

From: [Pool, Taylor S](#)
To: [Niemi, Katie](#); [Wright, Dana K](#); [Frazer, Gary D](#)
Cc: [Kodis, Martin](#); [Gustavson, Angela](#)
Subject: Hearing Summary
Date: Tuesday, February 27, 2018 1:42:39 PM
Attachments: [testimony_griffitts.pdf](#)
[testimony_hyun.pdf](#)
[CBRA Hearing 2.27.18.docx](#)
Importance: High

Hi All,

Attached is a brief hearing summary from this morning's CBRA hearing, along with the other two witness testimonies.

Please let me know if you have any questions, or need anything else.

Thanks,
Taylor

Taylor Pool
Congressional/Legislative Affairs Specialist
U.S. Fish and Wildlife Service
E: taylor_pool@fws.gov
O: 703-358-2128
C: 202-657-2989



BOARD OF COUNTY COMMISSIONERS



This file came to us with the contact info redacted, but it should not be withheld: 840 W 11th Street Panama City, FL 32401

February 22, 2018

BOARD OF COUNTY COMMISSIONERS

www.baycountyfl.gov

Honorable, Doug Lamborn, Chairman
Subcommittee on Water, Power and Oceans
U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Re: H.R. 2947 Replace Coast Barrier Resource System Maps

840 WEST 11 TH STREET
PANAMA CITY, FL 32401

I would like to thank the House Committee on Natural Resources for the opportunity to testify before you today. I am Philip Griffiths Jr. Most folks call me Griff. I am a 5th generation Bay Countian. I was born in raised in Panama City Beach. I was appointed by Governor Rick Scott in June of 2016 to fill a vacant seat on the commission and subsequently won the primary later that year. I am proud to call Bay County home and I am humbled to serve the citizens of Bay County as their commissioner.

COMMISSIONERS:

TOMMY HAMM
DISTRICT I

ROBERT CARROLL
DISTRICT II

WILLIAM T. DOZIER
DISTRICT III

GUY M. TUNNELL
DISTRICT IV

PHILIP "GRIFF" GRIFFITTS
DISTRICT V

ROBERT J. MAJKA JR
COUNTY MANAGER

I am here before you today to speak in favor of H.R. 2947 proposed by Representative Dr. Neal Dunn. This bill entitled "Strengthening Coastal Communities Act of 2017" consist of the U.S. Fish & Wildlife Services Summary of Final Recommended Changes to the John H. Chafee Coastal Barrier Resources System, Unit P31 and OPA P31P, dated October 7, 2016. This resolution is overdue in correcting a mistake made long ago. The following facts support the bill:

- 1. The OPA map includes residential subdivisions developed with a full complement of public infrastructure prior to 1990 when the map was drawn
2. These areas were mistakenly included in an OPA containing St. Andrews State Park in 1990
3. These areas have never flooded and the risk to taxpayers is low.
4. The homeowners in these residential communities are unnecessarily suffering serious financial hardships from an inability to obtain federal flood insurance.

Let me explain this in more detail.

In 1990 when the CBRA maps were done for Bay County, an Otherwise Protected Area (OPA) map was created to include St Andrews State Recreation Area. This State Park includes several miles of undeveloped beachfront on the Gulf of Mexico. The mapper used section lines to create the western and northern boundaries of the OPA map. This imprecise method included private property developed with homes and public infrastructure in the OPA map.

Under CBRA this OPA map should have been limited to undeveloped conservation areas such as national wildlife refuges, national parks and seashores, state parks military bases and conservation lands owned by private organizations. Copies of the Bay County Unit P 31P are attached.

Because of the mapping error, Bay County Unit P-31P correctly includes St Andrews State Park to the south on the Gulf of Mexico. However, it incorrectly contains portions of an existing mobile home and RV subdivision called "Venture Out" on the west and an approximate 80 acre upland parcel located on the north that is over one mile away from the beach and developed for residential use. These areas are not a coastal barrier island. Attached are current aerial maps prepared by U.S. Fish & Wildlife Services showing these areas with the existing boundaries as well as the recommended changes.

The 80 acre residential area contains three subdivisions. Bonefish Pointe is approved for 18 lots, Finisterre subdivision is approved for 73 lots and Martinique subdivision is approved for 138 lots. There are currently 89 homes constructed there with 5 under construction. Each home is on a paved road with public water and sewer utilities and police and fire services are provided by Bay County. The attached maps show how these subdivisions are currently included in the OPA.

There were single family homes constructed on Grand Lagoon in this area as far back as 1955. The area of the Finisterre subdivision was subject to an Agreement between adjacent landowners to connect roads, water and sewer services to a large 1321 unit Development of Regional Impact called Bay Point in 1976. See Agreement date July 1976.

Bay County designated this area in its Comprehensive Plan for residential use at a density of 15 units an acre in 1990. A copy of the 1990 Future Land Use Map for the area is attached. The current Land Use Map designates this area for commercial and residential use. See attached current FLUM-Bay Point Area.

Longtime residents will tell you that this area has never flooded during a hurricane. As a lifetime resident of this area I can confirm this. Therefore, the legislation poses little risk to the taxpayers. It should be noted that when the subdivisions were originally approved they were not included in the 1996 FEMA flood zones. These 1996 FEMA maps were drawn one year after we had severe impacts from Hurricane Opal and these areas did not flood. However, in 2002 and again in 2009, FEMA modified the flood maps. At that time, most of the residential lots were included in a flood zone. At that point, most banks started demanding flood insurance. Because these lots were located in an OPA area, owners of homes and vacant lots that were not previously required to have flood insurance were compelled to purchase it and federal flood insurance was not available. Private insurance can cost upwards of \$50,000 a year. This makes financing new construction and refinancing existing development extremely difficult and expensive. It adversely affects not only people's lives, but the local real estate market and the local tax base. Attached is a report of a middle class family who struggled to keep their home because of the map error on Map P-31P.

To all the members present today, I truly believe the inclusion of these residential areas in Bay County OPA Unit P-31P was a mistake. It was caused by a mapping error and the unauthorized application of an OPA to existing residential lands. The map error has real life impacts on local homeowners, it complicates the efficient provision of public utilities and it depresses local markets. For these reasons, Bay County humbly requests you and the members of the Committee on Natural Resources vote to support H.R.2947

Sincerely



Philip "Griff" Griffitts
Vice-Chairman

Existing and Final Recommended Boundaries



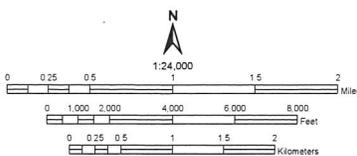
JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM

St. Andrew Complex P31 (1 of 3)

This draft map was produced by the U.S. Fish and Wildlife Service to show final recommended boundary changes to the John H. Chafee Coastal Barrier Resources System (CBRS) as directed by Section 4 of the Coastal Barrier Resources Reauthorization Act of 2005 (Public Law 109-226).

The seaward side of the CBRS unit includes the entire sand-sharing system, including the beach and nearshore area. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments and the Great Lakes, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

For additional information about the Coastal Barrier Resources Act (CBRA) or the CBRS, please visit www.fws.gov/cbra.

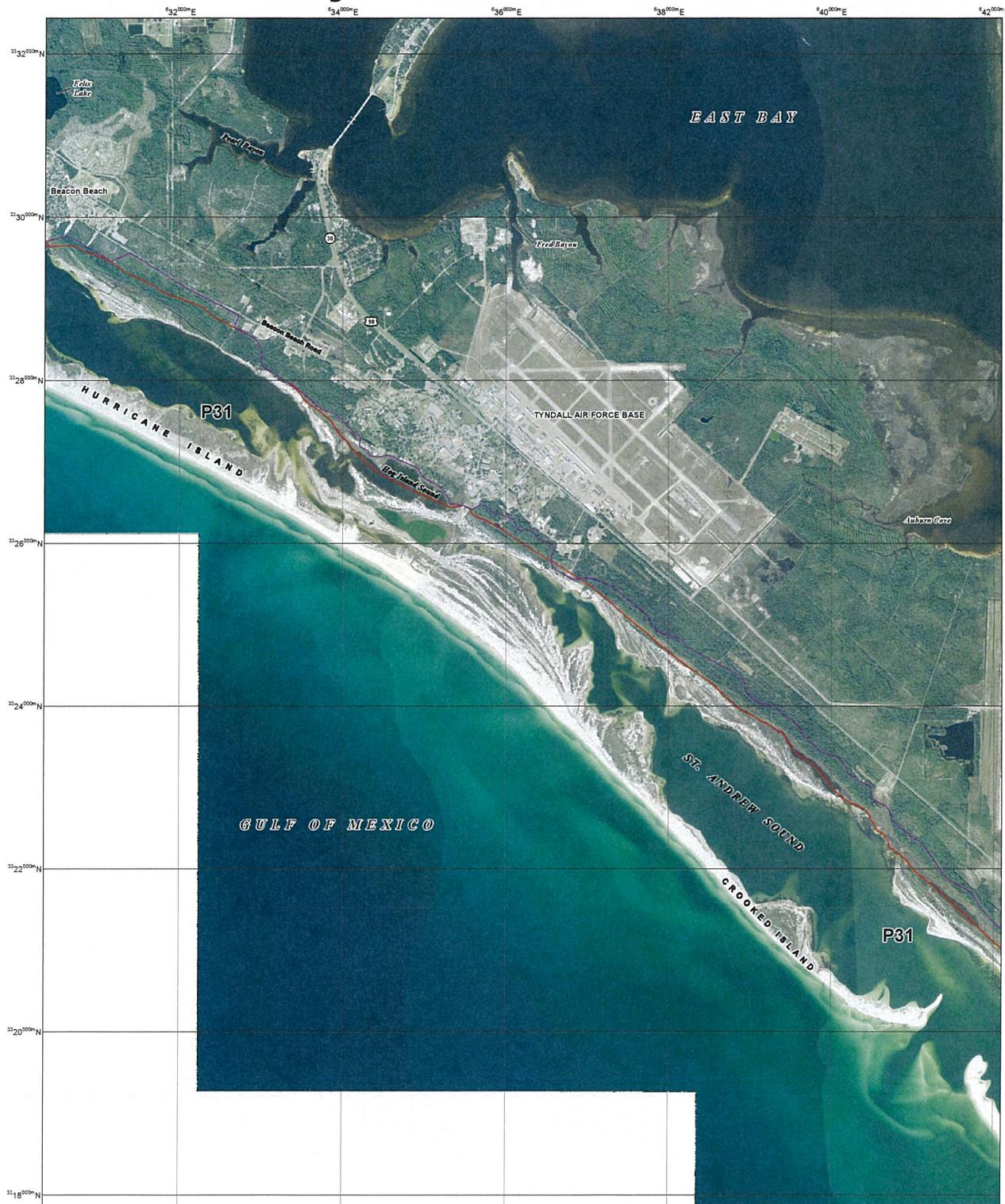


- Existing System Unit Boundary
- - - Existing Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- Final Recommended System Unit Boundary
- - - Final Recommended Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- - - - - Approximate State Boundary
- $\times 5,400m$ N 2000-meter Universal Transverse Mercator grid values

Imagery Date: 2013
 Imagery Source: United States Department of Agriculture National Agriculture Imagery Program
 Coordinate System: Universal Transverse Mercator Zone 16 North North American Datum 1983

October 7, 2016

Existing and Final Recommended Boundaries



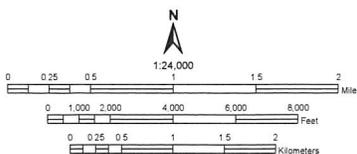
JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM

St. Andrew Complex P31 (2 of 3)

This draft map was produced by the U.S. Fish and Wildlife Service to show final recommended boundary changes to the John H. Chafee Coastal Barrier Resources System (CBRS) as directed by Section 4 of the Coastal Barrier Resources Reauthorization Act of 2005 (Public Law 109-226).

The seaward side of the CBRS unit includes the entire sand-sharing system, including the beach and nearshore area. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments and the Great Lakes, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

For additional information about the Coastal Barrier Resources Act (CBRA) or the CBRS, please visit www.fws.gov/cbra.

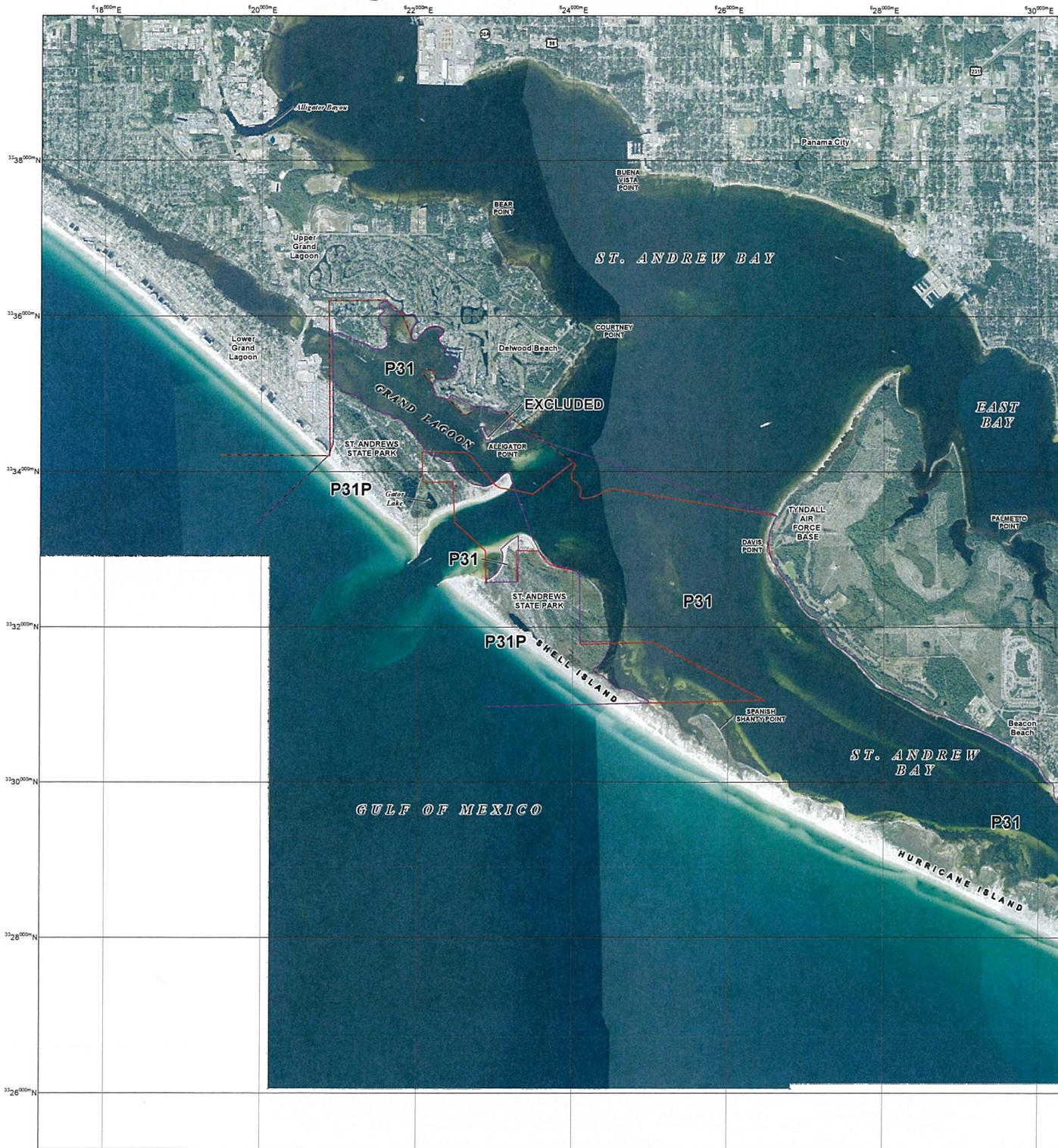


- Existing System Unit Boundary
- Existing Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- Final Recommended System Unit Boundary
- Final Recommended Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- - - - - Approximate State Boundary
- $\phi 5,4000^{\circ}$ N 2000-meter Universal Transverse Mercator grid values

Imagery Date: 2013
 Imagery Source: United States Department of Agriculture National Agriculture Imagery Program
 Coordinate System: Universal Transverse Mercator Zone 16 North North American Datum 1983

October 7, 2016

Existing and Final Recommended Boundaries



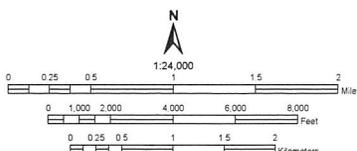
JOHN H. CHAFEE COASTAL BARRIER RESOURCES SYSTEM

St. Andrew Complex P31/P31P (3 of 3)

This draft map was produced by the U.S. Fish and Wildlife Service to show final recommended boundary changes to the John H. Chafee Coastal Barrier Resources System (CBRS) as directed by Section 4 of the Coastal Barrier Resources Reauthorization Act of 2005 (Public Law 109-226).

The seaward side of the CBRS unit includes the entire sand-sharing system, including the beach and nearshore area. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments and the Great Lakes, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

For additional information about the Coastal Barrier Resources Act (CBRA) or the CBRS, please visit www.fws.gov/cbra.



- Existing System Unit Boundary
- Existing Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- Final Recommended System Unit Boundary
- Final Recommended Otherwise Protected Area (OPA) Boundary; OPAs are identified on the map by the letter "P" following the unit number
- - - - - Approximate State Boundary
- $\phi 54^{\circ}00'N$ 2000-meter Universal Transverse Mercator grid values

Imagery Date: 2013
 Imagery Source: United States Department of Agriculture National Agriculture Imagery Program
 Coordinate System: Universal Transverse Mercator Zone 16 North North American Datum 1983

October 7, 2016

Sal Albano and his wife Allison moved into their home in Bay County's Martinique subdivision about four years ago. It was a great place, they thought, to raise their two daughters, Luca, now three and six-year-old Bijou, who has been diagnosed with autism. Sal, a maintenance engineer at a local condominium, and Allison, a real estate agent, are not wealthy people, and in fact, live at least block off the coastline.

"We had no doubt in our minds this was the last place we ever wanted to live," Sal Albano said. "We have so many friends here and we love our home. It's a great community for a family with a child with autism."

But in the last two years, their dream home has become an almost unbearable burden.

The Albanos financed their home when they bought it four years ago through the now-defunct Peoples First Bank, bought out by Hancock Bank when it folded in 2012. And that's when their problems began.

Six months after Hancock Bank took over the \$90,000 remaining on their home's mortgage the Albanos received a letter stating that they needed proof of flood insurance. People's had not required flood insurance, as Bay County puts the property at more than 5.5 feet above the flood level, and the home itself is built 3.5 feet above that.

The Albanos complied and bought a minimal policy through their carrier, only to receive a refund and notice that they were not insured a couple months later. Hancock responded by force-placing insurance on the family, doubling their mortgage payment to \$3,900 and mandating that they make back payments to 2012.

"My problem is that nobody can write insurance for a home that's in CBRA. The government won't recognize it and the insurance companies can't write it. So how are you going to force place it on us?"

In the last eight weeks, the insurance companies, the bank and the Albanos have been trying to reach a consensus.

"I got a letter from Hancock saying you don't need insurance, but in the same pile of mail, there was another letter from them saying you have until April 1 to get flood insurance."

Albano said the ordeal has taken a toll on him and his family.

"My wife is so frustrated," he said. "We're thinking about putting it up for sale."

Sal Albano can be reached at (850) 625-5350.

Allison Albano can be reached at (850) 258-0123.

**Testimony of
Karen Hyun, Ph.D., Vice President for Coastal Conservation
National Audubon Society**

**Regarding
H.R. 2947 (Rep. Neal Dunn), To replace certain Coastal Barrier Resources System
maps “Strengthening Coastal Communities Act of 2017.”, and
H.R. 4880 (Rep. Lisa Blunt Rochester), To revise the boundaries of certain John H.
Chafee Coastal Barrier Resources System Units in Delaware.**

**Before the
Subcommittee on Water, Power, and Oceans
Committee on Natural Resources
U.S. House of Representatives**

February 27, 2018

Chairman Lamborn, Ranking Member Huffman, and Members of the Subcommittee, thank you for the opportunity to participate in this hearing about the Coastal Barrier Resources Act (CBRA). My name is Karen Hyun and I am the Vice President for Coastal Conservation at the National Audubon Society. The National Audubon Society works to protect birds and the places they depend on now and in the future. We have 22 state offices, over 60 nature centers and sanctuaries, 462 chapters, and over a million members, who are nearly evenly split between progressives and moderates/conservatives.

I am here today to express Audubon’s strong support for H.R. 2947 and H.R. 4880. These revisions were made by the U.S. Fish and Wildlife Service, which applied statutory criteria and sought public review and comment, to make appropriate changes to the CBRA System.

The National Audubon Society commends the Subcommittee for holding this hearing on these bills as needed steps toward improving and strengthening CBRA. We hope that the Committee will take further steps to move legislation that would add the remaining areas included in the Digital Mapping Pilot Project to the CBRA System.

Coastal Barrier Resources Act Background

The Coastal Barrier Resources Act (CBRA) was bi-partisan legislation enacted in 1982 and was signed into law by President Ronald Regan, who said:

The Coastal Barrier Resources Act meets a national problem with less federal involvement, not more. It adopts the sensible approach that risk associated with new private development should be borne by the private sector, not underwritten by the American taxpayer. It [saves] American

taxpayers millions of dollars while, at the same time, taking a major step forward in the conservation of our magnificent coastal resources.

The CBRA has three goals to:

- (1) reduce the flow of federal tax dollars into risky coastal development;
- (2) promote public safety by preventing taxpayer funds for development in hurricane and storm prone areas; and
- (3) protect fish, wildlife, and other natural resources.

Nationwide, roughly 3.3 million acres – about the size of the state of Connecticut - of undeveloped land and habitat along the Atlantic, Gulf of Mexico and Great Lakes are protected through the CBRA System.

CBRA is a free-market conservation tool that prohibits federal expenditures or financial assistance for new development on areas mapped as undeveloped and included in the CBRA System. It does not regulate how people develop their land, but transfers the full cost from Federal taxpayers to the individuals who choose to build in these areas. According to a 2002 analysis conducted by the U.S. Fish and Wildlife Service, CBRA saved the taxpayer more than \$1.3 billion in federal expenditures from 1983-2010. These savings are likely underestimated because not all Federal funding sources were incorporated in the original study. In addition, this study has not been updated and has not considered subsequent disaster relief spending.

CBRA promotes public safety. Since CBRA was enacted, more than 50 hurricanes, including 17 major hurricanes, have struck the U.S., causing thousands of deaths. Roughly 39 percent of the U.S. population now lives in coastal counties, placing more people at risk from deadly storms. By removing taxpayer-funded subsidies for development in hazardous coastal areas, the CBRA promotes public safety.

Finally, CBRA helps protect economically important coastal resources. Since the life histories of many fish and shellfish of commercial importance rely on coastal wetlands and estuaries, inclusion of these habitats in the CBRA System contributes to the nation's economically vital commercial fisheries. In 2015, commercial fish landings in Atlantic and Gulf of Mexico states netted more than \$2.8 billion, while commercial fish landings in Great Lakes states contributed more than \$22 million to the economy. Coastal wetlands also help protect coastal communities from catastrophic storm damages. More than \$625 million in property damages were prevented because coastal wetlands in New York and New Jersey buffered Hurricane Sandy's waves and storm damage. It is estimated that nationwide, coastal wetlands provide more than \$23 billion per year in storm protection services.

The National Audubon Society supports CBRA because it provides vitally important habitat for shorebirds and other birds and wildlife. Protected areas, including units in the CBRA System, are essential to bird conservation. For example, in the Coastal Carolinas, an impressive 55-99% of important bird species are found in the CBRA System and other protected areas. These include high percentages of nonbreeding (migrating and

overwintering) Red Knot (74%), breeding and non-breeding American Oystercatcher (90% and 79%), Piping Plover (97% and 88%), and breeding Least Terns (93%), found in particular on units of the CBRA System. These CBRA System units have greater acreages of habitat favored by many bird species, such as saltmarsh, mud and sand, than do other areas in the Coastal Carolinas.

Digital Mapping Pilot Project

In 2000, Congress directed the Secretary of the Interior to conduct a Digital Mapping Pilot Project, and in 2006, to finalize the pilot project maps. This Digital Mapping Pilot Project was authorized to address challenges associated with administering the CBRA because of outdated maps that dated back to the 1990s. The draft pilot project maps underwent public review in 2009 and were revised in 2016. In November 2016, the U.S. Fish and Wildlife Service transmitted to Congress a report with the final recommended pilot project maps, which would add 24,510 acres to and remove 396 acres from the CBRA System. We ask this Committee and Congress to act by adopting these maps through legislation. Enacting legislation adopting these pilot project maps as a complete package would save taxpayer dollars, improve public safety, and protect habitat that supports fish, wildlife, and coastal economies.

H.R. 4880 (Rep. Lisa Blunt Rochester), To revise the boundaries of certain John H. Chafee Coastal Barrier Resources System Units in Delaware.

Delaware has 6,696 acres included in 4 CBRA System units, on which nearly all federal development subsidies are prohibited. Another 34,049 acres are included in 6 “Otherwise Protected Areas,” in which only federal flood insurance is prohibited. The U.S. Fish and Wildlife Service recommended to Congress in November 2016 that another 897 acres be added to CBRA System units and Otherwise Protected Areas in Delaware, and 83 acres be removed to reflect mapping errors. H.R. 4880 would incorporate these revised pilot project maps into the CBRA System in Delaware.

The National Audubon Society commends Representative Blunt Rochester for her leadership on this issue, and continuing the bi-partisan support for CBRA. One of the original authors of CBRA in 1982 was Representative Thomas B. Evans (R-DE) who stated, “In passing the Coastal Barrier Resources Act, we in Congress said to developers, ‘if you’re going to develop in storm-prone, environmentally-sensitive areas, we can’t stop you; but do it on your own nickel and not the American Taxpayer’s.’”

Hurricanes, nor’easters and storms periodically hit the Delaware coast, resulting in the loss of human life and the destruction of property. For example, a 1962 nor’easter battered Dewey Beach for 2 ½ days, causing 20 foot waves that crashed against homes and businesses and inundated the town. Coastal storms imperil coastal residents and visitors alike. By removing taxpayer subsidies for coastal construction, the CBRA removes incentives for people to build in highly hazardous areas.

In 2015, the commercial fish and shell fishing industry in Delaware landed more than 3.5 million pounds of marine fish and shellfish that were worth \$6.8 million. Recreational fishing is important to Delaware's economy, too. More than 138,000 saltwater anglers fished along Delaware's coast in 2011, contributing more than \$94 million in retail sales in the state. Habitat like wetlands and clean coastal water is the lifeblood for saltwater fisheries, and CBRA protects more than 34,000 acres of coastal wetlands and nearshore habitat in Delaware.

H.R. 2947 (Rep. Neal Dunn), To replace certain Coastal Barrier Resources System maps "Strengthening Coastal Communities Act of 2017."

Through a process separate from the Digital Mapping Pilot Project, the U.S. Fish and Wildlife Service also transmitted to Congress recommended maps for the St. Andrew Complex (P31/P31P) located in Bay County, Florida, dated October 7, 2016. These maps were prepared following a 45-day public review period of proposed maps dated May 16, 2016. H.R. 2947 would enact these maps and are supported by National Audubon.

Florida currently has a total of 767,187 acres in the protective CBRA System: 303,243 acres are included in 68 CBRA System units, on which nearly all federal development subsidies are prohibited, while another 463,944 acres are included in 63 Otherwise Protected Areas, in which only federal flood insurance is prohibited. In the Digital Mapping Pilot Project, the U.S. Fish and Wildlife Service recommended to Congress that another 13,554 acres be added to the CBRA in Florida, and 234 acres be removed to reflect mapping errors.

Florida is the number one most hurricane-prone state in the United States. From 1851 to 2015, 114 hurricanes hit Florida. As many hurricanes hit Florida as hit Louisiana and Texas combined, and Florida had as many hurricanes as did the rest of the South Atlantic states combined (Georgia, South Carolina, North Carolina and Virginia). Hurricanes have resulted in the loss of human life and serious injuries, imperiling coastal residents and visitors. By removing taxpayer subsidies for coastal construction, the CBRA removes incentives for people to build in highly hazardous areas that are prone to repeated disasters.

Florida's marine fisheries provide more than 2.5 million recreational anglers with sport fishing opportunities, and more than 15,000 commercial fishers with employment. Habitat like wetlands and clean coastal water is the lifeblood for saltwater fisheries, and CBRA protects nearly 700,000 acres of coastal wetlands and nearshore habitat in Florida. CBRA's beaches, dunes, and islands also provide important habitat for birds, which draw bird enthusiasts and Audubon members in Florida and nationwide.

Conclusion

The National Audubon Society supports H.R. 2947 and H.R. 4880 and commends the Subcommittee for holding a hearing on these bills as needed steps toward improving and strengthening CBRA. We hope that the Committee will take further steps to move

legislation that would add the remaining areas included in the Digital Mapping Pilot Project to the CBRA System.

Thank you Chairman Lamborn, Ranking Member Huffman, and Members of the Subcommittee for the opportunity to provide this testimony.

Congressional Hearing Summary

Date: February 27, 2018

Subject: Coastal Barrier Resources Act: H.R. 2947 and H.R. 4880

Committee: House Natural Resources

Subcommittee: Water, Power and Oceans

Members Present

Democrats: Ranking Member Huffman (CA-02); Rep. Barragan (CA-44); Rep. Blunt Rochester (DE-AL)

Republicans: Vice Chairman Webster (FL-11); Rep. Dunn (FL-02); Rep. Johnson (LA-04); Rep. Graves (LA-06)

Witnesses

Panel

Mr. Gary Frazer
Assistant Director for Ecological Services
U.S. Fish and Wildlife Service (FWS)

Mr. Philip Griffitts
Commissioner
Bay County Board of County Commissioners

Ms. Karen Hyun
Vice President, Coastal Conservation
National Audubon Society

Summary of Subject Matter:

The hearing focused on the Coastal Barrier Resources Act (CBRA) and two bills specific to CBRA, H.R. 2947 (Rep. Dunn) and H.R. 4880 (Rep. Blunt Rochester). The comprehensive map modernization process the FWS is undertaking, along with the Digital Mapping Pilot Project were also noted subjects of the hearing.

Opening Statements of Subcommittee Members

Subcommittee Vice Chairman Webster

Webster noted in his opening that H.R. 2947 would have the support of the Committee, and would save taxpayer money and that CBRA as a whole is a strong, effective, fiscally conservation program that enjoys bipartisan support.

Congressional Hearing Summary

Ranking Member Huffman

Huffman noted his support for both bills and stated that CBRA is an example of good environmental stewardship that includes responsible taxpayer protections. Huffman noted the bipartisan support of the hearing and the CBRA program; but, also mentioned that he would like to discuss the inclusion of west coast areas and funding shortfalls of the program. Huffman also went into detail on the impacts of sea level rise and climate change.

Question and Answer

- (Vice Chairman Webster yielded time to Rep. Dunn) Rep. Dunn (R-FL-02) asked Mr. Frazer about his other bill (H.R. 4091) and whether or not the Service would implement the law and draft a map if directed by Congress; He also asked Mr. Frazer about the public comment/notification process and timeframe for when final maps are produced after laws are enacted.
- Ranking Member Huffman (D-CA-02) focused his questions on the public review process, estimates of cost-effectiveness/taxpayer savings, and CBRA modernization
- Rep. Graves (R-LA-06) made a statement on coastal barriers and their benefits for coastal communities, and mentioned that FEMA and FWS were holding up and/or refusing to go through with beach renourishment efforts. Graves also stated that the FWS is “not a fan of Section 6” of CBRA (exceptions), and that overall the FWS causes the increase in renourishment costs by forcing the gathering of offshore materials. After asking Mr. Frazer about beach renourishment, Rep. Graves also requested that FWS come back to the Committee, revisiting the issue of beach renourishment, and how to make changes on what can be done to use the existing sand on barrier islands for beach renourishment; along with explain FWS views on sediment transport and sea level rise.

From: [Niemi, Katie](#)
To: [Phinney, Jonathan T](#); [BallisLarsen, Martha](#); [Bohn, Cynthia](#); [Eustis, Christine](#); [Peters, Kristen E](#); [Comlish, Paul D](#)
Cc: [Wright, Dana K](#); [Pool, Taylor S](#)
Subject: CBRA hearing
Date: Wednesday, February 28, 2018 8:42:31 AM
Attachments: [Service-Testimony-CBRA Hearing 02-27-18 Final OMB Cleared.docx](#)
[CBRA Hearing Summary 2.27.18.docx](#)

Hi Folks,

Below is the E&E article on yesterday's CBRA hearing. Attached is the Service's written testimony and a summary CLA prepared of the hearing (including key Q&As). Please let me know if you have any questions.

Thanks!

Katie

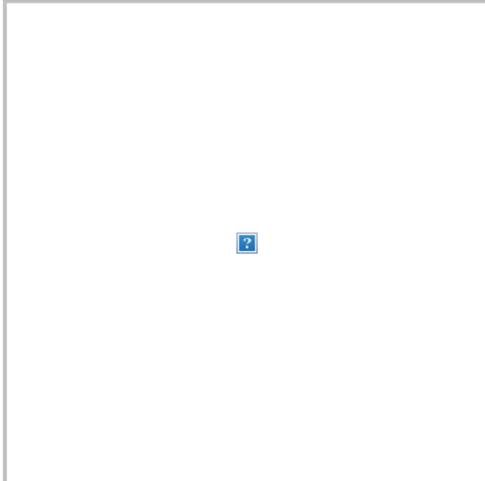
FWS pushes lawmakers to move on updated coastal maps

Cecelia Smith-Schoenwalder, E&E News reporter
Published: Wednesday, February 28, 2018

Lawmakers yesterday debated legislation to tweak Fish and Wildlife Service maps that limit federal funds for projects in storm-prone areas under the Coastal Barrier Resources Act.

The bills, discussed by the House Natural Resources Subcommittee on Water, Power and Oceans yesterday, would amend three of the 65 units included in FWS's map update in 2016.

[H.R. 4880](#), from Rep. Lisa Blunt Rochester (D-Del.), would tweak one unit in Delaware. Florida Republican Rep. Neal Dunn's [H.R. 2947](#) would tweak two others in Florida.



Gary Frazer, assistant director for ecological services at the Fish and Wildlife Service. House Natural Resources Committee

Gary Frazer, the assistant director for ecological services for FWS, said the agency recommends Congress approve the remaining 62 draft maps en bloc.

If Congress were to adopt all the updated maps, it would add nearly 25,000 acres of undeveloped coastal barrier areas to the Coastal Barrier Resources System, Frazer said.

According to a 2002 analysis by FWS, CBRA has saved taxpayers more than \$1.3 billion from 1983 to 2010. The law discourages building on at-risk coasts by restricting federal funds available to developers for disaster assistance, roads, wastewater systems and subsidized flood insurance.

The bills would remove certain structures that were wrongfully included to allow property owners to gain access to federal subsidies.

Philip Griffiths, who is on the Bay County Board of County Commissioners in Panama City, Fla., said numerous families have struggled to keep their homes because of this error. Some of them have had to pay up to \$50,000 annually for flood insurance, said Griffiths.

"The map error has real-life impacts on local homeowners, it complicates the efficient provision of public utilities and it depresses local markets," he told lawmakers.

FWS has only submitted new maps to Congress for 15 percent of the Coastal Barrier Resources System.

Frazer said FWS doesn't have the resources to update the rest of the system. FWS currently has \$1.4 million for that purpose, but Frazer said an additional \$5 million would be needed.

Rep. Jared Huffman (D-Calif.) pushed for modernization of the CBRA during the hearing and suggested it extend to the West Coast.

Frazer said that FWS views the law as fundamentally sound.

**Testimony of Gary Frazer,
Assistant Director for Ecological Services,
U.S. Fish and Wildlife Service, Department of the Interior**

**Before the House Committee on Natural Resources, Subcommittee on Water, Power and
Oceans**

**Legislative Hearing on Two Bills to Revise the Boundaries of Certain Units of the John H.
Chafee Coastal Barrier Resources System: H.R. 2947, the “Strengthening Coastal
Communities Act of 2017”; and H.R. 4880, “To revise the boundaries of certain John H.
Chafee Coastal Barrier Resources System units in Delaware”**

February 27, 2018

Good morning Chairman Lamborn, Ranking Member Huffman, and Members of the Subcommittee. I am Gary Frazer, Assistant Director for Ecological Services with the U.S. Fish and Wildlife Service (Service). I appreciate the opportunity to testify today on two bills related to the John H. Chafee Coastal Barrier Resources System (CBRS). My testimony provides the Administration’s views on each of the bills and includes information on the Coastal Barrier Resources Act (CBRA) and the Service’s efforts to modernize the maps of the CBRS. The Administration supports CBRA and its objectives to save lives, save taxpayer dollars, and conserve coastal barrier habitat through the law’s non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. The Administration also supports the two bills that are the subject of today’s hearing and looks forward to working with the Subcommittee on legislative efforts to update the maps of the CBRS.

Background

Established by CBRA of 1982, the CBRS consists of geographic units that were relatively undeveloped at the time they were designated. Coastal barrier ecosystems are not only home to vital natural resources such as coastal wetlands, diverse wildlife, and flyways for migratory birds; they also protect public safety and the substantial investments within coastal communities that are vulnerable to intense storms and hurricanes. Undeveloped coastal barriers and wetlands absorb the brunt of the destructive forces of hurricanes and storm surges, reducing wave energy and inland flooding and providing resistance to the flow of water. A 2016 study by Lloyd’s Tercentenary Research Foundation shows that coastal wetlands prevented \$625 million in direct flood damages during Hurricane Sandy in 2012.

Nationally, the CBRS contains 862 geographic units that encompass 3.5 million acres of relatively undeveloped areas along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. CBRA limits most new federal funding for development within these identified areas, saving American taxpayers millions of dollars in spending for roads, wastewater and potable water systems, disaster assistance, and subsidized flood insurance. CBRA imposes no restrictions on development conducted with private, state, or local funds. In his 1982 signing statement, President Reagan stated that CBRA “simply adopts the sensible

approach that risk associated with new private development in these sensitive areas should be borne by the private sector, not underwritten by the American taxpayer.”

The devastating 2017 hurricane season, with three major hurricanes making landfall in the U.S. within one month, will cost taxpayers billions in disaster response, flood insurance payouts, and long-term recovery efforts. CBRA is a common sense law that tackles a national problem with less federal involvement rather than more. CBRA helps the Federal Government send appropriate price signals to property owners to indicate that the risk of developing on coastal barriers is high and ensures that the federal taxpayer does not underwrite further development in those areas, all without infringing upon the rights of landowners to develop their properties.

The CBRS units are identified and depicted on a series of maps entitled “John H. Chafee Coastal Barrier Resources System.” The Service is responsible for maintaining and updating the official maps of the CBRS. Aside from three minor exceptions, only legislation enacted by Congress can modify the CBRS boundaries to add or remove areas. These exceptions include: (1) CBRA’s five-year review requirement that solely considers changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess federal property to the CBRS.

CBRS Map Modernization

The official maps of the CBRS were first created more than 35 years ago. Today’s technology produces more refined maps that are more easily accessed and understood by the public. Congress recognized the challenges associated with the maps and, through the 2000 reauthorization of CBRA (Section 6 of Pub. L. 106-514), directed the Service to conduct a pilot project to remap 50-75 CBRS areas using digital technology. In the 2006 reauthorization of CBRA (Section 4 of Pub. L. 109-226), Congress directed the Service to prepare digital maps for the remainder of the CBRS and make recommendations for its expansion. The Service agrees that the maps should be modernized. To date, the Service has transmitted comprehensively revised draft maps for approximately 15 percent of the CBRS to Congress for consideration.

The Service uses a “comprehensive map modernization” process to update the CBRS maps that requires: (1) research by the Service into the intent of the original boundaries and the development status on the ground at the time the areas were originally included within the CBRS; (2) development of draft revised boundaries by the Service; (3) public review of the draft boundaries; (4) preparation of final recommended maps by the Service that take into consideration information provided during the public comment period; (5) transmittal of final recommended maps to the Congressional committees of jurisdiction; and (6) Congressional enactment of legislation to make the revised maps effective. This process will ensure that newly adopted maps are created in a transparent way that clearly identifies the location of CBRS lines and underlying justification. Information about the Service’s guiding principles and criteria for assessing modifications to the CBRS is available in Chapter 6 of the *Final Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project*. Information about the Service’s large-scale comprehensive remapping projects is below.

Digital Mapping Pilot Project

The Service submitted its Digital Mapping Pilot Project report and accompanying draft maps for 65 units (approximately 10 percent of the total acreage within the CBRS) to Congress in 2016. H.R. 4880 addresses two units that are part of the pilot project. However, there are an additional 59 units included in the pilot project that are not addressed by these bills. The Administration recommends that Congress adopt en bloc all of the final recommended maps for the 65 pilot project units that are included in Appendix C of the report to Congress. If adopted by Congress, the pilot project maps collectively would remove about 325 structures from the CBRS, correcting decades-old errors that affect property owners. The pilot project maps also add 24,510 acres of undeveloped coastal barrier areas to the CBRS (mainly wetlands and open water). Coastal barriers are highly dynamic areas that are subject to continual geomorphic change, and development conditions on the ground are also subject to change. Therefore, delays in the adoption of the final recommended maps will require updated reviews by the Service of on-the-ground conditions. Such reviews are costly to the government and will delay relief for those homeowners and project proponents with areas recommended for removal.

Legislation

The bills that are the subject of this hearing seek to enact certain revised CBRS maps that were prepared by the Service through the comprehensive map modernization process described above. If adopted by Congress, these revised maps would remove areas that were previously included within the CBRS in error and add new undeveloped coastal barrier areas to the CBRS. The areas removed from the CBRS would become eligible for federal subsidies, including federally backed flood insurance. The areas added to the CBRS would not be eligible for most new federal expenditures and financial assistance (including flood insurance).

H.R. 2947: Strengthening Coastal Communities Act of 2017

H.R. 2947 would revise the boundaries of two existing units of the CBRS in Bay County, Florida. These units are known as St. Andrew Complex P31/P31P. The legislation replaces the existing three maps for these two units dated January 11, 2016, with three revised maps dated October 7, 2016. These revised maps, prepared by the Service in 2014, would remove 200 structures (mainly residential) and 125 acres (98 acres of uplands and 27 acres of associated aquatic habitat) from the CBRS and add 1,582 acres (131 acres of uplands and 1,451 acres of associated aquatic habitat) to the CBRS.

The Administration supports H.R. 2947 as it would adopt three maps that the Service prepared through the comprehensive map modernization process.

H.R. 4880: To revise the boundaries of certain John H. Chafee Coastal Barrier Resources System units in Delaware

H.R. 4880 would revise the boundaries of two existing units of the CBRS in Sussex County, Delaware. These units are known as Delaware Seashore Unit DE-07P and North Bethany Beach Unit H01. The legislation replaces the existing map for the two existing units dated December 6,

2013, with a revised map dated March 18, 2016, which also adds one new unit known as Delaware Seashore Unit DE-07 to the CBRS. This map was prepared by the Service as part of the Digital Mapping Pilot Project. The revised map would remove 99 structures (mainly residential) and 83 acres (43 acres of uplands and 40 acres of associated aquatic habitat) from the CBRS. The revised map would also add 897 acres (409 acres of uplands and 488 acres of associated aquatic habitat) and 1 structure associated with a Delmarva Power electrical facility to the CBRS. This facility would be included within Otherwise Protected Area (OPA) Unit DE-07P. The only restriction within an OPA is on federal flood insurance for new construction (or substantially improved existing construction).

The Administration supports H.R. 4880 as it would adopt a map that the Service prepared through the comprehensive map modernization process. In addition, the Administration recommends that all of the maps included in Appendix C of the *Final Report to Congress: John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project* also be adopted en bloc.

Conclusion

The Administration supports map modernization as a good government effort that will provide relief to landowners affected by inadvertent errors on old maps, make CBRS information more accessible to the public, and preserve the long-term integrity of the CBRS. Thank you for the opportunity to testify today on the Coastal Barrier Resources Act. I am happy to answer any questions, and look forward to working with the Subcommittee as it considers these two bills.

Congressional Hearing Summary

Date: February 27, 2018

Subject: Coastal Barrier Resources Act: H.R. 2947 and H.R. 4880

Committee: House Natural Resources

Subcommittee: Water, Power and Oceans

Members Present

Democrats: Ranking Member Huffman (CA-02); Rep. Barragan (CA-44); Rep. Blunt Rochester (DE-AL)

Republicans: Vice Chairman Webster (FL-11); Rep. Dunn (FL-02); Rep. Johnson (LA-04); Rep. Graves (LA-06)

Witnesses

Panel

Mr. Gary Frazer
Assistant Director for Ecological Services
U.S. Fish and Wildlife Service (FWS)

Mr. Philip Griffitts
Commissioner
Bay County Board of County Commissioners

Ms. Karen Hyun
Vice President, Coastal Conservation
National Audubon Society

Summary of Subject Matter:

The hearing focused on the Coastal Barrier Resources Act (CBRA) and two bills specific to CBRA, H.R. 2947 (Rep. Dunn) and H.R. 4880 (Rep. Blunt Rochester). The comprehensive map modernization process the FWS is undertaking, along with the Digital Mapping Pilot Project were also noted subjects of the hearing.

Opening Statements of Subcommittee Members

Subcommittee Vice Chairman Webster

Webster noted in his opening that H.R. 2947 would have the support of the Committee, and would save taxpayer money and that CBRA as a whole is a strong, effective, fiscally conservation program that enjoys bipartisan support.

Congressional Hearing Summary

Ranking Member Huffman

Huffman noted his support for both bills and stated that CBRA is an example of good environmental stewardship that includes responsible taxpayer protections. Huffman noted the bipartisan support of the hearing and the CBRA program; but, also mentioned that he would like to discuss the inclusion of west coast areas and funding shortfalls of the program. Huffman also went into detail on the impacts of sea level rise and climate change.

Question and Answer

- (Vice Chairman Webster yielded time to Rep. Dunn) Rep. Dunn (R-FL-02) asked Mr. Frazer about his other bill (H.R. 4091) and whether or not the Service would implement the law and draft a map if directed by Congress; He also asked Mr. Frazer about the public comment/notification process and timeframe for when final maps are produced after laws are enacted.
- Ranking Member Huffman (D-CA-02) focused his questions on the public review process, estimates of cost-effectiveness/taxpayer savings, and CBRA modernization
- Rep. Graves (R-LA-06) made a statement on coastal barriers and their benefits for coastal communities, and mentioned that FEMA and FWS were holding up and/or refusing to go through with beach renourishment efforts. Graves also stated that the FWS is “not a fan of Section 6” of CBRA (exceptions), and that overall the FWS causes the increase in renourishment costs by forcing the gathering of offshore materials. After asking Mr. Frazer about beach renourishment, Rep. Graves also requested that FWS come back to the Committee, revisiting the issue of beach renourishment, and how to make changes on what can be done to use the existing sand on barrier islands for beach renourishment; along with explain FWS views on sediment transport and sea level rise.

From: [Niemi, Katie](#)
To: [Ellis, John](#)
Cc: [Matthews, Kathryn H](#); [Wells, Emily N](#); [Bohn, Cynthia](#); [Wright, Dana K](#)
Subject: Re: OCEANS FWS pushes lawmakers to move on updated coastal maps
Date: Monday, March 5, 2018 9:53:48 AM
Attachments: [Info Memo on Sand Mining in CBRS 11.27.17.docx](#)

John,

I think the issue is the Service's long-standing policy that mining sand from within the CBRS for shoreline stabilization projects located outside of the CBRS does not meet the 16 U.S.C. 3505(a)(6)(G) exception under the CBRA. Attached is an info memo we prepared on this issue in November.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Mon, Mar 5, 2018 at 9:34 AM, Ellis, John <john_ellis@fws.gov> wrote:
Make that are they "talking about "

On Mon, Mar 5, 2018 at 9:33 AM, Ellis, John <john_ellis@fws.gov> wrote:
Any idea what they are talking about by using existing sand on barrier islands? Are they king about upland sources, sand spits etc?

On Mon, Mar 5, 2018 at 8:59 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:
Hi John,

Overall the hearing went well. Gary testified on two CBRA bills, both of which had broad support (one technical correction for FL and one DE map that is part of the pilot project). There was generally support for the principles of CBRA. One issue to make you aware of, Rep. Graves (R-LA-06; and serves on both the House Natural Resources Committee and the House Transportation and Infrastructure Committee) was at the hearing and made a statement on coastal barriers and their benefits for coastal communities, and mentioned that FEMA and FWS were holding up and/or refusing to go through with beach renourishment efforts. Rep. Graves also stated that the FWS is "not a fan of Section 6" of CBRA (exceptions), and that overall the FWS causes the increase in renourishment costs by forcing the gathering of offshore materials. After asking Gary about beach renourishment, Rep. Graves also requested that FWS come back to the Committee, revisiting the issue of beach renourishment, and how to make changes on what can be done to use the existing sand on barrier islands for beach renourishment; along with explaining FWS views on sediment transport and sea level rise.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
[5275 Leesburg Pike](#)
[Falls Church VA 22041-3803](#)
Tel (703) 358-2071

On Mon, Mar 5, 2018 at 8:33 AM, Ellis, John <john_ellis@fws.gov> wrote:

----- Forwarded message -----

From: **Miller, Susan** <susan_miller@fws.gov>
Date: Mon, Mar 5, 2018 at 8:00 AM
Subject: OCEANS FWS pushes lawmakers to move on updated coastal maps
To: "Augspurger, Tom" <tom_augspurger@fws.gov>, Dale Suiter <dale_suiter@fws.gov>, Emily Wells <emily_wells@fws.gov>, "Fogo, Laura" <laura_fogo@fws.gov>, Gary Jordan <gary_jordan@fws.gov>, John Ellis <john_ellis@fws.gov>, John Hammond <john_hammond@fws.gov>, Joseph Madison <joseph_madison@fws.gov>, Kathryn Matthews <kathryn_matthews@fws.gov>, "Krom, Caroline" <caroline_krom@fws.gov>, "Mann, Leigh" <leigh_mann@fws.gov>, Matthew Butts <matthew_butts@fws.gov>, "McRae, Sarah" <sarah_mcrac@fws.gov>, Michael Morse <michael_l_morse@fws.gov>, Mike Wicker <mike_wicker@fws.gov>, "Newcomb, Doug" <doug_newcomb@fws.gov>, Pete Benjamin <pete_benjamin@fws.gov>, Ryan Nordsven <ryan_nordsven@fws.gov>, Sara Ward <sara_ward@fws.gov>, "Serrano, Lilibeth" <lilibeth_serrano@fws.gov>, Shaun Olson <shaun_olson@fws.gov>, "Shearer, John Ann" <johann_shearer@fws.gov>, Wilson Laney <wilson_laney@fws.gov>

OCEANS

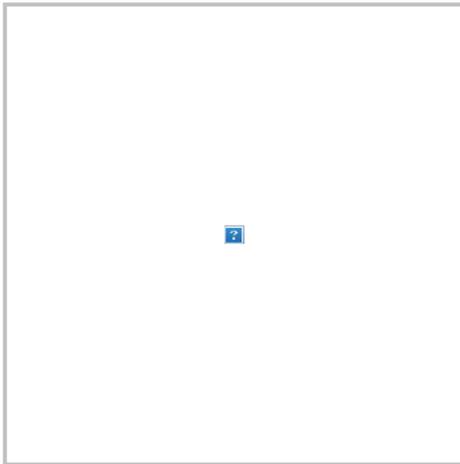
FWS pushes lawmakers to move on updated coastal maps

Cecelia Smith-Schoenwalder, E&E News reporter
Published: Wednesday, February 28, 2018

Lawmakers yesterday debated legislation to tweak Fish and Wildlife Service maps that limit federal funds for projects in storm-prone areas under the Coastal Barrier Resources Act.

The bills, discussed by the House Natural Resources Subcommittee on Water, Power and Oceans yesterday, would amend three of the 65 units included in FWS's map update in 2016.

H.R. 4880, from Rep. Lisa Blunt Rochester (D-Del.), would tweak one unit in Delaware. Florida Republican Rep. Neal Dunn's **H.R. 2947** would tweak two others in Florida.



Gary Frazer, assistant director for ecological services at the Fish and Wildlife Service. House Natural Resources Committee

Gary Frazer, the assistant director for ecological services for FWS, said the agency recommends Congress approve the remaining 62 draft maps en bloc.

If Congress were to adopt all the updated maps, it would add nearly 25,000 acres of undeveloped coastal barrier areas to the Coastal Barrier Resources System, Frazer said.

According to a 2002 analysis by FWS, CBRA has saved taxpayers more than \$1.3 billion from 1983 to 2010. The law discourages building on at-risk coasts by restricting federal funds available to developers for disaster assistance, roads, wastewater systems and subsidized flood insurance.

The bills would remove certain structures that were wrongfully included to allow property owners to gain access to federal subsidies.

Philip Griffiths, who is on the Bay County Board of County Commissioners in Panama City, Fla., said numerous families have struggled to keep their homes because of this error. Some of them have had to pay up to \$50,000 annually for flood insurance, said Griffiths.

"The map error has real-life impacts on local homeowners, it complicates the efficient provision of public utilities and it depresses local markets," he told lawmakers.

FWS has only submitted new maps to Congress for 15 percent of the Coastal Barrier Resources System.

Frazer said FWS doesn't have the resources to update the rest of the system. FWS currently has \$1.4 million for that purpose, but Frazer said an additional \$5 million would be needed.

Rep. Jared Huffman (D-Calif.) pushed for modernization of the CBRA during the hearing and suggested it extend to the West Coast.

Frazer said that FWS views the law as fundamentally sound.

Information Memorandum for the Principal Deputy Director

Date: November 27, 2017

From: Gary Frazer, Assistant Director for Ecological Services

Telephone #: (202) 208-4646

Subject: Background information on the Service's national policy regarding sand mining within the Coastal Barrier Resources System (CBRS) for shoreline stabilization projects outside of the CBRS

I. Introduction

The CBRS was established by the Coastal Barrier Resources Act (CBRA) in 1982 and consists of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts that are delineated on a series of maps. Congress enacted CBRA to minimize the loss of human life, wasteful Federal expenditures, and damage to natural resources on coastal barriers by prohibiting most new Federal expenditures that promote development within the CBRS. CBRA does not prohibit development conducted with private, state, or local funds; rather, it restricts Federal subsidies that encourage development within these hazard-prone and ecologically sensitive areas.

CBRA's restrictions on new Federal expenditures and financial assistance within System Units of the CBRS include, but are not limited to: construction or purchase of roads, structures, facilities, and infrastructure, and most projects to prevent the erosion of or otherwise stabilize any inlet, shoreline, or inshore area (U.S.C. 3504). However, Federal agencies, after consultation with the U.S. Fish & Wildlife Service (Service), may make expenditures and financial assistance available for activities that meet one of the CBRA's exceptions (16 U.S.C. 3505). Any response from the Service is in the form of an opinion only. 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.

The Service has a long-standing national policy regarding sand mining within the CBRS for shoreline stabilization projects outside of the CBRS. The Service has applied this interpretation in its responses to requests for CBRA consultations from 1994 to the present (such requests generally come from the U.S. Army Corps of Engineers (Corps)). This policy has recently been the subject of inquiries from staff for both individual members of Congress and Congressional committees, who are hearing from local officials regarding the matter.

II. Background

The CBRA contains a set of exceptions that allow Federal agencies to make expenditures and financial assistance available within the CBRS for several different types of activities. The Corps has submitted consultation requests to the Service that propose that sand mining within the CBRS for a shoreline stabilization project located outside of the CBRS would meet the exception in the CBRA for "nonstructural projects designed to mimic, enhance, or restore a natural stabilization system" (16 U.S.C. 3505(a)(6)(G)). This exception also requires the project to be consistent with the purposes of the CBRA (i.e., to minimize: the loss of human life; wasteful expenditure of Federal revenues; and 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 within the CBRS).

In 1994, the Department of the Interior’s Solicitor’s Office advised the Service that the 16 U.S.C. 3505(a)(6)(G) exception applies only to projects for stabilizing the shoreline of a unit of the CBRS; it does not apply to projects to stabilize shorelines outside of the CBRS (regardless of whether the project might be consistent with the purposes of the CBRA). A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this policy. See the attachments for related correspondence.

There is an exception under the CBRA that allows for dredging of Federal navigation channels (including disposal of dredge materials), but this exception is limited only to the dredging necessary for the maintenance of the channel. The legislative history of the CBRA states that “The use of disposal sites for dredge materials is not precluded by this legislation so long as they are related to, and necessary for, the maintenance of an existing project” (House Report 97-841 Part 1). Beneficial use of dredge spoils from such channel maintenance activities for beach nourishment is possible in certain circumstances, but dredging that exceeds what is necessary for true maintenance of the channels is not permitted with Federal funds.

The legislative history is clear that the CBRA was intended to reduce Federal involvement in activities that are detrimental to coastal barrier ecosystems included within the CBRS, including most dredging. House Report 97-841 Part 1 states: “Intense development and human use of coastal barriers have also caused diminished productivity in these important natural resource areas. Disposing sewage effluents, dredging canals and channels, filling wetlands, leveling dunes, clearing vegetation, constructing hurricane and erosion control projects, stabilizing inlets, and other activities often spell trouble for the coastal barrier ecosystems that protect and often sustain natural resources of immense aesthetic and economic value.”...“The intent of the legislation is that all forms of direct Federal assistance for projects...be precluded.”

III. Positions of Interested Parties

Service Position

The Service maintains its long-standing policy that mining sand from within the CBRS for shoreline stabilization projects located outside of the CBRS does not meet the 16 U.S.C. 3505(a)(6)(G) exception under the CBRA.

U.S. Army Corps of Engineers

The Corps continues to submit CBRA consultation requests to the Service that propose that the exception to the CBRA for “nonstructural projects designed to mimic, enhance, or restore a natural stabilization system” (16 U.S.C. 3505(a)(6)(G)) can be applied to sand mining within the CBRS for shoreline stabilization outside of the CBRS. Mining sand for beach nourishment projects within CBRS units is generally preferable to mining sand from offshore borrow sites because it is cheaper and can produce sand of the necessary quality (grain size, color, etc.). The most recent related requests include projects in Stone Harbor, New Jersey (Corps Philadelphia District) and Folly Beach, South Carolina (Corps Charleston District); however, there are no pending consultation requests related to this issue.

Congressional Interest

Service staff have recently had phone calls with Congressional staff (New Jersey and North Carolina member offices and the House of Representatives Transportation and Infrastructure Committee and Natural Resources Committee) concerning sand mining within the CBRS. Staffers have indicated that CBRA is becoming a road block to beach nourishment projects and that it forces communities to pay for projects themselves or drives up the costs to the Corps for sourcing beach-quality sand.

From: [Shultz, Gina](#)
To: [FWHQ Ecological Services Staff](#)
Subject: Fwd: Congressional Affairs Update
Date: Monday, March 5, 2018 11:28:20 AM
Attachments: [3.2.18.docx](#)

FYI

Gina Shultz
Deputy Assistant Director, Ecological Services
U.S. Fish and Wildlife Service
MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-1985

----- Forwarded message -----

From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Fri, Mar 2, 2018 at 4:59 PM
Subject: Congressional Affairs Update
To: Angela Gustavson <angela_gustavson@fws.gov>

Good afternoon,

The Congressional Affairs Update for this week is attached. This week, Gary Frazer testified at a House Natural Resources Subcommittee hearing on two bills related to the Coastal Barrier Resources System.

There are a few hearings next week of interest to the Service, including a House Natural Resources hearing on the DOI maintenance backlog.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

*Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service*

March 2, 2018

2018 Congressional Recess Schedule

<i>Senate</i>	<i>Holidays & Special Days</i>	<i>House</i>
State Work Period Mar. 26-Apr. 6		District Work Period Mar. 26-Apr. 6
State Work Period Apr. 30-May 4		District Work Period Apr.30-May 4
State Work Period May 28-June 1	Memorial Day May 28	District Work Period May 28-June 1
State Work Period July 2-July 6	Independence Day July 4	District Work Period July 2-July 6
State Work Period Aug. 6-Sep. 3	Labor Day Sep. 3	District Work Period July 30-Sep. 3
Sep. 10-Sep. 11	Rosh Hashanah	Sep. 10-Sep. 11
Sep. 19	Yom Kippur	District Work Period Sep. 17-Sep. 21
Oct. 8	Columbus Day	Oct. 8
State Work Period Oct. 29-Nov. 12	Veterans Day Nov. 12 (observed)	District Work Period Oct. 15-Nov. 9
State Work Period Nov. 19-Nov. 23	Thanksgiving Day Nov. 22	District Work Period Nov. 19-Nov. 23
	Targeted Adjournment Date Dec. 14	

HEARINGS AND MARKUPS OF INTEREST

Fish and Wildlife Service Testifies on CBRA Legislation

On Tuesday, February 27, the House Natural Resources Subcommittee on Water, Power and Oceans held a legislative hearing on two bills enacting revised maps for the Coastal Barrier Resources System. H.R. 2947, sponsored by **Representative Neal Dunn (R-FL-2)**, would enact three revised maps in Bay County, Florida and H.R. 4880, sponsored by **Representative Lisa Blunt Rochester (D-DE-AL)**, would enact three revised maps in Sussex County, Delaware. Gary Frazer, Assistant Director for Ecological Services, testified on behalf of the Fish and Wildlife Service in support of both bills and noted the comprehensive map modernization process the Service is undertaking, along with the Digital Mapping Pilot Project. Questions of note to Gary Frazer include:

- **Representative Dunn (R-FL-2)** asked about another CBRA-related bill he is sponsoring (H.R. 4091) and whether the Service will draft a map as directed by the bill, if it were passed by Congress.
- **Ranking Member Jared Huffman (D-CA-2)** focused his questions on the public review process, estimates of cost-effectiveness and taxpayer savings, and CBRA modernization.
- **Representative Garret Graves (R-LA-6)** discussed the benefits of coastal barriers to coastal communities, and asked questions about beach renourishment and the use of sediment from coastal barrier islands.

For more information, please visit:

<https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=404024>

Senate Subcommittee Considers Legislation Funding Endangered Fish Recovery Programs

On Wednesday, February 28, the Senate Energy and Natural Resources Subcommittee on Water and Power held a legislative hearing on several bills, including S. 2166, the Endangered Fish Recovery Programs Extension Act of 2017. S. 2166, sponsored by **Senator Cory Gardner (R-CO)**, would extend annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023. Alan Mikkelsen, Senior Advisor to the Secretary for Water and Western Resources Issues, testified on behalf of the Department of the Interior. **Chairman Jeff Flake (R-AZ)** and Mr. Mikkelsen discussed the success of the fish recovery programs in allowing for continued water operations, contributing to conservation of the target fish species, and preventing ESA-related legislation. **Senator Ron Wyden (D-OR)** discussed the importance of finding a resolution to water issues in the Klamath Basin.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=7B42576B-8405-425F-9098-09E5DDEA3570>

Senate Committee Discusses Administration’s Infrastructure Proposal

On Thursday, March 1, the Senate Committee on Environment and Public Works held an oversight hearing entitled “The Administration’s Framework for Rebuilding Infrastructure in America.” Secretary of Transportation Elaine Chao and Assistant Secretary of the Army Civil Works R.D. James testified on behalf of the Administration. Committee Members discussed several items of interest to the Service:

- **Chairman John Barrasso (R-WY)** and **Senator Dan Sullivan (R-AK)** expressed support for the Administration’s infrastructure proposal, particularly measures that would streamline the permitting process. **Chairman Barrasso** asked about pros and cons of expanding the Army Corps’ existing cost-share authority to allow any non-federal entity to fund expedited reviews.
- **Ranking Member Tom Carper (D-DE)** cited inadequate funding as the primary factor delaying infrastructure projects, as opposed to environmental permitting requirements.
- **Senator Ed Markey (D-MA)** also expressed concerns with limiting environmental reviews as a means to expedite projects.
- **Ranking Member Carper** and **Senator Jim Inhofe (R-OK)** discussed recently-enacted laws that are intended to improve agency coordination and speed up project delivery, including MAP-21 and FAST-41. **Ranking Member Carper** asked why an Executive

Director has not yet been appointed for the Federal Permitting Improvement Steering Council.

- **Senator Sheldon Whitehouse (D-RI)** asked witnesses to consider the needs of coastal states in designing and relocating critical infrastructure in the face of rising sea levels.

For more information, please visit:

<https://www.epw.senate.gov/public/index.cfm/hearings?ID=993C02C3-83B9-473D-B4FC-17B301D39397>

UPCOMING HEARINGS/MARKUPS

House Committee to Discuss the Department of the Interior’s Maintenance Backlog

On Tuesday, March 6, the House Committee on Natural Resources will hold an oversight hearing entitled, “Exploring Innovative Solutions to Reduce the Department of the Interior’s Maintenance Backlog.” The hearing is scheduled for 10:00 a.m. in 1324 Longworth House Office Building. For more information, please visit:

<https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=404079>

House Committee to Discuss the Administration’s Infrastructure Proposal

On Tuesday March 6, the House Committee on Transportation and Infrastructure will hold an oversight hearing entitled “Examining the Administration’s Infrastructure Proposal.” U.S. Secretary of Transportation Elaine Chao will testify on behalf of the Administration. The hearing is scheduled for 10:00 a.m. in 2167 Rayburn House Office Building. For more informatoin, please visit: <https://transportation.house.gov/calendar/eventsingle.aspx?EventID=402216>

House Committee to Consider Natural Resources Legislation

On Wednesday, March 7, the House Committee on Natural Resources will mark up three pending bills:

- H.R. 520, National Strategic and Critical Minerals Production Act, sponsored by **Representative Mark Amodei (R-NV-2)**. H.R. 520 would establish a limited process for permitting mining exploration and operations, including NEPA exemptions for certain federal decisions.
- H.R. 4731, To extend the retained use estate for the Caneel Bay resort in St. John, United States Virgin Islands, and for other purposes, sponsored by **Representative Stacey Plaskett (D-USVI-AL)**.
- H.R. 5133, Federal Land Transaction Facilitation Act Reauthorization of 2018, sponsored by **Chairman Rob Bishop (R-UT-1)**.

The mark up is scheduled for 10:15 a.m. in 1324 Longworth House Office Building. For more information, please visit:

<https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=404081>

INTRODUCED LEGISLATION OF INTEREST

H.R.5149 — To provide that certain wilderness study areas in Montana have been adequately studied for wilderness designation.

Sponsor: Rep. Gianforte, Greg [R-MT-At Large] (Introduced 03/01/2018) Cosponsors: (0)

Committees: House - Natural Resources

Latest Action: House - 03/01/2018 Referred to the House Committee on Natural Resources.

H.R.5148 — To release certain wilderness study areas in the State of Montana.

Sponsor: Rep. Gianforte, Greg [R-MT-At Large] (Introduced 03/01/2018) Cosponsors: (0)

Committees: House - Natural Resources

Latest Action: House - 03/01/2018 Referred to the House Committee on Natural Resources.

H.R.5133 — To reauthorize the Federal Land Transaction Facilitation Act, and for other purposes.

Sponsor: Rep. Bishop, Rob [R-UT-1] (Introduced 03/01/2018) Cosponsors: (0)

Committees: House - Natural Resources

Latest Action: House - 03/01/2018 Referred to the House Committee on Natural Resources.

H.R.5103 — To amend the Internal Revenue Code of 1986 to increase the excise tax and special occupational tax in respect of firearms and to increase the transfer tax on any other weapon, and for other purposes.

Sponsor: Rep. Davis, Danny K. [D-IL-7] (Introduced 02/27/2018) Cosponsors: (9)

Committees: House - Ways and Means, Natural Resources, Judiciary, Education and the Workforce, Energy and Commerce

Latest Action: House - 02/27/2018 Referred to the Committee on Ways and Means, and in addition to the Committees on Natural Resources, the Judiciary, Education and the Workforce, and Energy and Commerce

S.2487 — A bill to amend the Food Security Act of 1985 to authorize the Secretary of Agriculture to provide certain data on conservation practices, and for other purposes.

Sponsor: Sen. Klobuchar, Amy [D-MN] (Introduced 03/01/2018) Cosponsors: (1)

Committees: Senate - Agriculture, Nutrition, and Forestry

Latest Action: Senate - 03/01/2018 Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.

S.2479 — A bill to amend the Agricultural Research, Extension, and Education Reform Act of 1998 to address deferred maintenance at agricultural research facilities, and for other purposes.

Sponsor: Sen. Hirono, Mazie K. [D-HI] (Introduced 03/01/2018) Cosponsors: (3)

Committees: Senate - Agriculture, Nutrition, and Forestry

Latest Action: Senate - 03/01/2018 Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

S.2472 — A bill to reauthorize the Coastal Management Act of 1972, and for other purposes.

Sponsor: Sen. Nelson, Bill [D-FL] (Introduced 02/28/2018) Cosponsors: (2)

Committees: Senate - Commerce, Science, and Transportation

Latest Action: Senate - 02/28/2018 Read twice and referred to the Committee on Commerce, Science, and Transportation.

S.Res.420 — A resolution designating March 3, 2018, as "World Wildlife Day".

Sponsor: Sen. Coons, Christopher A. [D-DE] (Introduced 03/01/2018) Cosponsors: (1)

Latest Action: Senate - 03/01/2018 Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Voice Vote

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Cc: [Phinney, Jonathan T](#); [Wright, Dana K](#)
Subject: Re: Invitation: Mtg w/ Spencer Wetmore re: American Shore & Beach Preserv... @ Wed Mar 21, 2018 2pm - 3pm (EDT) (katie_niemi@fws.gov)
Date: Tuesday, March 6, 2018 11:46:10 AM
Importance: High

I will check with Gina since I may be on travel that week. If I am in town, I can plan to attend.

Martha

Martha Balis-Larsen
Chief, Division of Budget & Technical Support
Ecological Services Program
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2171 (general)
703-358-2314 (direct)

On Tue, Mar 6, 2018 at 11:24 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Martha,

Please see meeting request below from Spencer Wetmore, City Administrator for Folly Beach. Dana and I have met with her in the past and we don't have any new information to share. I anticipate she may want to know how they can go about revisiting the long-standing Solicitor's Opinion concerning removal of sand from a CBRS unit to renourish a beach outside of the CBRS.

Can you or Gina attend this meeting along with me and Dana?

Thanks!

Katie

----- Forwarded message -----

From: **Craig Aubrey** <craig_aubrey@fws.gov>
Date: Tue, Mar 6, 2018 at 11:11 AM
Subject: Invitation: Mtg w/ Spencer Wetmore re: American Shore & Beach Preserv... @ Wed Mar 21, 2018 2pm - 3pm (EDT) (katie_niemi@fws.gov)
To: katie_niemi@fws.gov, swetmore@cityoffollybeach.com, dana_wright@fws.gov, john_morse@fws.gov, jonathan_phinney@fws.gov, ben_thatcher@fws.gov

Mtg w/ Spencer Wetmore re: American Shore & Beach

[more details »](#)

Preservation 2018 Coastal Summit

Dear Craig, Patrice, and Robert,

It's time again for the annual American Shore and Beach Preservation Association's Coastal Summit in DC. As we've done for the past several years, I'm emailing to ask if we could set a meeting to allow the conference attendees the opportunity to meet with representatives from USFWS. This meeting serves as an important bridge between the local government officials and scientists who represent our cities to establish relationships with the agency and hear from your staff regarding the realities of the work you do.

So far, we have a variety of topics including Section 7, BA, and BO update, Coastal Barrier Resources Act, CBRA zones. As the conference registration progresses, we'll have a better idea of what topics the attendees have questions about and can set a draft agenda. We anticipate the meeting taking no more than an hour.

Please let me know if you would be able to accommodate a **March 21st meeting at either 1pm or 2pm**. We look forward to seeing you again this year!

Best,

Spencer Wetmore



When Wed Mar 21, 2018 2pm – 3pm Eastern Time

Where 1W112 - Mollie Beattie Conference Room ([map](#))

Video call https://plus.google.com/hangouts/_/doi.gov/craig-aubrey

Calendar [katie_niemi@fws.gov](#)

- Who
- [craig_aubrey@fws.gov](#) - organizer
 - [robert_barba@fws.gov](#) - creator
 - [katie_niemi@fws.gov](#)
 - [swetmore@cityoffollybeach.com](#)
 - [dana_wright@fws.gov](#)
 - [john_morse@fws.gov](#)
 - [jonathan_phinney@fws.gov](#)
 - [ben_thatcher@fws.gov](#)

Going? **Yes** - **Maybe** - **No** [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this email at the account [katie_niemi@fws.gov](#) because you are subscribed for invitations on calendar [katie_niemi@fws.gov](#).

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More](#).

From: [Niemi, Katie](#)
To: [Howe, Marian](#)
Cc: [Wright, Dana K](#); [Phinney, Jonathan T](#); [BalisLarsen, Martha](#)
Subject: Re: [EXTERNAL] RE: Check-in on Coastal Barrier Resources Act TDA
Date: Thursday, April 5, 2018 11:16:14 AM
Attachments: [Sol Opinion exception 6\(a\)\(6\)\(G\) and USACE letter.pdf](#)
Importance: High

Hi Merra,

Attached is the 1994 memo from the DOI Solicitor's Office which advised the Service that the 16 U.S.C. 3505(a)(6)(G) exception applies only to projects for stabilizing the shoreline of a unit of the CBRS; it does not apply to projects to stabilize shorelines outside of the CBRS. Also attached is a 1995 letter from the ASFWP to the Corps which reaffirmed this policy.

Please let me me know if you need anything else.

Thanks!
Katie

On Thu, Apr 5, 2018 at 10:38 AM, Howe, Marian <marian_howe@fws.gov> wrote:

FYI, I reached out to Richie for an update on the TDA for the pilot maps and they're moving forward with it, but he mentioned that they've been hearing about sand mining from members and would like a copy of the solicitor's opinion.

----- Forwarded message -----

From: **O'Connell, Richie** <Richie.O'Connell@mail.house.gov>
Date: Wed, Apr 4, 2018 at 12:52 PM
Subject: [EXTERNAL] RE: Check-in on Coastal Barrier Resources Act TDA
To: "Howe, Marian" <marian_howe@fws.gov>
Cc: "Ball, William" <William.Ball@mail.house.gov>

Hey Merra,

Taylor was excellent to work with in your absence. We did receive the TDA and are still running the traps on our end with members, but look to be in good shape. I'll let you know when the timing comes more clearly into focus. I know you were involved in the early stages of that TDA as well so thanks to you and Taylor for all your work on that front.

On a slightly related note – as you're aware, members have been engaged on CBRA's funding prohibitions as they pertain dredging for beach nourishment projects. After the call we did a few month back, we took the message back to some of our members who have been engaged on this and they wanted to know a little more about this 1994 (I believe?) solicitor's opinion that guides the Service's interpretation of the Act in the regard. Is that solicitor's opinion something you could share with us?

Thanks,

Richie

From: Howe, Marian [mailto:marian_howe@fws.gov]
Sent: Tuesday, April 3, 2018 12:21 PM
To: O'Connell, Richie <Richie.O'Connell@mail.house.gov>
Cc: Ball, William <William.Ball@mail.house.gov>
Subject: Check-in on Coastal Barrier Resources Act TDA

Hi Richie,

After a brief hiatus during Feb and March, I'll be taking over the Coastal Barrier Resources Act again from my colleague Taylor Pool, and I was informed that the Service recently submitted technical drafting assistance to adopt the final recommended maps for the for the 65 pilot project units in the Coastal Barrier Resources System Digital Mapping Pilot Project. I just wanted to check in to see if there were any updates or information you could share regarding potential legislation to adopt these maps.

Let me know if we can be helpful with anything else on this front, and I look forward to working with you again in the future.

Cheers,
Merra

--

Merra Howe
Congressional and Legislative Affairs Specialist
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2225
Cell:617-680-9848
marian_howe@fws.gov

--

Merra Howe
Congressional and Legislative Affairs Specialist
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2225
Cell: 617-680-9848
marian_howe@fws.gov

FWS.CW.0380

Memorandum

To: Ralph Morgenweck
Assistant Director, Fish and Wildlife Enhancement
Fish and Wildlife Service

From: Charles P. Raynor
Assistant Solicitor
Fish and Wildlife

Subject: Interpretation of Section 6(a)(6)(G) of the Coastal
Barrier Resources Act

Introduction

You have requested our opinion as to whether a project to renourish a beach outside the Coastal Barrier Resources System (System) utilizing sand removed from within a unit of the System can qualify for the shoreline stabilization projects exemption in section 6(a)(6)(G) of the Coastal Barrier Resources Act (Act), 16 U.S.C. 3505(a)(6)(G). We conclude this exemption applies only to projects designed to stabilize the shoreline of a System unit and therefore does not apply to projects to renourish beaches outside the System even if the other requirements of section 6(a)(6)(G) are met.

Background

Section 5(a) of the CBRA, 16 U.S.C. 3504(a), prohibits new Federal expenditures or financial assistance for activities within the System, unless the activities are covered by one of the exceptions listed in section 6. The shoreline stabilization projects exception in section 6(a)(6)(G) covers:

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

. . . .

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

We understand Proposed beach renourishment projects within the CBRS that meet these standards and are consistent with the CBRA

purposes may receive Federal funding.

Discussion

The Corps proposes to dredge approximately 975,000 cubic yards of sand from within the Midway Inlet Unit for use in renourishing the beach on Pawley's Island, which is not within the CBRS. We interpret the language of section 6(a)(6) of the CBRA, however, as referring to nonstructural projects devoted to stabilizing the shoreline of a Unit of the CBRS by mimicking, enhancing, or restoring the natural stabilization systems of the Unit. In other words, beach renourishment projects must be aimed at renourishing the beach of the CBRA Unit in order to qualify for Federal funding under section 6(a)(6). In contrast, the Corps' Pawley's Island project is intended solely to accomplish the renourishment of a beach outside of the CBRS. We therefore conclude that Federal funding or financial assistance for such a project would violate section 5 of the CBRA. Our opinion would not differ if the project were designed instead to renourish beaches both within and without the CBRS, because we interpret section 6(a)(6) to refer to projects designed to renourish solely a beach within the CBRS.

Even if this project were intended to renourish the beach of the Midway Inlet Unit, we believe it still would not qualify for a Federal funding exception because it would be inconsistent with the CBRA purposes. As noted above, the CBRA purposes include minimizing damage to fish, wildlife, and other natural resources of coastal barriers. In this case, the proposed dredging would damage the productive natural systems of Midway Inlet in several ways. The dredging would result in the outright destruction of all benthic organisms encountered by the dredging cutterhead that would be used. In addition, the borrow area, which currently is shallow, would be converted to deeper, less productive open water. The deepening of this area would also cause sloughing and/or erosion of adjacent shallow areas and thereby reduce their habitat values.

The existing shallow water of the borrow area provides, in conjunction with adjacent beaches, habitat for a number of species of birds and turtles. These include Wilsons plovers and Least terns (classified as threatened by the State of South Carolina) that nest and feed in the existing habitat. The loggerhead turtle (Federally listed as threatened under the Endangered Species Act) utilizes these beaches for nesting and the shallow ridged shoals for feeding and nesting during its "internesting period" (the time interval between nesting emergencies).

Finally, recent studies by the Corps of Engineers of the effects of other renourishment projects on North Carolina beaches suggest that they result in a reduction in nearshore and surf fisheries caused by disturbances to intertidal communities from renourishment activities.

Conclusion

The renourishment project proposed by the Army Corps of Engineers, dredging of sand from within the Midway Inlet Unit in order to renourish a beach outside the Coastal Barrier Resources System, does not fall within the CBRA section 6(a)(6) Federal funding exception, which applies only to projects for renourishment of beaches within the CBRS. In addition, the project would lead to significant adverse impacts on the natural resources of the Midway Inlet Unit, although section 6(a)(6) projects must be consistent with the CBRA purpose of minimizing damage to the natural resources of coastal barriers. For each of these reasons, we conclude that Federal funding or financial assistance for this beach renourishment project would violate section 5 of the Coastal Barrier Resources System.

Please refer any questions to David Gayer (343-2172).

cc: Coastal Barriers Coordinator
J. G. Harvey Geitner, Charleston, S.C. Field Office, FWS



United States Department of the Interior

OFFICE OF THE SECRETARY
1849 C Street, N.W.
Washington, D.C. 20240

JUN 12 1995

Dr. John H. Zirschky
Acting Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Dr. Zirschky:

Thank you for your letter of February 16, 1995, requesting review of the U.S. Fish and Wildlife Service (Service) interpretation of the statutory requirements of the Coastal Barrier Resources Act (Act) in relation to the issue of federally funded beach nourishment activities. You specifically request that we reverse the Service's interpretation of section 6(a)(6)(G) of the Act as it relates to the U.S. Army Corps of Engineers (Corps) Folly Beach, South Carolina, beach renourishment project and other similar projects. You note that the Service's interpretation should be rescinded for the following reasons: 1) Corps studies indicate impacts to coastal barrier Unit M07, Bird Key Complex, from the Folly Beach project are not appreciable and may be beneficial, 2) the Energy and Water Development Appropriation Act for 1992 authorized the use of Unit M07 as a borrow area by the Corps, 3) the Service previously determined that the use of Unit M07 as a borrow area was an allowable activity under section 6(a)(6)(G) of the Act, and 4) the Service's current statutory interpretation places unexpected financial burdens on both the Federal Government and the non-Federal cost-sharing sponsors of the Folly Beach project and other similar Corps projects.

Section 6 of the Act sets forth several exceptions to the general prohibition in section 5 against Federal expenditures affecting the Coastal Barrier Resources System (System). The exception in section 6(a)(6)(G) is for "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore, natural stabilization systems" and that are also consistent with the purposes of the Act. We have conferred with the Department's Office of the Solicitor on this issue and, after careful consideration, determined that the current statutory interpretation is correct. Section 6(a)(6)(G) applies only to projects for stabilizing the shoreline of a unit of the System; it does not apply to projects to stabilize shoreline outside the System regardless of whether the project might be consistent with the purposes of the Act. Therefore, any Corps proposed action designed to nourish beaches located outside the System using beach material taken from within the System does not meet the criteria for a section 6(a)(6)(G) exception.

Relative to your point that the Folly Beach project would not be damaging to Unit M07 and may actually benefit the unit, the section 6 exception does not apply in this case regardless of whether the project may be non-detrimental or beneficial. The section 6 exception applies only to projects for stabilizing the shoreline of a unit of the System, not for projects outside the System. In fact, the Charleston Field Office recently reported that Bird Key, a highly important nesting site for colonial waterbirds, has actually undergone drastic erosion since the Folly Beach project began. Most, if not all of the nesting habitat, has been lost. Also, recent studies by the South Carolina Department of Natural Resources indicate that material accumulating in the project borrow area does not appear to be beach compatible material due to the high content of silt and clay material.

With regard to the 1992 Energy and Water Development Appropriations Act, Congress regularly enacts new legislation resulting in numerous federally funded activities. However, activities authorized by such newly enacted legislation must adhere to other statutory requirements unless the legislation specifically exempts the activities from existing statutory requirements.

You are correct in stating that the Corps previously received a Service determination that the Folly Beach project was an allowable activity under section 6(a)(6)(G). However, because of conflicting interpretations regarding section 6(a)(6)(G) in relation to beach renourishment activities within coastal barrier units, the Service requested an interpretation by the Department's Solicitor which resulted in the current statutory interpretation.

Finally, you note that the current statutory interpretation places unexpected financial burdens on both the Federal and non-Federal sponsors of the Folly Beach project. The purposes of the Act are to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the System. The Act does not restrict the use of private, State or local government funds for activities within the System. Therefore, implementation of the Act results in a savings of Federal dollars by placing the financial burden on those who chose to invest, live, or conduct development activities within the System, not the American taxpayer. The current statutory requirement only restricts the use of Federal funds for the purpose of removing sand from within the System. Furthermore, it is only the last 4,500 feet of the southwest portion of the total proposed borrow area for the Folly Beach project which is within Unit M07. The remaining unaffected borrow area is 7,170 feet long and 600 feet wide. Therefore, the project is not entirely prohibited and estimated future financial burdens may be inflated.

It is important to note that coastal barrier units include the fastland core of the coastal barrier itself, as well as associated aquatic habitat and the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is defined by the 30-foot bathymetric contour. Congress approved this delineation criteria for units of the System in recognition of the important role the sand-sharing system plays in maintaining the dynamic, migratory nature of coastal barriers.

We hope this clarifies the Department's position on this issue. Thank you for your cooperation on this matter.

Sincerely,

/s/ George T. Frampton, Jr.

George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks

cc: 6229-MIB-ES(1)
6013-MIB-PMO-Secretary's Files
6013-MIB-PMO-Secretary's Reading File (2)
6024-MIB-SOL
7456-MIB-PMB
3156-MIB-FW
6242-MIB-CL
6628-MIB-LM
3012-MIB-FWS-Directorate Reading File
3012-MIB-FWS-CCU
3024-MIB-FWS-AES
400-ARLSQ-FWS-DHC
400-ARLSQ-FWS-DHC-BHR

FWS/DHC/BHR:LKelsey:eob:358-2201:3/30/95 - Q:\DHC\kelsey\Zirschky.ltr
REVISED:AES:MNash:4/3/95

From: [Niemi, Katie](#)
To: [BalisLarsen, Martha](#); [Phinney, Jonathan T](#)
Cc: [Wright, Dana K](#)
Subject: follow-up with Rep. Graves on sand mining and beach nourishment
Date: Monday, April 9, 2018 10:06:36 AM
Importance: High

Martha and Jonathan,

Dana and I had a status update with CLA last week. Heads-up that Marty may be reaching out to Gary concerning FWS follow-up with Rep. Graves. Below is summary of the concerns Rep. Graves raised at the 2018 hearing.

Rep. Graves (R-LA-06; and serves on both the House Natural Resources Committee and the House Transportation and Infrastructure Committee) was at the February 2018 CBRA hearing and made a statement on coastal barriers and their benefits for coastal communities, and mentioned that FEMA and FWS were holding up and/or refusing to go through with beach renourishment efforts. Rep. Graves also stated that the FWS is “not a fan of Section 6” of CBRA (exceptions), and that overall the FWS causes the increase in renourishment costs by forcing the gathering of offshore materials. After asking Gary about beach renourishment, **Rep. Graves also requested that FWS come back to the Committee, revisiting the issue of beach renourishment, and how to make changes on what can be done to use the existing sand on barrier islands for beach renourishment; along with explaining FWS views on sediment transport and sea level rise.**

We can discuss at our check-in on Wednesday. Thanks.

Katie

From: [Niemi, Katie](#)
To: [BalisLarsen, Martha](#); [Phinney, Jonathan T](#); [Kodis, Martin](#); [Marian Howe](#)
Subject: CBRA hearing transcript
Date: Wednesday, April 11, 2018 11:33:56 AM
Attachments: [Transcript of Hearing Frazier and Graves.docx](#)

Hi Folks,

A video of the February 27 CBRA hearing is available on the Committee's website:
<https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=404024>

Terry listened to the exchange between Congressman Graves (LA) and Gary and typed up the attached transcript.

Katie

Mr. Graves: I hear from members of Congress on a regular basis about their frustration. Let me reiterate, Dr. Hyun discussed and reaffirmed....look, this is designed to protect the environment, these barriers play a role, not just in ensuring the ecological productivity of the islands and the adjacent areas, but also they provide a benefit to the mainland. If we're seeing, over and over again, where FEMA'S refusing after storms to come in and provide renourishment or assistance in protecting these barriers, or if the Service themselves are forcing us to go get offshore minerals or offshore sand sediments as opposed to sediments right there in the same area, you significantly increase the cost of restoration or protection of these barriers, ensuring the environmental benefits are continued. Can you comment on that?

Mr. Frazier: Congressman, the Service's role is to follow the direction that we get from Congress in terms of what sort of federal expenditures are authorized within the System Unit and what sort of circumstances allow for activities to occur within System Units. I think the foundation of your question has to do with how coastal barriers function. They are self-sustaining natural systems, natural geological processes maintain these systems, and often development on undeveloped coastal barrier, so as to disrupt that natural geological process, and often times that disruption then is what causes the need for...

Mr. Graves: Can I challenge one of the statements you just made? You just said that these barriers are self-sustaining. I disagree. If they were self-sustaining...you have sediment migration patterns that in many cases do not sustain those barriers, and in some cases the migration pattern may go into the deep water, where you're not sustaining the barrier system. You also have engineered systems, like...that's why we spend, like, gosh, hundreds of millions of dollars annually in this country doing renourishment projects for beaches or, in the case of Louisiana, just for barrier islands.

Mr. Frazier: So, Congressman, I'm not a coastal geologist but I've been in this field...

Mr. Graves: Geomorphologist.

Mr. Frazier: ...for quite a while. Storms on coastal barriers do oftentimes take sand from beaches and move it offshore and then over time that sand comes back to shore. Undeveloped systems are maintained over time, they do move, and certainly now with sea level rise, that's a disruption to the system. Hardening the shorelines or disrupting the sand transport upstream or downdrift, also disrupts those systems. Those are all things that effect the need for communities to have beaches nourished or other protections.

Mr. Graves: So, let me just close up there, time's running out. Could you please come back to the committee...you mentioned sea rise, you recognize sediment transport and other challenges that prevent the sustainability or resilience of some of these structures. **Could you please go back to US Fish and revisit this issue of using sand sources within the vicinity as opposed to going offshore where you're potentially doubling costs to try and sustain the ecological productivity and sustain the barrier functions of these islands, and give us recommendations on how we can make changes to more efficiently protect these resources?**

Mr. Frazier: Congressman, we'd be happy to work with you. This is something, though, that has been....

Mr. Graves: If you could just come back to us, that's all I'm asking. I yield back.

From: [Wright, Dana K](#)
To: [Niemi, Katie](#); [Fish, Teresa L](#)
Subject: Re: DTS Assignment--Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration
Date: Friday, June 22, 2018 6:53:14 AM
Attachments: [DEPARTMENT OF THE INTERIOR Mail - Fwd \[EXTERNAL\] Letter to Director Sheehan.pdf](#)
[Letter to Dir Sheehan on CBRA.PDF](#)

I downloaded the correspondence to our network and fixed the scanned letter (the pages were out of order). The letters are also attached.

K:\CBRA\Consistency Consultations\Beach Norishment and Dredging\Incoming Letter

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, Jun 22, 2018 at 6:38 AM, <DTS@fws.gov> wrote:

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:
<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)** 068399.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Synopsis: PER OCL... They want the questions answered in a narrative form, not the usual Q&A that is usually done. REQUIRES DEPT CLEARANCE

Action Required: 0-Prepare Draft Response

Assigned By Office: AES User: Lois Wellman

Thank you.



Cannuscio, Lisa <lisa_cannuscio@ios.doi.gov>

Fwd: [EXTERNAL] Letter to Director Sheehan

1 message

Howarth, Robert <robert_howarth@ios.doi.gov>
To: Lisa M Cannuscio <Lisa_Cannuscio@ios.doi.gov>

Thu, Jun 21, 2018 at 10:32 AM

Hi Lisa. Please task.

Thanks, Rob

----- Forwarded message -----

From: **Chambers, Micah** <micah_chambers@ios.doi.gov>

Date: Thu, Jun 21, 2018 at 10:27 AM

Subject: Fwd: [EXTERNAL] Letter to Director Sheehan

To: "Kodis, Martin" <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>, "Howarth, Robert" <robert_howarth@ios.doi.gov>

Not sure why this is scanned the way that it is, but you get the gist. This should be a reply from Greg and it should be a narrative, not Q&A.

----- Forwarded message -----

From: **Deeley, Blake** <blake_deeley@ios.doi.gov>

Date: Thu, Jun 21, 2018 at 10:22 AM

Subject: Fwd: [EXTERNAL] Letter to Director Sheehan

To: Micah Chambers <micah_chambers@ios.doi.gov>

Cc: "Davidson, Dustin" <dustin.davidson@mail.house.gov>

Here you go.

----- Forwarded message -----

From: **Davidson, Dustin** <Dustin.Davidson@mail.house.gov>

Date: Wed, Jun 20, 2018 at 6:15 PM

Subject: [EXTERNAL] Letter to Director Sheehan

To: "blake_deeley@ios.doi.gov" <blake_deeley@ios.doi.gov>

Hey Blake,

Attached is a letter from members to the director on the CBRS program. In the letter there are some questions we would like answered.

Call with any questions you have.

Thanks,

Dustin H. Davidson | Legislative Assistant
Office of Congressman Garret Graves (LA-06)

202-225-3901 (office) | garretgraves.house.gov

--

Blake Deeley | *Advisor*
Congressional & Legislative Affairs
Office of the Secretary
U.S. Department of the Interior

--

Micah Chambers
Deputy Director
Office of Congressional & Legislative Affairs
Office of the Secretary of the Interior

--

Robert Howarth
Deputy Director for Correspondence and FOIA Management
Office of the Executive Secretariat and Regulatory Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240
202-208-3181
202-208-4451 (direct)
202-549-8961 (cell)



Letter to Dir Sheehan on CBRA.PDF
2376K

Congress of the United States
Washington, DC 20515

June 20, 2018

Mr. Greg Sheehan
Acting Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Dear Acting Director Sheehan:

Congress passed the Coastal Barrier Resources Act of 1982 (CBRA) to reduce taxpayer risk and preserve the Nation's coastal resources.¹ The CBRA exemplifies how prudent Federal spending can achieve conservation objectives. Section 5 of the CBRA contains broad prohibitions on federal funding within the Coastal Barrier Resources System (CBRS), but Congress provided exceptions to these funding prohibitions in Section 6 so that certain projects consistent with the purposes of the CBRA may proceed. We fully support the purposes of the CBRA, and that is why we are troubled by the U.S. Fish and Wildlife Service's (Service) unreasonably narrow interpretation of Section 6 exceptions, specifically as they pertain to Congressionally authorized shoreline stabilization and beach renourishment projects, which have similar purposes.

