

## TEMPLATE FOR INTERAGENCY CBRA CONSULTATIONS

The Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*) encourages the conservation of hurricane prone and biologically rich coastal barriers. No new expenditures or financial assistance may be made available under authority of any Federal law for any purpose within the System Units of the John H. Chafee Coastal Barrier Resources System (CBRS) including: construction or purchase of roads, structures, facilities, or related infrastructure, and most projects to prevent the erosion of or otherwise stabilize any inlet, shoreline, or inshore area. However, the appropriate Federal officer, after consultation with the U.S. Fish and Wildlife Service (Service), may make Federal expenditures and financial assistance available within System Units for activities that meet one of the CBRA's exceptions (16 U.S.C. 3505). The CBRA imposes no restrictions on actions and projects within the CBRS that are carried out with State, local, or private funding. Any response from the Service to a CBRA consultation request is in the form of an opinion only. The Service has not been granted veto power. **The responsibility for complying with the CBRA and the final decision regarding the expenditure of funds for a particular action or project rests with the Federal funding agency.**

There are two types of units within the CBRS, System Units and Otherwise Protected Areas (OPAs). OPAs are denoted with a "P" at the end of the unit number (e.g., "FL-64P"). Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System Units. The only Federal spending prohibition within OPAs is on Federal flood insurance; other Federal expenditures are permitted. **Consultation with the Service is not needed if the proposed action or project is located within an OPA.** However, agencies providing disaster assistance that is contingent upon a requirement to purchase flood insurance after the fact are advised to disclose the OPA designation and information on the restrictions on Federal flood insurance to the recipient prior to the commitments of funds.

The Service has developed the attached template to help facilitate the CBRA consultation process. This form, and any additional documentation, may be submitted to the appropriate Ecological Services Field Office to fulfill the CBRA's consultation requirement.

### **Additional Resources:**

CBRS Mapper: <https://www.fws.gov/cbra/maps/mapper.html>

CBRS shapefile and Web Map Service: <https://www.fws.gov/cbra/maps/Boundaries.html>

CBRA consultations: <https://www.fws.gov/cbra> under "Project Consultations"

CBRS in/out property determinations: <https://www.fws.gov/cbra/Determinations.html>

Ecological Services Field Office contact information: <https://www.fws.gov/offices>

April 23, 2020

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The Mississippi Trustee Implementation Group (MS TIG) has evaluated four projects as potential restoration projects under the “Mississippi Trustee Implementation Group Draft Restoration Plan II and Environmental Assessment: Wetlands, Coastal, and Nearshore Habitats and Oysters”, which was released for public comment on April 22, 2020. If the MS TIG selects the projects, or any combination of these projects, after consideration of public comment, the MS TIG partners would implement the projects.

The *Deepwater Horizon* Gulf Restoration Office (United States Fish and Wildlife Service) requests a consultation with the U.S. Fish and Wildlife Service (Service) under the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*) for the proposed restoration projects within the plan.

#### Project Location

*Insert project location. The CBRS Mapper can be used to identify the CBRS unit number(s) at: <http://www.fws.gov/cbra/Maps/Mapper.html>.*

The actions or projects are located in coastal Mississippi and two of the projects partially occurs within System Units of the Coastal Barrier Resources System (CBRS). Please refer to the table in the attached document for a list of proposed projects, and Unit number (if applicable), and consistency determinations.

#### Description of the Proposed Action or Project

The proposed projects are designed to restore natural resources injured by the *Deepwater Horizon* oil spill. Please see the attached letter for project descriptions, maps, and consistency analysis.

#### Applicable Exception(s) under 16 U.S.C. 3505(a)

16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

#### ***General Exceptions***

- 16 U.S.C. 3505(a)(1): 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 a coastal water area because the use or facility requires access to the coastal water body.

