

Summary of Public Comments Received on Draft Map for Coastal Barrier Resources System Units FL-70 and FL-70P and Fish and Wildlife Service Responses and Recommendation

I. Overview

The U.S. Fish and Wildlife Service (Service) prepared a draft revised map dated January 10, 2012, for Gasparilla Island Unit FL-70/FL-70P, located in Lee County, Florida. The revised map removes approximately 6 acres from the Coastal Barrier Resources System (CBRS) and adds approximately 1,751 acres to the CBRS. The Service held a 45-day public comment period for this draft map from March 8 through April 23, 2012.

The Service announced the availability of the draft map and opportunity to provide comments in a notice published in the *Federal Register* on March 8, 2012 (77 FR 14032). The Service sent letters dated March 29, 2012, to 66 stakeholders including members of Congress; Federal, state, and local officials; and non-governmental organizations. The Service also published a public notice in two local newspapers, the *Cape Coral Breeze*, on March 21, April 4, and April 18, 2012, and the *Fort Myers News-Press*, on March 28 and April 11, 2012. The draft map, *Federal Register* notice, and summaries of the proposed boundary changes for each of the two units were posted to the Service's website during the public comment period.

The draft map for Florida makes progress towards fulfilling a mandate in the Coastal Barrier Resources Reauthorization Act of 2005 (Pub. L. 109-226) to prepare draft revised maps for all CBRS areas, propose additions to the CBRS, and solicit public

comments on the draft revised maps. The draft map proposes the removal of land from the CBRS, including private properties that were inappropriately included within the CBRS, and also proposes the addition of undeveloped land and associated aquatic habitat that meet the Coastal Barrier Resources Act (CBRA) criteria for inclusion within the CBRS.

The Service received letters and/or electronic-mail correspondence from the following 17 entities:

- South Bay Homeowners Association (supports removal of private properties, opposes expansion of the CBRS at this time)
- Lee County (supports removal of private properties, opposes inclusion of Gulf-fronting beaches and adjacent aquatic areas within the proposed new Unit FL-70)
- U.S. Army Corps of Engineers (opposes inclusion of Gulf-fronting beaches and adjacent aquatic areas within the proposed new Unit FL-70)
- State of Florida (no objections)
- National Park Service (no comment on proposed changes)
- United States Department of Defense (no comment on proposed changes)
- Florida Power and Light

Company (supports removal of private properties, opposes inclusion of a Florida Power and Light-owned parcel within the proposed new Unit FL-70)

- One private citizen (supports all proposed changes)
- Boca Grande Chamber of Commerce (supports all proposed changes)
- Natural Resources Defense Council (supports all proposed changes)
- Florida Wildlife Federation (supports all proposed changes)
- Sea Turtle Conservancy (supports all proposed changes)
- 1000 Friends of Florida (supports all proposed changes)
- Treasure Coast Environmental Defense Fund (supports all proposed changes)
- Gulf Restoration Network (supports all proposed changes)
- National Wildlife Federation (supports all proposed changes)
- Florida Coastal and Ocean Coalition (supports all proposed changes)

All comments supported the proposed removal of 27 structures from Unit FL-70P, including 25 privately owned

homes, one home owned by Lee County and one restaurant. No comments opposed the expansion of Otherwise Protected Area (OPA) Unit FL-70P. The comments included both opposition to and support for the proposed new System Unit FL-70. The comments opposing the proposed new System unit primarily focused on the proposed inclusion of the Gulf of Mexico facing shore and associated aquatic areas within Unit FL-70, and the potential impact on an ongoing Federally-authorized shore protection project. The comments from environmental groups supported the proposed additions to the CBRS and stated that expanding the CBRS is in the best interest of the American taxpayer, the coastal environment, and the safety of the public.

Copies of the comments submitted to the Service concerning the draft map are available to the public upon request. Requests for copies of the public comments should be submitted to the Service's headquarters office or via email to CBRA@fws.gov.

II. Summary of Public Comments

The comments received during the public comment period and the Service's responses to these comments are summarized below.

Shore Protection Project

Comments: The U.S. Army Corps of Engineers (Corps) and Lee County commented that inclusion of the Gasparilla Island segment of the Federally authorized Lee County Shore Protection Project within the CBRS could preclude the Federal Government from fulfilling its cost-sharing obligations for portions of the 2.8-mile project, including the sand borrow area, located on the southwestern side of Gasparilla Island. Our assessment indicates that the dredging and beach nourishment project along Gasparilla Island first began in 2007. Lee County stated that the project was planned, designed, permitted and constructed in cooperation with the Corps and in anticipation of continued Federal participation.

Service Response: Because the Federally-funded shore protection project is already underway and it largely protects existing development on Gasparilla Island which is not within

the CBRS, the Service believes that inclusion of the waters on the Gulf side of Gasparilla Island and the 4-acre U.S. Coast Guard beachfront parcel within the new Unit FL-70 should be reconsidered. The Service's final recommended map classifies the waters on the Gulf side of Gasparilla Island within OPA Unit FL-70P, rather than within new System Unit FL-70, and does not include within the CBRS the 4-acre beachfront parcel owned by U.S. Coast Guard. The OPA designation of the water on the Gulf side of Gasparilla Island has no impact on the Corps' ability to conduct dredging or beach nourishment using Federal funds. Therefore, if the final recommended map is made effective, the Lee County Shore Protection Project may continue to receive Federal funding.