The U.S. Army Corps of Engineers' (USACE) shoreline stabilization and beach renourishment projects relocate dredged sand inshore, taking advantage of natural processes to rebuild coastal barriers and preserve natural resources. Such sand must be compatible with the sand where the dredged material is deposited. When possible, USACE utilizes sand from nearby areas, for reasons of sand compatibility, cost, and in many cases, ecological and geomorphological considerations. However, a 1994 solicitor's opinion that guides the Service's consideration of these projects states that "this [section 6(a)(6)(G)] exemption... does not apply to projects to renourish beaches outside the System *even if the other requirements of section 6(a)(6)(G) are met* (emphasis added)."² Under this interpretation, USACE often must seek compatible sand miles offshore, significantly increasing the cost to the taxpayer.

¹ S. Rep. No. 97-419, at 2.

² Interpretation of Section 6(a)(6)(G) of the Coastal Barrier Resources Act, Op. Assistant Solicitor U.S. Fish and Wildlife Service (1994).

As such we request your response to the attached questions to clarify this interpretation and work together to rectify this departure from CBRA's original intent.

Thank you for your consideration.

Respectfully,



Garret Graves
Member of Congress



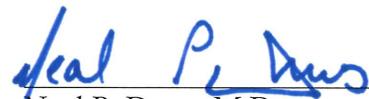
Doug Lamborn
Member of Congress



Walter B. Jones
Member of Congress



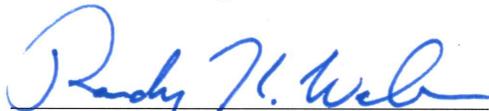
Frank A. LoBiondo
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

QUESTIONS

1. Does the 1994 solicitor's opinion referenced in our letter continue to dictate U.S. Fish and Wildlife Service policy pertaining to Congressionally authorized beach renourishment projects that utilize dredged material from CBRS and deposit it outside the System?
2. The 1994 solicitor's opinion narrowly interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". However, the language of section 6(a)(6)(G) ("Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.") does not limit the exception's application only to projects within the System, as asserted in the solicitor's opinion. The opinion provides no explanation for the solicitor's narrow interpretation. Please explain the basis for the solicitor's narrow interpretation when the statutory language does not limit the exception in such a way.
3. Do you consider this solicitor's opinion to be an appropriate interpretation of section 6(a)(6)(G), and will the Service revisit this interpretation?
4. The 1994 solicitor's opinion interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". In many circumstances, beach renourishment projects that extract sand from a CBRS unit for use outside of the unit provide environmental and Federal economic benefits, help preserve life and property, stabilize critical fish and wildlife habitat in the area or otherwise provide benefits to the unit. What are criteria or circumstances when it would be appropriate (notwithstanding your agency's current narrow interpretation of CBRA and its Section 6 exceptions) to allow for compatible sand to be taken from a CBRS unit for use outside of a unit for USACE shoreline stabilization and beach renourishment projects? For example, would it be appropriate:
 - (a) When no less environmentally damaging cost-effective alternatives to utilizing sand from within the System unit are available (e.g., when utilizing sand from within the System unit to provide coastal storm risk management to people and property is determined to be the most cost-effective solution after taking in to account the monetary and non-monetary benefits and costs)?
 - (b) When the nourishment material is being taken from a portion of the System unit that is replenished by littoral flows?
 - (c) When the System unit is not sediment starved, and the removal action would not impact critical fish and wildlife habitat within the unit?
 - (d) When longshore transport would result in the sand moving back from the placement site into the System unit?
 - (e) When the System unit is now a factor in disruption of longshore transport and the sand would be placed in the sand starved area downdrift of the unit?

- (f) When utilizing sand from within the System unit is consistent with regional sediment management best practices/plans?
 - (g) What other criteria or circumstances would you propose?
5. If you believe the 1994 solicitor's opinion is an appropriate interpretation of CBRA's section 6(a)(6)(G) exception, what legislative and administrative remedies do you recommend to allow these projects to move forward as directed by Congress?
 6. Do you consider shoreline stabilization and beach renourishment projects, the purposes of which include cost-effectively protecting lives and property and providing environmental and Federal economic benefits, to be consistent generally with the purposes and spirit of CBRA?
 7. As referenced in our letter, USACE must often spend millions of dollars unnecessarily to find compatible sand miles offshore for shoreline stabilization and beach renourishment projects, when the appropriate resource exists nearby but is inaccessible due to the Service's narrow interpretation of CBRA. Do you believe this is an appropriate interpretation of a law designed to minimize wasteful taxpayer investment?

From: [Wright, Dana K](#)
To: [Niemi, Katie](#); [Fish, Teresa L](#)
Subject: Re: DTS Assignment--Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration
Date: Friday, June 22, 2018 6:55:13 AM

We're going to need to get an extension on this - the due date was set as July 5th. We'll probably need an extra month because I assume we'll need to do a briefing and may need to involve SOL.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, Jun 22, 2018 at 6:53 AM, Wright, Dana <dana_wright@fws.gov> wrote:

I downloaded the correspondence to our network and fixed the scanned letter (the pages were out of order). The letters are also attached.

K:\CBRA\Consistency Consultations\Beach Norishment and Dredging\Incoming Letter

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, Jun 22, 2018 at 6:38 AM, <DTS@fws.gov> wrote:

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:

<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)** 068399.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Synopsis: PER OCL... They want the questions answered in a narrative form, not the usual Q&A that is usually done. REQUIRES DEPT CLEARANCE

Action Required: 0-Prepare Draft Response

Assigned By Office: AES User: Lois Wellman

****Thank you**.**

From: [Niemi, Katie](#)
To: [Phinney, Jonathan T](#)
Subject: Re: Extension needed for incoming from Rep. Graves
Date: Monday, June 25, 2018 8:07:50 AM
Importance: High

Thanks!

Katie

On Fri, Jun 22, 2018 at 4:06 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:
I sent a request to Nikki Randolph today

On Fri, Jun 22, 2018 at 11:05 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Jonathan,

Please see attached incoming from Reps. Graves, Jones, Dunn, Weber, Lamborn, LoBiondo, and Rouzer. Can you please reach out to CCU today and get an extension for at least a month (current due date is July 5). Dana and I will prepare the draft response and we will both be out on AL over the next couple weeks. This response will also require internal review/coordination.

Thanks.

Katie

----- Forwarded message -----

From: <DTS@fws.gov>

Date: Fri, Jun 22, 2018 at 6:38 AM

Subject: DTS Assignment--Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

To: alison_parker@fws.gov, dana_wright@fws.gov, jonathan_phinney@fws.gov, katie_niemi@fws.gov, Martha_BalisLarsen@fws.gov, megan_lang@fws.gov, teresa_fish@fws.gov

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:

<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)** 068399.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Synopsis: PER OCL... They want the questions answered in a narrative form, not the usual Q&A that is usually done. REQUIRES DEPT CLEARANCE

Action Required: 0-Prepare Draft Response

Assigned By Office: AES User: Lois Wellman

****Thank you**.**

--

Jonathan T. Phinney PhD

Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)

USFWS Ecological Services

[5275 Leesburg Pike Suite 2](#) C007

Falls Church, VA 22041

703-358-1832 (office)

-1800 (fax)

703-819-2570 (mobile)

jonathan_phinney@fws.gov

<http://www.fws.gov>

From: [Niemi, Katie](#)
To: [Marian Howe](#)
Subject: Fwd: Extension needed for incoming from Rep. Graves
Date: Monday, July 9, 2018 11:48:26 AM

Hi Merra,

The DCN for the incoming from Reps. Graves, Jones, Dunn, Weber, Lamborn, LoBiondo, and Rouzer is 068399.

----- Forwarded message -----

From: <DTS@fws.gov>
Date: Fri, Jun 22, 2018 at 6:38 AM
Subject: DTS Assignment--Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration
To: alison_parker@fws.gov, dana_wright@fws.gov, jonathan_phinney@fws.gov, katie_niemi@fws.gov, Martha_BalisLarsen@fws.gov, megan_lang@fws.gov, teresa_fish@fws.gov

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:
<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)** 068399.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Synopsis: PER OCL... They want the questions answered in a narrative form, not the usual Q&A that is usually done. REQUIRES DEPT CLEARANCE

Action Required: 0-Prepare Draft Response

Assigned By Office: AES User: Lois Wellman

Thank you.

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)

-1800 (fax)

703-819-2570 (mobile)

jonathan_phinney@fws.gov

<http://www.fws.gov>

From: [Wright, Dana K](#)
To: [Mike Molnar](#)
Cc: [Bohn, Cynthia](#); [Niemi, Katie](#); [Bridget Faust](#); [John Ryan-Henry](#); [Bradley Watson](#)
Subject: Re: [EXTERNAL] CSO / USFWS CBRA Call follow up
Date: Thursday, July 12, 2018 10:29:49 AM
Attachments: [CBRA CSO Presentation 7.11.18.pdf](#)

Hi Mike,

Thanks for your time yesterday. A copy of the presentation is attached. It was a pleasure to meet with you folks, and we look forward to working with you further.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Jul 11, 2018 at 2:39 PM, Mike Molnar <mmolnar@coastalstates.org> wrote:

Good afternoon,

Thank you for your time today. We learned a lot about the CBRA/CBRS and appreciate your time. Would it be possible to have a PDF copy of the presentation that was used today? We would use it for our own internal knowledge and not for distribution.

As requested, here is the information on the [NFWF Coastal Resilience Funding](#). The program funds planning/design and on the ground projects. They host a webinar at 3:00 today.

We look forward to continuing the conversation going forward. All participants to today's call are copied on this email in an effort to continue the dialogue.

Let us know if you have any additional thoughts or questions.

Regards,

Mike

Mike Molnar

Coastal Management Specialist

Coastal States Organization

Phone: 202-508-3861

mmolnar@coastalstates.org

[444 North Capitol St., NW, Suite 638](#)

Washington, DC 20001



Coastal Barrier Resources Act

July 11, 2018

*Photo: Monomoy NWR
and CBRS Unit MA-20P
Credit: NASA Earth Observatory*

Ecological Services – Division of Budget and Technical Support
U.S. Fish & Wildlife Service



Coastal Barrier Resources Act

- Congress enacted the CBRA and created the Coastal Barrier Resources System (CBRS) in 1982
- Designated relatively undeveloped coastal barriers as part of the CBRS
- Market-based approach to conservation
- Prohibits most Federal funding and financial assistance within designated areas
- Does not restrict private, local, or state funded development



Shell Key, Florida – within CBRS Unit P24 (Credit: Pinellas County)

“The CBRA meets a national problem with less Federal involvement, not more.”

~ President Reagan, 1982

Purposes of CBRA

1. Keep people out of harm's way
2. Save taxpayer dollars
 - * More than \$1.3 billion estimated savings as of 2002
3. Protect valuable habitat for fish and wildlife
 - * Habitat for threatened and endangered species and commercial and sportfish species

A 2007 GAO study found that **97% of all units remained undeveloped or experienced minimal development**. Three percent of units experienced significant development.



*Gilchrist, TX following Hurricane Ike
(Credit: AP)*

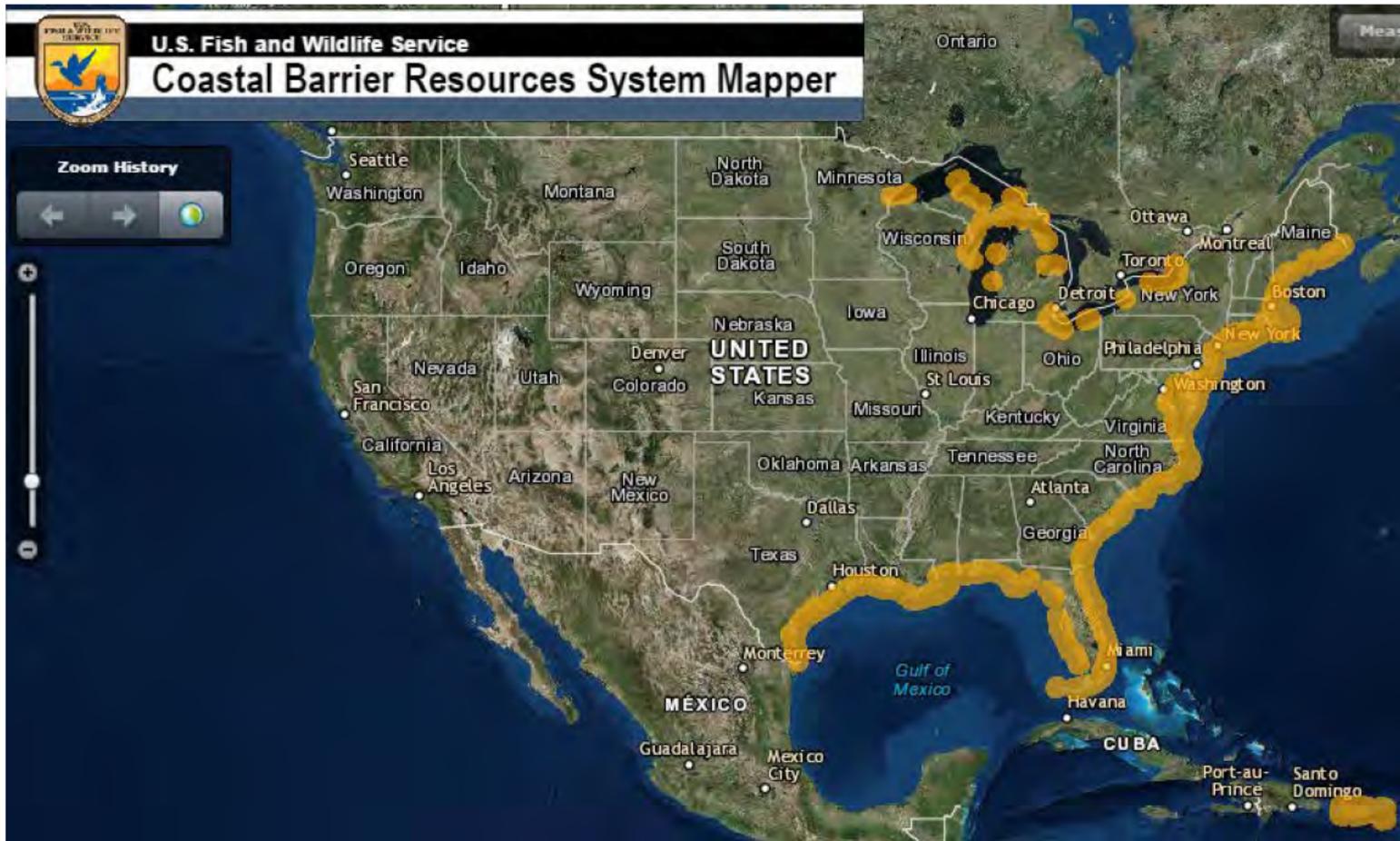


(Credit: USFWS)



People can develop, but taxpayers won't subsidize

Location of CBRS Units

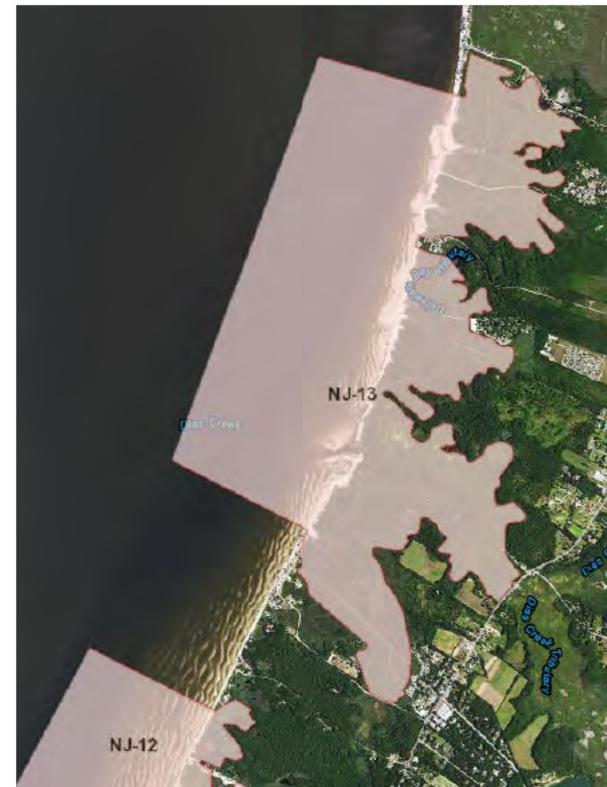


862 CBRS Units (approx. 3.5 million acres) located in 23 states and territories

Two Types of CBRS Areas

System Units

- Mostly privately-owned areas when first included (though some are now conserved)
- Full range of Federal spending prohibitions
 - Examples include flood insurance, road construction, dredging, beach nourishment
 - Consultation required between Federal funding agency and U.S. Fish & Wildlife Service (FWS) prior to the commitment of funds



System Units on the Delaware Bay side of Cape May, NJ

Two Types of CBRS Areas

Otherwise Protected Areas (OPAs)

- First designated in 1990 by the Coastal Barrier Improvement Act
- Denoted with a “P” at the end of the unit number (e.g., NJ-05P)
- Mostly conservation/recreation areas (also contain some private lands)
- Only Federal spending prohibition is flood insurance (with an exception for park related structures such as visitors centers and restrooms)
- No consultation required for Federal expenditures (unless related to flood insurance)



OPA Unit NJ-05P, Island Beach State Park

CBRA's Prohibitions

CBRA prohibits new Federal funding and financial assistance for most:

- * Construction or purchase of **structures, facilities, and related infrastructure**
- * Construction or purchase of **roads, airports, boat landings, or other facilities on, or bridges to, any System units**
- * Projects to **prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area**
- * **Federal flood insurance** for new or substantially improved structures

CBRA also contains many exceptions and does not prohibit financial assistance for federal permits or environmental assessments



These prohibitions are abridged. The full set of CBRA's prohibitions can be found in [16 U.S.C. 3504](#).



(Credit: Program for the Study of Developed Shorelines)

Exceptions to CBRA's Prohibitions

Part 1

After consultation with FWS, Federal agencies may fund the following within the CBRS:

- (1) Exploration, extraction or transportation of **energy resources**
- (2) Maintenance, replacement, reconstruction or repair (but not expansion) of **public roads, structures, or facilities that are essential links** in a larger network
- (3) Maintenance or improvements of **existing Federal navigation channels** and related structures, including disposal of dredge materials
Existing Federal navigation channels are those that were in place when the area was added to the CBRS.
- (4) **Military activities** essential to national security
- (5) Construction, operation, maintenance and rehabilitation of **Coast Guard facilities**

These exceptions are abridged. The full set of exceptions to CBRA's prohibitions are found in

[16 U.S.C. 3505.](#)

Exceptions to CBRA's Prohibitions

Part 2

The following can be funded within the CBRS,
if they are consistent with 3 purposes of CBRA:

- (A) Projects for the study, management, protection and enhancement of **fish and wildlife resources**, acquisition of **fish and wildlife habitats**, and **recreational projects**
- (B) Establishment, operation and maintenance of **air and water navigation aids**
- (C) Projects under the **Land and Water Conservation Fund Act and the Coastal Zone Management Act**
- (D) **Scientific research**, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife
- (E) Assistance for **emergency actions** essential to saving lives and protection of property and the public health and safety (note: this is limited to Presidentially declared disasters and only actions necessary to alleviate the immediate emergency)
- (F) Maintenance, replacement, reconstruction or repair (but not expansion) of **public roads, structures and facilities**
- (G) **Nonstructural projects for shoreline stabilization** to enhance or restore a natural stabilization system (e.g., planting dune grass and beach nourishment)

These exceptions are abridged. The full set of exceptions to CBRA's prohibitions are found in [16 U.S.C. 3505](#). The purposes of the CBRA are found in [16 U.S.C. 3501\(b\)](#).

CBRA Consistency Consultations

- * The Federal funding agency is responsible for consulting with a [FWS Ecological Services Field Office](#) for any project within or affecting the CBRS
- * Consultation is to determine whether a Federal expenditure meets an exception to the CBRA
- * Consultation requests should include:
 - description of the project or action
 - the location of the project or action
 - the particular CBRA exception(s) that applies to the project or action
 - an explanation of how the project or action meets that exception(s)
 - any other supporting materials
- * **Any response from FWS is opinion only (no veto authority). The final decision (and justification for applicable exception(s)) rests with the Federal funding agency.**



*Beach nourishment on Cape San Blas, Florida in 2008
(Credit: Gulf County Tourist Development Council)*

- * A consultation template, flow chart, and additional information about consultations are available under the “[Project Consultations](#)” tab on the CBRA website

CBRA's Prohibition on Shoreline Stabilization

- CBRA was intended to reduce Federal involvement in activities that are detrimental to coastal barrier ecosystems within the CBRS, including most dredging and Federally funded projects “to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area” (16 U.S.C. 3504(a))

CBRA legislative history (House Report 97-841 Part 1) states:

- “Intense development and human use of coastal barriers have also caused diminished productivity in these important natural resource areas. Disposing sewage effluents, **dredging canals and channels**, filling wetlands, leveling dunes, clearing vegetation, **constructing hurricane and erosion control projects, stabilizing inlets**, and other activities often spell trouble for the coastal barrier ecosystems that protect and often sustain natural resources of immense aesthetic and economic value.”
- “The intent of the legislation is that all forms of direct Federal assistance for projects...be precluded.”



*Beach nourishment on Tybee Island, Georgia
(2008, U.S. Army Corps of Engineers)*

Exceptions to CBRA's Prohibitions

After consultation with FWS, Federal agencies may fund the following within the CBRS:

- Maintenance or improvement of **existing Federal navigation channels** and related structures, including disposal of dredge materials

Existing Federal navigation channels are those that were in place when the area was added to the CBRS.

After consultation with FWS, Federal agencies may fund the following within the CBRS (must also be consistent with the 3 purposes of CBRA):

- Projects for the study, management, protection, enhancement, and acquisition of **fish and wildlife resources, and recreational projects**
- **Nonstructural projects for shoreline stabilization** to mimic, enhance, or restore a natural stabilization system (e.g., planting of dune grass)

A 1994 DOI Solicitor's opinion found that sand mining within the CBRS for shoreline stabilization projects outside of the CBRS is not allowable under the section 6(a)(6)(G) exception.

National Policy on Sand Mining within the CBRS



United States Department of the Interior

OFFICE OF THE SECRETARY
1849 C Street, N.W.
Washington, D.C. 20240

JUN 12 1995

Dr. John H. Zirschky
Acting Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Dr. Zirschky:

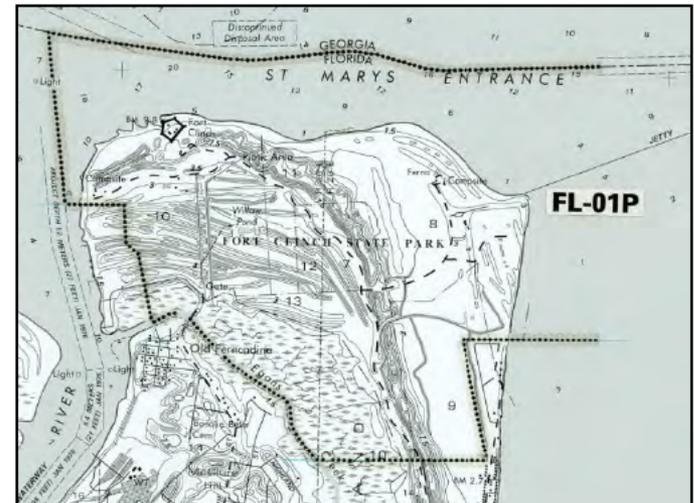
Thank you for your letter of February 16, 1995, requesting review of the U.S. Fish and Wildlife Service (Service) interpretation of the statutory requirements of the Coastal Barrier Resources Act (Act) in relation to the issue of federally funded beach nourishment activities. You specifically request that we reverse the Service's interpretation of section 6(a)(6)(G) of the Act as it relates to the U.S. Army Corps of Engineers (Corps) Folly Beach, South Carolina, beach renourishment project and other similar projects. You note that the Service's interpretation should be rescinded for the following reasons: 1) Corps studies indicate impacts to coastal barrier Unit M07, Bird Key Complex, from the Folly Beach project are not appreciable and may be beneficial, 2) the Energy and Water Development Appropriation Act for 1992 authorized the use of Unit M07 as a borrow area by the Corps, 3) the Service previously determined that the use of Unit M07 as a borrow area was an allowable activity under section 6(a)(6)(G) of the Act, and 4) the Service's current statutory interpretation places unexpected financial burdens on both the Federal Government and the non-Federal cost-sharing sponsors of the Folly Beach project and other similar Corps projects.

Section 6 of the Act sets forth several exceptions to the general prohibition in section 5 against Federal expenditures affecting the Coastal Barrier Resources System (System). The exception in section 6(a)(6)(G) is for "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore, natural stabilization systems" and that are also consistent with the purposes of the Act. We have conferred with the Department's Office of the Solicitor on this issue and, after careful consideration, determined that the current statutory interpretation is correct. Section 6(a)(6)(G) applies only to projects for stabilizing the shoreline of a unit of the System; it does not apply to projects to stabilize shoreline outside the System regardless of whether the project might be consistent with the purposes of the Act. Therefore, any Corps proposed action designed to nourish beaches located outside the System using beach material taken from within the System does not meet the criteria for a section 6(a)(6)(G) exception.

- In 1995, the Assistant Secretary for Fish and Wildlife and Parks reviewed the 1994 Solicitor's Opinion at the request of the Corps
- The Assistant Secretary reaffirmed this position and FWS has continued to implement it
- Sand mining within the CBRS for nourishing beaches outside of the CBRS is generally prohibited, however, there is an exception for the maintenance of Federal navigation channels
 - Dredge spoils from such maintenance may in some cases be used for beach nourishment
- Private, state, or local funds may be used within the CBRS both to mine sand and nourish beaches

CBRA is a Map-Based Law

- CBRS boundaries are depicted on maps that were first adopted by Congress through legislation
- With a few minor exceptions, only Congress can approve CBRS boundary revisions to add or remove land



FWS Mapping Responsibilities

Administrative map revisions (adopted by FWS through *Federal Register* notice):

- **5-year review** of CBRS maps to make modifications solely to reflect natural changes such as erosion and accretion
- **Voluntary additions** of areas requested by property owners
- **Additions of excess Federal property**

Comprehensive map modernization (adopted only through legislation)

The 2006 CBRA reauthorization requires FWS to:

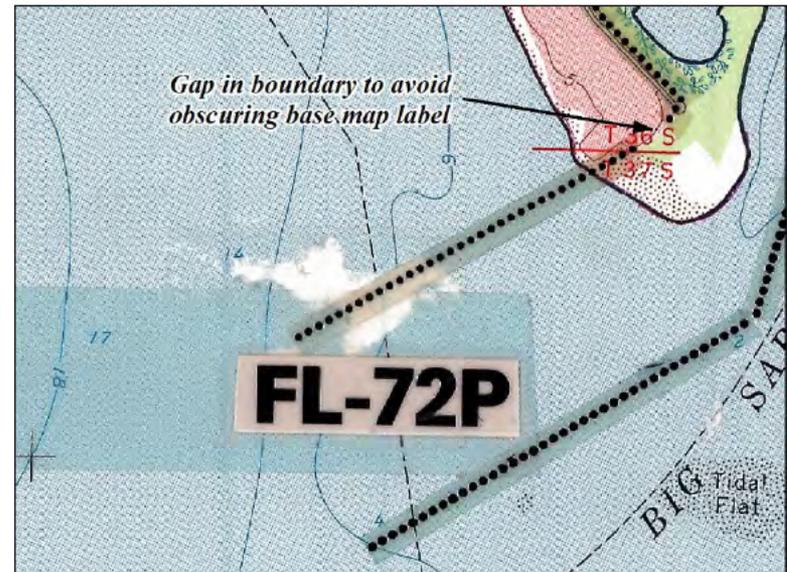
- prepare digital maps for the entire CBRS and make recommendations for expansion
 - Includes the correction of mapping errors using statutory criteria and objective mapping protocols
- describe the extent to which the revised boundaries differ from the existing
- hold public review period and summarize public comments
- make recommendations to Congress for the adoption of revised maps

Why Modernize the Maps?

- Entire set of CBRS maps last comprehensively updated in 1990
- Outdated quad-based maps (still effective in 4 states: CT, MA, NY, RI) are difficult to interpret and can result in inappropriate provision or denial of Federal financial assistance
- Due to manual methods and outdated base maps, some CBRS maps have errors that negatively affect property owners and project proponents



CBRS boundaries on the 1990's era maps can be difficult to interpret because they are typically about 80-100 feet wide on-the-ground. This 1990 map for Rhode Island Unit D01 shows a boundary segment that is about 165 feet wide in one area.



On the 1990's era maps, OPA boundaries were created with strips of tape depicting a dot pattern. The cartographers opted to avoid obscuring labels on the base maps by leaving gaps in the boundary, such as the one shown on the 1994 map for Florida Unit FL-72P.

Why Modernize the Maps?

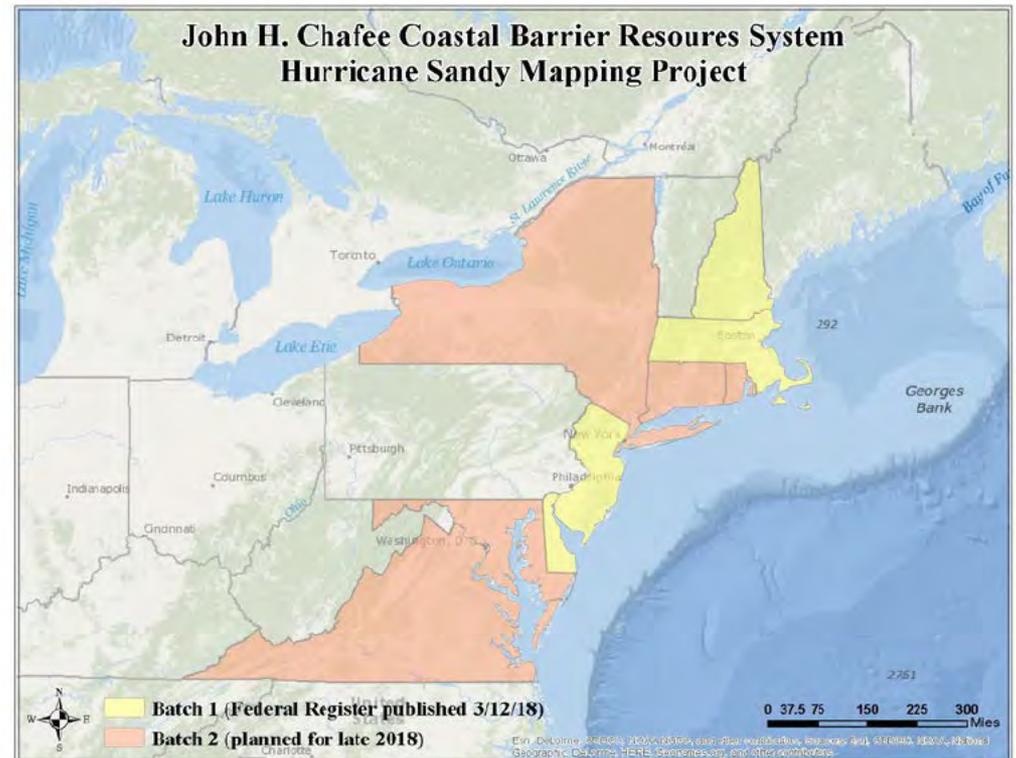
Correcting Mapping Errors

- FWS has a backlog of CBRS units with requests from property owners and/or members of Congress for technical correction reviews
- About 40% of this backlog is addressed by the Hurricane Sandy Remapping Project
- About 30% of the existing CBRS units reviewed through the Hurricane Sandy Remapping Project have mapping errors affecting structures
- Correcting mapping errors requires an act of Congress, and is therefore more efficient in large batches



Hurricane Sandy Remapping Project

- Funded in October 2013 with Department of the Interior Hurricane Sandy supplemental funds
- 9 states from NH to VA
- More than 500,000 acres (16% of total existing CBRS acreage)
- 368 existing CBRS units (43% of total existing units)
- Helps fulfill Congressional mandate to modernize all CBRS maps and recommend additions to the CBRS
- Batch 1: DE, MA, NH, and NJ (112 existing units, 36 new units, and 40% of project acreage) – public review March 12-July 10, 2018
- Batch 2: CT, MD, NY (Long Island only), RI, and VA (256 existing units and 60% of project acreage) – public review anticipated fall 2018



Hurricane Sandy Remapping Project

Types of Changes

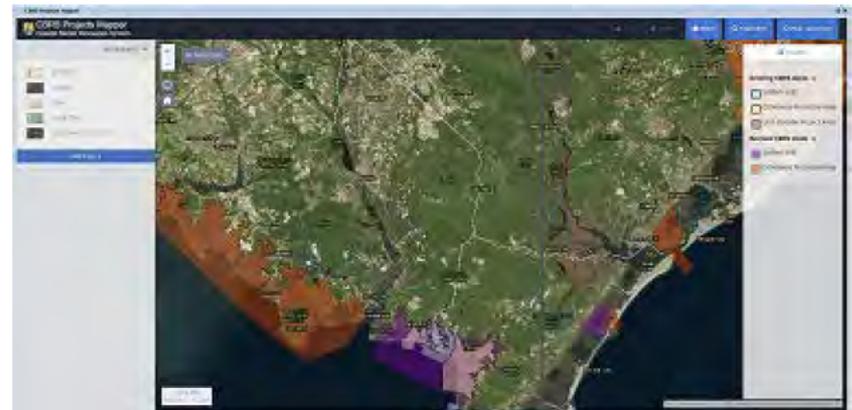
FWS applies **standard mapping protocols** and **objective criteria** to CBRS boundary changes. Additional information is available in the Federal Register notice for this project:
<https://www.federalregister.gov/d/2018-04889/p-34>.

Primary Types of Proposed Changes:

- Removals to correct mapping errors
- Additions of qualifying areas (consistent with statutory development criteria and additions made by Congress in 1982 and 1990)
- Unit type reclassifications from OPA to System Unit and vice-versa

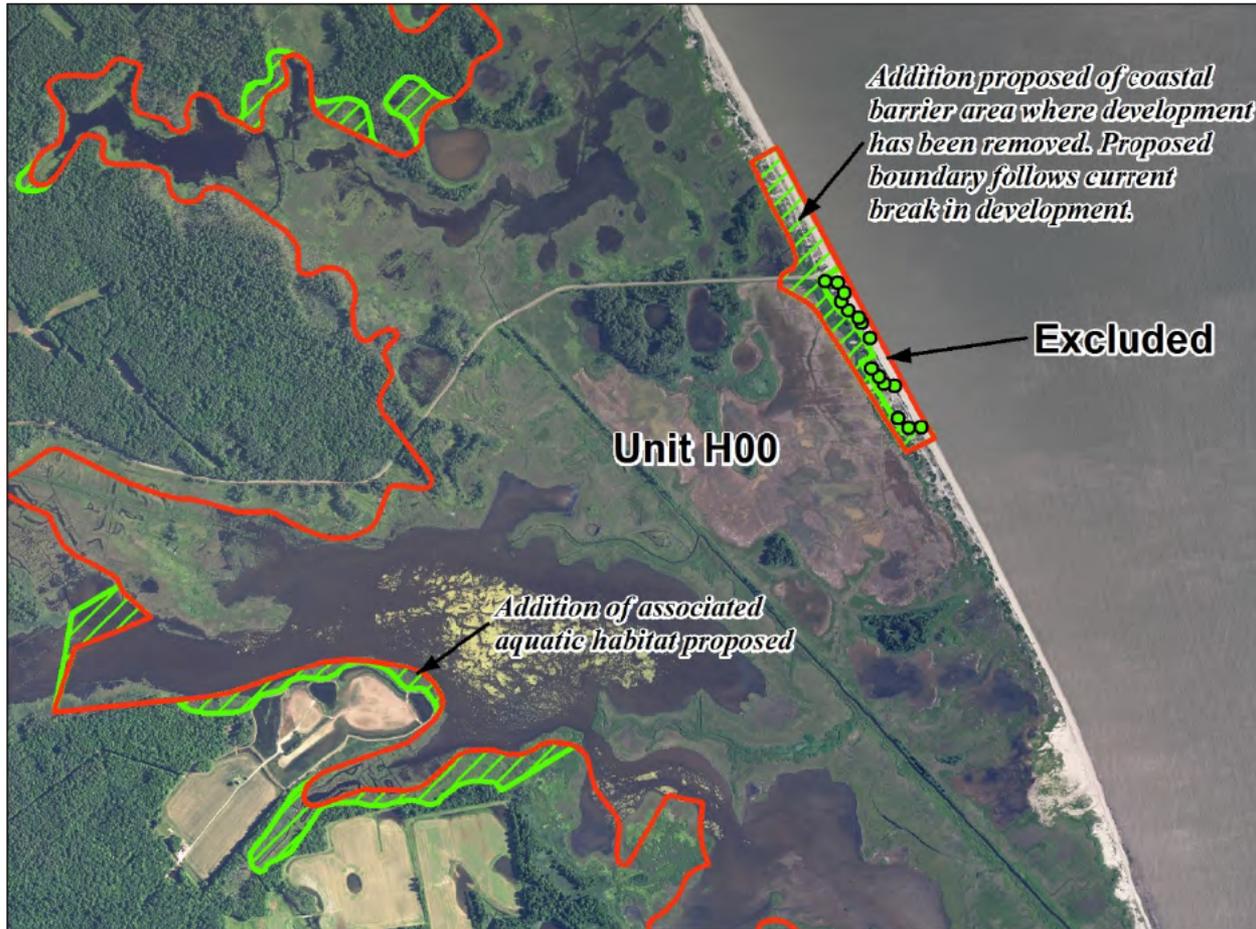
Information about these types of changes is available online at:

<https://www.fws.gov/cbra/Change-Types.html>



Hurricane Sandy Remapping Project

Types of Changes

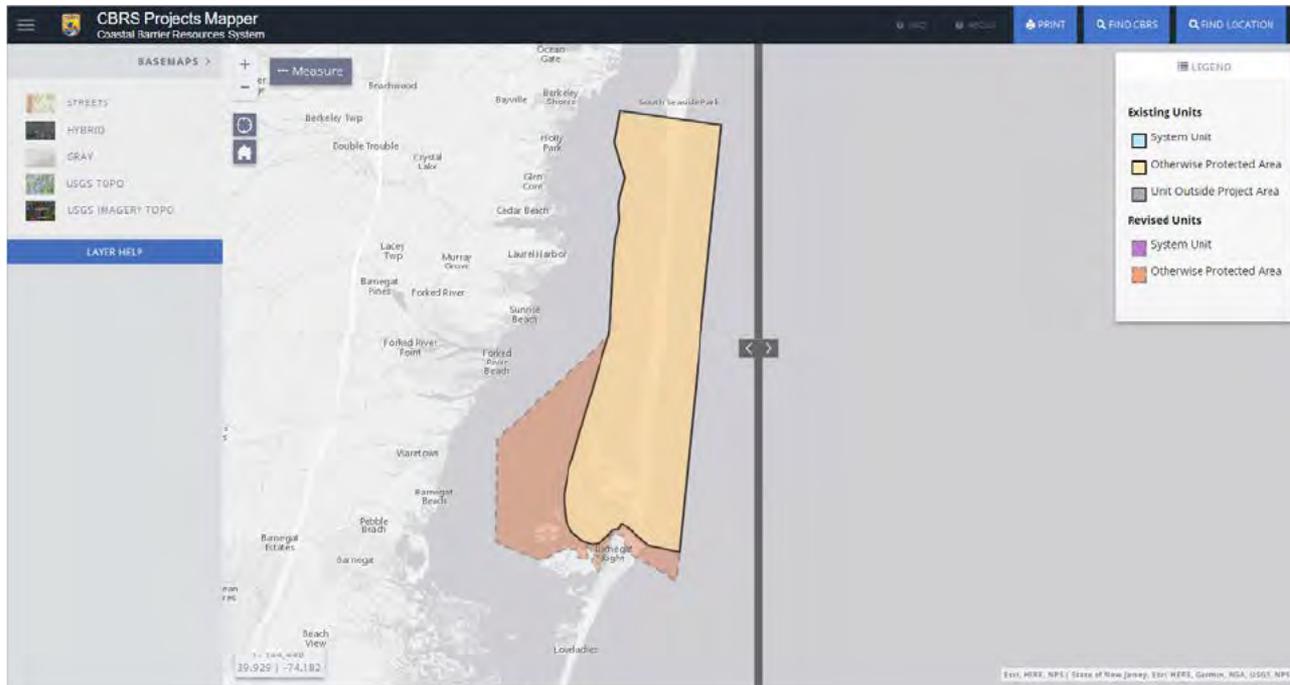


See this area in the CBRS Projects Mapper (search on Unit H00): <https://www.fws.gov/cbra/Maps/Mapper.html>

Hurricane Sandy Remapping Project

CBRS Projects Mapper

FWS developed a new “CBRS Projects Mapper” to illustrate proposed changes



<https://www.fws.gov/cbra/Maps/Mapper.html>

Comprehensive Map Modernization

Next Steps



John H. Chafee Coastal Barrier Resources System (CBRS) Comprehensive Map Modernization Process

Existing CBRS
Maps



U.S. Fish and Wildlife
Service Prepares
Proposed CBRS
Boundaries



Public Review
and Comment



U.S. Fish and
Wildlife Service
Prepares **Final
Recommended**
CBRS Maps



Transmittal of
Final
Recommended
Maps to Congress
for Consideration



Congress Enacts
Legislation to
Adopt Revised
Maps



Batch 1 comment
period closed July
10, Batch 2 is
anticipated fall 2018



Anticipated
in 2019

Where can I get more information?

FWS CBRA website

<http://www.fws.gov/cbra>

CBRS Projects Mapper

<http://www.fws.gov/cbra/Maps/Mapper.html>

Hurricane Sandy CBRS Remapping Project Website:

<https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project-Batch-1.html>

Contact us by email:

CBRA@fws.gov

Contact us by phone:

703-358-2171



From: [Niemi, Katie](#)
To: [Wright, Dana K](#)
Subject: Fwd: Meeting request from American Shore and Beach Preservation Association
Date: Friday, July 20, 2018 9:59:26 AM
Importance: High

FYI

----- Forwarded message -----

From: **Martha BalisLarsen** <martha_balislarsen@fws.gov>
Date: Fri, Jul 20, 2018 at 9:50 AM
Subject: Re: Meeting request from American Shore and Beach Preservation Association
To: "Niemi, Katie" <katie_niemi@fws.gov>
Cc: Craig Aubrey <craig_aubrey@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>

Your response looks fine. Gary is on leave for the next two weeks so we should plan to talk with Gina. We probably won't have the chiefs meeting on Tuesday but we may be able to use the time to talk about CBRA issues.

Martha

Sent from my iPhone

On Jul 20, 2018, at 8:46 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Martha,

Please see the meeting request below from Derek Brockbank, Executive Director of the American Shore and Beach Preservation Association. My recommendation is that Gary take this meeting. Can we discuss this meeting request and the response letter to Rep. Graves (and 7 other members of Congress) with Gary after the Chiefs meeting next Tuesday? Below is what I plan to send to Derek as an acknowledgement of his meeting request. Thanks!

Katie

DRAFT EMAIL RESPONSE:

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
[5275 Leesburg Pike](#)
[Falls Church, VA 22041](#)-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>
Date: Thu, Jul 19, 2018 at 3:46 PM
Subject: [EXTERNAL] Meeting on CBRA and Beaches
To: robert_barba@fws.gov, "Aubrey, Craig" <craig_aubrey@fws.gov>, cbra@fws.gov, katie_niemi@fws.gov

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Cc: [Phinney, Jonathan T](#)
Subject: Re: Meeting request from American Shore and Beach Preservation Association
Date: Friday, July 20, 2018 12:08:05 PM
Importance: High

good idea! Let's chat with her then.

Martha

Martha Balis-Larsen
Chief, Division of Budget & Technical Support
Ecological Services Program
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2171 (general)
703-358-2314 (direct)

On Fri, Jul 20, 2018 at 9:59 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Thanks Martha. We have a 2:30 meeting scheduled with Gina on Monday to discuss CBRA budget and technical corrections backlog. We could add this item to that meeting which is already scheduled.

Katie

On Fri, Jul 20, 2018 at 9:50 AM, Martha BalisLarsen <martha_balislarsen@fws.gov> wrote:

Your response looks fine. Gary is on leave for the next two weeks so we should plan to talk with Gina. We probably won't have the chiefs meeting on Tuesday but we may be able to use the time to talk about CBRA issues.

Martha

Sent from my iPhone

On Jul 20, 2018, at 8:46 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Martha,

Please see the meeting request below from Derek Brockbank, Executive Director of the American Shore and Beach Preservation Association. My recommendation is that Gary take this meeting. Can we discuss this meeting request and the response letter to Rep. Graves (and 7 other members of Congress) with Gary after the Chiefs meeting next Tuesday? Below is what I plan to send to Derek as an acknowledgement of

his meeting request. Thanks!

Katie

DRAFT EMAIL RESPONSE:

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
[5275 Leesburg Pike](#)
[Falls Church, VA 22041](#)-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>
Date: Thu, Jul 19, 2018 at 3:46 PM
Subject: [EXTERNAL] Meeting on CBRA and Beaches
To: robert_barba@fws.gov, "Aubrey, Craig" <craig_aubrey@fws.gov>, cbra@fws.gov, katie_niemi@fws.gov

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Barba, Robert](#)
To: [Niemi, Katie](#)
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches
Date: Thursday, July 26, 2018 3:06:27 PM
Importance: High

Katie,
Let me know if i can be of assistance with setting this up.

On Fri, Jul 20, 2018 at 11:10 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Thu, Jul 19, 2018 at 3:46 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

--

Thanks for your time,
-Rob

Robert R. Barba
AES-BASS
Ecological Services Program
U.S. Fish & Wildlife Service
MS-ES
5275 Leesburg Pike

Falls Church, VA 22041-3803
(703) 358-2171 / (703) 358-1800 fax
Robert_Barba@fws.gov

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Graves letter
Date: Thursday, July 26, 2018 3:52:25 PM
Importance: High

Katie,

I made a lot of progress on the Graves letter today. it's still painfully long, but we can probably get it down to 5 pages with a little more effort. I've done about all I can do for it right now, you should look at it again.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches
Date: Friday, July 27, 2018 5:30:10 PM
Importance: High

I checked with Gina. We would prefer to schedule after the Graves response has cleared so that we know what position the Admin wants to take. Can discuss more on Monday.

Martha

Sent from my iPhone

On Jul 26, 2018, at 2:46 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Great, thanks.

Katie

On Thu, Jul 26, 2018 at 2:33 PM, BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

I talk with Gina at 3 pm today so I will bring it up then.

Martha

Martha Balis-Larsen
Chief, Division of Budget & Technical Support
Ecological Services Program
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
[5275 Leesburg Pike](#)
[Falls Church, VA 22041](#)-3803
703-358-2171 (general)
703-358-2314 (direct)

On Thu, Jul 26, 2018 at 11:46 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Martha,

Please advise on how you want to respond to Derek's follow-up email about scheduling a meeting with ASBPA. Below is draft language if you want to let him know that we need to wait till Gary is back before we can schedule.

Hello Derek,

Our Assistant Director for Ecological Services is out of the office for a couple weeks. When he returns we will check with him to schedule a meeting, hopefully around the end of August.

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>

Date: Thu, Jul 26, 2018 at 11:22 AM
Subject: RE: [EXTERNAL] Meeting on CBRA and Beaches
To: "Niemi, Katie" <katie_niemi@fws.gov>
Cc: Robert Barba <robert_barba@fws.gov>, "Aubrey, Craig" <craig_aubrey@fws.gov>

Katie –

Just following up on this, seeing if you'd had a chance to check internally about available dates for a meeting?

Let me know.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Friday, July 20, 2018 11:10 AM
To: Derek Brockbank <derek.brockbank@asbpa.org>
Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 19, 2018 at 3:46 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among

our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Niemi, Katie](#)
To: [Gustavson, Angela](#); [Marian Howe](#); [Balislarsen, Martha](#)
Subject: Fwd: [EXTERNAL] Meeting on CBRA and Beaches
Date: Wednesday, August 1, 2018 2:17:29 PM

Hi Folks,

Please see request from ASBPA for a copy of the final letter that goes out to Rep. Graves. Can I commit to sending it to him once it's signed and sent to Congress?

Thanks!

Katie

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>
Date: Wed, Aug 1, 2018 at 2:06 PM
Subject: RE: [EXTERNAL] Meeting on CBRA and Beaches
To: "Niemi, Katie" <katie_niemi@fws.gov>
Cc: Robert Barba <robert_barba@fws.gov>, "Aubrey, Craig" <craig_aubrey@fws.gov>

Ok. That makes sense. Would you be able to send me your final response after you've sent it Rep. Graves?

When you have a better sense of timing, Please let me know when in September you can meet.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Wednesday, August 1, 2018 2:02 PM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Hello Derek,

We're in the process of preparing a response to Rep. Graves and his colleagues on the issue of sand mining within the CBRS. I've checked with my managers and they'd prefer to schedule the meeting with you after the response has cleared internally so we can provide you with a timely update on this matter. It will probably be September before we are able to discuss.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 26, 2018 at 11:22 AM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Katie –

Just following up on this, seeing if you'd had a chance to check internally about available dates for a meeting?

Let me know.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Friday, July 20, 2018 11:10 AM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 19, 2018 at 3:46 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic

(I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Wright, Dana K](#)
To: [Bohn, Cynthia](#)
Cc: [Phinney, Jonathan T](#)
Subject: Re: Draft response to Rep. Graves on CBRA (DCN 068399)
Date: Friday, August 3, 2018 12:29:03 PM
Importance: High

Great, thank you Cindy!

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, Aug 3, 2018 at 12:18 PM, Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

Dana, I have reviewed this response and find it to be very comprehensive and accurate. I do not have any comments or specific changes to add. Great job, please let me know if you have any other ways I can assist you. Take care, Cindy

Cynthia Bohn
Southeast Region Coastal Program
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
[1875 Century Blvd, Room 200](#)
[Atlanta, GA 30345](#)
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Fri, Aug 3, 2018 at 6:40 AM, Wright, Dana <dana_wright@fws.gov> wrote:

Hi Cindy,

Sorry - I was out of the office yesterday. I think you must have missed Katie's email that was sent out prior to mine that has our draft response to Mr. Graves et al. OCL directed us to do a response and make it a narrative rather than a Q & A. We'd like to get your comments, as well as comments from Jonathan, Martha, and CLA. After we reconcile that first round of comments, then we'll share with Linus for his review. Give me a call if you

want to discuss.

I'm reattaching the draft response so you don't have to wade through your inbox for it, I know you just got back from vacation.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, Aug 2, 2018 at 11:52 AM, Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

I don't think we should reply to this other than to say we have applied the Solicitor's interpretation to these activities since receiving the response.

Dana: I will be in the office today and tomorrow, and then on travel and AL next week again. I will review this more completely this afternoon. Do you just want me to review your draft and respond that way? C

Cynthia Bohn
Southeast Region Coastal Program
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
[1875 Century Blvd, Room 200](#)
[Atlanta, GA 30345](#)
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Wed, Aug 1, 2018 at 2:12 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

Attached is a draft response to the incoming letter from Rep. Graves and 7 of his colleagues concerning the issue of sand mining within the CBRS. Can you please review this letter and provide any feedback to Dana within the next week (by August 9). I'll be on AL August 2-10 so please let Dana know if you have any questions or need additional information.



Thanks!

Katie

From: [Niemi, Katie](#)
To: [Wellman, Lois A](#)
Cc: [Wright, Dana K](#); [Phinney, Jonathan T](#)
Subject: Fwd: Request an extension for DTS 068399 to August 30
Date: Wednesday, August 15, 2018 10:31:21 AM
Importance: High

Lois,
FYI, here is background on our request for extensions related to the CBRA letter to 068399.

----- Forwarded message -----

From: **Phinney, Jonathan** <jonathan_phinney@fws.gov>
Date: Mon, Jul 30, 2018 at 2:43 PM
Subject: Fwd: Request an extension for DTS 068399 to August 30
To: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

FYI

----- Forwarded message -----

From: **Randolph, Nikki** <nikki_randolph@fws.gov>
Date: Mon, Jul 30, 2018 at 2:20 PM
Subject: Re: Request an extension for DTS 068399 to August 30
To: "Phinney, Jonathan" <jonathan_phinney@fws.gov>

No worries, I told exsec when they assigned it I was gonna ask for 60 days.... they laughed.... now here we are.....

On Mon, Jul 30, 2018 at 2:19 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:
Understood Nikki.

We will get it to you as soon as Gary and staff solicitor review.

Thanks for the assistance.

Jph

On Mon, Jul 30, 2018 at 2:15 PM, Randolph, Nikki <nikki_randolph@fws.gov> wrote:

I understand. But this is an ExSec assignment, not ours and I have already asked for 2 extensions, I have asked for a third, from the tone not sure we will get it. Does it matter if they grant the extension or not? Not really, but just get me the draft as soon as possible. If its not before the 13th, Ill deal with whatever.....

On Mon, Jul 30, 2018 at 2:02 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Nikki,

We have to extend it until next week after Gary Frazer from AL on August 6. This is a policy-related request from Congressmen Graves and Gary needs to review our

response.

My apologies for not being clear on the solicitors. I meant the career SOL review. We can likely expedite that review but not Gary's.

So we will work to get in past Gary by Friday August 3.

Jph

On Mon, Jul 30, 2018 at 8:34 AM, Randolph, Nikki <nikki_randolph@fws.gov> wrote:
Due date stands. this is not your normal CBRA letter as it has to go to the department for clearance. Before it can go to SOL it has to be cleared from the Directors office and FWP. CCU will get the SOL and other Dept surnames once the draft has cleared the directors office.

On Thu, Jul 26, 2018 at 3:35 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Nikki and Thomas,

DTS 068399 requires the CBRA Program to get a solicitor's review of our answers before it can be released to Representative Graves' office.

I am requesting an extension to the end of August to take into account vacations in the solicitor's office.

Thank you.

Jonathan

On Mon, Jul 9, 2018 at 4:25 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

No I did not see your email referenced. But we are fine (relieved!) now.

Jph

On Mon, Jul 9, 2018 at 4:24 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Thank you.

On Wed, Jun 27, 2018 at 8:13 AM, Randolph, Nikki <nikki_randolph@fws.gov> wrote:

Your due date was changed to July 26 earlier this week. I sent an email. I guess you didn't see it.

On Tue, Jun 26, 2018 at 4:15 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Nikki and Thomas,

I am following up on an earlier request for an extension below. I am on AL starting tomorrow, Wednesday June 27.

Please respond to all so the CBRA staff is aware of the status.

Thank you.

Jph

On Fri, Jun 22, 2018 at 4:04 PM, Phinney, Jonathan

<jonathan_phinney@fws.gov> wrote:

Nikki,

The CBRA Program received a task today that will require more time than the allotted 2 weeks.

The letter from several Congressmen to Principal Deputy Sheehan requests answers to 7 complicated questions on an interpretation of the CBRA law by the solicitor's office in 1994. The Program's response needs to be well researched on the history of the 1994 opinion and will require extensive discussions and reviews by the solicitor's office.

I am requesting 4 weeks for a response so we can answer the letter with the thoroughness that it requires.

Please feel free to contact me with any questions and thank you for your consideration.

Regards,

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services

[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Nikki S. Randolph
Chief, CCU
U.S. Fish and Wildlife Service
202-208-7535

*"There cannot be a crisis next week. My schedule is already full" -- Henry
Kissinger*

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Nikki S. Randolph
Chief, CCU
U.S. Fish and Wildlife Service
202-208-7535

| *"There cannot be a crisis next week. My schedule is already full" -- Henry Kissinger*

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
[5275 Leesburg Pike Suite 2](#) C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Nikki S. Randolph
Chief, CCU
U.S. Fish and Wildlife Service
202-208-7535

| | *"There cannot be a crisis next week. My schedule is already full" -- Henry Kissinger*

--

Jonathan T. Phinney PhD

Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)

USFWS Ecological Services

[5275 Leesburg Pike Suite 2](#) C007

Falls Church, VA 22041

703-358-1832 (office)

-1800 (fax)

703-819-2570 (mobile)

jonathan_phinney@fws.gov

<http://www.fws.gov>

--

Nikki S. Randolph

Chief, CCU

U.S. Fish and Wildlife Service

202-208-7535

| | *"There cannot be a crisis next week. My schedule is already full" -- Henry Kissinger*

--

Jonathan T. Phinney PhD

Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)

USFWS Ecological Services

[5275 Leesburg Pike Suite 2](#) C007

Falls Church, VA 22041

703-358-1832 (office)

-1800 (fax)

703-819-2570 (mobile)

jonathan_phinney@fws.gov

<http://www.fws.gov>

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Invitat on: Graves letter @ Thu Aug 16, 2018 12:30pm - 1:30pm (EDT) (katie_niemi@fws.gov)
Start: Thursday, August 16, 2018 12:30:00 PM
End: Thursday, August 16, 2018 1:30:00 PM
Attachments: [Invite.ics](#)
Importance: High

more details » <https://www.google.com/calendar/event?action=VIEW&cid=NntkczhmZnBsaJQ2bnxtdmU2ZnZkNTJ2c2Uga2F0aWVibmlbWIAZndzLmdvdg&tok=MTkjZGFuYV93cmliHRAZndzLmdvdjM0YzNkZmNmNmLzNmVmKGy5ZmlwYjAzoTlyYTU2MTkyMjg4MGU0MTQ&etz=America%2FNew_York&hl=en&es=1>

Graves letter

When

Thu Aug 16, 2018 12:30pm – 1:30pm Eastern Time - New York

Video call

https://hangouts.google.com/hangouts/_/doi.gov/dana-wright-kat/?hceid=ZGFuYV93cmliHRAZndzLmdvdg.6kds8fplj46lnvc6fvd52vse

Calendar

katie_niemi@fws.gov

Who

• dana_wright@fws.gov

- organizer

• katie_niemi@fws.gov

Going?

Yes <https://www.google.com/calendar/event?action=RESPOND&cid=NntkczhmZnBsaJQ2bnxtdmU2ZnZkNTJ2c2Uga2F0aWVibmlbWIAZndzLmdvdg&rst=1&tok=MTkjZGFuYV93cmliHRAZndzLmdvdjM0YzNkZmNmNmLzNmVmKGy5ZmlwYjAzoTlyYTU2MTkyMjg4MGU0MTQ&etz=America%2FNew_York&hl=en&es=1>

-

Maybe <https://www.google.com/calendar/event?action=RESPOND&cid=NntkczhmZnBsaJQ2bnxtdmU2ZnZkNTJ2c2Uga2F0aWVibmlbWIAZndzLmdvdg&rst=3&tok=MTkjZGFuYV93cmliHRAZndzLmdvdjM0YzNkZmNmNmLzNmVmKGy5ZmlwYjAzoTlyYTU2MTkyMjg4MGU0MTQ&etz=America%2FNew_York&hl=en&es=1>

-

No <https://www.google.com/calendar/event?action=RESPOND&cid=NntkczhmZnBsaJQ2bnxtdmU2ZnZkNTJ2c2Uga2F0aWVibmlbWIAZndzLmdvdg&rst=2&tok=MTkjZGFuYV93cmliHRAZndzLmdvdjM0YzNkZmNmNmLzNmVmKGy5ZmlwYjAzoTlyYTU2MTkyMjg4MGU0MTQ&etz=America%2FNew_York&hl=en&es=1>

-

more options » <https://www.google.com/calendar/event?action=VIEW&cid=NntkczhmZnBsaJQ2bnxtdmU2ZnZkNTJ2c2Uga2F0aWVibmlbWIAZndzLmdvdg&tok=MTkjZGFuYV93cmliHRAZndzLmdvdjM0YzNkZmNmNmLzNmVmKGy5ZmlwYjAzoTlyYTU2MTkyMjg4MGU0MTQ&etz=America%2FNew_York&hl=en&es=1>

-

Invitation from Google Calendar <<https://www.google.com/calendar/>>

-

You are receiving this email at the account katie_niemi@fws.gov because you are subscribed for invitations on calendar katie_niemi@fws.gov.

-

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

-

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More <https://support.google.com/calendar/answer/37135#forwarding>](https://support.google.com/calendar/answer/37135#forwarding).

From: [Wright, Dana K](#)
To: [Wright, Dana K](#); [Niemi, Katie](#)
Subject: Graves letter
Start: Thursday, August 16, 2018 12:30:00 PM
End: Thursday, August 16, 2018 1:30:00 PM

Please do not edit this section of the description.

This event has a Google Hangouts video call.
Join: https://hangouts.google.com/hangouts/_/doi.gov/dana-wright-kat?cecid_ZGFuYV93cmliuHRAZndzLmdvdg.6kds8fpj46nlmve6fd52vsc&hs_121

View your event at https://www.google.com/calendar/event?action=VIEW&eid=NmkechmZnBsaQjQ2bnx0dmUzZnZlNTJ2c2Uga2F0aWVfbmllbWIAZndzLmdvdg&tok_MTkjZGFuYV93cmliuHRAZndzLmdvdjM0YzNkZmNmNmZMmVlMGY5ZmlwYjAzOTIyYTU2MTkyMjg4MGU0MTQ&etz_America%2FNw_York&hl_en&es_1

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Re: draft response to Rep. Graves
Date: Thursday, August 23, 2018 8:38:42 AM
Importance: High

Do we need to set up a time to go over these today?

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Aug 22, 2018 at 3:00 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

----- Forwarded message -----

From: **Howe, Marian** <marian_howe@fws.gov>
Date: Wed, Aug 22, 2018 at 11:04 AM
Subject: Re: draft response to Rep. Graves
To: "Niemi, Katie" <katie_niemi@fws.gov>

Take a look and let me know what you think of Marty's edits.

On Wed, Aug 22, 2018 at 9:21 AM, Kodis, Martin <martin_kodis@fws.gov> wrote:
I have some comments and edits. Will give to Merra this morning.

Marty

On Wed, Aug 22, 2018 at 7:27 AM, Wright, Dana <dana_wright@fws.gov> wrote:
Thanks Merra! I fixed the format for the citation for the USGS study (#18) and also added back a few words of substance to the paragraph about the study that I think are necessary to understand the types of coastal management techniques that we were talking about. Please see attached for the latest.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Aug 21, 2018 at 1:33 PM, Howe, Marian <marian_howe@fws.gov> wrote:
Here is my cleaned up version with footnotes.

On Tue, Aug 21, 2018 at 11:15 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:
Merra & Marty,
Attached is the most recent version of the response letter to Rep. Graves. This version incorporates Martha's edits. We will upload it to DTS. I have a 1:00 meeting today but am open now if you want to discuss. Thanks.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
[5275 Leesburg Pike](#)
[Falls Church, VA 22041](#)-3803
Tel (703) 358-2071

--

Merra Howe
Congressional and Legislative Affairs Specialist
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2225
Cell: 571-581-7162
marian_howe@fws.gov

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

[5275 Leesburg Pike](#)
[Falls Church, VA 22041](#)

703-358-2241 ph
703-358-2245 fax

--

Merra Howe
Congressional and Legislative Affairs Specialist
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2225

Cell: 571-581-7162
marian_howe@fvs.gov

From: [Wellman, Lois A](#)
To: [Wright, Dana K](#)
Cc: [Niemi, Katie](#)
Subject: Re: Updated version of 068399 with SOL edits
Date: Wednesday, August 29, 2018 7:07:29 AM
Importance: High

Does it have to go back to anyone else in SOL? If not, I suggest we get his okay to put his surname and be done with it. I've printed off the letter for Gary to review.

On Wed, Aug 29, 2018 at 7:04 AM, Wright, Dana <dana_wright@fws.gov> wrote:

Well, he hasn't hit the surname button in a DTS routing, but he told us yesterday that he's done reviewing it and he was good with the revised version we sent him. In DTS it is going to SOL after EA. Martha had us move Gary up in the surname process because of the content of the letter. Should we add a routing for Linus and get him to surname it in DTS to formalize it?

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Aug 29, 2018 at 6:51 AM, Wellman, Lois <lois_wellman@fws.gov> wrote:

So does this mean Linus has surnamed it?

On Tue, Aug 28, 2018 at 3:58 PM, Wright, Dana <dana_wright@fws.gov> wrote:

Hi Lois,

We recently received edits back from Linus Chen on the CBRA letter (068399) that is currently open for review with Gary and Gina. The attached version reflects Linus' edits and has been uploaded to DTS. If Gary hasn't looked at it yet, can you please replace the version that is in the hard copy?

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

--

Lois Wellman
AES Special Assistant
Office of the Assistant Director for Ecological Services
U.S. Fish & Wildlife Service
[1849 C St. NW](#)
MIB 3345
Washington, DC 20240
Lois_Wellman@fws.gov
(202)208-4646 office
(202)208-5618 fax

--

Lois Wellman
AES Special Assistant
Office of the Assistant Director for Ecological Services
U.S. Fish & Wildlife Service
1849 C St. NW
MIB 3345
Washington, DC 20240
Lois_Wellman@fws.gov
(202)208-4646 office
(202)208-5618 fax

From: [Wright, Dana K](#)
To: [Chen, Linus Y](#)
Cc: [Niemi, Katie](#); [Wellman, Lois A](#)
Subject: Re: Question about SOL surname on 068399
Date: Wednesday, August 29, 2018 9:48:41 AM
Importance: High

Hi all,

Gary just called me about this letter. I mentioned the question about Solicitor's office surname to him and he said that he is going to have to think about it.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Aug 29, 2018 at 8:41 AM, Wright, Dana <dana_wright@fws.gov> wrote:

The letter was addressed to the Acting Director of FWS but it came in to us through OCL rather than CLA. CCU indicated in DTS that the letter requires Department clearance, and they set it up to go to AS-FWP. There is also a routing called "Package Under Review" that doesn't say which office. Lois, what do you think? Note that the letter discusses our implementation CBRA with regard to a Solicitor's opinion from the 90's.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Aug 29, 2018 at 8:29 AM, Chen, Linus <linus.chen@sol.doi.gov> wrote:

I'll ask. I presume if it's coming from FWS (and not the Sec) it may not need front office surname (and maybe mine is enough).

I guess this will be assigned to me soon in DTS?

On Wed, Aug 29, 2018 at 7:11 AM Wright, Dana <dana_wright@fws.gov> wrote:

Hi Linus,

Does Ben or anybody else in SOL need to review the CBRA letter to Congressman Graves (068399) or is your surname all we need for that one?

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Graves letter update (cleared AEA)
Date: Friday, August 31, 2018 6:24:25 AM

Katie,

The Graves letter cleared DAEA and AEA (Huggler surnamed for both) with no changes and has been sent to SOL-DPW to be assigned to Linus.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

From: [Niemi, Katie](#)
To: [Frazer, Gary D](#)
Cc: [Wellman, Lois A](#); [BalisLarsen, Martha](#); [Phinney, Jonathan T](#); [Wright, Dana K](#)
Subject: Rep. Graves response letter (DCN 068399)
Date: Tuesday, October 2, 2018 9:30:09 AM
Importance: High

Gary,

Dana and I reviewed the one page response letter to Rep. Graves and only have a couple minor edits:

First paragraph, add "; Pub. L. 97-348 and subsequent amendments)." after "(CBRA"

Second paragraph, first sentence, add "John H. Chafee" before "Coastal Barrier Resources System"

That's it. The one page letter looks good.

Thanks.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Cc: [Phinney, Jonathan T](#); [Wright, Dana K](#)
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches
Date: Wednesday, October 3, 2018 8:51:47 AM
Importance: High

I think it will need to be Gary given the Dept's 1 page response to Graves. Let's chat about it at 9:30.

Martha

Martha Balis-Larsen
Chief, Division of Budget & Technical Support
Ecological Services Program
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2171 (general)
703-358-2314 (direct)

On Wed, Oct 3, 2018 at 8:16 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Martha,
Please see below. Perhaps this is a meeting that Gary and Ben or Linus should take?

Thanks.

Katie

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>
Date: Tue, Oct 2, 2018 at 3:46 PM
Subject: RE: [EXTERNAL] Meeting on CBRA and Beaches
To: Niemi, Katie <katie_niemi@fws.gov>

Katie –

I wanted to again check on the status of the response, and see if we could set a placeholder date for a meeting?

I understand your need to complete internal review on a congressional response that may be the basis of a discussion, but the purpose of our meeting has become more urgent. Some of the communities most impacted by regulations on how communities can access sand in a CBRA zone

shoal or inlet, are now looking to restore their beaches after Hurricane Florence and have been asking how this process is evolving. Frankly, USFWS has not been the most forthcoming about what is happening and potential for changes to CBRA-zone regulation.

I think it's in everyone's best interest – coastal communities, coastal fish and wildlife, USFWS – to not have Congress legislate a solution. But we would like to hear from USFWS what you are working on? And what you see as your legal limitations to allowing access to sand resources that have developed in a CBRA zone.

Will you have time and ability to meet sometime in October to talk further?

Regards,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Tuesday, September 4, 2018 2:50 PM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Hello Derek,

The Service's response to Rep. Graves and his colleagues is under internal review. Unfortunately, I'm unable to speculate how long it will take to complete the review process, but most likely at least another month. At this time we don't have any updates to share on the sand mining issue.

Thanks.

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

5275 Leesburg Pike

Falls Church, VA 22041-3803

Tel (703) 358-2071

On Wed, Aug 29, 2018 at 1:03 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Katie –

I wanted to follow up on this meeting request and see if we could get a meeting on the calendar for mid/late-September.

Can you suggest a date/time and we'll see if we can make it work?

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Wednesday, August 1, 2018 2:02 PM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Hello Derek,

We're in the process of preparing a response to Rep. Graves and his colleagues on the issue of sand mining within the CBRS. I've checked with my managers and they'd prefer to schedule the meeting with you after the response has cleared internally so we can provide you with a timely update on this matter. It will probably be September before we are able to discuss.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 26, 2018 at 11:22 AM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Katie –

Just following up on this, seeing if you'd had a chance to check internally about available dates for a meeting?

Let me know.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Friday, July 20, 2018 11:10 AM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 19, 2018 at 3:46 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Niemi, Katie](#)
To: [Bohn, Cynthia](#)
Cc: [Pool, Taylor S](#); [Kodis, Martin](#)
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches
Date: Friday, October 12, 2018 11:08:15 AM

Hi Cindy,
Martha is planning to call Derek and let him know that our response is still under internal review.
Katie

On Tue, Oct 9, 2018 at 3:57 PM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

Thanks Katie, are you going to schedule a meeting with him? Has anything changed or are we planning to change anything regarding to our sand mining policy in CBRS units? Cindy

Cynthia Bohn
Southeast Region Coastal Program
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Wed, Oct 3, 2018 at 8:21 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

FYI, this group wants to meet with us and is very interested in the Service's response to Rep. Graves concerning sand mining within the CBRS.

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>
Date: Tue, Oct 2, 2018 at 3:46 PM
Subject: RE: [EXTERNAL] Meeting on CBRA and Beaches
To: Niemi, Katie <katie_niemi@fws.gov>

Katie –

I wanted to again check on the status of the response, and see if we could set a placeholder

date for a meeting?

I understand your need to complete internal review on a congressional response that may be the basis of a discussion, but the purpose of our meeting has become more urgent. Some of the communities most impacted by regulations on how communities can access sand in a CBRA zone shoal or inlet, are now looking to restore their beaches after Hurricane Florence and have been asking how this process is evolving. Frankly, USFWS has not been the most forthcoming about what is happening and potential for changes to CBRA-zone regulation.

I think it's in everyone's best interest – coastal communities, coastal fish and wildlife, USFWS – to not have Congress legislate a solution. But we would like to hear from USFWS what you are working on? And what you see as your legal limitations to allowing access to sand resources that have developed in a CBRA zone.

Will you have time and ability to meet sometime in October to talk further?

Regards,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]
Sent: Tuesday, September 4, 2018 2:50 PM
To: Derek Brockbank <derek.brockbank@asbpa.org>
Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Hello Derek,

The Service's response to Rep. Graves and his colleagues is under internal review. Unfortunately, I'm unable to speculate how long it will take to complete the review process, but most likely at least another month. At this time we don't have any updates to share on the sand mining issue.

Thanks.

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

5275 Leesburg Pike

Falls Church, VA 22041-3803

Tel (703) 358-2071

On Wed, Aug 29, 2018 at 1:03 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Katie –

I wanted to follow up on this meeting request and see if we could get a meeting on the calendar for mid/late-September.

Can you suggest a date/time and we'll see if we can make it work?

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Wednesday, August 1, 2018 2:02 PM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Hello Derek,

We're in the process of preparing a response to Rep. Graves and his colleagues on the issue of sand mining within the CBRS. I've checked with my managers and they'd prefer to schedule the meeting with you after the response has cleared internally so we can provide you with a timely update on this matter. It will probably be September before

we are able to discuss.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041](#)-3803

Tel (703) 358-2071

On Thu, Jul 26, 2018 at 11:22 AM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Katie –

Just following up on this, seeing if you'd had a chance to check internally about available dates for a meeting?

Let me know.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: Niemi, Katie [mailto:katie_niemi@fws.gov]

Sent: Friday, July 20, 2018 11:10 AM

To: Derek Brockbank <derek.brockbank@asbpa.org>

Cc: Robert Barba <robert_barba@fws.gov>; Aubrey, Craig <craig_aubrey@fws.gov>

Subject: Re: [EXTERNAL] Meeting on CBRA and Beaches

Derek,

Thanks for your message. I will check in with my managers and let you know our availability for a meeting in August.

Thanks!

Katie

Katie Niemi

Coastal Barriers Coordinator

U.S. Fish & Wildlife Service

Ecological Services, MS: ES

[5275 Leesburg Pike](#)

[Falls Church, VA 22041-3803](#)

Tel (703) 358-2071

On Thu, Jul 19, 2018 at 3:46 PM, Derek Brockbank <derek.brockbank@asbpa.org> wrote:

Mr. Aubrey, Ms. Niemi –

I'd like to follow up on ASBPA's request for a meeting that scheduling conflicts prevented this spring, and see if you had time to meet with ASBPA this summer?

I'd like to introduce (re-introduce?) American Shore and Beach Preservation Association to you, fill you in on our coastal and beach agenda, and discuss a CBRA issue that is increasingly coming up among our members and the US Army Corps of Engineers – accessing sand in shoals that have developed in CBRA mapped zones.

As you are no doubt aware, there has been growing interest in this from members of Congress too. Rep Garret Graves was drafting a letter to Director Sheehan on this topic (I'm not sure if it was sent?); and legislative language was being considered, although not offered, in the Water Resources Development Act. ASBPA would very much like to avoid seeing legislative action to address these issues, but would like to see a more consistent approach that supports natural infrastructure in flood risk management. I hope we can also help FWS communicate with the beach community about what you're doing and why.

Please let me know if and when you have time to meet in July or August?

Thanks,

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Travnicek, Andrea J](#)
To: [Frazer, Gary D](#); [Nemi, Katie](#); [Balslarsen, Martha](#); [Phinney, Jonathan T](#); [Wright, Dana K](#)
Cc: [Spence, Jon E D](#); [Wellman, Lois A](#); [Kurth, Jim](#); [Guertin, Stephen](#); [Sellars, Roslyn](#); [Robbins, Tasha J](#)
Subject: Invitation: CBRA Briefing @ Thu Nov 1, 2018 11am - 11:30am (EDT) (dana_wright@fws.gov)
Start: Thursday, November 1, 2018 11:00:00 AM
End: Thursday, November 1, 2018 11:30:00 AM
Location: ASFWP conf. room - 3144
Attachments: [invite.ics](#)

more details » <https://www.google.com/calendar/event?action=VIEW&eid=Nm%20XVlaWVjdDulyZnBsOHFmN3JzZWZmdm9ZGFuYV93cmlihaHRAZndzLmvdg&tok=MjgiYW5kcmVhX3RyYXZuaWNoBpb3MuZG9pLmdvdjI4Y2E5ZThhYWRmNndiMThtZGYyY2RmYjJOTWZTRjNzMWYjhhYzlkctz%2FNew_York&hl=en&es=1>

CBRA Briefing

When
Thu Nov 1, 2018 11am - 11:30am Eastern Time - New York
Where
ASFWP conf. room - 3144 ([map](https://maps.google.com/maps?q=ASFWP+conf.+room+-3144&hl=en) <<https://maps.google.com/maps?q=ASFWP+conf.+room+-3144&hl=en>>)

- Calendar
dana_wright@fws.gov
Who
 - andrea_travnicek@ios.doi.gov
 - organizer
 - tasha_j_robbins@ios.doi.gov
 - creator, optional
 - gary_frazier@fws.gov
 - katie_nemi@fws.gov
 - martha_balslarsen@fws.gov
 - jonathan_phinney@fws.gov
 - dana_wright@fws.gov
 - jonc_spence@fws.gov
 - optional
 - lois_wellman@fws.gov
 - optional
 - jim_kurth@fws.gov
 - optional
 - stephen_guertin@fws.gov
 - optional
 - roslyn_sellars@fws.gov
 - optional

Going (dana_wright@fws.gov)?
Yes <https://www.google.com/calendar/event?action=RESPOND&eid=Nm5S0XVlaWVjdDulyZnBsOHFmN3JzZWZmdm9ZGFuYV93cmlihaHRAZndzLmvdg&rst=1&tok=MjgiYW5kcmVhX3RyYXZuaWNoBpb3MuZG9pLmdvdjI4Y2E5ZThhYWRmNndiMThtZGYyY2RmYjJOTWZTRjNzMWYjhhYzlkctz%2FNew_York&hl=en&es=1>
_

Maybe <https://www.google.com/calendar/event?action=RESPOND&eid=Nm5S0XVlaWVjdDulyZnBsOHFmN3JzZWZmdm9ZGFuYV93cmlihaHRAZndzLmvdg&rst=3&tok=MjgiYW5kcmVhX3RyYXZuaWNoBpb3MuZG9pLmdvdjI4Y2E5ZThhYWRmNndiMThtZGYyY2RmYjJOTWZTRjNzMWYjhhYzlkctz%2FNew_York&hl=en&es=1>
_

No <https://www.google.com/calendar/event?action=RESPOND&eid=Nm5S0XVlaWVjdDulyZnBsOHFmN3JzZWZmdm9ZGFuYV93cmlihaHRAZndzLmvdg&rst=2&tok=MjgiYW5kcmVhX3RyYXZuaWNoBpb3MuZG9pLmdvdjI4Y2E5ZThhYWRmNndiMThtZGYyY2RmYjJOTWZTRjNzMWYjhhYzlkctz%2FNew_York&hl=en&es=1>
more options » <https://www.google.com/calendar/event?action=VIEW&eid=Nm%20XVlaWVjdDulyZnBsOHFmN3JzZWZmdm9ZGFuYV93cmlihaHRAZndzLmvdg&tok=MjgiYW5kcmVhX3RyYXZuaWNoBpb3MuZG9pLmdvdjI4Y2E5ZThhYWRmNndiMThtZGYyY2RmYjJOTWZTRjNzMWYjhhYzlkctz%2FNew_York&hl=en&es=1>

Invitation from Google Calendar <<https://www.google.com/calendar/>>

You are receiving this email at the account dana_wright@fws.gov because you are subscribed for invitations on calendar dana_wright@fws.gov.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More <https://support.google.com/calendar/answer/37135#forwarding>](https://support.google.com/calendar/answer/37135#forwarding).

From: [Travnicek, Andrea J](#)
To: [Frazer, Gary D](#); [Niemi, Katie](#); [BalsLarsen, Martha](#); [Phinney, Jonathan T](#); [Wright, Dana K](#); [Travnicek, Andrea J](#)
Cc: [Spence, Tonie D](#); [Wellman, Lois A](#); [Kurth, Jim](#); [Guertin, Stephen](#); [Sellars, Roslyn](#); [Robbins, Tasha L](#)
Subject: CBRA Briefing
Start: Thursday, November 1, 2018 11:00:00 AM
End: Thursday, November 1, 2018 11:30:00 AM
Location: ASFWP conf. room - 3144

Please do not edit this section of the description.

View your event at https://www.google.com/calendar/event?action=VIEW&cid=Nm%20OXVlaWVjdUyZnBsOHFmN3sZWZmdmZGFaYV93cmliuaHRAZndzLmdvdg&tok=MjggYW5kcmVhX3RyYXZuaWNhOjBpb3MuZG9pLmdvdj4Y2E5ZTRlYWRmNzdIMThjZGYyY2RmYjJjOTIwZTRjNzMuYjhhYzI&ctz=America%2FNew_York&hl=en&es=1

From: [Niemi, Katie](#)
To: [Wright, Dana K](#)
Subject: Fwd: please review-CBRA info memo and slides for AS-FWP briefing
Date: Tuesday, October 30, 2018 9:08:35 AM

----- Forwarded message -----

From: **Bohn, Cynthia** <cynthia_bohn@fws.gov>
Date: Tue, Oct 30, 2018 at 8:30 AM
Subject: Re: please review-CBRA info memo and slides for AS-FWP briefing
To: Katie Niemi <katie_niemi@fws.gov>

Hi Katie: I like the suggestions other folks are sending. I only looked at content. The only thing I would add is to highlight or bold on the slide the language that is within CBRA which specifically prohibits stabilization projects. We are following a very clear intent in the law. c

Cynthia Bohn
Southeast Region Coastal Program
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Tue, Oct 30, 2018 at 8:24 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
Thanks Cindy.

On Mon, Oct 29, 2018 at 3:07 PM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

Hi Katie, I have reviewed all the attachments and I have no additional comments or revisions. Good luck with the briefing. Cindy

Cynthia Bohn
Southeast Region Coastal Program

Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Mon, Oct 29, 2018 at 2:49 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

The briefing for Andrea Travnicek on the CBRA response letter to Rep. Graves is scheduled for November 1 at 11:00. Can you please review the attached draft info memo and powerpoint slides and let me know if you have any concerns and/or changes by noon tomorrow (Tuesday). Also attached are the enclosures referenced in the info memo. Sorry for the short turn-around time, we want to get these to Gary a couple days before the briefing.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [Bohn, Cynthia](#)
To: [Niemi, Katie](#)
Subject: Re: [EXTERNAL] Follow up on CBRA
Date: Monday, November 19, 2018 3:09:27 PM
Importance: High

Thanks Katie, I'll call you later this week or next week to catch up. c

Cynthia Bohn
Southeast Region Coastal Program
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Fri, Nov 9, 2018 at 8:32 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Cindy,

When you're back in the office, I'd be happy to fill you in on the meeting Martha and I had with ASBPA this week. Some highlights from the meeting:

- they are interested in our sand mining policy (we shared the 1994 Solicitor's Opinion and 1995 letter to the Corps on that matter)
- they are interested in working with the Corps to develop beach projects that have benefits for fish and wildlife (i.e. CBRA friendly)
- they are interested in the beneficial use provision (associated with CBRA exception for necessary dredging activities)
- we shared the consultation template and flowchart with them which they found very helpful and they plan to develop a similar flowchart that is specific to beach projects
- they are interested in the guidance/fact sheet we are developing on dredging and shoreline stabilization activities
- they are interested in where their members can engage in the process, we explained that we have no veto authority on CBRA consultations and best to work with the Corps early on in the process
- they are interested in facilitating dialogue between us and their members and mentioned their annual meeting in March (they'd be happy to have us present on CBRA). I explained that this March would probably not work but perhaps the following year and perhaps we could set up some webinars on CBRA as it relates to beach projects. I mentioned that you are the regional contact for consultations and Derek mentioned that he had met you in the past and plans to follow-up with you.

Hope your trip is going well and we can catch up when you're back in the office. Enjoy the

long weekend!

Katie

----- Forwarded message -----

From: **Derek Brockbank** <derek.brockbank@asbpa.org>

Date: Thu, Nov 8, 2018 at 4:06 PM

Subject: [EXTERNAL] Follow up on CBRA

To: Katie Niemi <katie_niemi@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>

Cc: Lawrence Malizzi <Lawrence.Malizzi@obg.com>

Katie, Martha –

Thanks for meeting with Larry and I yesterday, I found it informative and productive. I wanted to capture our follow up items:

- 1) We'll work on a "beach projects and CBRA" flow-chart, to help members of our community and USACE figure out when/where to consider CBRA implications. (this will likely be in January or later).
- 2) You're working on general (not policy) guidance on how coastal projects should be considering CBRA – this is just in the conceptual phase, and I hope we can continue to dialogue on this, to ensure the product is helpful to coastal communities.
- 3) We'll consider doing a survey of members to see who have CBRA issues and what they are, which may be able to inform what goes into to 1 & 2.
- 4) We'll follow up with Cindy Bohn, about presenting to ASBPA members.

Finally, thank you for sharing the Interpretation of 6(a)(6)(g). I think ASBPA has a disagreement over this interpretation and would like to see this revisited, with updated scientific information on net impacts to wildlife beach project, but I completely understand this is out of your hands.

My question on this guidance is: this looks like it applies ONLY to 6(a)(6)(g) ("Nonstructural projects for shoreline stabilization..."), how about 6(a)(6)(a) ("Projects for the... protection, and enhancement of fish and wildlife resources and habitats, including... stabilization projects for fish and wildlife habitats")? Is there guidance on that?

If a beach and dune project is being done for the purpose of ecological or habitat restoration – and many nourished beaches have significant value to wildlife – while being “consistent with the 3 purposes of CBRA” can CBRA be exempted?

If it can, then I think we can push USACE to plan projects that have a better wildlife habitat restoration elements. But if that’s a non-starter, USACE will want to continue to plan projects the same-old way.

Thanks for your insight and look forward to staying in touch.

Derek

Derek Brockbank

Executive Director,

American Shore and Beach Preservation Association (ASBPA)

202-827-4246 (office)

917-536-6878 (cell)

Derek.Brockbank@asbpa.org

www.asbpa.org

www.facebook.com/AmericanBeaches

www.twitter.com/asbpa

From: [Pool, Taylor S](#)
To: [Niemi, Katie](#)
Cc: [Bohn, Cynthia](#); [Phinney, Jonathan T](#); [BalisLarsen, Martha](#); [Fish, Teresa L](#); [Zosh, Jennifer M](#); [Ellis, John](#); [Matthews, Kathryn H](#); [Wells, Emily N](#); [Peters, Kristen E](#); [Benjamin, Pete](#)
Subject: Re: Push On to Change Sand Rule Interpretation
Date: Tuesday, February 26, 2019 10:19:52 AM
Importance: High

Thanks for sharing this, Katie!

Best,
Taylor

Taylor Pool
Congressional/Legislative Affairs Specialist
U.S. Fish and Wildlife Service
E: taylor_pool@fws.gov
O: 703-358-2128
C: 202-657-2989

On Tue, Feb 26, 2019 at 10:11 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. Link below to Coastal Review Online article concerning the Service's long-standing CBRA sand mining policy, including statements from Margaret Everson's letter to Congress on this matter and statements from interest groups seeking legislative action.

[Push On to Change Sand Rule Interpretation](#)

Coastal Review Online

... this work may be done in channels and on related structures that were authorized before they were included in a **Coastal Barrier Resources System**, ...

Flag as irrelevant

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Fwd: [EXTERNAL] Google Alert - CBRA
Date: Wednesday, February 27, 2019 7:50:38 AM
Importance: High

See the articles below. We may want to share these internally. The CRO one quotes the Graves letter, so it's out there.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: Google Alerts <googlealerts-noreply@google.com>
Date: Wed, Feb 27, 2019 at 12:07 AM
Subject: [EXTERNAL] Google Alert - CBRA
To: <dana_wright@fws.gov>



CBRA

As-it-happens update · February 27, 2019

NEWS

[Push On to Change Sand Rule Interpretation](#)

Coastal Review Online

Sand within areas designated Coastal Barrier Resources Act, or **CBRA**, ... being dredged from a channel within a **CBRA** zone onto a nearby beach.



Flag as irrelevant

[Stone Harbor Reviews Lagoons, Oceanfront](#)

Cape May County Herald

Farrell said that attempts to get Fish and Wildlife to alter the boundaries of the **CBRA** defined area, an attempt to free up borrow areas just outside the ...



Flag as irrelevant

[See more results](#) | [Edit this alert](#)

You have received this email because you have subscribed to **Google Alerts**.

[Unsubscribe](#) | [View all your alerts](#)



[Receive this alert as RSS feed](#)

[Send Feedback](#)

From: [Niemi, Katie](#)
To: [Hires, Brian K](#)
Cc: [Eisenhauer, David](#)
Subject: Re: [EXTERNAL] From Climatewire -- ADAPTATION: Sand fight sparked by big conservation plan for beaches
Date: Monday, March 25, 2019 11:22:03 AM

Thanks Brian. I will send this E&E article out to our internal folks.

Katie

On Mon, Mar 25, 2019 at 9:20 AM Hires, Brian <brian_hires@fws.gov> wrote:

Good morning Katie. Can you share this with appropriate folks on your team? Let me know if you or others have any questions, or requested clarification on this. (This is one of the reporters who will be visiting us in the coming weeks.)

Brian

----- Forwarded message -----

From: [brian_hires](#) <email_this@eenews.net>
Date: Mon, Mar 25, 2019 at 9:17 AM
Subject: [EXTERNAL] From Climatewire -- ADAPTATION: Sand fight sparked by big conservation plan for beaches
To: <brian_hires@fws.gov>

This Climatewire story was sent to you by: brian_hires@fws.gov



AN E&E NEWS PUBLICATION

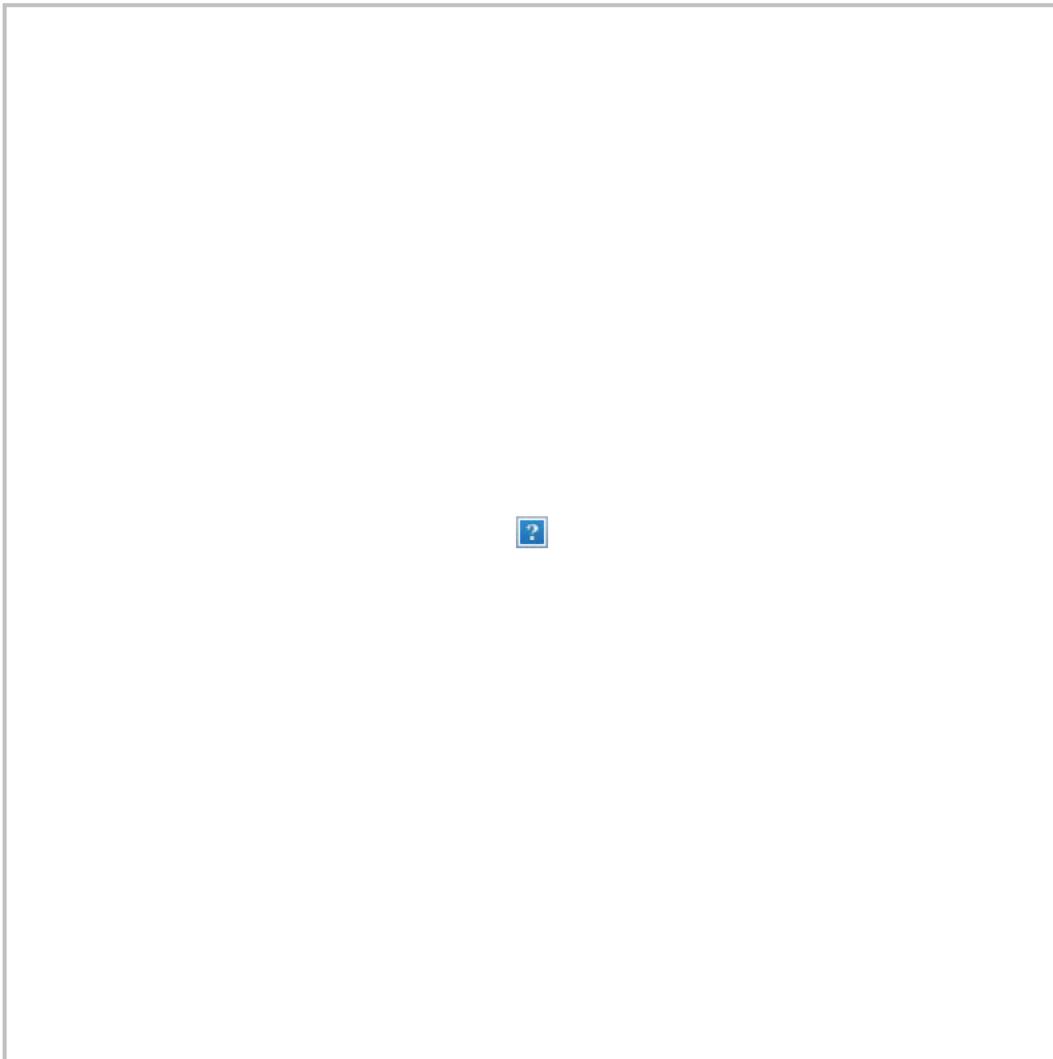
ADAPTATION

Sand fight sparked by big conservation plan for beaches

Thomas Frank, E&E News reporter

Published: Monday, March 25, 2019





Soldiers from the New Jersey Army National Guard replenish a beach after Superstorm Sandy in 2012. Master Sgt. Mark C. Olsen/U.S. Air Force/Flickr

A Trump administration proposal to vastly expand federal conservation land along the East Coast is facing protests from states and communities that say the plan will damage tourism industries that are still recovering from Superstorm Sandy in 2012.

The dispute is unfolding from Maryland to Massachusetts as officials and homeowners object to a plan by the Fish and Wildlife Service to add 275,000 acres to a federal protection zone. It's one of the largest expansions of the Coastal Barrier Resources System in its 37-year history.

The expansion will strengthen the East Coast's "resiliency and sustainability" following Sandy, which killed 72 people in the U.S. and caused \$65 billion in domestic damage, the agency says.

The epicenter of the battle is the New Jersey shore, where expanded conservation areas would interfere with beach replenishment and protection projects essential to sustaining the legendary tourist destination, state and local officials say.

"New Jersey generates billions of dollars from tourism and property values. Everybody benefits from this," said Scott Wahl, Avalon Borough's business administrator, referring to beach-refilling projects in his southern New Jersey seaside community. "This is not to benefit a bunch of rich people who live along the shore."

The controversy recently drew in Rep. Jeff Van Drew, a Democrat representing southern New Jersey. He wrote a letter March 14 imploring FWS to let shore communities continue to dredge sand from a federal conservation area to refill nearby beaches that are constantly eroded by tides.

Environmental advocates are pushing back with warnings about the possible ecological damage from beach replenishment projects that they call "sand mining."