- 16 U.S.C. 3505(a)(2): The **maintenance or construction of improvements of existing Federal navigation channels** (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. 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 portion of the System Unit was included within the CBRS.
- 16 U.S.C. 3505(a)(3): The maintenance, replacement, reconstruction, or repair, but not the expansion, of **publicly owned or publicly operated roads, structures, or facilities that are essential links** in a larger network or system.
- 16 U.S.C. 3505(a)(4): **Military activities** essential to national security.
- 16 U.S.C. 3505(a)(5): The construction, operation, maintenance, and rehabilitation of **Coast Guard facilities** and access thereto.

### ***Specific Exceptions***

*These exceptions must also be consistent with all three purposes of the CBRA (see "Justification" section below).*

- 16 U.S.C. 3505(a)(6)(A): **Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats**, including acquisition of fish and wildlife habitats, and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.
- 16 U.S.C. 3505(a)(6)(B): Establishment, operation, and maintenance of **air and water navigation aids** and devices, and for access thereto.
- 16 U.S.C. 3505(a)(6)(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.).
- 16 U.S.C. 3505(a)(6)(D): **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.
- 16 U.S.C. 3505(a)(6)(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 5170a, 5170b, and 5192 of title 42 **and are limited to actions that are necessary to alleviate the emergency.**
- 16 U.S.C. 3505(a)(6)(F): Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of **publicly owned or publicly operated roads, structures, and facilities.**
- 16 U.S.C. 3505(a)(6)(G): **Nonstructural projects for shoreline stabilization** that are designed to mimic, enhance, or restore a natural stabilization system.

Justification for Exception(s)

*Briefly explain how the proposed action or project meets the exception(s) under the CBRA identified above. **If the exception(s) cited above is under 16 U.S.C 3505(a)(6), the justification should also include an explanation of how the proposed action or project is consistent with the three purposes of the CBRA, which are to minimize: (1) the loss of human life; (2) wasteful expenditure of Federal revenues; and (3) damage to fish, wildlife, and other natural resources associated with the coastal barriers by restricting Federal expenditures and financial assistance which have the effect of encouraging development.***

The four projects considered in this restoration plan are projects that will enhance and protect fish and wildlife habitats. Please see the CBRA Summary document for additional project information and the detailed CBRA analysis of these projects.

Contact Information

Please provide response via email to the following:

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U.S. Fish and Wildlife Service Response

Below is the Service's response to the *Deepwater Horizon* Gulf Restoration Office (United States Fish and Wildlife Service) request for a consultation under the CBRA for four restoration projects being considered as part of the “Mississippi Trustee Implementation Group Draft Restoration Plan II and Environmental Assessment: Wetlands, Coastal, and Nearshore Habitats and Oysters”. This response represents the Service’s opinion. **The final decision regarding the expenditure of funds for this action or project rests with the Federal funding agency.** The Gulf Restoration Office has fulfilled its obligation to consult with the Service under the CBRA for this particular action or projects within the CBRS. Please note that any new commitment of Federal funds associated with this action or projects, or change in the project design and/or scope, is subject to the CBRA’s consultation requirement.

The Service has reviewed the information provided by the Gulf Restoration Office, and believes the referenced action/projects are:

- Not located within a System Unit of the CBRS and the CBRA does not apply (except with respect to the restrictions on Federal flood insurance)
- Located within a System Unit of the CBRS and meets the exception(s) to the CBRA selected above
- Located within a System Unit of the CBRS and meets different exception(s) than the one(s) selected above (see additional information/comments below)
- Located within a System Unit of the CBRS and does not meet an exception to the CBRA (see additional information/comments below)
- Due to many competing priorities, the Service is unable to provide an opinion on the applicability of the CBRA’s exceptions to this action/project at this time. The Gulf Restoration Office may elect to proceed with the action/project if it has determined that the action/project is allowable under the CBRA. Please note that any new commitment of Federal funds associated with this action/project or a related future project is subject to the CBRA’s consultation requirement.

This response does not constitute consultation for any project pursuant to section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) or comments afforded by the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*); nor does it preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

*Stephen Ricks*

Stephen M. Ricks

Field Supervisor

Mississippi Ecological Services Field Office

4/27/2020