) to consult with the Service to determine if property under their control is within the System or is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes. RTC and FDIC must allow 90 days for any governmental agency or qualified conservation organization to submit written notice of interest in acquiring such property before placing the property on the open market.

The Service's Washington and Regional Offices will assist RTC and FDIC to the maximum extent possible in identification of such properties, particularly those in the System.

Appendix 1—Pertinent Regional Offices

- U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87102; Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 505-766-2324, CBRA Jurisdiction—Texas.
- U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 612-725-3510, CBRA Jurisdiction—Minnesota, Wisconsin, Michigan, Ohio.
- U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 404-331-6343, CBRA Jurisdiction—Louisiana, Mississippi, Alabama, Florida, U.S. Virgin Islands, Puerto Rico, Georgia, South Carolina, North Carolina.
- U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158; Assistant Regional Director—Fish and Wildlife Enhancement: Telephone 617-665-9217, CBRA Jurisdiction—Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Maine.

Dated: August 31, 1992.

Richard N. Smith,
Deputy Director.

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