"These sand removals have an impact on fish habitat, fisheries that depend on the habitat and wildlife," said Karen Hyun, head of coastal conservation for the National Audubon Society and a former senior FWS official. The Audubon Society released a study last week saying the protection zones have saved federal taxpayers \$9.5 billion in disaster aid by keeping coastal areas clear of buildings, roads and infrastructure.

David Conrad of the Association of State Floodplain Managers, which supports the proposed expansion, said it will conserve flood-prone land.

The dispute centers on the federal Coastal Barrier Resources System, a politically popular program that aims to limit development in environmentally sensitive coastal areas that provide fish and wildlife habitat and protect inland communities against storm surges. Created in 1982, the coastal system has grown to include 3.5 million acres, mostly along the East and Gulf coasts, but also in patches along the shores of all five Great Lakes and in Puerto Rico and the U.S. Virgin Islands.

The program does not prohibit development but discourages it by making areas inside the coastal system ineligible for most federal money and programs.

On the Jersey Shore, residents and officials fear losing support of one critical federal agency: the Army Corps of Engineers, which does beach restoration and protection projects around the nation.

The Army Corps has been helping rebuild and protect New Jersey's vulnerable coastline since the 1960s, said Patrick Rosenello, the mayor of North Wildwood, a coastal city of 4,000 people whose population surges to 69,000 in the summer. Project costs are typically split among the Army Corps, the state and a municipality.

In 2005, the Army Corps built a sea wall stretching a mile and a half along North Wildwood's beach and agreed to make storm-related repairs for 50 years. The sea wall runs north-south along the Atlantic coast. At the city's northern edge, it curves inland and abuts a shallow inlet that sits inside a section of the Coastal Barrier Resources System known as NJ-09.

In March 2018, FWS published a map showing that it planned to expand NJ-09 slightly to

include the area containing the sea wall. The minor shift has major implications.

"This expansion would take the Army Corps of Engineers out of their role of helping to maintain their project," Rosenello said.

Rosenello and two neighboring mayors wrote to FWS in July urging revisions to NJ-09 that would let the Army Corps repair North Wildwood's sea wall and take sand from the protected inlet to restore beaches of Avalon and Stone Harbor Borough.

Avalon and Stone Harbor would remain outside NJ-09 under the proposed expansion. But they fear that if the Army Corps cannot use sand from next-door Hereford Inlet for beach restoration, the agency would have to dredge sand from an unprotected inlet several miles away, costing millions of dollars more.

"There are several million cubic yards of sand sitting unused in Hereford Inlet that can and should be used for resiliency and protection of lives and property," said Wahl, the Avalon business administrator. Avalon, North Wildwood and Stone Harbor are major attractions in Cape May County, where tourism accounts for nearly half of the jobs, generates \$6.4 billion in sales and boosts the population from 94,000 to 750,000 in the summer, according to the New Jersey Division of Travel and Tourism.

FWS said in an email to E&E News that it is "considering modifying" its proposed expansion of NJ-09 "to ensure that the existing structure [sea wall] is not included."

The Army Corps and the New Jersey Department of Environmental Protection have joined in objecting to the FWS proposal to expand federal protection zones across the New Jersey coast. "We cannot support the expansion," the department said in a 20-page letter to the agency in July, citing potential harm to the state's tourism and shellfish industries as well as to planned road construction projects.

Stewart Farrell, director of the Coastal Research Center at Stockton University in New Jersey and a consultant to local communities, said that barring federal money from being spent on beach restoration deviates from the intent of the Coastal Barrier Resources Act. "They didn't want federal dollars to encourage development. But this is not encouraging development. It's protecting what's already there," Farrell said.

Elsewhere on the East Coast, state and local officials from Delaware, Maryland, Massachusetts and New York have objected to segments of the plan that affect tourist destinations such as Fire Island, N.Y., and Provincetown, Mass.

Supporters include the Natural Resources Defense Council, the Association of State Floodplain Managers and the Audubon Society. They note that communities could continue to replenish their beaches without federal money.

"It's putting the onus on state and local government," said Hyun of the Audubon Society.

The expansion project began one year after Superstorm Sandy, when the Interior Department, which oversees FWS, gave the agency \$5 million to review the federal protection zones in the nine states most directly affected. Those states are Connecticut,

Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Virginia.

The review is part of a broader, long-term project ordered by Congress in 2006 to analyze the entire Coastal Barrier Resources System, suggest areas that should be added or removed, and correct errors in the maps that define the protection zones. Congress must approve any changes to the system's geographic boundaries.

FWS told E&E News that it expects to propose the revisions to Congress in 2020.

Wahl of Avalon and Rosenello of North Wildwood said that if Congress approves the expansion of NJ-09, they will take their fight to federal court.

Want to read more stories like this?

[Click here](#) to start a free trial to E&E -- the best way to track policy and markets.

ABOUT CLIMATEWIRE – POLICY. SCIENCE. BUSINESS.

Climatewire is written and produced by the staff of E&E News. It is designed to provide comprehensive, daily coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG programs, Climatewire plugs readers into the information they need to stay abreast of this sprawling, complex issue.

E&E News



E&E News

122 C Street NW 7th Floor Washington, DC 20001

Phone: 202-628-6500 Fax: 202-737-5299

www.eenews.net

All content is copyrighted and may not be reproduced or retransmitted without the express consent of Environment & Energy Publishing, LLC. [Click here](#) to view our privacy policy.

--

[Brian Hires](#)

Public Affairs Officer

U.S. Fish and Wildlife Service Headquarters

Falls Church, VA

703-346-9941 mobile

703-358-2191 office

From: [Bohn, Cynthia](#)
To: [Niemi, Katie](#)
Subject: Re: E&E article - Sand fight sparked by big conservation plan for beaches
Date: Monday, March 25, 2019 11:56:58 AM
Importance: High

I was hoping to see a quote from Katie Niemi in the article! thanks for sharing, c

Cynthia Bohn
Southeast Region Coastal Program Coordinator
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Mon, Mar 25, 2019 at 11:30 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. We provided email responses to questions from the reporter last week.

Sand fight sparked by big conservation plan for beaches

[Thomas Frank](#), E&E News reporter Published: Monday, March 25, 2019

Soldiers replenish a beach after Superstorm Sandy in 2012. Photo credit: Master Sgt. Mark C. Olsen/U.S. Air Force/Flickr

Soldiers from the New Jersey Army National Guard replenish a beach after Superstorm Sandy in 2012. Master Sgt. Mark C. Olsen/U.S. Air Force/Flickr

A Trump administration proposal to vastly expand federal conservation land along the East Coast is facing protests from states and communities that say the plan will damage tourism industries that are still recovering from Superstorm Sandy in 2012.

The dispute is unfolding from Maryland to Massachusetts as officials and homeowners object to a plan by the Fish and Wildlife Service to add 275,000 acres to a federal protection zone. It's one of the largest expansions of the Coastal Barrier Resources System in its 37-year history.

The expansion will strengthen the East Coast's "resiliency and sustainability" following Sandy, which killed 72 people in the U.S. and caused \$65 billion in domestic damage, the agency says.

The epicenter of the battle is the New Jersey shore, where expanded conservation areas would interfere with beach replenishment and protection projects essential to sustaining the legendary tourist destination, state and local officials say.

"New Jersey generates billions of dollars from tourism and property values. Everybody benefits from this," said Scott Wahl, Avalon Borough's business administrator, referring to beach-refilling projects in his southern New Jersey seaside community. "This is not to benefit a bunch of rich people who live along the shore."

The controversy recently drew in Rep. Jeff Van Drew, a Democrat representing southern New Jersey. He wrote a letter March 14 imploring FWS to let shore communities continue to dredge sand from a federal conservation area to refill nearby beaches that are constantly eroded by tides.

Environmental advocates are pushing back with warnings about the possible ecological damage from beach replenishment projects that they call "sand mining."

"These sand removals have an impact on fish habitat, fisheries that depend on the habitat and wildlife," said Karen Hyun, head of coastal conservation for the National Audubon Society and a former senior FWS official. The Audubon Society released a study last week saying the protection zones have saved federal taxpayers \$9.5 billion in disaster aid by keeping coastal areas clear of buildings, roads and infrastructure.

David Conrad of the Association of State Floodplain Managers, which supports the proposed expansion, said it will conserve flood-prone land.

The dispute centers on the federal Coastal Barrier Resources System, a politically popular program that aims to limit development in environmentally sensitive

coastal areas that provide fish and wildlife habitat and protect inland communities against storm surges. Created in 1982, the coastal system has grown to include 3.5 million acres, mostly along the East and Gulf coasts, but also in patches along the shores of all five Great Lakes and in Puerto Rico and the U.S. Virgin Islands.

The program does not prohibit development but discourages it by making areas inside the coastal system ineligible for most federal money and programs.

On the Jersey Shore, residents and officials fear losing support of one critical federal agency: the Army Corps of Engineers, which does beach restoration and protection projects around the nation.

The Army Corps has been helping rebuild and protect New Jersey's vulnerable coastline since the 1960s, said Patrick Rosenello, the mayor of North Wildwood, a coastal city of 4,000 people whose population surges to 69,000 in the summer. Project costs are typically split among the Army Corps, the state and a municipality.

In 2005, the Army Corps built a sea wall stretching a mile and a half along North Wildwood's beach and agreed to make storm-related repairs for 50 years. The sea wall runs north-south along the Atlantic coast. At the city's northern edge, it curves inland and abuts a shallow inlet that sits inside a section of the Coastal Barrier Resources System known as NJ-09.

In March 2018, FWS published a map showing that it planned to expand NJ-09 slightly to include the area containing the sea wall. The minor shift has major implications.

"This expansion would take the Army Corps of Engineers out of their role of helping to maintain their project," Rosenello said.

Rosenello and two neighboring mayors wrote to FWS in July urging revisions to NJ-09 that would let the Army Corps repair North Wildwood's sea wall and take sand from the protected inlet to restore beaches of Avalon and Stone Harbor Borough.

Avalon and Stone Harbor would remain outside NJ-09 under the proposed expansion. But they fear that if the Army Corps cannot use sand from next-door Hereford Inlet for beach restoration, the agency would have to dredge sand from an unprotected inlet several miles away, costing millions of dollars more.

"There are several million cubic yards of sand sitting unused in Hereford Inlet that can and should be used for resiliency and protection of lives and property," said Wahl, the Avalon business administrator. Avalon, North Wildwood and Stone Harbor are major attractions in Cape May County, where tourism accounts for nearly half of the jobs, generates \$6.4 billion in sales and boosts the population from 94,000 to 750,000 in the summer, according to the New Jersey Division of Travel and Tourism.

FWS said in an email to E&E News that it is "considering modifying" its proposed expansion of NJ-09 "to ensure that the existing structure [sea wall] is not included."

The Army Corps and the New Jersey Department of Environmental Protection have joined in objecting to the FWS proposal to expand federal protection zones across the New Jersey coast. "We cannot support the expansion," the department said in a 20-page letter to the agency in July, citing potential harm to the state's tourism and shellfish industries as well as to planned road construction projects.

Stewart Farrell, director of the Coastal Research Center at Stockton University in New Jersey and a consultant to local communities, said that barring federal money from being spent on beach restoration deviates from the intent of the Coastal Barrier Resources Act. "They didn't want federal dollars to encourage development. But this is not encouraging development. It's protecting what's already there," Farrell said.

Elsewhere on the East Coast, state and local officials from Delaware, Maryland, Massachusetts and New York have objected to segments of the plan that affect tourist destinations such as Fire Island, N.Y., and Provincetown, Mass.

Supporters include the Natural Resources Defense Council, the Association of State Floodplain Managers and the Audubon Society. They note that communities could continue to replenish their beaches without federal money.

"It's putting the onus on state and local government," said Hyun of the Audubon Society.

The expansion project began one year after Superstorm Sandy, when the Interior Department, which oversees FWS, gave the agency \$5 million to review the federal protection zones in the nine states most directly affected. Those states are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Virginia.

The review is part of a broader, long-term project ordered by Congress in 2006 to analyze the entire Coastal Barrier Resources System, suggest areas that should be added or removed, and correct errors in the maps that define the protection zones. Congress must approve any changes to the system's geographic boundaries.

FWS told E&E News that it expects to propose the revisions to Congress in 2020.

Wahl of Avalon and Rosenello of North Wildwood said that if Congress approves the expansion of NJ-09, they will take their fight to federal court.

From: [Wright, Dana K](#)
To: [Phinney, Jonathan T](#)
Cc: [Niemi, Katie](#); [BalisLarsen, Martha](#)
Subject: Fwd: Van Drew Briefing 4/29
Date: Monday, April 22, 2019 10:01:39 AM
Importance: High

Hi Jonathan,

FYI for tomorrow's Chief's meeting. We have been requested to brief Rep. Van Drew's Chief of Staff on CBRA in general next week. We expect that there will be discussion of the sand mining issue, which is also the topic of Thursday's briefing for Margaret Eversen.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: **Berg , Elizabeth** <elizabeth_berg@fws.gov>
Date: Wed, Apr 17, 2019 at 5:28 PM
Subject: Van Drew Briefing 4/29
To: Jennifer Zosh <jennifer_zosh@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

Hi Jen,

I know Katie and Dana are still out, but I wanted to pass this along as soon as I heard back from Rep. Van Drew's staff, Javier Gamboa.

Javier would like to schedule a briefing in the afternoon on April 29th.

Thanks,
Liz

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

From: [Wright, Dana K](#)
To: [Zosh, Jennifer M](#)
Cc: [Niemi, Katie](#)
Subject: Re: Sand Mining
Date: Wednesday, April 24, 2019 11:08:14 AM
Importance: High

Thanks Jen!

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Apr 24, 2019 at 10:47 AM Zosh, Jennifer <jennifer_zosh@fws.gov> wrote:

Hey Dana,

See list below:

Entities that submitted comments/concerns with sand mining within current CBRS Units

- U.S. Army Corps of Engineers, Philadelphia District
- New Jersey Department of Environmental Protection
- Borough of Stone Harbor
- Borough of Avalon
- City of North Wildwood

Entities that submitted comments supporting the expansion of the CBRS and oppose sand mining and any legislation that would allow sand mining in the CBRS

- Audubon Society
- American Littoral Society
- Natural Resources Defense Council
- National Wildlife Federation

Entities that submitted concerns regarding whether the expansion of the CBRS will have implications on potential sand mining and beach nourishment projects in the future

- U.S Army Corps of Engineers, North Atlantic Division
- U.S. Army Corps of Engineers, Philadelphia District
- Town of Southampton, New York

--

Jennifer Zosh

Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
[5275 Leesburg Pike](#), MS: ES
Falls Church, VA 22041

703-358-2429 (office)
703-358-1800 (fax)

From: [Frazer, Gary D](#)
To: [BalisLarsen, Martha](#)
Cc: [Phinney, Jonathan T](#); [Niemi, Katie](#); [Wright, Dana K](#); [Shultz, Gina](#)
Subject: Fwd: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Monday, May 13, 2019 7:31:07 AM
Attachments: [background & informational memo template.docx](#)
[068399 Signed.pdf](#)
[Letter to Dir Sheehan on CBRA.PDF](#)

See below. Due to Melissa by noon Tuesday. I will be on travel, so do not worry about running it by me. Besides, you've done a variation of this several times already. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Fri, May 10, 2019 at 6:13 PM
Subject: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
To: Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>
Cc: Tatiana Hendrix <tatiana_hendrix@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>

Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

INFORMATION/BRIEFING MEMORANDUM FOR THE ACTING SECRETARY

DATE:

FROM:

SUBJECT:

KEY FACTS

[This section should have very topline figures or facts that give an “at a glance” summary of what is to be discussed]

Stakeholder Positions:

Public Lands Affected:

BACKGROUND

[Broad context, history, backstory etc. of the issue as well as pertinent facts and process status]

DISCUSSION

[More focused on actions being taken or set to be taken by the Department on the issue in question, as well as relevant laws, policies, and Department regulations that relate to the issue and how they may be impacted.]

NEXT STEPS

[Next steps in process for issue at hand such as progress of proposed regulation or Department action]



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Garret Graves
House of Representatives
Washington, D.C. 20515

Dear Representative Graves:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable David Rouzer
House of Representatives
Washington, D.C. 20515

Dear Representative Rouzer:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Frank LoBiondo
House of Representatives
Washington, D.C. 20515

Dear Representative LoBiondo:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Doug Lamborn
House of Representatives
Washington, D.C. 20515

Dear Representative Lamborn:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Randy K. Weber
House of Representatives
Washington, D.C. 20515

Dear Representative Weber:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Neal P. Dunn, M.D.
House of Representatives
Washington, D.C. 20515

Dear Representative Dunn:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable Walter B. Jones
House of Representatives
Washington, D.C. 20515

Dear Representative Jones:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director

Congress of the United States
Washington, DC 20515

June 20, 2018

Mr. Greg Sheehan
Acting Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Dear Acting Director Sheehan:

Congress passed the Coastal Barrier Resources Act of 1982 (CBRA) to reduce taxpayer risk and preserve the Nation's coastal resources.¹ The CBRA exemplifies how prudent Federal spending can achieve conservation objectives. Section 5 of the CBRA contains broad prohibitions on federal funding within the Coastal Barrier Resources System (CBRS), but Congress provided exceptions to these funding prohibitions in Section 6 so that certain projects consistent with the purposes of the CBRA may proceed. We fully support the purposes of the CBRA, and that is why we are troubled by the U.S. Fish and Wildlife Service's (Service) unreasonably narrow interpretation of Section 6 exceptions, specifically as they pertain to Congressionally authorized shoreline stabilization and beach renourishment projects, which have similar purposes.

The U.S. Army Corps of Engineers' (USACE) shoreline stabilization and beach renourishment projects relocate dredged sand inshore, taking advantage of natural processes to rebuild coastal barriers and preserve natural resources. Such sand must be compatible with the sand where the dredged material is deposited. When possible, USACE utilizes sand from nearby areas, for reasons of sand compatibility, cost, and in many cases, ecological and geomorphological considerations. However, a 1994 solicitor's opinion that guides the Service's consideration of these projects states that "this [section 6(a)(6)(G)] exemption... does not apply to projects to renourish beaches outside the System *even if the other requirements of section 6(a)(6)(G) are met* (emphasis added)."² Under this interpretation, USACE often must seek compatible sand miles offshore, significantly increasing the cost to the taxpayer.

¹ S. Rep. No. 97-419, at 2.

² Interpretation of Section 6(a)(6)(G) of the Coastal Barrier Resources Act, Op. Assistant Solicitor U.S. Fish and Wildlife Service (1994).

As such we request your response to the attached questions to clarify this interpretation and work together to rectify this departure from CBRA's original intent.

Thank you for your consideration.

Respectfully,



Garret Graves
Member of Congress



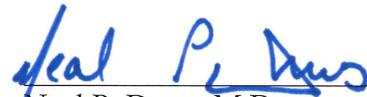
Doug Lamborn
Member of Congress



Walter B. Jones
Member of Congress



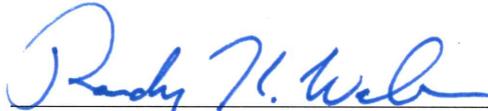
Frank A. LoBiondo
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

- (f) When utilizing sand from within the System unit is consistent with regional sediment management best practices/plans?
 - (g) What other criteria or circumstances would you propose?
5. If you believe the 1994 solicitor's opinion is an appropriate interpretation of CBRA's section 6(a)(6)(G) exception, what legislative and administrative remedies do you recommend to allow these projects to move forward as directed by Congress?
 6. Do you consider shoreline stabilization and beach renourishment projects, the purposes of which include cost-effectively protecting lives and property and providing environmental and Federal economic benefits, to be consistent generally with the purposes and spirit of CBRA?
 7. As referenced in our letter, USACE must often spend millions of dollars unnecessarily to find compatible sand miles offshore for shoreline stabilization and beach renourishment projects, when the appropriate resource exists nearby but is inaccessible due to the Service's narrow interpretation of CBRA. Do you believe this is an appropriate interpretation of a law designed to minimize wasteful taxpayer investment?

QUESTIONS

1. Does the 1994 solicitor's opinion referenced in our letter continue to dictate U.S. Fish and Wildlife Service policy pertaining to Congressionally authorized beach renourishment projects that utilize dredged material from CBRS and deposit it outside the System?
2. The 1994 solicitor's opinion narrowly interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". However, the language of section 6(a)(6)(G) ("Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.") does not limit the exception's application only to projects within the System, as asserted in the solicitor's opinion. The opinion provides no explanation for the solicitor's narrow interpretation. Please explain the basis for the solicitor's narrow interpretation when the statutory language does not limit the exception in such a way.
3. Do you consider this solicitor's opinion to be an appropriate interpretation of section 6(a)(6)(G), and will the Service revisit this interpretation?
4. The 1994 solicitor's opinion interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". In many circumstances, beach renourishment projects that extract sand from a CBRS unit for use outside of the unit provide environmental and Federal economic benefits, help preserve life and property, stabilize critical fish and wildlife habitat in the area or otherwise provide benefits to the unit. What are criteria or circumstances when it would be appropriate (notwithstanding your agency's current narrow interpretation of CBRA and its Section 6 exceptions) to allow for compatible sand to be taken from a CBRS unit for use outside of a unit for USACE shoreline stabilization and beach renourishment projects? For example, would it be appropriate:
 - (a) When no less environmentally damaging cost-effective alternatives to utilizing sand from within the System unit are available (e.g., when utilizing sand from within the System unit to provide coastal storm risk management to people and property is determined to be the most cost-effective solution after taking in to account the monetary and non-monetary benefits and costs)?
 - (b) When the nourishment material is being taken from a portion of the System unit that is replenished by littoral flows?
 - (c) When the System unit is not sediment starved, and the removal action would not impact critical fish and wildlife habitat within the unit?
 - (d) When longshore transport would result in the sand moving back from the placement site into the System unit?
 - (e) When the System unit is now a factor in disruption of longshore transport and the sand would be placed in the sand starved area downdrift of the unit?

From: [Niemi, Katie](#)
To: [Ellis, John](#)
Subject: Re: CBRA IM for Secretary's meeting with Rep. Rouzer (edits needed by 11:30 today)
Date: Tuesday, May 14, 2019 10:46:13 AM

Thanks John.

Katie

On Tue, May 14, 2019 at 10:38 AM Ellis, John <john_ellis@fws.gov> wrote:

It looks good to me

On Tue, May 14, 2019 at 10:11 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

We received a request yesterday for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). They asked for information on general CBRA background, the SOL opinion regarding sand mining, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/>

The info memo is due to the Director's office by noon today so please let me know if you have any changes or concerns by 11:30. Apologies for the quick turn-around.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [Kodis, Martin](#)
To: [Bohn, Cynthia](#)
Cc: [Niemi, Katie](#); [BalisLarsen, Martha](#); [Benjamin, Pete](#); [Ellis, John](#); [Chen, Linus Y](#); [Jesup, Benjamin C](#); [Phinney, Jonathan T](#); [Berg, Elizabeth A](#); [Shultz, Gina](#); [Frazer, Gary D](#); [Peters, Kristen E](#); [Wells, Emily N](#); [Wright, Dana K](#)
Subject: Re: CBRA IM for Secretary's meeting with Rep. Rouzer (edits needed by 11:30 today)
Date: Tuesday, May 14, 2019 10:55:39 AM
Importance: High

No comments (other than it's long :-)). Excellent job all.

Marty

On Tue, May 14, 2019 at 10:26 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

HI guys: I have just made some minor suggestions for the IM. Please see attached, you may need to open Reviews/View Comments.

Cynthia Bohn
Southeast Region Coastal Program Coordinator
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Tue, May 14, 2019 at 10:11 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

We received a request yesterday for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). They asked for information on general CBRA background, the SOL opinion regarding sand mining, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/>

The info memo is due to the Director's office by noon today so please let me know if you have any changes or concerns by 11:30. Apologies for the quick turn-around.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES

5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

5275 Leesburg Pike
Falls Church, VA 22041

703-358-2241 ph
703-358-2245 fax

From: [Jesup, Benjamin C](#)
To: [Niemi, Katie](#)
Subject: Re: CBRA IM for Secretary's meeting with Rep. Rouzer (edits needed by 11:30 today)
Date: Tuesday, May 14, 2019 12:00:13 PM
Importance: High

Katie:

When this is finalized, please send me a copy.

Thanks.

Ben

On Tue, May 14, 2019 at 10:11 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

We received a request yesterday for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). They asked for information on general CBRA background, the SOL opinion regarding sand mining, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/>

The info memo is due to the Director's office by noon today so please let me know if you have any changes or concerns by 11:30. Apologies for the quick turn-around.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
Department of the Interior
202-208-3170

NOTICE: This email message (including any attachments) is intended for the use of the individual(s) or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this message in error, please notify the sender immediately and destroy all copies.

From: [Niemi, Katie](#)
To: [Bohn, Cynthia](#); [Ellis, John](#); [Chen, Linus Y](#); [Jesup, Benjamin C](#)
Subject: Fwd: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
Date: Tuesday, May 14, 2019 12:17:35 PM
Attachments: [Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx](#)
[Attachment 1 - 1994 SOL Opinion and 1995 AS-FWP Letter.pdf](#)
[Attachment 3 - Map of CBRS Units L07 L08 L09.pdf](#)
[Attachment 2 - 2018 Congressional Letters.pdf](#)

FYI. Attached is the CBRA info memo we sent forward to the Director's office. Thank you all for your timely review and edits.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Tue, May 14, 2019 at 12:08 PM
Subject: Re: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
To: <melissa_beaumont@fws.gov>
Cc: Martha Balis Larsen <Martha_BalisLarsen@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>, Dana Wright <dana_wright@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Frazer, Gary <gary_frazer@fws.gov>, Martin Kodis <martin_kodis@fws.gov>

Hello Melissa,

Attached is the info memo (and related attachments) for the Secretary's meeting with Rep. Rouzer. Please let me know if you need additional information.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Mon, May 13, 2019 at 7:31 AM Frazer, Gary <gary_frazer@fws.gov> wrote:

See below. Due to Melissa by noon Tuesday. I will be on travel, so do not worry about running it by me. Besides, you've done a variation of this several times already. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Fri, May 10, 2019 at 6:13 PM
Subject: Info Memo for Secretary re CBRA Issues & NC due COB Tuesday
To: Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>
Cc: Tatiana Hendrix <tatiana_hendrix@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>

Hi Gary,

We received a request from OCL today for an info memo for the Secretary's upcoming meeting with Rep. Rouzer (NC-7). The issues they would like information on are general CBRA background, on the SOL opinion described the attached letters, and any information on this specific CBRA issue in their district- <https://www.coastalreview.org/2017/02/topsail-beachs-request-for-sand-site-stalled/> My apologies for the quick turnaround on this one.

Please let me know if you have any questions and thank you for your help!

Melissa

--

Melissa Beaumont
Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

INFORMATION/BRIEFING MEMORANDUM FOR THE SECRETARY

DATE: May 14, 2019

FROM: Gary Frazer, Assistant Director for Ecological Services, U.S. Fish and Wildlife Service

SUBJECT: Coastal Barrier Resources Act (CBRA) issues in Representative Rouzer's district (NC-7)

KEY FACTS

The Coastal Barrier Resources System (CBRS) was established by CBRA in 1982 and consists of geographic units along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The units are delineated on a series of maps maintained by the U.S. Fish and Wildlife Service (Service). With a few minor exceptions, only Congress can revise the CBRS maps. The purposes of CBRA are to minimize the loss of human life, wasteful Federal expenditures, and damage to natural resources on coastal barriers by prohibiting most new Federal expenditures within the CBRS. The law does not prohibit development conducted with private, state, or local funds; rather, it restricts Federal subsidies that may promote development within these hazard-prone and ecologically-sensitive areas. CBRA restricts new Federal expenditures within System Units of the CBRS for most projects to prevent the erosion of or to otherwise stabilize any inlet, shoreline, or inshore area (16 U.S.C. 3504(a)(3)). However, Federal agencies, after consultation with the Service, may make expenditures within the CBRS for activities that meet one of CBRA's exceptions (16 U.S.C. 3505).

In its consultations with other agencies since the mid-1990s, the Service has applied a consistent legal interpretation that most Federally funded sand mining *within* the CBRS for shoreline-stabilization projects *outside* of the CBRS is prohibited. This interpretation affects U.S. Army Corps of Engineers (Corps) shore-protection projects in a few areas along the Atlantic Coast (Stone Harbor, NJ; Topsail Beach, NC; Wrightsville Beach, NC; Carolina Beach, NC; and Folly Beach, SC), where communities seek to use areas within the CBRS as borrow sites for beach-nourishment projects for developed areas outside of the CBRS. The use of nearshore borrow sites is often preferable to offshore borrow sites due to sand quality and cost.

Stakeholder Positions: Local communities (including some in Rep. Rouzer's district) seek to invoke an exception under CBRA so sand mining for beach-nourishment projects can proceed with Federal funds. In 2016, a community in NJ filed suit against the Corps and the Service for violation of the Administrative Procedure Act, alleging an arbitrary and capricious interpretation of CBRA in a project consultation that resulted in Federal funds being denied for sand mining within Hereford Inlet. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing. Our understanding is that some communities in NJ are considering pursuing additional litigation.

Conversely, several organizations (e.g., American Littoral Society, Association of State Floodplain Managers, National Audubon Society, National Wildlife Federation, and Natural Resources Defense Council) oppose Federally funded sand mining within the CBRS. Some of the concerns from these groups include: disruption of natural sand movement and sand supplies; impacts on benthic habitat, fisheries, and shorebird habitat; and adaptability of islands to sea-level rise.

BACKGROUND

The legislative history is clear that CBRA is intended to reduce Federal involvement in activities that are detrimental to coastal barrier ecosystems within the CBRS, including most dredging and flood-control projects. House Report 97-841 Part 1 states:

Intense development and human use of coastal barriers have also caused diminished productivity in these important natural resource areas. Disposing sewage effluents, dredging canals and

channels, filling wetlands, leveling dunes, clearing vegetation, constructing hurricane and erosion control projects, stabilizing inlets, and other activities often spell trouble for the coastal barrier ecosystems that protect and often sustain natural resources of immense aesthetic and economic value The intent of the legislation is that all forms of direct Federal assistance for projects ... be precluded.

CBRA is a free-market approach to conservation that tackles a national problem with less Federal involvement rather than more. It helps the Federal Government send appropriate price signals to indicate that the risk of developing on coastal barriers is high and ensures that the Federal taxpayer does not underwrite further development in those areas, all without infringing upon the rights of landowners to develop their properties. It does not ban shoreline stabilization or sand-mining activities; they can still occur within the CBRS provided that the cost is covered by private, state, or local sources. As stated in President Reagan's 1982 signing statement, CBRA "will stop the flow of Federal dollars that have helped to encourage development that otherwise would not be economical. The difficult task of balancing competing uses of resources is best performed by the market, free of Federal subsidies."

In 1994, the Solicitor's Office Branch of Fish and Wildlife advised the Service that CBRA's exceptions apply only to projects that occur *within* the CBRS; they do not apply to projects that occur *outside* of the CBRS (regardless of whether the project may be consistent with the purposes of CBRA). A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks and the Solicitor's Office in 1995 reaffirmed this interpretation of CBRA. See Attachment 1 for related correspondence.

The Service received a letter in June 2018 from seven members of Congress, including Representative Rouzer, asserting that the agency has taken an unreasonably narrow interpretation of CBRA's exceptions, specifically as they pertain to congressionally-authorized shoreline-stabilization projects. The Service's December 2018 response letter stated that "this interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice [in 2000 and 2006] without regard to this interpretation of the law. Accordingly, the Service currently has no plans to revisit this interpretation." See Attachment 2 for the incoming letter and the Service's response.

In recent weeks, the Service participated in discussions with the Corps' South Atlantic Division and Wilmington District concerning the application of CBRA to projects with potential borrow sites in the CBRS in southeastern NC that are nearing the end of their Congressional authorization and/or their spending caps. (see Attachment 3 for map of the affected areas).

DISCUSSION

The Service does not have enforcement authority over CBRA; each affected agency is independently responsible for complying with the law. CBRA does not prohibit private, state, or local funding. State and local funding has been used to cover project costs within the CBRS in FL and NJ and is currently proposed for a storm-damage-reduction project in TX. However, given escalating costs, local communities and other interested parties continue to seek a path forward to allow sand mining within the CBRS using Federal funds.

NEXT STEPS

It is Congress's prerogative to amend CBRA to allow Federally funded sand mining within the CBRS for beach nourishment outside of the CBRS. The prohibitions and exceptions have not been amended since the 1990 CBRA reauthorization.

Attachments

FWS.CW.0380

Memorandum

To: Ralph Morgenweck
Assistant Director, Fish and Wildlife Enhancement
Fish and Wildlife Service

From: Charles P. Raynor
Assistant Solicitor
Fish and Wildlife

Subject: Interpretation of Section 6(a)(6)(G) of the Coastal
Barrier Resources Act

Introduction

You have requested our opinion as to whether a project to renourish a beach outside the Coastal Barrier Resources System (System) utilizing sand removed from within a unit of the System can qualify for the shoreline stabilization projects exemption in section 6(a)(6)(G) of the Coastal Barrier Resources Act (Act), 16 U.S.C. 3505(a)(6)(G). We conclude this exemption applies only to projects designed to stabilize the shoreline of a System unit and therefore does not apply to projects to renourish beaches outside the System even if the other requirements of section 6(a)(6)(G) are met.

Background

Section 5(a) of the CBRA, 16 U.S.C. 3504(a), prohibits new Federal expenditures or financial assistance for activities within the System, unless the activities are covered by one of the exceptions listed in section 6. The shoreline stabilization projects exception in section 6(a)(6)(G) covers:

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

.

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

We understand Proposed beach renourishment projects within the CBRS that meet these standards and are consistent with the CBRA

purposes may receive Federal funding.

Discussion

The Corps proposes to dredge approximately 975,000 cubic yards of sand from within the Midway Inlet Unit for use in renourishing the beach on Pawley's Island, which is not within the CBRS. We interpret the language of section 6(a)(6) of the CBRA, however, as referring to nonstructural projects devoted to stabilizing the shoreline of a Unit of the CBRS by mimicking, enhancing, or restoring the natural stabilization systems of the Unit. In other words, beach renourishment projects must be aimed at renourishing the beach of the CBRA Unit in order to qualify for Federal funding under section 6(a)(6). In contrast, the Corps' Pawley's Island project is intended solely to accomplish the renourishment of a beach outside of the CBRS. We therefore conclude that Federal funding or financial assistance for such a project would violate section 5 of the CBRA. Our opinion would not differ if the project were designed instead to renourish beaches both within and without the CBRS, because we interpret section 6(a)(6) to refer to projects designed to renourish solely a beach within the CBRS.

Even if this project were intended to renourish the beach of the Midway Inlet Unit, we believe it still would not qualify for a Federal funding exception because it would be inconsistent with the CBRA purposes. As noted above, the CBRA purposes include minimizing damage to fish, wildlife, and other natural resources of coastal barriers. In this case, the proposed dredging would damage the productive natural systems of Midway Inlet in several ways. The dredging would result in the outright destruction of all benthic organisms encountered by the dredging cutterhead that would be used. In addition, the borrow area, which currently is shallow, would be converted to deeper, less productive open water. The deepening of this area would also cause sloughing and/or erosion of adjacent shallow areas and thereby reduce their habitat values.

The existing shallow water of the borrow area provides, in conjunction with adjacent beaches, habitat for a number of species of birds and turtles. These include Wilsons plovers and Least terns (classified as threatened by the State of South Carolina) that nest and feed in the existing habitat. The loggerhead turtle (Federally listed as threatened under the Endangered Species Act) utilizes these beaches for nesting and the shallow ridged shoals for feeding and nesting during its "internesting period" (the time interval between nesting emergencies).

Finally, recent studies by the Corps of Engineers of the effects of other renourishment projects on North Carolina beaches suggest that they result in a reduction in nearshore and surf fisheries caused by disturbances to intertidal communities from renourishment activities.

Conclusion

The renourishment project proposed by the Army Corps of Engineers, dredging of sand from within the Midway Inlet Unit in order to renourish a beach outside the Coastal Barrier Resources System, does not fall within the CBRA section 6(a)(6) Federal funding exception, which applies only to projects for renourishment of beaches within the CBRS. In addition, the project would lead to significant adverse impacts on the natural resources of the Midway Inlet Unit, although section 6(a)(6) projects must be consistent with the CBRA purpose of minimizing damage to the natural resources of coastal barriers. For each of these reasons, we conclude that Federal funding or financial assistance for this beach renourishment project would violate section 5 of the Coastal Barrier Resources System.

Please refer any questions to David Gayer (343-2172).

cc: Coastal Barriers Coordinator
J. G. Harvey Geitner, Charleston, S.C. Field Office, FWS



United States Department of the Interior

OFFICE OF THE SECRETARY
1849 C Street, N.W.
Washington, D.C. 20240

JUN 12 1995

Dr. John H. Zirschky
Acting Assistant Secretary (Civil Works)
Department of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Dr. Zirschky:

Thank you for your letter of February 16, 1995, requesting review of the U.S. Fish and Wildlife Service (Service) interpretation of the statutory requirements of the Coastal Barrier Resources Act (Act) in relation to the issue of federally funded beach nourishment activities. You specifically request that we reverse the Service's interpretation of section 6(a)(6)(G) of the Act as it relates to the U.S. Army Corps of Engineers (Corps) Folly Beach, South Carolina, beach renourishment project and other similar projects. You note that the Service's interpretation should be rescinded for the following reasons: 1) Corps studies indicate impacts to coastal barrier Unit M07, Bird Key Complex, from the Folly Beach project are not appreciable and may be beneficial, 2) the Energy and Water Development Appropriation Act for 1992 authorized the use of Unit M07 as a borrow area by the Corps, 3) the Service previously determined that the use of Unit M07 as a borrow area was an allowable activity under section 6(a)(6)(G) of the Act, and 4) the Service's current statutory interpretation places unexpected financial burdens on both the Federal Government and the non-Federal cost-sharing sponsors of the Folly Beach project and other similar Corps projects.

Section 6 of the Act sets forth several exceptions to the general prohibition in section 5 against Federal expenditures affecting the Coastal Barrier Resources System (System). The exception in section 6(a)(6)(G) is for "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore, natural stabilization systems" and that are also consistent with the purposes of the Act. We have conferred with the Department's Office of the Solicitor on this issue and, after careful consideration, determined that the current statutory interpretation is correct. Section 6(a)(6)(G) applies only to projects for stabilizing the shoreline of a unit of the System; it does not apply to projects to stabilize shoreline outside the System regardless of whether the project might be consistent with the purposes of the Act. Therefore, any Corps proposed action designed to nourish beaches located outside the System using beach material taken from within the System does not meet the criteria for a section 6(a)(6)(G) exception.

Dr. John H. Zirschky

2

Relative to your point that the Folly Beach project would not be damaging to Unit M07 and may actually benefit the unit, the section 6 exception does not apply in this case regardless of whether the project may be non-detrimental or beneficial. The section 6 exception applies only to projects for stabilizing the shoreline of a unit of the System, not for projects outside the System. In fact, the Charleston Field Office recently reported that Bird Key, a highly important nesting site for colonial waterbirds, has actually undergone drastic erosion since the Folly Beach project began. Most, if not all of the nesting habitat, has been lost. Also, recent studies by the South Carolina Department of Natural Resources indicate that material accumulating in the project borrow area does not appear to be beach compatible material due to the high content of silt and clay material.

With regard to the 1992 Energy and Water Development Appropriations Act, Congress regularly enacts new legislation resulting in numerous federally funded activities. However, activities authorized by such newly enacted legislation must adhere to other statutory requirements unless the legislation specifically exempts the activities from existing statutory requirements.

You are correct in stating that the Corps previously received a Service determination that the Folly Beach project was an allowable activity under section 6(a)(6)(G). However, because of conflicting interpretations regarding section 6(a)(6)(G) in relation to beach renourishment activities within coastal barrier units, the Service requested an interpretation by the Department's Solicitor which resulted in the current statutory interpretation.

Finally, you note that the current statutory interpretation places unexpected financial burdens on both the Federal and non-Federal sponsors of the Folly Beach project. The purposes of the Act are to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the System. The Act does not restrict the use of private, State or local government funds for activities within the System. Therefore, implementation of the Act results in a savings of Federal dollars by placing the financial burden on those who chose to invest, live, or conduct development activities within the System, not the American taxpayer. The current statutory requirement only restricts the use of Federal funds for the purpose of removing sand from within the System. Furthermore, it is only the last 4,500 feet of the southwest portion of the total proposed borrow area for the Folly Beach project which is within Unit M07. The remaining unaffected borrow area is 7,170 feet long and 600 feet wide. Therefore, the project is not entirely prohibited and estimated future financial burdens may be inflated.

Dr. John H. Zirschky

3

It is important to note that coastal barrier units include the fastland core of the coastal barrier itself, as well as associated aquatic habitat and the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is defined by the 30-foot bathymetric contour. Congress approved this delineation criteria for units of the System in recognition of the important role the sand-sharing system plays in maintaining the dynamic, migratory nature of coastal barriers.

We hope this clarifies the Department's position on this issue. Thank you for your cooperation on this matter.

Sincerely,

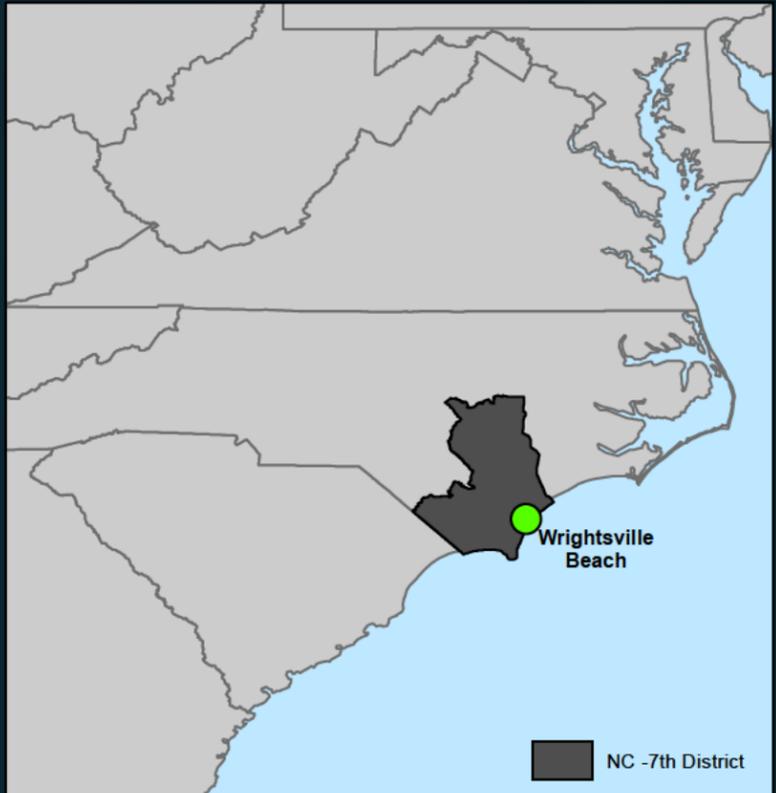
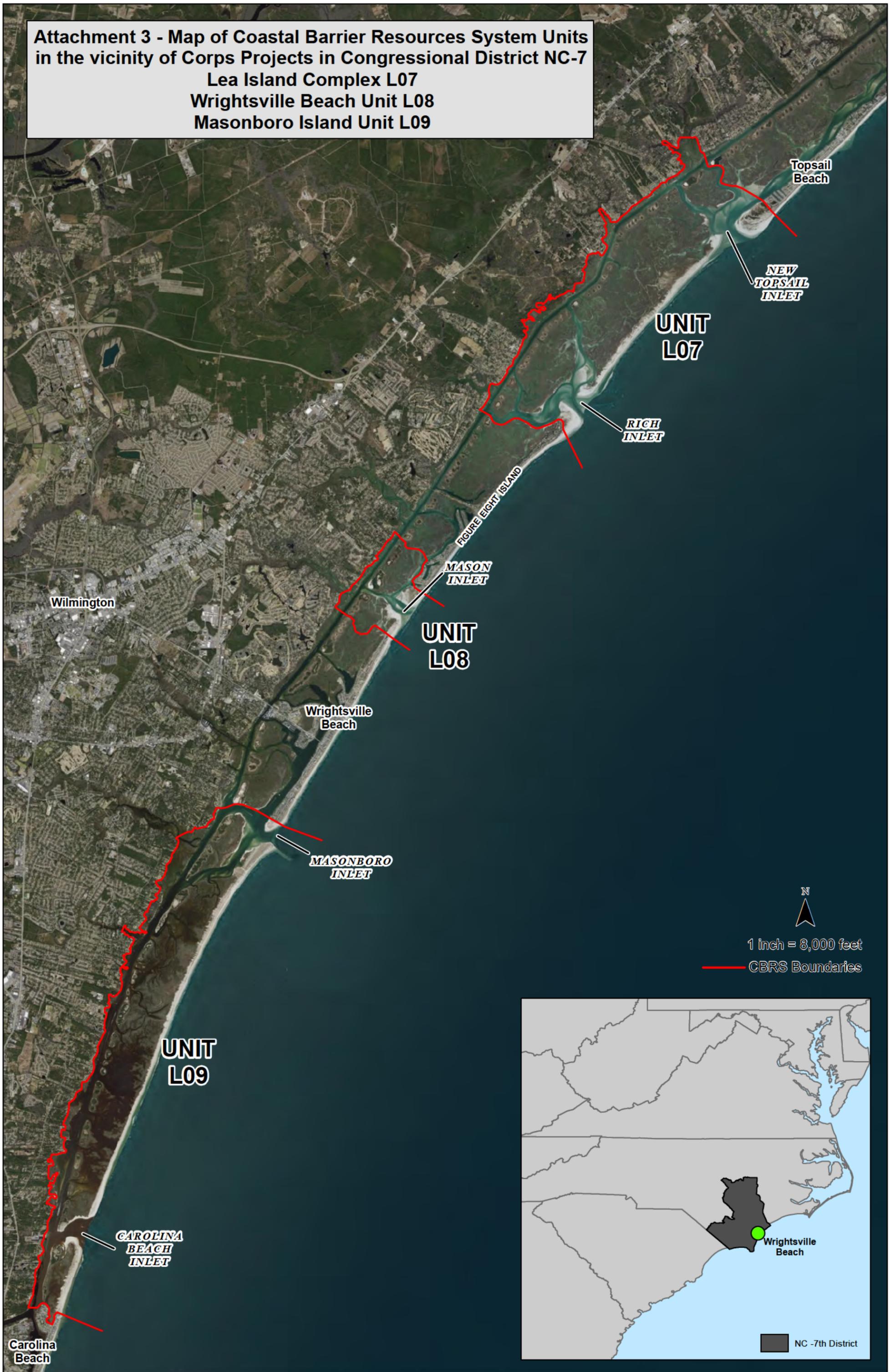
/s/ George T. Frampton, Jr.

George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks

cc: 6229-MIB-ES(1)
6013-MIB-PMO-Secretary's Files
6013-MIB-PMO-Secretary's Reading File (2)
6024-MIB-SOL
7456-MIB-PMB
3156-MIB-FW
6242-MIB-CL
6628-MIB-LM
3012-MIB-FWS-Directorate Reading File
3012-MIB-FWS-CCU
3024-MIB-FWS-AES
400-ARLSQ-FWS-DHC
400-ARLSQ-FWS-DHC-BHR

FWS/DHC/BHR:LKelsey:eob:358-2201:3/30/95 - Q:\DHC\kelsey\Zirschky.ltr
REVISED:AES:MNash:4/3/95

**Attachment 3 - Map of Coastal Barrier Resources System Units
in the vicinity of Corps Projects in Congressional District NC-7
Lea Island Complex L07
Wrightsville Beach Unit L08
Masonboro Island Unit L09**



Congress of the United States
Washington, DC 20515

June 20, 2018

Mr. Greg Sheehan
Acting Director
U.S. Fish and Wildlife Service
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Interpretation of certain provisions of the Coastal Barrier Resources Act pertaining to environmental restoration

Dear Acting Director Sheehan:

Congress passed the Coastal Barrier Resources Act of 1982 (CBRA) to reduce taxpayer risk and preserve the Nation's coastal resources.¹ The CBRA exemplifies how prudent Federal spending can achieve conservation objectives. Section 5 of the CBRA contains broad prohibitions on federal funding within the Coastal Barrier Resources System (CBRS), but Congress provided exceptions to these funding prohibitions in Section 6 so that certain projects consistent with the purposes of the CBRA may proceed. We fully support the purposes of the CBRA, and that is why we are troubled by the U.S. Fish and Wildlife Service's (Service) unreasonably narrow interpretation of Section 6 exceptions, specifically as they pertain to Congressionally authorized shoreline stabilization and beach renourishment projects, which have similar purposes.

The U.S. Army Corps of Engineers' (USACE) shoreline stabilization and beach renourishment projects relocate dredged sand inshore, taking advantage of natural processes to rebuild coastal barriers and preserve natural resources. Such sand must be compatible with the sand where the dredged material is deposited. When possible, USACE utilizes sand from nearby areas, for reasons of sand compatibility, cost, and in many cases, ecological and geomorphological considerations. However, a 1994 solicitor's opinion that guides the Service's consideration of these projects states that "this [section 6(a)(6)(G)] exemption... does not apply to projects to renourish beaches outside the System *even if the other requirements of section 6(a)(6)(G) are met* (emphasis added)."² Under this interpretation, USACE often must seek compatible sand miles offshore, significantly increasing the cost to the taxpayer.

¹ S. Rep. No. 97-419, at 2.

² Interpretation of Section 6(a)(6)(G) of the Coastal Barrier Resources Act, Op. Assistant Solicitor U.S. Fish and Wildlife Service (1994).

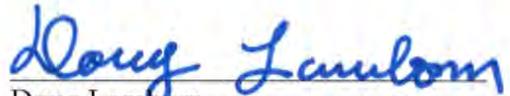
As such we request your response to the attached questions to clarify this interpretation and work together to rectify this departure from CBRA's original intent.

Thank you for your consideration.

Respectfully,



Garret Graves
Member of Congress



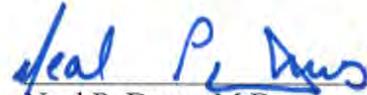
Doug Lamborn
Member of Congress



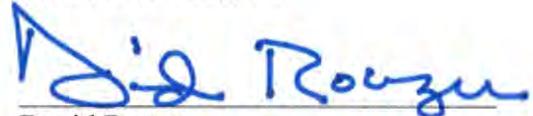
Walter B. Jones
Member of Congress



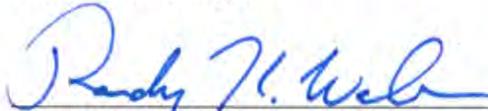
Frank A. LoBiondo
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



David Rouzer
Member of Congress



Randy K. Weber
Member of Congress

Enclosures

QUESTIONS

1. Does the 1994 solicitor's opinion referenced in our letter continue to dictate U.S. Fish and Wildlife Service policy pertaining to Congressionally authorized beach renourishment projects that utilize dredged material from CBRS and deposit it outside the System?
2. The 1994 solicitor's opinion narrowly interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". However, the language of section 6(a)(6)(G) ("Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.") does not limit the exception's application only to projects within the System, as asserted in the solicitor's opinion. The opinion provides no explanation for the solicitor's narrow interpretation. Please explain the basis for the solicitor's narrow interpretation when the statutory language does not limit the exception in such a way.
3. Do you consider this solicitor's opinion to be an appropriate interpretation of section 6(a)(6)(G), and will the Service revisit this interpretation?
4. The 1994 solicitor's opinion interpreted that the 6(a)(6)(G) exception "applies only to projects designed to stabilize the shoreline of a System unit". In many circumstances, beach renourishment projects that extract sand from a CBRS unit for use outside of the unit provide environmental and Federal economic benefits, help preserve life and property, stabilize critical fish and wildlife habitat in the area or otherwise provide benefits to the unit. What are criteria or circumstances when it would be appropriate (notwithstanding your agency's current narrow interpretation of CBRA and its Section 6 exceptions) to allow for compatible sand to be taken from a CBRS unit for use outside of a unit for USACE shoreline stabilization and beach renourishment projects? For example, would it be appropriate:
 - (a) When no less environmentally damaging cost-effective alternatives to utilizing sand from within the System unit are available (e.g., when utilizing sand from within the System unit to provide coastal storm risk management to people and property is determined to be the most cost-effective solution after taking in to account the monetary and non-monetary benefits and costs)?
 - (b) When the nourishment material is being taken from a portion of the System unit that is replenished by littoral flows?
 - (c) When the System unit is not sediment starved, and the removal action would not impact critical fish and wildlife habitat within the unit?
 - (d) When longshore transport would result in the sand moving back from the placement site into the System unit?
 - (e) When the System unit is now a factor in disruption of longshore transport and the sand would be placed in the sand starved area downdrift of the unit?

- (f) When utilizing sand from within the System unit is consistent with regional sediment management best practices/plans?
 - (g) What other criteria or circumstances would you propose?
5. If you believe the 1994 solicitor's opinion is an appropriate interpretation of CBRA's section 6(a)(6)(G) exception, what legislative and administrative remedies do you recommend to allow these projects to move forward as directed by Congress?
 6. Do you consider shoreline stabilization and beach renourishment projects, the purposes of which include cost-effectively protecting lives and property and providing environmental and Federal economic benefits, to be consistent generally with the purposes and spirit of CBRA?
 7. As referenced in our letter, USACE must often spend millions of dollars unnecessarily to find compatible sand miles offshore for shoreline stabilization and beach renourishment projects, when the appropriate resource exists nearby but is inaccessible due to the Service's narrow interpretation of CBRA. Do you believe this is an appropriate interpretation of a law designed to minimize wasteful taxpayer investment?



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

The Honorable David Rouzer
House of Representatives
Washington, D.C. 20515

Dear Representative Rouzer:

Thank you for your letter of June 20, 2018, to the U.S. Fish and Wildlife Service (Service) asking whether the 1994 Solicitor's opinion on certain provisions of the Coastal Barrier Resources Act (CBRA) continues to dictate Service policy, whether we consider this is an appropriate interpretation, and whether we will revisit this interpretation.

The U.S. Army Corps of Engineers (Corps) has sought to mine sand within the John H. Chafee Coastal Barrier Resource System (CBRS) for use in shoreline stabilization projects for developed areas located outside of the CBRS. The Corps has cited the section 6(a)(6)(G) exception for this activity in consultation letters to the Service. In 1994, the Department of the Interior's Solicitor's Office advised the Service that this exception applies only to projects designed to stabilize the shoreline of a unit within the CBRS; it does not apply to projects to renourish beaches outside of the CBRS, even if the other requirements of section 6(a)(6)(G) are met. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the law.

This interpretation of the statutory language has been the basis for the Service's interpretation and advice to other federal agencies for over 20 years. Congress subsequently reauthorized the CBRA twice without regard to this interpretation of the law. Accordingly, the Service currently has no plan to revisit this interpretation.

The Service supports CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat through the law's non-regulatory approach of removing federal incentives to build in areas subject to hurricanes and erosion. We hope this information is helpful. If you have any additional questions concerning this matter, please contact the Service's Assistant Director for Ecological Services, Mr. Gary Frazer, at (202) 208-4646.

Sincerely,

Principal Deputy Director

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Subject: Fwd: Congressional Meeting Memo
Date: Wednesday, May 15, 2019 10:11:08 AM
Attachments: [ATT00001.htm](#)
[MM.May.13.docx](#)
Importance: High

FYI, Margaret meets with Graves today at 2 pm.

Martha

Sent from my iPhone

Begin forwarded message:

From: "Shultz, Gina" <Gina_Shultz@fws.gov>
Date: May 15, 2019 at 9:24:00 AM EDT
To: FWHQ Ecological Services Staff
<fwhq_ecological_services_staff@fws.gov>, Tom McDowell
<tom_mcdowell@fws.gov>, Sarah Hall <sarah_hall@fws.gov>
Subject: Fwd: Congressional Meeting Memo

FYI
Gina Shultz
Deputy Assistant Director, Ecological Services
U.S. Fish and Wildlife Service
MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-1985

----- Forwarded message -----
From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Mon, May 13, 2019 at 5:04 PM
Subject: Congressional Meeting Memo
To: Angela Gustavson <angela_gustavson@fws.gov>

Good afternoon,

The Congressional Meeting Memo for this week is attached.

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

**U.S. FISH AND WILDLIFE SERVICE
MEETING MEMO**

Week of May 13, 2019

BRIEFINGS/MEETINGS

Tuesday, May 14

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Senator Jacky Rosen (D-NV)*, as a courtesy. The meeting is scheduled for 11:00 a.m. in 144 Russell Senate Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Kyle Chapman and Sean Lokken, staff for Senator Catherine Cortez Masto (D-NV)*, as a courtesy. The meeting is scheduled for 1:30 p.m. in 516 Hart Senate Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Representative Greg Walden (R-OR-2)*, as a courtesy. The meeting is scheduled for 3:00 p.m. in 2185 Rayburn House Office Building.

Andy Bishop (Rainwater Basin Joint Venture Coordinator) and **Brad Dunbar** (Rainwater Basin Joint Venture Board Member representing agriculture industry), **Bob Bettger** (Fillmore county landowner and farmer), and **Tylar Greene** (CLA) will meet with *Representative Adrian Smith (R-NE-3)*, to provide a summary of the Rainwater Basin Joint Venture program and the program's successes in the state. The meeting is scheduled for 3:45 p.m. in 502 Cannon House Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Senator Jeff Merkley (D-OR)*, as a courtesy. The meeting is scheduled for 5:30 p.m. in Hart Senate Office Building.

Wednesday, May 15

Andy Bishop (Rainwater Basin Joint Venture Coordinator) and **Brad Dunbar** (Rainwater Basin Joint Venture Board Member representing agriculture industry), **Bob Bettger** (Fillmore county landowner and farmer), and **Tylar Greene** (CLA) will meet with *Senator Ben Sasse (R-NE)*, to provide a summary of the Rainwater Basin Joint Venture program and the program's successes in the state. The meeting is scheduled for 7:45 a.m. in the cafeteria of the Dirksen Senate Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Chris Tudor, staff for Representative Tom McClintock (R-CA-4)*, as a courtesy. The meeting is scheduled for 10:00 a.m. in 2312 Rayburn House Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Richie O'Connell, staff for Representative Ken Calvert (R-CA-42)*, as a courtesy. The meeting is scheduled for 11:00 a.m. in 2205 Rayburn House Office Building.

Andy Bishop (Rainwater Basin Joint Venture Coordinator) and **Brad Dunbar** (Rainwater Basin Joint Venture Board Member representing agriculture industry), **Bob Bettger** (Fillmore county landowner and farmer), and **Tylar Greene** (CLA) will meet with *Alan Feyerherm, staff for Representative Jeff Fortenberry (R-NE-1)*, to provide a summary of the Rainwater Basin Joint Venture program and the program's successes in the state. The meeting is scheduled for 11:30 a.m. in 1514 Longworth House Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Representative Kevin McCarthy (R-CA-23)*, as a courtesy. The meeting is scheduled for 1:30 p.m. in H-204 Capitol Building.

Margaret Everson (Principal Deputy Director) and **Barbara Wainman** (Assistant Director, External Affairs) will meet with *Representative Sam Graves (R-MO-6)*, as a courtesy. The meeting is scheduled for 2:00 p.m. in 1135 Longworth House Office Building.

Margaret Everson (Principal Deputy Director) and **Barbara Wainman** (Assistant Director, External Affairs) will meet with *Representative Jack Bergman (R-MI-1)*, as a courtesy. The meeting is scheduled for 3:00 p.m. in 414 Cannon House Office Building.

Andy Bishop (Rainwater Basin Joint Venture Coordinator) and **Brad Dunbar** (Rainwater Basin Joint Venture Board Member representing agriculture industry), **Bob Bettger** (Fillmore county landowner and farmer), and **Taylor Pool** (CLA) will meet with *Senator Deb Fischer (R-NE)*, to provide a summary of the Rainwater Basin Joint Venture program and the program's successes in the state. The meeting is scheduled for 4:30 p.m. in 454 Russell Senate Office Building.

Thursday, May 16

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *John Watts, staff for Senator Dianne Feinstein (D-CA)*, as a courtesy. The meeting is scheduled for 9:00 a.m. in 331 Hart Senate Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Representative Steven Horsford (D-NV-4)*, as a courtesy. The meeting is scheduled for 10:15 a.m. in 1330 Longworth House Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Representative Doug LaMalfa (R-CA-1)*, as a courtesy. The meeting is scheduled for 11:00 a.m. in 332 Cannon House Office Building.

Margaret Everson (Principal Deputy Director) and **Barbara Wainman** (Assistant Director, External Affairs) will meet with *Representative Garret Graves (R-LA-6)*, as a courtesy. The meeting is scheduled for 12:00 p.m. in 2402 Rayburn House Office Building.

Paul Souza (Pacific Southwest Regional Director) and **Meghan Snow** (Pacific Southwest Regional Congressional Affairs Specialist) will meet with *Representative Jared Huffman (D-CA-02)*, as a courtesy. The meeting is scheduled for 4:30 p.m. in 1527 Longworth House Office Building.

From: [Schrading, Eric](#)
To: [Kodis, Martin](#)
Cc: [Niemi, Katie](#); [Berg, Elizabeth A](#); [Gustavson, Angela](#); [Popolizio, Carlo](#); [Wright, Dana K](#); [Hastie, Kyla](#); [Simon, Spencer](#)
Subject: Re: Stone Harbor correspondence
Date: Thursday, May 16, 2019 2:04:40 PM
Attachments: [Chronology of CBRA Coordination \(1\).pdf](#)
Importance: High

Marty,

The Chronology of CBRA consultation below provides a good overview of consultation or lack thereof between 1991 and present for the Hereford Inlet with the Philadelphia District. If you need copies of our 1997 or 2013 FWCA reports of other correspondence we can try to track that down for you.

Thanks.

On Wed, May 15, 2019 at 3:57 PM Wright, Dana <dana_wright@fws.gov> wrote:

Hi Marty,

Attached is what we have on Corps projects in Hereford Inlet from the 1990's and also from 2016 (sorry for the volume). I pulled some key pieces of information from these letters into a separate word doc to show what our understanding of the project at the time was. Also see the attached talking points and map.

To ensure a complete record, I recommend that you also check with the NFJO for any relevant documents. We don't maintain the official records for CBRA consultations. Eric, the field supervisor, is copied. Eric can speak to this issue better than any of us at HQ.

Correspondence with LoBiondo was the Graves et al letter (DCN 069815) signed by Margaret in December 2018. He was one of the seven members that had signed on.

Talking points and a map of the area are attached.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, May 15, 2019 at 3:36 PM Kodis, Martin <martin_kodis@fws.gov> wrote:

Hi guys.

Please gather up all correspondence on this issue asap as the Secretary's office will be

asking maybe even today. We will have to scramble.

Angela recalled correspondence with LoBiondo recently (maybe it was signed by the RD?). She's checking on that now. But we need to go back to the 1990s as well.

Thanks,

Marty

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

5275 Leesburg Pike
Falls Church, VA 22041

703-358-2241 ph
703-358-2245 fax

--

Eric Schradung, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
1991-1995	USFWS Planning Aid Reports (PAR)	Two planning aid reports were prepared for NAP in 1991 and 1995 for Brigantine Inlet to Great Egg Harbor Inlet. The 1995 PAR states (page 4) that fish and wildlife resource information in the 1991 document also pertains to the Townsends Inlet to Cape May Inlet Project Area. There is no mention of CBRS areas in these documents.
11/7/1996	Letter from NAP to USFWS NJFO	This letter initiates consultation for CBRA for TI to CM project.
12/5/1996	Letter from NAP to USFWS NJFO	Transmittal of Draft Feasibility Report and EIS for review
12/6/1996	Public Notice from NAP	Public Notice announcing availability of Draft EIS for agency and public review
12/24/1996	Letter from USFWS Regional to NAP	Response to CBRA consultation initiation and identifies CBRS Unit NJ-09 within project area. USFWS finds the project is in compliance as proposed by meeting the exceptions in Section 6(a)(6)(A) of CBRA for the Stone Harbor Point Restoration provided that 1) the terminal groin (jetty) is notched to allow sand bypass into the NJ-09 Unit, and 2) the area is protected by deed restriction, conservation easement or other protection by NJ. This determination did not discuss the Hereford Inlet sand borrow area (Area G) in NJ-09.
3/4/1997	Letter from USDOJ Office of the Secretary	Coordinated NEPA review letter from U.S. DOI to NAP that basically reiterates CBRA information and findings from the USFWS Regional Letter from 12/6/1996.

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT

**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
3/1/1997	Final EIS (page 6-5)	<p>The EIS discusses CBRA NJ-09 and a rationale for compliance at the Stone Harbor Point Ecosystem Restoration Component. A map was provided on page 6-6 of the FEIS for this CBRS unit. The delineation of the unit was adopted from available non digital CBRS mapping at the time. NJ-09 delineation does not show an enclosed polygon on the ocean side of the unit. Therefore, a seaward boundary encompassing the Hereford Borrow Area is not clearly defined. (It should be noted that subsequent digital mapping provided in 2013 provides a much clearer seaward boundary delineation.) The EIS states that the two conditions previously provided by FWS are already met in that "Stone Harbor Point is currently restricted from development through local regulations. However, the Corps has determined that the terminal groin is not "starving" Stone Harbor Point under existing conditions, and no modifications are necessary. Coordination relative to compliance with the CBRA is on-going." It should be noted that there is no discussion on the Hereford Inlet Borrow Area within NJ-09 or any proposal by NAP to tie this borrow area exclusively to the Stone Harbor Point Ecosystem Restoration.</p>
6/23/1997	Final FWCA Section 2(b) Report	<p>The Report briefly describes the CBRA unit NJ-09 on page 16. The discussion states further that "The Corps proposes to use two borrow areas for initial construction, Borrow Area E (Townsend Inlet) for the beachfill on Seven Mile Island and Borrow Area G (Hereford Inlet) for ecosystem restoration on Stone Harbor Point." This is incorrect and does not follow any information provided by the Corps. This error is the first reference where Borrow Area G in Hereford Inlet is mistakenly tied for exclusive use for Stone Harbor Point (CBRA NJ-09), Again it is incorrect. It should be noted that the Feasibility Report and EIS did not propose Area G for only ecosystem restoration at Stone Harbor Point, and were clear the Hereford borrow area is primarily for use to protect Stone Harbor. The 2(b) report also cites the two conditions recommended by the Regional Office for notching the terminal groin and deed restrictions/permanent protections to Stone Harbor Point. Another condition is that the Service recommends that Borrow Areas E and G be used "exclusively".</p>
11/28/2000	Record of Decision Signed	<p>The ROD provides a general description of the selected plan and alternatives considered. Borrow Areas and CBRA were not presented in the ROD.</p>

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
4/1/2001	Section 7 ESA Programmatic Biological Assessment (BA)	NAP submits Programmatic BA for NJ Beach projects to USFWS. A description of the general plan for Avalon, Stone Harbor, and Ecosystem Restoration at Stone Harbor Point are provided. No specific information of the Hereford Inlet Borrow Area or discussion of the CBRS NJ-09 was included.
4/10/2001	Section 7 ESA Programmatic Biological Assessment (BA) Submittal Cover Letter to FWS	Submittal cover letter transmits BA to FWS NJFO. Letter discusses modifications of Stone Harbor Point ecosystem restoration plan will be submitted to NJFO at a later date.
4/30/2001	Section 7 ESA PBA Acknowledgement Letter from FWS	Letter from FWS NJFO acknowledging receipt of the BA and will start review and preparation of Biological Opinion (BO).
10/17/2001	Section 7 ESA Formal Consultation Letter to FWS	This letter initiates formal Section 7 ESA consultation specifically for the initial construction of the TI to CM Inlet project, and requests that the NJ Programmatic consultation be deferred until consultation is completed for this specific project. This letter describes the project plan and design. It provides a description of the use of the borrow area at Hereford Inlet, and that it would be used for sand fill from the terminal groin at Stone Harbor point north to 96th Street in Stone Harbor. The ecosystem restoration at Stone Harbor Point is discussed in this letter, and that material for this project feature would also be obtained from Hereford Inlet borrow area.
3/8/2002	Project Cooperation Agreement Signed	The ecosystem restoration component at Stone Harbor Point is identified in the PCA as a project feature.
2003	Initial Construction	Approx. 4.2 million cy were placed on the beaches of Avalon and Stone Harbor utilizing the Townsends Inlet (E) and Hereford Inlet (G) Borrow Areas. The ecosystem restoration component of Stone Harbor Point was not constructed.

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
12/27/2005	Section 7 ESA Consultation Prog. BO from FWS	A programmatic Biological Opinion (BO) was submitted that evaluated all NJ Atlantic Coast beachfill projects. TI to CM Inlet was described and included a discussion of project borrow areas in TI and Hereford Inlet and their use for initial construction. It was noted that the Hereford Inlet Borrow Area was used for Seven Mile Island for initial construction and would be used for periodic nourishment. The BO also discusses the ecosystem restoration component at Stone Harbor Point. No discussion of CBRA was provided in the BO.
11/19/2008	Section 7 ESA Tier 2 Consultation Ltr. From FWS	Tier 2 consultation only addresses truck fill for Avalon. Hereford Inlet Borrow Area use was not proposed for this periodic nourishment cycle. No CBRA issues were discussed.
2008	Periodic Nourishment	Approx. 175,000 cubic yards were placed on Avalon beaches from an upland (truckfill) sand source.
1/13/2011	Section 7 Tier 2 ESA Letter to FWS	Tier 2 letter to FWS for periodic nourishment in Feb. 2011. Letter describes that 750,000 cy of beachfill would be placed in Avalon and Stone Harbor using sand from both Townsends Inlet and Hereford Inlet Borrow Areas. Maps showing the borrow area configurations and locations were enclosed. CBRA was not discussed in this letter.
4/21/2011	Section 7 Tier 2 ESA Letter from FWS	Tier 2 Consultation conclusion letter from FWS. Letter mentions that Hereford Inlet Borrow Area is one of the sand sources for the project. No CBRA issues were discussed.
2011	Avalon and Stone Harbor Periodic Nourishment	Approx. 750,000 cy were placed on the beaches of Avalon and Stone Harbor in 2011 utilizing the Townsends Inlet (E) and Hereford Inlet (G) Borrow Areas for periodic nourishment and FCCE storm repairs (2009 Nor'Ida Storm).
8/6/2012	Section 7 Tier 2 ESA Letter to FWS	Tier 2 letter to FWS for periodic nourishment scheduled for October 2012. Letter describes that 450,000 cy of beachfill would be placed in Avalon and Stone Harbor using sand from both Townsends Inlet and Hereford Inlet Borrow Areas. Maps showing the borrow area configurations and locations were enclosed. CBRA was not discussed in this letter.

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT

**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
7/4/2012	Avalon and Stone Harbor FCCE Repair	Approx. 450,000 cy were placed on the beaches of Avalon and Stone Harbor in 2012 utilizing the Townsends Inlet (E) and Hereford Inlet (G) Borrow Areas for FCCE repairs following Hurricane Irene in 2011.
7/29/2013	Section 7 Tier 2 ESA Letter from FWS to NAP Regulatory Branch	FWS provided a Tier 2 Letter to NAP Regulatory Branch concerning an action proposed by the City of Wildwood, NJ to utilize Hereford Inlet Borrow Area to repair beaches damaged by Hurricane Sandy in 2012. Funding for this effort would be provided by FEMA. FWS provided a CBRA review stating that after coordination with FEMA, it came to their attention that the Hereford Inlet BA is within the NJ-09 CBRS Unit. A review concluded that the proposed use of the BA does not meet the criteria for exceptions under Section 6(a)(6)(G) because the sand extraction would be taken out of the CBRS unit. This letter provides a copy of a 1994 letter to the Corps from FWS with an issue of a borrow area within a CBRS unit in Little Tybee Island, GA. This letter concluded that due to the apparent detrimental effects on the CBRA unit the taking of material from within a unit and placing it outside of the unit does not meet the exception criteria in Section 6(a)(6)(G). Also enclosed, was a 2013 memorandum of the Federal Interagency Floodplain Management Task Force that provided consensus recommendations, which included enhancing CBRA compliance. This memo was signed by the ASA CW.

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT

**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
7/30/2013	Section 7 Tier 2 ESA Letter from FWS to NAP Planning	FWS provided a Tier 2 Letter to NAP Planning Division concerning the use of the Hereford Inlet Borrow Area to repair the Stone Harbor beaches damaged by Hurricane Sandy in 2012. FWS also provided a CBRA review stating that it came to their attention that the Hereford Inlet BA is within the NJ-09 CBRS Unit. A review concluded that the proposed use of the BA does not meet the criteria for exceptions under Section 6(a)(6)(G) because the sand extraction would be taken out of the CBRS unit. FWS recommended that NAP Planning should consult again with the FWS Washington Office pursuant to CBRA pending a final determination on the use of Hereford Inlet as a sand borrow area. FWS also stated Federal agencies are required to consult with the Service prior to committing funds for projects or actions within or affecting the CBRS. This letter provides a copy of a 1994 letter to the Corps from FWS with an issue of a borrow area within a CBRS unit in Little Tybee Island, GA. This letter concluded that due to the apparent detrimental effects on the CBRA unit the taking of material from within a unit and placing it outside of the unit does not meet the exception criteria in Section 6(a)(6)(G). Also enclosed, was a 2013 memorandum of the Federal Interagency Floodplain Management Task Force that provided consensus recommendations, which included enhancing CBRA compliance. This memo was signed by the ASA CW.
2013	Avalon and Stone Harbor FCCE Repair/Restore	Approx. 1.01 million cy were placed on the beaches of Avalon and Stone Harbor utilizing the Townsends Inlet (E) and Hereford Inlet (G) Borrow Areas following the Hurricane Sandy storm in 2012.

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
7/28/2016	CBRA Consultation Letter to FWS	NAP prepared a CBRA consultation letter to address the Hereford Inlet Borrow Area concerns. This letter provides some background on CBRA and its applicability to the project area, and discusses past CBRA consultation that found the project in compliance with CBRA. The letter discusses that the Hereford Inlet borrow area was used for initial construction and renourishment in 2011 and 2013. A rationale is provided that supports NAP's assertion that the project meets exception criteria in Section 6(a)(6)(G) by stating that sand removed from the inlet borrow area makes its way back into the same CBRS unit (the beach and inlet of NJ-09) due to natural longshore drift processes. Sediment transport monitoring since 1998 has confirmed that this assertion is accurate, and the placement of sand updrift of the CBRA unit has enhanced the Stone Harbor point environmental area and has stabilized the area and established it as a productive nesting area for numerous species including endangered species.
8/9/2016	CBRA Consultation Response Letter from FWS	This letter was written by the FWS NJFO (after consulting with the Office of the Solicitor) provides an overview of the FWS authority under CBRA and a determination of project compliance with CBRA. As part of the FWS review, the letter states that "the Service's response to a consultation request is in the form of an opinion only. The funding agency is responsible for complying with the provisions of CBRA." The FWS states that it was their "understanding that the 1990's approval of Hereford Inlet as a borrow area was based on restoring Stone Harbor Point which was within the CBRS Unit NJ-09..." They conclude that a "breach" in the jetty by allowing sand to bypass the jetty meets one of the purposes of the CBRA (i.e. prevent and restore damage to fish, and wildlife, and other natural resources associated with a CBRS Unit). It is uncertain if the breach has actually occurred, but it was not proposed as part of this project (NAP analysis and monitoring demonstrates that a notch in the terminal groin is unnecessary as sand naturally bypasses it due to net south longshore littoral drift and the Stone Harbor project template, which basically buries the groin). The letter further states that "subsequent Federal expenditures in 2011 and 2013 to dredge sand from Hereford Inlet (including a series of federally-funded vibracore studies within the inlet) were

TOWNSENDS INLET TO CAPE MAY INLET COASTAL FLOOD RISK MANAGEMENT PROJECT

**CHRONOLOGY OF COORDINATION WITH U.S. FISH AND WILDLIFE SERVICE WITH EMPHASIS ON COASTAL BARRIER RESOURCES ACT
CONSULTATION AND COMPLIANCE**

DATES	EVENT	SUMMARY NOTES
		carried out by the Corps without formally consulting with the Service on whether such Federal expenditures were consistent with the CBRA on an individual basis." The letter further concludes that "proposed action (Federal expenditure) and the proposed exception by the Corps are not consistent with the provisions of the CBRA." This conclusion is based on the FWS finding that the exception under Section 6(a)(6)(G) of the CBRA applies only to natural systems within a CBRS Unit and not to artificial systems outside a CBRS Unit" (Interpreted as the Hereford Inlet is the "natural system" and the Town of Stone Harbor is the "artificial system" outside of the unit). FWS further cites that "minimizing the loss of human life; wasteful expenditures of Federal revenues; and damage to fish, wildlife, and other natural resources must be associated with activities within CBRS Units." This letter also enclosed the same letter to the Corps in 1994, which concluded non-applicability of the exceptions under CBRA for a borrow area within Little Tybee Island, GA placing the material outside of the unit, due to the apparent detrimental effects on the CBRA unit
8/16/2016	Section 7 Tier 2 ESA Letter to FWS	This letter is a Tier 2 Section 7 ESA consultation letter for the upcoming re-nourishment work for Avalon and Stone Harbor. This letter makes a brief reference to the NAP CBRA consultation letter sent to FWS NJFO on 7/28/2016. NAP receipt of the FWS CBRA consultation letter (dated 8/9/2016) came after sending this Tier 2 letter, and NAP was not aware of the FWS determination at that time.

From: [Schrading, Eric](#)
To: [Kodis, Martin](#)
Cc: [Niemi, Katie](#); [Berg, Elizabeth A](#); [Gustavson, Angela](#); [Popolizio, Carlo](#); [Wright, Dana K](#); [Hastie, Kyla](#); [Simon, Spencer](#)
Subject: Re: Stone Harbor correspondence
Date: Thursday, May 16, 2019 2:09:34 PM
Attachments: [13-CPA-0151 Stone Harbor.PDF](#)
Importance: High

Sorry,

One more relevant letter....from 2013.

On Thu, May 16, 2019 at 2:04 PM Schrading, Eric <eric_schrading@fws.gov> wrote:
Marty,

The Chronology of CBRA consultation below provides a good overview of consultation or lack thereof between 1991 and present for the Hereford Inlet with the Philadelphia District. If you need copies of our 1997 or 2013 FWCA reports of other correspondence we can try to track that down for you.

Thanks.

On Wed, May 15, 2019 at 3:57 PM Wright, Dana <dana_wright@fws.gov> wrote:
Hi Marty,

Attached is what we have on Corps projects in Hereford Inlet from the 1990's and also from 2016 (sorry for the volume). I pulled some key pieces of information from these letters into a separate word doc to show what our understanding of the project at the time was. Also see the attached talking points and map.

To ensure a complete record, I recommend that you also check with the NFJO for any relevant documents. We don't maintain the official records for CBRA consultations. Eric, the field supervisor, is copied. Eric can speak to this issue better than any of us at HQ.

Correspondence with LoBiondo was the Graves et al letter (DCN 069815) signed by Margaret in December 2018. He was one of the seven members that had signed on.

Talking points and a map of the area are attached.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, May 15, 2019 at 3:36 PM Kodis, Martin <martin_kodis@fws.gov> wrote:
Hi guys.

Please gather up all correspondence on this issue asap as the Secretary's office will be asking maybe even today. We will have to scramble.

Angela recalled correspondence with LoBiondo recently (maybe it was signed by the RD?). She's checking on that now. But we need to go back to the 1990s as well.

Thanks,

Marty

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

5275 Leesburg Pike
Falls Church, VA 22041

703-358-2241 ph
703-358-2245 fax

--

Eric Schrading, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

--

Eric Schrading, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>



In Reply Refer To:
13-CPA-0151

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office
Ecological Services
927 North Main Street, Building D
Pleasantville, New Jersey 08232
Tel: 609/646 9310
Fax: 609/646 0352
<http://www.fws.gov/northeast/njfieldoffice>



Charles MacIntosh, Acting Chief
Planning Division
Philadelphia District
U.S. Army Corps of Engineers
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Beth Brandeth

APR 30 2013

Dear Mr. MacIntosh:

The U.S. Fish and Wildlife Service (Service) received your March 18, 2013 request for streamlined (Tier 2) formal consultation regarding U.S. Army Corps of Engineers, Philadelphia District (Corps) proposed beach re-nourishment activities in the approved Avalon/Stone Harbor, Cape May County, New Jersey project area (Townsend Inlet to Hereford Inlet project). Project activities have been completed in Avalon and have begun in Stone Harbor with the Corps relying on our Tier 2 letter dated August 29, 2012 (log number 12-CPA-0296) for a proposed beach re-nourishment in Avalon/Stone Harbor that never occurred because of Hurricane Sandy.

This response serves as Tier 2 streamlined consultation pursuant to the Service's December 2005 Programmatic (Tier 1) Biological Opinion on the Effects of Federal Beach Nourishment, Re-nourishment, Stabilization, and Restoration Activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the Federally Listed (threatened) Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus pumilus*) (PBO). This Tier 2 (streamlined) consultation covers only the remainder of the 2013 Stone Harbor re-nourishment event, including potential direct and indirect effects to federally listed species that may occur during and after construction. Subsequent re-nourishment events will be considered separate Federal actions and will require individual Tier 2 consultations.

AUTHORITY

This response is provided pursuant to Section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA) to ensure the protection of endangered and threatened species and does not address all Service concerns for fish and wildlife resources. Additional comments are provided in regard to the Coastal Barrier

Resources System (CBRS) or Otherwise Protected Area (OPA) (as defined pursuant to the Coastal Barrier Resources Act of 1982 (P.L. 97-348; 96 Stat. 1653) (CBRA), as amended by the Coastal Barrier Improvement Act of 1990 (P.L. 97-101-591; 104 Stat. 2931).

COASTAL BARRIER RESOURCES ACT

The purposes of CBRA are to minimize the loss of human life; wasteful expenditures of Federal revenues; and damage to fish, wildlife, and other natural resources associated with coastal barriers along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts of the United States. To accomplish this purpose, CBRA established the John H. Chafee Coastal Barrier Resources System (CBRS), a system of relatively undeveloped coastal barriers and associated aquatic habitat that is delineated on a set of official maps that are maintained by the Service. Most new Federal expenditures and financial assistance, including Federal funding for dredging and beach nourishment projects, are prohibited within System units of the CBRS (16 U.S.C. 3504).

It came to our attention that, according to the official CBRS map for the area (Stone Harbor Unit NJ-09/NJ-09P dated July 12, 1996), the proposed sand borrow area (Hereford Inlet) is located within System Unit NJ-09 of the CBRS. Therefore, it was necessary to clarify the issue of federally funded beach nourishment activities in relation to CBRA; specifically the removal of sand materials from within a System unit of the CBRS for placement outside of the CBRS for erosion control. Section 6 of the CBRA (16 U.S.C. 3505) provides exceptions to the general prohibitions in Section 5 of the CBRA (16 U.S.C. 3504) for Federal expenditures within or affecting the CBRS. The exception in Section 6(a)(6)(G) of CBRA is for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system” within the CBRS that are also consistent with the purposes of CBRA (*i.e.*, to minimize the loss of human life, wasteful Federal expenditures, and damage to natural resources). According to a review by the Department of the Interior’s Office of the Solicitor, this exception applies only when the shoreline stabilization project falls within the CBRS.

The Service’s New Jersey Field Office is required to submit any activity within 500 feet of CBRS to our Washington Office for a final determination. On April 22, the Washington Office determined that proposed action to nourish beaches located outside of the CBRS (*e.g.*, Stone Harbor beaches) using sand material taken from within the CBRS (*e.g.*, Hereford Inlet) did not meet the criteria for this exception under CBRA. Please find attached the Service’s letter to the Corps’ Directorate of Civil Works dated June 2, 1994, which explained the Washington Office’s determination on this matter.

Additional information is provided in the attached memorandum signed by FEMA and the Corps in January 2013 outlining the Federal Interagency Floodplain Management Task Force’s (FIFM Task Force) Consensus Recommendations and Actions from a Federal Floodplain Management Policy Analysis. Please note that the FIFM Task Force

identified enhancing CBRA compliance across all Federal agencies as a recommended action on page 2 of the memorandum.

During an April 26 conference call regarding the proposed beach re-nourishment for North Wildwood, Dr. Farrell of Stockton College provided an electronic copy of a CBRS determination dated December 24, 1996 by the Service Region 5 Headquarters on the use of Hereford Inlet as a sand borrow area by the Corps' Planning Division. In this letter, the Service approved the use of Hereford Inlet as a sand borrow area for the restoration of Stone Harbor Point and re-nourishment of Stone Harbor beaches in 1997. We provided this information as well as additional information from our files to the Washington Office for review. The Washington Office requests that the Corps Planning Division consult again with the Service pursuant to the CBRA pending a final determination on the use of Hereford Inlet as a sand borrow area. Federal agencies are required to consult with the Service prior to committing funds for projects or actions within or affecting the CBRS.

Finally, the Service developed an online mapper that depicts the approximate boundaries of the CBRS to assist Federal agencies in complying with the provisions of CBRA. The CBRS mapper and additional information on the CBRA consistency consultations process for proposed projects can be found on the Service's CBRA website at: <http://www.fws.gov/cbra>.

CONSULTATION HISTORY

A chronology of key correspondences among the Service, Corps, and the Conserve Wildlife Foundation of New Jersey (CWFNJ) in partnership with the New Jersey Division of Fish and Wildlife – Endangered and Nongame Species Program (ENSP) regarding the subject re-nourishment event. A chronology of key correspondences is provided below.

- | | |
|-------------------|---|
| January 28, 2013 | Via e-mail, the Corps advised the Service of conducting beach nourishment activities in Avalon, Stone Harbor, Brigantine, and Ocean City. The Corps indicated that activities in Stone Harbor would occur within the piping plover nesting season and that piping plover monitors would be present. |
| February 2, 2013 | The Service requested that the Corps provide in their Tier 2 letter request all conservation measures to be implemented. |
| February 19, 2013 | The Corps notified the Service that the Avalon portion of project was completed. The Corps also stated that the Stone Harbor portion of the project would begin in mid-April and end by Memorial Day. |
| February 25, 2013 | The Service advised the Corps that modification to project plans should be evaluated by the Service with modified Tier 2 letters. |

- | | |
|----------------|--|
| March 21, 2013 | The Service received an electronic copy of the scanned coordination letter from the Corps for the project. |
| March 25, 2013 | The Service received the Corps' coordination letter via regular mail. |
| April 11, 2013 | The Corps notified the Service that the Stone Harbor project would extend to June 15, re-nourishing for the terminal groin north to 79 th Street. The Corps also provided information on piping plover monitoring activities. |

PROJECT DESCRIPTION

The Corps re-nourished the Borough of Avalon beach between 9th and 22nd Streets. The Borough of Stone Harbor beach re-nourishment is ongoing between 79th Street and the terminal groin. A maximum of 450,000 cubic yards of sand is proposed to be placed on the Stone Harbor beaches from a borrow area within Hereford inlet. The Corps began construction on April 15, 2013 and proposes to complete the project by June 15, 2013.

ADHERENCE TO MEASURES TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES

Relevant conservation measures proposed by the Corps for protection of federally listed species, and reasonable and prudent measures imposed by the Service to minimize take of federally listed species, are specified within the PBO and are applicable to all Tier 2 projects carried out under the Corps' program. All applicable measures to protect piping plovers will be followed during the 2013 re-nourishment of Stone Harbor:

- The beach nourishments will be conducted during the nesting season. No attempts to nest have been documented by the designated piping plover monitor in the fill area in Stone Harbor. The fill area is also outside the designated species protection areas in the Borough's Beach Management Plans.
- The southern extent of the beach nourishment in Stone Harbor is close enough to the designated/recent nesting area (Stone Harbor Point) to raise some minor concerns about disturbance to piping plovers.

There have been no known occurrences of seabeach amaranth in the proposed areas to be re-nourished.

STATUS OF THE SPECIES

Relevant biological and ecological information for the piping plover and seabeach amaranth was provided to the Corps in the PBO. That information remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

ENVIRONMENTAL BASELINE

The environmental baseline for the Corps' overall program for Federal beach nourishment, re-nourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Philadelphia District was established and fully described within the PBO. New information regarding the status of the piping plover and seabeach amaranth within the project area since issuance of the PBO has become available. Specifically, no piping plovers have nested within the proposed re-nourishment areas in recent years, and no seabeach amaranth plants were found during surveys. All other information described within the PBO remains pertinent and was considered by the Service in formulating this Tier 2 Biological Opinion.

EFFECTS OF THE ACTION

Following review of the information provided by the Corps regarding the Stone Harbor-nourishment project, the Service has determined that the potential effects of the project are consistent with those addressed in the PBO and are hereby incorporated by reference. Beach habitats within the Stone Harbor project area have been degraded by beach erosion, and no piping plover or seabeach amaranth were present within the project area in the past three years. The proposed re-nourishment area does not presently provide suitable piping plover nesting habitat. Therefore, no direct adverse impacts to these species are anticipated.

Following beach nourishment in other areas of New Jersey, piping plovers have established nesting in previously unoccupied sites, and seabeach amaranth has colonized suitable habitats created by beach re-nourishment. However, piping plover nesting and productivity on such stabilized beaches (where no habitat enhancement occurs) is generally lower than on un-stabilized beaches where over-wash zones and or tidal pools are available. Therefore, it is likely that at least one pair of piping plovers may nest or attempt to nest within the Avalon/Stone Harbor project area following the fill, and productivity is anticipated to be lower than on un-stabilized beaches or stabilized beaches with habitat enhancement.

Past shoreline stabilization within the Avalon/Stone Harbor project area has interfered with formation and maintenance of natural habitats for piping plover and seabeach amaranth. The project perpetuates shoreline stabilization that has essentially stopped the natural process of shoreline retreat and, consequently, prevents the natural formation of optimal habitats for piping plovers and seabeach amaranth (*e.g.*, inlets and overwash areas). Further, the beach re-nourishment plan selected for the project area will result in creation of sub-optimal beach habitat for piping plover and seabeach amaranth. Therefore, the Avalon/Stone Harbor re-nourishment project will preclude formation of natural habitats and create sub-optimal beach habitat for piping plover and seabeach amaranth along approximately 16,100 linear feet of Atlantic coast shoreline.

CONCLUSION

Actions and effects associated with the Avalon/Stone Harbor re-nourishment permit are consistent with those identified and discussed within the PBO. After reviewing the size and scope of the project, the environmental baseline, the status of federally listed species within the project area, and the effects of the action, it is the Service's Biological Opinion that the 2013 Avalon/Stone Harbor re-nourishment permit is not likely to jeopardize the continued existence of the piping plover or seabeach amaranth. No Critical Habitat has been designated for these species within the project area; therefore, no Critical Habitat will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the ESA and the Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of carrying out an otherwise lawful activity.

Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of the agency action is not considered a prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement. The indirect effects of the 2012-13 Avalon/Stone Harbor re-nourishment project are anticipated to result in harm in the form of reduced habitat quality along approximately 16,100 linear feet of Atlantic coastal shoreline. The type and amount of anticipated incidental take is consistent with that described in the PBO and does not cause the total annual level of incidental take in the PBO.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

To be exempt from the take prohibitions of Section 9 of the ESA, the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the PBO, to minimize the impact of anticipated incidental take of plovers. The Service has determined that the following new reasonable and prudent measures beyond those specified in the December 2005 Tier I Programmatic Biological Opinion are needed to minimize the impact of incidental take anticipated for the Avalon re-nourishment project:

- A piping plover monitor shall be present until the project is completed.

The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to demonstrate clear compliance with the RPMs and their implementing terms and conditions in this Biological Opinion; or (2) fails to require Corps staff, contractors, cooperators, and/or permittees to adhere to the terms and conditions of the incidental take statement; and/or (3) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of Section 7(o)(2) of the ESA may lapse.

REINITIATION - CLOSING STATEMENT

This concludes Tier 2 formal consultation on the effects of the Corps' proposed 2013 beach re-nourishment of Stone Harbor, Cape May County, New Jersey. The Service cannot provide after-the-fact concurrence for the Avalon portion of the project. As provided in 50 CFR § 402.16, re-initiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or Critical Habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or Critical Habitat that was not considered in this opinion; or, (4) a new species is listed or Critical Habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending re-initiation.

As a reminder, this Tier 2 consultation covers only the 2013 Stone Harbor re-nourishment event (beach between 79th Street and the terminal groin in the Borough of Stone Harbor), including potential impacts to federally listed species that may occur during and after this cycle of re-nourishment. Subsequent re-nourishment events will be considered separate Federal actions and will require individual Tier 2 consultations.

As a further reminder, we are advising the Corps that funding sand dredging activities within Hereford Inlet for erosion control measures outside of the CBRS may not be consistent with CBRA, pending ongoing review at our Washington Office. These federally funded projects may be completed without CBRA consultation if an alternative sand borrow area that is outside of the CBRS is identified and utilized.

Please contact Carlo Popolizio at (609) 383-3938, extension 32, if you have any questions or require further assistance.

Sincerely,



J. Eric Davis Jr.
Field Supervisor

cc: Todd Pover: todd.pover@conservewildlifenj.org
Dianne Daly: power45@comcast.net
Anne Hecht: Anne_Hecht@fws.gov
Dana Wright: Dana_Wright@fws.gov

ES:NJFO:Cpopolizio:RP:JED:cap: 4/29/13
P:/Shared/Carlo/13-CPA0151 [Tier 2]



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/DHC/BCWR

JUN 02 1994

Major General Stanley G. Genega
Directorate of Civil Works
U.S. Army Corps of Engineers
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000

Dear General Genega:

It has come to my attention that some clarification is necessary on the issue of Federally funded beach nourishment activities in relation to the requirements of the Coastal Barrier Resources Act (Act). More specifically, the issue involves removing sand materials from within a unit of the Coastal Barrier Resources System (System) for placement outside of the unit for erosion control measures.