Correction of Unit FL-70P Boundaries Only

Comments: The South Bay Homeowners Association commented that the Service should support a corrective action regarding Unit FL-70P at this time (i.e., the removal of 25 private homes, one home owned by Lee County, and one restaurant from the CBRS) and any proposals for expanding the unit or creating a new unit in the area should be tendered separately to Congress.

Service Response: Section 4 of Public Law 109-226 directs the Secretary of the Interior to modernize all of the CBRS maps, recommend additions to the CBRS, and solicit public comments on the draft maps. Given this directive, when the Service finds a technical mapping error that warrants a change in one part of a CBRS map, our standard practice is to review all adjacent areas on the map to ensure that the entire map is accurate and any adjacent areas that are appropriate for inclusion within the CBRS are identified. This comprehensive approach to map revisions treats all landowners who may be affected equitably and is the most efficient and cost-effective way to update the CBRS maps and ensure the Service and Congress will not have to revisit the same map in the future to correct technical mapping errors and identify areas appropriate for inclusion within the CBRS.

Inclusion of Private Property within Unit FL-70

Comments: Florida Power and Light Company (FPL) commented that it opposes the inclusion of its parcel of land (approximately 10-acres) at the southeastern tip of Gasparilla Island within the new unit FL-70. FPL believes the parcel qualifies as developed based on CBRA's criteria. The parcel currently has a 2,300 square foot functional warehouse equipped with electricity, wastewater disposal, and fresh water supply. FPL also owns a dock structure adjacent to the parcel with an existing submerged land lease from the State of Florida, for which FPL pays annual use fees. Comments submitted by FPL stated that this parcel was used in the past as "a fully developed and operational fuel oil terminal for FPL's power generation assets"; however the infrastructure that supported these industrial functions has since been removed (except for the warehouse, dock structure, and a fence surrounding the property).

Service Response: The development criteria the Service considers in making recommendations to the Congress regarding the addition of any area to the CBRS are: (1) the density of structures on the ground and (2) the availability of infrastructure on the ground (16 U.S.C. 3503(g)). To be considered "developed", the density of development on each coastal barrier area must be more than one structure per five acres of land above mean high tide. In the case of the FPL parcel, there is less than one structure per five acres of land above mean high tide.

In addition, a coastal barrier area is considered "developed," even when there is less than one structure per five acres of land above mean high tide, if there was a full complement of infrastructure on the ground before designation. A full complement of infrastructure includes all of the following components for each lot or building site in the area: a road with a reinforced road bed; a wastewater disposal system; electric service; and a fresh water supply. The intent of the infrastructure criterion is to exclude areas where there is intensive private capitalization prior to its inclusion within the CBRS demonstrating a substantial on the ground commitment to complete the development. Because the existing infrastructure for the parcel was put in place primarily to support prior development that was

removed many years ago, the Service believes that the parcel qualifies as an undeveloped coastal barrier and is appropriate for inclusion within the CBRS.

Expansion of the CBRS along the Florida Coast Makes Sense

Comments: Eight environmental groups commented that expanding the CBRS along Florida's coast makes good fiscal, public safety and environmental sense. The groups support the proposed changes and additions for three reasons: (1) the proposed changes are based on sound research by the Service; (2) the proposed changes are consistent with the CBRA's mandate that the Service modernize all CBRS maps and develop recommendations for the expansion of the CBRS; and (3) the process used to propose changes to the CBRS complies with public review and comment requirements of the CBRA.

The Boca Grande Area Chamber of Commerce commented that progress made toward fulfilling the mandate in Pub. L. 109-226 to modernize all CBRS maps and to make recommendations for the expansion of CBRS is appropriate at this time. The Boca Grande Area Chamber of Commerce also commented that it shares a common interest with CBRA in minimizing the damage to natural resources associated with coastal barriers and agrees that regular review of the CBRS is not only preferable but necessary to ensure proper stewardship of valuable coastal marine environments.

Service Response: The Service agrees that expanding the CBRS makes good fiscal, public safety, and environmental sense. The expansions proposed by the Service's final recommended map make progress towards achieving CBRA's goals of minimizing the wasteful expenditure of taxpayer dollars, protecting human life and property, and

protecting natural resources.

III. Service Recommendation for Final Recommended Map

The Service has reviewed all comments received on the draft map dated January 10, 2012, and recommends that the waters on the Gulf side of Gasparilla Island be included within OPA FL-70P, rather than within new System Unit FL-70, and the 4-acre parcel owned by U.S. Coast Guard not be included within the CBRS. All other proposed changes depicted on the January 10, 2012, draft map remain the same on the Service's final recommended map dated May 11, 2012.

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