Section 6 of the Act sets forth several exceptions to the general prohibition in section 5 against Federal expenditures affecting the System. The exception in section 6(a)(6)(G) is for "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore, natural stabilization systems" and that are also consistent with the purposes of the Act. The Department of the Interior's Office of the Solicitor has carefully reviewed this issue and has advised us that section 6(a)(6)(G) applies only to projects for stabilizing the shoreline of a unit of the System; it does not apply to projects to stabilize shoreline outside the System regardless of whether the project might be consistent with the purposes of the Act. Therefore, any Corps' proposed action designed to nourish beaches located outside the System using beach material taken from within the System does not meet the criteria for a section 6(a)(6)(G) exception. The Department's Office of the Solicitor has reviewed this issue and this specific correspondence and fully concurs with our position on this matter.

A specific example of where this issue has arisen is relative to the Corps of Engineers proposed action for the use of a sand borrow area (Borrow Area #3) within Unit N01, Little Tybee Island, of the Coastal Barrier Resources System for a beach nourishment project outside of Unit N01. The U.S. Fish and Wildlife Service's Atlanta Regional Director wrote to your agency on April 5, 1994, expressing support for the formal opinion provided to the Corps of Engineers on August 2, 1993, by our Brunswick Field Office regarding your consultation request under the Act. The Atlanta Regional Director also supports the comments provided to your agency on the Joint Public Notice, dated February 14, 1994, and the Draft Environmental Assessment for the Tybee Island, Georgia Beach Erosion Control Project

Section 934 Revaluation Report. This proposed action does not meet the criteria for a section 6(a)(6)(G) exception.

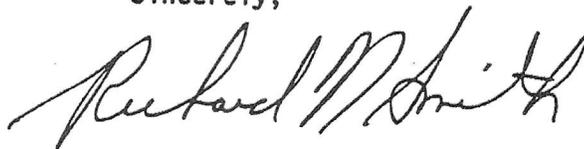
Moreover, the Service believes the proposed project would not be consistent with the purposes of the Act. These purposes are to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the Coastal Barrier Resources System. Use of this site would cause damage to the fish, wildlife, and other natural resources associated with Unit N01, Little Tybee Island.

Taking sand from Borrow Area #3 is likely to cause erosion to the beaches of Little Tybee Island. This area has been identified as important habitat for migratory birds and the federally protected loggerhead sea turtle and piping plover. In addition, the nearshore tidal portions of this site are important spawning, nursery and habitat areas for estuarine larvae, shellfish, and juvenile fish, including Georgia's number one sportfish, the spotted seatrout. Negative impacts to these species include increased turbidity, physical changes in tidal currents or channel locations that could affect migration of these organisms. Furthermore, Little Tybee Island has been designated as a Natural Heritage Preserve to protect the natural, historical, and cultural values for the benefit of the public.

Relative to the Little Tybee Island proposed project, I support the position of our Field and Regional Offices. I strongly recommend that the Corps find an alternative borrow site. The Service has previously stated that Borrow Areas #1 and #2, which are located outside the System and which the Corps identified as possible alternative sites, would be acceptable to the Service, provided adequate testing is done to ensure that these areas contain suitable beach material.

With respect to this issue in general, please clarify this issue for your Divisions and Districts. Thank you for your cooperation on this matter.

Sincerely,



DeputyDIRECTOR

IDENTICAL LETTER SENT TO:
Colonel Wayne W. Boy, Savannah District



**Federal Emergency
Management Agency**



**Assistant Secretary of the Army
(Civil Works)**

TO: Federal Interagency Floodplain Management Task Force Member Agencies

SUBJECT: FIFM Task Force Consensus Recommendations and Actions from a Federal Floodplain Management Policy Analysis

The Federal Interagency Floodplain Management (FIFM) Task Force was formed to promote, support, and encourage Federal agencies to formulate and implement programs and policies that: 1) reduce the loss of life and property caused by floods; and 2) protect and restore natural resources and functions of floodplains. It does this primarily through improving coordination, collaboration, and transparency among the federal agencies in floodplain management efforts; conducting studies of floodplain management activities; and improving alignment of federal programs.

The Task Force has already made progress in carrying out this mission. Specifically, it has:

- Convened a listening session with key stakeholders to identify and refine floodplain management issues and priorities.
- Developed guidance for Federal agencies on unwise use of floodplains.
- Conducted research on policies and programs that promote or interfere with good floodplain management practices.
- Made numerous presentations at floodplain and flood risk management events to exchange information relevant to the work of the Task Force.

The Task Force has also provided a forum for enhanced coordination and action on the part of individual member agencies. For example:

- U.S. Army Corps of Engineers (Corps) and Federal Emergency Management Agency (FEMA) have jointly resolved several policy conflicts, including accounting for the National Flood Insurance Program requirements of 44 CFR 65.12 during Corps evaluation of flood risk management projects in the floodplain. Guidance has been distributed to the field offices of both agencies through jointly signed memorandums.
- The Corps has coordinated its Flood Risk Management and Silver Jackets Programs with FEMA's Community Rating System Program to encourage and assist communities in taking responsible steps to better manage their flood risk.
- FEMA and the U.S. Fish and Wildlife Service (FWS) have updated an existing Interagency Agreement to place Coastal Barrier Resources System (CBRS) boundaries on Flood Insurance Rate Maps (FIRMs) and established a new Interagency Agreement to facilitate a digital conversion of the official CBRS maps and make changes that are necessary as a result of erosion and accretion.

At its meeting on July 27, 2012, the FIFM Task Force identified several opportunities and activities to enhance floodplain management efforts at various levels of government and to help agencies become better stewards of public resources. These activities were developed collaboratively by the Working Group of the Task Force, an interagency group with 19 representatives from the following agencies:

- U.S. Army Corps of Engineers
- Federal Emergency Management Agency
- National Oceanic and Atmospheric Administration
- U.S. Environmental Protection Agency
- U.S. Department of Transportation
- Tennessee Valley Authority
- U.S. Department of the Interior
- U.S. Department of Agriculture
- U.S. Department of Defense
- U.S. Department of Housing and Urban Development
- General Services Administration
- White House Council on Environmental Quality (Advisor)

Some of these activities are recommendations to one or more federal agencies. Others describe actions that the Task Force will take and incorporate into its overall work plan to be carried out over the next 3-4 years. Some activities will involve further action by numerous federal agencies, while others are informational in nature. These opportunities and activities are categorized into four areas and are described below.

Compliance

- **Enhance Coastal Barrier Resources Act (CBRA) Compliance.** Federal agencies operating under CBRA (16 U.S.C. 3501 et seq.), are required to comply with its provisions, which are designed to restrict federal expenditures and financial assistance in the development of coastal barriers designated as part of the CBRS. Section 3506(b) of CBRA also requires that each federal agency affected by CBRA report and certify annually to the Department of the Interior (DOI) that the agency is in compliance with the law. Federal agencies have not issued such certifications in recent years. DOI will issue a memorandum to federal agencies to remind them of their obligations under CBRA and request that they provide DOI with an annual letter certifying their compliance with the law, as appropriate. The Task Force recommends that federal agencies respond to DOI's request to help raise awareness about CBRA requirements and ensure that sufficient policies and protocols are in place to prevent the inappropriate provision of federal financial assistance within the CBRS.
- **Assess and Enhance Executive Order (EO) 11988 Compliance.** A recent study conducted by the Task Force indicated that implementation of *Executive Order 11988: Floodplain Management* may not be consistent across the federal government. Effective and consistent implementation of the EO will save lives and property, reduce the economic and environmental impacts of flooding in communities, and reduce costs to taxpayers across the country. Given the impacts of more extreme precipitation events anticipated as a result of climate change, flood losses will likely increase, thus further highlighting the importance of EO 11988. To address this issue, the Task Force will draft a memorandum for CEQ's consideration and issuance, requesting federal agencies that have adopted regulations and implementing guidance to assess their EO compliance and effectiveness of compliance and to take appropriate action where necessary. The Task Force will work with CEQ to assess responses.

Tools/Technology/Data

- **Modernize Coastal Barrier Resource System (CBRS) Maps.** Many of the maps that delineate CBRS boundaries require updates in light of natural changes to the system that occur over time and to be consistent with current technology. Digitizing and modernizing these maps will help all federal agencies responsible for CBRA compliance as well as developers, surveyors, planners, floodplain managers, realtors and other stakeholders who need to know the exact location of the CBRS unit boundaries. Homeowners, in particular, will have a clearer understanding of whether their property is located within the CBRS, so they can more accurately determine whether they are eligible for federal financial assistance, including flood insurance – avoiding the discovery and cancellation of invalid flood insurance policies after claims are made. The Task Force recognizes the value of the modernization efforts already underway and recommends that they be continued and expanded.

- **Enhance Technical Assistance to Communities in Coastal Areas.** Coastal areas are home to over 160 million people, support 66 million jobs and contribute \$8.3 trillion to the U.S. economy. These areas are also prone to a number of natural hazards. As a result, it is critical that we provide coastal communities with the resources they need to make better decisions that reduce flood hazards. The Task Force will be exploring broader use of the Community Rating System as an incentive mechanism for coastal communities to make better floodplain management decisions. In addition, the Task Force plans to assess floodplain management-related technical assistance available to coastal communities and identify gaps that may need to be filled.
- **Enhance Collaboration and Research on Mapping to Support Floodplain Management.** Maps are powerful tools in floodplain management. The Task Force will be working to assess and enhance data collection, distribution, collaboration and research related to mapping to support floodplain management. It will place special emphasis on identifying, quantifying or mapping the natural areas of floodplains and their beneficial uses and values.
- **Improve the Link Between Agencies and Available Floodplain-related Research Capabilities.** There are potential disconnects between agencies responsible for establishing and implementing policies that impact flood risk or floodplains and those agencies involved in scientific research and data collection. The Task Force will evaluate disconnects and establish a more formal mechanism for coordination so the available research becomes more broadly available and research needs are aligned with future research plans.
- **Assess Federal Use of Flood Loss Data and Identify Potential Improvements in Collection, Dissemination and Use.** Federal agencies are often asked to report on flood-related losses. This information is important for understanding the impacts of policies and programs in and around floodplains. Federal agencies collect and use flood loss data differently based on their missions and the needs of their stakeholders. The Task Force will convene key federal agencies to discuss what flood loss data they have, how they calculate flood losses, and how they use these data (e.g., policy questions they try to answer). The Task Force will compile this feedback to create a more comprehensive view of how flood loss data is collected, calculated and used within federal agencies and key, high-level similarities and differences. Based on this feedback, the Task Force will identify approaches for improving the collection, dissemination and/or use of flood loss data to enhance future policy decisions.
- **Study the Benefits of Protecting Natural and Beneficial Functions.** Floodplains provide more value, or services, per acre than any other land type. However, floodplains continue to be degraded by development and other activities that often cause hidden losses, both economic and environmental, for communities and the nation. The Task Force will conduct a review of existing information to assess our current state of knowledge about valuing the natural resources and functions of floodplains. Based on this assessment, the Task Force will identify opportunities to quantify and/or qualitatively describe the benefits that floodplains provide.

Partnerships

- **Improve Silver Jackets Awareness and Participation.** Silver Jackets interagency teams promote valuable collaboration among federal and state agencies with respect to flood risk management. They focus on a common set of priorities and are capable of more easily leveraging resources to solve problems. Involvement by federal agencies other than FEMA and the Corps, however, has been inconsistent. Having stronger support for Silver Jackets teams from all agencies involved in flood risk and floodplain management will provide more resources and opportunities for collaboration to the Silver Jackets teams and promote more innovative and effective approaches to flood risk management. The Task Force will prepare a memorandum to its member agencies and other

interested agencies recommending that they designate a point of contact to coordinate their involvement in the Silver Jackets program.

- **Coordinate Under Presidential Policy Directive 8 (PPD#8) Initiatives.** PPD #8 provides an opportunity to improve floodplain management by providing a partnership venue to ensure assistance is available to integrate mitigation and floodplain management into recovery, mitigation and response policies, plans, programs, and decision making. The FIFM Task Force is developing processes to ensure that it is coordinating closely with the leadership structure of the National Disaster Recovery, Mitigation, and Response Frameworks as developed under PPD #8, specifically as it relates to floodplain management.

Communication

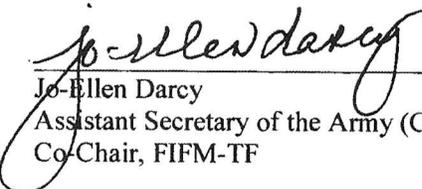
- **Promote the Task Force Role in Resolving Interagency Conflicts.** One reason the Task Force was formed was to identify and address policy or programmatic conflicts among federal agencies that may be resulting in poor floodplain management decisions. The Task Force will more actively promote its role in addressing these issues and opportunities so other members of the floodplain management community are aware of the potential resource the Task Force can offer.

As noted previously, many of the above recommendations will be merged into the Task Force's work plan. Participation by all federal agencies in support of Task Force efforts is encouraged. Please contact any member of the Task Force for further information on the work of the Task Force or its current activities.



David L. Miller
Associate Administrator, Federal Insurance and
Mitigation Administration
Co-Chair, FIFM-TF

Date: 1/24/13



Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Co-Chair, FIFM-TF

Date: Jan. 28, 2013

From: [Schrading, Eric](#)
To: [Kodis, Martin](#)
Cc: [Niemi, Katie](#); [Berg, Elizabeth A](#); [Gustavson, Angela](#); [Popolizio, Carlo](#); [Wright, Dana K](#); [Hastie, Kyla](#); [Simon, Spencer](#)
Subject: Re: Stone Harbor correspondence
Date: Thursday, May 16, 2019 2:40:49 PM
Attachments: [14-CPA-0088 Hereford Inlet 020614.PDF](#)
Importance: High

One more from 2014

On Thu, May 16, 2019 at 2:09 PM Schrading, Eric <eric_schrading@fws.gov> wrote:
Sorry,

One more relevant letter....from 2013.

On Thu, May 16, 2019 at 2:04 PM Schrading, Eric <eric_schrading@fws.gov> wrote:
Marty,

The Chronology of CBRA consultation below provides a good overview of consultation or lack thereof between 1991 and present for the Hereford Inlet with the Philadelphia District. If you need copies of our 1997 or 2013 FWCA reports of other correspondence we can try to track that down for you.

Thanks.

On Wed, May 15, 2019 at 3:57 PM Wright, Dana <dana_wright@fws.gov> wrote:
Hi Marty,

Attached is what we have on Corps projects in Hereford Inlet from the 1990's and also from 2016 (sorry for the volume). I pulled some key pieces of information from these letters into a separate word doc to show what our understanding of the project at the time was. Also see the attached talking points and map.

To ensure a complete record, I recommend that you also check with the NFJO for any relevant documents. We don't maintain the official records for CBRA consultations. Eric, the field supervisor, is copied. Eric can speak to this issue better than any of us at HQ.

Correspondence with LoBiondo was the Graves et al letter (DCN 069815) signed by Margaret in December 2018. He was one of the seven members that had signed on.

Talking points and a map of the area are attached.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES

Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, May 15, 2019 at 3:36 PM Kodis, Martin <martin_kodis@fws.gov> wrote:
Hi guys.

Please gather up all correspondence on this issue asap as the Secretary's office will be asking maybe even today. We will have to scramble.

Angela recalled correspondence with LoBiondo recently (maybe it was signed by the RD?). She's checking on that now. But we need to go back to the 1990s as well.

Thanks,

Marty

--

Martin Kodis
Chief, Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

5275 Leesburg Pike
Falls Church, VA 22041

703-358-2241 ph
703-358-2245 fax

--

Eric Schradling, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

--

Eric Schradling, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office

4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

--

Eric Schradling, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>



In Reply Refer To:
14-CPA-0088

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office
Ecological Services
927 North Main Street, Building D
Pleasantville, New Jersey 08232
Tel: 609/646 9310
Fax: 609/646 0352
<http://www.fws.gov/northeast/njfieldoffice>



Peter R. Blum, Chief
Planning Division
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

FEB 06 2014

Dear Mr. Blum:

The U.S. Fish and Wildlife Service (Service), New Jersey Field Office has reviewed the *Hereford Inlet to Cape May Inlet Draft Feasibility Report and Integrated Environmental Assessment* addressing storm damage reduction for the communities of North Wildwood, Wildwood, Wildwood Crest, and portion of Lower Township. Specifically, dune placement activity is proposed from 2nd and John F. Kennedy Boulevard in North Wildwood south to Raleigh Avenue in Lower Township.

The U.S. Army Corps of Engineers (Corps) proposes to create a 75-foot-wide beach berm at elevation +6.5 North American Vertical Datum (NAVD) and a dune at an elevation of +16 feet NAVD in Northern Wildwood. The remainder of the project would only receive a dune at +16 feet NAVD. For initial construction of the project, the Corps proposes to obtain approximately 1.3 million cubic yards utilizing sand hydraulically back-passed from the beaches of Wildwood, Wildwood Crest, and Lower Township. About 305,000 cubic yards of sand may be required for periodic re-nourishment at 4-year intervals for a period of 50 years.

AUTHORITY

The following comments are provided pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*), the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*), Section 7 of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), and the Migratory Bird Treaty Act of 1918 (40 Stat. 755; 16 U.S.C. 703-712, as amended), ensuring the protection of federally listed endangered and threatened species, and migratory birds. Additional comments are provided pursuant to the Coastal Barrier Resources Act (CBRA) (16 U.S.C. 3501 *et seq.*).

FEDERALLY LISTED SPECIES

Piping Plover

The federally listed (threatened) piping plover (*Charadrius melodus*) was documented nesting on the Hereford Inlet shoreline of North Wildwood during the last 10 years and within the Cape May National Wildlife Refuge (Two-Mile Beach) in 2010. Both nesting areas are in the vicinity of the project area. The likelihood of nesting activity within the project area is very low. However, we cannot entirely rule out possible nesting within the project area, if construction activity occurs during the breeding season (March 15-August 31). Also, because of the proximity of the Hereford Inlet shoreline of North Wildwood to the project area, the Service may require that the Corps hire a biological construction monitor for any work during the breeding season under the protocol established by the Service and the New Jersey Endangered and Nongame Species Program (ENSP) for the protection of nesting piping plovers. Finally, if any nesting activity is detected by the ENSP within the project area, the Corps shall coordinate/consult with the Service and ENSP to ensure adequate protection of piping plovers.

Individual Tier 2 consultation with the Corps remains required prior to construction and for each periodic nourishment cycle. The Corps shall not rely on Service Tier 2 letters for any nourishment cycle that is later cancelled, delayed, or otherwise modified, but shall rather re-submit updated project information to the Service for further individual Tier 2 consultation.

Seabeach Amaranth

There are no records of the federally listed (threatened) seabeach amaranth (*Amaranthus pumilus*) occurring within the project area. It is very unlikely that seabeach amaranth will occur in the project area during the initial nourishment but, if detected, we request that the Corps contact this office to coordinate protective measures for this species.

SPECIES PROPOSED FOR LISTING

The red knot (*Calidris canutus rufa*) is being proposed for Federal listing under the ESA. The listing process may be completed as early as September 2014. The proposed critical habitat rule may be issued by March-April 2014. Protective measures for the red knot need to be appended or included in the Programmatic Biological Opinion.

Small numbers of red knots may occur in New Jersey year-round, while large numbers of birds rely on Atlantic and Delaware Bay stopover habitats during the spring (mid-May through early June) and fall (late-July through October – sometimes extending into November 15) migration periods. Red knots are generally faithful to their stopover sites. Threats to the red knot include disturbance, reduced food availability at staging areas, and loss of stopover habitat.

During fall migration, red knots have been documented roosting and foraging on North Wildwood beaches from Hereford Inlet south to 26th Street. On the southern end of the project

area, red knots have been documented roosting and foraging from Richmond Avenue south to the U.S. Coast Guard boundary. The Service may requests that, from July 15 to November 15, if a large number of red knots forage at or in the vicinity of the project site, project activities be suspended and an avian biologist be hired to monitor the red knots until they leave. The avian biologist shall determine when project activities may resume in coordination with this office and the Corps. More specific recommendations may be provided in our Tier 2 letter.

COASTAL BARRIER RESOURCE ACT

Section 2.4.16 of the Report (page 104) proposes Hereford Inlet as a borrow area for future re-nourishment events and mentions the past use of vibracores to evaluate sand resources within the inlet. According to the official Coastal Barrier Resource System (CBRS) map for Hereford Inlet, proposed sand borrow areas commonly referred as "H" are located within Unit NJ-09 of the CBRS. If the Corps proposes to make Federal expenditures or financial assistance (as defined by Section 3(3) of the CBRA) available for any purpose relating to a future action or project within the CBRS (including funding for the use of vibracores), the Corps is responsible for submitting a formal consultation request to the Service in writing, with an explanation of how the proposed Federal expenditures or financial assistance comply with the provisions of the CBRA and which Section 6 exception the action or project meets. If the activity qualifies for an exception under Section 6 of the CBRA, "the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available" within the CBRS.

OTHER COMMENTS AND RECOMMENDATIONS

As a condition for receiving Federal assistance for beach nourishment, all municipalities are required to develop a Beach Management Plan approved by the Service and the New Jersey Division of Fish and Wildlife. At the moment, North Wildwood is the only municipality within the project area to have such plan.

The Corps shall require all municipalities within the study area to coordinate with the Service and ENSP prior to placing sand fencing and planting dune-stabilizing native vegetation following each re-nourishment event.

Please contact Carlo Popolizio at (609) 383-3938, extension 32, if you have any questions pertaining to this correspondence.

Sincerely,



Eric Schrading
Field Supervisor

cc: todd.pover@conservewildlifenj.org
kara.turner@dep.state.nj.us
gail.moore@dep.state.nj.us

NJFO:ES:cpopolizio:ES:cap:2/5/14

P:/Shared/Carlo/14-CPA-0088

From: [Wright, Dana K](#)
To: [Chen, Linus Y](#)
Subject: Re: HNR Hearing Video (Rep. Van Drew and CBRS Unit NJ-09)
Date: Friday, May 17, 2019 10:17:48 AM

No, I haven't heard anything about it.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, May 17, 2019 at 9:47 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Do we know anything relevant about Rep. Rouzer's 5/6 roundtable on Hurricane Florence (it's on his homepage)
<https://rouzer.house.gov/>

On Fri, May 17, 2019 at 6:01 AM Wright, Dana <dana_wright@fws.gov> wrote:

I haven't heard about TX but yes to NC (Rep. Rouzer).

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, May 16, 2019 at 4:38 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Thanks. Will try to take a look at this later.
Interesting, Van Drew is a Dem (NJ). Are Representatives in NC and TX participating in these meetings also?

On Thu, May 16, 2019 at 3:47 PM Wright, Dana <dana_wright@fws.gov> wrote:

Hi Ben and Linus,

The CBRA/sand mining issue came up at the HNR Budget hearing yesterday (please see video below). I wanted to pass this along to keep you in the loop given the significant Congressional interest in this issue recently. It is my understanding that there are meetings happening or being scheduled between interested Representatives

and Secretary Bernhardt and Principal Deputy Director Margaret Eversen.

Link below to a Cape May Herald article about the CBRA Hereford Inlet issue.

https://www.capemaycountyherald.com/news/government/article_05f7cd4e-77e3-11e9-b3df-e3637dd25ec4.html

Link below to a press release from Rep. Van Drew's office.

<https://vandrew.house.gov/media/press-releases/van-drew-urges-secretary-bernhardt-fix-bureaucratic-error-and-save-stone-1>

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: **Niemi, Katie** <katie_niemi@fws.gov>

Date: Thu, May 16, 2019 at 10:01 AM

Subject: HNR Hearing Video (Rep. Van Drew and CBRS Unit NJ-09)

To: Jonathan Phinney <jonathan_phinney@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Christine Eustis <christine_eustis@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Eric Schrading <eric_schrading@fws.gov>, Carlo Popolizio <Carlo_Popolizio@fws.gov>, Wright, Dana <dana_wright@fws.gov>

Hi Folks,

Yesterday the Secretary testified before the House Natural Resources Committee at a hearing on the Department's budget, policies, and priorities for FY 2020. Below is a link to the hearing video. See time marker 2:27 for Rep. Van Drew's questions regarding CBRA and Hereford Inlet.

<https://youtu.be/oDSiCD4poHE>

We have already provided CLA with copies of relevant correspondence that we have in our CBRA HQ records as well as talking points on this matter.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service

Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

From: [Niemi, Katie](#)
To: [Kodis, Martin](#)
Subject: Filed Amendment for S.47 re CBRA and sand mining
Date: Friday, May 17, 2019 11:47:09 AM

Marty,

Below is the S. 47 filed amended regarding CBRA and sand mining. You can also find it in the [Congressional Record](#) from February 6, 2019 (S1011).

SA 130. Mr. BURR (for himself and Mr. TILLIS) submitted an amendment intended to be proposed by him to the bill S. 47, to provide for the management of the natural resources of the United States, and for other purposes; which was ordered to lie on the table; as follows: At the end of title VII, add the following: SEC. 701l. BEACH RENOURISHMENT PROJECTS. Section 6(a)(6)(G) of the Coastal Barrier Resources Act (16 U.S.C. 3505(a)(6)(G)) is amended by inserting “, including beach renourishment projects that remove sand material within a System unit for placement on or near a shoreline that is not within the System” after “stabilization system”.

From: [Berg, Elizabeth A](#)
To: [Niemi, Katie](#); [Wright, Dana K](#)
Subject: CBRA sand mining amendment
Date: Monday, June 17, 2019 8:44:48 AM
Attachments: [Van Drew Amend. to HR 2740613191031563156.pdf](#)
[BILLS-116hr3055rh.pdf](#)
Importance: High

Hi Katie and Dana,

On Thursday 6/13, Reps. Graves and Van Drew submitted a floor amendment to the Interior Appropriations Bill that that would allow for sand mining from CBRA areas. The submitted language and bill text are attached.

There will likely be debate over this and other floor amendments to the bill when it comes to the floor, likely this week. Additionally, the Committee on Rules will meet on Tuesday 6/18 and potentially Wednesday 6/19 to consider the bill.

I'll continue to track the progress of this and provide you with updates.

Liz

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

**AMENDMENT DIVISION C OF COMMITTEE PRINT
116-18
OFFERED BY MR. VAN DREW OF NEW JERSEY**

At the end of division C (before the short title), insert the following:

1 SEC. None of the funds made available by this
2 Act may be used to implement the Department of Interior
3 Solicitor's opinion (FWS.CW.0380) issued in 1994 inter-
4 preting the applicability of Section 6(a)(6)(G) of the
5 Coastal Barrier Resources Act (16 U.S.C. 3505
6 (a)(6)(G)).



Union Calendar No. 76

116TH CONGRESS
1ST SESSION

H. R. 3055

[Report No. 116-101]

Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2020, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 2019

Mr. SERRANO, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2020, and for other purposes.

1 aliens by contract for services; rental of space abroad for
2 periods not exceeding 10 years, and expenses of alteration,
3 repair, or improvement; purchase or construction of tem-
4 porary demountable exhibition structures for use abroad;
5 payment of tort claims, in the manner authorized in the
6 first paragraph of section 2672 of title 28, United States
7 Code, when such claims arise in foreign countries; not to
8 exceed \$294,300 for official representation expenses
9 abroad; purchase of passenger motor vehicles for official
10 use abroad, not to exceed \$45,000 per vehicle; obtaining
11 insurance on official motor vehicles; and rental of tie lines,
12 \$530,000,000, to remain available until September 30,
13 2021, of which \$11,000,000 is to be derived from fees to
14 be retained and used by the International Trade Adminis-
15 tration, notwithstanding section 3302 of title 31, United
16 States Code: *Provided*, That, of amounts provided under
17 this heading, not less than \$16,400,000 shall be for China
18 antidumping and countervailing duty enforcement and
19 compliance activities: *Provided further*, That the provisions
20 of the first sentence of section 105(f) and all of section
21 108(c) of the Mutual Educational and Cultural Exchange
22 Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply
23 in carrying out these activities; and that for the purpose
24 of this Act, contributions under the provisions of the Mu-
25 tual Educational and Cultural Exchange Act of 1961 shall

1 include payment for assessments for services provided as
2 part of these activities.

3 BUREAU OF INDUSTRY AND SECURITY

4 OPERATIONS AND ADMINISTRATION

5 For necessary expenses for export administration and
6 national security activities of the Department of Com-
7 merce, including costs associated with the performance of
8 export administration field activities both domestically and
9 abroad; full medical coverage for dependent members of
10 immediate families of employees stationed overseas; em-
11 ployment of citizens of the United States and aliens by
12 contract for services abroad; payment of tort claims, in
13 the manner authorized in the first paragraph of section
14 2672 of title 28, United States Code, when such claims
15 arise in foreign countries; not to exceed \$13,500 for offi-
16 cial representation expenses abroad; awards of compensa-
17 tion to informers under the Export Control Reform Act
18 of 2018 (subtitle B of title XVII of the John S. McCain
19 National Defense Authorization Act for Fiscal Year 2019;
20 Public Law 115–232; 132 Stat. 2208; 50 U.S.C. 4801 et
21 seq.), and as authorized by section 1(b) of the Act of June
22 15, 1917 (40 Stat. 223; 22 U.S.C. 401(b)); and purchase
23 of passenger motor vehicles for official use and motor vehi-
24 cles for law enforcement use with special requirement vehi-
25 cles eligible for purchase without regard to any price limi-

1 tation otherwise established by law, \$127,652,000, to re-
2 main available until expended: *Provided*, That the provi-
3 sions of the first sentence of section 105(f) and all of sec-
4 tion 108(c) of the Mutual Educational and Cultural Ex-
5 change Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall
6 apply in carrying out these activities: *Provided further*,
7 That payments and contributions collected and accepted
8 for materials or services provided as part of such activities
9 may be retained for use in covering the cost of such activi-
10 ties, and for providing information to the public with re-
11 spect to the export administration and national security
12 activities of the Department of Commerce and other ex-
13 port control programs of the United States and other gov-
14 ernments.

15 ECONOMIC DEVELOPMENT ADMINISTRATION

16 ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

17 For grants for economic development assistance as
18 provided by the Public Works and Economic Development
19 Act of 1965, for trade adjustment assistance, and for
20 grants authorized by sections 27 and 28 of the Stevenson-
21 Wydler Technology Innovation Act of 1980 (15 U.S.C.
22 3722 and 3723), \$498,350,000, to remain available until
23 expended, of which \$30,000,000 shall be for grants under
24 such section 27 and \$5,000,000 shall be for grants under
25 such section 28.

1 SALARIES AND EXPENSES

2 For necessary expenses of administering the eco-
3 nomic development assistance programs as provided for by
4 law, \$41,650,000: *Provided*, That these funds may be used
5 to monitor projects approved pursuant to title I of the
6 Public Works Employment Act of 1976, title II of the
7 Trade Act of 1974, sections 27 and 28 of the Stevenson-
8 Wydler Technology Innovation Act of 1980 (15 U.S.C.
9 3722 and 3723), and the Community Emergency Drought
10 Relief Act of 1977.

11 MINORITY BUSINESS DEVELOPMENT AGENCY

12 MINORITY BUSINESS DEVELOPMENT

13 For necessary expenses of the Department of Com-
14 merce in fostering, promoting, and developing minority
15 business enterprise, including expenses of grants, con-
16 tracts, and other agreements with public or private organi-
17 zations, \$44,000,000.

18 ECONOMIC AND STATISTICAL ANALYSIS

19 SALARIES AND EXPENSES

20 For necessary expenses, as authorized by law, of eco-
21 nomic and statistical analysis programs of the Department
22 of Commerce, \$107,990,000, to remain available until
23 September 30, 2021.

1 BUREAU OF THE CENSUS

2 CURRENT SURVEYS AND PROGRAMS

3 For necessary expenses for collecting, compiling, ana-
4 lyzing, preparing, and publishing statistics, provided for
5 by law, \$275,000,000: *Provided*, That, from amounts pro-
6 vided herein, funds may be used for promotion, outreach,
7 and marketing activities.

8 PERIODIC CENSUSES AND PROGRAMS

9 (INCLUDING TRANSFER OF FUNDS)

10 For necessary expenses for collecting, compiling, ana-
11 lyzing, preparing, and publishing statistics for periodic
12 censuses and programs provided for by law, \$675,000,000,
13 to remain available until September 30, 2022: *Provided*,
14 That, from amounts provided herein, funds may be used
15 for promotion, outreach, and marketing activities: *Pro-*
16 *vided further*, That within the amounts appropriated,
17 \$3,556,000 shall be transferred to the “Office of Inspector
18 General” account for activities associated with carrying
19 out investigations and audits related to the Bureau of the
20 Census.

21 In addition to the amounts provided under this head-
22 ing for the 2020 Census, \$7,500,000,000, to remain avail-
23 able until September 30, 2022, is new budget authority
24 for the 2020 Census as specified for the purposes of sec-
25 tion 251(b)(2) of the Balanced Budget and Emergency

1 Deficit Control Act of 1985, as amended, and section
2 1(g)(1) of H.Res. 293 of the 116th Congress.

3 NATIONAL TELECOMMUNICATIONS AND INFORMATION

4 ADMINISTRATION

5 SALARIES AND EXPENSES

6 For necessary expenses, as provided for by law, of
7 the National Telecommunications and Information Ad-
8 ministration (NTIA), \$42,411,000, to remain available
9 until September 30, 2021: *Provided*, That, notwith-
10 standing 31 U.S.C. 1535(d), the Secretary of Commerce
11 shall charge Federal agencies for costs incurred in spec-
12 trum management, analysis, operations, and related serv-
13 ices, and such fees shall be retained and used as offsetting
14 collections for costs of such spectrum services, to remain
15 available until expended: *Provided further*, That the Sec-
16 retary of Commerce is authorized to retain and use as off-
17 setting collections all funds transferred, or previously
18 transferred, from other Government agencies for all costs
19 incurred in telecommunications research, engineering, and
20 related activities by the Institute for Telecommunication
21 Sciences of NTIA, in furtherance of its assigned functions
22 under this paragraph, and such funds received from other
23 Government agencies shall remain available until ex-
24 pended.

1 PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING
2 AND CONSTRUCTION

3 For the administration of prior-year grants, recov-
4 eries and unobligated balances of funds previously appro-
5 priated are available for the administration of all open
6 grants until their expiration.

7 UNITED STATES PATENT AND TRADEMARK OFFICE
8 SALARIES AND EXPENSES
9 (INCLUDING TRANSFERS OF FUNDS)

10 For necessary expenses of the United States Patent
11 and Trademark Office (USPTO) provided for by law, in-
12 cluding defense of suits instituted against the Under Sec-
13 retary of Commerce for Intellectual Property and Director
14 of the USPTO, \$3,450,681,000, to remain available until
15 expended: *Provided*, That the sum herein appropriated
16 from the general fund shall be reduced as offsetting collec-
17 tions of fees and surcharges assessed and collected by the
18 USPTO under any law are received during fiscal year
19 2020, so as to result in a fiscal year 2020 appropriation
20 from the general fund estimated at \$0: *Provided further*,
21 That during fiscal year 2020, should the total amount of
22 such offsetting collections be less than \$3,450,681,000
23 this amount shall be reduced accordingly: *Provided fur-*
24 *ther*, That any amount received in excess of
25 \$3,450,681,000 in fiscal year 2020 and deposited in the

1 Patent and Trademark Fee Reserve Fund shall remain
2 available until expended: *Provided further*, That the Direc-
3 tor of USPTO shall submit a spending plan to the Com-
4 mittees on Appropriations of the House of Representatives
5 and the Senate for any amounts made available by the
6 preceding proviso and such spending plan shall be treated
7 as a reprogramming under section 505 of this Act and
8 shall not be available for obligation or expenditure except
9 in compliance with the procedures set forth in that section:
10 *Provided further*, That any amounts reprogrammed in ac-
11 cordance with the preceding proviso shall be transferred
12 to the United States Patent and Trademark Office “Sala-
13 ries and Expenses” account: *Provided further*, That from
14 amounts provided herein, not to exceed \$900 shall be
15 made available in fiscal year 2020 for official reception
16 and representation expenses: *Provided further*, That in fis-
17 cal year 2020 from the amounts made available for “Sala-
18 ries and Expenses” for the USPTO, the amounts nec-
19 essary to pay (1) the difference between the percentage
20 of basic pay contributed by the USPTO and employees
21 under section 8334(a) of title 5, United States Code, and
22 the normal cost percentage (as defined by section
23 8331(17) of that title) as provided by the Office of Per-
24 sonnel Management (OPM) for USPTO’s specific use, of
25 basic pay, of employees subject to subchapter III of chap-

1 ter 83 of that title, and (2) the present value of the other-
2 wise unfunded accruing costs, as determined by OPM for
3 USPTO's specific use of post-retirement life insurance
4 and post-retirement health benefits coverage for all
5 USPTO employees who are enrolled in Federal Employees
6 Health Benefits (FEHB) and Federal Employees Group
7 Life Insurance (FEGLI), shall be transferred to the Civil
8 Service Retirement and Disability Fund, the FEGLI
9 Fund, and the Employees FEHB Fund, as appropriate,
10 and shall be available for the authorized purposes of those
11 accounts: *Provided further*, That any differences between
12 the present value factors published in OPM's yearly 300
13 series benefit letters and the factors that OPM provides
14 for USPTO's specific use shall be recognized as an im-
15 puted cost on USPTO's financial statements, where appli-
16 cable: *Provided further*, That, notwithstanding any other
17 provision of law, all fees and surcharges assessed and col-
18 lected by USPTO are available for USPTO only pursuant
19 to section 42(c) of title 35, United States Code, as amend-
20 ed by section 22 of the Leahy-Smith America Invents Act
21 (Public Law 112-29): *Provided further*, That within the
22 amounts appropriated, \$1,500,000 shall be transferred to
23 the "Office of Inspector General" account for activities as-
24 sociated with carrying out investigations and audits re-
25 lated to the USPTO.

1 NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
2 SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES
3 (INCLUDING TRANSFER OF FUNDS)

4 For necessary expenses of the National Institute of
5 Standards and Technology (NIST), \$751,000,000, to re-
6 main available until expended, of which not to exceed
7 \$9,000,000 may be transferred to the “Working Capital
8 Fund”: *Provided*, That not to exceed \$5,000 shall be for
9 official reception and representation expenses: *Provided*
10 *further*, That NIST may provide local transportation for
11 summer undergraduate research fellowship program par-
12 ticipants.

13 INDUSTRIAL TECHNOLOGY SERVICES

14 For necessary expenses for industrial technology
15 services, \$169,172,000, to remain available until ex-
16 pended, of which \$154,000,000 shall be for the Hollings
17 Manufacturing Extension Partnership, and of which
18 \$15,172,000 shall be for the National Network for Manu-
19 facturing Innovation (also known as “Manufacturing
20 USA”).

21 CONSTRUCTION OF RESEARCH FACILITIES

22 For construction of new research facilities, including
23 architectural and engineering design, and for renovation
24 and maintenance of existing facilities, not otherwise pro-
25 vided for the National Institute of Standards and Tech-

1 nology, as authorized by sections 13 through 15 of the
2 National Institute of Standards and Technology Act (15
3 U.S.C. 278c–278e), \$120,000,000, to remain available
4 until expended: *Provided*, That the Secretary of Commerce
5 shall include in the budget justification materials that the
6 Secretary submits to Congress in support of the Depart-
7 ment of Commerce budget (as submitted with the budget
8 of the President under section 1105(a) of title 31, United
9 States Code) an estimate for each National Institute of
10 Standards and Technology construction project having a
11 total multi-year program cost of more than \$5,000,000,
12 and simultaneously the budget justification materials shall
13 include an estimate of the budgetary requirements for
14 each such project for each of the 5 subsequent fiscal years.

15 NATIONAL OCEANIC AND ATMOSPHERIC
16 ADMINISTRATION
17 OPERATIONS, RESEARCH, AND FACILITIES
18 (INCLUDING TRANSFER OF FUNDS)

19 For necessary expenses of activities authorized by law
20 for the National Oceanic and Atmospheric Administration,
21 including maintenance, operation, and hire of aircraft and
22 vessels; pilot programs for state-led fisheries management,
23 notwithstanding any other provision of law; grants, con-
24 tracts, or other payments to nonprofit organizations for

1 the purposes of conducting activities pursuant to coopera-
2 tive agreements; and relocation of facilities,
3 \$3,920,625,000, to remain available until September 30,
4 2021: *Provided*, That fees and donations received by the
5 National Ocean Service for the management of national
6 marine sanctuaries may be retained and used for the sala-
7 ries and expenses associated with those activities, notwith-
8 standing section 3302 of title 31, United States Code: *Pro-*
9 *vided further*, That in addition, \$177,782,000 shall be de-
10 rived by transfer from the fund entitled “Promote and De-
11 velop Fishery Products and Research Pertaining to Amer-
12 ican Fisheries”, which shall only be used for the Fisheries
13 Science and Management program activities: *Provided fur-*
14 *ther*, That of the \$4,115,907,000 provided for in direct
15 obligations under this heading, \$3,920,625,000 is appro-
16 priated from the general fund, \$177,782,000 is provided
17 by transfer, and \$17,500,000 is derived from recoveries
18 of prior year obligations: *Provided further*, That any devi-
19 ation from the amounts designated for specific activities
20 in the report accompanying this Act, or any use of
21 deobligated balances of funds provided under this heading
22 in previous years, shall be subject to the procedures set
23 forth in section 505 of this Act: *Provided further*, That
24 in addition, for necessary retired pay expenses under the
25 Retired Serviceman’s Family Protection and Survivor

1 Benefits Plan, and for payments for the medical care of
2 retired personnel and their dependents under the Depend-
3 ents' Medical Care Act (10 U.S.C. ch. 55), such sums as
4 may be necessary.

5 PROCUREMENT, ACQUISITION, AND CONSTRUCTION
6 (INCLUDING TRANSFER OF FUNDS)

7 For procurement, acquisition, and construction of
8 capital assets, including alteration and modification costs,
9 of the National Oceanic and Atmospheric Administration,
10 \$1,496,000,000, to remain available until September 30,
11 2022, except that funds provided for acquisition and con-
12 struction of vessels and construction of facilities shall re-
13 main available until expended: *Provided*, That of the
14 \$1,509,000,000 provided for in direct obligations under
15 this heading, \$1,496,000,000 is appropriated from the
16 general fund and \$13,000,000 is provided from recoveries
17 of prior year obligations: *Provided further*, That any devi-
18 ation from the amounts designated for specific activities
19 in the report accompanying this Act, or any use of
20 deobligated balances of funds provided under this heading
21 in previous years, shall be subject to the procedures set
22 forth in section 505 of this Act: *Provided further*, That
23 the Secretary of Commerce shall include in budget jus-
24 tification materials that the Secretary submits to Congress
25 in support of the Department of Commerce budget (as

1 submitted with the budget of the President under section
2 1105(a) of title 31, United States Code) an estimate for
3 each National Oceanic and Atmospheric Administration
4 procurement, acquisition, or construction project having a
5 total of more than \$5,000,000 and simultaneously the
6 budget justification shall include an estimate of the budg-
7 etary requirements for each such project for each of the
8 5 subsequent fiscal years: *Provided further*, That, within
9 the amounts appropriated, \$1,302,000 shall be transferred
10 to the “Office of Inspector General” account for activities
11 associated with carrying out investigations and audits re-
12 lated to satellite procurement, acquisition, and construc-
13 tion.

14 PACIFIC COASTAL SALMON RECOVERY

15 For necessary expenses associated with the restora-
16 tion of Pacific salmon populations, \$65,000,000, to re-
17 main available until September 30, 2021: *Provided*, That,
18 of the funds provided herein, the Secretary of Commerce
19 may issue grants to the States of Washington, Oregon,
20 Idaho, Nevada, California, and Alaska, and to the Feder-
21 ally recognized tribes of the Columbia River and Pacific
22 Coast (including Alaska), for projects necessary for con-
23 servation of salmon and steelhead populations that are
24 listed as threatened or endangered, or that are identified
25 by a State as at-risk to be so listed, for maintaining popu-

1 lations necessary for exercise of tribal treaty fishing rights
2 or native subsistence fishing, or for conservation of Pacific
3 coastal salmon and steelhead habitat, based on guidelines
4 to be developed by the Secretary of Commerce: *Provided*
5 *further*, That all funds shall be allocated based on sci-
6 entific and other merit principles and shall not be available
7 for marketing activities: *Provided further*, That funds dis-
8 bursed to States shall be subject to a matching require-
9 ment of funds or documented in-kind contributions of at
10 least 33 percent of the Federal funds.

11 FISHERMEN'S CONTINGENCY FUND

12 For carrying out the provisions of title IV of Public
13 Law 95-372, not to exceed \$349,000, to be derived from
14 receipts collected pursuant to that Act, to remain available
15 until expended.

16 FISHERY DISASTER ASSISTANCE

17 For the necessary expenses associated with the miti-
18 gation of fishery disasters, \$15,000,000, to remain avail-
19 able until expended: *Provided*, That funds shall be used
20 for mitigating the effects of commercial fishery failures
21 and fishery resource disasters as declared by the Secretary
22 of Commerce.

23 FISHERIES FINANCE PROGRAM ACCOUNT

24 Subject to section 502 of the Congressional Budget
25 Act of 1974, during fiscal year 2020, obligations of direct

1 loans may not exceed \$24,000,000 for Individual Fishing
2 Quota loans and not to exceed \$100,000,000 for tradi-
3 tional direct loans as authorized by the Merchant Marine
4 Act of 1936.

5 DEPARTMENTAL MANAGEMENT

6 SALARIES AND EXPENSES

7 For necessary expenses for the management of the
8 Department of Commerce provided for by law, including
9 not to exceed \$4,500 for official reception and representa-
10 tion, \$40,000,000: *Provided*, That of the funds provided
11 under this heading, \$15,000,000 shall be withheld from
12 obligation until the Secretary updates and resubmits to
13 the Committees on Appropriations of the House of Rep-
14 resentatives and the Senate the plan for expenditure de-
15 scribed in the third proviso under the heading “Bureau
16 of the Census—Periodic Census and Programs” in divi-
17 sion C of Public Law 116-6.

18 RENOVATION AND MODERNIZATION

19 For necessary expenses for the renovation and mod-
20 ernization of Department of Commerce facilities,
21 \$1,100,000, to remain available until expended.

22 OFFICE OF INSPECTOR GENERAL

23 For necessary expenses of the Office of Inspector
24 General in carrying out the provisions of the Inspector
25 General Act of 1978 (5 U.S.C. App.), \$35,043,000: *Pro-*

1 *vided*, That notwithstanding section 6413(b) of the Middle
2 Class Tax Relief and Job Creation Act of 2012 (Public
3 Law 112–96), \$2,000,000, to remain available until ex-
4 pended, from the amounts provided under this heading,
5 shall be derived from the Public Safety Trust Fund for
6 activities associated with carrying out investigations and
7 audits related to the First Responder Network Authority
8 (FirstNet).

9 GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

10 SEC. 101. During the current fiscal year, applicable
11 appropriations and funds made available to the Depart-
12 ment of Commerce by this Act shall be available for the
13 activities specified in the Act of October 26, 1949 (15
14 U.S.C. 1514), to the extent and in the manner prescribed
15 by the Act, and, notwithstanding 31 U.S.C. 3324, may
16 be used for advanced payments not otherwise authorized
17 only upon the certification of officials designated by the
18 Secretary of Commerce that such payments are in the
19 public interest.

20 SEC. 102. During the current fiscal year, appropria-
21 tions made available to the Department of Commerce by
22 this Act for salaries and expenses shall be available for
23 hire of passenger motor vehicles as authorized by 31
24 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C.

1 3109; and uniforms or allowances therefor, as authorized
2 by law (5 U.S.C. 5901–5902).

3 SEC. 103. The Secretary of Commerce shall notify
4 the Committees on Appropriations at least 15 days in ad-
5 vance of the acquisition or disposal of any capital asset
6 (including land, structures, and equipment) not specifi-
7 cally provided for in this Act or any other law appro-
8 priating funds to the Department of Commerce.

9 SEC. 104. The requirements set forth by section 105
10 of the Commerce, Justice, Science, and Related Agencies
11 Appropriations Act, 2012 (Public Law 112–55), as
12 amended by section 105 of title I of division B of Public
13 Law 113–6, are hereby adopted by reference and made
14 applicable with respect to fiscal year 2020: *Provided*, That
15 the life cycle cost for the Joint Polar Satellite System is
16 \$11,322,125,000 and the life cycle cost for the Geo-
17 stationary Operational Environmental Satellite R-Series
18 Program is \$10,828,059,000.

19 SEC. 105. Notwithstanding any other provision of
20 law, the Secretary may furnish services (including but not
21 limited to utilities, telecommunications, and security serv-
22 ices) necessary to support the operation, maintenance, and
23 improvement of space that persons, firms, or organizations
24 are authorized, pursuant to the Public Buildings Coopera-
25 tive Use Act of 1976 or other authority, to use or occupy

1 in the Herbert C. Hoover Building, Washington, DC, or
2 other buildings, the maintenance, operation, and protec-
3 tion of which has been delegated to the Secretary from
4 the Administrator of General Services pursuant to the
5 Federal Property and Administrative Services Act of 1949
6 on a reimbursable or non-reimbursable basis. Amounts re-
7 ceived as reimbursement for services provided under this
8 section or the authority under which the use or occupancy
9 of the space is authorized, up to \$100,000, shall be cred-
10 ited to the appropriation or fund which initially bears the
11 costs of such services.

12 SEC. 106. Nothing in this title shall be construed to
13 prevent a grant recipient from deterring child pornog-
14 raphy, copyright infringement, or any other unlawful ac-
15 tivity over its networks.

16 SEC. 107. The Administrator of the National Oceanic
17 and Atmospheric Administration is authorized to use, with
18 their consent, with reimbursement and subject to the lim-
19 its of available appropriations, the land, services, equip-
20 ment, personnel, and facilities of any department, agency,
21 or instrumentality of the United States, or of any State,
22 local government, Indian tribal government, Territory, or
23 possession, or of any political subdivision thereof, or of
24 any foreign government or international organization, for
25 purposes related to carrying out the responsibilities of any

1 statute administered by the National Oceanic and Atmos-
2 pheric Administration.

3 SEC. 108. The National Technical Information Serv-
4 ice shall not charge any customer for a copy of any report
5 or document generated by the Legislative Branch unless
6 the Service has provided information to the customer on
7 how an electronic copy of such report or document may
8 be accessed and downloaded for free online. Should a cus-
9 tomer still require the Service to provide a printed or dig-
10 ital copy of the report or document, the charge shall be
11 limited to recovering the Service's cost of processing, re-
12 producing, and delivering such report or document.

13 SEC. 109. To carry out the responsibilities of the Na-
14 tional Oceanic and Atmospheric Administration (NOAA),
15 the Administrator of NOAA is authorized to: (1) enter
16 into grants and cooperative agreements with; (2) use on
17 a non-reimbursable basis land, services, equipment, per-
18 sonnel, and facilities provided by; and (3) receive and ex-
19 pend funds made available on a consensual basis from: a
20 Federal agency, State or subdivision thereof, local govern-
21 ment, tribal government, Territory, or possession or any
22 subdivisions thereof: *Provided*, That funds received for
23 permitting and related regulatory activities pursuant to
24 this section shall be deposited under the heading "Na-
25 tional Oceanic and Atmospheric Administration—Oper-

1 ations, Research, and Facilities” and shall remain avail-
2 able until September 30, 2022, for such purposes: *Pro-*
3 *vided further*, That all funds within this section and their
4 corresponding uses are subject to section 505 of this Act.

5 SEC. 110. Amounts provided by this Act or by any
6 prior appropriations Act that remain available for obliga-
7 tion, for necessary expenses of the programs of the Eco-
8 nomics and Statistics Administration of the Department
9 of Commerce, including amounts provided for programs
10 of the Bureau of Economic Analysis and the Bureau of
11 the Census, shall be available for expenses of cooperative
12 agreements with appropriate entities, including any Fed-
13 eral, State, or local governmental unit, or institution of
14 higher education, to aid and promote statistical, research,
15 and methodology activities which further the purposes for
16 which such amounts have been made available.

17 SEC. 111. None of the funds made available in this
18 or prior Acts may be obligated or expended for the travel
19 of personnel within the Office of the Secretary of Com-
20 merce from any account other than the “Departmental
21 Management—Salaries and Expenses” account.

22 This title may be cited as the “Department of Com-
23 merce Appropriations Act, 2020”.

1 TITLE II
2 DEPARTMENT OF JUSTICE
3 GENERAL ADMINISTRATION
4 SALARIES AND EXPENSES

5 For expenses necessary for the administration of the
6 Department of Justice, \$114,740,000, of which not to ex-
7 ceed \$4,000,000 for security and construction of Depart-
8 ment of Justice facilities shall remain available until ex-
9 pended.

10 JUSTICE INFORMATION SHARING TECHNOLOGY
11 (INCLUDING TRANSFER OF FUNDS)

12 For necessary expenses for information sharing tech-
13 nology, including planning, development, deployment and
14 departmental direction, \$33,875,000, to remain available
15 until expended: *Provided*, That the Attorney General may
16 transfer up to \$40,000,000 to this account, from funds
17 available to the Department of Justice for information
18 technology, to remain available until expended, for enter-
19 prise-wide information technology initiatives: *Provided fur-*
20 *ther*, That the transfer authority in the preceding proviso
21 is in addition to any other transfer authority contained
22 in this Act: *Provided further*, That any transfer pursuant
23 to the first proviso shall be treated as a reprogramming
24 under section 505 of this Act and shall not be available

1 for obligation or expenditure except in compliance with the
2 procedures set forth in that section.

3 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
4 (INCLUDING TRANSFER OF FUNDS)

5 For expenses necessary for the administration of im-
6 migration-related activities of the Executive Office for Im-
7 migration Review, \$672,966,000, of which \$4,000,000
8 shall be derived by transfer from the Executive Office for
9 Immigration Review fees deposited in the “Immigration
10 Examinations Fee” account, and of which not less than
11 \$25,000,000 shall be available for services and activities
12 provided by the Legal Orientation Program: *Provided*,
13 That not to exceed \$35,000,000 of the total amount made
14 available under this heading shall remain available until
15 expended.

16 OFFICE OF INSPECTOR GENERAL

17 For necessary expenses of the Office of Inspector
18 General, \$105,500,000, including not to exceed \$10,000
19 to meet unforeseen emergencies of a confidential char-
20 acter: *Provided*, That not to exceed \$2,000,000 shall re-
21 main available until September 30, 2021.

22 UNITED STATES PAROLE COMMISSION
23 SALARIES AND EXPENSES

24 For necessary expenses of the United States Parole
25 Commission as authorized, \$13,308,000: *Provided*, That,

1 notwithstanding any other provision of law, upon the expi-
2 ration of a term of office of a Commissioner, the Commis-
3 sioner may continue to act until a successor has been ap-
4 pointed.

5 LEGAL ACTIVITIES

6 SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

7 For expenses necessary for the legal activities of the
8 Department of Justice, not otherwise provided for, includ-
9 ing not to exceed \$20,000 for expenses of collecting evi-
10 dence, to be expended under the direction of, and to be
11 accounted for solely under the certificate of, the Attorney
12 General; the administration of pardon and clemency peti-
13 tions; and rent of private or Government-owned space in
14 the District of Columbia, \$934,600,000, of which not to
15 exceed \$20,000,000 for litigation support contracts shall
16 remain available until expended: *Provided*, That of the
17 amount provided for INTERPOL Washington dues pay-
18 ments, not to exceed \$685,000 shall remain available until
19 expended: *Provided further*, That of the total amount ap-
20 propriated, not to exceed \$9,000 shall be available to
21 INTERPOL Washington for official reception and rep-
22 resentation expenses: *Provided further*, That notwith-
23 standing section 205 of this Act, upon a determination
24 by the Attorney General that emergent circumstances re-
25 quire additional funding for litigation activities of the Civil

1 Division, the Attorney General may transfer such amounts
2 to “Salaries and Expenses, General Legal Activities” from
3 available appropriations for the current fiscal year for the
4 Department of Justice, as may be necessary to respond
5 to such circumstances: *Provided further*, That any transfer
6 pursuant to the preceding proviso shall be treated as a
7 reprogramming under section 505 of this Act and shall
8 not be available for obligation or expenditure except in
9 compliance with the procedures set forth in that section:
10 *Provided further*, That of the amount appropriated, such
11 sums as may be necessary shall be available to the Civil
12 Rights Division for salaries and expenses associated with
13 the election monitoring program under section 8 of the
14 Voting Rights Act of 1965 (52 U.S.C. 10305) and to reim-
15 burse the Office of Personnel Management for such sala-
16 ries and expenses: *Provided further*, That of the amounts
17 provided under this heading for the election monitoring
18 program, \$3,390,000 shall remain available until ex-
19 pended: *Provided further*, That of the amount appro-
20 priated, not less than \$197,387,000 shall be available for
21 the Criminal Division, including related expenses for the
22 Mutual Legal Assistance Treaty Program.

23 In addition, for reimbursement of expenses of the De-
24 partment of Justice associated with processing cases
25 under the National Childhood Vaccine Injury Act of 1986,

1 not to exceed \$13,000,000, to be appropriated from the
2 Vaccine Injury Compensation Trust Fund.

3 SALARIES AND EXPENSES, ANTITRUST DIVISION

4 For expenses necessary for the enforcement of anti-
5 trust and kindred laws, \$166,755,000, to remain available
6 until expended: *Provided*, That notwithstanding any other
7 provision of law, fees collected for premerger notification
8 filings under the Hart-Scott-Rodino Antitrust Improve-
9 ments Act of 1976 (15 U.S.C. 18a), regardless of the year
10 of collection (and estimated to be \$141,000,000 in fiscal
11 year 2020), shall be retained and used for necessary ex-
12 penses in this appropriation, and shall remain available
13 until expended: *Provided further*, That the sum herein ap-
14 propriated from the general fund shall be reduced as such
15 offsetting collections are received during fiscal year 2020,
16 so as to result in a final fiscal year 2020 appropriation
17 from the general fund estimated at \$25,755,000.

18 SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

19 For necessary expenses of the Offices of the United
20 States Attorneys, including inter-governmental and coop-
21 erative agreements, \$2,329,800,000: *Provided*, That of the
22 total amount appropriated, not to exceed \$7,200 shall be
23 available for official reception and representation ex-
24 penses: *Provided further*, That not to exceed \$25,000,000
25 shall remain available until expended: *Provided further*,

1 That each United States Attorney shall establish or par-
2 ticipate in a task force on human trafficking.

3 UNITED STATES TRUSTEE SYSTEM FUND

4 For necessary expenses of the United States Trustee
5 Program, as authorized, \$227,229,000, to remain avail-
6 able until expended: *Provided*, That, notwithstanding any
7 other provision of law, deposits to the United States
8 Trustee System Fund and amounts herein appropriated
9 shall be available in such amounts as may be necessary
10 to pay refunds due depositors: *Provided further*, That, not-
11 withstanding any other provision of law, fees deposited
12 into the Fund pursuant to section 589a(b) of title 28,
13 United States Code (as limited by section 1004(b) of the
14 Bankruptcy Judgeship Act of 2017 (division B of Public
15 Law 115–72)), shall be retained and used for necessary
16 expenses in this appropriation and shall remain available
17 until expended: *Provided further*, That to the extent that
18 fees deposited into the Fund in fiscal year 2020, net of
19 amounts necessary to pay refunds due depositors, exceed
20 \$227,229,000, those excess amounts shall be available in
21 future fiscal years only to the extent provided in advance
22 in appropriations Acts: *Provided further*, That the sum
23 herein appropriated from the general fund shall be re-
24 duced (1) as such fees are received during fiscal year
25 2020, net of amounts necessary to pay refunds due deposi-

1 tors, (estimated at \$309,000,000) and (2) to the extent
2 that any remaining general fund appropriations can be de-
3 rived from amounts deposited in the Fund in previous fis-
4 cal years that are not otherwise appropriated, so as to re-
5 sult in a final fiscal year 2020 appropriation from the gen-
6 eral fund estimated at \$0.

7 SALARIES AND EXPENSES, FOREIGN CLAIMS

8 SETTLEMENT COMMISSION

9 For expenses necessary to carry out the activities of
10 the Foreign Claims Settlement Commission, including
11 services as authorized by section 3109 of title 5, United
12 States Code, \$2,335,000.

13 FEES AND EXPENSES OF WITNESSES

14 For fees and expenses of witnesses, for expenses of
15 contracts for the procurement and supervision of expert
16 witnesses, for private counsel expenses, including ad-
17 vances, and for expenses of foreign counsel, \$270,000,000,
18 to remain available until expended, of which not to exceed
19 \$16,000,000 is for construction of buildings for protected
20 witness safesites; not to exceed \$3,000,000 is for the pur-
21 chase and maintenance of armored and other vehicles for
22 witness security caravans; and not to exceed \$18,000,000
23 is for the purchase, installation, maintenance, and up-
24 grade of secure telecommunications equipment and a se-
25 cure automated information network to store and retrieve

1 the identities and locations of protected witnesses: *Pro-*
2 *vided*, That amounts made available under this heading
3 may not be transferred pursuant to section 205 of this
4 Act.

5 SALARIES AND EXPENSES, COMMUNITY RELATIONS

6 SERVICE

7 (INCLUDING TRANSFER OF FUNDS)

8 For necessary expenses of the Community Relations
9 Service, \$17,000,000: *Provided*, That notwithstanding sec-
10 tion 205 of this Act, upon a determination by the Attorney
11 General that emergent circumstances require additional
12 funding for conflict resolution and violence prevention ac-
13 tivities of the Community Relations Service, the Attorney
14 General may transfer such amounts to the Community Re-
15 lations Service, from available appropriations for the cur-
16 rent fiscal year for the Department of Justice, as may be
17 necessary to respond to such circumstances: *Provided fur-*
18 *ther*, That any transfer pursuant to the preceding proviso
19 shall be treated as a reprogramming under section 505
20 of this Act and shall not be available for obligation or ex-
21 penditure except in compliance with the procedures set
22 forth in that section.

23 ASSETS FORFEITURE FUND

24 For expenses authorized by subparagraphs (B), (F),
25 and (G) of section 524(e)(1) of title 28, United States

1 Code, \$20,514,000, to be derived from the Department
2 of Justice Assets Forfeiture Fund.

3 UNITED STATES MARSHALS SERVICE

4 SALARIES AND EXPENSES

5 For necessary expenses of the United States Mar-
6 shals Service, \$1,444,600,000, of which not to exceed
7 \$6,000 shall be available for official reception and rep-
8 resentation expenses, and not to exceed \$25,000,000 shall
9 remain available until expended.

10 CONSTRUCTION

11 For construction in space controlled, occupied or uti-
12 lized by the United States Marshals Service for prisoner
13 holding and related support, \$15,000,000, to remain avail-
14 able until expended.

15 FEDERAL PRISONER DETENTION

16 For necessary expenses related to United States pris-
17 oners in the custody of the United States Marshals Service
18 as authorized by section 4013 of title 18, United States
19 Code, \$1,792,461,000, to remain available until expended:
20 *Provided*, That not to exceed \$20,000,000 shall be consid-
21 ered “funds appropriated for State and local law enforce-
22 ment assistance” pursuant to section 4013(b) of title 18,
23 United States Code: *Provided further*, That the United
24 States Marshals Service shall be responsible for managing
25 the Justice Prisoner and Alien Transportation System.

1 NATIONAL SECURITY DIVISION

2 SALARIES AND EXPENSES

3 (INCLUDING TRANSFER OF FUNDS)

4 For expenses necessary to carry out the activities of
5 the National Security Division, \$109,585,000, of which
6 not to exceed \$5,000,000 for information technology sys-
7 tems shall remain available until expended: *Provided*, That
8 notwithstanding section 205 of this Act, upon a deter-
9 mination by the Attorney General that emergent cir-
10 cumstances require additional funding for the activities of
11 the National Security Division, the Attorney General may
12 transfer such amounts to this heading from available ap-
13 propriations for the current fiscal year for the Department
14 of Justice, as may be necessary to respond to such cir-
15 cumstances: *Provided further*, That any transfer pursuant
16 to the preceding proviso shall be treated as a reprogram-
17 ming under section 505 of this Act and shall not be avail-
18 able for obligation or expenditure except in compliance
19 with the procedures set forth in that section.

20 INTERAGENCY LAW ENFORCEMENT

21 INTERAGENCY CRIME AND DRUG ENFORCEMENT

22 For necessary expenses for the identification, inves-
23 tigation, and prosecution of individuals associated with the
24 most significant drug trafficking organizations,
25 transnational organized crime, and money laundering or-

1 ganizations not otherwise provided for, to include inter-
2 governmental agreements with State and local law en-
3 forcement agencies engaged in the investigation and pros-
4 ecution of individuals involved in transnational organized
5 crime and drug trafficking, \$570,000,000, of which
6 \$50,000,000 shall remain available until expended: *Pro-*
7 *vided*, That any amounts obligated from appropriations
8 under this heading may be used under authorities avail-
9 able to the organizations reimbursed from this appropria-
10 tion.

11 FEDERAL BUREAU OF INVESTIGATION

12 SALARIES AND EXPENSES

13 For necessary expenses of the Federal Bureau of In-
14 vestigation for detection, investigation, and prosecution of
15 crimes against the United States, \$9,455,928,000, of
16 which not to exceed \$216,000,000 shall remain available
17 until expended: *Provided*, That not to exceed \$184,500
18 shall be available for official reception and representation
19 expenses.

20 CONSTRUCTION

21 For necessary expenses, to include the cost of equip-
22 ment, furniture, and information technology requirements,
23 related to construction or acquisition of buildings, facili-
24 ties and sites by purchase, or as otherwise authorized by
25 law; conversion, modification and extension of federally

1 owned buildings; preliminary planning and design of
2 projects; and operation and maintenance of secure work
3 environment facilities and secure networking capabilities;
4 \$51,895,000, to remain available until expended.

5 DRUG ENFORCEMENT ADMINISTRATION

6 SALARIES AND EXPENSES

7 For necessary expenses of the Drug Enforcement Ad-
8 ministration, including not to exceed \$70,000 to meet un-
9 foreseen emergencies of a confidential character pursuant
10 to section 530C of title 28, United States Code; and ex-
11 penses for conducting drug education and training pro-
12 grams, including travel and related expenses for partici-
13 pants in such programs and the distribution of items of
14 token value that promote the goals of such programs,
15 \$2,356,858,000, of which not to exceed \$75,000,000 shall
16 remain available until expended and not to exceed \$90,000
17 shall be available for official reception and representation
18 expenses.

19 BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND

20 EXPLOSIVES

21 SALARIES AND EXPENSES

22 For necessary expenses of the Bureau of Alcohol, To-
23 bacco, Firearms and Explosives, for training of State and
24 local law enforcement agencies with or without reimburse-
25 ment, including training in connection with the training

1 and acquisition of canines for explosives and fire
2 accelerants detection; and for provision of laboratory as-
3 sistance to State and local law enforcement agencies, with
4 or without reimbursement, \$1,439,000,000, of which not
5 to exceed \$36,000 shall be for official reception and rep-
6 resentation expenses, not to exceed \$1,000,000 shall be
7 available for the payment of attorneys' fees as provided
8 by section 924(d)(2) of title 18, United States Code, and
9 not to exceed \$25,000,000 shall remain available until ex-
10 pended: *Provided*, That none of the funds appropriated
11 herein shall be available to investigate or act upon applica-
12 tions for relief from Federal firearms disabilities under
13 section 925(c) of title 18, United States Code: *Provided*
14 *further*, That such funds shall be available to investigate
15 and act upon applications filed by corporations for relief
16 from Federal firearms disabilities under section 925(c) of
17 title 18, United States Code: *Provided further*, That no
18 funds made available by this or any other Act may be used
19 to transfer the functions, missions, or activities of the Bu-
20 reau of Alcohol, Tobacco, Firearms and Explosives to
21 other agencies or Departments.

1 FEDERAL PRISON SYSTEM

2 SALARIES AND EXPENSES

3 (INCLUDING TRANSFER OF FUNDS)

4 For necessary expenses of the Federal Prison System
5 for the administration, operation, and maintenance of
6 Federal penal and correctional institutions, and for the
7 provision of technical assistance and advice on corrections
8 related issues to foreign governments, \$7,325,000,000:
9 *Provided*, That the Attorney General may transfer to the
10 Department of Health and Human Services such amounts
11 as may be necessary for direct expenditures by that De-
12 partment for medical relief for inmates of Federal penal
13 and correctional institutions: *Provided further*, That the
14 Director of the Federal Prison System, where necessary,
15 may enter into contracts with a fiscal agent or fiscal inter-
16 mediary claims processor to determine the amounts pay-
17 able to persons who, on behalf of the Federal Prison Sys-
18 tem, furnish health services to individuals committed to
19 the custody of the Federal Prison System: *Provided fur-*
20 *ther*, That not to exceed \$5,400 shall be available for offi-
21 cial reception and representation expenses: *Provided fur-*
22 *ther*, That not to exceed \$50,000,000 shall remain avail-
23 able for necessary operations until September 30, 2021:
24 *Provided further*, That, of the amounts provided for con-
25 tract confinement, not to exceed \$20,000,000 shall remain

1 available until expended to make payments in advance for
2 grants, contracts and reimbursable agreements, and other
3 expenses: *Provided further*, That the Director of the Fed-
4 eral Prison System may accept donated property and serv-
5 ices relating to the operation of the prison card program
6 from a not-for-profit entity which has operated such pro-
7 gram in the past, notwithstanding the fact that such not-
8 for-profit entity furnishes services under contracts to the
9 Federal Prison System relating to the operation of pre-
10 release services, halfway houses, or other custodial facili-
11 ties.

12 BUILDINGS AND FACILITIES

13 For planning, acquisition of sites, and construction
14 of new facilities; purchase and acquisition of facilities and
15 remodeling, and equipping of such facilities for penal and
16 correctional use, including all necessary expenses incident
17 thereto, by contract or force account; and constructing,
18 remodeling, and equipping necessary buildings and facili-
19 ties at existing penal and correctional institutions, includ-
20 ing all necessary expenses incident thereto, by contract or
21 force account, \$150,000,000, to remain available until ex-
22 pended: *Provided*, That labor of United States prisoners
23 may be used for work performed under this appropriation.

1 FEDERAL PRISON INDUSTRIES, INCORPORATED

2 The Federal Prison Industries, Incorporated, is here-
3 by authorized to make such expenditures within the limits
4 of funds and borrowing authority available, and in accord
5 with the law, and to make such contracts and commit-
6 ments without regard to fiscal year limitations as provided
7 by section 9104 of title 31, United States Code, as may
8 be necessary in carrying out the program set forth in the
9 budget for the current fiscal year for such corporation.

10 LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL
11 PRISON INDUSTRIES, INCORPORATED

12 Not to exceed \$2,700,000 of the funds of the Federal
13 Prison Industries, Incorporated, shall be available for its
14 administrative expenses, and for services as authorized by
15 section 3109 of title 5, United States Code, to be com-
16 puted on an accrual basis to be determined in accordance
17 with the corporation's current prescribed accounting sys-
18 tem, and such amounts shall be exclusive of depreciation,
19 payment of claims, and expenditures which such account-
20 ing system requires to be capitalized or charged to cost
21 of commodities acquired or produced, including selling and
22 shipping expenses, and expenses in connection with acqui-
23 sition, construction, operation, maintenance, improvement,
24 protection, or disposition of facilities and other property
25 belonging to the corporation or in which it has an interest.

1 STATE AND LOCAL LAW ENFORCEMENT ACTIVITIES
2 OFFICE ON VIOLENCE AGAINST WOMEN
3 VIOLENCE AGAINST WOMEN PREVENTION AND
4 PROSECUTION PROGRAMS
5 (INCLUDING TRANSFER OF FUNDS)

6 For grants, contracts, cooperative agreements, and
7 other assistance for the prevention and prosecution of vio-
8 lence against women, as authorized by the Omnibus Crime
9 Control and Safe Streets Act of 1968 (34 U.S.C. 10101
10 et seq.) (“the 1968 Act”); the Violent Crime Control and
11 Law Enforcement Act of 1994 (Public Law 103–322)
12 (“the 1994 Act”); the Victims of Child Abuse Act of 1990
13 (Public Law 101–647) (“the 1990 Act”); the Prosecu-
14 torial Remedies and Other Tools to end the Exploitation
15 of Children Today Act of 2003 (Public Law 108–21); the
16 Juvenile Justice and Delinquency Prevention Act of 1974
17 (34 U.S.C. 11101 et seq.) (“the 1974 Act”); the Victims
18 of Trafficking and Violence Protection Act of 2000 (Public
19 Law 106–386) (“the 2000 Act”); the Violence Against
20 Women and Department of Justice Reauthorization Act
21 of 2005 (Public Law 109–162) (“the 2005 Act”); the Vio-
22 lence Against Women Reauthorization Act of 2013 (Public
23 Law 113–4) (“the 2013 Act”); and the Rape Survivor
24 Child Custody Act of 2015 (Public Law 114–22) (“the
25 2015 Act”); and for related victims services,

1 \$582,500,000, to remain available until expended, which
2 shall be derived by transfer from amounts available for
3 obligation in this Act from the Fund established by section
4 1402 of chapter XIV of title II of Public Law 98–473
5 (34 U.S.C. 20101), notwithstanding section 1402(d) of
6 such Act of 1984, and merged with the amounts otherwise
7 made available under this heading: *Provided*, That except
8 as otherwise provided by law, not to exceed 5 percent of
9 funds made available under this heading may be used for
10 expenses related to evaluation, training, and technical as-
11 sistance: *Provided further*, That of the amount provided—

12 (1) \$222,000,000 is for grants to combat vio-
13 lence against women, as authorized by part T of the
14 1968 Act;

15 (2) \$41,000,000 is for transitional housing as-
16 sistance grants for victims of domestic violence, dat-
17 ing violence, stalking, or sexual assault as authorized
18 by section 40299 of the 1994 Act;

19 (3) \$3,000,000 is for the National Institute of
20 Justice and the Bureau of Justice Statistics for re-
21 search, evaluation, and statistics of violence against
22 women and related issues addressed by grant pro-
23 grams of the Office on Violence Against Women,
24 which shall be transferred to “Research, Evaluation

1 and Statistics” for administration by the Office of
2 Justice Programs;

3 (4) \$20,000,000 is for a grant program to pro-
4 vide services to advocate for and respond to youth
5 victims of domestic violence, dating violence, sexual
6 assault, and stalking; assistance to children and
7 youth exposed to such violence; programs to engage
8 men and youth in preventing such violence; and as-
9 sistance to middle and high school students through
10 education and other services related to such violence:
11 *Provided*, That unobligated balances available for
12 the programs authorized by sections 41201, 41204,
13 41303, and 41305 of the 1994 Act, prior to its
14 amendment by the 2013 Act, shall be available for
15 this program: *Provided further*, That 10 percent of
16 the total amount available for this grant program
17 shall be available for grants under the program au-
18 thorized by section 2015 of the 1968 Act: *Provided*
19 *further*, That the definitions and grant conditions in
20 section 40002 of the 1994 Act shall apply to this
21 program;

22 (5) \$62,000,000 is for grants to encourage ar-
23 rest policies as authorized by part U of the 1968
24 Act, of which \$4,000,000 is for a homicide reduction
25 initiative;

1 (6) \$50,000,000 is for sexual assault victims
2 assistance, as authorized by section 41601 of the
3 1994 Act;

4 (7) \$50,000,000 is for rural domestic violence
5 and child abuse enforcement assistance grants, as
6 authorized by section 40295 of the 1994 Act;

7 (8) \$26,000,000 is for grants to reduce violent
8 crimes against women on campus, as authorized by
9 section 304 of the 2005 Act;

10 (9) \$57,000,000 is for legal assistance for vic-
11 tims, as authorized by section 1201 of the 2000 Act;

12 (10) \$9,000,000 is for enhanced training and
13 services to end violence against and abuse of women
14 in later life, as authorized by section 40801 of the
15 1994 Act;

16 (11) \$22,000,000 is for grants to support fami-
17 lies in the justice system, as authorized by section
18 1301 of the 2000 Act: *Provided*, That unobligated
19 balances available for the programs authorized by
20 section 1301 of the 2000 Act and section 41002 of
21 the 1994 Act, prior to their amendment by the 2013
22 Act, shall be available for this program;

23 (12) \$9,000,000 is for education and training
24 to end violence against and abuse of women with

1 disabilities, as authorized by section 1402 of the
2 2000 Act;

3 (13) \$1,000,000 is for the National Resource
4 Center on Workplace Responses to assist victims of
5 domestic violence, as authorized by section 41501 of
6 the 1994 Act;

7 (14) \$1,000,000 is for analysis and research on
8 violence against Indian women, including as author-
9 ized by section 904 of the 2005 Act: *Provided*, That
10 such funds may be transferred to “Research, Eval-
11 uation and Statistics” for administration by the Of-
12 fice of Justice Programs;

13 (15) \$1,000,000 is for a national clearinghouse
14 that provides training and technical assistance on
15 issues relating to sexual assault of American Indian
16 and Alaska Native women;

17 (16) \$5,000,000 is for grants to assist tribal
18 governments in exercising special domestic violence
19 criminal jurisdiction, as authorized by section 904 of
20 the 2013 Act: *Provided*, That the grant conditions in
21 section 40002(b) of the 1994 Act shall apply to this
22 program; and

23 (17) \$3,500,000 is for the purposes authorized
24 under the 2015 Act.

1 OFFICE OF JUSTICE PROGRAMS
2 RESEARCH, EVALUATION AND STATISTICS
3 For grants, contracts, cooperative agreements, and
4 other assistance authorized by title I of the Omnibus
5 Crime Control and Safe Streets Act of 1968 (“the 1968
6 Act”); the Juvenile Justice and Delinquency Prevention
7 Act of 1974 (“the 1974 Act”); the Missing Children’s As-
8 sistance Act (34 U.S.C. 11291 et seq.); the Prosecutorial
9 Remedies and Other Tools to end the Exploitation of Chil-
10 dren Today Act of 2003 (Public Law 108–21); the Justice
11 for All Act of 2004 (Public Law 108–405); the Violence
12 Against Women and Department of Justice Reauthoriza-
13 tion Act of 2005 (Public Law 109–162) (“the 2005 Act”);
14 the Victims of Child Abuse Act of 1990 (Public Law 101–
15 647); the Second Chance Act of 2007 (Public Law 110–
16 199); the Victims of Crime Act of 1984 (Public Law 98–
17 473); the Adam Walsh Child Protection and Safety Act
18 of 2006 (Public Law 109–248) (“the Adam Walsh Act”);
19 the PROTECT Our Children Act of 2008 (Public Law
20 110–401); subtitle D of title II of the Homeland Security
21 Act of 2002 (Public Law 107–296) (“the 2002 Act”); the
22 NICS Improvement Amendments Act of 2007 (Public
23 Law 110–180); the Violence Against Women Reauthoriza-
24 tion Act of 2013 (Public Law 113–4) (“the 2013 Act”);

1 and other programs, \$80,000,000, to remain available
2 until expended, of which—

3 (1) \$43,000,000 is for criminal justice statistics
4 programs, and other activities, as authorized by part
5 C of title I of the 1968 Act, of which \$5,000,000 is
6 for a nationwide incident-based crime statistics pro-
7 gram; and

8 (2) \$37,000,000 is for research, development,
9 and evaluation programs, and other activities as au-
10 thORIZED by part B of title I of the 1968 Act and
11 subtitle D of title II of the 2002 Act, of which
12 \$5,000,000 is for research targeted toward devel-
13 oping a better understanding of the domestic
14 radicalization phenomenon, and advancing evidence-
15 based strategies for effective intervention and pre-
16 vention; \$1,000,000 is for research to study the root
17 causes of school violence to include the impact and
18 effectiveness of grants made under the STOP School
19 Violence Act; \$1,000,000 is for a study to better
20 protect children against online predatory behavior as
21 part of the National Juvenile Online Victimization
22 Studies (N-JOVS); \$3,000,000 is for a national
23 center for restorative justice; and \$3,000,000 is for
24 corrections-related research, and \$1,500,000 is for
25 expenses (including research and evaluation) associ-

1 ated with the National Institute of Justice’s imple-
2 mentation of the First Step Act of 2018 (Public
3 Law 115–391).

4 STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE
5 (INCLUDING TRANSFER OF FUNDS)

6 For grants, contracts, cooperative agreements, and
7 other assistance authorized by the Violent Crime Control
8 and Law Enforcement Act of 1994 (Public Law 103–322)
9 (“the 1994 Act”); the Omnibus Crime Control and Safe
10 Streets Act of 1968 (“the 1968 Act”); the Justice for All
11 Act of 2004 (Public Law 108–405); the Victims of Child
12 Abuse Act of 1990 (Public Law 101–647) (“the 1990
13 Act”); the Trafficking Victims Protection Reauthorization
14 Act of 2005 (Public Law 109–164); the Violence Against
15 Women and Department of Justice Reauthorization Act
16 of 2005 (Public Law 109–162) (“the 2005 Act”); the
17 Adam Walsh Child Protection and Safety Act of 2006
18 (Public Law 109–248) (“the Adam Walsh Act”); the Vic-
19 tims of Trafficking and Violence Protection Act of 2000
20 (Public Law 106–386); the NICS Improvement Amend-
21 ments Act of 2007 (Public Law 110–180); subtitle D of
22 title II of the Homeland Security Act of 2002 (Public Law
23 107–296) (“the 2002 Act”); the Second Chance Act of
24 2007 (Public Law 110–199); the Prioritizing Resources
25 and Organization for Intellectual Property Act of 2008

1 (Public Law 110–403); the Victims of Crime Act of 1984
2 (Public Law 98–473); the Mentally Ill Offender Treat-
3 ment and Crime Reduction Reauthorization and Improve-
4 ment Act of 2008 (Public Law 110–416); the Violence
5 Against Women Reauthorization Act of 2013 (Public Law
6 113–4) (“the 2013 Act”); the Comprehensive Addiction
7 and Recovery Act of 2016 (Public Law 114–198)
8 (“CARA”); the Justice for All Reauthorization Act of
9 2016 (Public Law 114–324); Kevin and Avonte’s Law (di-
10 vision Q of Public Law 115–141) (“Kevin and Avonte’s
11 Law”); the Keep Young Athletes Safe Act of 2018 (title
12 III of division S of Public Law 115–141) (“the Keep
13 Young Athletes Safe Act”); the STOP School Violence Act
14 of 2018 (title V of division S of Public Law 115–141)
15 (“the STOP School Violence Act”); the Fix NICS Act of
16 2018 (title VI of division S of Public Law 115–141); the
17 Project Safe Neighborhoods Grant Program Authorization
18 Act of 2018 (Public Law 115–185); and the SUPPORT
19 for Patients and Communities Act (Public Law 115–271);
20 and other programs, \$1,933,000,000, to remain available
21 until expended as follows—

22 (1) \$530,250,000 for the Edward Byrne Memo-
23 rial Justice Assistance Grant program as authorized
24 by subpart 1 of part E of title I of the 1968 Act
25 (except that section 1001(c), and the special rules

1 for Puerto Rico under section 505(g) of title I of the
2 1968 Act shall not apply for purposes of this Act),
3 of which, notwithstanding such subpart 1,
4 \$15,000,000 is for the Officer Robert Wilson III
5 Memorial Initiative on Preventing Violence Against
6 Law Enforcement Officer Resilience and Surviv-
7 ability (VALOR), \$7,500,000 is for an initiative to
8 support evidence-based policing, \$10,000,000 is for
9 an initiative to enhance prosecutorial decision-mak-
10 ing, \$3,600,000 is for the operationalization, mainte-
11 nance and expansion of the National Missing and
12 Unidentified Persons System, \$2,500,000 is for an
13 academic based training initiative to improve police-
14 based responses to people with mental illness or de-
15 velopmental disabilities, \$2,000,000 is for a student
16 loan repayment assistance program pursuant to sec-
17 tion 952 of Public Law 110–315, \$15,500,000 is for
18 prison rape prevention and prosecution grants to
19 States and units of local government, and other pro-
20 grams, as authorized by the Prison Rape Elimini-
21 nation Act of 2003 (Public Law 108–79),
22 \$2,000,000 is for a grant program authorized by
23 Kevin and Avonte’s Law, \$3,000,000 is for a re-
24 gional law enforcement technology initiative,
25 \$7,000,000 is for the Capital Litigation Improve-

1 ment Grant Program, as authorized by section 426
2 of Public Law 108–405, and for grants for wrongful
3 conviction review, \$2,000,000 is for emergency law
4 enforcement assistance for events occurring during
5 or after fiscal year 2020, as authorized by section
6 609M of the Justice Assistance Act of 1984 (34
7 U.S.C. 50101), \$2,000,000 is for grants to States
8 and units of local government to deploy managed ac-
9 cess systems to combat contraband cell phone use in
10 prison, \$4,000,000 is for a program to improve juve-
11 nile indigent defense, \$100,000,000 is for grants for
12 law enforcement activities associated with the presi-
13 dential nominating conventions, and \$8,000,000 is
14 for community-based violence prevention initiatives;

15 (2) \$260,000,000 for the State Criminal Alien
16 Assistance Program, as authorized by section
17 241(i)(5) of the Immigration and Nationality Act (8
18 U.S.C. 1231(i)(5)): *Provided*, That no jurisdiction
19 shall request compensation for any cost greater than
20 the actual cost for Federal immigration and other
21 detainees housed in State and local detention facili-
22 ties;

23 (3) \$100,000,000 for victim services programs
24 for victims of trafficking, as authorized by section
25 107(b)(2) of Public Law 106–386, for programs au-

1 thorized under Public Law 109–164, or programs
2 authorized under Public Law 113–4;

3 (4) \$14,000,000 for economic, high technology,
4 white collar, and Internet crime prevention grants,
5 including as authorized by section 401 of Public
6 Law 110–403, of which \$2,500,000 is for competi-
7 tive grants that help State and local law enforce-
8 ment tackle intellectual property thefts, and
9 \$2,000,000 for a competitive grant program for
10 training students in computer forensics and digital
11 investigation;

12 (5) \$20,000,000 for sex offender management
13 assistance, as authorized by the Adam Walsh Act,
14 and related activities;

15 (6) \$25,000,000 for the matching grant pro-
16 gram for law enforcement armor vests, as authorized
17 by section 2501 of title I of the 1968 Act: *Provided*,
18 That \$1,500,000 is transferred directly to the Na-
19 tional Institute of Standards and Technology’s Of-
20 fice of Law Enforcement Standards for research,
21 testing and evaluation programs;

22 (7) \$1,000,000 for the National Sex Offender
23 Public Website;

24 (8) \$80,000,000 for grants to States to up-
25 grade criminal and mental health records for the

1 National Instant Criminal Background Check Sys-
2 tem, of which no less than \$27,500,000 shall be for
3 grants made under the authorities of the NICS Im-
4 provement Amendments Act of 2007 (Public Law
5 110–180) and Fix NICS Act of 2018;

6 (9) \$30,000,000 for Paul Coverdell Forensic
7 Sciences Improvement Grants under part BB of title
8 I of the 1968 Act;

9 (10) \$142,000,000 for DNA-related and foren-
10 sic programs and activities, of which—

11 (A) \$100,000,000 is for the purposes au-
12 thorized under section 2 of the DNA Analysis
13 Backlog Elimination Act of 2000 (Public Law
14 106–546) (the Debbie Smith DNA Backlog
15 Grant Program): *Provided*, That up to 4 per-
16 cent of funds made available under this para-
17 graph may be used for the purposes described
18 in the DNA Training and Education for Law
19 Enforcement, Correctional Personnel, and
20 Court Officers program (Public Law 108–405,
21 section 303);

22 (B) \$30,000,000 for other local, State, and
23 Federal forensic activities;

24 (C) \$8,000,000 is for the purposes de-
25 scribed in the Kirk Bloodsworth Post-Convic-

1 tion DNA Testing Grant Program (Public Law
2 108–405, section 412); and

3 (D) \$4,000,000 is for Sexual Assault Fo-
4 rensic Exam Program grants, including as au-
5 thorized by section 304 of Public Law 108–405;

6 (11) \$49,000,000 for a grant program for com-
7 munity-based sexual assault response reform;

8 (12) \$12,000,000 for the court-appointed spe-
9 cial advocate program, as authorized by section 217
10 of the 1990 Act;

11 (13) \$106,500,000 for offender reentry pro-
12 grams and research, as authorized by the Second
13 Chance Act of 2007 (Public Law 110–199), without
14 regard to the time limitations specified at section
15 6(1) of such Act, of which not to exceed \$6,000,000
16 is for a program to improve State, local, and tribal
17 probation or parole supervision efforts and strate-
18 gies, \$5,000,000 is for Children of Incarcerated Par-
19 ents Demonstrations to enhance and maintain pa-
20 rental and family relationships for incarcerated par-
21 ents as a reentry or recidivism reduction strategy,
22 and \$4,000,000 is for additional replication sites
23 employing the Project HOPE Opportunity Probation
24 with Enforcement model implementing swift and cer-
25 tain sanctions in probation, and for a research

1 project on the effectiveness of the model: *Provided*,
2 That up to \$7,500,000 of funds made available in
3 this paragraph may be used for performance-based
4 awards for Pay for Success projects, of which up to
5 \$5,000,000 shall be for Pay for Success programs
6 implementing the Permanent Supportive Housing
7 Model;

8 (14) \$80,000,000 for initiatives to improve po-
9 lice-community relations, of which \$25,000,000 is
10 for a competitive matching grant program for pur-
11 chases of body-worn cameras for State, local and
12 Tribal law enforcement, \$35,000,000 is for a justice
13 reinvestment initiative, for activities related to crimi-
14 nal justice reform and recidivism reduction, and
15 \$20,000,000 is for an Edward Byrne Memorial
16 criminal justice innovation program;

17 (15) \$375,000,000 for comprehensive opioid
18 abuse reduction activities, including as authorized by
19 CARA, and for the following programs, which shall
20 address opioid abuse reduction consistent with un-
21 derlying program authorities—

22 (A) \$83,000,000 for Drug Courts, as au-
23 thorized by section 1001(a)(25)(A) of title I of
24 the 1968 Act;

1 (B) \$35,000,000 for mental health courts
2 and adult and juvenile collaboration program
3 grants, as authorized by parts V and HH of
4 title I of the 1968 Act, and the Mentally Ill Of-
5 fender Treatment and Crime Reduction Reau-
6 thorization and Improvement Act of 2008 (Pub-
7 lic Law 110–416);

8 (C) \$33,000,000 for grants for Residential
9 Substance Abuse Treatment for State Pris-
10 oners, as authorized by part S of title I of the
11 1968 Act;

12 (D) \$25,000,000 for a veterans treatment
13 courts program;

14 (E) \$30,000,000 for a program to monitor
15 prescription drugs and scheduled listed chemical
16 products;

17 (F) \$159,000,000 for a comprehensive
18 opioid abuse program; and

19 (G) \$10,000,000 is for law enforcement as-
20 sisted diversion program grants;

21 (16) \$2,500,000 for a competitive grant pro-
22 gram authorized by the Keep Young Athletes Safe
23 Act;

24 (17) \$93,750,000 for grants to be administered
25 by the Bureau of Justice Assistance including for

1 purposes authorized under the STOP School Vio-
2 lence Act, of which \$2,000,000 is for a center for
3 campus safety;

4 (18) \$10,000,000 for a competitive grant pilot
5 program for qualified nonprofit organizations to pro-
6 vide legal representation to immigrants arriving at
7 the southwest border seeking asylum and other
8 forms of legal protection in the United States; and

9 (19) \$2,000,000 for grants to state and local
10 law enforcement agencies for the expenses associated
11 with the investigation and prosecution of criminal of-
12 fenses, involving civil rights, authorized by the Em-
13 mettt Till Unsolved Civil Rights Crimes Reauthoriza-
14 tion Act of 2016 (Public Law 114-325).

15

16 JUVENILE JUSTICE PROGRAMS

17 For grants, contracts, cooperative agreements, and
18 other assistance authorized by the Juvenile Justice and
19 Delinquency Prevention Act of 1974 (“the 1974 Act”); the
20 Omnibus Crime Control and Safe Streets Act of 1968
21 (“the 1968 Act”); the Violence Against Women and De-
22 partment of Justice Reauthorization Act of 2005 (Public
23 Law 109-162) (“the 2005 Act”); the Missing Children’s
24 Assistance Act (34 U.S.C. 11291 et seq.); the Prosecu-
25 torial Remedies and Other Tools to end the Exploitation

1 of Children Today Act of 2003 (Public Law 108–21); the
2 Victims of Child Abuse Act of 1990 (Public Law 101–
3 647) (“the 1990 Act”); the Adam Walsh Child Protection
4 and Safety Act of 2006 (Public Law 109–248) (“the
5 Adam Walsh Act”); the PROTECT Our Children Act of
6 2008 (Public Law 110–401); the Violence Against Women
7 Reauthorization Act of 2013 (Public Law 113–4) (“the
8 2013 Act”); the Justice for All Reauthorization Act of
9 2016 (Public Law 114–324); and other juvenile justice
10 programs, \$341,500,000, to remain available until ex-
11 pended as follows—

12 (1) \$65,000,000 for programs authorized by
13 section 221 of the 1974 Act, and for training and
14 technical assistance to assist small, nonprofit organi-
15 zations with the Federal grants process: *Provided*,
16 That of the amounts provided under this paragraph,
17 \$500,000 shall be for a competitive demonstration
18 grant program to support emergency planning
19 among State, local and tribal juvenile justice resi-
20 dential facilities;

21 (2) \$100,000,000 for youth mentoring grants;

22 (3) \$49,500,000 for delinquency prevention, as
23 authorized by section 505 of the 1974 Act, of which,
24 pursuant to sections 261 and 262 thereof—

1 (A) \$5,000,000 shall be for grants to pre-
2 vent trafficking of girls;

3 (B) \$7,500,000 shall be for the Tribal
4 Youth Program;

5 (C) \$500,000 shall be for an Internet site
6 providing information and resources on children
7 of incarcerated parents;

8 (D) \$2,000,000 shall be for competitive
9 grants focusing on girls in the juvenile justice
10 system;

11 (E) \$9,000,000 shall be for an opioid-af-
12 fected youth initiative;

13 (F) \$8,000,000 shall be for an initiative
14 relating to children exposed to violence; and

15 (4) \$28,000,000 for programs authorized by
16 the Victims of Child Abuse Act of 1990;

17 (5) \$85,000,000 for missing and exploited chil-
18 dren programs, including as authorized by sections
19 404(b) and 405(a) of the 1974 Act (except that sec-
20 tion 102(b)(4)(B) of the PROTECT Our Children
21 Act of 2008 (Public Law 110–401) shall not apply
22 for purposes of this Act);

23 (6) \$4,000,000 for child abuse training pro-
24 grams for judicial personnel and practitioners, as
25 authorized by section 222 of the 1990 Act; and

1 (7) \$10,000,000 for the Juvenile Accountability
2 Block Grants program as authorized by part R of
3 title I of the 1968 Act and Guam shall be considered
4 a State.

5 PUBLIC SAFETY OFFICER BENEFITS

6 (INCLUDING TRANSFER OF FUNDS)

7 For payments and expenses authorized under section
8 1001(a)(4) of title I of the Omnibus Crime Control and
9 Safe Streets Act of 1968, such sums as are necessary (in-
10 cluding amounts for administrative costs), to remain avail-
11 able until expended; and \$24,800,000 for payments au-
12 thorized by section 1201(b) of such Act and for edu-
13 cational assistance authorized by section 1218 of such Act,
14 to remain available until expended: *Provided*, That not-
15 withstanding section 205 of this Act, upon a determina-
16 tion by the Attorney General that emergent circumstances
17 require additional funding for such disability and edu-
18 cation payments, the Attorney General may transfer such
19 amounts to “Public Safety Officer Benefits” from avail-
20 able appropriations for the Department of Justice as may
21 be necessary to respond to such circumstances: *Provided*
22 *further*, That any transfer pursuant to the preceding pro-
23 viso shall be treated as a reprogramming under section
24 505 of this Act and shall not be available for obligation

1 or expenditure except in compliance with the procedures
2 set forth in that section.

3 COMMUNITY ORIENTED POLICING SERVICES
4 COMMUNITY ORIENTED POLICING SERVICES PROGRAMS
5 (INCLUDING TRANSFER OF FUNDS)

6 For activities authorized by the Violent Crime Con-
7 trol and Law Enforcement Act of 1994 (Public Law 103-
8 322); the Omnibus Crime Control and Safe Streets Act
9 of 1968 (“the 1968 Act”); the Violence Against Women
10 and Department of Justice Reauthorization Act of 2005
11 (Public Law 109-162) (“the 2005 Act”); and the SUP-
12 PORT for Patients and Communities Act (Public Law
13 115-271), \$323,000,000, to remain available until ex-
14 pended: *Provided*, That any balances made available
15 through prior year deobligations shall only be available in
16 accordance with section 505 of this Act: *Provided further*,
17 That of the amount provided under this heading—

18 (1) \$239,750,000 is for grants under section
19 1701 of title I of the 1968 Act (34 U.S.C. 10381)
20 for the hiring and rehiring of additional career law
21 enforcement officers under part Q of such title not-
22 withstanding subsection (i) of such section: *Pro-*
23 *vided*, That, notwithstanding section 1704(c) of such
24 title (34 U.S.C. 10384(c)), funding for hiring or re-
25 hiring a career law enforcement officer may not ex-

1 ceed \$125,000 unless the Director of the Office of
2 Community Oriented Policing Services grants a
3 waiver from this limitation: *Provided further*, That of
4 the amounts appropriated under this paragraph,
5 \$6,500,000 is for community policing development
6 activities in furtherance of the purposes in section
7 1701: *Provided further*, That of the amounts appro-
8 priated under this paragraph \$38,000,000 is for re-
9 gional information sharing activities, as authorized
10 by part M of title I of the 1968 Act, which shall be
11 transferred to and merged with “Research, Evalua-
12 tion, and Statistics” for administration by the Office
13 of Justice Programs: *Provided further*, That within
14 the amounts appropriated under this paragraph, no
15 less than \$3,000,000 is to support the Tribal Access
16 Program: *Provided further*, That within the amounts
17 appropriated under this paragraph, \$2,000,000 is
18 for training, peer mentoring, and mental health pro-
19 gram activities as authorized under the Law En-
20 forcement Mental Health and Wellness Act (Public
21 Law 115–113);

22 (2) \$12,000,000 is for activities authorized by
23 the POLICE Act of 2016 (Public Law 114–199);

24 (3) \$8,000,000 is for competitive grants to
25 State law enforcement agencies in States with high

1 seizures of precursor chemicals, finished meth-
2 amphetamine, laboratories, and laboratory dump sei-
3 zures: *Provided*, That funds appropriated under this
4 paragraph shall be utilized for investigative purposes
5 to locate or investigate illicit activities, including
6 precursor diversion, laboratories, or methamphet-
7 amine traffickers;

8 (4) \$32,000,000 is for competitive grants to
9 statewide law enforcement agencies in States with
10 high rates of primary treatment admissions for her-
11 oin and other opioids: *Provided*, That these funds
12 shall be utilized for investigative purposes to locate
13 or investigate illicit activities, including activities re-
14 lated to the distribution of heroin or unlawful dis-
15 tribution of prescription opioids, or unlawful heroin
16 and prescription opioid traffickers through statewide
17 collaboration; and

18 (5) \$31,250,000 is for competitive grants to be
19 administered by the Community Oriented Policing
20 Services Office for purposes authorized under the
21 STOP School Violence Act (title V of division S of
22 Public Law 115–141).

1 osophical beliefs of individual employees of the Bureau of
2 Prisons.

3 SEC. 205. Not to exceed 5 percent of any appropria-
4 tion made available for the current fiscal year for the De-
5 partment of Justice in this Act may be transferred be-
6 tween such appropriations, but no such appropriation, ex-
7 cept as otherwise specifically provided, shall be increased
8 by more than 10 percent by any such transfers: *Provided*,
9 That any transfer pursuant to this section shall be treated
10 as a reprogramming of funds under section 505 of this
11 Act and shall not be available for obligation except in com-
12 pliance with the procedures set forth in that section.

13 SEC. 206. None of the funds made available under
14 this title may be used by the Federal Bureau of Prisons
15 or the United States Marshals Service for the purpose of
16 transporting an individual who is a prisoner pursuant to
17 conviction for crime under State or Federal law and is
18 classified as a maximum or high security prisoner, other
19 than to a prison or other facility certified by the Federal
20 Bureau of Prisons as appropriately secure for housing
21 such a prisoner.

22 SEC. 207. (a) None of the funds appropriated by this
23 Act may be used by Federal prisons to purchase cable tele-
24 vision services, or to rent or purchase audiovisual or elec-

1 tronic media or equipment used primarily for recreational
2 purposes.

3 (b) Subsection (a) does not preclude the rental, main-
4 tenance, or purchase of audiovisual or electronic media or
5 equipment for inmate training, religious, or educational
6 programs.

7 SEC. 208. None of the funds made available under
8 this title shall be obligated or expended for any new or
9 enhanced information technology program having total es-
10 timated development costs in excess of \$100,000,000, un-
11 less the Deputy Attorney General and the investment re-
12 view board certify to the Committees on Appropriations
13 of the House of Representatives and the Senate that the
14 information technology program has appropriate program
15 management controls and contractor oversight mecha-
16 nisms in place, and that the program is compatible with
17 the enterprise architecture of the Department of Justice.

18 SEC. 209. The notification thresholds and procedures
19 set forth in section 505 of this Act shall apply to devi-
20 ations from the amounts designated for specific activities
21 in this Act and in the report accompanying this Act, and
22 to any use of deobligated balances of funds provided under
23 this title in previous years.

24 SEC. 210. None of the funds appropriated by this Act
25 may be used to plan for, begin, continue, finish, process,

1 or approve a public-private competition under the Office
2 of Management and Budget Circular A-76 or any suc-
3 cessor administrative regulation, directive, or policy for
4 work performed by employees of the Bureau of Prisons
5 or of Federal Prison Industries, Incorporated.

6 SEC. 211. Notwithstanding any other provision of
7 law, no funds shall be available for the salary, benefits,
8 or expenses of any United States Attorney assigned dual
9 or additional responsibilities by the Attorney General or
10 his designee that exempt that United States Attorney
11 from the residency requirements of section 545 of title 28,
12 United States Code.

13 SEC. 212. At the discretion of the Attorney General,
14 and in addition to any amounts that otherwise may be
15 available (or authorized to be made available) by law, with
16 respect to funds appropriated by this title under the head-
17 ings “Research, Evaluation and Statistics”, “State and
18 Local Law Enforcement Assistance”, and “Juvenile Jus-
19 tice Programs” or otherwise appropriated or transferred
20 under this Act for administration by the Office of Justice
21 Programs—

22 (1) up to 3 percent of funds made available to
23 the Office of Justice Programs for grant or reim-
24 bursement programs may be used by such Office to
25 provide training and technical assistance; and

1 (2) up to 3 percent of funds made available for
2 grant or reimbursement programs under such head-
3 ings, except for amounts appropriated specifically for
4 research, evaluation, or statistical programs adminis-
5 tered by the National Institute of Justice and the
6 Bureau of Justice Statistics, shall be transferred to
7 and merged with funds provided to the National In-
8 stitute of Justice and the Bureau of Justice Statis-
9 tics, to be used by them for research, evaluation, or
10 statistical purposes, without regard to the authoriza-
11 tions for such grant or reimbursement programs;
12 and

13 (3) up to 7 percent of funds made available for
14 grant or reimbursement programs may be trans-
15 ferred to and merged with funds under the heading
16 “State and Local Law Enforcement Assistance”, for
17 assistance to Indian tribes, without regard to the au-
18 thorizations for such grant or reimbursement pro-
19 grams.

20 SEC. 213. Upon request by a grantee for whom the
21 Attorney General has determined there is a fiscal hard-
22 ship, the Attorney General may, with respect to funds ap-
23 propriated in this or any other Act making appropriations
24 for fiscal years 2017 through 2020 for the following pro-
25 grams, waive the following requirements:

1 (1) For the adult and juvenile offender State
2 and local reentry demonstration projects under part
3 FF of title I of the Omnibus Crime Control and
4 Safe Streets Act of 1968 (34 U.S.C. 10631 et seq.),
5 the requirements under section 2976(g)(1) of such
6 part (34 U.S.C. 10631(g)(1)).

7 (2) For grants to protect inmates and safe-
8 guard communities as authorized by section 6 of the
9 Prison Rape Elimination Act of 2003 (34 U.S.C.
10 30305(c)(3)), the requirements of section 6(c)(3) of
11 such Act.

12 SEC. 214. Notwithstanding any other provision of
13 law, section 20109(a) of subtitle A of title II of the Violent
14 Crime Control and Law Enforcement Act of 1994 (34
15 U.S.C. 12109(a)) shall not apply to amounts made avail-
16 able by this or any other Act.

17 SEC. 215. None of the funds made available under
18 this Act, other than for the national instant criminal back-
19 ground check system established under section 103 of the
20 Brady Handgun Violence Prevention Act (34 U.S.C.
21 40901), may be used by a Federal law enforcement officer
22 to facilitate the transfer of an operable firearm to an indi-
23 vidual if the Federal law enforcement officer knows or sus-
24 pects that the individual is an agent of a drug cartel, un-

1 less law enforcement personnel of the United States con-
2 tinuously monitor or control the firearm at all times.

3 SEC. 216. (a) None of the income retained in the De-
4 partment of Justice Working Capital Fund pursuant to
5 title I of Public Law 102–140 (105 Stat. 784; 28 U.S.C.
6 527 note) shall be available for obligation during fiscal
7 year 2020, except up to \$12,000,000 may be obligated for
8 implementation of a unified Department of Justice finan-
9 cial management system.

10 (b) Not to exceed \$30,000,000 of the unobligated bal-
11 ances transferred to the capital account of the Department
12 of Justice Working Capital Fund pursuant to title I of
13 Public Law 102–140 (105 Stat. 784; 28 U.S.C. 527 note)
14 shall be available for obligation in fiscal year 2020, and
15 any use, obligation, transfer or allocation of such funds
16 shall be treated as a reprogramming of funds under sec-
17 tion 505 of this Act.

18 (c) Not to exceed \$10,000,000 of the excess unobli-
19 gated balances available under section 524(c)(8)(E) of
20 title 28, United States Code, shall be available for obliga-
21 tion during fiscal year 2020, and any use, obligation,
22 transfer or allocation of such funds shall be treated as a
23 reprogramming of funds under section 505 of this Act.

24 SEC. 217. Discretionary funds that are made avail-
25 able in this Act for the Office of Justice Programs may

1 and rental of conference rooms in the District of Colum-
2 bia, \$5,000,000.

3 NATIONAL SPACE COUNCIL

4 For necessary expenses of the National Space Coun-
5 cil, in carrying out the purposes of Title V of Public Law
6 100-685 and Executive Order 13803, hire of passenger
7 motor vehicles, and services as authorized by section 3109
8 of title 5, United States Code, not to exceed \$2,250 for
9 official reception and representation expenses,
10 \$1,870,000: *Provided*, That notwithstanding any other
11 provision of law, the National Space Council may accept
12 personnel support from Federal agencies, departments,
13 and offices, and such Federal agencies, departments, and
14 offices may detail staff without reimbursement to the Na-
15 tional Space Council for purposes provided herein.

16 NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
17 SCIENCE

18 For necessary expenses, not otherwise provided for,
19 in the conduct and support of science research and devel-
20 opment activities, including research, development, oper-
21 ations, support, and services; maintenance and repair, fa-
22 cility planning and design; space flight, spacecraft control,
23 and communications activities; program management; per-
24 sonnel and related costs, including uniforms or allowances
25 therefor, as authorized by sections 5901 and 5902 of title

1 5, United States Code; travel expenses; purchase and hire
2 of passenger motor vehicles; and purchase, lease, charter,
3 maintenance, and operation of mission and administrative
4 aircraft, \$7,161,300,000, to remain available until Sep-
5 tember 30, 2021: *Provided*, That, of the amounts pro-
6 vided, \$592,600,000 is for an orbiter to meet the science
7 goals for the Jupiter Europa mission as recommended in
8 previous Planetary Science Decadal surveys: *Provided fur-*
9 *ther*, That the National Aeronautics and Space Adminis-
10 tration shall use the Space Launch System as the launch
11 vehicles for the Jupiter Europa missions, plan for an or-
12 biter launch no later than 2023 and a lander launch no
13 later than 2025, and include in the fiscal year 2021 budg-
14 et the 5-year funding profile necessary to achieve these
15 goals.

16 AERONAUTICS

17 For necessary expenses, not otherwise provided for,
18 in the conduct and support of aeronautics research and
19 development activities, including research, development,
20 operations, support, and services; maintenance and repair,
21 facility planning and design; space flight, spacecraft con-
22 trol, and communications activities; program manage-
23 ment; personnel and related costs, including uniforms or
24 allowances therefor, as authorized by sections 5901 and
25 5902 of title 5, United States Code; travel expenses; pur-

1 chase and hire of passenger motor vehicles; and purchase,
2 lease, charter, maintenance, and operation of mission and
3 administrative aircraft, \$700,000,000, to remain available
4 until September 30, 2021.

5 SPACE TECHNOLOGY

6 For necessary expenses, not otherwise provided for,
7 in the conduct and support of space technology research
8 and development activities, including research, develop-
9 ment, operations, support, and services; maintenance and
10 repair, facility planning and design; space flight, space-
11 craft control, and communications activities; program
12 management; personnel and related costs, including uni-
13 forms or allowances therefor, as authorized by sections
14 5901 and 5902 of title 5, United States Code; travel ex-
15 penses; purchase and hire of passenger motor vehicles; and
16 purchase, lease, charter, maintenance, and operation of
17 mission and administrative aircraft, \$1,291,600,000, to
18 remain available until September 30, 2021: *Provided*,
19 That \$180,000,000 shall be for RESTORE–L: *Provided*
20 *further*, That \$125,000,000 shall be for nuclear thermal
21 propulsion technologies: *Provided further*, That, not later
22 than 180 days after the enactment of this Act, the Na-
23 tional Aeronautics and Space Administration (NASA)
24 shall provide a plan for the design of a flight demonstra-
25 tion.

EXPLORATION

1
2 For necessary expenses, not otherwise provided for,
3 in the conduct and support of exploration research and
4 development activities, including research, development,
5 operations, support, and services; maintenance and repair,
6 facility planning and design; space flight, spacecraft con-
7 trol, and communications activities; program manage-
8 ment; personnel and related costs, including uniforms or
9 allowances therefor, as authorized by sections 5901 and
10 5902 of title 5, United States Code; travel expenses; pur-
11 chase and hire of passenger motor vehicles; and purchase,
12 lease, charter, maintenance, and operation of mission and
13 administrative aircraft, \$5,129,900,000, to remain avail-
14 able until September 30, 2021: *Provided*, That not less
15 than \$1,425,000,000 shall be for the Orion Multi-Purpose
16 Crew Vehicle: *Provided further*, That not less than
17 \$2,150,000,000 shall be for the Space Launch System
18 (SLS) launch vehicle, which shall have a lift capability not
19 less than 130 metric tons and which shall have core ele-
20 ments and an Exploration Upper Stage developed simulta-
21 neously, to be used to the maximum extent practicable,
22 including for Earth to Moon missions and a Moon landing:
23 *Provided further*, That of the amounts provided for SLS,
24 not less than \$200,000,000 shall be for Exploration Upper
25 Stage development: *Provided further*, That \$592,800,000

1 of title 5, United States Code; travel expenses; purchase
2 and hire of passenger motor vehicles; and purchase, lease,
3 charter, maintenance and operation of mission and admin-
4 istrative aircraft, \$4,285,700,000, to remain available
5 until September 30, 2021.

6 SCIENCE, TECHNOLOGY, ENGINEERING, AND
7 MATHEMATICS ENGAGEMENT

8 For necessary expenses, not otherwise provided for,
9 in the conduct and support of aerospace and aeronautical
10 education research and development activities, including
11 research, development, operations, support, and services;
12 program management; personnel and related costs, includ-
13 ing uniforms or allowances therefor, as authorized by sec-
14 tions 5901 and 5902 of title 5, United States Code; travel
15 expenses; purchase and hire of passenger motor vehicles;
16 and purchase, lease, charter, maintenance, and operation
17 of mission and administrative aircraft, \$123,000,000, to
18 remain available until September 30, 2021, of which
19 \$25,000,000 shall be for the Established Program to
20 Stimulate Competitive Research and \$48,000,000 shall be
21 for the National Space Grant College and Fellowship Pro-
22 gram.

23 SAFETY, SECURITY AND MISSION SERVICES

24 For necessary expenses, not otherwise provided for,
25 in the conduct and support of science, aeronautics, space

1 technology, exploration, space operations and education
2 research and development activities, including research,
3 development, operations, support, and services; mainte-
4 nance and repair, facility planning and design; space
5 flight, spacecraft control, and communications activities;
6 program management; personnel and related costs, includ-
7 ing uniforms or allowances therefor, as authorized by sec-
8 tions 5901 and 5902 of title 5, United States Code; travel
9 expenses; purchase and hire of passenger motor vehicles;
10 not to exceed \$63,000 for official reception and represen-
11 tation expenses; and purchase, lease, charter, mainte-
12 nance, and operation of mission and administrative air-
13 craft, \$3,084,600,000, to remain available until Sep-
14 tember 30, 2021.

15 CONSTRUCTION AND ENVIRONMENTAL COMPLIANCE AND
16 RESTORATION

17 For necessary expenses for construction of facilities
18 including repair, rehabilitation, revitalization, and modi-
19 fication of facilities, construction of new facilities and ad-
20 ditions to existing facilities, facility planning and design,
21 and restoration, and acquisition or condemnation of real
22 property, as authorized by law, and environmental compli-
23 ance and restoration, \$497,200,000, to remain available
24 until September 30, 2025: *Provided*, That proceeds from
25 leases deposited into this account shall be available for a

1 period of 5 years to the extent and in amounts as provided
2 in annual appropriations Acts: *Provided further*, That such
3 proceeds referred to in the preceding proviso shall be avail-
4 able for obligation for fiscal year 2020 in an amount not
5 to exceed \$17,000,000: *Provided further*, That each an-
6 nual budget request shall include an annual estimate of
7 gross receipts and collections and proposed use of all funds
8 collected pursuant to section 20145 of title 51, United
9 States Code.

10 OFFICE OF INSPECTOR GENERAL

11 For necessary expenses of the Office of Inspector
12 General in carrying out the Inspector General Act of 1978,
13 \$41,700,000, of which \$500,000 shall remain available
14 until September 30, 2021.

15 ADMINISTRATIVE PROVISIONS

16 (INCLUDING TRANSFERS OF FUNDS)

17 Funds for any announced prize otherwise authorized
18 shall remain available, without fiscal year limitation, until
19 a prize is claimed or the offer is withdrawn.

20 Not to exceed 5 percent of any appropriation made
21 available for the current fiscal year for the National Aero-
22 nautics and Space Administration in this Act may be
23 transferred between such appropriations, but no such ap-
24 propriation, except as otherwise specifically provided, shall
25 be increased by more than 10 percent by any such trans-

1 fers. Balances so transferred shall be merged with and
2 available for the same purposes and the same time period
3 as the appropriations to which transferred. Any transfer
4 pursuant to this provision shall be treated as a reprogram-
5 ming of funds under section 505 of this Act and shall not
6 be available for obligation except in compliance with the
7 procedures set forth in that section.

8 The spending plan required by this Act shall be pro-
9 vided by NASA at the theme, program, project and activ-
10 ity level. The spending plan, as well as any subsequent
11 change of an amount established in that spending plan
12 that meets the notification requirements of section 505 of
13 this Act, shall be treated as a reprogramming under sec-
14 tion 505 of this Act and shall not be available for obliga-
15 tion or expenditure except in compliance with the proce-
16 dures set forth in that section.

17 NATIONAL SCIENCE FOUNDATION

18 RESEARCH AND RELATED ACTIVITIES

19 For necessary expenses in carrying out the National
20 Science Foundation Act of 1950 (42 U.S.C. 1861 et seq.),
21 and Public Law 86–209 (42 U.S.C. 1880 et seq.); services
22 as authorized by section 3109 of title 5, United States
23 Code; maintenance and operation of aircraft and purchase
24 of flight services for research support; acquisition of air-
25 craft; and authorized travel; \$7,106,301,000, to remain

1 available until September 30, 2021, of which not to exceed
2 \$544,000,000 shall remain available until expended for
3 polar research and operations support, and for reimburse-
4 ment to other Federal agencies for operational and science
5 support and logistical and other related activities for the
6 United States Antarctic program: *Provided*, That receipts
7 for scientific support services and materials furnished by
8 the National Research Centers and other National Science
9 Foundation supported research facilities may be credited
10 to this appropriation.

11 MAJOR RESEARCH EQUIPMENT AND FACILITIES

12 CONSTRUCTION

13 For necessary expenses for the acquisition, construc-
14 tion, commissioning, and upgrading of major research
15 equipment, facilities, and other such capital assets pursu-
16 ant to the National Science Foundation Act of 1950 (42
17 U.S.C. 1861 et seq.), including authorized travel,
18 \$223,230,000, to remain available until expended.

19 EDUCATION AND HUMAN RESOURCES

20 For necessary expenses in carrying out science, math-
21 ematics and engineering education and human resources
22 programs and activities pursuant to the National Science
23 Foundation Act of 1950 (42 U.S.C. 1861 et seq.), includ-
24 ing services as authorized by section 3109 of title 5,
25 United States Code, authorized travel, and rental of con-

1 ference rooms in the District of Columbia, \$950,000,000,
2 to remain available until September 30, 2021.

3 AGENCY OPERATIONS AND AWARD MANAGEMENT

4 For agency operations and award management nec-
5 essary in carrying out the National Science Foundation
6 Act of 1950 (42 U.S.C. 1861 et seq.); services authorized
7 by section 3109 of title 5, United States Code; hire of pas-
8 senger motor vehicles; uniforms or allowances therefor, as
9 authorized by sections 5901 and 5902 of title 5, United
10 States Code; rental of conference rooms in the District of
11 Columbia; and reimbursement of the Department of
12 Homeland Security for security guard services;
13 \$336,890,000: *Provided*, That not to exceed \$8,280 is for
14 official reception and representation expenses: *Provided*
15 *further*, That contracts may be entered into under this
16 heading in fiscal year 2020 for maintenance and operation
17 of facilities and for other services to be provided during
18 the next fiscal year.

19 OFFICE OF THE NATIONAL SCIENCE BOARD

20 For necessary expenses (including payment of sala-
21 ries, authorized travel, hire of passenger motor vehicles,
22 the rental of conference rooms in the District of Columbia,
23 and the employment of experts and consultants under sec-
24 tion 3109 of title 5, United States Code) involved in car-
25 rying out section 4 of the National Science Foundation

1 Act of 1950 (42 U.S.C. 1863) and Public Law 86–209
2 (42 U.S.C. 1880 et seq.), \$4,370,000: *Provided*, That not
3 to exceed \$2,500 shall be available for official reception
4 and representation expenses.

5 OFFICE OF INSPECTOR GENERAL

6 For necessary expenses of the Office of Inspector
7 General as authorized by the Inspector General Act of
8 1978, \$15,350,000, of which \$400,000 shall remain avail-
9 able until September 30, 2021.

10 ADMINISTRATIVE PROVISIONS

11 (INCLUDING TRANSFER OF FUNDS)

12 Not to exceed 5 percent of any appropriation made
13 available for the current fiscal year for the National
14 Science Foundation in this Act may be transferred be-
15 tween such appropriations, but no such appropriation shall
16 be increased by more than 10 percent by any such trans-
17 fers. Any transfer pursuant to this paragraph shall be
18 treated as a reprogramming of funds under section 505
19 of this Act and shall not be available for obligation except
20 in compliance with the procedures set forth in that section.

21 The Director of the National Science Foundation
22 (NSF) shall notify the Committees on Appropriations of
23 the House of Representatives and the Senate at least 30
24 days in advance of any planned divestment through trans-
25 fer, decommissioning, termination, or deconstruction of

1 any NSF-owned facilities or any NSF capital assets (in-
2 cluding land, structures, and equipment) valued greater
3 than \$2,500,000.

4 This title may be cited as the “Science Appropria-
5 tions Act, 2020”.

6 TITLE IV

7 RELATED AGENCIES

8 COMMISSION ON CIVIL RIGHTS

9 SALARIES AND EXPENSES

10 For necessary expenses of the Commission on Civil
11 Rights, including hire of passenger motor vehicles,
12 \$10,500,000: *Provided*, That none of the funds appro-
13 priated in this paragraph may be used to employ any indi-
14 viduals under Schedule C of subpart C of part 213 of title
15 5 of the Code of Federal Regulations exclusive of one spe-
16 cial assistant for each Commissioner: *Provided further*,
17 That none of the funds appropriated in this paragraph
18 shall be used to reimburse Commissioners for more than
19 75 billable days, with the exception of the chairperson,
20 who is permitted 125 billable days: *Provided further*, That
21 none of the funds appropriated in this paragraph shall be
22 used for any activity or expense that is not explicitly au-
23 thorized by section 3 of the Civil Rights Commission Act
24 of 1983 (42 U.S.C. 1975a): *Provided further*, That the

1 Chair is authorized to accept and use any gift or donation
2 to carry out the work of the Commission.

3 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

4 SALARIES AND EXPENSES

5 For necessary expenses of the Equal Employment
6 Opportunity Commission as authorized by title VII of the
7 Civil Rights Act of 1964, the Age Discrimination in Em-
8 ployment Act of 1967, the Equal Pay Act of 1963, the
9 Americans with Disabilities Act of 1990, section 501 of
10 the Rehabilitation Act of 1973, the Civil Rights Act of
11 1991, the Genetic Information Nondiscrimination Act
12 (GINA) of 2008 (Public Law 110–233), the ADA Amend-
13 ments Act of 2008 (Public Law 110–325), and the Lilly
14 Ledbetter Fair Pay Act of 2009 (Public Law 111–2), in-
15 cluding services as authorized by section 3109 of title 5,
16 United States Code; hire of passenger motor vehicles as
17 authorized by section 1343(b) of title 31, United States
18 Code; nonmonetary awards to private citizens; and up to
19 \$29,500,000 for payments to State and local enforcement
20 agencies for authorized services to the Commission,
21 \$399,500,000: *Provided*, That the Commission is author-
22 ized to make available for official reception and represen-
23 tation expenses not to exceed \$2,250 from available funds:
24 *Provided further*, That the Commission may take no action
25 to implement any workforce repositioning, restructuring,

1 or reorganization until such time as the Committees on
2 Appropriations of the House of Representatives and the
3 Senate have been notified of such proposals, in accordance
4 with the reprogramming requirements of section 505 of
5 this Act: *Provided further*, That the Chair is authorized
6 to accept and use any gift or donation to carry out the
7 work of the Commission.

8 INTERNATIONAL TRADE COMMISSION
9 SALARIES AND EXPENSES

10 For necessary expenses of the International Trade
11 Commission, including hire of passenger motor vehicles
12 and services as authorized by section 3109 of title 5,
13 United States Code, and not to exceed \$2,250 for official
14 reception and representation expenses, \$101,000,000, to
15 remain available until expended.

16 LEGAL SERVICES CORPORATION

17 PAYMENT TO THE LEGAL SERVICES CORPORATION

18 For payment to the Legal Services Corporation to
19 carry out the purposes of the Legal Services Corporation
20 Act of 1974, \$550,000,000, of which \$509,500,000 is for
21 basic field programs and required independent audits;
22 \$5,100,000 is for the Office of Inspector General, of which
23 such amounts as may be necessary may be used to conduct
24 additional audits of recipients; \$23,400,000 is for manage-
25 ment and grants oversight; \$5,000,000 is for client self-

1 help and information technology; \$5,000,000 is for a Pro
2 Bono Innovation Fund; and \$2,000,000 is for loan repay-
3 ment assistance: *Provided*, That the Legal Services Cor-
4 poration may continue to provide locality pay to officers
5 and employees at a rate no greater than that provided by
6 the Federal Government to Washington, DC-based em-
7 ployees as authorized by section 5304 of title 5, United
8 States Code, notwithstanding section 1005(d) of the Legal
9 Services Corporation Act (42 U.S.C. 2996d(d)): *Provided*
10 *further*, That the authorities provided in section 205 of
11 this Act shall be applicable to the Legal Services Corpora-
12 tion: *Provided further*, That, for the purposes of section
13 505 of this Act, the Legal Services Corporation shall be
14 considered an agency of the United States Government.

15 ADMINISTRATIVE PROVISION—LEGAL SERVICES

16 CORPORATION

17 None of the funds appropriated in this Act to the
18 Legal Services Corporation shall be expended for any pur-
19 pose prohibited or limited by, or contrary to any of the
20 provisions of, sections 501, 502, 503, 504, 505, and 506
21 of Public Law 105–119, and all funds appropriated in this
22 Act to the Legal Services Corporation shall be subject to
23 the same terms and conditions set forth in such sections,
24 except that all references in sections 502 and 503 to 1997

1 and 1998 shall be deemed to refer instead to 2019 and
2 2020, respectively.

3 MARINE MAMMAL COMMISSION

4 SALARIES AND EXPENSES

5 For necessary expenses of the Marine Mammal Com-
6 mission as authorized by title II of the Marine Mammal
7 Protection Act of 1972 (16 U.S.C. 1361 et seq.),
8 \$3,616,000.

9 OFFICE OF THE UNITED STATES TRADE

10 REPRESENTATIVE

11 SALARIES AND EXPENSES

12 For necessary expenses of the Office of the United
13 States Trade Representative, including the hire of pas-
14 senger motor vehicles and the employment of experts and
15 consultants as authorized by section 3109 of title 5,
16 United States Code, \$57,000,000, of which \$1,000,000
17 shall remain available until expended: *Provided*, That of
18 the total amount made available under this heading, not
19 to exceed \$124,000 shall be available for official reception
20 and representation expenses.

21 TRADE ENFORCEMENT TRUST FUND

22 (INCLUDING TRANSFER OF FUNDS)

23 For activities of the United States Trade Representa-
24 tive authorized by section 611 of the Trade Facilitation
25 and Trade Enforcement Act of 2015 (19 U.S.C. 4405),

1 including transfers, \$15,000,000, to be derived from the
2 Trade Enforcement Trust Fund: *Provided*, That any
3 transfer pursuant to subsection (d)(1) of such section shall
4 be treated as a reprogramming under section 505 of this
5 Act.

6

7 STATE JUSTICE INSTITUTE

8 SALARIES AND EXPENSES

9 For necessary expenses of the State Justice Institute,
10 as authorized by the State Justice Institute Act of 1984
11 (42 U.S.C. 10701 et seq.) \$6,555,000, of which \$500,000
12 shall remain available until September 30, 2021: *Provided*,
13 That not to exceed \$2,250 shall be available for official
14 reception and representation expenses: *Provided further*,
15 That, for the purposes of section 505 of this Act, the State
16 Justice Institute shall be considered an agency of the
17 United States Government.

18

TITLE V

19

GENERAL PROVISIONS

20

(INCLUDING RESCISSIONS)

21

(INCLUDING TRANSFERS OF FUNDS)

22

SEC. 501. No part of any appropriation contained in
23 this Act shall be used for publicity or propaganda purposes
24 not authorized by the Congress.

1 SEC. 502. No part of any appropriation contained in
2 this Act shall remain available for obligation beyond the
3 current fiscal year unless expressly so provided herein.

4 SEC. 503. The expenditure of any appropriation
5 under this Act for any consulting service through procure-
6 ment contract, pursuant to section 3109 of title 5, United
7 States Code, shall be limited to those contracts where such
8 expenditures are a matter of public record and available
9 for public inspection, except where otherwise provided
10 under existing law, or under existing Executive order
11 issued pursuant to existing law.

12 SEC. 504. If any provision of this Act or the applica-
13 tion of such provision to any person or circumstances shall
14 be held invalid, the remainder of the Act and the applica-
15 tion of each provision to persons or circumstances other
16 than those as to which it is held invalid shall not be af-
17 fected thereby.

18 SEC. 505. None of the funds provided under this Act,
19 or provided under previous appropriations Acts to the
20 agencies funded by this Act that remain available for obli-
21 gation or expenditure in fiscal year 2020, or provided from
22 any accounts in the Treasury of the United States derived
23 by the collection of fees available to the agencies funded
24 by this Act, shall be available for obligation or expenditure
25 through a reprogramming of funds that: (1) creates or ini-

1 tiates a new program, project or activity; (2) eliminates
2 a program, project or activity; (3) increases funds or per-
3 sonnel by any means for any project or activity for which
4 funds have been denied or restricted; (4) relocates an of-
5 fice or employees; (5) reorganizes or renames offices, pro-
6 grams or activities; (6) contracts out or privatizes any
7 functions or activities presently performed by Federal em-
8 ployees; (7) augments existing programs, projects or ac-
9 tivities in excess of \$500,000 or 10 percent, whichever is
10 less, or reduces by 10 percent funding for any program,
11 project or activity, or numbers of personnel by 10 percent;
12 or (8) results from any general savings, including savings
13 from a reduction in personnel, which would result in a
14 change in existing programs, projects or activities as ap-
15 proved by Congress; unless the House and Senate Com-
16 mittees on Appropriations are notified 15 days in advance
17 of such reprogramming of funds.

18 SEC. 506. (a) If it has been finally determined by
19 a court or Federal agency that any person intentionally
20 affixed a label bearing a “Made in America” inscription,
21 or any inscription with the same meaning, to any product
22 sold in or shipped to the United States that is not made
23 in the United States, the person shall be ineligible to re-
24 ceive any contract or subcontract made with funds made
25 available in this Act, pursuant to the debarment, suspen-

1 sion, and ineligibility procedures described in sections
2 9.400 through 9.409 of title 48, Code of Federal Regula-
3 tions.

4 (b)(1) To the extent practicable, with respect to au-
5 thorized purchases of promotional items, funds made
6 available by this Act shall be used to purchase items that
7 are manufactured, produced, or assembled in the United
8 States, its territories or possessions.

9 (2) The term “promotional items” has the meaning
10 given the term in OMB Circular A–87, Attachment B,
11 Item (1)(f)(3).

12 SEC. 507. (a) The Departments of Commerce and
13 Justice, the National Science Foundation, and the Na-
14 tional Aeronautics and Space Administration shall provide
15 to the Committees on Appropriations of the House of Rep-
16 resentatives and the Senate a quarterly report on the sta-
17 tus of balances of appropriations at the account level. For
18 unobligated, uncommitted balances and unobligated, com-
19 mitted balances the quarterly reports shall separately
20 identify the amounts attributable to each source year of
21 appropriation from which the balances were derived. For
22 balances that are obligated, but unexpended, the quarterly
23 reports shall separately identify amounts by the year of
24 obligation.

1 (b) The report described in subsection (a) shall be
2 submitted within 30 days of the end of each quarter.

3 (c) If a department or agency is unable to fulfill any
4 aspect of a reporting requirement described in subsection
5 (a) due to a limitation of a current accounting system,
6 the department or agency shall fulfill such aspect to the
7 maximum extent practicable under such accounting sys-
8 tem and shall identify and describe in each quarterly re-
9 port the extent to which such aspect is not fulfilled.

10 SEC. 508. Any costs incurred by a department or
11 agency funded under this Act resulting from, or to pre-
12 vent, personnel actions taken in response to funding re-
13 ductions included in this Act shall be absorbed within the
14 total budgetary resources available to such department or
15 agency: *Provided*, That the authority to transfer funds be-
16 tween appropriations accounts as may be necessary to
17 carry out this section is provided in addition to authorities
18 included elsewhere in this Act: *Provided further*, That use
19 of funds to carry out this section shall be treated as a
20 reprogramming of funds under section 505 of this Act and
21 shall not be available for obligation or expenditure except
22 in compliance with the procedures set forth in that section:
23 *Provided further*, That for the Department of Commerce,
24 this section shall also apply to actions taken for the care
25 and protection of loan collateral or grant property.

1 SEC. 509. None of the funds provided by this Act
2 shall be available to promote the sale or export of tobacco
3 or tobacco products, or to seek the reduction or removal
4 by any foreign country of restrictions on the marketing
5 of tobacco or tobacco products, except for restrictions
6 which are not applied equally to all tobacco or tobacco
7 products of the same type.

8 SEC. 510. Notwithstanding any other provision of
9 law, amounts deposited or available in the Fund estab-
10 lished by section 1402 of chapter XIV of title II of Public
11 Law 98–473 (34 U.S.C. 20101) in any fiscal year in ex-
12 cess of \$2,838,000,000 shall not be available for obligation
13 until the following fiscal year: *Provided*, That notwith-
14 standing section 1402(d) of such Act, of the amounts
15 available from the Fund for obligation: (1) \$10,000,000
16 shall be transferred to the “Department of Justice, Office
17 of Inspector General” account for oversight and auditing
18 purposes associated with this section; and (2) 5 percent
19 shall be available to the Office for Victims of Crime for
20 grants, consistent with the requirements of the Victims of
21 Crime Act, to Indian tribes to improve services for victims
22 of crime.

23 SEC. 511. None of the funds made available to the
24 Department of Justice in this Act may be used to discrimi-
25 nate against or denigrate the religious or moral beliefs of

1 students who participate in programs for which financial
2 assistance is provided from those funds, or of the parents
3 or legal guardians of such students.

4 SEC. 512. None of the funds made available in this
5 Act may be transferred to any department, agency, or in-
6 strumentality of the United States Government, except
7 pursuant to a transfer made by, or transfer authority pro-
8 vided in, this Act or any other appropriations Act.

9 SEC. 513. (a) The Inspectors General of the Depart-
10 ment of Commerce, the Department of Justice, the Na-
11 tional Aeronautics and Space Administration, the Na-
12 tional Science Foundation, and the Legal Services Cor-
13 poration shall conduct audits, pursuant to the Inspector
14 General Act (5 U.S.C. App.), of grants or contracts for
15 which funds are appropriated by this Act, and shall submit
16 reports to Congress on the progress of such audits, which
17 may include preliminary findings and a description of
18 areas of particular interest, within 180 days after initi-
19 ating such an audit and every 180 days thereafter until
20 any such audit is completed.

21 (b) Within 60 days after the date on which an audit
22 described in subsection (a) by an Inspector General is
23 completed, the Secretary, Attorney General, Adminis-
24 trator, Director, or President, as appropriate, shall make
25 the results of the audit available to the public on the Inter-

1 net website maintained by the Department, Administra-
2 tion, Foundation, or Corporation, respectively. The results
3 shall be made available in redacted form to exclude—

4 (1) any matter described in section 552(b) of
5 title 5, United States Code; and

6 (2) sensitive personal information for any indi-
7 vidual, the public access to which could be used to
8 commit identity theft or for other inappropriate or
9 unlawful purposes.

10 (c) Any person awarded a grant or contract funded
11 by amounts appropriated by this Act shall submit a state-
12 ment to the Secretary of Commerce, the Attorney General,
13 the Administrator, Director, or President, as appropriate,
14 certifying that no funds derived from the grant or contract
15 will be made available through a subcontract or in any
16 other manner to another person who has a financial inter-
17 est in the person awarded the grant or contract.

18 (d) The provisions of the preceding subsections of
19 this section shall take effect 30 days after the date on
20 which the Director of the Office of Management and
21 Budget, in consultation with the Director of the Office of
22 Government Ethics, determines that a uniform set of rules
23 and requirements, substantially similar to the require-
24 ments in such subsections, consistently apply under the

1 executive branch ethics program to all Federal depart-
2 ments, agencies, and entities.

3 SEC. 514. (a) None of the funds appropriated or oth-
4 erwise made available under this Act may be used by the
5 Departments of Commerce and Justice, the National Aer-
6 onautics and Space Administration, or the National
7 Science Foundation to acquire a high-impact or moderate-
8 impact information system, as defined for security cat-
9 egorization in the National Institute of Standards and
10 Technology's (NIST) Federal Information Processing
11 Standard Publication 199, "Standards for Security Cat-
12 egorization of Federal Information and Information Sys-
13 tems" unless the agency has—

14 (1) reviewed the supply chain risk for the infor-
15 mation systems against criteria developed by NIST
16 and the Federal Bureau of Investigation (FBI) to
17 inform acquisition decisions for high-impact and
18 moderate-impact information systems within the
19 Federal Government;

20 (2) reviewed the supply chain risk from the pre-
21 sumptive awardee against available and relevant
22 threat information provided by the FBI and other
23 appropriate agencies; and

24 (3) in consultation with the FBI or other ap-
25 propriate Federal entity, conducted an assessment of

1 any risk of cyber-espionage or sabotage associated
2 with the acquisition of such system, including any
3 risk associated with such system being produced,
4 manufactured, or assembled by one or more entities
5 identified by the United States Government as pos-
6 ing a cyber threat, including but not limited to,
7 those that may be owned, directed, or subsidized by
8 the People’s Republic of China, the Islamic Republic
9 of Iran, the Democratic People’s Republic of Korea,
10 or the Russian Federation.

11 (b) None of the funds appropriated or otherwise
12 made available under this Act may be used to acquire a
13 high-impact or moderate-impact information system re-
14 viewed and assessed under subsection (a) unless the head
15 of the assessing entity described in subsection (a) has—

16 (1) developed, in consultation with NIST, the
17 FBI, and supply chain risk management experts, a
18 mitigation strategy for any identified risks;

19 (2) determined, in consultation with NIST and
20 the FBI, that the acquisition of such system is in
21 the national interest of the United States; and

22 (3) reported that determination to the Commit-
23 tees on Appropriations of the House of Representa-
24 tives and the Senate and the agency Inspector Gen-
25 eral.

1 SEC. 515. None of the funds made available in this
2 Act shall be used in any way whatsoever to support or
3 justify the use of torture by any official or contract em-
4 ployee of the United States Government.

5 SEC. 516. None of the funds made available in this
6 Act may be used to include in any new bilateral or multi-
7 lateral trade agreement the text of—

8 (1) paragraph 2 of article 16.7 of the United
9 States–Singapore Free Trade Agreement;

10 (2) paragraph 4 of article 17.9 of the United
11 States–Australia Free Trade Agreement; or

12 (3) paragraph 4 of article 15.9 of the United
13 States–Morocco Free Trade Agreement.

14 SEC. 517. None of the funds made available in this
15 Act may be used to authorize or issue a national security
16 letter in contravention of any of the following laws author-
17 izing the Federal Bureau of Investigation to issue national
18 security letters: The Right to Financial Privacy Act of
19 1978; The Electronic Communications Privacy Act of
20 1986; The Fair Credit Reporting Act; The National Secu-
21 rity Act of 1947; USA PATRIOT Act; USA FREEDOM
22 Act of 2015; and the laws amended by these Acts.

23 SEC. 518. If at any time during any quarter, the pro-
24 gram manager of a project within the jurisdiction of the
25 Departments of Commerce or Justice, the National Aero-

1 nautics and Space Administration, or the National Science
2 Foundation totaling more than \$75,000,000 has reason-
3 able cause to believe that the total program cost has in-
4 creased by 10 percent or more, the program manager shall
5 immediately inform the respective Secretary, Adminis-
6 trator, or Director. The Secretary, Administrator, or Di-
7 rector shall notify the House and Senate Committees on
8 Appropriations within 30 days in writing of such increase,
9 and shall include in such notice: the date on which such
10 determination was made; a statement of the reasons for
11 such increases; the action taken and proposed to be taken
12 to control future cost growth of the project; changes made
13 in the performance or schedule milestones and the degree
14 to which such changes have contributed to the increase
15 in total program costs or procurement costs; new esti-
16 mates of the total project or procurement costs; and a
17 statement validating that the project's management struc-
18 ture is adequate to control total project or procurement
19 costs.

20 SEC. 519. Funds appropriated by this Act, or made
21 available by the transfer of funds in this Act, for intel-
22 ligence or intelligence related activities are deemed to be
23 specifically authorized by the Congress for purposes of sec-
24 tion 504 of the National Security Act of 1947 (50 U.S.C.

1 (1) “Working Capital Fund”, \$100,000,000;

2 (2) “Federal Bureau of Investigation, Salaries
3 and Expenses”, \$60,000,000 including from, but not
4 limited to, fees collected to defray expenses for the
5 automation of fingerprint identification and criminal
6 justice information services and associated costs; and

7 (3) “State and Local Law Enforcement Activi-
8 ties, Office of Justice Programs”, \$85,000,000.

9 (b) The Department of Justice shall submit to the
10 Committees on Appropriations of the House of Represent-
11 atives and the Senate a report no later than September
12 1, 2020, specifying the amount of each rescission made
13 pursuant to subsection (a) .

14 (c) The amounts rescinded in subsection (a) shall not
15 be from amounts that were designated by the Congress
16 as an emergency or disaster relief requirement pursuant
17 to the concurrent resolution on the budget or the Balanced
18 Budget and Emergency Deficit Control Act of 1985.

19 SEC. 522. None of the funds made available in this
20 Act may be used to purchase first class or premium airline
21 travel in contravention of sections 301–10.122 through
22 301–10.124 of title 41 of the Code of Federal Regulations.

23 SEC. 523. None of the funds made available in this
24 Act may be used to send or otherwise pay for the attend-
25 ance of more than 50 employees from a Federal depart-

1 ment or agency, who are stationed in the United States,
2 at any single conference occurring outside the United
3 States unless such conference is a law enforcement train-
4 ing or operational conference for law enforcement per-
5 sonnel and the majority of Federal employees in attend-
6 ance are law enforcement personnel stationed outside the
7 United States.

8 SEC. 524. The Director of the Office of Management
9 and Budget shall instruct any department, agency, or in-
10 strumentality of the United States receiving funds appro-
11 priated under this Act to track undisbursed balances in
12 expired grant accounts and include in its annual perform-
13 ance plan and performance and accountability reports the
14 following:

15 (1) Details on future action the department,
16 agency, or instrumentality will take to resolve
17 undisbursed balances in expired grant accounts.

18 (2) The method that the department, agency, or
19 instrumentality uses to track undisbursed balances
20 in expired grant accounts.

21 (3) Identification of undisbursed balances in ex-
22 pired grant accounts that may be returned to the
23 Treasury of the United States.

24 (4) In the preceding 3 fiscal years, details on
25 the total number of expired grant accounts with

1 undisbursed balances (on the first day of each fiscal
2 year) for the department, agency, or instrumentality
3 and the total finances that have not been obligated
4 to a specific project remaining in the accounts.

5 SEC. 525. To the extent practicable, funds made
6 available in this Act should be used to purchase light bulbs
7 that are “Energy Star” qualified or have the “Federal En-
8 ergy Management Program” designation.

9 SEC. 526. (a) None of the funds made available by
10 this Act may be used for the National Aeronautics and
11 Space Administration (NASA), the Office of Science and
12 Technology Policy (OSTP), or the National Space Council
13 (NSC) to develop, design, plan, promulgate, implement,
14 or execute a bilateral policy, program, order, or contract
15 of any kind to participate, collaborate, or coordinate bilat-
16 erally in any way with China or any Chinese-owned com-
17 pany unless such activities are specifically authorized by
18 a law enacted after the date of enactment of this Act.

19 (b) None of the funds made available by this Act may
20 be used to effectuate the hosting of official Chinese visitors
21 at facilities belonging to or utilized by NASA.

22 (c) The limitations described in subsections (a) and
23 (b) shall not apply to activities which NASA, OSTP, or
24 NSC, after consultation with the Federal Bureau of Inves-
25 tigation, have certified—

1 (1) pose no risk of resulting in the transfer of
2 technology, data, or other information with national
3 security or economic security implications to China
4 or a Chinese-owned company; and

5 (2) will not involve knowing interactions with
6 officials who have been determined by the United
7 States to have direct involvement with violations of
8 human rights.

9 (d) Any certification made under subsection (c) shall
10 be submitted to the Committees on Appropriations of the
11 House of Representatives and the Senate, and the Federal
12 Bureau of Investigation, no later than 30 days prior to
13 the activity in question and shall include a description of
14 the purpose of the activity, its agenda, its major partici-
15 pants, and its location and timing.

16 SEC. 527. (a) None of the funds made available in
17 this Act may be used to maintain or establish a computer
18 network unless such network blocks the viewing,
19 downloading, and exchanging of pornography.

20 (b) Nothing in subsection (a) shall limit the use of
21 funds necessary for any Federal, State, tribal, or local law
22 enforcement agency or any other entity carrying out crimi-
23 nal investigations, prosecution, adjudication, or other law
24 enforcement- or victim assistance-related activity.

1 SEC. 528. The Departments of Commerce and Jus-
2 tice, the National Aeronautics and Space Administration,
3 the National Science Foundation, the Commission on Civil
4 Rights, the Equal Employment Opportunity Commission,
5 the International Trade Commission, the Legal Services
6 Corporation, the Marine Mammal Commission, the Offices
7 of Science and Technology Policy and the United States
8 Trade Representative, the National Space Council, and
9 the State Justice Institute shall submit spending plans,
10 signed by the respective department or agency head, to
11 the Committees on Appropriations of the House of Rep-
12 resentatives and the Senate within 45 days after the date
13 of enactment of this Act.

14 SEC. 529. Notwithstanding any other provision of
15 this Act, none of the funds appropriated or otherwise
16 made available by this Act may be used to pay award or
17 incentive fees for contractor performance that has been
18 judged to be below satisfactory performance or for per-
19 formance that does not meet the basic requirements of a
20 contract.

21 SEC. 530. None of the funds made available by this
22 Act may be used in contravention of section 7606 (“Legit-
23 imacy of Industrial Hemp Research”) of the Agricultural
24 Act of 2014 (Public Law 113–79) by the Department of
25 Justice or the Drug Enforcement Administration.

1 SEC. 531. None of the funds made available under
2 this Act to the Department of Justice may be used, with
3 respect to any of the States of Alabama, Alaska, Arizona,
4 Arkansas, California, Colorado, Connecticut, Delaware,
5 Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Ken-
6 tucky, Louisiana, Maine, Maryland, Massachusetts, Michi-
7 gan, Minnesota, Mississippi, Missouri, Montana, Nevada,
8 New Hampshire, New Jersey, New Mexico, New York,
9 North Carolina, North Dakota, Ohio, Oklahoma, Oregon,
10 Pennsylvania, Rhode Island, South Carolina, Tennessee,
11 Texas, Utah, Vermont, Virginia, Washington, West Vir-
12 ginia, Wisconsin, and Wyoming, or with respect to the
13 District of Columbia, the Commonwealth of the Northern
14 Mariana Islands, Guam, or Puerto Rico, to prevent any
15 of them from implementing their own laws that authorize
16 the use, distribution, possession, or cultivation of medical
17 marijuana.

18 SEC. 532. The Department of Commerce, the Na-
19 tional Aeronautics and Space Administration, and the Na-
20 tional Science Foundation shall provide a quarterly report
21 to the Committees on Appropriations of the House of Rep-
22 resentatives and the Senate on any official travel to China
23 by any employee of such Department or agency, including
24 the purpose of such travel.

1 SEC. 533. Of the amounts made available by this Act,
2 not less than 10 percent of each total amount provided,
3 respectively, for Public Works grants authorized by the
4 Public Works and Economic Development Act of 1965 and
5 grants authorized by section 27 of the Stevenson-Wydler
6 Technology Innovation Act of 1980 (15 U.S.C. 3722) shall
7 be allocated for assistance in persistent poverty counties:
8 *Provided*, That for purposes of this section, the term “per-
9 sistent poverty counties” means any county that has had
10 20 percent or more of its population living in poverty over
11 the past 30 years, as measured by the 1990 and 2000
12 decennial censuses and the most recent Small Area In-
13 come and Poverty Estimates.

14 SEC. 534. None of the funds made available in this
15 Act or any other Act may be used by the Department of
16 Commerce to incorporate into the 2020 Decennial Census
17 any question that was not included in the 2018 End-to-
18 End Census Test in Providence County, Rhode Island.

19 SEC. 535. None of the funds made available by this
20 Act may be used to relocate the Bureau of Alcohol, To-
21 bacco, Firearms and Explosives (ATF) Canine Training
22 Center or the ATF National Canine Division.

23 This Act may be cited as the “Commerce, Justice,
24 Science, and Related Agencies Appropriations Act, 2020”.

Union Calendar No. 76

116TH CONGRESS
1ST Session

H. R. 3055

[Report No. 116-101]

A BILL

Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2020, and for other purposes.

JUNE 3, 2019

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

From: [Niemi, Katie](#)
To: [Berg, Elizabeth A](#)
Cc: [Wright, Dana K](#)
Subject: Re: CBRA sand mining amendment
Date: Monday, June 17, 2019 8:49:18 AM

Thanks Liz for tracking this and keeping us in the loop.

Katie

On Mon, Jun 17, 2019 at 8:45 AM Berg , Elizabeth <elizabeth_berg@fws.gov> wrote:

Hi Katie and Dana,

On Thursday 6/13, Reps. Graves and Van Drew submitted a floor amendment to the Interior Appropriations Bill that that would allow for sand mining from CBRA areas. The submitted language and bill text are attached.

There will likely be debate over this and other floor amendments to the bill when it comes to the floor, likely this week. Additionally, the Committee on Rules will meet on Tuesday 6/18 and potentially Wednesday 6/19 to consider the bill.

I'll continue to track the progress of this and provide you with updates.

Liz

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

From: [Phinney, Jonathan T](#)
To: [BalisLarsen, Martha](#)
Cc: [Wright, Dana K](#); [Niemi, Katie](#); [Bohn, Cynthia](#)
Subject: Fwd: Congressional Affairs Update
Date: Monday, June 17, 2019 9:02:25 AM
Attachments: [6.14.19.docx](#)
Importance: High

Dana,
Thanks for the alert on the rider in the FY20 House Appropriation
I am alerting Martha to the issue.
JPh

----- Forwarded message -----

From: **Wright, Dana** <dana_wright@fws.gov>
Date: Mon, Jun 17, 2019 at 7:27 AM
Subject: Fwd: Congressional Affairs Update
To: Katie Niemi <Katie_Niemi@fws.gov>, Cynthia Bohn <cynthia_bohn@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>

FYI - we have a rider on the 2020 appropriations bill.

Amdt. 94 submitted by **Rep. Jefferson Van Drew (D-NJ-4)**, **Garret Graves (R-LA-6)**, and **David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of Interior Solicitor's opinion regarding sand borrowing in the Coastal Barrier Resources System.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Fri, Jun 14, 2019 at 4:07 PM
Subject: Congressional Affairs Update
To: Angela Gustavson <angela_gustavson@fws.gov>

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing on three bills of interest to the Service and the Department provided a Statement for the Record.

Next week, the House is expected to begin consideration of an omnibus appropriations package for FY 2020 that would include funding for the Department of the Interior. A number of amendments were filed that are of interest to the Service.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
5275 Leesburg Pike Suite 2 C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
571-388-7526 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

CONGRESSIONAL AFFAIRS UPDATE

*Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service*

June 14, 2019

2019 Congressional Recess Schedule

<i>Senate</i>	<i>Holidays & Special Days</i>	<i>House</i>
State Work Period Jul. 1 – Jul. 5	Independence Day Jul. 4	District Work Period Jul. 1 – Jul. 5
State Work Period Aug. 5 – Sep. 6	Labor Day Sep. 2	District Work Period Jul. 29 – Sep. 6
State Work Period Sep. 30 – Oct. 14	Columbus Day Oct. 14	District Work Period Sep. 30 – Oct. 11
	Veteran’s Day Nov. 11	District Work Period Nov. 4 – Nov. 8
State Work Period Nov. 25 – Nov. 29	Thanksgiving Day Nov. 28	District Work Period Nov. 25 – Nov. 29
State Work Period Dec. 16 – Dec. 31	Christmas Day Dec. 25	

UPDATES ON LEGISLATION OF INTEREST

Update on FY 2020 Appropriations

Next week, the House of Representatives is expected to begin consideration of H.R. 3055, an omnibus appropriations package funding several Departments for FY 2020 including the Department of the Interior. Members of Congress have filed 140 amendments to the section of the bill that contains appropriations for the Department of the Interior. Amendments of interest to the Service include:

- Amdt. 19 submitted by **Rep. Joe Cunningham (D-SC-1)** and **Xochitl Torres Small (D-NM-2)** — Increases funding for every allocation under the Land and Water Conservation Fund to reflect full funding of the Land and Water Conservation Fund
- Amdt. 23 submitted by **Rep. Blain Luetkemeyer (R-MO-3)** — Prohibits the use of funds to enforce a restriction against the taking of black vultures by livestock farmers during calving season.
- Amdt. 29 submitted by **Rep. Michael Cloud (R-TX-27)** — Prohibits the use of funds to produce a report that describes the environmental impacts of border barrier construction; describes measures that might contribute to mitigation of these impacts, including land acquisitions for national wildlife refuges; or estimates the costs of such mitigation.
- Amdt. 37 submitted by **Rep. Debbie Lesko (R-AZ-7)** — Prohibits the use of funds to treat the Mexican wolf as an endangered or threatened species.

- Amdt. 45 submitted by **Rep. Liz Cheney (R-WY-AL)** and **Greg Gianforte (R-MT-AL)** — Prohibits the use of funds to enforce the listing of the grizzly bear in the Greater Yellowstone Ecosystem under the ESA.
- Amdt. 49 submitted by **Rep. Neal Dunn (R-FL-2)** — Prohibits the use of funds to enforce the listing of the Panama City crayfish under the ESA.
- Amdt. 50 submitted by **Rep. Vern Buchanan (R-FL-16), Jared Huffman (D-CA-2), Earl Blumenauer (D-OR-3), and Ted Lieu (D-CA-33)** — Prohibits the use of funds to issue permits for the importation of elephant or lion trophies from Zimbabwe, Zambia or Tanzania.
- Amdt. 65 submitted by **Rep. Raul Grijalva (D-AZ-3)** — Prohibits the Department of the Interior from transferring jurisdiction of public lands along the southern U.S. border to the Departments of Defense and Homeland Security for the purposes of border security.
- Amdt. 70 submitted by **Rep. Pete Stauber (R-MN-8), Tom Emmer (R-MN-6), Paul Gosar (R-AZ-4), and Jim Sensenbrenner (R-WI-5)** — Prohibits the use of funds to treat the gray wolf as an endangered species or threatened species.
- Amdt. 77 submitted by **Rep. Gosar** — Prohibits the use of funds to write or issue a proposed rule under section 4 of the ESA for the greater sage grouse and Columbia Basin distinct population segment of the greater sage grouse.
- Amdt. 91 submitted by **Rep. Tim Walberg (R-MI-7), Matt Gaetz (R-FL-1), Steve King (R-IA-4), Richard Hudson (R-NC-8), Mike Kelly (R-PA-16), and Gianforte** — Prohibits the use of funds to regulate the lead content of ammunition or fishing tackle under the Toxic Substances Control Act
- Amdt. 94 submitted by **Rep. Jefferson Van Drew (D-NJ-4), Garret Graves (R-LA-6), and David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of Interior Solicitor’s opinion regarding sand borrowing in the Coastal Barrier Resources System.
- Amdt. 107 submitted by **Rep. Scott Perry (R-PA-10)** — Prohibits the use of funds to conduct a report on the impact of border barrier construction on sensitive lands, habitat, and wildlife, potential mitigation efforts, or cost estimates of such efforts.
- Amdt. 108 submitted by **Rep. Perry** — Prohibits the use of funds to enforce, implement, or administer a MOU that restricts border enforcement activities on federal lands.
- Amdt. 130 submitted by **Rep. Jeff Duncan (R-SC-3) and Don Young (R-AK-AL)** — Strikes section 118 from the bill that prohibits energy leases in the Arctic NWR.
- Amdt. 133 submitted by **Rep. Nydia Velázquez (D-NY-7)** — Prohibits the use of funds by the EPA to process a pesticide registration application for chlorpyrifos.
- Amdt. 137 submitted by **Rep. David Kustoff (R-TN-8), James Comer (R-KY-1), Andy Barr (R-KY-6), Michael Guest (R-MS-3), Bradley Byrne (R-AL-1), Phil Roe (R-TN-1), John Rose (R-TN-6), Chuck Fleischmann (R-TN-3), and Jim Cooper (R-TN-6)** — Increases by \$4,400,000 FWS funding for controlling and eradicating Asian Carp in the Mississippi River and its tributaries.

The House Rules Committee will review all filed amendments and will make in order those amendments on which the full House of Representatives will vote. For more information, please visit: <https://rules.house.gov/bill/116/hr-3055>

The National Defense Authorization Act for FY 2020 Advances to House Floor

On Thursday, June 13, the House Armed Services Committee voted 33-24 to advance H.R. 2500, the National Defense Authorization Act (NDAA) for Fiscal Year 2020, for consideration by the full House of Representatives. The Committee-passed bill would prohibit the use of Department of Defense funds for the construction of a barrier along the Southern U.S. border and limit the ability to waive the requirements of certain environmental statutes for national security purposes. H.R. 2500 next goes to the full House of Representatives for consideration.

On Sunday, June 11, the Senate Armed Services Committee released its version of the NDAA, S. 1790, which was previously approved by the Committee. The Senate bill does not contain any provisions of significant interest to the Service. The full Senate is expected to begin consideration of S. 1790 on Tuesday, June 18.

HEARINGS AND MARKUPS OF INTEREST

House Natural Resources Subcommittee Holds Legislative Hearing

On Thursday, June 13, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing to consider the following bills of interest to the Service, for which the Department provided a Statement for the Record:

- H.R. 1446, sponsored by **Rep. Wm. Lacy Clay (D-MO-1)**, Multinational Species Conservation Funds Semipostal Stamp Reauthorization Act of 2019
- H.R. 2685, sponsored by **Rep. Jefferson Van Drew (D-NJ-2)**, Wild Bird Conservation Reauthorization Act of 2019
- Discussion Draft H.R. ___, sponsored by **Rep. Alan Lowenthal (D-CA-47)**, Migratory Bird Protection Act

Members made several comments of interest to the Service, including:

- **Rep. Mike Johnson (R-LA-4)** asked how the legal interpretation of the draft bill would impact industry and what activities count for the most incidental take of migratory birds.
- **Chairman Jared Huffman (D-CA-2)** asked if the Service has the authority to regulate incidental take under the MBTA as written and how the draft bill would allow industry to plan projects and provide regulator certainty. **Chairman Huffman** also asked how climate change impacts migratory bird populations.
- **Rep. Russ Fulcher (R-ID-1)** asked about the cost of H.R. 2685 and what the most appropriate measure of success is in taking action under the bill. **Rep. Fulcher** also stated that the environmental regulatory system as a whole does not have a clear definition of success for its programs to show the American taxpayer.
- **Rep. Alan Lowenthal (D-CA-47)** asked how other countries interpret their treaties, and how they interpret incidental take, and if their interpretations were different from how the U.S. interprets incidental take. **Rep. Lowenthal** noted the recent report on biodiversity loss, and asked if there is a sense of urgency to protect birds in the U.S.
- **Ranking Member Tom McClintock (R-CA-4)** asked about the discrepancy between criminalizing commercial activity under the draft bill, and not non-commercial activity,

stating that the bill seems to attack commerce. **Ranking Member McClintock** also asked about the increased level of take from cats compared to oil pits and stated that if we are trying to address the mortality of birds we should eradicate all feral cats.

For more information, please visit: <https://naturalresources.house.gov/hearings/wow-legislative-hearing4>

Senate Energy and Natural Resources Committee Examines Wildfire Programs

On Thursday, June 13, the Senate Committee on Energy and Natural Resources held an oversight hearing to examine the outlook for wildland fire and management programs for 2019. Jeff Rupert, Director of the Office of Wildland Fire, testified on behalf of the Department of the Interior.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=9C6917EA-EE01-4475-A5B1-F0A6B5EB3DB3>

UPCOMING HEARINGS AND MARKUPS

Senate Committee to Hold Hearing on Deferred Maintenance

On Tuesday, June 18, the Senate Energy and Natural Resources Committee will hold an oversight hearing to examine deferred maintenance needs and potential solutions on federal lands administered by the Department of the Interior. Scott Cameron, Principal Deputy Assistant Secretary for Policy, Management, and Budget will testify on behalf of the Department of the Interior. The hearing is scheduled for 9:30 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=69C0BD6D-0DAD-4CEC-8FE0-06946A0EA883>

Senate Committee to Examine the Land and Water Conservation Fund

On Tuesday, June 25, the Senate Energy and Natural Resources Committee will hold an oversight hearing to examine implementation of the Land and Water Conservation Fund program. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/2019/6/full-committee-hearing-to-review-lwcf>

House Subcommittee to Discuss Protecting and Restoring U.S. Waters

On Tuesday, June 25, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment will hold an oversight hearing titled “Protecting and Restoring America’s Iconic Waters.” The hearing is scheduled for 10:00 a.m. in 2167 Rayburn House Office Building.

For more information, please visit: <https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-water-resources-and-environment-hearing-on--protecting-and-restoring-americas-iconic-waters>

INTRODUCED LEGISLATION OF INTEREST

S.1856 — A bill to amend the National Wildlife Refuge System Administration Act of 1966 to prohibit the use of neonicotinoids in National Wildlife Refuges, and for other purposes.

Sponsor: Sen. Heinrich, Martin [D-NM] (Introduced 06/13/2019) Cosponsors: (0)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1849 — A bill to provide flexibility and improve the effectiveness of the Four Forests Restoration Initiative in the State of Arizona.

Sponsor: Sen. McSally, Martha [R-AZ] (Introduced 06/13/2019) Cosponsors: (0)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1829 — A bill to modernize Federal grant reporting, and for other purposes.

Sponsor: Sen. Lankford, James [R-OK] (Introduced 06/13/2019) Cosponsors: (3)

Committees: Senate - Homeland Security and Governmental Affairs

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Homeland Security and Governmental Affairs

S.1821 — A bill to amend the Energy Independence and Security Act of 2007 to provide for research on, and the development and deployment of marine energy, and for other purposes.

Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 06/12/2019) Cosponsors: (4)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1812 — A bill to authorize the Administrator of the Environmental Protection Agency to conduct research on wildfire smoke, and for other purposes.

Sponsor: Sen. Merkley, Jeff [D-OR] (Introduced 06/12/2019) Cosponsors: (1)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1811 — A bill to make technical corrections to the America's Water Infrastructure Act of 2018, and for other purposes.

Sponsor: Sen. Barrasso, John [R-WY] (Introduced 06/12/2019) Cosponsors: (1)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1790 — National Defense Authorization Act for Fiscal Year 2020

Sponsor: Sen. Inhofe, James M. [R-OK] (Introduced 06/11/2019) Cosponsors: (0)

Committees: Senate - Armed Services

Latest Action: Senate - 06/11/2019 Placed on Senate Legislative Calendar under General Orders. Calendar No. 114.

S.1768 — A bill to clarify that noncommercial species found entirely within the borders of a single State are not interstate commerce or subject to regulation under the Endangered Species Act of 1973 or any other provision of law enacted as an exercise of the power of Congress to regulate interstate commerce.

Sponsor: Sen. Lee, Mike [R-UT] (Introduced 06/10/2019) Cosponsors: (0)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1760 — A bill to modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

Sponsor: Sen. Barrasso, John [R-WY] (Introduced 06/10/2019) Cosponsors: (3)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1758 — A bill to extend a repayment contract relating to the Purgatoire River Water Conservancy District and to authorize the District to develop an excess capacity contract to offset repayment costs, and for other purposes.

Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 06/10/2019) Cosponsors: (0)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.Res.251 — A resolution recognizing 2019 as the International Year of the Salmon, a framework of collaboration across the Northern Hemisphere to sustain and recover salmon stocks through research, partnerships, and public action.

Sponsor: Sen. Murkowski, Lisa [R-AK] (Introduced 06/13/2019) Cosponsors: (7)

Committees: Senate - Commerce, Science, and Transportation

Latest Action: Senate - 06/13/2019 Referred to the Committee on Commerce, Science, and Transportation.

H.R.3244 — To amend the Plant Protection Act for purposes of mitigating the threat of invasive species, and for other purposes.

Sponsor: Rep. Welch, Peter [D-VT-At Large] (Introduced 06/12/2019) Cosponsors: (0)

Committees: House - Agriculture

Latest Action: House - 06/12/2019 Referred to the House Committee on Agriculture.

H.R.3237 — To authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the Central and Lower Platte River Basin, and for other purposes.

Sponsor: Rep. Neguse, Joe [D-CO-2] (Introduced 06/12/2019) Cosponsors: (9)
Committees: House - Natural Resources
Latest Action: House - 06/12/2019 Referred to the House Committee on Natural Resources.

H.R.3225 — To amend the Mineral Leasing Act to make certain adjustments in leasing on Federal lands for oil and gas drilling, and for other purposes.

Sponsor: Rep. Levin, Mike [D-CA-49] (Introduced 06/12/2019) Cosponsors: (2)
Committees: House - Natural Resources, Agriculture
Latest Action: House - 06/12/2019 Referred to the Committee on Natural Resources.

H.R.3203 — To provide research, development, and deployment of marine energy, and for other purposes.

Sponsor: Rep. Deutch, Theodore E. [D-FL-22] (Introduced 06/11/2019) Cosponsors: (1)
Committees: House - Science, Space, and Technology
Latest Action: House - 06/11/2019 Referred to the House Committee on Science, Space, and Technology.

H.R.3195 — To amend title 54, United States Code, to provide permanent, dedicated funding for the Land and Water Conservation Fund, and for other purposes.

Sponsor: Rep. Van Drew, Jefferson [D-NJ-2] (Introduced 06/11/2019) Cosponsors: (10)
Committees: House - Natural Resources
Latest Action: House - 06/11/2019 Referred to the House Committee on Natural Resources.

H.R.3167 — National Flood Insurance Program Reauthorization Act of 2019

Sponsor: Rep. Waters, Maxine [D-CA-43] (Introduced 06/10/2019) Cosponsors: (0)
Committees: House - Financial Services, Transportation and Infrastructure
Latest Action: House - 06/11/2019 Referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

H.R.3164 — Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2020

Sponsor: Rep. Bishop, Sanford D., Jr. [D-GA-2] (Introduced 06/06/2019) Cosponsors: (0)
Committees: House - Appropriations
Committee Reports: H. Rept. 116-107
Latest Action: House - 06/06/2019 Placed on the Union Calendar, Calendar No. 80.

H.R.3161 — To amend title 10, United States Code, to reauthorize the National Oceanographic Partnership Program, and for other purposes.

Sponsor: Rep. Panetta, Jimmy [D-CA-20] (Introduced 06/06/2019) Cosponsors: (3)
Committees: House - Natural Resources, Armed Services, Science, Space, and Technology
Latest Action: House - 06/06/2019 Referred to the Committee on Natural Resources

H.R.3160 — To direct the Secretary of the Interior to take certain land located in Pinal County, Arizona, into trust for the benefit of the Gila River Indian Community, and for other purposes.

Sponsor: Rep. O'Halleran, Tom [D-AZ-1] (Introduced 06/06/2019) Cosponsors: (7)

Committees: House - Natural Resources

Latest Action: House - 06/06/2019 Referred to the House Committee on Natural Resources.

From: [Niemi, Katie](#)
To: [Schrading, Eric](#); [Popolizio, Carlo](#); [Benjamin, Pete](#); [Hernandez, Christopher M](#); [Ellis, John](#); [Matthews, Kathryn H](#); [Stilwell, David](#); [Papa, Steve](#)
Cc: [Wright, Dana K](#); [Bohn, Cynthia](#)
Subject: CBRA sand mining amendment
Date: Monday, June 17, 2019 9:30:15 AM
Attachments: [6.14.19.docx](#)

FYI - CBRA sand mining amendment to the 2020 appropriations bill (language below). There will likely be debate over this and other floor amendments to the bill when it comes to the floor, likely this week. Additionally, the Committee on Rules will meet on Tuesday 6/18 and potentially Wednesday 6/19 to consider the bill.

Amdt. 94 submitted by **Rep. Jefferson Van Drew (D-NJ-4)**, **Garret Graves (R-LA-6)**, and **David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of Interior Solicitor's opinion regarding sand borrowing in the Coastal Barrier Resources System.

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Fri, Jun 14, 2019 at 4:07 PM
Subject: Congressional Affairs Update
To: Angela Gustavson <angela_gustavson@fws.gov>

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing on three bills of interest to the Service and the Department provided a Statement for the Record.

Next week, the House is expected to begin consideration of an omnibus appropriations package for FY 2020 that would include funding for the Department of the Interior. A number of amendments were filed that are of interest to the Service.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs

U.S. Fish and Wildlife Service

Office: 703-358-2253

Mobile: 202-909-5105

angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

*Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service*

June 14, 2019

2019 Congressional Recess Schedule

<i>Senate</i>	<i>Holidays & Special Days</i>	<i>House</i>
State Work Period Jul. 1 – Jul. 5	Independence Day Jul. 4	District Work Period Jul. 1 – Jul. 5
State Work Period Aug. 5 – Sep. 6	Labor Day Sep. 2	District Work Period Jul. 29 – Sep. 6
State Work Period Sep. 30 – Oct. 14	Columbus Day Oct. 14	District Work Period Sep. 30 – Oct. 11
	Veteran’s Day Nov. 11	District Work Period Nov. 4 – Nov. 8
State Work Period Nov. 25 – Nov. 29	Thanksgiving Day Nov. 28	District Work Period Nov. 25 – Nov. 29
State Work Period Dec. 16 – Dec. 31	Christmas Day Dec. 25	

UPDATES ON LEGISLATION OF INTEREST

Update on FY 2020 Appropriations

Next week, the House of Representatives is expected to begin consideration of H.R. 3055, an omnibus appropriations package funding several Departments for FY 2020 including the Department of the Interior. Members of Congress have filed 140 amendments to the section of the bill that contains appropriations for the Department of the Interior. Amendments of interest to the Service include:

- Amdt. 19 submitted by **Rep. Joe Cunningham (D-SC-1)** and **Xochitl Torres Small (D-NM-2)** — Increases funding for every allocation under the Land and Water Conservation Fund to reflect full funding of the Land and Water Conservation Fund
- Amdt. 23 submitted by **Rep. Blain Luetkemeyer (R-MO-3)** — Prohibits the use of funds to enforce a restriction against the taking of black vultures by livestock farmers during calving season.
- Amdt. 29 submitted by **Rep. Michael Cloud (R-TX-27)** — Prohibits the use of funds to produce a report that describes the environmental impacts of border barrier construction; describes measures that might contribute to mitigation of these impacts, including land acquisitions for national wildlife refuges; or estimates the costs of such mitigation.
- Amdt. 37 submitted by **Rep. Debbie Lesko (R-AZ-7)** — Prohibits the use of funds to treat the Mexican wolf as an endangered or threatened species.

- Amdt. 45 submitted by **Rep. Liz Cheney (R-WY-AL)** and **Greg Gianforte (R-MT-AL)** — Prohibits the use of funds to enforce the listing of the grizzly bear in the Greater Yellowstone Ecosystem under the ESA.
- Amdt. 49 submitted by **Rep. Neal Dunn (R-FL-2)** — Prohibits the use of funds to enforce the listing of the Panama City crayfish under the ESA.
- Amdt. 50 submitted by **Rep. Vern Buchanan (R-FL-16), Jared Huffman (D-CA-2), Earl Blumenauer (D-OR-3), and Ted Lieu (D-CA-33)** — Prohibits the use of funds to issue permits for the importation of elephant or lion trophies from Zimbabwe, Zambia or Tanzania.
- Amdt. 65 submitted by **Rep. Raul Grijalva (D-AZ-3)** — Prohibits the Department of the Interior from transferring jurisdiction of public lands along the southern U.S. border to the Departments of Defense and Homeland Security for the purposes of border security.
- Amdt. 70 submitted by **Rep. Pete Stauber (R-MN-8), Tom Emmer (R-MN-6), Paul Gosar (R-AZ-4), and Jim Sensenbrenner (R-WI-5)** — Prohibits the use of funds to treat the gray wolf as an endangered species or threatened species.
- Amdt. 77 submitted by **Rep. Gosar** — Prohibits the use of funds to write or issue a proposed rule under section 4 of the ESA for the greater sage grouse and Columbia Basin distinct population segment of the greater sage grouse.
- Amdt. 91 submitted by **Rep. Tim Walberg (R-MI-7), Matt Gaetz (R-FL-1), Steve King (R-IA-4), Richard Hudson (R-NC-8), Mike Kelly (R-PA-16), and Gianforte** — Prohibits the use of funds to regulate the lead content of ammunition or fishing tackle under the Toxic Substances Control Act
- Amdt. 94 submitted by **Rep. Jefferson Van Drew (D-NJ-4), Garret Graves (R-LA-6), and David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of Interior Solicitor’s opinion regarding sand borrowing in the Coastal Barrier Resources System.
- Amdt. 107 submitted by **Rep. Scott Perry (R-PA-10)** — Prohibits the use of funds to conduct a report on the impact of border barrier construction on sensitive lands, habitat, and wildlife, potential mitigation efforts, or cost estimates of such efforts.
- Amdt. 108 submitted by **Rep. Perry** — Prohibits the use of funds to enforce, implement, or administer a MOU that restricts border enforcement activities on federal lands.
- Amdt. 130 submitted by **Rep. Jeff Duncan (R-SC-3) and Don Young (R-AK-AL)** — Strikes section 118 from the bill that prohibits energy leases in the Arctic NWR.
- Amdt. 133 submitted by **Rep. Nydia Velázquez (D-NY-7)** — Prohibits the use of funds by the EPA to process a pesticide registration application for chlorpyrifos.
- Amdt. 137 submitted by **Rep. David Kustoff (R-TN-8), James Comer (R-KY-1), Andy Barr (R-KY-6), Michael Guest (R-MS-3), Bradley Byrne (R-AL-1), Phil Roe (R-TN-1), John Rose (R-TN-6), Chuck Fleischmann (R-TN-3), and Jim Cooper (R-TN-6)** — Increases by \$4,400,000 FWS funding for controlling and eradicating Asian Carp in the Mississippi River and its tributaries.

The House Rules Committee will review all filed amendments and will make in order those amendments on which the full House of Representatives will vote. For more information, please visit: <https://rules.house.gov/bill/116/hr-3055>

The National Defense Authorization Act for FY 2020 Advances to House Floor

On Thursday, June 13, the House Armed Services Committee voted 33-24 to advance H.R. 2500, the National Defense Authorization Act (NDAA) for Fiscal Year 2020, for consideration by the full House of Representatives. The Committee-passed bill would prohibit the use of Department of Defense funds for the construction of a barrier along the Southern U.S. border and limit the ability to waive the requirements of certain environmental statutes for national security purposes. H.R. 2500 next goes to the full House of Representatives for consideration.

On Sunday, June 11, the Senate Armed Services Committee released its version of the NDAA, S. 1790, which was previously approved by the Committee. The Senate bill does not contain any provisions of significant interest to the Service. The full Senate is expected to begin consideration of S. 1790 on Tuesday, June 18.

HEARINGS AND MARKUPS OF INTEREST

House Natural Resources Subcommittee Holds Legislative Hearing

On Thursday, June 13, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing to consider the following bills of interest to the Service, for which the Department provided a Statement for the Record:

- H.R. 1446, sponsored by **Rep. Wm. Lacy Clay (D-MO-1)**, Multinational Species Conservation Funds Semipostal Stamp Reauthorization Act of 2019
- H.R. 2685, sponsored by **Rep. Jefferson Van Drew (D-NJ-2)**, Wild Bird Conservation Reauthorization Act of 2019
- Discussion Draft H.R. __, sponsored by **Rep. Alan Lowenthal (D-CA-47)**, Migratory Bird Protection Act

Members made several comments of interest to the Service, including:

- **Rep. Mike Johnson (R-LA-4)** asked how the legal interpretation of the draft bill would impact industry and what activities count for the most incidental take of migratory birds.
- **Chairman Jared Huffman (D-CA-2)** asked if the Service has the authority to regulate incidental take under the MBTA as written and how the draft bill would allow industry to plan projects and provide regulator certainty. **Chairman Huffman** also asked how climate change impacts migratory bird populations.
- **Rep. Russ Fulcher (R-ID-1)** asked about the cost of H.R. 2685 and what the most appropriate measure of success is in taking action under the bill. **Rep. Fulcher** also stated that the environmental regulatory system as a whole does not have a clear definition of success for its programs to show the American taxpayer.
- **Rep. Alan Lowenthal (D-CA-47)** asked how other countries interpret their treaties, and how they interpret incidental take, and if their interpretations were different from how the U.S. interprets incidental take. **Rep. Lowenthal** noted the recent report on biodiversity loss, and asked if there is a sense of urgency to protect birds in the U.S.
- **Ranking Member Tom McClintock (R-CA-4)** asked about the discrepancy between criminalizing commercial activity under the draft bill, and not non-commercial activity,

stating that the bill seems to attack commerce. **Ranking Member McClintock** also asked about the increased level of take from cats compared to oil pits and stated that if we are trying to address the mortality of birds we should eradicate all feral cats.

For more information, please visit: <https://naturalresources.house.gov/hearings/wow-legislative-hearing4>

Senate Energy and Natural Resources Committee Examines Wildfire Programs

On Thursday, June 13, the Senate Committee on Energy and Natural Resources held an oversight hearing to examine the outlook for wildland fire and management programs for 2019. Jeff Rupert, Director of the Office of Wildland Fire, testified on behalf of the Department of the Interior.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=9C6917EA-EE01-4475-A5B1-F0A6B5EB3DB3>

UPCOMING HEARINGS AND MARKUPS

Senate Committee to Hold Hearing on Deferred Maintenance

On Tuesday, June 18, the Senate Energy and Natural Resources Committee will hold an oversight hearing to examine deferred maintenance needs and potential solutions on federal lands administered by the Department of the Interior. Scott Cameron, Principal Deputy Assistant Secretary for Policy, Management, and Budget will testify on behalf of the Department of the Interior. The hearing is scheduled for 9:30 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=69C0BD6D-0DAD-4CEC-8FE0-06946A0EA883>

Senate Committee to Examine the Land and Water Conservation Fund

On Tuesday, June 25, the Senate Energy and Natural Resources Committee will hold an oversight hearing to examine implementation of the Land and Water Conservation Fund program. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/2019/6/full-committee-hearing-to-review-lwcf>

House Subcommittee to Discuss Protecting and Restoring U.S. Waters

On Tuesday, June 25, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment will hold an oversight hearing titled “Protecting and Restoring America’s Iconic Waters.” The hearing is scheduled for 10:00 a.m. in 2167 Rayburn House Office Building.

For more information, please visit: <https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-water-resources-and-environment-hearing-on--protecting-and-restoring-americas-iconic-waters>

INTRODUCED LEGISLATION OF INTEREST

S.1856 — A bill to amend the National Wildlife Refuge System Administration Act of 1966 to prohibit the use of neonicotinoids in National Wildlife Refuges, and for other purposes.

Sponsor: Sen. Heinrich, Martin [D-NM] (Introduced 06/13/2019) Cosponsors: (0)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1849 — A bill to provide flexibility and improve the effectiveness of the Four Forests Restoration Initiative in the State of Arizona.

Sponsor: Sen. McSally, Martha [R-AZ] (Introduced 06/13/2019) Cosponsors: (0)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1829 — A bill to modernize Federal grant reporting, and for other purposes.

Sponsor: Sen. Lankford, James [R-OK] (Introduced 06/13/2019) Cosponsors: (3)

Committees: Senate - Homeland Security and Governmental Affairs

Latest Action: Senate - 06/13/2019 Read twice and referred to the Committee on Homeland Security and Governmental Affairs

S.1821 — A bill to amend the Energy Independence and Security Act of 2007 to provide for research on, and the development and deployment of marine energy, and for other purposes.

Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 06/12/2019) Cosponsors: (4)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1812 — A bill to authorize the Administrator of the Environmental Protection Agency to conduct research on wildfire smoke, and for other purposes.

Sponsor: Sen. Merkley, Jeff [D-OR] (Introduced 06/12/2019) Cosponsors: (1)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1811 — A bill to make technical corrections to the America's Water Infrastructure Act of 2018, and for other purposes.

Sponsor: Sen. Barrasso, John [R-WY] (Introduced 06/12/2019) Cosponsors: (1)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/12/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1790 — National Defense Authorization Act for Fiscal Year 2020

Sponsor: Sen. Inhofe, James M. [R-OK] (Introduced 06/11/2019) Cosponsors: (0)

Committees: Senate - Armed Services

Latest Action: Senate - 06/11/2019 Placed on Senate Legislative Calendar under General Orders. Calendar No. 114.

S.1768 — A bill to clarify that noncommercial species found entirely within the borders of a single State are not interstate commerce or subject to regulation under the Endangered Species Act of 1973 or any other provision of law enacted as an exercise of the power of Congress to regulate interstate commerce.

Sponsor: Sen. Lee, Mike [R-UT] (Introduced 06/10/2019) Cosponsors: (0)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Environment and Public Works.

S.1760 — A bill to modernize the Public Utility Regulatory Policies Act of 1978, and for other purposes.

Sponsor: Sen. Barrasso, John [R-WY] (Introduced 06/10/2019) Cosponsors: (3)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1758 — A bill to extend a repayment contract relating to the Purgatoire River Water Conservancy District and to authorize the District to develop an excess capacity contract to offset repayment costs, and for other purposes.

Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 06/10/2019) Cosponsors: (0)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/10/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.Res.251 — A resolution recognizing 2019 as the International Year of the Salmon, a framework of collaboration across the Northern Hemisphere to sustain and recover salmon stocks through research, partnerships, and public action.

Sponsor: Sen. Murkowski, Lisa [R-AK] (Introduced 06/13/2019) Cosponsors: (7)

Committees: Senate - Commerce, Science, and Transportation

Latest Action: Senate - 06/13/2019 Referred to the Committee on Commerce, Science, and Transportation.

H.R.3244 — To amend the Plant Protection Act for purposes of mitigating the threat of invasive species, and for other purposes.

Sponsor: Rep. Welch, Peter [D-VT-At Large] (Introduced 06/12/2019) Cosponsors: (0)

Committees: House - Agriculture

Latest Action: House - 06/12/2019 Referred to the House Committee on Agriculture.

H.R.3237 — To authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program First Increment Extension for threatened and endangered species in the Central and Lower Platte River Basin, and for other purposes.

Sponsor: Rep. Neguse, Joe [D-CO-2] (Introduced 06/12/2019) Cosponsors: (9)
Committees: House - Natural Resources
Latest Action: House - 06/12/2019 Referred to the House Committee on Natural Resources.

H.R.3225 — To amend the Mineral Leasing Act to make certain adjustments in leasing on Federal lands for oil and gas drilling, and for other purposes.

Sponsor: Rep. Levin, Mike [D-CA-49] (Introduced 06/12/2019) Cosponsors: (2)
Committees: House - Natural Resources, Agriculture
Latest Action: House - 06/12/2019 Referred to the Committee on Natural Resources.

H.R.3203 — To provide research, development, and deployment of marine energy, and for other purposes.

Sponsor: Rep. Deutch, Theodore E. [D-FL-22] (Introduced 06/11/2019) Cosponsors: (1)
Committees: House - Science, Space, and Technology
Latest Action: House - 06/11/2019 Referred to the House Committee on Science, Space, and Technology.

H.R.3195 — To amend title 54, United States Code, to provide permanent, dedicated funding for the Land and Water Conservation Fund, and for other purposes.

Sponsor: Rep. Van Drew, Jefferson [D-NJ-2] (Introduced 06/11/2019) Cosponsors: (10)
Committees: House - Natural Resources
Latest Action: House - 06/11/2019 Referred to the House Committee on Natural Resources.

H.R.3167 — National Flood Insurance Program Reauthorization Act of 2019

Sponsor: Rep. Waters, Maxine [D-CA-43] (Introduced 06/10/2019) Cosponsors: (0)
Committees: House - Financial Services, Transportation and Infrastructure
Latest Action: House - 06/11/2019 Referred to the Subcommittee on Economic Development, Public Buildings, and Emergency Management.

H.R.3164 — Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2020

Sponsor: Rep. Bishop, Sanford D., Jr. [D-GA-2] (Introduced 06/06/2019) Cosponsors: (0)
Committees: House - Appropriations
Committee Reports: H. Rept. 116-107
Latest Action: House - 06/06/2019 Placed on the Union Calendar, Calendar No. 80.

H.R.3161 — To amend title 10, United States Code, to reauthorize the National Oceanographic Partnership Program, and for other purposes.

Sponsor: Rep. Panetta, Jimmy [D-CA-20] (Introduced 06/06/2019) Cosponsors: (3)
Committees: House - Natural Resources, Armed Services, Science, Space, and Technology
Latest Action: House - 06/06/2019 Referred to the Committee on Natural Resources

H.R.3160 — To direct the Secretary of the Interior to take certain land located in Pinal County, Arizona, into trust for the benefit of the Gila River Indian Community, and for other purposes.

Sponsor: Rep. O'Halleran, Tom [D-AZ-1] (Introduced 06/06/2019) Cosponsors: (7)

Committees: House - Natural Resources

Latest Action: House - 06/06/2019 Referred to the House Committee on Natural Resources.

From: [Bohn, Cynthia](#)
To: [Niemi, Katie](#)
Cc: [Popolizio, Carlo](#); [Ellis, John](#); [Papa, Steve](#); [Wright, Dana K](#); [Valenta, Aaron](#)
Subject: Re: CBRA sand mining amendment
Date: Monday, June 17, 2019 11:17:55 AM
Importance: High

This doesn't seem to change anything other than we cannot consult. Interesting to see how this will turn out. thx, C

Cynthia Bohn
Southeast Region Coastal Program Coordinator
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Mon, Jun 17, 2019 at 10:58 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

I'm not sure exactly how it would work, but given that the amendment offered is to the DOI appropriations bill, I would think the Corps would still have responsibility to consult with us on sand mining activities within the CBRS. Unclear how we would then respond (or not respond) on these particular consultations. Ultimately the decision on whether to fund and proceed with activities within the CBRS rests with the funding agency, not us.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Mon, Jun 17, 2019 at 10:02 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

How would that even work? c

Cynthia Bohn

Southeast Region Coastal Program Coordinator
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Mon, Jun 17, 2019 at 9:30 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI - CBRA sand mining amendment to the 2020 appropriations bill (language below). There will likely be debate over this and other floor amendments to the bill when it comes to the floor, likely this week. Additionally, the Committee on Rules will meet on Tuesday 6/18 and potentially Wednesday 6/19 to consider the bill.

Amdt. 94 submitted by **Rep. Jefferson Van Drew (D-NJ-4), Garret Graves (R-LA-6), and David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of Interior Solicitor's opinion regarding sand borrowing in the Coastal Barrier Resources System.

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Gustavson, Angela** <angela_gustavson@fws.gov>
Date: Fri, Jun 14, 2019 at 4:07 PM
Subject: Congressional Affairs Update
To: Angela Gustavson <angela_gustavson@fws.gov>

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, the House Natural Resources Subcommittee on Water, Oceans, and Wildlife held a legislative hearing on three bills of interest to the Service and the Department provided a Statement for the Record.

Next week, the House is expected to begin consideration of an omnibus appropriations

package for FY 2020 that would include funding for the Department of the Interior. A number of amendments were filed that are of interest to the Service.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

From: [Berg, Elizabeth A](#)
To: [Wright, Dana K](#)
Cc: [Niemi, Katie](#)
Subject: Re: CBRA sand mining amendment
Date: Monday, June 17, 2019 2:17:59 PM
Attachments: [Van Drew 2740 Amend CBR map614191231473147.pdf](#)
Importance: High

Hi Katie and Dana,

Here is a copy of the second CBRA amendment.

Liz

On Mon, Jun 17, 2019 at 9:23 AM Wright, Dana <dana_wright@fws.gov> wrote:

I assume they would - this amendment only affects DOI.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Mon, Jun 17, 2019 at 9:11 AM Berg, Elizabeth <elizabeth_berg@fws.gov> wrote:

Good question. Maybe one for the FWS solicitor? I don't know.

On Mon, Jun 17, 2019 at 8:57 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Liz,

Given the way this amendment is written (and the fact that it would amend the DOI appropriations bill), would the Corps still have to go through the consultation process prior to making expenditures affecting the CBRS?

Katie

On Mon, Jun 17, 2019 at 8:45 AM Berg, Elizabeth <elizabeth_berg@fws.gov> wrote:

Hi Katie and Dana,

On Thursday 6/13, Reps. Graves and Van Drew submitted a floor amendment to the Interior Appropriations Bill that that would allow for sand mining from CBRA areas. The submitted language and bill text are attached.

There will likely be debate over this and other floor amendments to the bill when it comes to the floor, likely this week. Additionally, the Committee on Rules will meet on Tuesday 6/18 and potentially Wednesday 6/19 to consider the bill.

I'll continue to track the progress of this and provide you with updates.

Liz

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

--

Elizabeth Berg
Congressional and Legislative Affairs Knauss Fellow
U.S. Fish and Wildlife Service
Office: 703-358-2225
elizabeth_berg@fws.gov

**AMENDMENT DIVISION C OF COMMITTEE PRINT
116-18
OFFERED BY MR. VAN DREW OF NEW JERSEY**

At the end of division C (before the short title), insert the following:

1 SEC. None of the funds made available by this
2 Act may be used by the United States Fish and Wildlife
3 Service to finalize Coastal Barrier Resources system maps
4 as proposed in 83 Federal Register 10739 for transmittal
5 to Congress unless the State of New Jersey is exempted
6 from such maps.



From: bamcoast@earthlink.net
To: [Niemi, Katie](#); [Wright, Dana K](#)
Subject: [EXTERNAL] Our letter
Date: Thursday, June 20, 2019 1:01:00 PM
Attachments: [CBRA sand mining opposition letter.docx](#)

PLEASE OPPOSE AMENDMENT NO. 94 TO H.R. 3055 REGARDING THE COASTAL BARRIER RESOURCES ACT

June 20, 2019

Dear Representative:

We are writing to request that you oppose an amendment to the Interior Appropriations bill that would weaken and undermine the Coastal Barrier Resources Act (CBRA), a bipartisan success story that President Reagan praised as “enhancing wise natural resource conservation and fiscal responsibility.” Last year, Congress passed legislation with one dissenting vote that expanded the areas protected through the CBRA, garnering praise by conservative think tanks, insurance industry representatives, state agency officials, sportsmen organizations and conservation groups. The current proposed amendment, offered by Reps. Graves, Rouzer and Van Drew, has never been subject to Congressional review or debate, would overturn decades of precedent, and would pose significant threats to the coastal environment.

The Coastal Barrier Resources Act has three principal objectives: save federal tax dollars, conserve coastal resources, and promote public safety. According to a March 2019 study published in the peer-reviewed *Journal of Coastal Research*, the CBRA has saved the federal tax payer \$9.5 billion. The CBRA prohibits most new federal expenditures for development on areas included in it. It does not prohibit development; it simply removes the federal taxpayer from underwriting it.

The CBRA protects 3.5 million acres along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands and Puerto Rico. These undeveloped areas include barrier islands, beaches, dunes, spits, inlets and wetlands, which are vital habitat for wildlife and the lucrative fishing industries, and important providers of coastal resiliency benefits. According to the National Oceanic and Atmospheric Administration, coastal wetlands support more than half of commercially harvested seafood in the U.S., while supporting the marine recreational fishing industry, which contributes 439,000 jobs to the nation’s economy and generates \$63 billion in sales.

The amendment would open up CBRA areas to sand mining to supply beach renourishment activities on developed beaches and other activities, threatening the CBRA areas that are most important to habitat and wildlife. The amendment should be opposed because:

- **It would overturn decades of precedent.** Every major change to the CBRA has been preceded by a Congressionally-requested review by the U.S. Fish and Wildlife Service of the issue.
- **Impacts from sand mining are unknown.** Sand mining impacts on the CBRA have never been studied by federal agencies, so the sweeping amendment would be implemented with no scientific review, guidelines or best practices.
- **It is unnecessary.** CBRA only prohibits federal expenditures. Private, state and local expenditures are allowed, so dredging can occur if the federal taxpayer isn’t required to pay for it.

We strongly urge you to oppose this amendment. Instead, the U.S. Fish and Wildlife Service should be directed to study this important issue so that the integrity of the bipartisan CBRA is not threatened by hasty action.

Sincerely,

National Audubon Society
Theodore Roosevelt Conservation Partnership
American Littoral Society
Audubon Maryland-DC
Surfrider Foundation
Save The Bay (RI)
New Jersey Conservation Foundation
Audubon New York
Audubon Connecticut
Southern Environmental Law Center
National Wildlife Federation
Audubon South Carolina
Audubon Florida
Audubon North Carolina
Association of State Wetland Managers
Audubon New Jersey
Maryland Ornithological Society
Association of State Floodplain Managers
Natural Resources Defense Council

From: [Niemi, Katie](#)
To: [BalisLarsen, Martha](#); [Phinney, Jonathan T](#); [Bohn, Cynthia](#); [Shultz, Gina](#); [Jesup, Benjamin C](#); [Chen, Linus Y](#); [Berg, Elizabeth A](#); [Gustavson, Angela](#); [Kodis, Martin](#); [Schrading, Eric](#); [Eustis, Christine](#); [Comlish, Paul D](#); [Hatch, Kristy B](#); [Fish, Teresa L](#); [Zosh, Jennifer M](#); [Wright, Dana K](#); [Peters, Kristen E](#)
Subject: CBRA sand mining amendment withdrawn
Date: Thursday, June 20, 2019 2:47:29 PM
Attachments: [CBRA sand mining opposition letter.docx](#)

Hi Folks,
FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.
<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

PLEASE OPPOSE AMENDMENT NO. 94 TO H.R. 3055 REGARDING THE COASTAL BARRIER RESOURCES ACT

June 20, 2019

Dear Representative:

We are writing to request that you oppose an amendment to the Interior Appropriations bill that would weaken and undermine the Coastal Barrier Resources Act (CBRA), a bipartisan success story that President Reagan praised as “enhancing wise natural resource conservation and fiscal responsibility.” Last year, Congress passed legislation with one dissenting vote that expanded the areas protected through the CBRA, garnering praise by conservative think tanks, insurance industry representatives, state agency officials, sportsmen organizations and conservation groups. The current proposed amendment, offered by Reps. Graves, Rouzer and Van Drew, has never been subject to Congressional review or debate, would overturn decades of precedent, and would pose significant threats to the coastal environment.

The Coastal Barrier Resources Act has three principal objectives: save federal tax dollars, conserve coastal resources, and promote public safety. According to a March 2019 study published in the peer-reviewed *Journal of Coastal Research*, the CBRA has saved the federal tax payer \$9.5 billion. The CBRA prohibits most new federal expenditures for development on areas included in it. It does not prohibit development; it simply removes the federal taxpayer from underwriting it.

The CBRA protects 3.5 million acres along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands and Puerto Rico. These undeveloped areas include barrier islands, beaches, dunes, spits, inlets and wetlands, which are vital habitat for wildlife and the lucrative fishing industries, and important providers of coastal resiliency benefits. According to the National Oceanic and Atmospheric Administration, coastal wetlands support more than half of commercially harvested seafood in the U.S., while supporting the marine recreational fishing industry, which contributes 439,000 jobs to the nation’s economy and generates \$63 billion in sales.

The amendment would open up CBRA areas to sand mining to supply beach renourishment activities on developed beaches and other activities, threatening the CBRA areas that are most important to habitat and wildlife. The amendment should be opposed because:

- **It would overturn decades of precedent.** Every major change to the CBRA has been preceded by a Congressionally-requested review by the U.S. Fish and Wildlife Service of the issue.
- **Impacts from sand mining are unknown.** Sand mining impacts on the CBRA have never been studied by federal agencies, so the sweeping amendment would be implemented with no scientific review, guidelines or best practices.
- **It is unnecessary.** CBRA only prohibits federal expenditures. Private, state and local expenditures are allowed, so dredging can occur if the federal taxpayer isn’t required to pay for it.

We strongly urge you to oppose this amendment. Instead, the U.S. Fish and Wildlife Service should be directed to study this important issue so that the integrity of the bipartisan CBRA is not threatened by hasty action.

Sincerely,

National Audubon Society
Theodore Roosevelt Conservation Partnership
American Littoral Society
Audubon Maryland-DC
Surfrider Foundation
Save The Bay (RI)
New Jersey Conservation Foundation
Audubon New York
Audubon Connecticut
Southern Environmental Law Center
National Wildlife Federation
Audubon South Carolina
Audubon Florida
Audubon North Carolina
Association of State Wetland Managers
Audubon New Jersey
Maryland Ornithological Society
Association of State Floodplain Managers
Natural Resources Defense Council

From: [Niemi, Katie](#)
To: [Chen, Linus Y](#)
Subject: Re: CBRA sand mining amendment withdrawn
Date: Friday, June 21, 2019 8:29:33 AM

Hi Linus,

The sand mining amendment was submitted by Rep. Jefferson Van Drew (D-NJ-4), Garret Graves (R-LA-6), and David Rouzer (R-NC-7). That one was withdrawn yesterday by Rep. Van Drew. There was a second amendment referring to the Batch 1 maps of the Hurricane Sandy Project (which include the NJ maps) but my understanding is that one was never offered by Rep. Van Drew.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Thu, Jun 20, 2019 at 2:50 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Yah, good news.

Your emails on this suggest that this was the second amendment on this issue. Was there a similar proposed amendment from the Congressmen in NC?

On Thu, Jun 20, 2019 at 2:47 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.

<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

From: [Shultz, Gina](#)
To: [Niemi, Katie](#)
Subject: Re: CBRA sand mining amendment withdrawn
Date: Friday, June 21, 2019 9:23:33 AM
Importance: High

Great letter. Thank you for sharing it and the news about the amendment.

Sent from my iPhone

On Jun 20, 2019, at 2:47 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,
FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.
<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

<CBRA sand mining opposition letter.docx>

From: [Niemi, Katie](#)
To: [Bohn, Cynthia](#)
Subject: Re: CBRA sand mining amendment withdrawn
Date: Friday, June 21, 2019 9:37:35 AM

Enjoy your vacation Cindy!!

Katie

On Fri, Jun 21, 2019 at 9:24 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:
interesting!! I'm doing some quick emails and then I'll be off line until July 3. Call me on my cell though if you need to or anything really fun happens!! c

Cynthia Bohn
Southeast Region Coastal Program Coordinator
Coastal Barrier Resources Act Coordinator (R5, R4, R2)
USFWS Southeast Region
1875 Century Blvd, Room 200
Atlanta, GA 30345
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

[Learn more about the Coastal Barrier Resources Act](#)

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Thu, Jun 20, 2019 at 2:47 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,
FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.

<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Subject: Re: CBRA sand mining amendment withdrawn
Date: Friday, June 21, 2019 9:46:12 AM
Importance: High

Can I cheer? Good news!

Martha

On Thu, Jun 20, 2019 at 2:47 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.

<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [Schrading, Eric](#)
To: [Eustis, Christine](#); [Simon, Spencer](#); [Niemi, Katie](#); [Wright, Dana K](#); [Bohn, Cynthia](#)
Subject: Re: CBRA sand mining amendment withdrawn
Date: Friday, June 21, 2019 1:13:22 PM
Importance: High

Thanks.

We are having conversations with National Audubon and American Littoral Society about some options/alternatives that could be considered by the Corps to satisfy their need for sand while still complying with CBRA. However, we are not discussing any proposed legislation for obvious reasons.

On Fri, Jun 21, 2019 at 10:18 AM Eustis, Christine <christine_eustis@fws.gov> wrote:
FYI - Congressman Van Drew wound up withdrawing his CBRA amendment...

----- Forwarded message -----

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Thu, Jun 20, 2019 at 2:47 PM
Subject: CBRA sand mining amendment withdrawn
To: BalisLarsen, Martha <martha_balislarsen@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Benjamin Jesup <benjamin.jesup@sol.doi.gov>, Linus Chen <linus.chen@sol.doi.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Eric Schrading <eric_schrading@fws.gov>, Christine Eustis <christine_eustis@fws.gov>, Comlish, Paul <paul_comlish@fws.gov>, Kristy Hatch <kristy_hatch@fws.gov>, Teresa Fish <teresa_fish@fws.gov>, Jennifer Zosh <jennifer_zosh@fws.gov>, Wright, Dana <dana_wright@fws.gov>, Kristen Peters <kristen_peters@fws.gov>

Hi Folks,

FYI, Rep. Van Drew (NJ) has withdrawn the CBRA sand mining amendment he offered to the FY2020 Interior appropriations bill.

Attached is a letter from numerous groups that opposed the amendment.

Here's a link to a letter from R Street which also opposed it.

<https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/>

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Christine Eustis
External Affairs, Northeast Region
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035
office: 413) 253-8321
cell: 413) 270-0215
christine_eustis@fws.gov

--

Eric Schradling, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

From: [Gustavson, Angela](#)
To: [Gustavson, Angela](#)
Bcc: [Niemi, Katie](#)
Subject: Congressional Affairs Update
Date: Friday, June 21, 2019 4:16:04 PM
Attachments: [6.21.19.docx](#)
Importance: High

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, two Senate Committees approved Robert Wallace to be the Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks.

In addition, the House began consideration of an omnibus appropriations package that includes FY 2020 funding for the Department of the Interior.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

*Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service*

June 21, 2019

2019 Congressional Recess Schedule

<i>Senate</i>	<i>Holidays & Special Days</i>	<i>House</i>
State Work Period Jul. 1 – Jul. 5	Independence Day Jul. 4	District Work Period Jul. 1 – Jul. 5
State Work Period Aug. 5 – Sep. 6	Labor Day Sep. 2	District Work Period Jul. 29 – Sep. 6
State Work Period Sep. 30 – Oct. 14	Columbus Day Oct. 14	District Work Period Sep. 30 – Oct. 11
	Veteran’s Day Nov. 11	District Work Period Nov. 4 – Nov. 8
State Work Period Nov. 25 – Nov. 29	Thanksgiving Day Nov. 28	District Work Period Nov. 25 – Nov. 29
State Work Period Dec. 16 – Dec. 31	Christmas Day Dec. 25	

Senate Votes on Robert Wallace as Assistant Secretary for Fish and Wildlife and Parks

On Wednesday, June 19, the Senate Environment and Public Works Committee approved Robert Wallace to be the Department of the Interior’s Assistant Secretary for Fish and Wildlife and Parks by voice vote. Additionally, on Thursday, June 20, the Senate Energy and Natural Resources Committee approved Robert Wallace by a 19-1 vote. Robert Wallace now awaits confirmation by the full Senate.

UPDATES ON LEGISLATION OF INTEREST

Update on FY 2020 Appropriations

This week, the House of Representatives began consideration of H.R. 3055, an omnibus appropriations package funding several Departments for FY 2020 including the Department of the Interior. Members of Congress filed 140 amendments to the section of the bill that contains appropriations for the Department of the Interior. The following amendments of interest to the Service were made in order and considered by the full House:

The following amendments were adopted:

- Amdt. 133 submitted by **Representatives Vern Buchanan (R-FL-16), Jared Huffman (D-CA-2), Earl Blumenauer (D-OR-3), and Ted Lieu (D-CA-33)** — Prevents funds from being used by USFWS to issue permits for the importation of elephant or lion trophies from Zimbabwe, Zambia or Tanzania, was adopted by a roll call vote of 239-192.

- Amdt. 141, submitted by **Representative Raul Grijalva (D-AZ-3)** — Prohibits the Department of the Interior from transferring jurisdiction of public lands along the southern U.S. border to the Departments of Defense and Homeland Security for the purposes of border security, was adopted by voice vote.
- Amdt. 168 submitted by **Representatives Joe Cunningham (D-SC-1)** and **Xochitl Torres Small (D-NM-2)** — Increases and decreases funding by \$5,000,000 to prioritize the Land and Water Conservation Fund, was adopted by a roll call vote of 235-107.

The following amendments were defeated:

- Amdt. 143, submitted by **Rep. Jeff Duncan (R-SC-3)** and **Don Young (R-AK-AL)** — Strikes section 118 from the bill that prohibits energy leases in the Arctic NWR, was defeated by a roll call vote of 198-233.

The following amendment was withdrawn:

- Amdt. 194, submitted by **Representatives Jefferson Van Drew (D-NJ-4)**, **Garret Graves (R-LA-6)**, and **David Rouzer (R-NC-7)** — Prohibits the use of funds to implement the 1994 Department of the Interior Solicitor’s opinion regarding sand borrowing in the Coastal Barrier Resources System, was withdrawn.

HEARINGS AND MARKUPS OF INTEREST

Senate Committee Held Hearing on Deferred Maintenance

On Tuesday, June 18, the Senate Energy and Natural Resources Committee held an oversight hearing to examine deferred maintenance needs and potential solutions on federal lands administered by the Department of the Interior. Scott Cameron, Principal Deputy Assistant Secretary for Policy, Management, and Budget testified on behalf of the Department of the Interior.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=69C0BD6D-0DAD-4CEC-8FE0-06946A0EA883>

House Natural Resources Held Full Committee Markup

On Wednesday, June 19, the House Committee on Natural Resources held a markup to consider the following bills of interest to the Service:

- H.R. 1225, sponsored by **Representative Bishop (R-UT-1)**, To establish, fund, and provide for the use of amounts in a National Park Service and Public Lands Legacy Restoration Fund to address the maintenance backlog of the National Park Service, United States Fish and Wildlife Service, Bureau of Land Management, and Bureau of Indian Education, and for other purposes. “Restore Our Parks and Public Lands Act.”
- H.R. 1305, sponsored by **Representative Alan Lowenthal (D-CA-47)**, To implement the Agreement on the Conservation of Albatrosses and Petrels, and for other purposes. “Albatross and Petrel Conservation Act.”
- H.R. 3195, sponsored by **Representative Van Drew (D-NJ-2)**, To amend title 54, United States Code, to provide permanent, dedicated funding for the Land and Water

Conservation Fund, and for other purposes. “Land and Water Conservation Fund Permanent Funding Act.”

H.R. 1305 and H.R. 3195 were approved by the Committee by recorded vote. Several amendments were offered to H.R. 3195, none of which were accepted. H.R. 1225 was not considered during the markup due to time constraints. During the hearing, Members made several comments that are of interest to the Service:

- **Representative Tom McClintock (R-CA-4)** stated that H.R. 1305 was ratification of a treaty by statute and that protections for albatrosses and petrels are already afforded under the MBTA, noting that the Senate should ratify the treaty and H.R. 1305 sets out even more regulations. **Representative McClintock** also stated the majority has not requested views from the Commerce, State, or Interior Departments, and referred to the great number of birds that are taken by feral cats, noting it is much larger than those taken by industry.
- With regards to H.R. 1305, **Representative Jared Huffman (D-CA-2)** stated that the minority’s support for the M-Opinion which removes protections from incidental take is contrary to the statement that seabirds are already protected under the MBTA.
- **Representative Alan Lowenthal (D-CA-47)** stated that H.R. 1305 does not ratify the treaty, but provides implementing language for the treaty; noting the Agreement it is not self-certifying. **Representative Lowenthal** noted that domestic fisheries are not going to be subject to additional requirements and regulations.

For more information, please visit: <https://naturalresources.house.gov/hearings/full-committee-markup>

UPCOMING HEARINGS AND MARKUPS

House Natural Resources Subcommittee to Hold Hearing on Chronic Wasting Disease

On Tuesday, June 25, the House Natural Resources Subcommittee on Oversight and Investigation will hold a hearing on Chronic Wasting Disease: The Threats to Wildlife, Public Lands, Hunting, and Health. The hearing is scheduled for 2:00 p.m. in 1324 Longworth House Office Building.

For more information, please visit: <https://naturalresources.house.gov/hearings/chronic-wasting-disease-the-threats-to-wildlife-public-lands-hunting-and-health>

Senate Energy and Natural Resources Committee to Hold Hearing on LWCF

On Tuesday, June 25, the Senate Energy and Natural Resources Committee will hold a hearing to review the implementation of the Land and Water Conservation Fund program. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building. Susan Combs, Assistant Secretary for Policy, Management and Budget at the Department of the Interior will testify.

For more information, please visit: <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=E5D7647F-0C40-4388-B23B-C56D5236E43A>

House Subcommittee to Discuss Protecting and Restoring U.S. Waters

On Tuesday, June 25, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment will hold an oversight hearing titled “Protecting and Restoring America’s Iconic Waters.” The hearing is scheduled for 10:00 a.m. in 2167 Rayburn House Office Building.

For more information, please visit: <https://transportation.house.gov/committee-activity/hearings/the-subcommittee-on-water-resources-and-environment-hearing-on--protecting-and-restoring-americas-iconic-waters>

INTRODUCED LEGISLATION OF INTEREST

S.1932 — A bill to support water infrastructure in Reclamation States, and for other purposes.

Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 06/20/2019) Cosponsors: (3)

Committees: Senate - Energy and Natural Resources

Latest Action: Senate - 06/20/2019 Read twice and referred to the Committee on Energy and Natural Resources.

S.1922 — A bill to authorize Federal agencies to establish prize competitions for innovation or adaptation management development relating to coral reef ecosystems, and for other purposes.

Sponsor: Sen. Hirono, Mazie K. [D-HI] (Introduced 06/20/2019) Cosponsors: (5)

Committees: Senate - Commerce, Science, and Transportation

Latest Action: Senate - 06/20/2019 Read twice and referred to the Committee on Commerce, Science, and Transportation.

S.1900 — An original bill making emergency supplemental appropriations for the fiscal year ending September 30, 2019, and for other purposes.

Sponsor: Sen. Shelby, Richard C. [R-AL] (Introduced 06/19/2019) Cosponsors: (0)

Committees: Senate - Appropriations

Latest Action: Senate - 06/19/2019 Placed on Senate Legislative Calendar under General Orders.

S.1899 — A bill to authorize the United States Fish and Wildlife Service to seek compensation for injuries to trust resources and to use funds received as that compensation to restore, replace, or acquire equivalent resources, and for other purposes.

Sponsor: Sen. Cardin, Benjamin L. [D-MD] (Introduced 06/19/2019) Cosponsors: (1)

Committees: Senate - Environment and Public Works

Latest Action: Senate - 06/19/2019 Read twice and referred to the Committee on Environment and Public Works.

S.Res.257 — A resolution designating June 20, 2019, as "American Eagle Day" and celebrating the recovery and restoration of the bald eagle, the national symbol of the United States.

Sponsor: Sen. Alexander, Lamar [R-TN] (Introduced 06/20/2019) Cosponsors: (13)

Latest Action: Senate - 06/20/2019 Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

H.R.3370 — To authorize the United States Fish and Wildlife Service to seek compensation for injuries to trust resources and to use funds received as that compensation to restore, replace, or acquire equivalent resources, and for other purposes.

Sponsor: Rep. Thompson, Mike [D-CA-5] (Introduced 06/19/2019) Cosponsors: (1)

Committees: House - Natural Resources, Appropriations

Latest Action: House - 06/19/2019 Referred to the Committee on Natural Resources.

H.R.3297 — Harmful Algal Bloom Essential Forecasting Act.

Sponsor: Rep. Rooney, Francis [R-FL-19] (Introduced 06/14/2019) Cosponsors: (6)

Committees: House - Science, Space, and Technology, Natural Resources

Latest Action: House - 06/14/2019 Referred to the Committee on Science, Space, and Technology.

From: [Wright, Dana K](#)
To: [Valenta, Aaron](#)
Cc: [Bohn, Cynthia](#); [Niemi, Katie](#)
Subject: Fwd: PEER letter of opposition to sand mining amendment
Date: Monday, June 24, 2019 11:09:07 AM
Attachments: [Van Drew Amend. to HR 2740613191031563156.pdf](#)
[CBRA sand mining opposition letter.docx](#)
Importance: High

Hi Aaron,

FYI since Cindy is out for a bit. This letter referenced below is re: a proposed budget amendment (attached) on the FY 20 budget that was offered by Rep. Van Drew (NJ), Rep. Graves (LA), and Rep. Rouzer (NC). It has since been withdrawn.

There were three letters of opposition to this amendment that we have seen, one of which is from PEER (linked below). The others are from R Street: <https://www.rstreet.org/2019/06/19/letter-opposed-to-amendment-no-94-to-h-r-3055/> and a group of ~ 20 NGOs (attached).

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Mon, Jun 24, 2019 at 10:51 AM
Subject: PEER letter of opposition to sand mining amendment
To: Jonathan Phinney <jonathan_phinney@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Christine Eustis <christine_eustis@fws.gov>, Kristen Peters <kristen_peters@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>, Eric Schradling <eric_schradling@fws.gov>, Benjamin Jesup <benjamin.jesup@sol.doi.gov>, Linus Chen <linus.chen@sol.doi.gov>, Wright, Dana <dana_wright@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>

FYI. Another letter of opposition to the CBRA sand mining amendment, this one from PEER.

https://www.peer.org/assets/docs/doi/6_21_19_CBRA%20Amendment%20ltr.pdf

PEER Press Release <https://www.peer.org/news/press-releases/coastal-barrier-islands-under-surprise-attack-in-house.html>

**AMENDMENT DIVISION C OF COMMITTEE PRINT
116-18
OFFERED BY MR. VAN DREW OF NEW JERSEY**

At the end of division C (before the short title), insert the following:

1 SEC. None of the funds made available by this
2 Act may be used to implement the Department of Interior
3 Solicitor's opinion (FWS.CW.0380) issued in 1994 inter-
4 preting the applicability of Section 6(a)(6)(G) of the
5 Coastal Barrier Resources Act (16 U.S.C. 3505
6 (a)(6)(G)).



PLEASE OPPOSE AMENDMENT NO. 94 TO H.R. 3055 REGARDING THE COASTAL BARRIER RESOURCES ACT

June 20, 2019

Dear Representative:

We are writing to request that you oppose an amendment to the Interior Appropriations bill that would weaken and undermine the Coastal Barrier Resources Act (CBRA), a bipartisan success story that President Reagan praised as “enhancing wise natural resource conservation and fiscal responsibility.” Last year, Congress passed legislation with one dissenting vote that expanded the areas protected through the CBRA, garnering praise by conservative think tanks, insurance industry representatives, state agency officials, sportsmen organizations and conservation groups. The current proposed amendment, offered by Reps. Graves, Rouzer and Van Drew, has never been subject to Congressional review or debate, would overturn decades of precedent, and would pose significant threats to the coastal environment.

The Coastal Barrier Resources Act has three principal objectives: save federal tax dollars, conserve coastal resources, and promote public safety. According to a March 2019 study published in the peer-reviewed *Journal of Coastal Research*, the CBRA has saved the federal tax payer \$9.5 billion. The CBRA prohibits most new federal expenditures for development on areas included in it. It does not prohibit development; it simply removes the federal taxpayer from underwriting it.

The CBRA protects 3.5 million acres along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands and Puerto Rico. These undeveloped areas include barrier islands, beaches, dunes, spits, inlets and wetlands, which are vital habitat for wildlife and the lucrative fishing industries, and important providers of coastal resiliency benefits. According to the National Oceanic and Atmospheric Administration, coastal wetlands support more than half of commercially harvested seafood in the U.S., while supporting the marine recreational fishing industry, which contributes 439,000 jobs to the nation’s economy and generates \$63 billion in sales.

The amendment would open up CBRA areas to sand mining to supply beach renourishment activities on developed beaches and other activities, threatening the CBRA areas that are most important to habitat and wildlife. The amendment should be opposed because:

- **It would overturn decades of precedent.** Every major change to the CBRA has been preceded by a Congressionally-requested review by the U.S. Fish and Wildlife Service of the issue.
- **Impacts from sand mining are unknown.** Sand mining impacts on the CBRA have never been studied by federal agencies, so the sweeping amendment would be implemented with no scientific review, guidelines or best practices.
- **It is unnecessary.** CBRA only prohibits federal expenditures. Private, state and local expenditures are allowed, so dredging can occur if the federal taxpayer isn’t required to pay for it.

We strongly urge you to oppose this amendment. Instead, the U.S. Fish and Wildlife Service should be directed to study this important issue so that the integrity of the bipartisan CBRA is not threatened by hasty action.

Sincerely,

National Audubon Society
Theodore Roosevelt Conservation Partnership
American Littoral Society
Audubon Maryland-DC
Surfrider Foundation
Save The Bay (RI)
New Jersey Conservation Foundation
Audubon New York
Audubon Connecticut
Southern Environmental Law Center
National Wildlife Federation
Audubon South Carolina
Audubon Florida
Audubon North Carolina
Association of State Wetland Managers
Audubon New Jersey
Maryland Ornithological Society
Association of State Floodplain Managers
Natural Resources Defense Council

From: [Wright, Dana K](#)
To: [Frazer, Gary D](#)
Cc: [Niemi, Katie](#); [Shultz, Gina](#); [BalisLarsen, Martha](#); [Phinney, Jonathan T](#)
Subject: Re: CBRA Memo
Date: Thursday, July 25, 2019 10:46:09 AM

Will do, thanks Gary.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, Jul 25, 2019 at 10:25 AM Frazer, Gary <gary_frazer@fws.gov> wrote:

Katie -- Would you dust off your briefing materials on the sand mining from within CBRS units issue and produce a briefing paper for Margaret by the end of next week? Thanks. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Beaumont, Melissa** <melissa_beaumont@fws.gov>
Date: Wed, Jul 24, 2019 at 7:31 PM
Subject: CBRA Memo
To: Gary Frazer <gary_frazer@fws.gov>
Cc: Charisa Morris <charisa_morris@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>

Hi Gary,

Margaret asked if we could put together a briefing paper on the CBRA issues recently raised by members of congress. I understand she still needs to chat with SOL for legal direction, but asked that we start putting together a memo on the background of the issue for her. Could we have something put together for her by the end of next week?

Thanks,
Melissa

--

Melissa Beaumont

Advisor, Office of the Director, U.S. Fish & Wildlife Service
U.S. Department of the Interior
Office: 202-208-4545
Desk: 202-208-4299

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: HIGH PRIORITY PLEASE REVIEW FRIDAY - Info Memo for Margaret on Sand Mining
Date: Thursday, July 25, 2019 1:53:10 PM
Importance: High

Hi Katie,

Per Melissa Beaumont's request through Gary, I have prepared a draft IM on sand mining for Margaret. I asked Jonathan to check on the template, but I used the one on the ES Magnet site. Gary said not to worry about keeping it to 2 pages (it's currently a little over 2.5). The memo borrows heavily from language you have reviewed in the past from other versions of this same memo, but I had to reorganize it because the template headers differ from previous versions. I used track changes only for content that is new that you should look at.

The draft is here:

K:\CBRA\Consistency Consultations\Beach Nourishment and Dredging\Info Memo for PDD July 2019

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

From: bamcoast@earthlink.net
To: [Niemi, Katie](#); [Wright, Dana K](#)
Subject: [EXTERNAL] Audubon's comments on Carolina Beach, Wrightsville Beach beach renourishment projects
Date: Sunday, August 4, 2019 12:41:00 PM
Attachments: [Audubon Commens on Carolina Beach Renourishment Sand Mining Proposal, July 2019, final on letterhead, word doc.docx](#)
[Audubon Comment Letter on Wrightsville Beach Project July 26, 2019, final on letterhead, word doc.docx](#)
Importance: High

Hi there. The National Audubon Society submitted comments on the COE's proposed dredging and beach renourishment projects for Carolina Beach, NC and Wrightsville Beach, NC. The 30-day comment periods on both projects closed at the end of July. Audubon focused its comments on the nexus between the proposed projects and CBRA. They are attached -- FYI.



National Audubon Society
225 Varick Street, 7th Floor
New York, NY 10014

212.979.3196
www.audubon.org

July 22, 2019

Mr. Eric Gash
U.S. Army Engineer District, Wilmington, CESAW-ECP-PE
69 Darlington Avenue
Wilmington, North Carolina 28403

Dear Mr. Gash,

The National Audubon Society (NAS) is writing to submit comments on the June 2019 *Draft Integrated Beach Renourishment Evaluation Report and Environmental Assessment for Carolina Beach, New Hanover County, North Carolina*. We appreciate the opportunity to review and provide feedback on the draft study.

NAS would like to focus its comments on the portions of the draft study that intersect with the Coastal Barrier Resources Act (CBRA). According to the draft study, the proposed project would dredge sand from the sand borrow area of Carolina Beach Inlet, which is located within Coastal Barrier Resources System (CBRS) Unit L09.¹ The study notes that federal spending is restricted within the CBRS.² The study proposes that:

“ . . . continued use of the Carolina Beach Inlet would require an exemption from the provisions of CBRA in the project’s final Congressional authorization. A Congressional re-authorization of the project would need to include specific statutory language allowing use of Federal funds to work within this borrow area notwithstanding the provisions of CBRA.³

The CBRA already provides exemptions to its funding restrictions for a number of dredging-related activities. The CBRA also provides a mechanism for federal agencies to consult with the U.S. Fish and Wildlife Service (FWS) regarding proposed federally licensed or permitted activities that may affect a CBRS unit. This consultation process provides opportunities for federal agencies to work with the FWS to design projects that are consistent with the restrictions within the CBRA. The consultation process can result in modifications to proposed projects that ensure the projects can move forward while comporting with the law’s requirements, including modifications such as identifying and utilizing alternative sources of dredged material for projects. The consultation process is a key element of the CBRA’s long track record of successfully saving federal tax dollars, promoting public safety and conserving coastal resources. Recommending that Congress include specific statutory language that would essentially over-ride the consultation process, which ensures that projects meet the CBRA’s objectives, is not necessary and would result in a significant weakening of a program that enjoys

¹ U.S. Army Corps of Engineers, Wilmington, NC, District. *Carolina Beach NC Beach Renourishment Evaluation Report*. June 2019. P. ii. (Hereafter referred to as “Draft Evaluation Report.”)
https://www.saw.usace.army.mil/Portals/59/docs/coastal_storm_damage_reduction/Carolina%20Beach/Carolina%20Beach%20-%20DRAFT%20Beach%20Renourishment%20Evaluation%20Report%20-%20USACE%20-%20June%2024%202019.pdf

² Ibid.

³ Ibid.

strong bipartisan support because of its unique free-market approach to conserving the environment and tax dollars.

1. *The Coastal Barrier Resources Act is a conservation and taxpayer success story.*

Enacted in 1982, the CBRA was enthusiastically signed into law by President Ronald Reagan, who applauded the fact that it, . . . saves American taxpayers millions of dollars while, at the same time, taking a major step forward in the conservation of our magnificent coastal resources . . . The CBRA meets a national problem with less Federal involvement, not more.⁴

Since then, the CBRA has continued to enjoy bipartisan and multi-interest support. In a July 2019 column, the R Street Institute, a conservative-leaning policy think tank, described the CBRA as, “an ideal model for a conservative, market-oriented approach to conservation.”⁵ In December 2018, President Trump signed a bill into law that expanded the CBRS, which was approved by the U.S. House of Representatives with one dissenting vote and approved by unanimous consent by the U.S. Senate.⁶ As Representative Dough Lamborn (R-CO) noted, the CBRA “has been a win-win for taxpayers and the environment,” while Representative Alan Lowenthal (D-CA) called CBRA an example of how “good environmental stewardship, conservation, and coastal resiliency go hand-in-hand with responsible taxpayer protections.”⁷

2. *The CBRA includes exceptions for certain federal activities and specifies a consultation process.*

The CBRA created the Coastal Barrier Resources System, which includes roughly 3.5 million acres along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico and the U.S. Virgin Islands.⁸ Barrier islands, beaches, wetlands, inlets, estuarine areas and nearshore waters are included in the System, which prohibits most federal expenditures for new development on areas within the CBRS.⁹

The withdrawal of federal funding for development in CBRS-designated areas is the core of the law. State, local and private funds may be used to build, pave, bridge, dredge, and conduct other activities in System areas. The prohibition on federally licensed, permitted and funded activities is the CBRS’s foundational restriction upon which the law is built.

⁴ Reagan, President Ronald, “Statement on Signing the Coastal Barrier Resources Act.” October 18, 1982. www.presidency.ucsb.edu

⁵ Lehmann, R.J., “Ronald Reagan’s lasting environmental legacy.” July 2, 2019. <https://www.rstreet.org/2019/07/02/ronald-reagans-lasting-environmental-legacy/>

⁶ See ⁶ U.S. House of Representatives, “Final Vote Results for Roll Call 419.” <http://clerk.house.gov/evs/2018/roll419.xml>; also <https://www.congress.gov/bill/115th-congress/house-bill/5787/all-actions?q=%7B%22search%22%3A%5B%22HR+5787%22%5D%7D&r=1&overview=closed#tabs>; also Public Law 115-358. <https://www.congress.gov/bill/115th-congress/house-bill/5787/all-actions?q=%7B%22search%22%3A%5B%22HR+5787%22%5D%7D&r=1&overview=closed#tabs>

⁷ See video proceedings of the House Natural Resources Committee mark-up, June 12, 2018, at <https://www.youtube.com/watch?v=mcdPAsNI-sA> .

⁸ U.S. Fish and Wildlife Service, “Coastal Barrier Resources System.” <https://www.fws.gov/cbra/Act.html#CBRS>

⁹ Ibid.

However, the CBRA specifies certain activities that may warrant the expenditure of federal funds in CBRS units if certain preliminary steps are first satisfied. CBRA Section 6 “Exceptions” specifies that energy-related activities, the maintenance of existing channels and disposal of dredged materials from channel maintenance, maintenance of public infrastructure, military activities essential to national security, and Coast Guard facility repairs may be exempted from the federal funding prohibition **after consultation with the Secretary [of the Interior.]**¹⁰ CBRA Section 6 further lists additional activities that may be exempted from the prohibition on federal funding after consultation with the Secretary and if the activities are consistent with the purposes of CBRA.¹¹

The consultation process is key to the ability of the FWS to implement both the letter and spirit of the law. Through this process, the federal applicant and the FWS can exchange information, discuss differences, and seek options that can allow proposed projects to move forward in a way that is consistent with the CBRA. The draft study’s proposal that Congress should over-ride this process by essentially pre-approving a proposed federal activity would remove the ability of the FWS to bring its expertise, experience and authority as the agency tasked with implementing the CBRA to discussions around proposed actions that will impact CBRS areas. It would prevent the FWS from doing what Congress directed it to do when it enacted the CBRA: ensure that the CBRA’s protections and restrictions are implemented. The draft study’s proposal would insert Congress as the authority on complex biological, resource, and habitat issues that by statute are given to the FWS, and would nullify the FWS’s ability to bring decades of experience to the table when federally funded activities are being discussed. This proposed elevation of Congress to the role of an Administrative agency would run counter to the CBRA and would result in the loss of important expertise in coastal resource matters.

3. The CBRA’s exceptions can be utilized by the Army Corps of Engineers.

Section 6(a)(2) of the “Exceptions” section in the CBRA says that, after consultation with the Secretary of the Interior, “the maintenance of existing channel improvements . . . including the disposal of dredged materials related to such improvements” may take place by federal permittees or licensees; e.g., federal funds may be expended in CBRS units in pursuit of this listed activity.¹² The Army Corps of Engineers (COE) may dredge existing federal navigation channels in CBRS units and dispose of those dredged materials after consultation with the Secretary.

The draft study notes that a federal navigation channel runs right through the CBRS portion of the Carolina Inlet: “The authorized project includes a navigation channel with a depth of 12 feet and widths varying from 90 feet inland to 300 feet in open waters.”¹³ The draft study further notes that beach-quality sand dredged from the navigation channel is beneficially used by placing the sand on a nearby park, and that this beneficial use occurs about every two years.¹⁴ The COE should utilize this CBRA exception to use the sand dredged from the federal navigation channel as part of its proposed project.

4. The Draft Study identifies readily available alternative sources of sand that are not CBRS Units that could be used instead.

¹⁰ Public Law 97-348 (96 Stat, 1653, 16 U.S.C. 3501 et seq.) Enacted October 18, 1982.

¹¹ Ibid.

¹² Ibid.

¹³ *Draft Evaluation Report*, op cit. P. 11.

¹⁴ Ibid.

The draft study notes the fact that the Carolina Inlet, which the COE proposes to dredge for the proposed project, is located in the CBRS and acknowledges the federal financial restrictions contained within the CBRA. The study says that specifically due to the CBRA's federal funding restrictions, the COE,

... evaluated an offshore borrow source (Borrow Area B), not located within a CBRS. Borrow Area B could be utilized if the sand borrow area of Carolina Beach Inlet is unavailable for this project in the future. Borrow Area B has been used since 1999 as the primary sand source for the Area South CSR project, also part of the Carolina Beach and Vicinity project, which is located just south of the Carolina Beach CSR project. Analysis has concluded that either Carolina Beach Inlet or Borrow Area B, even with considering the quantity requirements for the Area South CSR project through 2049, has sufficient sand quality and quantity to support the Carolina Beach CSR project over the recommended 15- year continuation of Federal participation in periodic renourishment.¹⁵

The identified alternative source of sand is already being used by the COE for adjacent beach renourishment projects and it possesses sufficient sand quantities to supply the project that is the subject of the draft study.

5. *The impacts from sand mining in the CBRS unit are not addressed in the proposed project, and they may be significant environmentally. A pre-dredging evaluation should be conducted on the site to be dredged, and a monitoring plan should be developed and implemented to evaluate impacts during and after the dredging.*

The draft study contends that impacts on the area that is dredged for sand are minimal, short-lived and inconsequential. The study does not provide information to support these assertions. In fact, scientific articles and research dispute these statements, including research conducted by COE scientists.

Sediment dredging can interrupt natural sand supplies, particularly in inlets.

In 2004, COE scientists reported that sediment mining "interrupts the natural sediment bypassing of the integrated sediment-sharing system."¹⁶ In particular, the COE scientists noted that mining inlets has demonstrable impacts on the sediment supplies for the inlet and nearby areas. The draft study proposes to mine sand from Carolina Inlet. According to the COE scientists, removing sand from inlets "reduces the rate of supply of sediment to connected features and ultimately to the down-drift beach in the bypassing system," which led the scientists to recommend that key concerns be addressed before embarking on inlet or shoal mining:

From an inlet management perspective, key questions to be addressed in considering inlet shoal mining are: (1) what will be the reduction in the bypassing rate to the down-

¹⁵ Ibid, p. ii.

¹⁶ Dabees, Mohamed A. and Kraus, Nicholas C., on contract with the U.S. Army Corps of Engineers' Vicksburg, MS Lab. *Evaluation of Ebb-Tidal Shoals as a Sand Source for Beach Nourishment: General Methodology with Reservoir Model Analysis*. 2004. P. 1. <http://cirp.usace.army.mil/Downloads/PDF/dabees-kraus-FSBPA04.pdf>

drift beach, (2) How long will it take for the mined feature to return to its volume prior to mining, and (3) what are the reductions to the transport rates to other morphologic features of the system?¹⁷

The draft study does not provide information to answer these questions that the COE recommends be addressed as part of a project.

Benthic and ecological damages can be caused by sand mining.

Sand mining operations can cause long-term damages to the benthic ecosystem. Scientists at the South Carolina Department of Natural Resources warn that, “Depending on the environment and the nature of the dredging impact, biological recovery [of the benthic community] may not occur for many years.”¹⁸ The scientists evaluated two sand borrow areas in South Carolina’s coastal zone, and determined that even after 6-8 years, the dredged areas’ “surficial sediment characteristics shifted toward finer materials and showed little evidence of recovering.”¹⁹ In addition, changes were observed in the benthic community in terms of faunal density, number of species, and composition of species, with “recolonization by opportunistic” species on the “disturbed seafloor.”²⁰

“Significant and long-term effects” were observed at the two sites, including:

- Sediment characteristics in the dredged areas changed from sand sediments with low silt and clay content to muddy bottoms with less sand; and,
- Marked changes in the benthic communities, particularly species composition. The “number of species decreased at both borrow areas post dredging and generally remained lower compared to changes in the reference area during the same periods.”²¹

The scientists concluded that:

As expected, the large-scale removal of sediment during dredging resulted in substantial changes in benthic community structure . . . Because removal of the existing fauna is unavoidable, the preferred scenario would be one of rapid recovery of borrow area communities to conditions observed before dredging or conditions similar to those found in nearby sand bottom habitats . . . [but] the persistent change in faunal composition 6 and 8 years later, combined with the persistent change in sediment composition from relatively clean sandy bottoms to muddy bottoms, indicates that benthic infauna had not recolonized to conditions observed before dredging in the borrow area or compared to the reference area.²²

¹⁷ Ibid, p. 13.

¹⁸ Crowe, Stacie E., et al. *Physical and Biological Alterations Following Dredging in Two Beach Nourishment Borrow Areas in South Carolina’s Coastal Zone*. South Carolina Department of Natural Resources. Published in *Journal of Coastal Research*. July 2016. P. 876.

https://www.researchgate.net/publication/289706699_Physical_and_Biological_Alterations_Following_Dredging_in_Two_Beach_Nourishment_Borrow_Areas_in_South_Carolina's_Coastal_Zone

¹⁹ Ibid, p. 875.

²⁰ Ibid.

²¹ Ibid, pp. 878-880.

²² Ibid, p. 884.

Impacts on the benthic ecosystem and coastal waters from sand mining have also been documented by scientists at the Virginia Institute of Marine Science (VIMS), who noted that, “The root of the potential problems from sand mining is the simple act of disturbing the natural sea floor.”²³ The scientists report that:

The disturbance usually is in the form of an excavation. Even if the excavation is only centimeters deep, it will have a profound effect on the resident infauna and lesser, but none-the-less real, consequences on the local pelagic organisms and physical processes.²⁴

Sand mining in coastal inlets can reduce coastal resiliency.

According to scientists at the Virginia Institute of Marine Sciences, sand mining in Atlantic coast inlets reduces the resiliency of coastal barriers, which are upland communities’ front line of defense from storms, hurricanes, erosion, and sea level rise impacts. Ebb shoals:

Are especially important because they act as ‘sand bridges’ that connect beaches and islands by transporting sediment via longshore transport from one side (updrift) to the other (downdrift) side of an inlet. The mining of sediment from these shoals upsets the inlet system equilibrium and can lead to increased erosion of the adjacent inlet shorelines.²⁵

In addition, coastal geologists have stated that:

The mining of material from inlet shoals . . . is not equivalent to the natural sediment bypassing that occurs at unmodified inlets for several reasons, most notably for the massive volumes involved that are ‘transported’ virtually instantaneously instead of gradually and continuously and for the placement of the material outside of the immediate inlet vicinity, where it would naturally bypass.²⁶

Negative impacts on birds can occur from dredging sand in inlets.

Along with reducing coastal resiliency, sand mining of beaches, spits, islands, and dunes can also harm wildlife, along with dredging activities. A case in point is the Atlantic Coast piping plover, which depends on Atlantic coast beaches for nesting and foraging, and is listed as a threatened species.²⁷ The preferred coastal habitats for piping plovers include sand spits, small islands, tidal flats, shoals (usually flood tidal deltas), and sandbars that are often associated with

²³ Hobbs, C.H. *An Investigation of Potential Consequences of Marine Mining in Shallow Water: An Example from the Mid-Atlantic Coast of the United States*. Virginia Institute of Marine Sciences. Published in *Journal of Coastal Research*. Winter 2002. <http://journals.fcla.edu/jcr/article/viewFile/81252/78392>

²⁴ Ibid.

²⁵ Ibid, pp. 17-18.

²⁶ Ibid.

²⁷ U.S. Fish and Wildlife Service Endangered Species, “Piping Plover Fact Sheet.” March 12, 2018. <https://www.fws.gov/midwest/endangered/pipingplover/pipingpl.html>

inlets.²⁸ Yet, inlet dredging can “alter natural coastal processes throughout the range of migrating and wintering piping plovers.”²⁹

The coastal areas that piping plovers depend on are also critical to other shorebird species, making the piping plover an indicator species for other birds since “the piping plover’s habitat needs and management responses are similar to other bird species using dynamic Atlantic Coast beaches, such as the least tern and the American oystercatcher.”³⁰ What impacts piping plovers has a similar effect on many other birds.

The threatened piping plover, along with other shorebird species and wildlife, are facing increasing habitat damage and loss. Coastal geologists have observed that, “The mining of [inlets] for sediment has increased. This is a problem because exposed [inlets] and sandbars are prime roosting and foraging habitats for piping plovers.”³¹ In fact, analyses of inlets within the U.S. breeding and wintering range of piping plovers, conducted in 2016 and 2012, respectively, found that 182 inlets (44%) in the breeding range and 81 (40%) in the non-breeding range had been mined or otherwise dredged.”³²

Dredging and mining inlets have long-term impacts on the coastal environment, as documented by South Carolina Department of Natural Resources scientists who determined that coastal borrow pits have failed to recover from the impacts of dredging even after years have passed. Scientists have concluded that “the larger the volume of sediment mined from the shoals, the larger the perturbation to the system and the longer the recovery period.”³³

Given the research that’s been conducted on the potential for significant, long-lasting and serious environmental damage from inlet sand dredging, it is incumbent on the COE to evaluate these potential impacts prior to moving forward with its proposed project. Scientists at the Virginia Institute of Marine Science recommend a series of steps to determine the potential impacts from marine mining prior to embarking on sediment excavations, including:

- Conducting an inventory or assessment to determine the types and quantities of organisms, the species diversity and biomass, that “would be lost should the project be performed;”
- Ensuring that benthic ecologists map, characterize, and quantify the biological community, including the recolonization potential of the area and likely consequences on the pelagic or transient fauna;
- Accurately determining the likelihood of an area successfully recolonizing the organisms that are killed from the dredging operation by ensuring that geologists provide an

²⁸ U.S. Fish and Wildlife Service. *Comprehensive Conservation Strategy for the Piping Plover (Charadrius melodus) in its Coastal Migration and Wintering Range in the Continental United States*. December 2012. P. 9. http://www.conservewildlifenj.org/downloads/cwnj_376.pdf

²⁹ Ibid.

³⁰ U.S. Fish and Wildlife Service, “Atlantic Coast Piping Plover Strategic Communications Plan: Reducing Human Disturbance, 2017-2021.” June 2017. P. 5. https://www.fws.gov/northeast/pipingplover/pdf/Communications_Plan_for_Reducing_Human_Disturbance_to_Atlantic_Coast_Piping_Plovers.pdf

³¹ Ibid, p. 17.

³² U.S. Fish and Wildlife Service. *Comprehensive Conservation Strategy for the Piping Plover (Charadrius melodus) in its Coastal Migration and Wintering Range in the Continental United States*. Op cit. p. 14.

³³ Ibid.

analysis of the substrate, while physical oceanographers evaluate the bottom agitating forces that will act on the area after the dredging operation;

- Reviewing and considering the biology of the water column; and,
- Conducting the “necessary” task of amassing a “thorough knowledge of the regional fisheries resources and how the changes in infauna might impact the available food resources.” Fisheries considerations should include whether there is a formal Fisheries Management Plan in place for the area to be dredged, and whether it has been designated as part of an Essential Fish Habitat, as well as determining whether there are important recreational or commercial fisheries in the area that could be impacted by marine mining.³⁴

In addition to conducting the pre-dredging steps recommended above, the project should include a monitoring plan to track and assess impacts during and after the dredging process. Without a monitoring plan, there will be no way to determine if negative impacts are occurring and the chance to adjust operations to reflect real-time impacts will be lost. The proposed project should include a monitoring plan that will provide needed information.

Conclusion

The draft study proposes that Congress severely weaken the CBRA by granting itself the ability to over-ride the well-established CBRA consultation process, thereby removing the FWS and its expertise from the review process and substituting itself. Such an action is unwarranted and unnecessary. The CBRA already provides exemptions to its funding restrictions for a number of dredging-related activities. The CBRA also provides a mechanism for airing and resolving disputes between federal agencies through the consultation process, which is a key element of the CBRA’s long track record of successfully saving federal tax dollars, promoting public safety and conserving coastal resources

Additionally, the draft study identifies a readily available and sufficient source of sand for the project that is not a CBRS unit. This alternative site should be utilized. Finally, a plan for assessing the impacts of sand mining and determining baseline conditions prior to dredging should be adopted as part of the final project.

The National Audubon Society appreciates the opportunity to submit these comments.

Sincerely,

Karen Hyun
Vice President, Coastal Conservation
National Audubon Society

³⁴ Ibid.



National Audubon Society
225 Varick Street, 7th Floor
New York, NY 10014

212.979.3196
www.audubon.org

July 26, 2019

Mr. Eric Gash
U.S. Army Engineer District, Wilmington, CESAW-ECP-PE
69 Darlington Avenue
Wilmington, North Carolina 28403

Dear Mr. Gash,

The National Audubon Society (NAS) is writing to submit comments on the June 2019 *Draft Validation Study Report and Environmental Assessment for Wrightsville Beach, New Hanover County, North Carolina*. We appreciate the opportunity to review and provide feedback on the draft study.

NAS would like to focus its comments on the portions of the draft study that intersect with the Coastal Barrier Resources Act (CBRA). According to the draft study, the proposed project would dredge sand from a site in Masonboro Inlet/Banks Channel.¹ The Army Corps of Engineers (COE) notes in the draft study that “all of Masonboro Inlet and about half of the Banks Channel borrow source is located within a Coastal Barrier Resources System (CBRS) unit.”² The study notes that the CBRA prohibits certain federal expenditures on areas included in the CBRS, and proposes,

.... an exemption from the provisions of CBRA ... [and that the] Congressional re-authorization of the project allow for the use of Federal funds to work within this borrow area, notwithstanding the financial restrictions of CBRA.³

The CBRA already provides exemptions to its funding restrictions for a number of dredging-related activities. The CBRA also provides a mechanism for federal agencies to consult with the U.S. Fish and Wildlife Service (FWS) regarding proposed federally licensed or permitted activities that may affect a CBRS unit. This consultation process provides opportunities for federal agencies to work with the FWS to design projects that are consistent with the restrictions within the CBRA. The consultation process can result in modifications to proposed projects that ensure the projects can move forward while comporting with the law's requirements, including modifications such as identifying and utilizing alternative sources of dredged material for projects. The consultation process is a key element of the CBRA's long track record of successfully saving federal tax dollars, promoting public safety and conserving coastal resources. Recommending that Congress include specific statutory language that would essentially over-ride the consultation process, which ensures that projects meet the CBRA's objectives, is not necessary and would result in a significant weakening of a program that enjoys strong bipartisan support because of its unique free-market approach to conserving the environment and tax dollars.

1. *The Coastal Barrier Resources Act is a conservation and taxpayer success story.*

¹ U.S. Army Corps of Engineers, Wilmington, NC, District. *Wrightsville Beach, NC, Validation Study*. June 2019. P. i. https://www.saw.usace.army.mil/Portals/59/docs/coastal_storm_damage_reduction/Wrightsville/Wrightsville%20Beach%20Validation%20Study%20-%20DRAFT%20report%20-%20public%20review%20-%20USACE%20-%2006-26-19.pdf (Hereafter referred to as “Draft Wrightsville Beach Study.”)

² *Ibid.*

³ *Ibid.*, p. ii.

Enacted in 1982, the CBRA was enthusiastically signed into law by President Ronald Reagan, who applauded the fact that it, . . . saves American taxpayers millions of dollars while, at the same time, taking a major step forward in the conservation of our magnificent coastal resources . . . The CBRA meets a national problem with less Federal involvement, not more.⁴

Since then, the CBRA has continued to enjoy bipartisan and multi-interest support. In a July 2019 column, the R Street Institute, a conservative-leaning policy think tank, described the CBRA as, “an ideal model for a conservative, market-oriented approach to conservation.”⁵ In December 2018, President Trump signed a bill into law that expanded the CBRS, which was approved by the U.S. House of Representatives with one dissenting vote and approved by unanimous consent by the U.S. Senate.⁶ As Representative Dough Lamborn (R-CO) noted, the CBRA “has been a win-win for taxpayers and the environment,” while Representative Alan Lowenthal (D-CA) called CBRA an example of how “good environmental stewardship, conservation, and coastal resiliency go hand-in-hand with responsible taxpayer protections.”⁷

2. The CBRA includes exceptions for certain federal activities and specifies a consultation process.

The CBRA created the Coastal Barrier Resources System, which includes roughly 3.5 million acres along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico and the U.S. Virgin Islands.⁸ Barrier islands, beaches, wetlands, inlets, estuarine areas, and nearshore waters are included in the System, which prohibits most federal expenditures for new development on areas within the CBRS.⁹

The withdrawal of federal funding for development in CBRS-designated areas is the core of the law. State, local, and private funds may be used to build, pave, bridge, dredge, and conduct other activities in System areas. The prohibition on federally licensed, permitted and funded activities is the CBRS’s foundational restriction upon which the law is built.

However, the CBRA specifies certain activities that may warrant the expenditure of federal funds in CBRS units if certain preliminary steps are first satisfied. CBRA Section 6 “Exceptions” specifies that energy-related activities, the maintenance of existing channels and disposal of dredged materials from channel maintenance, maintenance of public infrastructure, military activities essential to national security, and Coast Guard facility repairs may be exempted from the federal funding prohibition **after consultation with the Secretary [of the Interior].**¹⁰ CBRA Section 6 further lists additional activities that may be exempted from the

⁴ Reagan, President Ronald, “Statement on Signing the Coastal Barrier Resources Act.” October 18, 1982. www.presidency.ucsb.edu

⁵ Lehmann, R.J., “Ronald Reagan’s lasting environmental legacy.” July 2, 2019. <https://www.rstreet.org/2019/07/02/ronald-reagans-lasting-environmental-legacy/>

⁶ See ⁶ U.S. House of Representatives, “Final Vote Results for Roll Call 419.” <http://clerk.house.gov/evs/2018/roll419.xml>; also <https://www.congress.gov/bill/115th-congress/house-bill/5787/all-actions?q=%7B%22search%22%3A%5B%22HR+5787%22%5D%7D&r=1&overview=closed#tabs>; also Public Law 115-358. <https://www.congress.gov/bill/115th-congress/house-bill/5787/all-actions?q=%7B%22search%22%3A%5B%22HR+5787%22%5D%7D&r=1&overview=closed#tabs>

⁷ See video proceedings of the House Natural Resources Committee mark-up, June 12, 2018, at <https://www.youtube.com/watch?v=mcdPAsNI-sA>.

⁸ U.S. Fish and Wildlife Service, “Coastal Barrier Resources System.” <https://www.fws.gov/cbra/Act.html#CBRS>

⁹ Ibid.

¹⁰ Public Law 97-348 (96 Stat. 1653, 16 U.S.C. 3501 et seq.) Enacted October 18, 1982.

prohibition on federal funding after consultation with the Secretary and if the activities are consistent with the purposes of CBRA.¹¹

The consultation process is key to the ability of the FWS to implement both the letter and spirit of the law. Through this process, the federal applicant and the FWS can exchange information, discuss differences, and seek options that can allow proposed projects to move forward in a way that is consistent with the CBRA. The draft study's proposal that Congress should over-ride this process by unilaterally exempting the project from CBRA's restrictions would remove the ability of the FWS to bring its expertise, experience, and authority as the agency tasked with implementing the CBRA to discussions around proposed actions that will impact it. It would prevent the FWS from doing what Congress directed it to do when it enacted the CBRA: ensure that the CBRA's protections and restrictions are implemented. The draft study's proposal would insert Congress as the authority on complex biological, resource, and habitat issues that by statute are given to the FWS, and would nullify the FWS's ability to bring decades of experience to the table when federally funded activities are being discussed. This proposed elevation of Congress to the role of an Administrative agency would run counter to the CBRA and would result in the loss of important expertise in coastal resource matters.

3. *The CBRA's exceptions can be utilized by the Army Corps of Engineers.*

Section 6(a)(2) of the "Exceptions" section in the CBRA says that, after consultation with the Secretary of the Interior, "the maintenance of existing channel improvements . . . including the disposal of dredged materials related to such improvements" may take place by federal permittees or licensees; e.g., federal funds may be expended in CBRS units in pursuit of this listed activity.¹² The Army Corps of Engineers (COE) may dredge existing federal navigation channels in CBRS units and dispose of those dredged materials after consultation with the Secretary.

There are two federal navigation channels that run through Banks Channel and Masonboro Inlet. Both channels go through portions of CBRA Unit L09:

This project includes a channel across the ocean bar at Masonboro Inlet and a channel through Banks and Motts Channel to the AIWW [Atlantic Intercoastal Waterway.] Banks and Motts Channels have authorized depths of -12 feet and widths of 90 feet.¹³

The draft study notes that, "Some of the dredged material removed during maintenance activities is beach-quality sand. That material is placed directly on nearby ocean beaches, when practicable; otherwise, it is stockpiled in confined disposal areas near the shoreline of the AIWW."¹⁴ The study further notes Masonboro Inlet and Banks Channel require, "little or no recurring maintenance dredging due to using this borrow source every 4 years for placement on the Wrightsville Beach CSR project."¹⁵

As noted above, the CBRA specifies that dredging activities to maintain federal channels are exempted from the Act's prohibitions, after consultation with the Secretary of Interior. The COE should utilize this CBRA exception to use the sand dredged from these federal navigation channels as part of its proposed project. Instead of placing beach-quality sand in confined

¹¹ Ibid.

¹² Ibid.

¹³ *Draft Wrightsville Beach Study*, op cit. p. 11.

¹⁴ Ibid.

¹⁵ Ibid.

disposal facilities, that sand should be used for the project. Additionally, the draft implies that if the areas, including the CBRA zone, were not being routinely dredged for non-navigation purposes, the navigation channels would incur sand deposits that would warrant maintenance dredging. Conducting maintenance dredging of federal channels is allowed under the CBRA.

4. The Draft Study identifies readily available alternative sources of sand that are not CBRS Units that could be used instead.

The draft study acknowledges that there is insufficient sand at the Masonboro Inlet/Banks Channel site to supply the proposed projects, and that an additional, non-CBRS site will be required:

The Masonboro Inlet/Banks Channel borrow area most likely cannot provide the volume required for all four periodic renourishments to FY 2036. The project may likely need to utilize the identified offshore borrow source in addition to the existing primary borrow source, to provide the required beach fill volume.¹⁶

The draft study states further that:

A 2017 study conducted by USACE (ERDC/CHL TR-17-13) revealed that the volume of sand available from Masonboro Inlet and Banks Channel borrow source is declining. The inlet is not recharging sufficiently to meet the long-term demands of the current project based on CESA-W-ECP-EC budget analysis. Furthermore, restrictions imposed by the CBRA zone may preclude future federal use of this area. Alternate borrow source(s), to be used solely or in conjunction with Masonboro Inlet and Banks Channel will need to be identified and utilized in order to continue to provide coastal storm protection to Wrightsville Beach.¹⁷

Due to the fact that the CBRS unit site will not be sufficient for the proposed project, and in acknowledgment of the restrictions placed on the site by the CBRA, the COE,

. . . has identified a new potential offshore area, not located within a CBRS unit, for beach quality borrow material investigations in the event that the sand borrow source of Masonboro Inlet/Banks Channel is not sufficient or useable in the future. It's anticipated that an offshore borrow source may be needed for at least one of the four required renourishments.¹⁸

The COE has identified at least two potential offshore sites that are outside of the CBRS. One site is 4.6 miles directly offshore of Wrightsville Beach.¹⁹ The draft study states that sand quality would have to be determined at this site, but preliminary evaluations indicate there is 70 million cubic yards of useable sand there.²⁰ The study also notes that there are potential sand deposits closer to shore that could be further investigated: "Several borings . . . indicate the presence of suitable sand deposits closer to the project site, which could lower placement costs, if viable."²¹

¹⁶ Ibid, p. 53.

¹⁷ U.S. Army Corps of Engineers, Wilmington, NC, District. *Wrightsville Beach, NC, Validation Study Appendices*. June 2019. Appendix B-33. (Hereafter referred to as Appendix B.)

¹⁸ Ibid, p. i.

¹⁹ *Appendix B*, B-29.

²⁰ Ibid, B-30.

²¹ Ibid.

Since the project will require going offshore for sand because the CBRS-located site does not possess sufficient sand quantities, and nearshore and offshore sites have been identified that are outside of the CBRS, the COE should utilize the non-CBRS sites for the entire project.

5. The impacts from sand mining in the CBRS unit are not addressed in the proposed project, and they may be significant environmentally. A pre-dredging evaluation should be conducted on the site to be dredged, and a monitoring plan should be developed and implemented to evaluate impacts during and after the dredging.

The draft study contends that impacts on the area that is dredged for sand are minimal, short-lived and inconsequential. The study does not provide information to support these assertions. In fact, scientific articles and research dispute these statements, including research conducted by COE scientists.

Sediment dredging can interrupt natural sand supplies, particularly in inlets.

In 2004, COE scientists reported that sediment mining “interrupts the natural sediment bypassing of the integrated sediment-sharing system.”²² In particular, the COE scientists noted that mining inlets has demonstrable impacts on the sediment supplies for the inlet and nearby areas. The draft study proposes to mine sand from Masonboro Inlet. According to the COE scientists, removing sand from inlets “reduces the rate of supply of sediment to connected features and ultimately to the down-drift beach in the bypassing system,” which led the scientists to recommend that key concerns be addressed before embarking on inlet or shoal mining:

From an inlet management perspective, key questions to be addressed in considering inlet shoal mining are: (1) what will be the reduction in the bypassing rate to the down-drift beach, (2) How long will it take for the mined feature to return to its volume prior to mining, and (3) what are the reductions to the transport rates to other morphologic features of the system?²³

The draft study does not provide information to answer these questions that the COE recommends be addressed as part of a project.

Benthic and ecological damages can be caused by sand mining.

Sand mining operations can cause long-term damages to the benthic ecosystem. Scientists at the South Carolina Department of Natural Resources warn that, “Depending on the environment and the nature of the dredging impact, biological recovery [of the benthic community] may not occur for many years.”²⁴ The scientists evaluated two sand borrow areas in South Carolina’s coastal zone, and determined that even after 6-8 years, the dredged areas’

²² Dabees, Mohamed A. and Kraus, Nicholas C., on contract with the U.S. Army Corps of Engineers’ Vicksburg, MS Lab. *Evaluation of Ebb-Tidal Shoals as a Sand Source for Beach Nourishment: General Methodology with Reservoir Model Analysis*. 2004. P. 1. <http://cirp.usace.army.mil/Downloads/PDF/dabees-kraus-FSBPA04.pdf>

²³ Ibid, p. 13.

²⁴ Crowe, Stacie E., et al. *Physical and Biological Alterations Following Dredging in Two Beach Nourishment Borrow Areas in South Carolina’s Coastal Zone*. South Carolina Department of Natural Resources. Published in *Journal of Coastal Research*. July 2016. P. 876.

https://www.researchgate.net/publication/289706699_Physical_and_Biological_Alterations_Following_Dredging_in_Two_Beach_Nourishment_Borrow_Areas_in_South_Carolina's_Coastal_Zone

“surficial sediment characteristics shifted toward finer materials and showed little evidence of recovering.”²⁵ In addition, changes were observed in the benthic community in terms of faunal density, number of species, and composition of species, with “recolonization by opportunistic” species on the “disturbed seafloor.”²⁶

“Significant and long-term effects” were observed at the two sites, including:

- Sediment characteristics in the dredged areas changed from sand sediments with low silt and clay content to muddy bottoms with less sand; and,
- Marked changes in the benthic communities, particularly species composition. The “number of species decreased at both borrow areas post dredging and generally remained lower compared to changes in the reference area during the same periods.”²⁷

The scientists concluded that:

As expected, the large-scale removal of sediment during dredging resulted in substantial changes in benthic community structure . . . Because removal of the existing fauna is unavoidable, the preferred scenario would be one of rapid recovery of borrow area communities to conditions observed before dredging or conditions similar to those found in nearby sand bottom habitats . . . [but] the persistent change in faunal composition 6 and 8 years later, combined with the persistent change in sediment composition from relatively clean sandy bottoms to muddy bottoms, indicates that benthic infauna had not recolonized to conditions observed before dredging in the borrow area or compared to the reference area.²⁸

Impacts on the benthic ecosystem and coastal waters from sand mining have also been documented by scientists at the Virginia Institute of Marine Science (VIMS), who noted that, “The root of the potential problems from sand mining is the simple act of disturbing the natural sea floor.”²⁹ The scientists report that:

The disturbance usually is in the form of an excavation. Even if the excavation is only centimeters deep, it will have a profound effect on the resident infauna and lesser, but none-the-less real, consequences on the local pelagic organisms and physical processes.³⁰

Sand mining in coastal inlets can reduce coastal resiliency.

According to scientists at the Virginia Institute of Marine Sciences, sand mining in Atlantic coast inlets reduces the resiliency of coastal barriers, which are upland communities’ front line of defense from storms, hurricanes, erosion and sea level rise impacts. Ebb shoals:

Are especially important because they act as ‘sand bridges’ that connect beaches and islands by transporting sediment via longshore transport from one side (updrift) to the

²⁵ Ibid, p. 875.

²⁶ Ibid.

²⁷ Ibid, pp. 878-880.

²⁸ Ibid, p. 884.

²⁹ Hobbs, C.H. *An Investigation of Potential Consequences of Marine Mining in Shallow Water: An Example from the Mid-Atlantic Coast of the United States*. Virginia Institute of Marine Sciences. Published in *Journal of Coastal Research*. Winter 2002.

<http://journals.fcla.edu/jcr/article/viewFile/81252/78392>

³⁰ Ibid.

other (downdrift) side of an inlet. The mining of sediment from these shoals upsets the inlet system equilibrium and can lead to increased erosion of the adjacent inlet shorelines.³¹

In addition, coastal geologists have stated that:

The mining of material from inlet shoals . . . is not equivalent to the natural sediment bypassing that occurs at unmodified inlets for several reasons, most notably for the massive volumes involved that are 'transported' virtually instantaneously instead of gradually and continuously and for the placement of the material outside of the immediate inlet vicinity, where it would naturally bypass.³²

Negative impacts on birds can occur from dredging sand in inlets.

Along with reducing coastal resiliency, sand mining can also harm wildlife. A case in point is the Atlantic Coast Piping Plover, which depends on Atlantic coast beaches for nesting and foraging, and is listed as a threatened species.³³ The preferred coastal habitats for piping plovers include sand spits, small islands, tidal flats, shoals (usually flood tidal deltas), and sandbars that are often associated with inlets.³⁴ Yet, inlet dredging can "alter natural coastal processes throughout the range of migrating and wintering piping plovers."³⁵ The coastal areas that piping plovers depend on are also critical to other shorebird species.

Bird use surveys have been conducted for Masonboro Inlet, which is a CBRS unit and would be dredged under the COE's recommended alternative. Bird use surveys have recorded use of the inlet by a variety of shorebird species, including: Black-bellied Plover, Semipalmated Plover, Piping Plover, Wilson's Plover, American Oystercatcher, Greater Yellowlegs, Spotted Sandpiper, Willet, Whimbrel, Marbled Godwit, Ruddy Turnstone, Purple Sandpiper, Red Knot, Sanderling, Dunlin, Western Sandpiper, Semipalmated Sandpiper, Least Sandpiper, and Short-billed Dowitcher.³⁶

The bird surveys revealed bird use of Masonboro Inlet year-round. The draft report states that the inlet would be used for dredging and pipe construction from November 15-March 31. The bird use surveys counted hundreds of shorebirds using the inlet during these months, including roughly 700 shorebirds using the inlet in March alone, raising the risk of negative impacts on shorebirds.³⁷

Along with dredging activities, the placement of pipelines from the inlet across part of the beach could affect shorebirds, including piping plovers and red knots, according to the draft study. These impacts would be avoided if either of the offshore borrow sites were used:

³¹ Ibid, pp. 17-18.

³² Ibid.

³³ U.S. Fish and Wildlife Service Endangered Species, "Piping Plover Fact Sheet." March 12, 2018.

<https://www.fws.gov/midwest/endangered/pipingplover/pipingpl.html>

³⁴ U.S. Fish and Wildlife Service. *Comprehensive Conservation Strategy for the Piping Plover (Charadrius melodus) in its Coastal Migration and Wintering Range in the Continental United States*. December 2012. P. 9.

http://www.conservewildlifenj.org/downloads/cwnj_376.pdf

³⁵ Ibid.

³⁶ Addison, Lindsay, and McIver, Tara, "Use of Inlets by Shorebirds and Terns in Southeastern NC." Audubon North Carolina. 2015.

<http://ncpif.ncbirdingtrail.org/wp-content/uploads/2018/03/1450ShorebirdsTernsUseofInletsinSoutheasternNCAddisonMcIver.pdf>

³⁷ Ibid.

Inlet dredging will require a pipeline running from the inlet to the northern extent of the project, which has the potential to impact piping plover. When the offshore borrow area is used, there would be no impacts to the birds at the south end of Wrightsville Beach adjacent to the inlet due to dredging or pipeline routes.³⁸

The draft study further notes that there is a “significant nesting site” at the southern end of Wrightsville Beach that could be impacted by pipeline placement. Dredging at Masonboro Inlet has already exhibited negative impacts on the nesting area on the south end of Wrightsville Beach, with habitat recovery sometimes taking one to two years to reform. The Inlet dredging and pipeline impacts would be avoided if an offshore borrow site were used instead:

Before each renourishment event, pipeline placement will be coordinated with the appropriate resource agencies to minimize impacts to the significant nesting site at the southern end of Wrightsville Beach . . . When the offshore borrow area is used, there would be no pipeline on the south end of Wrightsville Beach, so there would be no impacts to bird habitat in that area. This alternative [using the offshore site] would not be expected to significantly affect breeding and nesting shorebirds or colonial waterbirds in the project area.³⁹

The threatened Piping Plover and Red Knot, along with other shorebird species and wildlife, are facing increasing habitat damage and loss. Coastal geologists have observed that, “The mining of [inlets] for sediment has increased. This is a problem because exposed [inlets] and sandbars are prime roosting and foraging habitats for piping plovers.”⁴⁰ In fact, analyses of inlets within the U.S. breeding and wintering range of piping plovers, conducted in 2016 and 2012, respectively, found that 182 inlets (44%) in the breeding range and 81 (40%) in the non-breeding range had been mined or otherwise dredged.⁴¹

Dredging and mining inlets have long-term impacts on the coastal environment, as documented by South Carolina Department of Natural Resources scientists who determined that coastal borrow pits have failed to recover from the impacts of dredging even after years have passed. Scientists have concluded that “the larger the volume of sediment mined from the shoals, the larger the perturbation to the system and the longer the recovery period.”⁴²

Dredging of Masonboro Inlet and Banks Channel that has already occurred has exacerbated erosion of Masonboro Island, according to the draft study: “Removal of sediment from Masonboro Inlet/Banks Channel reduces the amount of down drift sediments that reach Masonboro Island.”⁴³ Masonboro Island is the largest component of the North Carolina Coastal Reserve and National Estuarine Research Reserve system (NCNERR), and provides a wide variety of habitats.⁴⁴ American Oystercatchers and Willets are abundant and nest throughout the site, while terns and skimmers nest on the beachfront and a great variety of shorebirds, wading birds and marshbirds are abundant during migration and winter months.⁴⁵

³⁸ *Draft Wrightsville Beach Study*, op. cit. pp. 103-105.

³⁹ *Ibid.*, p. 86.

⁴⁰ *Ibid.*, p. 17.

⁴¹ U.S. Fish and Wildlife Service. *Comprehensive Conservation Strategy for the Piping Plover (Charadrius melodus) in its Coastal Migration and Wintering Range in the Continental United States*. Op cit. p. 14.

⁴² *Ibid.*

⁴³ *Draft Wrightsville Beach Study*, op cit, p. 62.

⁴⁴ North Carolina Division of Coastal Management, “N.C. Coastal Reserve and National Estuarine Research Reserve: Masonboro Island.” <http://portal.ncdenr.org/web/crp/masonboro-island#naturalfeaturesmi>

⁴⁵ National Audubon Society, “Important Bird Areas: Masonboro Island, North Carolina.” <https://www.audubon.org/important-bird-areas/masonboro-island>

Given the research that has been conducted on the potential for significant, long-lasting and serious environmental damage from inlet sand dredging, it is incumbent on the COE to evaluate these potential impacts prior to moving forward with its proposed project. The draft study notes that impacts in the dredged area have not been assessed and that there are information gaps: “A number of the after-dredge surveys for Masonboro Inlet and Banks Channel were incomplete; survey coverage tended to focus on contract areas, not the entire inlet and channel.”⁴⁶

Scientists at the Virginia Institute of Marine Science recommend a series of steps to determine the potential impacts from marine mining prior to embarking on sediment excavations, including:

- Conducting an inventory or assessment to determine the types and quantities of organisms, the species diversity and biomass, that “would be lost should the project be performed;”
- Ensuring that benthic ecologists map, characterize, and quantify the biological community, including the recolonization potential of the area and likely consequences on the pelagic, or transient, fauna;
- Accurately determining the likelihood of an area successfully recolonizing the organisms that are killed from the dredging operation by ensuring that geologists provide an analysis of the substrate, while physical oceanographers evaluate the bottom agitating forces that will act on the area after the dredging operation;
- Reviewing and considering the biology of the water column; and,
- Conducting the “necessary” task of amassing a “thorough knowledge of the regional fisheries resources and how the changes in infauna might impact the available food resources.” Fisheries considerations should include whether there is a formal Fisheries Management Plan in place for the area to be dredged, and whether it has been designated as part of an Essential Fish Habitat, as well as determining whether there are important recreational or commercial fisheries in the area that could be impacted by marine mining.⁴⁷

In addition to conducting the pre-dredging steps recommended above, the project should include a monitoring plan to track and assess impacts during the dredging process, and following it. Without a monitoring plan, there will be no way to determine if negative impacts are occurring, and the chance to adjust operations to reflect real-time impacts will be lost. The proposed project should include a monitoring plan that will provide needed information.

Conclusion

The draft study proposes that Congress severely weaken the CBRA by granting itself the ability to over-ride the well-established CBRA consultation process, thereby removing the FWS and its expertise from the review process and substituting itself. Such an action is unwarranted and unnecessary. The CBRA already provides exemptions to its funding restrictions for a number of dredging-related activities. The CBRA also provides a mechanism for airing and resolving disputes between federal agencies through the consultation process, which is a key element of the CBRA’s long track record of successfully saving federal tax dollars, promoting public safety and conserving coastal resources

⁴⁶ *Appendix B, B-17.*

⁴⁷ *Ibid.*

Additionally, the draft study identifies two potential offshore sand borrow sites that are not CBRS units. These alternative sites should be utilized. Finally, a plan for assessing the impacts of sand mining and determining baseline conditions prior to dredging should be adopted as part of the final project.

The National Audubon Society appreciates the opportunity to submit these comments.

Sincerely,

Karen Hyun, PhD
Vice President, Coastal Conservation
National Audubon Society

From: [Fish, Teresa L](#)
To: [Niemi, Katie](#); [Wright, Dana K](#)
Subject: USACE reports
Date: Wednesday, August 7, 2019 12:44:22 PM
Importance: High

Katie and Dana,

According to USACE's Wilmington District page, neither of the evaluation reports are located on [regs.gov](#); they're posted only on their webpage. They have the notice and all supporting documents (i.e., report and appendices) on the Wilmington page. Contact information is given for anyone who wanted to submit comments.

Carolina Beach Renourishment Evaluation Report

Mentions that the sand borrow area of Carolina Beach Inlet is within Unit L09 so they identified an offshore borrow area (Borrow Area B). It also states:

“There is explicit understanding that the financial restrictions of CBRA would affect the ability to utilize federal funds to use Carolina Beach Inlet as a borrow source. Consequently, continued use of the Carolina Beach Inlet would require an exemption from the provisions of CBRA in the project's final Congressional authorization. A Congressional re-authorization of the project would need to include specific statutory language allowing use of Federal funds to work within this borrow area notwithstanding the provisions of CBRA.” (pg. ii)

There is also a section dedicated to CBRA in the report – Section 9.3 (pg. 128). Scattered references to CBRA are also mentioned throughout the report stating essentially the same thing as above:

- Section 2.3.3 – Carolina Beach Inlet Navigation Project and CBRA Zone (pg. 12)
- Section 5 – Plan Formulation and Evaluation of Alternatives (pg. 23)
- Table 5.7 – Planning and Guidance (P&G) criteria comparison of alternative (pg. 39)
- Section 6.2.4 – Borrow Areas (pg. 46)

Wrightsville Beach, NC Validation Study

States that all of Masonboro Inlet and about half of the Banks Channel borrow source is located within a CBRS unit and that current engineering analysis of the current borrow source indicates that there may not be a sufficient quantity of sand to provide borrow material for four additional renourishments required through FY 2036.

Like with the previous report, there is a section dedicated to CBRA – Section 9.3 (pg. 141 of the report). In part, it states:

“...the Wilmington District proposes to continue to consider the inlet source as a potential borrow source for the project, with the explicit understanding that CBRA would prohibit the use of the inlet as a borrow source unless the Congressional re-authorization of the project allowing use of Federal funds to work within this borrow area notwithstanding the financial restrictions of CBRA. Without Congressional language of this sort, the offshore borrow alternative would be used for all future project renourishments for the period of analysis

from FY 2022-FY 2036. Beyond this timeframe another source of sand would need to be identified.”

Scattered references to CBRA are also mentioned throughout the report stating essentially the same thing as above:

- Section 5 – Plan Formulation and Evaluation of Alternatives (pg. 19)
- Section 6.2.4 – Borrow Areas (pg. 42)

Thanks,
Terri

From: [BalisLarsen, Martha](#)
To: [Frazer, Gary D](#); [Shultz, Gina](#)
Cc: [Gilbert, Parks](#); [Galst, Carey](#); [Niemi, Katie](#)
Subject: Fwd: Cape May County Herald article: Borough Prepares for Litigation
Date: Monday, September 16, 2019 7:33:24 PM
Importance: High

Heads up on potential new CBRA litigation on the sand mining issue.

Martha

Sent from my iPhone

Begin forwarded message:

From: "Niemi, Katie" <katie_niemi@fws.gov>
Date: September 16, 2019 at 10:07:55 AM EDT
To: Eric Schradling <eric_schrading@fws.gov>, "Bohn, Cynthia" <cynthia_bohn@fws.gov>, Spencer Simon <spencer_simon@fws.gov>, Linus Chen <linus.chen@sol.doi.gov>, "BalisLarsen, Martha" <martha_balislarsen@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>, "Wright, Dana" <dana_wright@fws.gov>
Subject: Cape May County Herald article: Borough Prepares for Litigation

FYI

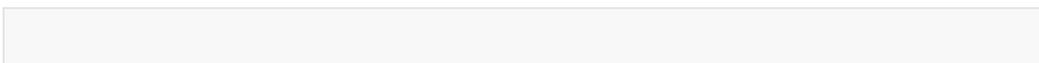
In the Cape May County Herald:

"STONE HARBOR - Stone Harbor, Avalon, and North Wildwood have jointly moved to retain a special litigation counsel to challenge the U.S. Fish and Wildlife Service's ruling, which prevents the municipalities from using federal dollars to borrow sand from Hereford Inlet.

The ruling, based on the federal agency's interpretation of the Coastal Barrier Resources Act (CBRA), complicates federally sponsored beach replenishment efforts by the Army Corps of Engineers.

A federal hydraulic replenishment is scheduled for late this year, but Stone Harbor won't receive new sand due to the CBRA interpretation. Beach replenishment will depend on moving existing sand taken from dunes higher than the federal template levels.

Attempts by the three municipalities to reach a negotiated settlement with Fish and Wildlife have not restored the ability to use Hereford Inlet sand for the beaches. Stone Harbor Borough Council approved the shared services agreement for legal counsel at its Sept. 3 meeting."





coastal barrier

As-it-happens update · September 14, 2019

NEWS

[Borough Prepares for Litigation](#)

Cape May County Herald

The ruling, based on the federal agency's interpretation of the **Coastal Barrier Resources Act (CBRA)**, complicates federally sponsored beach ...



Flag as irrelevant

[See more results](#)

| [Edit this alert](#)

You have received this email because you have subscribed to **Google Alerts**.

[Unsubscribe](#) | [View all your alerts](#)



[Receive this alert as RSS feed](#)

[Send Feedback](#)

From: [Eustis, Christine](#)
To: [Schrading, Eric](#)
Cc: [Niemi, Katie](#); [BalisLarsen, Martha](#); [Eisenhauer, David](#); [Phinney, Jonathan T](#); [Berg, Elizabeth A](#); [Kodis, Martin](#); [Gustavson, Angela](#); [Bohn, Cynthia](#); [Hires, Brian K](#); [Simon, Spencer](#); [Wright, Dana K](#)
Subject: Re: please review - CBRA & Hereford Inlet Q&As
Date: Wednesday, October 9, 2019 4:52:40 PM
Importance: High

Looks great to me!

On Wed, Oct 9, 2019 at 2:54 PM Schrading, Eric <eric_schrading@fws.gov> wrote:

Katie,

Great job on the Q&A's.

Two suggestions:

- 1..Should be identify that the State of NJ supported inclusion of NJ-09 when it became a system unit in 1990?
2. For Q&A #3....we may want to highlight "within" and "outside" in this sentence to make it a little more clear to the reader.

While CBRA **does** contain an exception for non-structural shoreline stabilization **within** the CBRS, it **does not** contain an exception for sand mining for the purpose of stabilizing shorelines **outside** of the CBRS.

On Wed, Oct 9, 2019 at 12:28 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

Due to the continued interest from the media and others in the CBRA and Hereford Inlet issue, David Eisenhauer and I thought it would be a good idea to develop some basic Q&As on this topic that we could post publicly on our website (probably on this page for the Hurricane Sandy project: <https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project-Batch-1.html>). Please take a look at the GoogleDocs file and let me know if you have any changes or concerns with us posting this document to the CBRA website. Prior to posting, we would format the file, add logos, etc.

https://docs.google.com/document/d/1t-2ib_nhoLIS2kOqCa5hDWCudL6ax4SaEATobLNp0SI/edit?usp=sharing

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Eric Schradling, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
P: (609) 382-5272
Cell: (609) 576-3400
Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

--

Christine Eustis (my pronouns are she, her)
Office of External Affairs
North Atlantic-Appalachian Region
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035
office: 413) 253-8321
cell: 413) 270-0215
christine_eustis@fws.gov

From: [Kirchner, Bill](#)
To: [Niemi, Katie](#)
Subject: Re: CBRA
Date: Tuesday, October 15, 2019 12:12:10 PM
Importance: High

Yes Katie send me the guidance! I worked on dredging issues for both the COE and EPA as well as contaminants.

Thank you!

Bill

Sent from my iPhone

On Oct 15, 2019, at 8:11 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Bill,

There has been ongoing pressure from local communities (and others) to get us to reverse our long-standing legal interpretation that CBRA does not allow the mining of sand from within the CBRS to nourish a recreational beach outside of the CBRS. This particular fact pattern affects a few areas along the coast, but certain communities and their representatives have been quite engaged on this issue. Here's an article related to this issue in Hereford Inlet, NJ: <https://www.sfgate.com/news/article/A-little-off-the-top-State-may-rearrange-some-14459171.php>

We are working on an options paper, per Gary's request. I don't think we need help with the options paper but if you have experience/interest with dredging/beach nourishment issues and would be interested in reviewing some CBRA guidance we are preparing on that topic, we would be happy to get your feedback when we go out for internal review (timeframe not yet known, but hopefully within the next six months).

Thanks for reaching out.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Thu, Oct 10, 2019 at 4:06 PM Kirchner, Bill <bill_kirchner@fws.gov> wrote:
Katie, in this weeks notes Gary wanted options on the sand mining issue.

"Need to develop an options paper for CBRA sand mining issue." What's up?

Is this a beneficial use project for beach nourishment? Contaminant issues?

Let me know if you want some assistance!

Bill

William Kirchner, PWS
R9 Ecological Services, NWI
911 NE 11th Ave.
Portland OR 97232
ph 503 231 2070

From: [Niemi, Katie](#)
To: [Simon, Spencer](#)
Subject: Re: high priority - please review CBRA options paper
Date: Wednesday, October 16, 2019 2:18:13 PM

Thanks for reviewing.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Wed, Oct 16, 2019 at 2:16 PM Simon, Spencer <spencer_simon@fws.gov> wrote:

Hi, I've reviewed the draft and have no edits. Thank you.

Spencer Simon

Deputy Assistant Regional Director, Ecological Services
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589
P: 413-253-8578
C: 413-313-6346

On Wed, Oct 16, 2019 at 2:02 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,
Please use this link to edit the GoogleDoc file.

https://docs.google.com/document/d/1h06H3hHvRHZ0ZP_bE3JzMbaOK8EAzS7vjsXf6DcG1Bo/edit?usp=sharing

Thanks!
Katie

On Wed, Oct 16, 2019 at 1:31 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,
We recently learned that Secretary Bernhardt is meeting with Rep. Van Drew (NJ-2) next Monday. Gary Frazer asked that we prepare an options paper on the CBRA sand mining issue for Margaret. Please see the GoogleDocs file and offer any revisions in "Suggesting" mode. I told Gary we'd have the options paper to him by today so any feedback you can provide this afternoon would be appreciated. Sorry for the short turn-around time.

https://drive.google.com/file/d/1G_wAC-gJAFHhZ1famNc84Mv4CZTdo0kR/view?usp=sharing

Thanks!
Katie

Katie Niemi

Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [Niemi, Katie](#)
To: [Schrading, Eric](#)
Cc: [Wright, Dana K](#)
Subject: Re: high priority - please review CBRA options paper
Date: Thursday, October 17, 2019 11:25:49 AM

Thanks Eric for your review and edits to the options paper. Gary revised it slightly last night (and caught the double wording as you did :) before sending forward. We will add your other comment to the draft on our network so we have that change in case we're asked for it again in the future. This continues to be a hot issue!

Katie

On Wed, Oct 16, 2019 at 10:38 PM Schrading, Eric <eric_schrading@fws.gov> wrote:

Katie,

Sorry to review this late. Two proposed changes...but I did not do this on the google doc.

1. Remove "to argue" -2nd sentence last paragraph on page three (repeated twice).
2. Capitalize or don't capitalize "Section" throughout paper...both are used (consistency).

Otherwise looks great!!!!

On Wed, Oct 16, 2019 at 1:31 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Folks,

We recently learned that Secretary Bernhardt is meeting with Rep. Van Drew (NJ-2) next Monday. Gary Frazer asked that we prepare an options paper on the CBRA sand mining issue for Margaret. Please see the GoogleDocs file and offer any revisions in "Suggesting" mode. I told Gary we'd have the options paper to him by today so any feedback you can provide this afternoon would be appreciated. Sorry for the short turn-around time.

https://drive.google.com/file/d/1G_wAC-gJAFHhZ1famNc84Mv4CZTdo0kR/view?usp=sharing

Thanks!
Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

--

Eric Schrading, CWB
Field Supervisor

U.S. Fish and Wildlife Service

New Jersey Field Office

4 East Jimmie Leeds Road, Suite 4

Galloway, New Jersey 08205-4465

P: (609) 382-5272

Cell: (609) 576-3400

Fax: (609) 646-0352

Follow us on Facebook: <https://www.facebook.com/USFWSNewJerseyFieldOffice>

From: [Wright, Dana K](#)
To: [Eisenhauer, David](#)
Cc: [Niemi, Katie](#); [Schrading, Eric](#); [Hires, Brian K](#); [Phinney, Jonathan T](#)
Subject: Re: Hereford Inlet media inquiry from Cape May County Herald reporter Rachel Rogish
Date: Thursday, October 17, 2019 1:32:51 PM
Attachments: [20191017 Hereford Inlet CBRA Q and A.pdf](#)
Importance: High

Hello all,

Please see attached. As Katie mentioned, it's not 508 compliant (or formatted to FWS graphics standards), but we'll take care of that next week.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, Oct 17, 2019 at 1:14 PM David Eisenhauer <david_eisenhauer@fws.gov> wrote:
Thank you, Katie. I will follow up with the reporter once I get the QA doc.

Sent from my iPhone

On Oct 17, 2019, at 1:08 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

David,
Martha just made some revisions to the Hereford Inlet Q&As. Dana is formatting the file and will send it to you this afternoon to share with the reporter (we'll post the file next week after properly formatting and 508 compliance for the web).

Here's some information you can share with the reporter. I recommend that Eric be the point-of-contact for specific questions regarding any consultation issues (though we can take the mapping questions).

DRAFT RESPONSE FOR REPORTER:

CBRA generally restricts the use of federal funds for dredging and flood control projects within the CBRS, including most beach nourishment and

shoreline stabilization. I can confirm that CBRA only impacts federally-funded projects. State or local expenditures are not prohibited within the CBRS.

There are several exceptions to CBRA's prohibitions on federal expenditures. Some exceptions allow for dredging of federal navigation channels, beach nourishment, and shoreline stabilization projects under limited circumstances. There are also exceptions for the maintenance, replacement, reconstruction, or repair of certain publicly-owned infrastructure. Additional information on CBRA's prohibitions and the excepted activities is available on our website at:

<https://www.fws.gov/cbra/CBRA-Prohibitions.html> and
<https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Importantly, CBRA also contains certain emergency provisions that may apply depending on the circumstances. CBRA compliance is the responsibility of the federal funding agency. In the event that there are federally-funded projects necessary to alleviate an emergency in a Presidentially-declared disaster, we recommend that you contact FEMA to discuss whether these emergency provisions may apply.

I recommend that you take a look at the CBRS Mapper for this area, as the infrastructure in North Wildwood that you are asking about may not even be within the CBRS: <https://www.fws.gov/cbra/Maps/Mapper.html>.

Attached is some information about Hereford Inlet and CBRA. Please let me know if you have any additional questions.

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Thu, Oct 17, 2019 at 12:37 PM Hires, Brian <brian_hires@fws.gov> wrote:
Let me know if I can be of any assistance here. Looks like factual information that's being requested (that may or may not need additional context as well)?

[Brian Hires](#)

[U.S. Fish and Wildlife Service](#) | [Office of Public Affairs](#) | Falls Church, VA
(Office) 703.358.2191 | (Cell) 703.346.9941

On Thu, Oct 17, 2019 at 10:48 AM Eisenhauer, David

<david_eisenhauer@fws.gov> wrote:

You will recall Rachel wrote a previous story with some misinformation in it. I sent a correction and asked that she reach out to us for future stories. Let me know whether you want to reach out directly to the reporter or provide a statement via email she can include in the story.

Dave

----- Forwarded message -----

From: parsonblaze@juno.com <parsonblaze@juno.com>

Date: Thu, Oct 17, 2019 at 10:39 AM

Subject: [EXTERNAL] Information Request from Rachel Rogish, Herald Reporter

To: <david_eisenhauer@fws.gov>

Good morning David,

I am contacting you regarding the situation of the beach fronts in North Wildwood, NJ. We corresponded a few months ago when a portion of the City's seawall collapsed and you were kind enough to provide me with your contact information.

I attended a recent City Council meeting where the present situation was discussed after the last nor'easter; the beach fronts were decimated and the bulkhead will need to be extended several blocks in order to protect infrastructure and roadways. It is my understanding (please correct me if I'm wrong) that federal funding cannot be used to pump sand from Hereford Inlet, but local and state funds could be used.

Would you be willing to speak with me about the situation? I am free this afternoon and tomorrow morning. My contact number is 609.827.4347. If you would prefer to email a statement, that is also fine.

Thank you for your time and have a good day.

Kind regards,
Rachel A. Rogish
Correspondent
Cape May County Herald
609.827.4347
rrogish@cmcherald.com

--

David Eisenhauer (he/him)
Public Affairs Officer
U.S. Fish and Wildlife Service, North Atlantic-Appalachian Region

david_eisenhauer@fws.gov

413-253-8492 (o)

413-313-3554 (m)

Making the simple complex is commonplace; making the complex simple, awesomely simple, that's creativity. -- Charles Mingus

Visit our [newsroom](#)

Information on Hereford Inlet, New Jersey and the Coastal Barrier Resources Act

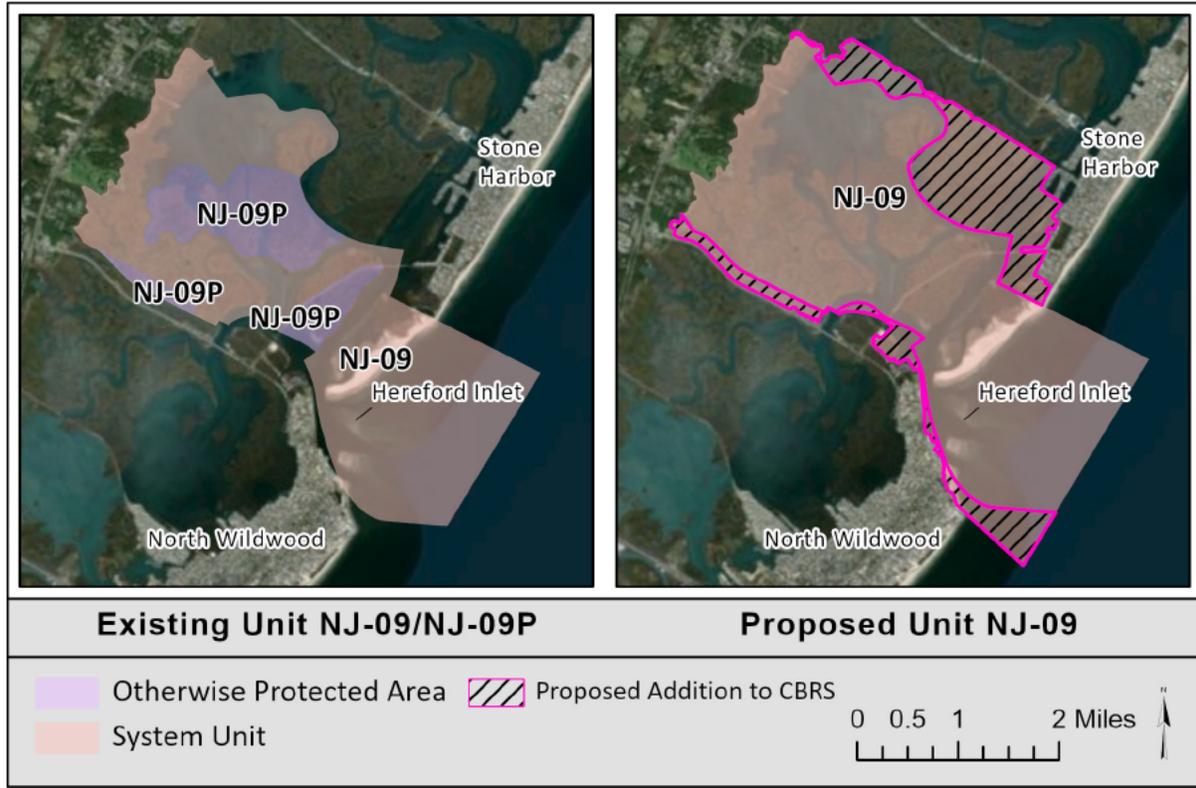


Figure 1. Proposed changes to CBRS Unit NJ-09/NJ-09P

Background

Hereford Inlet, located in Cape May County, New Jersey, is within Unit NJ-09 of the Coastal Barrier Resources System (CBRS). The CBRS was initially designated by Congress with the adoption of the [Coastal Barrier Resources Act \(CBRA\)](#) of 1982 (Pub. L. 97-348) and includes relatively undeveloped coastal barriers along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. CBRA encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures and financial assistance that encourage development, including most dredging, erosion control, and shoreline stabilization projects. There is no prohibition on projects conducted with non-federal funds. Hereford Inlet was first added to Unit NJ-09 by Congress through the [Coastal Barrier Improvement Act of 1990](#) (Pub. L. 101-591), and the State of New Jersey supported this designation. The unit was expanded in 1997 ([62 FR 8258](#)).

Hurricane Sandy Remapping Project

This area is part of a large Hurricane Sandy Remapping Project being undertaken by the U.S. Fish and Wildlife Service (Service) that covers nine states along the northeast portion of the Atlantic Coast. The Service has proposed changes in the vicinity of Hereford Inlet through the remapping project (see Figure 1). The proposed changes are depicted in the [CBRS Projects Mapper](#) and described in the Service's [Summary of Proposed Changes for Unit NJ-09](#). The Service held a 120-day public comment period on the proposed changes for New Jersey from March 12 through July 10, 2018. Now that the public review period has closed, the Service is

making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is also preparing summaries of and responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including recommended removals and additions) will only become effective once the revised maps are adopted into law by Congress.

Q: How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the Hereford Inlet borrow area for the U.S. Army Corps of Engineers (Corps) Townsends Inlet to Cape May Inlet New Jersey Shore Projection Project?

A: There are no proposed changes that affect the status of the Hereford Inlet borrow area, which is already within the CBRS (and has been since the 1990s).

Q. Did the Service ban dredging in Hereford Inlet?

A. The Service has not banned dredging within Hereford Inlet. However, CBRA's restrictions do limit the range of activities that can be done within the CBRS with federal funds. CBRA does not in any way limit the use of state, local, and/or private dollars for activities within the CBRS or restrict the issuance of federal permits. There are also some exceptions to CBRA's restrictions on federal expenditures within the CBRS.

Additionally, the Service does not have any type of enforcement authority over federal expenditures in the CBRS; each agency affected by CBRA is responsible for complying with the law. The Service has an opportunity to provide a non-binding opinion regarding the application of CBRA's exceptions through a consultation process for any federally funded project or activity affecting the CBRS. Any response provided by the Service is an opinion only, and the federal funding agency makes the final decision. Additional information on CBRA's prohibitions and excepted activities is available at:

<https://www.fws.gov/cbra/CBRA-Prohibitions.html> and
<https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Q. Why can't sand be taken from Hereford Inlet and used to nourish nearby beaches to the north (outside of the CBRS)?

A. In 2016, the Corps requested a consultation from the Service for a project to dredge Hereford Inlet to obtain sand for use in nourishing beaches outside of the CBRS on Seven Mile Island to the northeast of the unit. In 2016, the Service found that the storm protection project was not allowable with federal funds based on its long-standing legal interpretation that CBRA does not allow for sand mining within the CBRS for the purposes of nourishing beaches outside of the CBRS. While CBRA **does** contain an exception for certain types of non-structural shoreline stabilization **within** the CBRS, it **does not** contain an exception for sand mining for the purpose of stabilizing shorelines **outside** of the CBRS. In the 1990s the Corps consulted with the Service and received concurrence for a project that utilized sand dredged from within Unit NJ-09 for a one-time environmental restoration project at Stone Harbor Point (also within the CBRS unit). The scope of the 1990s Corps project that the Corps completed a CBRA consultation on was significantly different from the project proposed in 2016. The

different fact patterns for the two projects resulted in two different responses; it was the Service's opinion that the 1990s project met a CBRA exception, while the 2016 project did not.

Q: How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the N. Wildwood seawall?

A: The proposed boundary for Unit NJ-09 produced by the Service through the Hurricane Sandy Remapping Project was drawn to follow the northern shoreline of the City of N. Wildwood, with an approximately 20' buffer off of the N. Wildwood seawall. This boundary would add an undeveloped sandy beach and the remainder of the open water in the vicinity of Hereford Inlet to the unit (see Figure 2).

The Service was made aware of the concerns of the City of N. Wildwood and the Corps regarding the proposed expansion of CBRS Unit NJ-09 along the N. Wildwood seawall during the 120-day public comment period that was held on the project in 2018. Now that the public review period has closed, the Service is making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is considering modifying the proposed boundary of Unit NJ-09 along the seawall to ensure that the existing structure is not included within the unit. Also, it is important to note that there is an exception in CBRA for the "Maintenance, replacement, reconstruction, or repair, but not the expansion...of publicly owned or publicly operated roads, structures, and facilities," so long as the project is also consistent with the purposes of CBRA (i.e., minimize loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources). This exception would be considered for any federally-funded projects to maintain the seawall if it (or any portion of it) were within the CBRS. In a June 2019 letter from the Service to the Corps, the Service concurred that a proposed repair to the existing seawall that extends underwater into the existing unit meets the aforementioned exception, and is therefore allowable with federal funds.



Figure 2. Proposed addition to Unit NJ-09 in the vicinity of the N. Wildwood Seawall

Q: Why is the Service recommending additions to the CBRS?

A: The Service has a statutory mandate (section 4 of [Pub. L. 109-226](#)) to remap the CBRS using digital technology and recommend the addition of qualifying undeveloped coastal barrier areas to Congress. The Service is not making these changes administratively, and is only making recommendations to Congress as required by law. The revised CBRS boundaries will only become effective once the revised maps are adopted into law by Congress.

Where Can I Get More Information?

CBRS Hurricane Sandy Remapping Project:

<https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project.html>

- [Hurricane Sandy Remapping Project Fact Sheet](#)
- [NJ-09 Summary of Proposed Changes](#)
- [NJ State Fact Sheet](#)

CBRS Mapper (existing units) and CBRS Projects Mapper (proposed changes):

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

**U.S. Fish & Wildlife Service
Ecological Services
5275 Leesburg Pike
Falls Church, VA 22041
703-358-2171
www.fws.gov/cbra**

October 2019



Information on Hereford Inlet, New Jersey and the Coastal Barrier Resources Act

Background

Hereford Inlet, located in Cape May County, New Jersey, is within Unit NJ-09 of the Coastal Barrier Resources System (CBRS). The CBRS was initially designated by Congress with the adoption of the [Coastal Barrier Resources Act \(CBRA\)](#) of 1982 (Pub. L. 97-348) and includes relatively undeveloped coastal barriers along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. CBRA encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures and financial assistance that encourage development, including most dredging, erosion control, and shoreline stabilization projects. There is no prohibition on projects conducted with non-federal funds. Hereford Inlet was first added to Unit NJ-09 by Congress through the [Coastal Barrier Improvement Act of 1990](#) (Pub. L. 101-591), and the State of New Jersey supported this designation. The unit was expanded in 1997 ([62 FR 8258](#)).

Hurricane Sandy Remapping Project

This area is part of a large Hurricane Sandy Remapping Project being undertaken by the U.S. Fish and Wildlife Service (Service) that covers nine states along the northeast portion of the Atlantic Coast. The Service has proposed changes in the vicinity of Hereford Inlet through the remapping project (see Figure 1). The proposed changes are depicted in the CBRS [Projects Mapper](#) and described in the Service's [Summary of Proposed Changes](#) for Unit NJ-09. The Service held a 120-day public comment period on the proposed changes for New Jersey from March 12 through July 10, 2018. Now that the public review period has closed, the Service is making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is also preparing summaries of and responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including

recommended removals and additions) will only become effective once the revised maps are adopted into law by Congress.

How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the Hereford Inlet borrow area for the U.S. Army Corps of Engineers (Corps) Townsends Inlet to Cape May Inlet New Jersey Shore Projection Project?

There are no proposed changes that affect the status of the Hereford Inlet borrow area, which is already within the CBRS (and has been since the 1990s).

Did the Service ban dredging in Hereford Inlet?

The Service has not banned dredging within Hereford Inlet. However, CBRA's restrictions do limit the range of activities that can be done within the CBRS with federal funds. CBRA does not in any way limit the use of state, local, and/or private dollars for activities within the CBRS or restrict

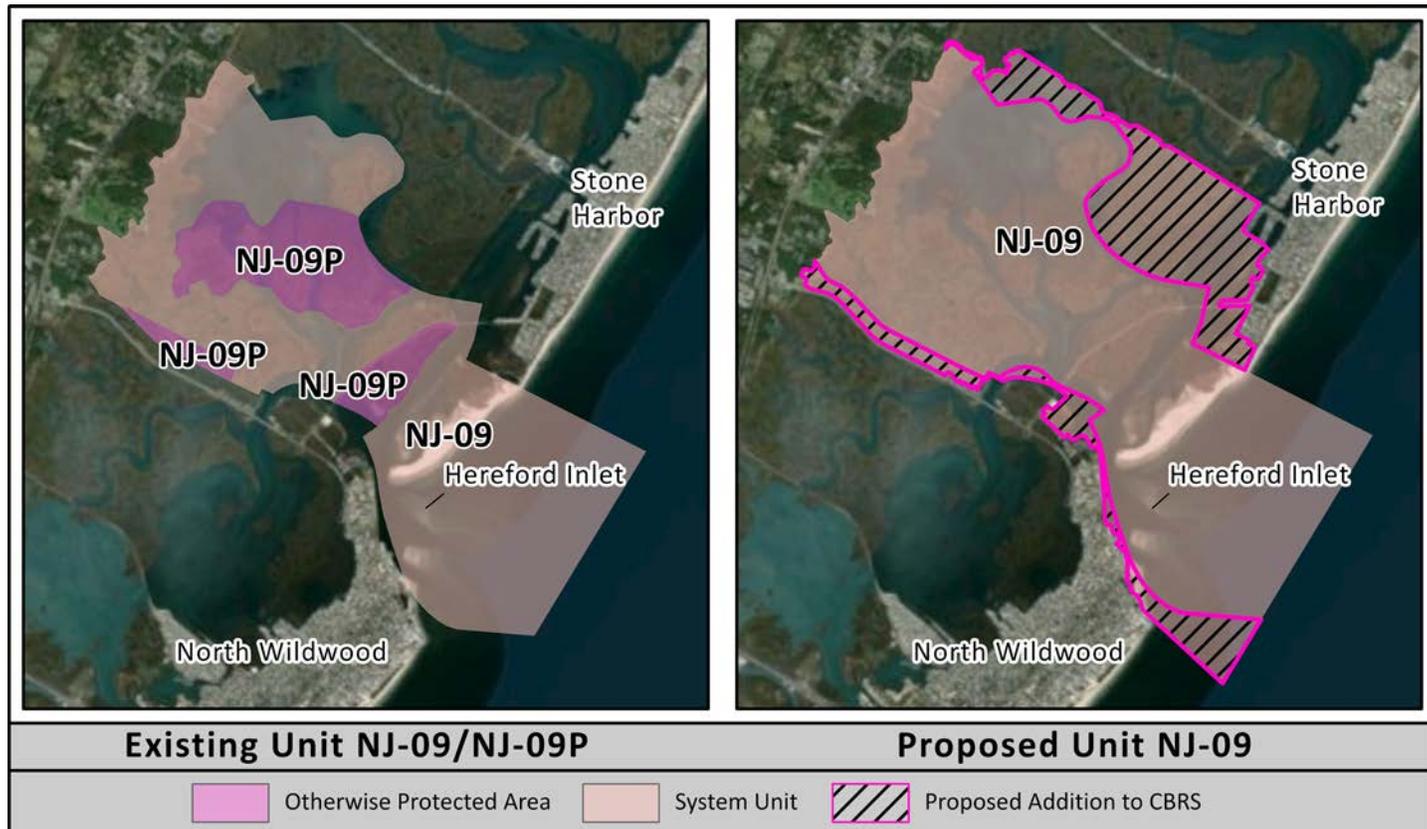


Figure 1. Proposed changes to CBRS Unit NJ-09/NJ-09P

the issuance of federal permits. There are also some exceptions to CBRA's restrictions on federal expenditures within the CBRS. The Service does not have any type of enforcement authority over federal expenditures in the CBRS; each agency affected by CBRA is responsible for complying with the law. The Service has an opportunity to provide a non-binding opinion regarding the application of CBRA's exceptions through a consultation process for any federally funded project or activity affecting the CBRS. Any response provided by the Service is an opinion only, and the federal funding agency makes the final decision. Additional information on CBRA's prohibitions and excepted activities is available at: <https://www.fws.gov/cbra/CBRA-Prohibitions.html> and <https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Why can't sand be taken from Hereford Inlet and used to nourish nearby beaches to the north (outside of the CBRS)?

In 2016, the Corps requested a consultation from the Service for a project to dredge Hereford Inlet to obtain sand for use in nourishing beaches outside of the CBRS on Seven Mile Island to the northeast of the unit. In 2016, the Service found that the storm protection project was not allowable with federal funds based on its long-standing legal interpretation that CBRA does not allow for sand mining within the CBRS for the purposes of nourishing beaches outside of the CBRS. While CBRA **does** contain an exception for certain types of non-structural shoreline stabilization **within** the CBRS, it **does not** contain an exception for sand mining for the purpose of stabilizing shorelines **outside** of the CBRS. In the 1990s the Corps consulted with the Service and received concurrence for a project that utilized sand dredged from within Unit NJ-09 for a one-time environmental restoration project at Stone Harbor Point (also within the CBRS unit). The scope of the 1990s Corps project that the Corps completed a CBRA consultation on was significantly different from the project proposed in 2016. The different fact patterns for the two projects resulted in two different responses; it was the Service's opinion that the 1990s project met a CBRA exception, while the 2016 project did not.

How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the N. Wildwood seawall?

The proposed boundary for Unit NJ-09 produced by the Service through the Hurricane Sandy Remapping Project was drawn to follow the northern shoreline of the City of N. Wildwood, with an approximately 20' buffer off of the N. Wildwood seawall. This boundary would add an undeveloped sandy beach and the remainder of the open water in the vicinity of Hereford Inlet to the unit (see Figure 2). The Service was made aware of the concerns of the City of N. Wildwood and the Corps regarding the proposed expansion of CBRS Unit NJ-09 along the N. Wildwood seawall during the 120-day public comment period that was held on the project in 2018. Now that the public review period has closed, the Service is making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is considering modifying the proposed boundary of Unit NJ-09 along the seawall to ensure that the existing structure is not included within the unit. Also, it is important to note that there is an exception in CBRA for the "Maintenance, replacement, reconstruction, or repair, but not the expansion...of publicly owned or publicly operated roads, structures, and facilities," so long as the project is also consistent with the purposes of CBRA (i.e., minimize loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources). This exception would be considered for any federally-funded projects to maintain the seawall if it (or any portion of it) were within the CBRS. In a June 2019 letter from the Service to the Corps, the Service concurred that a proposed repair to the existing seawall that extends underwater into the existing unit meets the aforementioned exception, and is therefore allowable with federal funds.

Why is the Service recommending additions to the CBRS?

The Service has a statutory mandate (section 4 of [Pub. L. 109-226](#)) to remap the CBRS using digital technology and recommend the addition of qualifying undeveloped coastal barrier areas to Congress. The Service is not making

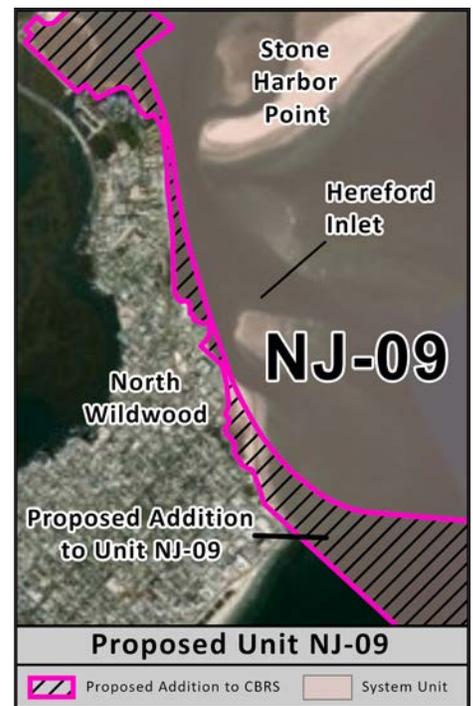


Figure 2. Proposed addition to Unit NJ-09 in the vicinity of the N. Wildwood Seawall

these changes administratively, and is only making recommendations to Congress as required by law. The revised CBRS boundaries will only become effective once the revised maps are adopted into law by Congress.

Where Can I Get More Information?

CBRS Hurricane Sandy Remapping Project: <https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project.html>

- [Hurricane Sandy Remapping Project Fact Sheet](#)
- [NJ-09 Summary of Proposed Changes](#)
- [NJ State Fact Sheet](#)

CBRS Mapper (existing units) and CBRS Projects Mapper (proposed changes): <https://www.fws.gov/cbra/maps/Mapper.html>

U.S. Fish & Wildlife Service
 Ecological Services
 5275 Leesburg Pike
 Falls Church, VA 22041
 703-358-2171
www.fws.gov/cbra



October 2019

From: [Niemi, Katie](#)
To: [Schrading, Eric](#); [Eisenhauer, David](#); [Hires, Brian K](#); [Simon, Spencer](#); [Wright, Dana K](#); [Eustis, Christine](#); [Kodis, Martin](#); [Berg, Elizabeth A](#); [Phinney, Jonathan T](#); [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#)
Subject: Hereford Inlet and CBRA Q&As
Date: Thursday, October 24, 2019 2:43:45 PM
Attachments: [20191022-Hereford-Inlet-CBRA-Q-and-A.pdf](#)

Hi Folks,

I just want to let you know that we recently posted the attached Hereford Inlet Q&As to the CBRA website. The PDF file is located under "State Fact Sheets" on this site:

<https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project-Batch-1.html>

Feel free to direct the media and any other interested parties to this resource on our website.

Thanks!

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

Information on Hereford Inlet, New Jersey and the Coastal Barrier Resources Act

Background

Hereford Inlet, located in Cape May County, New Jersey, is within Unit NJ-09 of the Coastal Barrier Resources System (CBRS). The CBRS was initially designated by Congress with the adoption of the [Coastal Barrier Resources Act \(CBRA\)](#) of 1982 (Pub. L. 97-348) and includes relatively undeveloped coastal barriers along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. CBRA encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures and financial assistance that encourage development, including most dredging, erosion control, and shoreline stabilization projects. There is no prohibition on projects conducted with non-federal funds. Hereford Inlet was first added to Unit NJ-09 by Congress through the [Coastal Barrier Improvement Act of 1990](#) (Pub. L. 101-591), and the State of New Jersey supported this designation. The unit was expanded in 1997 ([62 FR 8258](#)).

Hurricane Sandy Remapping Project

This area is part of a large Hurricane Sandy Remapping Project being undertaken by the U.S. Fish and Wildlife Service (Service) that covers nine states along the northeast portion of the Atlantic Coast. The Service has proposed changes in the vicinity of Hereford Inlet through the remapping project (see Figure 1). The proposed changes are depicted in the CBRS [Projects Mapper](#) and described in the Service's [Summary of Proposed Changes](#) for Unit NJ-09. The Service held a 120-day public comment period on the proposed changes for New Jersey from March 12 through July 10, 2018. Now that the public review period has closed, the Service is making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is also preparing summaries of and responses to the comments received along with final recommended maps for Congressional consideration. The revised CBRS boundaries (including

recommended removals and additions) will only become effective once the revised maps are adopted into law by Congress.

How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the Hereford Inlet borrow area for the U.S. Army Corps of Engineers (Corps) Townsends Inlet to Cape May Inlet New Jersey Shore Projection Project?

There are no proposed changes that affect the status of the Hereford Inlet borrow area, which is already within the CBRS (and has been since the 1990s).

Did the Service ban dredging in Hereford Inlet?

The Service has not banned dredging within Hereford Inlet. However, CBRA's restrictions do limit the range of activities that can be done within the CBRS with federal funds. CBRA does not in any way limit the use of state, local, and/or private dollars for activities within the CBRS or restrict

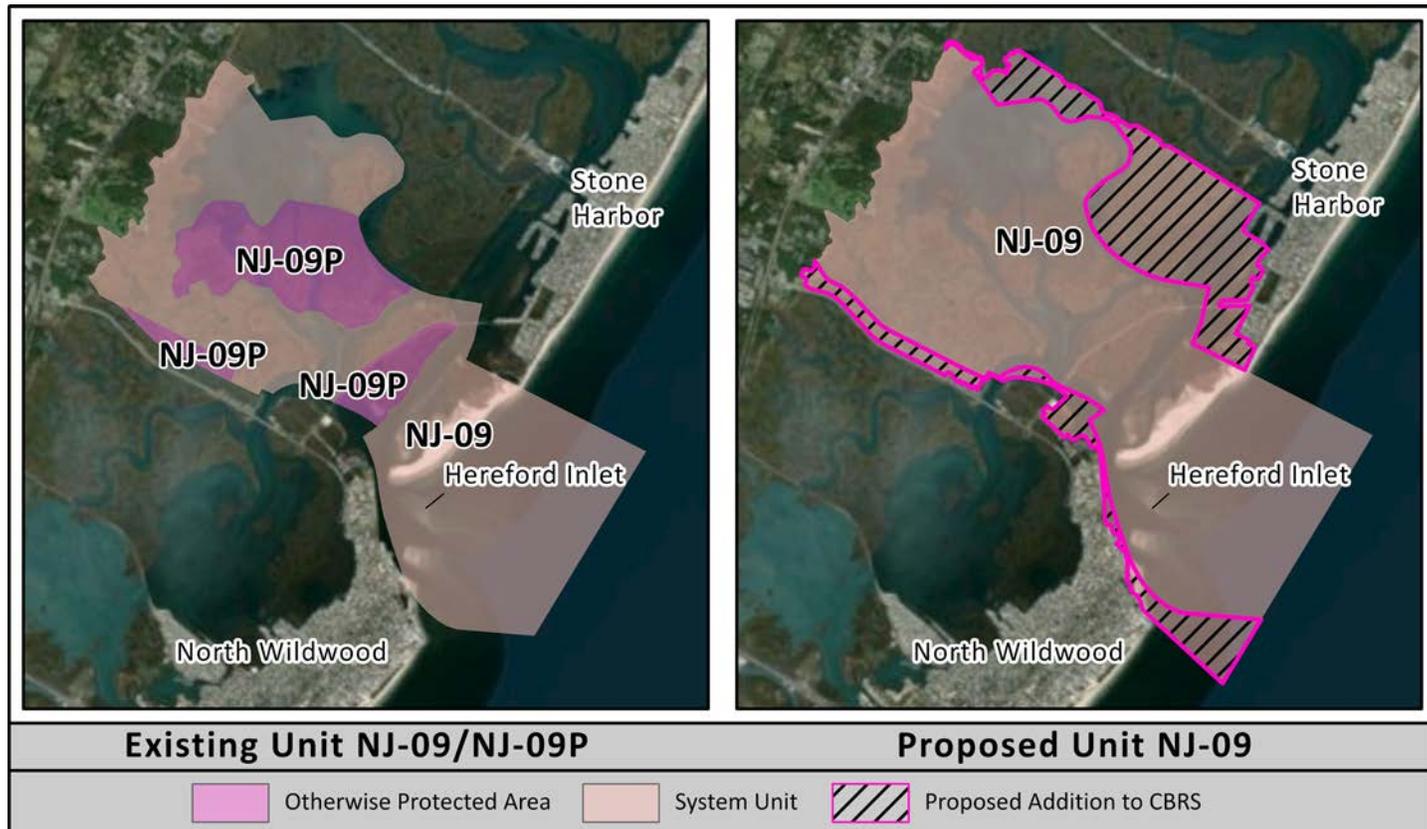


Figure 1. Proposed changes to CBRS Unit NJ-09/NJ-09P

the issuance of federal permits. There are also some exceptions to CBRA's restrictions on federal expenditures within the CBRS. The Service does not have any type of enforcement authority over federal expenditures in the CBRS; each agency affected by CBRA is responsible for complying with the law. The Service has an opportunity to provide a non-binding opinion regarding the application of CBRA's exceptions through a consultation process for any federally funded project or activity affecting the CBRS. Any response provided by the Service is an opinion only, and the federal funding agency makes the final decision. Additional information on CBRA's prohibitions and excepted activities is available at: <https://www.fws.gov/cbra/CBRA-Prohibitions.html> and <https://www.fws.gov/cbra/Limitations-and-Exceptions.html>.

Why can't sand be taken from Hereford Inlet and used to nourish nearby beaches to the north (outside of the CBRS)?

In 2016, the Corps requested a consultation from the Service for a project to dredge Hereford Inlet to obtain sand for use in nourishing beaches outside of the CBRS on Seven Mile Island to the northeast of the unit. In 2016, the Service found that the storm protection project was not allowable with federal funds based on its long-standing legal interpretation that CBRA does not allow for sand mining within the CBRS for the purposes of nourishing beaches outside of the CBRS. While CBRA **does** contain an exception for certain types of non-structural shoreline stabilization **within** the CBRS, it **does not** contain an exception for sand mining for the purpose of stabilizing shorelines **outside** of the CBRS. In the 1990s the Corps consulted with the Service and received concurrence for a project that utilized sand dredged from within Unit NJ-09 for a one-time environmental restoration project at Stone Harbor Point (also within the CBRS unit). The scope of the 1990s Corps project that the Corps completed a CBRA consultation on was significantly different from the project proposed in 2016. The different fact patterns for the two projects resulted in two different responses; it was the Service's opinion that the 1990s project met a CBRA exception, while the 2016 project did not.

How will the changes the Service is proposing through the Hurricane Sandy Remapping Project affect the N. Wildwood seawall?

The proposed boundary for Unit NJ-09 produced by the Service through the Hurricane Sandy Remapping Project was drawn to follow the northern shoreline of the City of N. Wildwood, with an approximately 20' buffer off of the N. Wildwood seawall. This boundary would add an undeveloped sandy beach and the remainder of the open water in the vicinity of Hereford Inlet to the unit (see Figure 2). The Service was made aware of the concerns of the City of N. Wildwood and the Corps regarding the proposed expansion of CBRS Unit NJ-09 along the N. Wildwood seawall during the 120-day public comment period that was held on the project in 2018. Now that the public review period has closed, the Service is making appropriate adjustments to the boundaries based on public comments, statutory criteria, and objective mapping protocols. The Service is considering modifying the proposed boundary of Unit NJ-09 along the seawall to ensure that the existing structure is not included within the unit. Also, it is important to note that there is an exception in CBRA for the "Maintenance, replacement, reconstruction, or repair, but not the expansion...of publicly owned or publicly operated roads, structures, and facilities," so long as the project is also consistent with the purposes of CBRA (i.e., minimize loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources). This exception would be considered for any federally-funded projects to maintain the seawall if it (or any portion of it) were within the CBRS. In a June 2019 letter from the Service to the Corps, the Service concurred that a proposed repair to the existing seawall that extends underwater into the existing unit meets the aforementioned exception, and is therefore allowable with federal funds.

Why is the Service recommending additions to the CBRS?

The Service has a statutory mandate (section 4 of [Pub. L. 109-226](#)) to remap the CBRS using digital technology and recommend the addition of qualifying undeveloped coastal barrier areas to Congress. The Service is not making

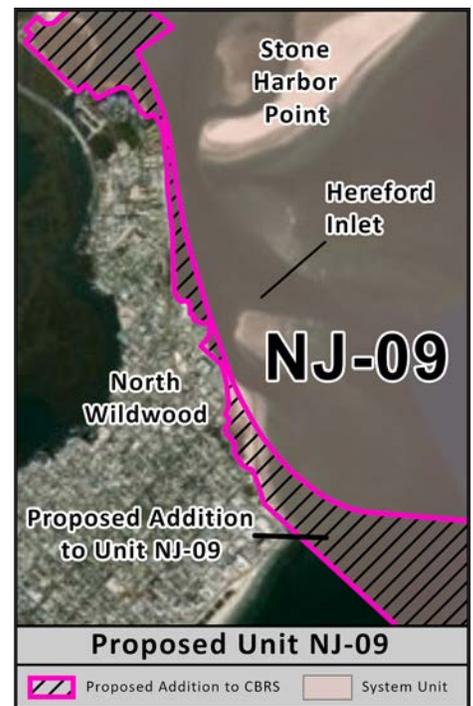


Figure 2. Proposed addition to Unit NJ-09 in the vicinity of the N. Wildwood Seawall

these changes administratively, and is only making recommendations to Congress as required by law. The revised CBRS boundaries will only become effective once the revised maps are adopted into law by Congress.

Where Can I Get More Information?

CBRS Hurricane Sandy Remapping Project: <https://www.fws.gov/cbra/maps/Hurricane-Sandy-Project.html>

- [Hurricane Sandy Remapping Project Fact Sheet](#)
- [NJ-09 Summary of Proposed Changes](#)
- [NJ State Fact Sheet](#)

CBRS Mapper (existing units) and CBRS Projects Mapper (proposed changes): <https://www.fws.gov/cbra/maps/Mapper.html>

U.S. Fish & Wildlife Service
 Ecological Services
 5275 Leesburg Pike
 Falls Church, VA 22041
 703-358-2171
www.fws.gov/cbra



October 2019

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Re: Please print for PF (email and attachments)
Date: Monday, October 28, 2019 10:52:26 AM

Thanks

On Mon, Oct 28, 2019 at 10:50 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI, the email below and attachments are all saved at:
CBRA\Consistency Consultations\Guidance Docs Provided to Director's Office 10.28.19

----- Forwarded message -----

From: Niemi, Katie <katie_niemi@fws.gov>
Date: Mon, Oct 28, 2019 at 10:45 AM
Subject: Re: Please print for PF (email and attachments)
To: Charisa Morris <charisa_morris@fws.gov>
Cc: Phinney, Jonathan <jonathan_phinney@fws.gov>, Sarah Quamme <sarah_quamme@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>

Hi Charisa,

If Margaret is interested in CBRA guidance related to consultations, below is a list of documents (either attached or hyperlinked) that may be helpful.

- **1983 Federal Register Notice** (this was a "rule-related notice") set forth the Department's general statement of policy and advisory guidelines regarding the provisions of CBRA that address limitations on federal expenditures and financial assistance, and exceptions to the limitations.
- **1983 Director's Order** delegated authority for CBRA consultations to the Regions.
- **1991 Director's Memo** provided guidance to the Regions for CBRA consultations with federal agencies.
- **1992 Federal Register Notice** (this was a "rule-related notice and request for comments"; the final guidelines were not published) set forth the Service's general statement of policy and advisory guidelines regarding the provisions of the Coastal Barrier Improvement Act (CBIA) of 1990 that address limitations on federal expenditures and financial assistance, and exceptions to the limitations.
- **1995 [Service Manual Chapter](#)** provided Service responsibilities for administering CBRA as modified by the CBIA.
- **2017 Hurricane Guidance Memo** provided CBRA guidance to the Regions following Hurricanes Harvey, Irma and Maria, and Nate.
- **2019 CBRA Fact Sheet** provides consultation guidance for federal agencies.
- The **[CBRA website](#)** contains information on the consultation process, including a **CBRA consultations flowchart** to assist federal agencies in determining whether a consultation is necessary, and an interagency **CBRA consultation template** to help facilitate the consultation process.

Please note that the Service also has responsibilities related to CBRS mapping (i.e., maintaining and updating the official maps) and CBRS in/out determinations (i.e., determining whether particular properties and structures are located "in" or "out" of the CBRS). If Margaret is interested in guidance related to these other CBRA responsibilities, please let me know and we'll provide you with additional information.

Thanks!
Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Sat, Oct 26, 2019 at 9:15 AM Charisa Morris <charisa_morris@fws.gov> wrote:

Thank you for the prompt! Just confirmation that we have no official guidelines, handbooks, policy, or regs. Just guidance for the mapper and some online fact sheet/pages. Is that correct?

Sent from my iPhone

On Oct 25, 2019, at 5:41 PM, Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

Charissa,

Do you need anything else from me on CBRA background?

JPh

On Thu, Oct 24, 2019 at 3:17 PM Phinney, Jonathan
<jonathan_phinney@fws.gov> wrote:

Charisa,

CBRA has a lot of guidances, unfortunately. I have attached a report that has the CBRA mapping guidance in Chapter 6 (pages 37-46).

Let me and the CBRA Project Lead, Katie Niemi (copied here), know if there is another guidance that Margaret is requesting.

Note the report is too large to send as an attachment so I have sent it as a Google link.

Regards,

Jonathan

 [John-H-Chafee-CBRS-Digital-Mapping-Pilot-Projec...](#)

On Thu, Oct 24, 2019 at 2:50 PM Morris, Charisa

<charisa_morris@fws.gov> wrote:

Hi Jonathan-

Margaret simply wanted to know what existing guidance the USFWS already has re: CBRA. Did my original email come through, and if so, do you think it answers her question?

Thanks!
Charisa

On Thu, Oct 24, 2019 at 2:12 PM Phinney, Jonathan

<jonathan_phinney@fws.gov> wrote:

Hi Charisa,

I am trying to locate the information that you requested from Sarah Quamme yesterday on CBRA.

Can you give me more information on the need? We have an overview ppt of the program. We have a mapping procedures document (actually a chapter) that can be a stand alone document. Or does the audience want a hard copy on the background of CBRA that is in the links below.

Happy to discuss by phone if desired.

Let me know.

Jonathan

----- Forwarded message -----

From: **Quamme, Sarah** <sarah_quamme@fws.gov>

Date: Wed, Oct 23, 2019 at 11:42 AM

Subject: Fwd: Please print for PF (email and attachments)

To: Jonathan Phinney <jonathan_phinney@fws.gov>

Hi Jonathan - I just got a visit from Charisa on this. She wanted to know if there was any other "standalone guidance" on CBRA beyond what is referenced in this blurb? Can you help me out with this?

----- Forwarded message -----

From: **Morris, Charisa** <charisa_morris@fws.gov>

Date: Wed, Oct 23, 2019 at 11:37 AM
Subject: Please print for PF (email and attachments)
To: Roslyn Sellars <Roslyn_Sellars@fws.gov>, Maureen Cooke
<maureen_cooke@fws.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Quamme,
Sarah <Sarah_Quamme@fws.gov>

Sarah is cc'd and will reply with additional materials, but existing public CBRA guidance is below. Many of these are links to webpages and tools. Printed materials are attached.

CBRA Guidance Following Hurricane Dorian

After a Presidentially-declared disaster, the Federal Emergency Management Agency (FEMA) and other federal agencies make expenditures and provide financial assistance to help communities recover and rebuild. Most federal funding for disaster relief is prohibited within the CBRS, with some exceptions (including certain emergency actions). Helpful information is available on our website, including: the [CBRS mapper](#), [GIS data](#), [CBRS in/out documentation](#), a [CBRA consultation fact sheet](#), and additional information about the [CBRA consultations](#) process. For assistance, please contact the local [FWS Ecological Services Field Office](#).

--

She/Her/Hers | Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

--

Sarah Joan Quamme
Chief, Branch of Domestic Listing
U.S. Fish & Wildlife Service
703-358-1796

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
5275 Leesburg Pike Suite 2 C007

Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
571-388-7526 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

She/Her/Hers | [Charisa Morris@fws.gov](mailto:Charisa_Morris@fws.gov) | Chief of Staff, Office of
the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348
| Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-
875-8937

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
5275 Leesburg Pike Suite 2 C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
571-388-7526 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

--

Jonathan T. Phinney PhD
Chief, Branch of Geospatial Mapping
and Technical Services (CBRA, NWI)
USFWS Ecological Services
5275 Leesburg Pike Suite 2 C007
Falls Church, VA 22041
703-358-1832 (office)
-1800 (fax)
571-388-7526 (mobile)
jonathan_phinney@fws.gov
<http://www.fws.gov>

From: [Wright, Dana K](#)
To: [Chen, Linus Y](#)
Cc: [Niemi, Katie](#)
Subject: 2016 interpretation
Date: Monday, October 28, 2019 2:36:32 PM
Attachments: [16-CPA-0223 USACE Formal CBRA.PDF](#)
[Corps_Incoming_7.28.16.pdf](#)

Hi Linus,

You called asking about a 2016 interpretation document on the sand mining issue. My assumption is that what you're looking for is the Service's 2016 CBRA consultation letter on the Corps' Stone Harbor dredging/beach nourishment project. Attached, you will find the incoming consultation letter dated July 28, 2016 and the Service's August 9, 2016 response. If you don't think this is it, please let me know. If it's something else related to this consultation, you may need to reach out to the field office supervisor, as they are the record keepers for consultations.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)



In Reply Refer To:
16-CPA-0223

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office

4 East Jimmie Leeds Road, Unit 4

Galloway, New Jersey 08205

Tel: 609/646 9310

<http://www.fws.gov/northeast/njfieldoffice>



Peter R. Blum, Chief
Planning Division, Philadelphia District
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Ms. Beth Brandreth

AUG 09 2016

Re: Coastal Barrier Resources System Determination for the use of the Hereford Inlet as a sand borrow area for the Townsends Inlet to Cape May Inlet beach restoration project, Borough of Stone Harbor, Cape May County, New Jersey

Dear Mr. Blum:

This response is in reference to your July 28, 2016 letter, in which you formally request an applicability determination of the Coastal Barrier Resources Act (CBRA, 16 U.S.C. 3501 *et seq.*) relative to the referenced project. The U.S. Fish and Wildlife Service (Service) reviewed the referenced area for the presence of John H. Chafee Coastal Barrier Resources System (CBRS) units and applicability of an exception proposed by the U.S. Army Corps of Engineers, Planning Division (Corps) to use the sand within the Stone Harbor CBRS Unit NJ-09 for a beach re-nourishment outside the Unit.

In your letter, you request concurrence from the Service for the exception in Section 6(a)(6)(G) of CBRA for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system” within the CBRS that are also consistent with the purposes of the CBRA (*i.e.*, to minimize loss to human life, wasteful Federal expenditures, and damage to natural resources). You also state that, in the late 1990s, the Service approved the use of the Hereford Inlet borrow area for the beach re-nourishment of Stone Harbor and that the subject borrow area was also utilized for this purpose by the Corps in 2011 and 2013.

AUTHORITY

The CBRS was established by CBRA in 1982 and consists of geographic units along the Atlantic, Gulf of Mexico, and Great Lakes coasts that are delineated in a series of maps. Congress enacted CBRA to minimize the loss of human life, wasteful Federal expenditures, and

damage to natural resources on undeveloped coastal barriers. CBRA accomplishes these goals by prohibiting most Federal expenditures that promote development within the CBRS. CBRA does not prevent development; rather, it restricts Federal subsidies that encourage development within these hazard-prone and ecologically sensitive areas. CBRA imposes no restrictions on development conducted with non-Federal funds.

The Service is responsible for administering CBRA, which includes: maintaining the official maps of the CBRS; consulting with Federal agencies that propose spending funds within the CBRS; and making recommendations to Congress regarding whether certain areas were appropriately included in the CBRS. Aside from three minor exceptions, only new legislation can modify the CBRS boundaries to add or remove land. These exceptions include: (1) the CBRA five-year review requirement that solely considers changes that have occurred to the CBRS by natural forces such as erosion and accretion; (2) voluntary additions to the CBRS by property owners; and (3) additions of excess Federal property to the CBRS.

These comments are provided as technical assistance only; individual Federal agencies have the responsibility to independently ensure compliance with CBRA. Additionally, these comments do not constitute consultation for any project pursuant to Section 7 of the Endangered Species Act of 1973 (ESA) (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 do they preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

SERVICE DETERMINATION

The CBRA and its amendments prohibit most Federal expenditures that tend to encourage the development or modification of coastal barriers. Examples of prohibited Federal assistance within CBRS Units include subsidies for road construction, channel dredging, and other coastal engineering projects. Examples of allowable Federal assistance within CBRS Units include military activities essential to national security; exploration and extraction of energy resources; maintenance of existing Federal channels; and maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities (16 U.S.C. 3505).

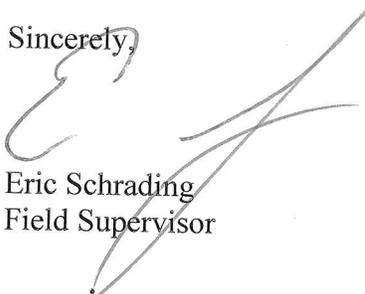
Section 5 of the CBRA prohibits most new Federal expenditures or financial assistance within System units of the CBRS. If the proposed project or action is within or will affect a System unit, the lead Federal agency must, in consultation with the Service, determine whether or not any of the Section 6 exceptions under CBRA are applicable (16 U.S.C. 3505). If none of CBRA's exceptions are applicable, the proposed project should not proceed with Federal funding. The Service's response to a consultation request is in the form of an opinion only. The funding agency is responsible for complying with the provisions of CBRA. If the activity qualifies for an exception under Section 6 of the CBRA, "the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available" within the CBRS.

It is the Service's understanding that the late 1990s approval of Hereford Inlet as a borrow area was based on restoring Stone Harbor Point which was within the CBRS Unit NJ-09 and had almost completely eroded away because the Stone Harbor South Jetty was significantly precluding sand from down-drifting to Stone Harbor Point. This activity met one of the purposes of the CBRA (*i.e.*, prevent and restore damage to fish, wildlife, and other natural resources associated with a CBRS Unit). As part of this project, the jetty was breached in part to allow sand to drift and resume feeding the Stone Harbor Point. Subsequent Federal expenditures in 2011 and 2013 to dredge sand from Hereford Inlet (including a series of federally-funded vibracore studies within the inlet) were carried out by the Corps without formally consulting with the Service on whether such Federal expenditures were consistent with the CBRA on an individual basis. Most coastal engineering efforts serve to protect and maintain human residential, recreational, and urban development that are artificially stabilized by beach re-nourishment projects outside CBRS Units, in some cases at the expense of important resources within CBRS Units.

The Corps proposed that the use of sand from Stone Harbor CBRS Unit NJ-09 would meet the exception in Section 6(a)(6)(G) of the CBRA for "nonstructural projects designed to mimic, enhance, or restore a natural stabilization system" within the CBRS that are also consistent with the purposes of the CBRA (*i.e.*, to minimize loss of human life, wasteful Federal expenditures, and damage to natural resources) since no sand will be directly placed on shorelines within Stone Harbor CBRS Unit NJ-09. The Department of the Interior's Office of the Solicitor carefully reviewed this issue in the past and advised the Service that the aforementioned exception Section 6(a)(6)(G) of the CBRA applies only to natural systems within a CBRS Unit and not to artificial systems outside a CBRS Unit (see enclosure). Likewise, minimizing the loss of human life; wasteful expenditures of Federal revenues; and damage to fish, wildlife, and other natural resources must be associated with activities within CBRS Units. Therefore, the proposed action (Federal expenditure) and the proposed exception by the Corps are not consistent with the provisions of the CBRA.

Please contact Carlo Popolizio at (609) 382-5271, if you have any questions regarding these comments or require further assistance regarding the CBRA. Ms. Cindy Bohn, Regional CBRA Coordinator for the Northeast and Southeast Regions may be reached at (404) 679-7122.

Sincerely,



Eric Schradling
Field Supervisor

Enclosure

cc: Dana_Wright@fws.gov
Katie.Niemi@fws.gov
Cynthia_Bohn@fws.gov
Mary.E.Brandreth@usace.army.mil

ES:NJFO:Cpopolizio:CB:DW:cap:RP:ES:cap: 8/5/16
P:/Shared/Carlo/16-CPA-0223



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/DHC/BCWR

JUN 02 1994

Major General Stanley G. Genega
Directorate of Civil Works
U.S. Army Corps of Engineers
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000

Dear General Genega:

It has come to my attention that some clarification is necessary on the issue of Federally funded beach nourishment activities in relation to the requirements of the Coastal Barrier Resources Act (Act). More specifically, the issue involves removing sand materials from within a unit of the Coastal Barrier Resources System (System) for placement outside of the unit for erosion control measures.

Section 6 of the Act sets forth several exceptions to the general prohibition in section 5 against Federal expenditures affecting the System. The exception in section 6(a)(6)(G) is for "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore, natural stabilization systems" and that are also consistent with the purposes of the Act. The Department of the Interior's Office of the Solicitor has carefully reviewed this issue and has advised us that section 6(a)(6)(G) applies only to projects for stabilizing the shoreline of a unit of the System; it does not apply to projects to stabilize shoreline outside the System regardless of whether the project might be consistent with the purposes of the Act. Therefore, any Corps' proposed action designed to nourish beaches located outside the System using beach material taken from within the System does not meet the criteria for a section 6(a)(6)(G) exception. The Department's Office of the Solicitor has reviewed this issue and this specific correspondence and fully concurs with our position on this matter.

A specific example of where this issue has arisen is relative to the Corps of Engineers proposed action for the use of a sand borrow area (Borrow Area #3) within Unit N01, Little Tybee Island, of the Coastal Barrier Resources System for a beach nourishment project outside of Unit N01. The U.S. Fish and Wildlife Service's Atlanta Regional Director wrote to your agency on April 5, 1994, expressing support for the formal opinion provided to the Corps of Engineers on August 2, 1993, by our Brunswick Field Office regarding your consultation request under the Act. The Atlanta Regional Director also supports the comments provided to your agency on the Joint Public Notice, dated February 14, 1994, and the Draft Environmental Assessment for the Tybee Island, Georgia Beach Erosion Control Project

Section 934 Revaluation Report. This proposed action does not meet the criteria for a section 6(a)(6)(G) exception.

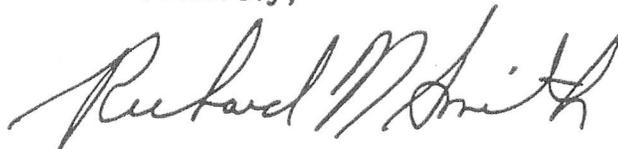
Moreover, the Service believes the proposed project would not be consistent with the purposes of the Act. These purposes are to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the Coastal Barrier Resources System. Use of this site would cause damage to the fish, wildlife, and other natural resources associated with Unit N01, Little Tybee Island.

Taking sand from Borrow Area #3 is likely to cause erosion to the beaches of Little Tybee Island. This area has been identified as important habitat for migratory birds and the federally protected loggerhead sea turtle and piping plover. In addition, the nearshore tidal portions of this site are important spawning, nursery and habitat areas for estuarine larvae, shellfish, and juvenile fish, including Georgia's number one sportfish, the spotted seatrout. Negative impacts to these species include increased turbidity, physical changes in tidal currents or channel locations that could affect migration of these organisms. Furthermore, Little Tybee Island has been designated as a Natural Heritage Preserve to protect the natural, historical, and cultural values for the benefit of the public.

Relative to the Little Tybee Island proposed project, I support the position of our Field and Regional Offices. I strongly recommend that the Corps find an alternative borrow site. The Service has previously stated that Borrow Areas #1 and #2, which are located outside the System and which the Corps identified as possible alternative sites, would be acceptable to the Service, provided adequate testing is done to ensure that these areas contain suitable beach material.

With respect to this issue in general, please clarify this issue for your Divisions and Districts. Thank you for your cooperation on this matter.

Sincerely,



DeputyDIRECTOR

IDENTICAL LETTER SENT TO:
Colonel Wayne W. Boy, Savannah District

From: [Lang, Megan W](#)
To: [Niemi, Katie](#)
Cc: [Wright, Dana K](#); [BalisLarsen, Martha](#)
Subject: Re: CBRA update for Chiefs meeting
Date: Monday, October 28, 2019 3:31:53 PM
Importance: High

Makes sense. I will let Gary know.

On Mon, Oct 28, 2019 at 3:29 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Megan,

My guess is that she's interested in CBRA consistency related guidance because the sand mining issue is so hot right now, so this morning I went ahead and sent Charisa guidance documents related to CBRA consistency (i.e., whether a project meets an exception under CBRA and is consistent with the Act). I also mentioned that we have guidance related to CBRS mapping and CBRS in/out determinations and can provide that information if Margaret is interested. Jonathan had also sent Charisa the 2016 pilot project report to Congress and pointed out a chapter related to our mapping protocols.

I just wanted to make Gary aware that Margaret is asking for CBRA related guidance. If he wants to follow-up with Margaret, that's up to him. If Charisa needs more, I'm assuming she'll ask. Thanks.

Katie

On Mon, Oct 28, 2019 at 3:08 PM Lang, Megan <megan_lang@fws.gov> wrote:

Hi Katie,

Will do. And are you expecting to hear back from Charisa with more details regarding what Margaret is looking for - or does Gary need to follow-up in some way?

I would have no idea what "guidance" means if asked for guidance regarding NWI...

Best Wishes,

Megan

On Mon, Oct 28, 2019 at 2:43 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Megan,

At the Chiefs meeting tomorrow can you please let Gary know that late last week we received requests from Charisa for "CBRA guidance." Margaret wanted to know what existing guidance we already have regarding CBRA. We provided documents we thought would be helpful but are not exactly sure what Margaret is looking for. Perhaps the request is related to the October 21 meeting between Secretary Bernhardt and Rep. Van Drew (NJ) regarding CBRA and sand mining.

Thanks for attending the Chiefs meeting tomorrow for our branch.

Katie

--

Chief Scientist
National Wetlands Inventory

U.S. Fish and Wildlife Service

5275 Leesburg Pike; MS:ES
Falls Church, VA 22041
(703) 358-2103 (office)
Megan_Lang@fws.gov

pronouns: she/her

--

Chief Scientist
National Wetlands Inventory

U.S. Fish and Wildlife Service

5275 Leesburg Pike; MS:ES
Falls Church, VA 22041
(703) 358-2103 (office)
Megan_Lang@fws.gov

pronouns: she/her

From: [BalisLarsen, Martha](#)
To: [Niemi, Katie](#)
Subject: Re: CBRA update for Chiefs meeting
Date: Tuesday, October 29, 2019 11:24:18 AM
Importance: High

Katie, did you cc: Gary on what you sent to Charisa? If not, could you forward it to him, cc: Gina and me so that he is aware? Could you also forward anything that Jonathan sent to Charisa related to this request? I usually always cc: him and Gina on any emails that provided information to pass along to Margaret for his general awareness. Thanks!

Martha

On Mon, Oct 28, 2019 at 3:29 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Megan,

My guess is that she's interested in CBRA consistency related guidance because the sand mining issue is so hot right now, so this morning I went ahead and sent Charisa guidance documents related to CBRA consistency (i.e., whether a project meets an exception under CBRA and is consistent with the Act). I also mentioned that we have guidance related to CBRS mapping and CBRS in/out determinations and can provide that information if Margaret is interested. Jonathan had also sent Charisa the 2016 pilot project report to Congress and pointed out a chapter related to our mapping protocols.

I just wanted to make Gary aware that Margaret is asking for CBRA related guidance. If he wants to follow-up with Margaret, that's up to him. If Charisa needs more, I'm assuming she'll ask. Thanks.

Katie

On Mon, Oct 28, 2019 at 3:08 PM Lang, Megan <megan_lang@fws.gov> wrote:

Hi Katie,

Will do. And are you expecting to hear back from Charisa with more details regarding what Margaret is looking for - or does Gary need to follow-up in some way?

I would have no idea what "guidance" means if asked for guidance regarding NWI...

Best Wishes,

Megan

On Mon, Oct 28, 2019 at 2:43 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Megan,

At the Chiefs meeting tomorrow can you please let Gary know that late last week we

received requests from Charisa for "CBRA guidance." Margaret wanted to know what existing guidance we already have regarding CBRA. We provided documents we thought would be helpful but are not exactly sure what Margaret is looking for. Perhaps the request is related to the October 21 meeting between Secretary Bernhardt and Rep. Van Drew (NJ) regarding CBRA and sand mining.

Thanks for attending the Chiefs meeting tomorrow for our branch.

Katie

--

Chief Scientist
National Wetlands Inventory

U.S. Fish and Wildlife Service
5275 Leesburg Pike; MS:ES
Falls Church, VA 22041
(703) 358-2103 (office)
Megan_Lang@fws.gov

pronouns: she/her

From: [Wright, Dana K](#)
To: [Niemi, Katie](#)
Subject: Re: Cape May County Herald article: Beach Replenishment Begins
Date: Tuesday, October 29, 2019 12:22:39 PM
Importance: High

Want to send this one too? It's new out today regarding Wildwood and the seawall. Mentions the Bernhardt meeting.

https://www.capemaycountyherald.com/news/environment/article_0edb8922-f994-11e9-9a91-6b766fe47fb2.html

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Mon, Oct 28, 2019 at 11:32 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
FYI. Discussion of the CBRA sand mining issue in this Cape May County Herald article.

https://www.capemaycountyherald.com/news/government/article_47fbeb6-f765-11e9-98ee-734975070e36.html

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

From: [Niemi, Katie](#)
To: [Wright, Dana K](#)
Subject: Fwd: QUESTION: CBRA memo
Date: Thursday, October 31, 2019 8:44:04 AM
Attachments: [Coastal Barrier Resource memo001.pdf](#)

See below and attached.

----- Forwarded message -----

From: **Parramore, Laury** <laury_parramore@fws.gov>
Date: Wed, Oct 30, 2019 at 4:26 PM
Subject: QUESTION: CBRA memo
To: Jonathan Phinney <jonathan_phinney@fws.gov>, Katie Niemi <katie_niemi@fws.gov>
Cc: Gavin Shire <gavin_shire@fws.gov>

Hi Jonathan and Katie,

Please see below and attached, of which I'm sure you are aware. Could we chat about the communications issues that may surround this? Brian H, our PAO who would normally handle this, is out at NCTC this week. Thanks.

[Laury Marshall](#)

----- Forwarded message -----

From: **Newell, Russell** <russell_newell@ios.doi.gov>
Date: Wed, Oct 30, 2019 at 2:49 PM
Subject: CBRA
To: Schroeder, Darin <darin_schroeder@ios.doi.gov>, Shire, Gavin <gavin_shire@fws.gov>
Cc: Barbara Wainman <barbara_wainman@fws.gov>, Parramore, Laury <laury_parramore@fws.gov>

Hi guys - this came up in our 11:30 and I want to follow up. I subsequently received this memo from SOL. I'm told by OCL that a letter based on this from the Secretary to Members may go out as soon as today or tomorrow. I asked what the comms plan is and am waiting to hear how proactive we'll be. I'll let you know when I hear more. Let me know if you have any further insight.

Russell

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

Fish & Wildlife & Parks
(202) 208-6232
@RobWallace_FWP





United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Re: Coastal Barrier Resources Act
Date: October 30, 2019

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act (“CBRA” or “Act”), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System (“System”) unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act’s purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including “[n]onstructural projects for shoreline stabilization that are designed to

mimic, enhance, or restore natural stabilization systems,” if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion “interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit].” We understand that local communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and

returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA’s purpose, are “of significant value to society,”² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers (“Corps”), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service’s (nor the action agency’s) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the “long-term conservation of these fish, wildlife, and other natural resources” associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in “threats to human life, health, and property.” *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to “mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G).

¹ CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that “damage” here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

From: [Niemi, Katie](#)
To: [Frazer, Gary D](#); [Shultz, Gina](#); [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Kodis, Martin](#); [Gustavson, Angela](#); [Simon, Spencer](#); [Eustis, Christine](#); [Bohn, Cynthia](#); [Peters, Kristen E](#); [Wright, Dana K](#); [Phinney, Jonathan T](#)
Subject: New SOL CBRA memo
Date: Thursday, October 31, 2019 9:09:40 AM
Attachments: [Coastal Barrier Resource memo001.pdf](#)

Please see attached and below for the new SOL CBRA memo on sand mining and beach nourishment. At the program level we have a lot of questions about how this new policy will be rolled-out and implemented.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Parramore, Laury** <laury_parramore@fws.gov>
Date: Wed, Oct 30, 2019 at 4:26 PM
Subject: QUESTION: CBRA memo
To: Jonathan Phinney <jonathan_phinney@fws.gov>, Katie Niemi <katie_niemi@fws.gov>
Cc: Gavin Shire <gavin_shire@fws.gov>

Hi Jonathan and Katie,

Please see below and attached, of which I'm sure you are aware. Could we chat about the communications issues that may surround this? Brian H, our PAO who would normally handle this, is out at NCTC this week. Thanks.

[Laury Marshall](#)

----- Forwarded message -----

From: **Newell, Russell** <russell_newell@ios.doi.gov>
Date: Wed, Oct 30, 2019 at 2:49 PM
Subject: CBRA
To: Schroeder, Darin <darin_schroeder@ios.doi.gov>, Shire, Gavin <gavin_shire@fws.gov>
Cc: Barbara Wainman <barbara_wainman@fws.gov>, Parramore, Laury <laury_parramore@fws.gov>

Hi guys - this came up in our 11:30 and I want to follow up. I subsequently received this memo from SOL. I'm told by OCL that a letter based on this from the Secretary to Members may go out as soon as today or tomorrow. I asked what the comms plan is and am waiting to hear how proactive we'll be. I'll let you know when I hear more. Let me know if you have any further insight.

Russell

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

From: "Romanik, Peg" <peg.romanik@sol.doi.gov>
Date: October 30, 2019 at 11:44:44 AM EDT
To: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Subject: Fwd: scanned memo

Karen, two printers and a scanner wouldn't work so MG had to scan this for me. Here it is! I will email to Margaret and give her hard copy tomorrow when she gets into the office. Do you want me to email to others - happy to do so.
Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
Office: (202)208-5578
Cell: (202)515-1000

On Wed, Oct 30, 2019 at 11:36 AM Caminiti, Mariagrazia
<marigrace.caminiti@sol.doi.gov> wrote:

attached

--

Marigrace Caminiti

Executive Assistant to the Solicitor
US Department of the Interior
1849 C Street, NW, Rm. 6352
Washington, DC 20240
202-208-4423 - main number
202-208-3111 - direct
202-208-5584 - fax
202-528-0486 or 202-359-2949 -cell/wcell

~ ~ ~ ~ ~

NOTICE: This electronic mail message (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this Message in error, please notify the sender immediately and destroy all copies.

--

Russell Newell
Senior Advisor
Fish & Wildlife & Parks
(202) 208-6232
@RobWallace_FWP





United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife
Re: Coastal Barrier Resources Act
Date: October 30, 2019

Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act (“CBRA” or “Act”), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System (“System”) unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act’s purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including “[n]onstructural projects for shoreline stabilization that are designed to

mimic, enhance, or restore natural stabilization systems,” if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion “interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit].” We understand that local communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and

returning the contaminants to the system would not further the purposes of the CBRA.¹ Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA’s purpose, are “of significant value to society,”² providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.³

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers (“Corps”), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service’s (nor the action agency’s) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the “long-term conservation of these fish, wildlife, and other natural resources” associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage⁴ to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in “threats to human life, health, and property.” *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to “mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G).

¹ CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

² CBRA House Report (September 21, 1982) at 8.

³ CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

⁴ We note that “damage” here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

From: [Frazer, Gary D](#)
To: [Niemi, Katie](#)
Cc: [Shultz, Gina](#); [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Wright, Dana K](#); [Phinney, Jonathan T](#)
Subject: Re: New SOL CBRA memo
Date: Thursday, October 31, 2019 1:09:36 PM
Importance: High

Thanks. Just get those to me when you're done.

Margaret wants to sit down with us next week to talk about next steps, so also think through any changes to our existing guidance or need for future guidance that will result from this new legal interpretation.

As background for that meeting, we will need to lay out in a briefing paper our plans/recommendations for how we incorporate this into our operational activities. So add that to your to do list, too, altho I assume you'd tackle that after we discuss your initial list of questions/concerns. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

On Thu, Oct 31, 2019 at 9:46 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Gary,
Dana and I are working on questions that we have for SOL, CLA/OCL, Regions, and External Affairs. Thanks.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

On Thu, Oct 31, 2019 at 9:34 AM Frazer, Gary <gary_frazer@fws.gov> wrote:

Katie -- If you get questions from the Regions or field about this, pls just advise that we can't provide any advice or views about implications until after we've had a chance to review thoroughly and discuss with SOL.

Pls review carefully and provide me a list of your questions or concerns regarding the opinion and its implications to our advisory role. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

On Thu, Oct 31, 2019 at 9:09 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Please see attached and below for the new SOL CBRA memo on sand mining and beach nourishment. At the program level we have a lot of questions about how this new policy will be rolled-out and implemented.

Katie

Katie Niemi
Coastal Barriers Coordinator
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

----- Forwarded message -----

From: **Parramore, Laury** <laury_parramore@fws.gov>
Date: Wed, Oct 30, 2019 at 4:26 PM
Subject: QUESTION: CBRA memo
To: Jonathan Phinney <jonathan_phinney@fws.gov>, Katie Niemi <katie_niemi@fws.gov>
Cc: Gavin Shire <gavin_shire@fws.gov>

Hi Jonathan and Katie,
Please see below and attached, of which I'm sure you are aware. Could we chat about the communications issues that may surround this? Brian H, our PAO who would normally handle this, is out at NCTC this week. Thanks.

[Laury Marshall](#)

----- Forwarded message -----

From: **Newell, Russell** <russell_newell@ios.doi.gov>
Date: Wed, Oct 30, 2019 at 2:49 PM
Subject: CBRA
To: Schroeder, Darin <darin_schroeder@ios.doi.gov>, Shire, Gavin <gavin_shire@fws.gov>
Cc: Barbara Wainman <barbara_wainman@fws.gov>, Parramore, Laury <laury_parramore@fws.gov>

Hi guys - this came up in our 11:30 and I want to follow up. I subsequently received this memo from SOL. I'm told by OCL that a letter based on this from the Secretary to Members may go out as soon as today or tomorrow. I asked what the comms plan is and am waiting to hear how proactive we'll be. I'll let you know when I hear more. Let me know if you have any further insight.

Russell

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

From: "Romanik, Peg" <peg.romanik@sol.doi.gov>
Date: October 30, 2019 at 11:44:44 AM EDT
To: Karen Budd-Falen <karen.budd-falen@sol.doi.gov>
Subject: Fwd: scanned memo

Karen, two printers and a scanner wouldn't work so MG had to scan this for me. Here it is! I will email to Margaret and give her hard copy tomorrow when she gets into the office. Do you want me to email to others - happy to do so.
Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
Office: (202)208-5578
Cell: (202)515-1000

On Wed, Oct 30, 2019 at 11:36 AM Caminiti, Mariagrazia
<marigrace.caminiti@sol.doi.gov> wrote:

attached

--

Marigrace Caminiti

Executive Assistant to the Solicitor
US Department of the Interior
1849 C Street, NW, Rm. 6352
Washington, DC 20240
202-208-4423 - main number
202-208-3111 - direct
202-208-5584 - fax
202-528-0486 or 202-359-2949 -cell/wcell

~~~~~

NOTICE: This electronic mail message (including any attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this Message in error, please notify the sender immediately and destroy all copies.

--  
Russell Newell  
Senior Advisor  
Fish & Wildlife & Parks

(202) 208-6232  
@RobWallace\_FWP



**From:** [Frazer, Gary D](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Niemi, Katie](#); [Shultz, Gina](#); [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Phinney, Jonathan T](#)  
**Subject:** Re: New SOL CBRA memo  
**Date:** Tuesday, November 5, 2019 9:02:58 AM  
**Importance:** High

---

Ugh. Keep your chins up.

I've been eaten up with our ESA regs stuff the last few days and haven't been able to focus on this, but will do so as soon as I get a chance. Will get back to you all on scheduling a follow up with Margaret, which will probably have to be the week after next, since next week is mostly Directorate meeting. -- GDF

*Gary Frazer*  
*Assistant Director -- Ecological Services*  
*U.S. Fish and Wildlife Service*  
*(202) 208-4646*

On Tue, Nov 5, 2019 at 6:46 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hello all,

There's a new story about this issue in the Cape May Herald: [https://www.capemaycountyherald.com/news/environment/article\\_47836054-ff59-11e9-ad45-c31717434b2f.html](https://www.capemaycountyherald.com/news/environment/article_47836054-ff59-11e9-ad45-c31717434b2f.html).

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, Oct 31, 2019 at 9:09 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Please see attached and below for the new SOL CBRA memo on sand mining and beach nourishment. At the program level we have a lot of questions about how this new policy will be rolled-out and implemented.

Katie

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike

Falls Church, VA 22041-3803  
Tel (703) 358-2071

----- Forwarded message -----

**From:** Parramore, Laury <[laury\\_parramore@fws.gov](mailto:laury_parramore@fws.gov)>  
**Date:** Wed, Oct 30, 2019 at 4:26 PM  
**Subject:** QUESTION: CBRA memo  
**To:** Jonathan Phinney <[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)>, Katie Niemi <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Cc:** Gavin Shire <[gavin\\_shire@fws.gov](mailto:gavin_shire@fws.gov)>

Hi Jonathan and Katie,  
Please see below and attached, of which I'm sure you are aware. Could we chat about the communications issues that may surround this? Brian H, our PAO who would normally handle this, is out at NCTC this week. Thanks.

[Laury Marshall](#)

----- Forwarded message -----

**From:** Newell, Russell <[russell\\_newell@ios.doi.gov](mailto:russell_newell@ios.doi.gov)>  
**Date:** Wed, Oct 30, 2019 at 2:49 PM  
**Subject:** CBRA  
**To:** Schroeder, Darin <[darin\\_schroeder@ios.doi.gov](mailto:darin_schroeder@ios.doi.gov)>, Shire, Gavin <[gavin\\_shire@fws.gov](mailto:gavin_shire@fws.gov)>  
**Cc:** Barbara Wainman <[barbara\\_wainman@fws.gov](mailto:barbara_wainman@fws.gov)>, Parramore, Laury <[laury\\_parramore@fws.gov](mailto:laury_parramore@fws.gov)>

Hi guys - this came up in our 11:30 and I want to follow up. I subsequently received this memo from SOL. I'm told by OCL that a letter based on this from the Secretary to Members may go out as soon as today or tomorrow. I asked what the comms plan is and am waiting to hear how proactive we'll be. I'll let you know when I hear more. Let me know if you have any further insight.

Russell

I think I have everyone who wanted a copy of the CBRA legal memo. I understand Cole is taking the lead in responding to inquiries on this subject.

Sent from my iPhone

Begin forwarded message:

**From:** "Romanik, Peg" <[peg.romanik@sol.doi.gov](mailto:peg.romanik@sol.doi.gov)>  
**Date:** October 30, 2019 at 11:44:44 AM EDT  
**To:** Karen Budd-Falen <[karen.budd-falen@sol.doi.gov](mailto:karen.budd-falen@sol.doi.gov)>  
**Subject:** Fwd: scanned memo

Karen, two printers and a scanner wouldn't work so MG had to scan this for



**From:** [Chen, Linus Y](#)  
**To:** [Wright, Dana K](#)  
**Subject:** Re: DTS Assignment--CBRA Availability of Draft Revised Boundaries for FL and SC; Request for Comments  
**Date:** Tuesday, November 5, 2019 12:00:54 PM  
**Importance:** High

---

No problem. Can you make sure Nikki does this for the other package too? DCN 70534 Congressional letters.

On Tue, Nov 5, 2019 at 11:59 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:  
Thanks for looping us in and getting the package passed back to Margaret quickly.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Nov 5, 2019 at 11:23 AM Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)> wrote:  
FYI-

----- Forwarded message -----

**From:** **Randolph, Nikki** <[nikki\\_randolph@fws.gov](mailto:nikki_randolph@fws.gov)>  
**Date:** Tue, Nov 5, 2019 at 7:09 AM  
**Subject:** Re: DTS Assignment--CBRA Availability of Draft Revised Boundaries for FL and SC; Request for Comments  
**To:** Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)>

I just printed out the email and that should be sufficient. If Margaret needs more, Ill let you know.

On Mon, Nov 4, 2019 at 4:20 PM Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)> wrote:

Hi Nikki,

I saw your note in DTS from Margaret. I have to leave now, but when I'm back tomorrow, can you help me respond to Margaret's comment in DTS? My proposed response note to your/Margaret's note:

This DTS item, and the related CBRA DTS item (DCN 70534), only involve 16 USC 3503 of CBRA. The new CBRA opinion (primarily on 16 USC 3505, but also 3504) does not touch upon 16 USC 3503. Thus there is no need to redraft these two DTS items.

Thanks!  
Linus

----- Forwarded message -----

From: **Jesup, Benjamin** <[benjamin.jesup@sol.doi.gov](mailto:benjamin.jesup@sol.doi.gov)>

Date: Mon, Nov 4, 2019 at 4:17 PM

Subject: Re: DTS Assignment--CBRA Availability of Draft Revised Boundaries for FL and SC; Request for Comments

To: Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)>

Sounds good to me. Thanks.

Ben

On Mon, Nov 4, 2019 at 4:15 PM Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)> wrote:

Hi Ben,

I got two CBRA packages sent back to make sure there is no issue with the new CBRA opinion related to 16 USC 3505. The two CBRA DTS packages involve 16 USC 3503 only (discussing mapping), and Peg and I previously surnamed it. I'm checking with FWS now, but thoughts on what to do in DTS? I guess I could respond to Margaret's note of "Send to SOL for redraft with w/r/t to draft new opinion." My proposed response note:

This DTS item, and the related CBRA DTS item (DCN 70534), only involve 16 USC 3503 of CBRA. The new CBRA opinion (primarily on 16 USC 3505, but also 3504) does not touch upon 16 USC 3503. Thus there is no need to redraft these two DTS items.

Thanks,  
Linus

----- Forwarded message -----

From: <[DTS@fws.gov](mailto:DTS@fws.gov)>

Date: Mon, Nov 4, 2019 at 3:42 PM

Subject: DTS Assignment--CBRA Availability of Draft Revised Boundaries for FL and SC; Request for Comments

To: <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)>

Hello and welcome to the DTS automated email alert!

Your office (DPW-BFW-Chen.l) has a task assigned to Linus Chen.

Please log in to the Data Tracking System at the following URL Address: <https://dts.fws.gov/dts/preLogin.do?officeId=5978> and review Document Control Number (DCN)\*\* FR00003680.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: CBRA Availability of Draft Revised Boundaries for FL and SC;  
Request for Comments

Synopsis: This notice announces the availability of proposed boundaries of eight units of the John H. Chafee Coastal Barrier Resources System (CBRS) in Florida and South Carolina for public review and comment.

Action Required: 2-Appropriate Action

Assigned By Office: DPW-BFW-Speights.h User: Helen Speights

**\*\*Thank you\*\*.**

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Ben Jesup  
Acting Regional Solicitor  
Southwest Region  
Department of the Interior  
505-248-5613

NOTICE: This email message (including any attachments) is intended for the use of the individual(s) or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this message or its contents is strictly prohibited. If you receive this message in error, please notify the sender immediately and destroy all copies.

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Nikki S. Randolph  
Chief, CCU  
U.S. Fish and Wildlife Service  
202-208-7535

| *"There cannot be a crisis next week. My schedule is already full" -- Henry Kissinger*

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**From:** [Berg, Elizabeth A](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Niemi, Katie](#); [Phinney, Jonathan T](#)  
**Subject:** Re: Letter from Secretary Bernhardt to Congressman Van Drew  
**Date:** Tuesday, November 5, 2019 1:50:35 PM  
**Attachments:** [201911041430.pdf](#)

---

See attached. The letter was also sent to Representatives Graves and Rouzer.

On Tue, Nov 5, 2019 at 1:49 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Thank you!

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Nov 5, 2019 at 1:48 PM Berg, Elizabeth <[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)> wrote:

Hi Dana,

We are working with OCL to get a copy of the Secretary's letter.

Liz

On Tue, Nov 5, 2019 at 12:08 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Liz,

There is a letter from Secretary Bernhardt to Congressman Van Drew posted along with Van Drew's press release on the sand mining issue:

<https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Is it possible for us to get a copy of this letter for our records? The website only shows the first page.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

--

Elizabeth Berg  
Congressional and Legislative Affairs Knauss Fellow  
U.S. Fish and Wildlife Service  
Office: 703-358-2225  
[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)

--

Elizabeth Berg  
Congressional and Legislative Affairs Knauss Fellow  
U.S. Fish and Wildlife Service  
Office: 703-358-2225  
[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

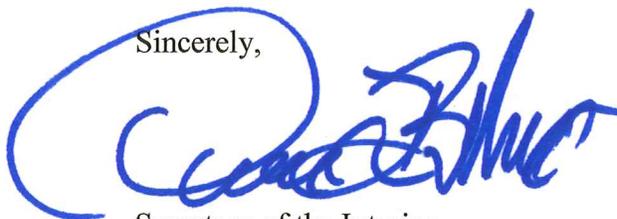
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to be "C. E. Brown", written in a cursive style. The signature is positioned below the word "Sincerely," and above the title "Secretary of the Interior".

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Garret Graves  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

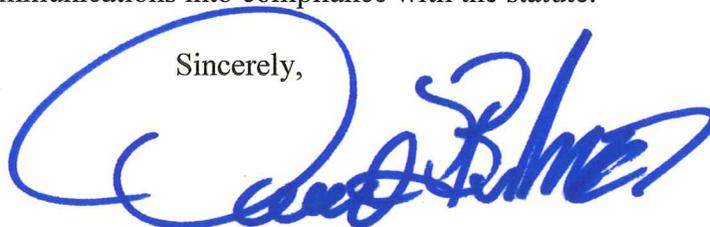
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. J. Egan", written in a cursive style.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable David Rouzer  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,



Bruce Babbitt

Secretary of the Interior

**From:** [Frazer, Gary D](#)  
**To:** [Shultz, Gina](#); [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Phinney, Jonathan T](#); [Niemi, Katie](#); [Wright, Dana K](#)  
**Subject:** Fwd: Scanned CBRA doc2  
**Date:** Tuesday, November 5, 2019 7:02:11 PM  
**Attachments:** [ATT00001.htm](#)  
[CBRA docs2.pdf](#)

---

FYI

Sent from my iPad

Begin forwarded message:

**From:** "Everson, Margaret" <[margaret\\_e\\_everson@fws.gov](mailto:margaret_e_everson@fws.gov)>  
**Date:** November 5, 2019 at 6:42:59 PM EST  
**To:** "FWS Directorate & Deputies" <[fwsdirectanddep@fws.gov](mailto:fwsdirectanddep@fws.gov)>  
**Cc:** Melissa Beaumont <[melissa\\_beaumont@fws.gov](mailto:melissa_beaumont@fws.gov)>, "Morris, Charisa" <[charisa\\_morris@fws.gov](mailto:charisa_morris@fws.gov)>, "Kodis, Martin" <[martin\\_kodis@fws.gov](mailto:martin_kodis@fws.gov)>  
**Subject:** Fwd: Scanned CBRA doc2

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best  
Margaret



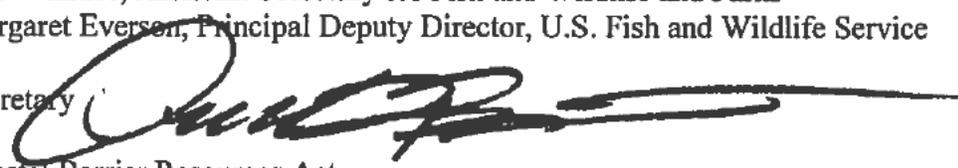


THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

Memorandum

To: Rob Wallace, Assistant Secretary for Fish and Wildlife and Parks  
Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service

From: Secretary 

Subject: Coastal Barrier Resources Act

Attached is correspondence regarding the above-referenced statute. Please notify your staffs of our position on this matter going forward, and modify any communications to bring them in compliance with the Department of the Interior's understanding of the language.

Attachment



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

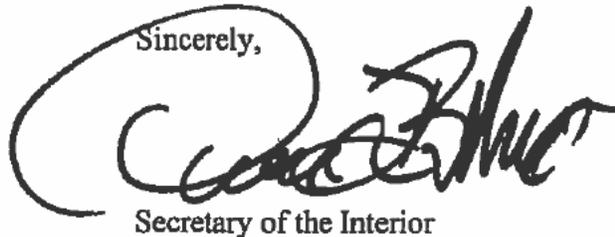
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "C. E. Brown", is written over a large, circular, stylized flourish that loops around the word "Sincerely,".

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Garret Graves  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

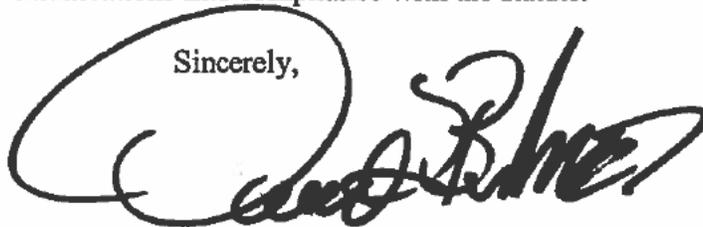
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to the Secretary of the Interior mentioned in the text below.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable David Rouzer  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

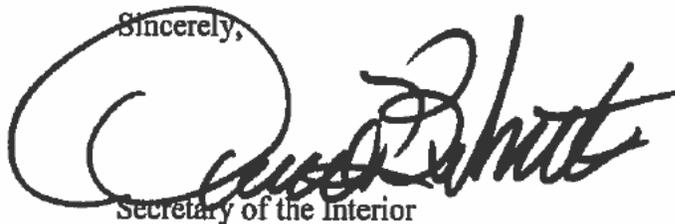
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Babbitt". The signature is written in a cursive, flowing style. The word "Sincerely," is printed above the signature.

Secretary of the Interior

Congress of the United States  
Washington, DC 20515

October 25, 2019

The Honorable David Bernhardt  
Secretary, U.S. Department of Interior  
1849 C St., NW  
Washington, DC 20240

Dear Secretary Bernhardt:

We write to you about an interpretation of the Coastal Barrier Resources Act (CBRA) that could jeopardize public and private infrastructure, small businesses and regional economies. The interpretation unnecessarily results in increased ecological impacts as well as increased Federal expenditures. In 2016, the U.S. Fish and Wildlife Service ("Service") issued an interpretation of a 1994 Solicitor's Opinion that has caused several ongoing coastal storm damage reduction (CSDR) projects from moving forward, even though these projects meet all the appropriate requirements of the CBRA and National Environmental Policy Act (NEPA). We believe that correcting the 2016 interpretation and the underlying 1994 Solicitor's Opinion is consistent with our infrastructure focus and small business support while retaining CBRA and NEPA regulatory compliance.

In 1982, the CBRA was enacted into law and established the John H. Chafee Coastal Barrier Resources System (System) to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers" in coastal areas along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico, and the Virgin Islands. One objective was to ensure the proper balance of ecological, community and economic considerations on undeveloped coastal barriers. As such, CBRA prohibits new federal financial assistance in System "units" with exceptions outlined in Section 6 of the statute (16 U.S.C. 3505). While the original intent of the law is laudable, the current interpretation has unintended consequences, particularly as they relate to CSDR projects that are partially federally funded, resource management and economic impacts.

In our congressional districts, coastal storm damage reduction projects carried out by the U.S. Army Corps of Engineers (USACE) in partnership with our respective states have been stalled, and their costs have ballooned, because of a 2016 interpretation of a 1994 Department of Interior Solicitor's Opinion (FWS.CW.0380) by the Service that essentially states that sand from a System unit cannot be placed on a non-CBRA shoreline. This decision suddenly prohibited sand recycling from certain System units - despite the Service in 1996 having previously allowed sand recycling from these same System units per CBRA's exceptions.

For example, the congressionally authorized *New Jersey Shore Protection, Townsends Inlet to Cape May Inlet* project had previously accessed System unit NJ-09 as a borrow site multiple times with the consent of the Service. Yet the 2016 Service interpretation suddenly prevented access to the borrow site, despite the environmental benefits of the project, and increased project costs by at least \$6.5 million, stalling the required periodic nourishment. As a

result of the determination by the Service that sand cannot be beneficially used from CBRA units, specifically NJ-09, to benefit land immediately adjacent to but not located within the CBRA unit, Stone Harbor and North Wildwood are directly impacted to such an extent that they are facing loss of their economic ability to meet the USACE's Project Cooperation Agreement requirements. Moreover, the significant environmental benefits of CSDR projects such as improved wildlife habitat conditions that have occurred over the past several years are being jeopardized directly as a result of the Service's 2016 decision. Likewise, similar challenges exist with the CSDR projects at Carolina Beach and Wrightsville Beach, NC. These projects have used passive-infill inlet borrow sites in CBRA zones for decades. If forced to use offshore borrow sites instead because of the Service's interpretation, these projects would incur greater environmental impacts and costs to the federal government.

CSDR projects not only protect public and private infrastructure, but often have the added benefit of enhancing the environmental condition e.g. turtle and shorebird usage. These projects meet both NEPA and CBRA's goals to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers." A CSDR project typically dredges sand from an approved borrow site and deposits that sand within a defined and approved shoreline template imitating a nature based infrastructure system therefore, meeting the exception definition under 16 USC 3505(a)(6)(G) of "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Beaches represent a natural stabilization system and a CSDR is simply a restoration of that natural stabilization system. Furthermore, evidence shows that CSDRs have contributed and benefited "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" as defined in 16 U.S.C. 3505(a)(6)(A).

In our reading the statute, we feel that the current NEPA compliant inlet borrow sites meet the spirit and intent of CBRA. Therefore, we ask for your favorable consideration to allow continued use of these inlet borrow sites as allowed exceptions under CBRA. In light of our reading of the statute, we have a question for the Department of Interior to consider.

1. Does the Department take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

We thank you for your leadership and attention to this matter that is of grave importance to our communities.

Sincerely,



Jeff Van Drew  
Member of Congress



David Rouzer  
Member of Congress



Garret Graves  
Member of Congress



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Richard Burr  
United States Senate  
Washington, DC 20510

Dear Senator Burr:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

Dear Senator Tillis:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

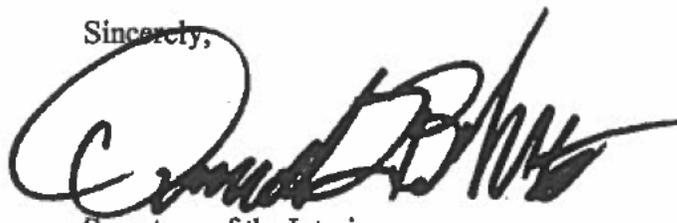
NOV 04 2019

The Honorable Doug Lamborn  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Lamborn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Neal Dunn  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Dunn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

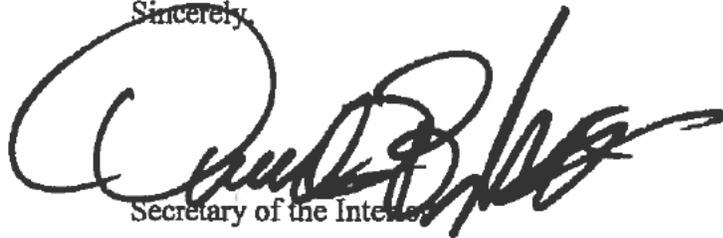
NOV 04 2019

The Honorable Randy Weber  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Weber:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

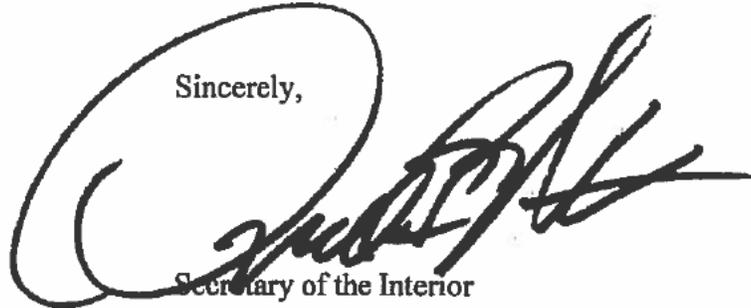
NOV 04 2019

The Honorable Frank Pallone  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Pallone:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

OCT 30 2019

IN REPLY REFER TO:

## Memorandum

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service  
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife  
Subject: Coastal Barrier Resources Act

### Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

### Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems," if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion "interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit]." We understand that local

communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

### Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and returning the contaminants to the system would not further the purposes of the CBRA.<sup>1</sup> Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to

---

<sup>1</sup> CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA's purpose, are "of significant value to society,"<sup>2</sup> providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.<sup>3</sup>

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers ("Corps"), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service's (nor the action agency's) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the "long-term conservation of these fish, wildlife, and other natural resources" associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage<sup>4</sup> to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in "threats to human life, health, and property." *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to "mimic, enhance, or restore natural stabilization systems." *Id.* § 3505(a)(6)(G).

### Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

---

<sup>2</sup> CBRA House Report (September 21, 1982) at 8.

<sup>3</sup> CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

<sup>4</sup> We note that "damage" here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

**From:** [Berg, Elizabeth A](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Niemi, Katie](#); [Phinney, Jonathan T](#)  
**Subject:** Re: Letter from Secretary Bernhardt to Congressman Van Drew  
**Date:** Wednesday, November 6, 2019 8:28:28 AM

---

Ok, thanks Dana.

On Wed, Nov 6, 2019 at 6:52 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Nevermind - the 10/25 incoming came in as part of an attachment that went out to the directorate, got it through Gary.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Nov 5, 2019 at 2:15 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Thanks. Do you have the incoming?

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Nov 5, 2019 at 1:50 PM Berg, Elizabeth <[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)> wrote:

See attached. The letter was also sent to Representatives Graves and Rouzer.

On Tue, Nov 5, 2019 at 1:49 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Thank you!

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES

Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Nov 5, 2019 at 1:48 PM Berg, Elizabeth <[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)> wrote:  
Hi Dana,

We are working with OCL to get a copy of the Secretary's letter.

Liz

On Tue, Nov 5, 2019 at 12:08 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:  
Hi Liz,

There is a letter from Secretary Bernhardt to Congressman Van Drew posted along with Van Drew's press release on the sand mining issue:  
<https://vandrew.house.gov/media/press-releases/van-drew-overcomes-bureaucratic-objections-help-local-governments-cape-may>

Is it possible for us to get a copy of this letter for our records? The website only shows the first page.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

--  
Elizabeth Berg  
Congressional and Legislative Affairs Knauss Fellow  
U.S. Fish and Wildlife Service  
Office: 703-358-2225  
[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)

--  
Elizabeth Berg  
Congressional and Legislative Affairs Knauss Fellow

U.S. Fish and Wildlife Service  
Office: 703-358-2225  
[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)

--

Elizabeth Berg  
Congressional and Legislative Affairs Knauss Fellow  
U.S. Fish and Wildlife Service  
Office: 703-358-2225  
[elizabeth\\_berg@fws.gov](mailto:elizabeth_berg@fws.gov)

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: Confusion re: CBRA response to Rep. Pallone - 069862  
**Date:** Wednesday, November 6, 2019 10:06:06 AM

---

The response to Rep. Hoyer (069934) has also been sent back to CCU again to hold, but it didn't include any notes. The Hoyer response is also purely a mapping issue.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 6, 2019 at 10:03 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Kaite,

There is a new issue with our response to Rep. Pallone - it looks like the mapping/boundary placement issue in the Sandy project has been confused with the sand mining issue. This letter had been held up for a while, but Gary talked to Margaret about it in October and got it moving through surname again. OCL just reviewed it and Taylor Playforth added a note that says "overcome by events, see Nov 4th response on the issue." The package was sent back to CCU yesterday and the routing is CCU-Hold.

Can we have someone check in with OCL/CCU to explain that this matter is unrelated to the sand mining issue? See attached for the most recent draft dated 5/15/19 and the note from OCL that was uploaded 11/5/19.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Niemi, Katie](#)  
**To:** [BalisLarsen, Martha](#); [Shaughnessy, Michelle](#); [Phinney, Jonathan T](#)  
**Subject:** Fwd: FW: [EXTERNAL] CBRA Info  
**Date:** Wednesday, November 6, 2019 11:21:04 AM  
**Attachments:** [Ltr to Sec. Bernhardt re CBRA\\_10.25.19.pdf](#)  
[11.04.19 Rouzer Bernhardt CBRA Response.pdf](#)

---

FYI, NC field office received copy of the CBRA sand mining letters from the Corps.

----- Forwarded message -----

From: **Ellis, John** <[john\\_ellis@fws.gov](mailto:john_ellis@fws.gov)>  
Date: Wed, Nov 6, 2019 at 10:36 AM  
Subject: Fwd: FW: [EXTERNAL] CBRA Info  
To: Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Dana Wright <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>, Katie Niemi <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>

----- Forwarded message -----

From: **Benjamin, Pete** <[pete\\_benjamin@fws.gov](mailto:pete_benjamin@fws.gov)>  
Date: Wed, Nov 6, 2019 at 9:23 AM  
Subject: Fwd: FW: [EXTERNAL] CBRA Info  
To: Tom Augspurger <[Tom\\_Augspurger@fws.gov](mailto:Tom_Augspurger@fws.gov)>, John Ellis <[John\\_Ellis@fws.gov](mailto:John_Ellis@fws.gov)>, Kathryn Matthews <[kathryn\\_matthews@fws.gov](mailto:kathryn_matthews@fws.gov)>, Emily Jernigan <[emily\\_wells@fws.gov](mailto:emily_wells@fws.gov)>

Pete Benjamin  
Field Supervisor  
Raleigh ES Field Office  
U.S. Fish and Wildlife Service  
551F Pylon Drive  
Raleigh, NC 27606  
Office: (919) 856-4520 x 11  
Mobile: (919) 816-6408

*NOTE: This email correspondence and any attachments to and from this sender are subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

From: **Thomas McCoy** <[thomas\\_mccoy@fws.gov](mailto:thomas_mccoy@fws.gov)>  
Date: Wed, Nov 6, 2019 at 9:01 AM  
Subject: FW: [EXTERNAL] CBRA Info  
To: Benjamin, Pete <[pete\\_benjamin@fws.gov](mailto:pete_benjamin@fws.gov)>, Christopher Hernandez <[christopher\\_hernandez@fws.gov](mailto:christopher_hernandez@fws.gov)>, Mark Caldwell <[mark\\_caldwell@fws.gov](mailto:mark_caldwell@fws.gov)>  
Cc: Michelle Eversen <[michelle\\_eversen@fws.gov](mailto:michelle_eversen@fws.gov)>

FYI - have not seen this.

Tom McCoy, Field Supervisor for Ecological Services  
Department of the Interior – U.S. Fish and Wildlife Service  
South Atlantic-Gulf Region (Region 2)  
South Carolina Ecological Services Field Office  
176 Croghan Spur Road, Suite 200  
Charleston, South Carolina 29407  
Main Phone Line: 843.727.4707  
Direct Phone Line: 843.300.0431  
Fax: 843.300.0204  
Email: [thomas\\_mccoy@fws.gov](mailto:thomas_mccoy@fws.gov)

Visit our Web Page for more information about our office:  
<https://www.fws.gov/southeast/charleston>.

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

-----Original Message-----

From: Metheney, Lisa A CIV USARMY CESAC (USA)  
<[Lisa.A.Metheney@usace.army.mil](mailto:Lisa.A.Metheney@usace.army.mil)>  
Sent: Wednesday, November 6, 2019 8:51 AM  
To: [thomas\\_mccoy@fws.gov](mailto:thomas_mccoy@fws.gov)  
Subject: [EXTERNAL] CBRA Info

Tom

Happy Wednesday! Hope all is well with you. I wanted to share some info that I suspect you have already seen through your channels but just in case you haven't, here you go.

Lisa

Lisa Metheney  
Deputy District Engineer for Programs and Project Management US Army Corps  
of Engineers, Charleston District  
843-329-8165  
[www.sac.usace.army.mil](http://www.sac.usace.army.mil)

**Congress of the United States**  
**Washington, DC 20515**

October 25, 2019

The Honorable David Bernhardt  
Secretary, U.S. Department of Interior  
1849 C St., NW  
Washington, DC 20240

Dear Secretary Bernhardt:

We write to you about an interpretation of the Coastal Barrier Resources Act (CBRA) that could jeopardize public and private infrastructure, small businesses and regional economies. The interpretation unnecessarily results in increased ecological impacts as well as increased Federal expenditures. In 2016, the U.S. Fish and Wildlife Service (“Service”) issued an interpretation of a 1994 Solicitor’s Opinion that has caused several ongoing coastal storm damage reduction (CSDR) projects from moving forward, even though these projects meet all the appropriate requirements of the CBRA and National Environmental Policy Act (NEPA). We believe that correcting the 2016 interpretation and the underlying 1994 Solicitor’s Opinion is consistent with our infrastructure focus and small business support while retaining CBRA and NEPA regulatory compliance.

In 1982, the CBRA was enacted into law and established the John H. Chafee Coastal Barrier Resources System (System) to “minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers” in coastal areas along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico, and the Virgin Islands. One objective was to ensure the proper balance of ecological, community and economic considerations on undeveloped coastal barriers. As such, CBRA prohibits new federal financial assistance in System “units” with exceptions outlined in Section 6 of the statute (16 U.S.C. 3505). While the original intent of the law is laudable, the current interpretation has unintended consequences, particularly as they relate to CSDR projects that are partially federally funded, resource management and economic impacts.

In our congressional districts, coastal storm damage reduction projects carried out by the U.S. Army Corps of Engineers (USACE) in partnership with our respective states have been stalled, and their costs have ballooned, because of a 2016 interpretation of a 1994 Department of Interior Solicitor’s Opinion (FWS.CW.0380) by the Service that essentially states that sand from a System unit cannot be placed on a non-CBRA shoreline. This decision suddenly prohibited sand recycling from certain System units - despite the Service in 1996 having previously allowed sand recycling from these same System units per CBRA’s exceptions.

For example, the congressionally authorized *New Jersey Shore Protection, Townsends Inlet to Cape May Inlet* project had previously accessed System unit NJ-09 as a borrow site multiple times with the consent of the Service. Yet the 2016 Service interpretation suddenly prevented access to the borrow site, despite the environmental benefits of the project, and increased project costs by at least \$6.5 million, stalling the required periodic nourishment. As a

result of the determination by the Service that sand cannot be beneficially used from CBRA units, specifically NJ-09, to benefit land immediately adjacent to but not located within the CBRA unit, Stone Harbor and North Wildwood are directly impacted to such an extent that they are facing loss of their economic ability to meet the USACE's Project Cooperation Agreement requirements. Moreover, the significant environmental benefits of CSDR projects such as improved wildlife habitat conditions that have occurred over the past several years are being jeopardized directly as a result of the Service's 2016 decision. Likewise, similar challenges exist with the CSDR projects at Carolina Beach and Wrightsville Beach, NC. These projects have used passive-infill inlet borrow sites in CBRA zones for decades. If forced to use offshore borrow sites instead because of the Service's interpretation, these projects would incur greater environmental impacts and costs to the federal government.

CSDR projects not only protect public and private infrastructure, but often have the added benefit of enhancing the environmental condition e.g. turtle and shorebird usage. These projects meet both NEPA and CBRA's goals to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers." A CSDR project typically dredges sand from an approved borrow site and deposits that sand within a defined and approved shoreline template imitating a nature based infrastructure system therefore, meeting the exception definition under 16 USC 3505(a)(6)(G) of "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Beaches represent a natural stabilization system and a CSDR is simply a restoration of that natural stabilization system. Furthermore, evidence shows that CSDRs have contributed and benefited "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" as defined in 16 U.S.C. 3505(a)(6)(A).

In our reading the statute, we feel that the current NEPA compliant inlet borrow sites meet the spirit and intent of CBRA. Therefore, we ask for your favorable consideration to allow continued use of these inlet borrow sites as allowed exceptions under CBRA. In light of our reading of the statute, we have a question for the Department of Interior to consider.

1. Does the Department take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

We thank you for your leadership and attention to this matter that is of grave importance to our communities.

Sincerely,



Jeff Van Drew  
Member of Congress



David Rouzer  
Member of Congress



Garret Graves  
Member of Congress



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable David Rouzer  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bruce Babbitt". The signature is written in a cursive style with a large, looping initial "B".

Secretary of the Interior

**From:** [Ellis, John](#)  
**To:** [Bohn, Cynthia](#); [Niemi, Katie](#); [Wright, Dana K](#)  
**Subject:** Fwd: Scanned CBRA doc2  
**Date:** Wednesday, November 6, 2019 1:46:01 PM  
**Attachments:** [CBRA docs2.pdf](#)

---

----- Forwarded message -----

From: **Benjamin, Pete** <[pete\\_benjamin@fws.gov](mailto:pete_benjamin@fws.gov)>  
Date: Wed, Nov 6, 2019 at 12:50 PM  
Subject: Fwd: Scanned CBRA doc2  
To: Tom Augspurger <[Tom\\_Augspurger@fws.gov](mailto:Tom_Augspurger@fws.gov)>, John Ellis <[John\\_Ellis@fws.gov](mailto:John_Ellis@fws.gov)>, Kathryn Matthews <[kathryn\\_matthews@fws.gov](mailto:kathryn_matthews@fws.gov)>, Emily Jernigan <[emily\\_wells@fws.gov](mailto:emily_wells@fws.gov)>

More on this FYI,

Pete Benjamin  
Field Supervisor  
Raleigh ES Field Office  
U.S. Fish and Wildlife Service  
551F Pylon Drive  
Raleigh, NC 27606  
Office: (919) 856-4520 x 11  
Mobile: (919) 816-6408

*NOTE: This email correspondence and any attachments to and from this sender are subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

From: **Eversen, Michelle** <[michelle\\_eversen@fws.gov](mailto:michelle_eversen@fws.gov)>  
Date: Wed, Nov 6, 2019 at 12:41 PM  
Subject: Fwd: Scanned CBRA doc2  
To: Aaron Valenta <[Aaron\\_Valenta@fws.gov](mailto:Aaron_Valenta@fws.gov)>, Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Thomas McCoy <[thomas\\_mccoy@fws.gov](mailto:thomas_mccoy@fws.gov)>, Pete Benjamin <[Pete\\_Benjamin@fws.gov](mailto:Pete_Benjamin@fws.gov)>, Larry Williams <[larry\\_williams@fws.gov](mailto:larry_williams@fws.gov)>

FYI - Please share appropriately.

----- Forwarded message -----

From: **Oetker, Michael** <[michael\\_oetker@fws.gov](mailto:michael_oetker@fws.gov)>  
Date: Wed, Nov 6, 2019 at 10:17 AM  
Subject: Fwd: Scanned CBRA doc2  
To: Arnold, Jack <[jack\\_arnold@fws.gov](mailto:jack_arnold@fws.gov)>, Michelle Eversen <[michelle\\_eversen@fws.gov](mailto:michelle_eversen@fws.gov)>, Kristen Peters <[kristen\\_peters@fws.gov](mailto:kristen_peters@fws.gov)>, Roya Mogadam <[roya\\_mogadam@fws.gov](mailto:roya_mogadam@fws.gov)>

----- Forwarded message -----

From: **Everson, Margaret** <[margaret\\_e\\_everson@fws.gov](mailto:margaret_e_everson@fws.gov)>  
Date: Tue, Nov 5, 2019 at 6:43 PM  
Subject: Fwd: Scanned CBRA doc2  
To: FWS Directorate & Deputies <[fwsdirectanddep@fws.gov](mailto:fwsdirectanddep@fws.gov)>  
Cc: Melissa Beaumont <[melissa\\_beaumont@fws.gov](mailto:melissa_beaumont@fws.gov)>, Morris, Charisa <[charisa\\_morris@fws.gov](mailto:charisa_morris@fws.gov)>, Kodis, Martin <[martin\\_kodis@fws.gov](mailto:martin_kodis@fws.gov)>

| FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best  
Margaret

--  
Mike Oetker  
Deputy Regional Director  
U.S. Fish and Wildlife Service  
South Atlantic-Gulf and Mississippi Basin Unified Regions  
404-679-4000

--  
**Michelle Eversen**  
Ecological Services Program Supervisor for NC, SC, GA, KY, TN and the Caribbean  
South Atlantic-Gulf and Mississippi Basin  
Unified Regions  
U.S. Fish and Wildlife Service  
100 Conservation Way  
Manteo, NC 27954

1-404-632-9331 (Mobile)

*This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act and may be disclosed to third parties*

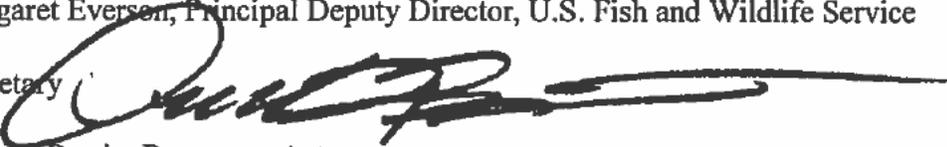


THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

Memorandum

To: Rob Wallace, Assistant Secretary for Fish and Wildlife and Parks  
Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service

From: Secretary 

Subject: Coastal Barrier Resources Act

Attached is correspondence regarding the above-referenced statute. Please notify your staffs of our position on this matter going forward, and modify any communications to bring them in compliance with the Department of the Interior's understanding of the language.

Attachment



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Jeff Van Drew  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Van Drew:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

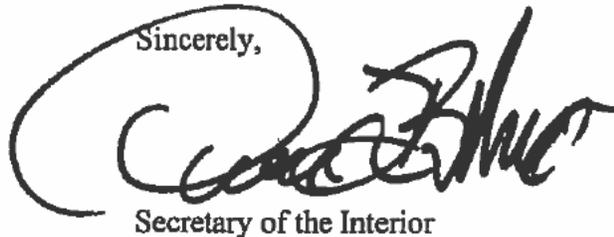
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "C. E. Brown", is written over a large, circular, stylized flourish. The signature is positioned above the printed title "Secretary of the Interior".

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Garret Graves  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

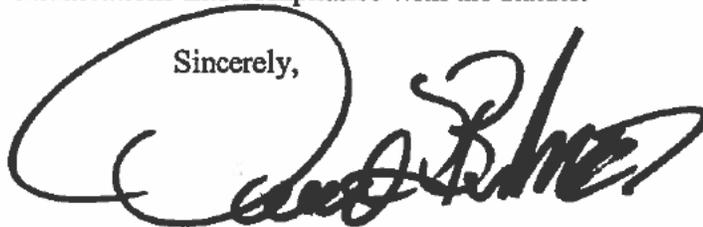
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Babbitt", written in a cursive style. The signature is enclosed within a large, hand-drawn oval.

Secretary of the Interior



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable David Rouzer  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Rouzer:

Thank you for your letter dated October 25, 2019, regarding the Coastal Barrier Resources Act (CBRA). In your letter, you asked the following:

Does the Department [of the Interior] take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any “non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system,” including those outside of a system unit?

The answer to your question is yes, application of the statutory exception is not limited to within a unit.

In particular, you raised concerns with a 1994 legal memorandum interpreting a section of the law that provides exceptions to limitations on Federal expenditures for shoreline stabilization projects. You note this flawed interpretation of the law has prevented a number of coastal storm damage reduction projects that would further the purposes of the statute as declared by Congress.

Based on the concerns raised in your letter and those of other members of Congress, I asked the Department of the Interior’s (Department) Office of the Solicitor to review the 1994 opinion referenced to determine whether section 6 of CBRA permits Federal funding for utilizing sand removed from a unit of the Coastal Barrier Resources System (System) to renourish beaches located outside the System. After considering the plain language of the law and the legislative history, the Office of the Solicitor determined that the exemption in section 6 is not limited to shoreline stabilization projects occurring within the System. I personally reviewed the matter and agree.

In 1982, when Congress passed CBRA (which established the John H. Chafee Coastal Barrier Resources System), it found that coastal barriers contain significant cultural and natural resources—including wildlife habitat—and function as natural storm protective buffers. Congress found that coastal barriers are generally unsuitable for development. To achieve the purposes of the Act, “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with coastal barriers,” CBRA prohibits new Federal financial assistance incentives that encourage development of coastal barriers. Section 6 of the Act establishes exceptions to this restriction, including “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” Within the Department, the U.S. Fish and Wildlife Service is responsible for maintaining and updating the official maps of the System.

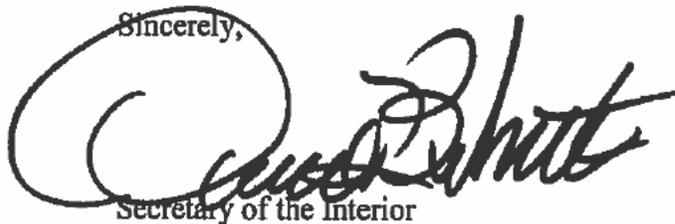
The 1994 legal memorandum interpreting section 6 that you referenced in your letter contained no analysis but summarily concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit and not to projects to renourish beaches outside the System, even when those projects benefit coastal barriers within the System. Closely evaluating the text, I do not find this was a permissible reading of the statute. The language is not ambiguous.

Even if some ambiguity could be identified in section 6, after reviewing the language of the Act and the legislative history, the more reasoned interpretation is that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA's broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur "solely" within the System. Thus, even to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. As a consequence, sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the Act.

Thank you for highlighting the issues in your letter. The Department is committed to ensuring that we do not needlessly burden people or communities beyond the parameters Congress has determined to be appropriate. I welcome the opportunity to discuss these efforts with you going forward.

A similar letter has been sent to each of your cosigners, and I have directed the U.S. Fish and Wildlife Service to bring its communications into compliance with the statute.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Babbitt". The signature is written in a cursive, flowing style. The word "Sincerely," is printed above the signature.

Secretary of the Interior

Congress of the United States  
Washington, DC 20515

October 25, 2019

The Honorable David Bernhardt  
Secretary, U.S. Department of Interior  
1849 C St., NW  
Washington, DC 20240

Dear Secretary Bernhardt:

We write to you about an interpretation of the Coastal Barrier Resources Act (CBRA) that could jeopardize public and private infrastructure, small businesses and regional economies. The interpretation unnecessarily results in increased ecological impacts as well as increased Federal expenditures. In 2016, the U.S. Fish and Wildlife Service ("Service") issued an interpretation of a 1994 Solicitor's Opinion that has caused several ongoing coastal storm damage reduction (CSDR) projects from moving forward, even though these projects meet all the appropriate requirements of the CBRA and National Environmental Policy Act (NEPA). We believe that correcting the 2016 interpretation and the underlying 1994 Solicitor's Opinion is consistent with our infrastructure focus and small business support while retaining CBRA and NEPA regulatory compliance.

In 1982, the CBRA was enacted into law and established the John H. Chafee Coastal Barrier Resources System (System) to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers" in coastal areas along the Atlantic Ocean, Gulf of Mexico, Great Lakes, Puerto Rico, and the Virgin Islands. One objective was to ensure the proper balance of ecological, community and economic considerations on undeveloped coastal barriers. As such, CBRA prohibits new federal financial assistance in System "units" with exceptions outlined in Section 6 of the statute (16 U.S.C. 3505). While the original intent of the law is laudable, the current interpretation has unintended consequences, particularly as they relate to CSDR projects that are partially federally funded, resource management and economic impacts.

In our congressional districts, coastal storm damage reduction projects carried out by the U.S. Army Corps of Engineers (USACE) in partnership with our respective states have been stalled, and their costs have ballooned, because of a 2016 interpretation of a 1994 Department of Interior Solicitor's Opinion (FWS.CW.0380) by the Service that essentially states that sand from a System unit cannot be placed on a non-CBRA shoreline. This decision suddenly prohibited sand recycling from certain System units - despite the Service in 1996 having previously allowed sand recycling from these same System units per CBRA's exceptions.

For example, the congressionally authorized *New Jersey Shore Protection, Townsends Inlet to Cape May Inlet* project had previously accessed System unit NJ-09 as a borrow site multiple times with the consent of the Service. Yet the 2016 Service interpretation suddenly prevented access to the borrow site, despite the environmental benefits of the project, and increased project costs by at least \$6.5 million, stalling the required periodic nourishment. As a

result of the determination by the Service that sand cannot be beneficially used from CBRA units, specifically NJ-09, to benefit land immediately adjacent to but not located within the CBRA unit, Stone Harbor and North Wildwood are directly impacted to such an extent that they are facing loss of their economic ability to meet the USACE's Project Cooperation Agreement requirements. Moreover, the significant environmental benefits of CSDR projects such as improved wildlife habitat conditions that have occurred over the past several years are being jeopardized directly as a result of the Service's 2016 decision. Likewise, similar challenges exist with the CSDR projects at Carolina Beach and Wrightsville Beach, NC. These projects have used passive-infill inlet borrow sites in CBRA zones for decades. If forced to use offshore borrow sites instead because of the Service's interpretation, these projects would incur greater environmental impacts and costs to the federal government.

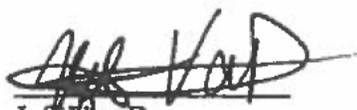
CSDR projects not only protect public and private infrastructure, but often have the added benefit of enhancing the environmental condition e.g. turtle and shorebird usage. These projects meet both NEPA and CBRA's goals to "minimize the loss of human life; wasteful expenditure of federal revenues; and the damage to fish, wildlife, and other natural resources associated with coastal barriers." A CSDR project typically dredges sand from an approved borrow site and deposits that sand within a defined and approved shoreline template imitating a nature based infrastructure system therefore, meeting the exception definition under 16 USC 3505(a)(6)(G) of "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Beaches represent a natural stabilization system and a CSDR is simply a restoration of that natural stabilization system. Furthermore, evidence shows that CSDRs have contributed and benefited "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" as defined in 16 U.S.C. 3505(a)(6)(A).

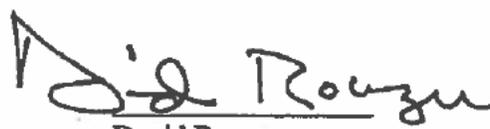
In our reading the statute, we feel that the current NEPA compliant inlet borrow sites meet the spirit and intent of CBRA. Therefore, we ask for your favorable consideration to allow continued use of these inlet borrow sites as allowed exceptions under CBRA. In light of our reading of the statute, we have a question for the Department of Interior to consider.

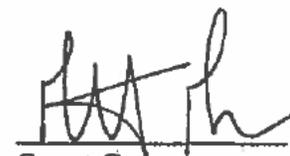
1. Does the Department take the view that, if otherwise consistent with the purposes of the Act, Sec. 6(G) of CBRA applies to any "non-structural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system," including those outside of a system unit?

We thank you for your leadership and attention to this matter that is of grave importance to our communities.

Sincerely,

  
Jeff Van Drew  
Member of Congress

  
David Rouzer  
Member of Congress

  
Garret Graves  
Member of Congress



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Richard Burr  
United States Senate  
Washington, DC 20510

Dear Senator Burr:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

NOV 04 2019

The Honorable Thom Tillis  
United States Senate  
Washington, DC 20510

Dear Senator Tillis:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,

Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

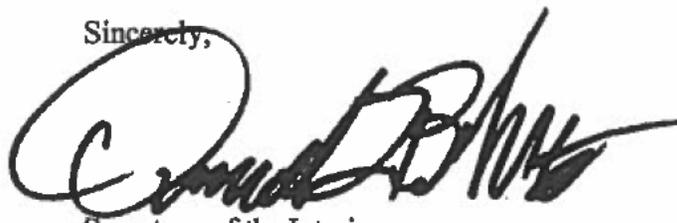
NOV 04 2019

The Honorable Doug Lamborn  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Lamborn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

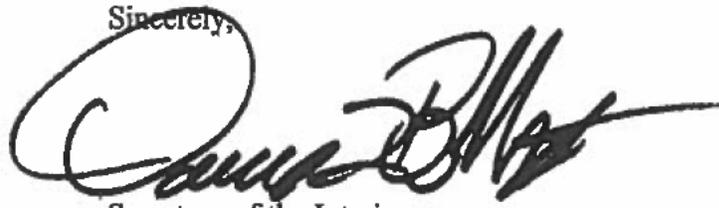
NOV 04 2019

The Honorable Neal Dunn  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Dunn:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

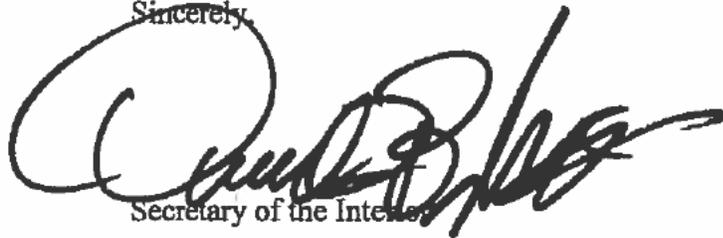
NOV 04 2019

The Honorable Randy Weber  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Weber:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



THE SECRETARY OF THE INTERIOR  
WASHINGTON

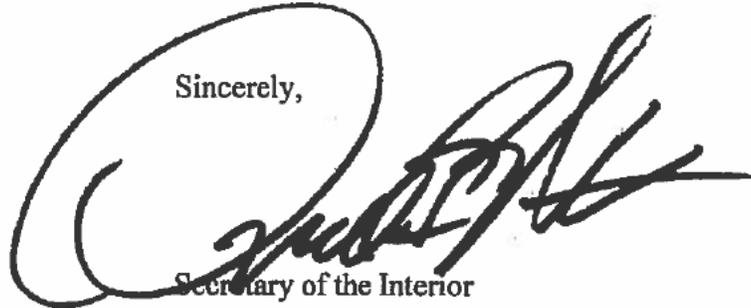
NOV 04 2019

The Honorable Frank Pallone  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Pallone:

Based on your previous interest in this matter, please find enclosed a letter regarding the Coastal Barrier Resources Act.

Sincerely,



Secretary of the Interior

Enclosure



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

OCT 30 2019

IN REPLY REFER TO:

## Memorandum

To: Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service  
From: Peg Romanik, Associate Solicitor, Division of Parks and Wildlife  
Subject: Coastal Barrier Resources Act

### Introduction

You have requested our opinion as to whether Section 6(a)(6)(G) of the Coastal Barrier Resources Act ("CBRA" or "Act"), 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for utilizing sand removed from a Coastal Barrier Resources System ("System") unit to renourish beaches located outside the System.

After considering the plain language of the Act, we conclude that the exemption in Section 6(a)(6)(G) is not limited to shoreline stabilization projects occurring within the System. Thus, sand from within a System unit may be used to renourish a beach that is located outside of the System. However, any such project must further the purposes of the Act. That is, the shoreline stabilization project must be consistent with the Act's purposes of minimizing threats to human life and property and encouraging long-term conservation of natural resources associated with coastal barriers, and has to fit within the restrictions of the statutory exception for certain nonstructural projects.

### Background

When it enacted the CBRA, Congress found that coastal barriers contain significant cultural and natural resources, including wildlife habitat and spawning areas, and function as natural storm protective buffers. *See* 16 U.S.C. § 3501(a). Congress further found that coastal barriers are generally unsuitable for development. *Id.* § 3501(a)(3). It enacted the CBRA to restrict Federal expenditures that encourage development of coastal barriers, thus minimizing the loss of human life and damage to natural resources within those areas. *Id.* § 3501(b). Section 5(a) of the Act prohibits most new Federal expenditures and financial assistance for activities occurring within the System. *Id.* § 3504(a). Section 6 of the Act sets forth exceptions to the prohibition, including "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems," if such projects are consistent with the purposes of the Act. *Id.* § 3505(a)(6)(G).

A 1994 legal memorandum from then Assistant Solicitor - Branch of Fish and Wildlife interpreting Section 6(a)(6)(G) concluded that the exemption for shoreline stabilization projects applies only to projects designed to stabilize the shoreline of a System unit, and not to projects to renourish beaches outside the System. The 1994 opinion "interpret[s] section 6(a)(6) to refer to projects designed to renourish solely a beach within the [System unit]." We understand that local

communities and members of Congress have recently raised concerns about their inability to receive Federal funds for beach nourishment and have asked the Department to revisit this issue

### Discussion

Section 6 of the Act sets forth certain exceptions to the limitations on Federal expenditures within the System. The introductory paragraph of the Section provides that a Federal agency, after consultation with the Secretary, “may make Federal expenditures or financial assistance available within the [System]” for certain enumerated activities. 16 U.S.C. § 3505(a). The phrase “within the [System]” must be read in conjunction with the immediately preceding phrase “Federal expenditures or financial assistance.” *See, e.g., Hays v. Sebelius*, 589 F.3d. 1279, 1281 (D.C. Cir. 2009) (applying the “Rule of the Last Antecedent,” which provides that “qualifying phrases are to be applied to the word or phrase immediately preceding and are not to be construed as extending to others more remote.”) (citation omitted). Thus, the phrase applies solely to where the Federal expenditures or financial assistance may be applied. In this case, that means Federal funds associated with removing sand from a unit within the System.

By contrast, Section 3505(a)(6) does not contain language specifying that excepted actions must occur “within the [System].” That section permits certain “actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act.” *Id.* § 3505(a)(6). Among those actions are “[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.” *Id.* § 3505(a)(6)(G). The phrase “within the [System]” does not appear either in the introductory language to subsection 6 or in the subpart addressing shoreline stabilization projects. In sum, there is no express limitation on removing sediment from within the System and applying it to areas outside of the System for the purpose of shoreline stabilization.

The statutory language reflects that Congress did not intend to constrain the flexibility of agencies to accomplish the CBRA’s broader purposes of protecting coastal barrier resources by requiring beach renourishment to occur “solely” within the System. Other provisions in Section 3505(a) indicate that Congress envisioned that the excepted activities might occur outside of the System. For example, Section 3505(a)(2) allows for the dredging of existing Federal navigation channels within the System, and the disposal of the dredge materials does not have to occur within the System. The House and Senate Reports specify that the “disposal site need not ... be consistent with the purposes of the Act” as the dredge materials may contain contaminants, and returning the contaminants to the system would not further the purposes of the CBRA.<sup>1</sup> Within Section 3505(a)(6), subparts (A) and (D) are similar in providing an exception for research for barrier resources, including fish and wildlife, which may require the study site to extend beyond the System to be most effective.

Alternatively, to the extent the statutory language could be viewed as ambiguous, our interpretation is reasonable and it furthers the purposes of the Act. There is no indication that Congress intended to conserve coastal barrier resources only within the System. Indeed, in calling for “coordinated action by Federal, State, and local governments,” Congress appears to

---

<sup>1</sup> CBRA Senate Report (May 26, 1982) at 7, and CBRA House Report (September 21, 1982) at 16.

have envisioned the protection of broad swaths of coastal land. *Id.* § 3501(a)(1)(5). Our interpretation of Section 6(a)(6)(G) gives Federal agencies more flexibility to permit or undertake shoreline stabilization projects that will protect coastal resources, even if those resources are located outside of the System. These resources, identified in the CBRA's purpose, are "of significant value to society,"<sup>2</sup> providing over \$1 billion in 1980 dollars for commercial fisheries, and high recreational value for people participating in sport fishing and waterfowl and duck hunting.<sup>3</sup>

Our interpretation also allows for projects that indirectly benefit coastal barrier resources within the System. For example, the U.S. Army Corps of Engineers ("Corps"), could use sand from a unit within the System to renourish a beach that is adjacent to that unit, but outside of the System. Stabilizing the adjacent beach could have positive effects on habitat located within the unit. The interpretation of Section 6(a)(6)(G) in the 1994 memorandum would preclude this project despite its beneficial effect on coastal barriers within the System.

Our interpretation does not alter the Service's (nor the action agency's) responsibility to consider on a case-by-case basis whether the proposed project is consistent with the purposes of the Act. *See id.* § 3505(a)(6). For example, the removal of the sand from within the System may not frustrate the "long-term conservation of these fish, wildlife, and other natural resources" associated with coastal barriers. *Id.* §3501(b). Thus, the Service should consider whether the sand could be removed without damage<sup>4</sup> to the natural resources within the System. Likewise, the project should not encourage development of coastal barriers in a manner that could result in "threats to human life, health, and property." *Id.* § 3501(a)(4). In addition, the Service should review whether the proposed project meets the limitations of the exception. That is, in order for the project to meet the standards of the exception, the Service should consider whether any beach renourishment outside the system is intended to "mimic, enhance, or restore natural stabilization systems." *Id.* § 3505(a)(6)(G).

### Conclusion

We recognize that our interpretation is a change from the conclusion presented in the 1994 legal memorandum. As noted above, however, that memorandum contained no analysis. After reviewing the legislative history and reading the plain language of the Act, we conclude a more reasoned interpretation is that the exception for shoreline stabilization projects is not expressly limited to projects occurring wholly within the System. And, to the extent the statutory language could be considered ambiguous, it should be interpreted in a way that furthers Congress' stated purpose of protecting coastal barrier resources. Thus, we conclude that sand from units within the System may be used to renourish beaches located outside of the System assuming the project is in compliance with the Act. Specifically, the Service (and the action agency) must continue to review each proposed project to ensure that it meets the specific requirements of section 6(a)(6)(G) and is consistent with the purposes of the Act.

---

<sup>2</sup> CBRA House Report (September 21, 1982) at 8.

<sup>3</sup> CBRA Senate Report (May 26, 1982) at 2, CBRA House Report (September 21, 1982) at 8.

<sup>4</sup> We note that "damage" here would have to cause more than insignificant impact to the natural resources. That is, it would have to be damage that would frustrate the purposes of the Act in some meaningful manner.

**From:** [Bohn, Cynthia](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: CBRA Compliance, Beach nourishment  
**Date:** Thursday, November 7, 2019 3:36:12 PM  
**Importance:** High

---

Hey Katie, I'm back. I've cruised through a bunch of the emails and such on the new sand mining opinion, but I'll get more into details tomorrow. Call me if you are in. c

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

On Wed, Nov 6, 2019 at 2:30 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Aaron, Spencer and Cindy,  
Please see the GoogleDoc link for the initial questions we have at the program level concerning the new SOL memo on CBRA. Feel free to add any additional questions you may have. My hope is that these questions will help inform the discussions about how this new policy will be implemented and communicated.

Thanks!  
Katie

[https://docs.google.com/document/d/1MhUPIHBDj1\\_YBf9Q-sXrexoZq7wny8fRGXJICgfteNw/edit?usp=sharing](https://docs.google.com/document/d/1MhUPIHBDj1_YBf9Q-sXrexoZq7wny8fRGXJICgfteNw/edit?usp=sharing)

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

**From:** "Everson, Margaret" <[margaret\\_e\\_everson@fws.gov](mailto:margaret_e_everson@fws.gov)>  
**Date:** November 5, 2019 at 6:42:59 PM EST  
**To:** "FWS Directorate & Deputies" <[fwsdirectanddep@fws.gov](mailto:fwsdirectanddep@fws.gov)>  
**Cc:** Melissa Beaumont <[melissa\\_beaumont@fws.gov](mailto:melissa_beaumont@fws.gov)>, "Morris, Charisa" <[charisa\\_morris@fws.gov](mailto:charisa_morris@fws.gov)>, "Kodis, Martin" <[martin\\_kodis@fws.gov](mailto:martin_kodis@fws.gov)>  
**Subject:** Fwd: Scanned CBRA doc2  
FWS Team.

Please find attached Correspondence regarding the Coastal Barrier Resources Act along with an opinion from the SOL concluding that the exemption within Section 6(a)(6)(G) of the Act is not limited to shoreline stabilization projects occurring within the Coastal Barrier Resources System. And sand from within a System unit may be used to renourish a beach that is located outside the System, provided the project furthers the purposes of the Act.

I am working with Gary Frazer and his team to identify our existing Service guidance that needs to be updated to align with the SOL guidance. Please take the opportunity to understand the Oct 30th memo from SOL and let me know if you have any questions. We will make sure to communicate the updates that we have made to our existing guidance on this issue as they are made. Please make sure to communicate this information to any of your staff members who are working on this issue so our recommendations and opinions are consistent with the SOL memo.

Best  
Margaret

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: Articles on sand mining  
**Date:** Friday, November 8, 2019 6:43:49 AM

---

Also, this article was updated:

<https://www.wect.com/2019/11/05/interior-department-reverses-beach-renourishment-ruling/>

It includes the complete 11/4 letter to Rep. Rouzer and also the following statement:

Dave Connolly, Chief Public Affairs U.S. Army Corps of Engineers Wilmington District explains in an email to WECT, “As a result of the recent announcement, we do plan to re-consult with Fish and Wildlife Service, on application of the CBRA zones to our existing projects.”

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Fri, Nov 8, 2019 at 6:37 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Katie,

Here are two more articles (including one by the NYT):

<https://philadelphia.cbslocal.com/2019/11/07/feds-we-were-wrong-on-sand-dredge-ban-in-south-new-jersey/>

<https://www.nytimes.com/2019/11/07/climate/trump-beaches-sand-protected-areas.html>

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Bohn, Cynthia](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Fwd: [EXTERNAL] FW: Statement on CBRA  
**Date:** Tuesday, November 12, 2019 2:26:02 PM  
**Importance:** High

---

Did you reply to Derek?

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

**From:** **Derek Brockbank** <[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)>  
**Date:** Fri, Nov 8, 2019 at 4:00 PM  
**Subject:** [EXTERNAL] FW: Statement on CBRA  
**To:** Bohn, Cynthia <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Katie Niemi <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>, BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)>

Cindy, Katie, Martha –

I'm sure you cannot comment on Sec. Bernhardt's recent statement/letter CBRA, so I'm not asking you for anything or to share anything at this time. But I did want to make sure you saw the statement we put out this afternoon. We are, as you probably assumed, pleased to see this particularly issue and implementation guidance get revisited.

As you develop new guidance and/or a new framework for how "Section 3505(a)(6)(g) of CBRA" will be interpreted and implemented, please reach out. Our members are the ones who will be most directly impacted and so are likely to be the most vocal about whatever the new guidance is. By working with us, you may be able to address issues before they become a problem.

I look forward to speaking with you soon.

Derek

## **Derek Brockbank**

Executive Director,

*American Shore and Beach Preservation Association (ASBPA)*

202-827-4246 (office)

917-536-6878 (cell)

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org)

[www.asbpa.org](http://www.asbpa.org)

[www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches)

[www.twitter.com/asbpa](https://www.twitter.com/asbpa)

---

**From:** Derek Brockbank [mailto:[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)]

**Sent:** Friday, November 8, 2019 1:39 PM

**To:** [derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)

**Subject:** Statement on CBRA

[View this email in your browser](#)



*For immediate release:*

<http://asbpa.org/2019/11/08/cbra-guidance/>

## **Change to CBRA guidance allows for better coastal resilience**

American Shore & Beach Preservation Association (ASBPA) is pleased to see the Department of Interior will be re-considering a section Coastal Barrier Resources Act (CBRA) that has made it more expensive for many coastal communities to improve their resilience. Allowing communities with federally authorized coastal shore protection projects, including federal beach restoration and ecological restoration, to access sand from inlets and near-shore sediment deposits, will save the federal taxpayer money, help reduce flood risk, and restore habitat - the three primary purposes of CBRA.

A 1994 Fish & Wildlife Service interpretation of Section 3505(a)(6)(g) of CBRA had said that coastal shore protection projects outside of CBRA-units could not use federal funds to access sediment from CBRA protected areas. This meant federal projects *adjacent* to inlets in CBRA-units cost federal taxpayers more because these projects have to get sand from far offshore. Given the increased cost to local community and the federal taxpayer, these projects could also be left unbuilt, which would put the community at increased risk of flood and coastal storm damage, while also reducing beach and dune habitat available to nesting shorebirds, sea turtles and other wildlife.

This guidance expanded the scope of CBRA beyond the intent of Congress - limiting development *within* CBRA-units - to apply it to previously developed

coastlines *outside* of the Coastal Barrier Resources System. Furthermore, this interpretation was based on the understanding of dredging and beach nourishment impacts to wildlife from the 1980s that has since evolved to show increasing importance and ecological productivity of restored beach habitat, and today's dredging and beach restoration efforts include numerous science-based conservation measures and best management practices that provide ecological benefits. In short, the implementation guidance was flawed from the beginning, but has only proven to be more problematic in recent years.

To be clear, changes to this guidance will not impact any environmental regulation or allow for dredging activity in any location where it not currently allowed. All environmental laws, protections and procedures must still be followed and areas that were off-limits to dredging will still be off-limits. This includes restrictions on beach sand-mining, dredging and restoration in endangered species critical habitat, essential fish habitat and more. Changes to this guidance simply allow federal funds to be used in the most efficient way possible to help communities that have demonstrated there is federal interest in reducing flood risk and restoring coastline.

[Section 3505\(a\)\(6\)\(g\)](#) of CBRA allows for federal expenditures for *"nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."*

ASBPA looks forward to an interpretation of this section that allows for resilient natural infrastructure, such as beaches and dunes, to be eligible for federal expenditures under CBRA, while adhering more closely to the congressional intent of reducing development within CBRA units, but not impacting previously developed areas. Allowing for sand from CBRA-units to be used for non-structural flood risk reduction project in previously developed areas is entirely consistent with the three purposes of CBRA: reducing risk and loss of life, improving or protecting wildlife habitat, and saving the federal taxpayer money.

For more information, contact:

[Derek Brockbank](#), Executive Director, *American Shore and Beach Preservation Association*

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org), 202-827-4246

**ABOUT ASBPA:** Founded in 1926, the American Shore and Beach Preservation Association (ASBPA) is a 501(c)3 nonprofit that advocates for healthy coastlines by promoting the integration of science, policies and actions that maintain, protect and enhance the coasts of America. For more information on ASBPA, go to [www.asbpa.org](http://www.asbpa.org), [www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches) or [www.twitter.com/asbpa](https://www.twitter.com/asbpa).

---



---

*Copyright © 2019 ASBPA, All rights reserved.*

Thank you for joining ASBPA's Government Affairs Committee. You have indicated to a member of the committee that you are interested in participating in this committee.

**Our mailing address is:**

ASBPA

5460 Beaujolais Ln

Fort Myers, FL 33919-2704

[Add us to your address book](#)

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).

**From:** [Bohn, Cynthia](#)  
**To:** [BalisLarsen, Martha](#)  
**Cc:** [Niemi, Katie](#)  
**Subject:** Re: [EXTERNAL] FW: Statement on CBRA  
**Date:** Tuesday, November 12, 2019 3:43:29 PM  
**Importance:** High

---

thanks for replying and reaching out. c

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

On Tue, Nov 12, 2019 at 3:13 PM BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)> wrote:  
Derek, thank you for sharing your organization's statement and your members' willingness to assist with any new guidance or policies. We will let you know when we have drafts available for comment.

Martha

Martha Balis-Larsen  
Chief, Division of Budget & Technical Support  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2171 (general)  
703-358-2314 (direct)

On Fri, Nov 8, 2019 at 4:02 PM Derek Brockbank <[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)> wrote:

Cindy, Katie, Martha –

I'm sure you cannot comment on Sec. Bernhardt's recent statement/letter CBRA, so I'm not asking

you for anything or to share anything at this time. But I did want to make sure you saw the statement we put out this afternoon. We are, as you probably assumed, pleased to see this particularly issue and implementation guidance get revisited.

As you develop new guidance and/or a new framework for how “Section 3505(a)(6)(g) of CBRA” will be interpreted and implemented, please reach out. Our members are the ones who will be most directly impacted and so are likely to be the most vocal about whatever the new guidance is. By working with us, you may be able to address issues before they become a problem.

I look forward to speaking with you soon.

Derek

## **Derek Brockbank**

Executive Director,

*American Shore and Beach Preservation Association (ASBPA)*

202-827-4246 (office)

917-536-6878 (cell)

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org)

[www.asbpa.org](http://www.asbpa.org)

[www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches)

[www.twitter.com/asbpa](https://www.twitter.com/asbpa)

---

**From:** Derek Brockbank [mailto:[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)]

**Sent:** Friday, November 8, 2019 1:39 PM

**To:** [derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)

**Subject:** Statement on CBRA

[View this email in your browser](#)



*For immediate release:*

<http://asbpa.org/2019/11/08/cbra-guidance/>

## **Change to CBRA guidance allows for better coastal resilience**

American Shore & Beach Preservation Association (ASBPA) is pleased to see the Department of Interior will be re-considering a section Coastal Barrier Resources Act (CBRA) that has made it more expensive for many coastal communities to improve their resilience. Allowing communities with federally authorized coastal shore protection projects, including federal beach restoration and ecological restoration, to access sand from inlets and near-shore sediment deposits, will save the federal taxpayer money, help reduce flood risk, and restore habitat - the three primary purposes of CBRA.

A 1994 Fish & Wildlife Service interpretation of Section 3505(a)(6)(g) of CBRA had said that coastal shore protection projects outside of CBRA-units could not use federal funds to access sediment from CBRA protected areas. This meant federal projects *adjacent* to inlets in CBRA-units cost federal taxpayers more because these projects have to get sand from far offshore. Given the increased cost to local community and the federal taxpayer, these projects could also be

left unbuilt, which would put the community at increased risk of flood and coastal storm damage, while also reducing beach and dune habitat available to nesting shorebirds, sea turtles and other wildlife.

This guidance expanded the scope of CBRA beyond the intent of Congress - limiting development *within* CBRA-units - to apply it to previously developed coastlines *outside* of the Coastal Barrier Resources System. Furthermore, this interpretation was based on the understanding of dredging and beach nourishment impacts to wildlife from the 1980s that has since evolved to show increasing importance and ecological productivity of restored beach habitat, and today's dredging and beach restoration efforts include numerous science-based conservation measures and best management practices that provide ecological benefits. In short, the implementation guidance was flawed from the beginning, but has only proven to be more problematic in recent years.

To be clear, changes to this guidance will not impact any environmental regulation or allow for dredging activity in any location where it not currently allowed. All environmental laws, protections and procedures must still be followed and areas that were off-limits to dredging will still be off-limits. This includes restrictions on beach sand-mining, dredging and restoration in endangered species critical habitat, essential fish habitat and more. Changes to this guidance simply allow federal funds to be used in the most efficient way possible to help communities that have demonstrated there is federal interest in reducing flood risk and restoring coastline.

[Section 3505\(a\)\(6\)\(g\)](#) of CBRA allows for federal expenditures for *"nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."*

ASBPA looks forward to an interpretation of this section that allows for resilient natural infrastructure, such as beaches and dunes, to be eligible for federal expenditures under CBRA, while adhering more closely to the congressional intent of reducing development within CBRA units, but not impacting previously developed areas. Allowing for sand from CBRA-units to be used for non-structural flood risk reduction project in previously developed areas is entirely consistent with the three purposes of CBRA: reducing risk and loss of life, improving or protecting wildlife habitat, and saving the federal taxpayer money.

For more information, contact:

**Derek Brockbank**, Executive Director, *American Shore and Beach Preservation Association*

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org), 202-827-4246

**ABOUT ASBPA:** Founded in 1926, the American Shore and Beach Preservation Association (ASBPA) is a 501(c)3 nonprofit that advocates for healthy coastlines by promoting the integration of science, policies and actions that maintain, protect and enhance the coasts of America. For more information on ASBPA, go to [www.asbpa.org](http://www.asbpa.org), [www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches) or [www.twitter.com/asbpa](https://www.twitter.com/asbpa).



---

*Copyright © 2019 ASBPA, All rights reserved.*

Thank you for joining ASBPA's Government Affairs Committee. You have indicated to a member of the committee that you are interested in participating in this committee.

**Our mailing address is:**

ASBPA

5460 Beaujolais Ln

Fort Myers, FL 33919-2704

[Add us to your address book](#)

Want to change how you receive these emails?  
You can [update your preferences](#) or [unsubscribe from this list](#).



**From:** [Niemi, Katie](#)  
**To:** [Wright, Dana K](#)  
**Subject:** Fwd: [EXTERNAL] FW: Statement on CBRA  
**Date:** Wednesday, November 13, 2019 8:38:48 AM

---

FYI

----- Forwarded message -----

**From:** **BalisLarsen, Martha** <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)>  
**Date:** Tue, Nov 12, 2019 at 3:13 PM  
**Subject:** Re: [EXTERNAL] FW: Statement on CBRA  
**To:** Derek Brockbank <[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)>  
**Cc:** Bohn, Cynthia <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Katie Niemi <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>

Derek, thank you for sharing your organization's statement and your members' willingness to assist with any new guidance or policies. We will let you know when we have drafts available for comment.

**Martha**

Martha Balis-Larsen  
Chief, Division of Budget & Technical Support  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2171 (general)  
703-358-2314 (direct)

On Fri, Nov 8, 2019 at 4:02 PM Derek Brockbank <[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)> wrote:

Cindy, Katie, Martha –

I'm sure you cannot comment on Sec. Bernhardt's recent statement/letter CBRA, so I'm not asking you for anything or to share anything at this time. But I did want to make sure you saw the statement we put out this afternoon. We are, as you probably assumed, pleased to see this particularly issue and implementation guidance get revisited.

As you develop new guidance and/or a new framework for how "Section 3505(a)(6)(g) of CBRA" will be interpreted and implemented, please reach out. Our members are the ones who will be most directly impacted and so are likely to be the most vocal about whatever the new guidance is. By working with us, you may be able to address issues before they become a problem.

I look forward to speaking with you soon.

Derek

## **Derek Brockbank**

Executive Director,

*American Shore and Beach Preservation Association (ASBPA)*

202-827-4246 (office)

917-536-6878 (cell)

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org)

[www.asbpa.org](http://www.asbpa.org)

[www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches)

[www.twitter.com/asbpa](https://www.twitter.com/asbpa)

---

**From:** Derek Brockbank [mailto:[derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)]

**Sent:** Friday, November 8, 2019 1:39 PM

**To:** [derek.brockbank@asbpa.org](mailto:derek.brockbank@asbpa.org)

**Subject:** Statement on CBRA

View this email in your browser



For immediate release:

<http://asbpa.org/2019/11/08/cbra-guidance/>

## **Change to CBRA guidance allows for better coastal resilience**

American Shore & Beach Preservation Association (ASBPA) is pleased to see the Department of Interior will be re-considering a section Coastal Barrier Resources Act (CBRA) that has made it more expensive for many coastal communities to improve their resilience. Allowing communities with federally authorized coastal shore protection projects, including federal beach restoration and ecological restoration, to access sand from inlets and near-shore sediment deposits, will save the federal taxpayer money, help reduce flood risk, and restore habitat - the three primary purposes of CBRA.

A 1994 Fish & Wildlife Service interpretation of Section 3505(a)(6)(g) of CBRA had said that coastal shore protection projects outside of CBRA-units could not use federal funds to access sediment from CBRA protected areas. This meant federal projects *adjacent* to inlets in CBRA-units cost federal taxpayers more because these projects have to get sand from far offshore. Given the increased cost to local community and the federal taxpayer, these projects could also be left unbuilt, which would put the community at increased risk of flood and coastal storm damage, while also reducing beach and dune habitat available to nesting shorebirds, sea turtles and other wildlife.

This guidance expanded the scope of CBRA beyond the intent of Congress - limiting development *within* CBRA-units - to apply it to previously developed coastlines *outside* of the Coastal Barrier Resources System. Furthermore, this

interpretation was based on the understanding of dredging and beach nourishment impacts to wildlife from the 1980s that has since evolved to show increasing importance and ecological productivity of restored beach habitat, and today's dredging and beach restoration efforts include numerous science-based conservation measures and best management practices that provide ecological benefits. In short, the implementation guidance was flawed from the beginning, but has only proven to be more problematic in recent years.

To be clear, changes to this guidance will not impact any environmental regulation or allow for dredging activity in any location where it not currently allowed. All environmental laws, protections and procedures must still be followed and areas that were off-limits to dredging will still be off-limits. This includes restrictions on beach sand-mining, dredging and restoration in endangered species critical habitat, essential fish habitat and more. Changes to this guidance simply allow federal funds to be used in the most efficient way possible to help communities that have demonstrated there is federal interest in reducing flood risk and restoring coastline.

[Section 3505\(a\)\(6\)\(g\)](#) of CBRA allows for federal expenditures for *"nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."*

ASBPA looks forward to an interpretation of this section that allows for resilient natural infrastructure, such as beaches and dunes, to be eligible for federal expenditures under CBRA, while adhering more closely to the congressional intent of reducing development within CBRA units, but not impacting previously developed areas. Allowing for sand from CBRA-units to be used for non-structural flood risk reduction project in previously developed areas is entirely consistent with the three purposes of CBRA: reducing risk and loss of life, improving or protecting wildlife habitat, and saving the federal taxpayer money.

For more information, contact:

[Derek Brockbank](#), Executive Director, *American Shore and Beach Preservation Association*

[Derek.Brockbank@asbpa.org](mailto:Derek.Brockbank@asbpa.org), 202-827-4246

**ABOUT ASBPA:** Founded in 1926, the American Shore and Beach Preservation Association (ASBPA) is a 501(c)3 nonprofit that advocates for healthy coastlines by promoting the integration of science, policies and actions that maintain, protect and enhance the coasts of America. For more information on ASBPA, go to [www.asbpa.org](http://www.asbpa.org), [www.facebook.com/AmericanBeaches](https://www.facebook.com/AmericanBeaches) or [www.twitter.com/asbpa](https://www.twitter.com/asbpa).

---



---

*Copyright © 2019 ASBPA, All rights reserved.*

Thank you for joining ASBPA's Government Affairs Committee. You have indicated to a member of the committee that you are interested in participating in this committee.

**Our mailing address is:**

ASBPA

5460 Beaujolais Ln

Fort Myers, FL 33919-2704

[Add us to your address book](#)

Want to change how you receive these emails?  
You can [update your preferences](#) or [unsubscribe from this list](#).

**From:** [Wright, Dana K](#)  
**To:** [BalisLarsen, Martha](#)  
**Cc:** [Shire, Gavin G](#); [Hires, Brian K](#); [Niemi, Katie](#); [Phinney, Jonathan T](#); [Bohn, Cynthia](#); [Eisenhauer, David](#)  
**Subject:** Re: CBRA - media call  
**Date:** Wednesday, November 13, 2019 1:34:40 PM

---

Hi all,

I heard back from Chris in the field office. He confirmed our understanding of the situation in Delaware. He said you can provide his contact information:

Christopher P. Guy  
Branch Chief, Conservation Planning and Assistance  
177 Admiral Cochrane Dr  
Annapolis, MD 21401  
4410-573-4529 Office  
443-758-8628 Cell  
[chris\\_guy@fws.gov](mailto:chris_guy@fws.gov)

Let me know if you need anything else on this.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 13, 2019 at 11:40 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hello all,

We are not aware of any Delaware projects that will be affected by the new SOL interpretation on CBRA and beach nourishment projects, however we would have to refer you to the Chesapeake Bay Field Office to confirm that (Chris Guy from that office is copied). The October 2019 SOL memo affects projects where a sand borrow site is located within a System Unit of the CBRS and the beach renourishment activities occur partially or completely outside of the CBRS. I am not aware of any borrow sites in Delaware that are within a System Unit. Chris, can you please confirm that the Corps has not contacted your office seeking to mine sand from within a System Unit in Delaware?

The Corps and the Service completed a CBRA consultation for a Delaware Bay Coastal Storm Risk Management Project in 2017 (see attached FYI only, not to share). That project was found to be allowable under CBRA's exceptions. My understanding is that in that case, the sand was coming from navigation channel maintenance outside of the CBRS, not from a

borrow site in a System Unit.

It may be a good idea to also refer the reporter to the Corps to confirm that they are not seeking to mine sand from within System Units in Delaware. Chris, is there a contact at the Corps' Philadelphia District that could be provided? Is it Barb Conlin?

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 13, 2019 at 10:34 AM BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)> wrote:

Gavin, as discussed, please call Sophie Schmidt, Reporter with Delaware Public Media. Interested in change in federal spending prohibitions under CBRA, re: NY Times article, and impact on beaches, especially those in Delaware. She looked online but could not find any documentation related to the change. 302-690-1616.

Martha

**From:** [Wright, Dana K](#)  
**To:** [Guy, Chris](#)  
**Subject:** Re: CBRA - media call  
**Date:** Wednesday, November 13, 2019 1:36:22 PM

---

Thanks Chris. I gave your contact information to external affairs to pass along if needed.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 13, 2019 at 1:29 PM Guy, Chris <[chris\\_guy@fws.gov](mailto:chris_guy@fws.gov)> wrote:

I got your message I currently have no requests from the Corps regarding CBRA.

You can pass my contact along to anyone who has specific questions regarding CBRA.

The one project where we actually had CBRA issues, the Navigation dredge was grandfathered and the disposal area was determined to meet the CBRA exemption. Since that time we have not had another request from the Corps in either Delaware or Maryland.

Call me if you have any more questions.

Christopher P. Guy

Branch Chief, Conservation Planning and Assistance  
177 Admiral Cochrane Dr  
Annapolis, MD 21401  
4410-573-4529 Office  
443-758-8628 Cell  
[chris\\_guy@fws.gov](mailto:chris_guy@fws.gov)

Chesapeake Bay Field Office e-newsletter at <http://chesapeakebay.fws.gov>

On Wed, Nov 13, 2019 at 11:40 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hello all,

We are not aware of any Delaware projects that will be affected by the new SOL interpretation on CBRA and beach nourishment projects, however we would have to refer

**From:** [Niemi, Katie](#)  
**To:** [Kilheffer, Chelby R](#)  
**Subject:** Fwd: [EXTERNAL] Coastal Engineering References  
**Date:** Monday, November 18, 2019 10:51:17 AM  
**Attachments:** [Guilfoyle et al 2019 Developing BMPs Coastal Engineering USACE Tech Note.pdf](#)  
[mining\\_winter04.zip](#)

---

FYI

----- Forwarded message -----

From: **Wright, Dana** <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
Date: Fri, Nov 15, 2019 at 10:37 AM  
Subject: Fwd: [EXTERNAL] Coastal Engineering References  
To: Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Katie Niemi <[Katie\\_Niemi@fws.gov](mailto:Katie_Niemi@fws.gov)>

Katie and Cindy,

I had a good chat with Tracy this morning - she pointed me in the direction of the attached technical paper from USACE (Guilfoyle et al), which looks very promising. Please take a look

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: **Tracy Rice** <[tracymrice@yahoo.com](mailto:tracymrice@yahoo.com)>  
Date: Fri, Nov 15, 2019 at 9:59 AM  
Subject: [EXTERNAL] Coastal Engineering References  
To: Dana Wright <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>

Dana -

Attached is the Technical Note from the Corps regarding coastal engineering BMPs, which you should find useful.

While looking for those old BOEM (MMS) studies, I found in my literature files that the Journal of Coastal Research (JCR) did a special issue back in 2004 on offshore sand mining impacts that I'd forgotten about. I zipped all those papers into a folder for you

to give you some of the scientific research regarding borrow areas offshore.

I'll attach the MMS / BOEM studies to a separate email for ease of attachment size limitations.

It was great talking with you this morning, and please don't hesitate to contact me if you have any additional questions in the future -

Tracy

p.s. If you want to look up specific papers referenced in the Corps TN or any of my reports, and can't find them readily, let me know and I'll see if I have electronic copies in my files that I can send to you. I should have digital copies of just about anything I reference in a report. Anne Hecht in the Hadley regional office, and Wendy Walsh in the New Jersey FO, also have significant digital libraries of recent scientific studies related to coastal ecosystems. And Melissa Bimbi in Charleston ES and Kathy Matthews in Raleigh ES should have the latest unpublished monitoring results / studies going on in the Carolinas, where much of the best research is going on nowadays, at least the monitoring not directly tied to listed sea turtles.



# Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species

*by Michael P. Guilfoyle, Jacob F. Jung, Richard A. Fischer  
and Dena D. Dickerson*

---

**PURPOSE:** This Technical Note (TN) was developed by the U.S. Army Engineer Research and Development Center-Environmental Laboratory (ERDC-EL), to summarize known impacts on seasonal habitats used by migratory shoreline-dependent birds (primarily shorebirds and seabirds) and nesting sea turtles along the Atlantic Coast by U.S. Army Corps of Engineers (USACE) coastal engineering activities. The USACE is responsible for maintaining coastal infrastructure including ports, harbors, shoreline stabilization, and maintenance of the Intracoastal Waterway System (ICWW) along the Atlantic Coast. This infrastructure is essential to the long-term sustainability of national and economic prosperity by ensuring navigation through ports and harbors that transport goods necessary for national and international commerce. Coastal shoreline stabilization and sediment management can also provide opportunities for reductions in storm surge, flood control, residential growth, recreational activities, coastal habitat restoration, and fisheries management. Routine engineering actions by the USACE includes maintenance dredging and dredged material deposition, beach nourishment, inlet realignment and shoreline stabilization, and dike, sea wall, terminal groin and revetment construction. These actions can alter the shape, structure and function of coastal habitats, and have the potential for both positive and negative seasonal effects on shoreline-dependent organisms. The objectives of this technical note include the following: (1) introducing issues concerning coastal engineering impacts on shoreline-dependent birds and sea turtles, (2) providing suggestions on specific management approaches that can be used to minimize these impacts, and (3) developing insights for future research and monitoring that should be undertaken to ensure that management actions are having the desired effect on target populations.

**BACKGROUND:** The U.S. Atlantic coast supports more than 35 shorebird species and an additional 13 tern and skimmer species (Sibley 2016). Five species of sea turtles are known to nest on beaches along the U.S. Atlantic or Gulf Coasts. Many North American birds and sea turtles are highly dependent upon coastal, sediment-based habitats, including beaches, inlets, marshes, bays, and estuaries. Maintenance and enhancement of navigation infrastructure often requires large expenditures in equipment, and the design and implementation of engineering projects to build, maintain, or enhance existing coastal infrastructure. Harbors, ports, approach channels, and the ICWW require sufficient depths to permit navigation of large oceanic cargo vessels used for the

transport of goods to desired destinations. Subsequently, maintenance dredging moves hundreds of millions of cubic yards of sediment each year. Strategic placement of dredged material can be used to restore eroded beaches (Figure 1), restore wetland or mudflat habitats, be deposited on off-shore islands, or be deposited at sea. Such beneficial use of dredged material is an essential element in the USACE Regional Sediment Management (RSM) (<http://rsm.usace.army.mil/>) and Engineering With Nature® (EWN) (<https://ewn.el.erdc.dren.mil/>) programs. A small proportion of dredged material, mostly from urban and industrial regions, may be sufficiently contaminated to require deposition in a confined disposal facility (CDF) or other disposal mechanism to reduce environmental and human exposure.



Figure 1. Coastal engineering operations may alter seasonal habitats for shoreline-dependent birds and nesting sea turtles by disturbing habitats during critical nesting, migratory or wintering periods, altering the size and shape of available habitats, and burying or reducing benthic organisms used as prey. (Photo Credit: Walker Golder, National Audubon Society, NC Field Office).

Other engineering projects entail stabilization efforts to minimize erosional processes that endanger human residential and commercial areas. Stabilization, coastal armoring, and sediment management structures include sea walls, jetties, dykes, revetments, and terminal groins. These structures are designed to minimize damage from erosion and storm surge during hurricanes and major storms. These engineered structures can modify ocean current and wave action, and also reduce the meandering nature of estuarine, inlet, and coastal currents and may direct sediment disposition away from navigation channels. The combination of deep navigation channels and stabilization structures can erode existing coastal habitats, and reduce or eliminate formation of natural sand spits, beaches, wetlands, marshes, inlets, and islands that are used by shoreline-dependent birds and nesting sea turtles. Inlets are important seasonally for foraging shorebirds, particularly during migration, but these features are often the first areas to receive sediment

deposition as a means of shoreline stabilization, or are areas where sediments are mined for other coastal projects (Harrington 2008). Deposition of dredged material can temporarily lower site quality for invertebrate populations important in the diets of many migratory shorebirds. The growing human populations along the coast, plus sea level rise and storm intensity due to climate instability, increases the need, rate, and extent of coastal engineering and shoreline stabilization activities, and hastens the potential for large-scale degradation of coastal habitats for shoreline-dependent organisms.

Many shoreline-dependent species along the Atlantic Coast are experiencing significant population declines. While conservation efforts to protect and enhance rare or endangered sea turtles along the Atlantic Coast are having a positive impact (Mazaris et al. 2017), beach nourishment and residential growth along coastal areas continue to negatively impact nesting sea turtles (Dickerson et al. 2006). In addition, some Atlantic Coast shorebird populations have declined by 70% or more. The rapid decline of the *rufa* subspecies of Red Knot (*Calidris canutus rufa*) resulted in the listing of this species in 2014 by the U.S. Fish and Wildlife Service as threatened under the Endangered Species Act (ESA) (Figure 2). Further declines in other sensitive shorebird and seabird populations could result in the future listing of the Semipalmated Sandpiper (*Calidris pusilla*), Whimbrel (*Numenius phaeopus*), Atlantic Coast population of Least Tern (*Sternula antillarum*), and Greater Yellowlegs (*Tringa melanoleuca*), among other species. Additional coastal species that become listed for ESA protection could compromise ongoing efforts by USACE to meet mission objectives to maintain or enhance coastal structures and navigation capacity. A proactive approach to coastal engineering and sediment management along the Atlantic Coast is needed to provide and protect important habitat that will promote sustainable populations for imperiled shoreline-dependent species.



Figure 2. The *rufa* Red Knot (*Calidris canutus rufa*) was listed as threatened under the ESA in 2014. This is a migratory species dependent upon high-quality enroute stopover habitat along the Atlantic Coast (Photo Credit: Walker Golder, National Audubon Society, NC Field Office).

**INCOMPATIBLE COASTAL ENGINEERING ACTIVITIES:** To promote effective strategies for managing coastal sediments and habitats for shoreline-dependent species, it is necessary to identify the primary coastal engineering actions that may negatively impact these species. Table 1 provides a list of common coastal engineering actions that likely have the most negative impacts on these species during some time of the year, but note that coastal engineering and conservation of habitats for shoreline-dependent species are not always incompatible, and the USACE is invested to integrating these two needs (Fischer et al. 2004, 2010; Guilfoyle et al. 2006, 2007). While negative impacts on sea turtles focus on nesting habitat and nest success, impacts on birds are more complicated. First, many migratory bird species do not breed or winter along the Atlantic Coast, but do require sufficient amount and quality of stopover habitat during spring and fall migration. Long distance migration is an essential feature of the life history of many of these birds. Many of these species breed in the Arctic regions of Canada and Alaska, and spend the winter in the Caribbean, Mexico, and Central and/or South America. Migration is a period of high mortality for these birds, especially for hatch-year individuals, and population demographics and sustainability require that sufficient high quality stopover areas be available (Newton 2004; Kirby et al. 2008). Without sufficient stopover habitat, the high energetic requirements for a successful migration may not be met, leading to an increase in mortality rates and population declines. Some of these migratory species winter along the Atlantic and Gulf Coasts, and their coastal wintering habitats also can be degraded by coastal engineering activities and expanding residential areas that reduce habitat and increase human disturbance (e.g., cats, dogs, pedestrians). While assessment of habitats for breeding birds can be determined by the numbers of nesting pairs and overall nesting success (e.g., number of fledged young per nest), the assessment of wintering and migratory habitats is more difficult. Efforts to create non-breeding habitat may require some unpredictable time before birds locate and start using the habitat regularly. Also, while data on the abundance of shorebirds using migratory and wintering habitat is important, overall survival and physiological condition of birds using these habitats (Gibson et al. 2018) may provide better information on the quality of the habitat and its overall capacity to support and enhance non-breeding populations.

| <b>Engineering Action</b> | <b>Potential Impacts on Shorebirds</b>                                                                                                                                                            | <b>Impacts on Nesting Sea Turtles</b>                                                                                                                 | <b>Consequences of Impacts</b>                                                                                                                                                                                                                                             |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Beach Nourishment         | Covers existing intertidal zone prey base; degrades or reduces value of site for foraging shorebirds during all seasons. (Properly engineered beaches can enhance nesting and foraging habitats). | May reduce nesting by sea turtles if incompatible sediment sources are used, and/or if slope and beach topography are no longer suitable for nesting. | Primarily affects shorebirds by degrading foraging value of beach, impacting reproductive success and survival during non-breeding seasons; initially lowers nesting attempts and overall success for sea turtles. Nourished areas may require several seasons to recover. |

|                                                                                 |                                                                                                                                                                                                       |                                                                                                                    |                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Inlet Relocation                                                                | Moving or altering shoreline habitat may reduce size or quality of shorebird foraging habitat during all seasons.                                                                                     | May move or alter beach habitat; shifting beach location or altering shape/ structure of beach may reduce nesting. | Degrading quality of foraging habitat may negatively affect survival and reproductive success for shoreline-dependent species; lowers reproductive success of nesting sea turtles.                                             |
| Sea Wall, Riprap and other Hard Structure Constructions to Stabilize Shorelines | Immediately removes potential foraging sites for all shoreline-dependent birds; may disrupt natural deposition patterns, inhibiting formation of dunes, sand spits, inlets and other coastal habitats | May immediately alter areas previously used for nesting.                                                           | Removes potential foraging habitat for birds and nesting habitat for sea turtles; disruption of natural sediment deposition patterns may reduce or eliminate natural formation of habitats used by shoreline-dependent species |

**BEST MANAGEMENT PRACTICES FOR COASTAL ENGINEERING PROJECTS:** The USACE needs improved approaches to offset potential negative impacts of coastal engineering and shoreline stabilization actions and that will create better conditions for shoreline-dependent birds, sea turtles, and other sensitive or rare flora and fauna. Such approaches, referred to as Best Management Practices (BMPs) (Rice 2009), need to be developed, tested and verified locally, and then implemented widely to provide guidelines that will help avoid, minimize, or mitigate negative impacts, or enhance positive impacts of coastal engineering projects along the Atlantic Coast. These BMPs should then be incorporated into the USACE planning, design, and construction stages of all coastal engineering projects. Pre- and post-project monitoring will be necessary to assess whether specific BMPs are benefiting targeted species as designed. BMPs also will likely need to be developed to address coastal engineering actions impacting specific coastal habitats including beaches, inlets, nearshore and offshore sites, barrier islands, dunes, estuaries, marshes, and mudflats. In addition, BMPs will need to be cost-effective to meet USACE mission objectives for coastal engineering projects. Increased engineering costs should not be more than 10 or 15 percent of baseline project expenditures. Therefore, it should be understood that BMPs implemented during a single project, by itself, may not provide great benefits to seasonal shoreline-dependent species. It is hoped that cumulative benefits of BMPs will be observable as a variety of BMPs are adopted and implemented in project after project, year-after-year, along the entire Atlantic Coast and other coastal regions in the U.S.

**Atlantic Coast BMPs.** BMPs have been developed for coastal stabilization efforts along the Atlantic Coast (Rice 2009). These BMPs have been adopted by the U.S. Fish and Wildlife Service (USFWS) for efforts to protect breeding Piping Plovers (*Charadrius melodus*), and will likely play a role in any Biological Opinions (BiOps) that concern the management or conservation of this species. These BMPs represent a first attempt to provide avoidance, minimization, and mitigation measures for the impacts of coastal stabilization on a breeding shorebird along the Atlantic Coast, but will need to be expanded to include other shoreline-dependent species including impacts during the non-breeding seasons (Figure 3). However, these BMPs were not developed specifically for USACE coastal engineering projects, and therefore, these approaches will probably require significant modifications to be practical for most

engineering actions without compromising mission objectives along the Atlantic Coast. Moreover, these BMPs have not yet received rigorous testing and assessment. Application of BMPs developed for conditions along the Atlantic Coast may not be applicable along the Pacific or Gulf Coasts. Table 2 outlines the BMPs from Rice (2009) and how they could be applied more widely to benefit shoreline-dependent species.



Figure 3. Mixed flocks of migratory shorebirds require sufficient foraging habitats along the Atlantic Coast including beaches, inlets, bayside shores, sand spits and mudflats (Photo Credit: J. Stevan Calver).

**Table 2. Recommended BMPs to implement during coastal stabilization projects to benefit shoreline-dependent species (modified from Rice 2009).**

| Habitat Type | Proposed BMP/Action                                                                                                                                                                                                                                  | Desired Impacts for Shorebirds/Turtles                                                                                                                                                                                                          |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dunes        | Create new dunes using native vegetation; avoid use of heavy equipment.                                                                                                                                                                              | Builds natural dunes over time; reduces impact from heavy equipment; lower disturbance to seasonal birds; embryonic dunes and overwash fans may provide some habitat for seasonal coastal birds.                                                |
|              | Use sand fences in developed areas and small scale projects; intermittent placement to promote passage for sea turtles and shorebird chicks; do not leave fence material on beach.                                                                   | Reduces impact from heavy equipment; provides habitat in developed areas.                                                                                                                                                                       |
|              | Identify dune restoration goals by geomorphological survey of adjacent natural or undisturbed areas to target features for replication.                                                                                                              | Promote creation of habitat to mimic natural habitats lost or degraded.                                                                                                                                                                         |
| Beaches      | Avoid all use of hard structures (e.g., sea walls, revetments, riprap), except in highly urbanized areas.                                                                                                                                            | Avoid use to protect remaining habitats; provide opportunities for restoration.                                                                                                                                                                 |
|              | Match sediment grain sizes to life-history needs of species; avoid sediment of different grain size, composition or structure; test areas of beach and filled areas to ensure compatibility.                                                         | Promotes integrity of restored beach for nesting seabirds, shorebirds, and sea turtles; promotes re-colonization of area by native benthic organisms.                                                                                           |
|              | Replicate, as much as possible, the natural beach profile including bar and trough morphology.                                                                                                                                                       | Promotes integrity of restored beach for nesting turtles and seasonal shoreline-dependent birds.                                                                                                                                                |
|              | Beach fill should be kept at thinnest depth possible ( $\leq 30$ cm), especially in intertidal zones.                                                                                                                                                | Promotes integrity of restored beach for nesting turtles and seasonal shorebirds; promotes re-colonization of intertidal areas by native benthic species.                                                                                       |
|              | Fill should be placed in non-continuous sections ( $\leq 600$ m) of the beach in important areas for birds and turtles; subsequent renourishment can alternate sections that receive fill.                                                           | Mimics natural structure of the original beach; promotes integrity of beach for sea turtles and shorebirds; promotes re-colonization of filled areas by adjacent benthic organisms; leaves undisturbed refugia for fish and wildlife resources. |
|              | Identify sensitive or essential habitats and maintain buffers (100–200 m) around sea turtle nesting sites, nesting waterbird colonies, and foraging/roosting sites for other shoreline-dependent birds; create 10 m buffers around sensitive plants. | Protects breeding/foraging/roosting areas from disturbances; maintains habitat for birds and nesting sea turtles.                                                                                                                               |
| Nearshore    | Identify and maintain buffers ( $\leq 500$ m) around all reef, hardbottoms, submerged aquatic vegetation and habitat areas of concern.                                                                                                               | Promotes integrity of habitat for fish community, seabirds, shorebirds, and sea turtles.                                                                                                                                                        |
|              | Work to ensure sediment compatibility.                                                                                                                                                                                                               | Promotes integrity of habitat for benthic organisms important to foraging birds.                                                                                                                                                                |

|           |                                                                                                                                                                                              |                                                                                                                                                                                                                    |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           | Avoid use of heavy equipment; do not use nearshore sandbars as sand sources for beach nourishment projects.                                                                                  | Promotes integrity of habitat for wildlife; protects/lowers wave energy; reduces need for future shoreline stabilization.                                                                                          |
| Offshore  | Protect and buffer all reefs and hardbottom habitats; locate areas mined for sediment away from all sensitive habitats.                                                                      | Promotes integrity of habitat for fish and wildlife.                                                                                                                                                               |
|           | Mining efforts should not significantly alter bathymetry; use shallow/staggered digs; retain significant layer of sediment that matches original surface.                                    | Promotes integrity of habitat for fish and wildlife; retains areas as refugia and source for recolonization of benthic organisms.                                                                                  |
| Inlets    | Minimize disturbance to inlet habitats; do not dredge inlets for sediments or stabilize using hard structures.                                                                               | Promotes integrity of habitat for seasonal wildlife.                                                                                                                                                               |
|           | In existing navigation channels, dredged material can be relocated within inlet systems; minimize disturbance with infrequent large scale maintenance; use small scale impacts as practical. | Placement of sediment can downdrift to beaches during wave and tidal processes; replicates sediment processes to maintain habitats below inlet; promotes integrity of habitats for shorebirds and nesting turtles. |
|           | Prevent off-road vehicles on inlet resources.                                                                                                                                                | Promotes integrity of habitats for shorebirds and nesting sea turtles.                                                                                                                                             |
| Estuarine | Do not use sediments in estuaries as source for stabilization projects; keep all dredged material in local area.                                                                             | Protects foraging habitats for shoreline-dependent birds and protects benthic and fish communities.                                                                                                                |
|           | Do not bury marshes, benthic communities, oyster reefs, clam beds, or other valuable benthic and fish habitats.                                                                              | Protects foraging habitat for shoreline-dependent birds; protects sensitive habitats for benthic and fish communities.                                                                                             |
|           | Maintain overwash material, fans and flats.                                                                                                                                                  | Promotes integrity of habitat for seasonal wildlife; protects potential nesting habitat for turtles.                                                                                                               |
|           | Do not use hard structures along estuarine shorelines.                                                                                                                                       | Protects shoreline habitats for foraging birds and potential nesting habitat for turtles.                                                                                                                          |
|           | Finger canals and sand spits should not be dredged in estuarine and bayside habitats.                                                                                                        | Protect foraging, roosting and loafing habitat for shoreline dependent birds; protects potential nesting habitat for turtles; protects habitat for benthic and fish communities.                                   |

**Pacific Coast BMPs.** The USACE Los Angeles District led the development of BMPs for the threatened Western Snowy Plover (*Charadrius alexandrinus nivosus*) along the California Coast. These BMPs were designed to avoid and minimize impacts of maintenance dredging and deposition activities largely on non-breeding Western Snowy Plovers (Ryan and Hamilton 2009; Merkel and Associates 2017). BMPs were developed for maintenance dredging and beach nourishment operations at Oceanside Harbor, CA (Merkel and Associates 2017) and were implemented prior to project initiation and before any movement of construction equipment or creation of debris. These BMPs were developed for conditions along the Pacific Coast and may not be applicable for conditions along the Atlantic or Gulf Coasts. Key elements of the BMPs to protect Western Snowy Plovers included the following (from Merkel and Associates 2017):

1. Project site will be monitored daily for presence of plovers and other protected shorebirds. Monitors will inform when birds are in the work area; efforts will be made to avoid disturbance and work will not continue until birds are out of work area.
2. If an active nest is discovered, no work will occur in area until young have fledged and are independent from adults.
3. Vehicles and equipment will be limited to the installation, maintenance, and removal of discharge pipeline and facilities, and trips to monitor beach discharge operations.
4. During all dredged pipeline activities (including mobilization, moving, maintenance, and demobilization), biological monitors will survey area for plovers and other protected birds prior to contractor entry and remain on site during all activities.
5. Beach re-contouring during dredge pipeline use or demobilization is limited to footprint of 50 ft wide corridor. No beach combing after pipeline demobilization is permitted.
6. During activities, number of vehicle trips shall be minimized to extent possible.
7. Vehicle use on approved beach areas is limited to activities associated with dredging operations; no recreational use by the contractor is authorized.
8. The biological monitor shall contact local law enforcement if public or dogs are observed in the exclusion area.

Efforts to minimize disturbance of Western Snowy Plovers focus on reducing or eliminating the flushing of roosting or foraging birds. During dredging and deposition, few or no disturbances were noted, but birds often were disturbed by local residents, unleashed dogs, and activities of other local county employees (Ryan and Hamilton 2009). While these efforts should successfully minimize impacts on birds during dredging and nourishment operations, the USACE should work in closer collaboration with local authorities and municipalities to ensure enforcement of restrictions on public access to areas utilized by sensitive birds and other shoreline-dependent species. In addition, more research may be needed to ensure that efforts provide population sustainability for non-breeding populations comparable to non-impacted areas.

**Gulf Coast BMPs.** Specific recommendations to protect shorebirds, particularly Piping Plovers, and other shoreline-dependent species, were developed by the USFWS and included in BiOps related to efforts along the Florida Gulf Coast along the Pensacola and Panama City Beaches (USFWS 2014). These recommendations may be formulated as BMPs; however, these BMPs may not be applicable along the Pacific or Atlantic coasts. Examples of specific recommendations include the following:

1. Avoid removing wrack line material from relatively undeveloped portions of the beach.
2. Identify and protect all areas designated as Piping Plover Optimal Habitats.
3. Protection of geomorphologic processes that lead to habitat renewal, including sand placement in areas that will not impede washover areas and avoid filling ephemeral pools.
4. Prior to disposition of dredged material, qualified personnel will mark all areas to be avoided using obvious identifiers.
5. Conduct bi-monthly surveys for Piping Plovers in the inlet area including shoals, bayside flats, bayside and ocean beaches using USFWS guidelines.
6. Post-construction bird surveys shall occur twice per month and annual spatial measurements of optimal habitat is to occur six months after sand placement; surveys shall continue for no less than five years.

7. Minimize all beach driving activities for law enforcement, beach patrol and beach vendors.
8. Post and rope off designated Piping Plover roosting and foraging areas.
9. Place educational signs where appropriate.
10. Prohibit planting of vegetation in Optimal Piping Plover habitat.
11. Within 400 m of project site, install predator-proof trash receptacles.
12. Minimize occurrence of dredging in adjacent inlets unless for emergency purposes.

BMPs for shoreline-dependent species have not yet been developed for other coastal habitats, including barrier islands, estuaries, salt marshes or mud flats. Coastal engineering projects that adopt approaches to create, protect or enhance these habitats will need pre- and post-project monitoring to test and evaluate successes and failures such that these respective approaches can be modified and optimized overtime. This approach will be consistent with adaptive management policies practiced by USACE Districts. In addition, efforts within the USACE Dredging Operations Environmental Research (DOER) and EWN programs have developed natural and nature-based designs along coastal shorelines to promote coastal resilience (Bridges et al. 2015). Natural and nature-based features (<https://ewn.el.ercd.dren.mil/nmbf.html#>) seek to use coastal engineering approaches that mimic natural systems on shorelines, barrier islands, dune systems, and other coastal habitats to provide natural stabilization protection from storm surge and sea-level rise. Several of the approaches described by Bridges et al. (2015) target habitat along coastal shorelines to benefit threatened and endangered species (TES). These approaches could be formulated as BMPs to be developed for seasonal shoreline-dependent species, tested and assessed, and then made available for USACE Districts along the Atlantic, Gulf and Pacific Coasts to use during engineering project planning, design, construction, and maintenance activities. For example, while Rice (2009) strongly recommends the exclusion of hard structures along the Atlantic Coast for shoreline stabilization, particularly in inlets, natural and nature-based substitutions for hard structures may be able to provide habitat for some species (Bridges et al. 2015).

**BENEFICIAL USES OF DREDGED MATERIAL:** The USACE has a long history of utilizing dredged material to benefit coastal and riverine bird communities (Fischer et al. 2004, 2010; Guilfoyle et al. 2006, 2007). Designing and implementing projects that use dredged material for environmental benefits can enhance coastal resilience and provide opportunities to create habitats for many coastal species (U.S. Environmental Protection Agency (EPA) 2007). Dredged material (e.g., from maintenance dredging) has been used to create over 2,000 small islands along the Atlantic Coast. Many shorebirds now depend on these islands for breeding, with some islands supporting large proportions of the local, regional and global populations (Fischer et al. 2004, 2010; Guilfoyle et al. 2006, 2007). Extensive research on the seasonal use and distribution of birds nesting on these islands was conducted in the latter decades of the 20<sup>th</sup> century by the USACE Dredged Material Research Program (DMRP) (Soots and Landin 1978). Examples of islands created with dredged material that provide important habitats for many coastal bird species today, include Queen Bess Island, LA, and Gaillard Island, AL. These islands, and others, are well documented to support critical nesting habitat for many imperiled coastal birds, including Gull-billed Terns (*Gelochelidon nilotica*), Least Tern, American Oystercatcher (*Haematopus palliatus*) and Brown Pelican (*Pelecanus occidentalis*) (Soots and Landin 1978; Fischer et al. 2004, 2010; Guilfoyle et al. 2006, 2007). These islands likely provide important habitat for a wide variety of migratory and wintering birds, but data on bird communities during the non-breeding seasons generally are poor or not available. Specific

aspects of coastal islands, including sediment characteristics, size, extent, shape, and topography (Golder et al. 2008) are likely to influence the frequency of use by shoreline-dependent birds. Also, plant succession on these islands can reduce, degrade, or eliminate habitat for many breeding coastal birds. Vegetation management via herbicide or mechanical removal, or by re-application of dredged material on these islands, may serve to maintain habitat for some birds, but management actions are typically irregular or non-existent for many coastal islands. In addition, many islands are subjected to erosion from sea-level rise and riverine levee systems that reduce the flow of sediments into coastal bays and estuaries. The current status and habitat value of many of these islands for birds needs to be investigated further.

Beach nourishment activities by the USACE typically provide dredged material for highly eroded beaches, either in high recreational use areas, or sites in need of additional shoreline protection after storms. Beach nourishment can also be used to rebuild beaches for a variety of shoreline-dependent birds and sea turtles (Dickerson et al. 2006) (Figure 4), and BMPs can be developed and standardized for projects to benefit these species (Table 2). These BMPs should address the physical (e.g., applying appropriate sediments that closely approximate the size, topography, structure and composition of sediments of the local beach system) (Dickerson et al. 2006), spatial (size and extent of projects), and temporal considerations (e.g., avoid actions during critical nesting, migrating or wintering seasons for shorebirds and recruitment periods for infaunal benthic communities) (Rosov et al. 2016).

**RESEARCH AND MONITORING NEEDS:** More research is needed to develop and test BMPs that will be effective in supporting shoreline-dependent species throughout their annual life cycle. Specific features for creating successful nesting habitat for sea turtles are better understood (Dickerson et al. 2006) than for seasonal shorebirds, but BMPs need to be standardized and implemented widely in USACE coastal engineering projects to promote demonstrable benefits to shoreline dependent populations. The development and testing of BMPs need to begin in pre-project planning and monitoring, and continue after the engineering action has been completed. Habitat needs for many migratory and wintering shorebirds and seabirds are poorly understood; however, Piping Plovers associated with disturbance in coastal habitats, including coastal habitat modifications, have been shown to have lower survival and be in poorer physiological condition during the non-breeding season (Gibson et al. 2018). Assessing short-term benefits of BMPs to non-breeding shoreline-dependent birds will be difficult and results may be unclear initially. Migratory shorebirds often follow weather frontal systems and may bypass quality stopover areas to benefit from conditions that promote timely arrival on breeding or wintering grounds. Size, shape and position of quality stopover habitat in the landscape may also impact use by migratory shorebirds (Gillespie et al. 2017). Juvenile and hatch-year birds typically experience higher mortality than adults, but significant changes to coastal habitats may negatively impact older, more experienced birds as well. For example, the *rufa* Red Knot, which was listed as federally Threatened under ESA in 2014, is known to focus its diet on eggs of horseshoe crabs (*Limulus polyphemus*) during spring migration in the Delaware Bay and elsewhere along the Atlantic Coast. Overharvesting of horseshoe crabs has reduced migratory *rufa* Red Knot populations by over 70%, with significant mortality among adults (Niles et al. 2009). Poor stopover habitat may incur adult mortality enroute during migration, or it may lead to poor reproductive success upon arrival to the breeding grounds or lower survival upon arrival on the wintering grounds. While numerous states have enacted stricter harvest regulations for

horseshoe crabs (Niles et al., 2009), higher egg abundance and documented increases in *rufa* Red Knot migratory populations have not materialized. However, horseshoe crabs require nearly ten years to reach sexual maturity, so it could take many years before populations are restored. In the meantime, populations of *rufa* Red Knots and other migratory shorebirds that rely on this food resource remain vulnerable. While efforts to create high-quality stopover habitat may take years to be established, once the sites are adopted by shorebirds, they will likely be used regularly.



Figure 4. Beach nourishment has the potential to create suitable nesting habitat for sea turtles if the correct sediment sources is used, and if the shape, contour, and access to the beach matches the natural topography (Dickerson et al. 2006) (Photo Credit: Public Domain image, U.S. Geological Survey, <https://www.usgs.gov/media/images/loggerhead-hatchling-makes-its-way-sea>).

A key element of BMPs for shoreline-dependent birds is the protection or restoration of the intertidal benthic organisms upon which these birds feed. Following beach nourishment, several seasons may be necessary for restoration of the benthic community under some conditions (Rakocinski et al. 1996; Burlas et al. 2001; Colosio et al. 2007; Rosov et al. 2016; Wooldridge et al. 2016). Often, the impacts of beach nourishment on the benthic community is difficult to discern, since most permitting and monitoring requirements lack scientific rigor in the final reports (Peterson and Bishop 2005). However, monitoring efforts on benthic communities have documented recovery of the community in one year or less when proper sediment is used and when timing of the nourishment operation does not conflict with peak larval recruitment or natural seasonal infaunal declines (Rosov et al. 2016; Wooldridge et al. 2016). Moreover, monitoring of bird communities has shown that if coastal engineering projects can create a diverse mix of breeding, foraging, and loafing habitat, particularly moist substrate habitats in bay-side intertidal areas with ephemeral pools, moist overwash zones, and mudflats, then long-term negative impacts may be minimized (Guilfoyle et al. 2006, 2007).

Coastal engineering impacts on birds will need to be assessed by a before-after control-impact (BACI) design where pre- and post-project monitoring of species richness and abundance metrics are undertaken. The goals of implementing BMPs should be to reduce the difference in these metrics between impacted and control sites. Quantifying foraging behavior, including number of prey consumed per unit time (Van Gils et al. 2006), may also convey information on the success of BMPs to successfully create high quality foraging habitat. Assessing physiological condition and application of an Integrated Population Modeling (IPM) approach can provide information on shorebird survival during the non-breeding season (Gibson et al. 2018). These efforts should focus on documenting the success of BMP implementation to create and enhance coastal habitats for breeding and nonbreeding shoreline-dependent birds and nesting sea turtles. Successful monitoring efforts can also act to promote adaptive management responses to alter BMPs as necessary to meet goals to improve conditions for target populations.

**ESA SECTION 7(a)(1) CONSERVATION PLANNING:** The USACE is working on new approaches to address the conservation and recovery of Federally listed species that impact mission areas. The ERDC-EL Threatened and Endangered Species Team (TEST) is investigating the use of Endangered Species Act Section 7(a)(1) conservation planning (Hartfield et al. 2017; Li 2017) as a viable means to reduce long-term expenditures, and reduce mission impacts from management actions taken for TES. The USACE has recently advocated a commitment to the Section 7(a)(1) conservation planning approach that calls for a proactive management of species listed under the ESA (Hartfield et al. 2017), while also managing lands and implementing projects so as to minimize the probability that other rare or sensitive species will become listed. Increased costs already associated with species such as the interior population of Least Terns, coastal Piping Plovers, and the recently listed *rufa* Red Knot, and confusion on how to manage future potential listings, has created a strong need for the USACE to determine how and when to implement the Section 7(a)(1) process, and proactive management of coastal resources for imperiled shoreline-dependent species provides one such opportunity. Moreover, the Section 7(a)(1) process requires a multi-agency collaboration that works hand-in-hand with other stakeholders. The Atlantic Flyway Shorebird Initiative (AFSI) is a collaborative organization of international and national government agencies, universities, and non-government organizations dedicated to the conservation of breeding, migratory and wintering shorebirds along the Atlantic Flyway. This effort is hemispheric in scope, addressing shorebird conservation issues on arctic breeding grounds, migratory habitat along the Atlantic Coast, and wintering habitats in Central and South America. By working proactively with AFSI, the USACE can address concerns of stakeholders involved with shorebird conservation. Numerous projects along the Atlantic Coast, funded by the National Fish and Wildlife Foundation (NFWF) for AFSI, provide opportunities for data sharing, project development, and long-term monitoring to assess success, as demonstrated by the effort to improve population metrics for the America Oystercatcher (Ens et al. 2017). The AFSI already provides organizational and collaborative engagements to meet the needs of critical stakeholders. In addition, because the AFSI works at the international and hemispheric scales, this ensures the USACE will not solely bear the burden of creating and assessing habitats for shoreline dependent species along the Atlantic Coast.

**DISCUSSION:** The USACE needs to find new approaches for conducting coastal engineering operations along the Atlantic Coast. Many TES and other rare or sensitive species are dependent on benthic and intertidal features of the coastal sediments that provide critical breeding, foraging,

roosting and loafing habitats during the breeding, winter, and migratory seasons. Coastal habitats used by these species may be degraded by USACE coastal engineering operations that are essential for the creation, enhancement and maintenance of our coastal infrastructure. This TN introduces the issues concerning USACE coastal engineering operations and potential BMPs that could be developed or refined to avoid, minimize or mitigate the impacts of engineering for shoreline-dependent species. Moreover, efforts to create or enhance habitats for TES and other rare or sensitive species could be included in a ESA Section 7(A)(1) conservation consultation process with the USFWS. Working proactively with the USFWS and other stakeholders, including the AFSI, could provide more flexibility to meet mission objectives along the Atlantic Coast, lower long-term costs associated with management of TES, while acting to provide demonstrable benefits to target populations. Working proactively with other agencies can assist with pre- and post-project monitoring that will be necessary to test and assess effectiveness of BMPs for coastal engineering projects. Another benefit would be to lower probability that other rare or sensitive species may become listed under ESA.

Much more work is needed to effectively manage coastal habitats for shoreline-dependent species during USACE coastal engineering projects along the Atlantic Coast. First, existing BMPs will have to be modified to be cost-effective for USACE engineering operations and new BMPs may be needed to address specific coastal habitats or mission conditions along the Atlantic, Pacific, or Gulf Coasts. The pre- and post-project impacts of BMPs will need to be assessed to document benefits for TES and other rare and sensitive species. Second, consultation with the USFWS will be needed to determine credit under the ESA Section 7(A)(1) process and to establish future agreements that may lead to reduced restrictions from environmental windows, or other incentive-based options, in exchange for efforts that provide demonstrable benefits to target populations. Third, effective BMPs will need to be identified, clearly described in proper context of USACE mission objectives, and included in coastal engineering manuals or other documents. This information will need to be distributed to various USACE District offices along the Atlantic, Pacific and Gulf Coasts as needed. The approach outlined in this TN provides the best option to restore and protect our nation's imperiled shorebird and sea turtle populations, and other shoreline-dependent species, along the Atlantic Coast.

**SUMMARY:** The USACE is mandated to create, maintain, and enhance our coastal infrastructure, including ports and harbors, and the ICWW. To meet this mission goal, the USACE designs, plans, and implements coastal engineering projects along the Atlantic Coast. However, these actions can alter and degrade habitats for TES, and other sensitive or rare shoreline-dependent species that utilize coastal habitats. Engineering actions likely to negatively impact these species are introduced (e.g., dredged material deposition, shoreline stabilization), along with a series of proposed BMPs to mitigate, enhance, or create habitat for imperiled shoreline-dependent species such as shorebirds, seabirds, and sea turtles. Research and long-term monitoring are needed to test effectiveness of BMPs to provide quality seasonal habitats that serve to benefit and support sustaining populations. Integrating these approaches in concert with proactive actions under the ESA Section 7(a)(1) conservation planning process with the USFWS provides an opportunity for the USACE to meet mission goals and increase flexibility during coastal engineering operations, while providing demonstrable benefits to listed species and reducing the probability that other species will become listed.

**ACKNOWLEDGEMENTS:** Funding was provided by the Ecosystem Management and Restoration Research Program (EMRRP). The Technical Director for the EMRRP Program is Dr. Trudy Estes. Technical reviews were provided by Dr. Burton Suedel, and Ms. Denise Lindsay, both of ERDC/EL, and Dr. Tim Welp of ERDC/CHL.

**POINTS OF CONTACT:** For additional information, contact Dr. Michael P. Guilfoyle (601-634-3432; [Michael.P.Guilfoyle@usace.army.mil](mailto:Michael.P.Guilfoyle@usace.army.mil)), Dr. Richard A. Fischer (502-641-7824; [Richard.A.Fischer@usace.army.mil](mailto:Richard.A.Fischer@usace.army.mil)), or the Program Manager of the Ecosystem Management and Restoration Research Program (EMRRP), Dr. Trudy Estes (601-634-2125; [Trudy.J.Estes@usace.army.mil](mailto:Trudy.J.Estes@usace.army.mil)).

This technical note should be cited as follows:

Guilfoyle, M. P., J. F. Jung, R. A. Fischer, and D. D. Dickerson. 2019. *Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species*. EMRRP Technical Notes Collection. ERDC/TN EMRRP-SI-38. Vicksburg, MS: U.S. Army Engineer Research and Development Center. <http://el.erdcd.usace.army.mil/emrrp/tehran.html>

## REFERENCES

- Bridges, T. S. P. W. Wagner, K. A. Burkes-Copes, M. E. Bates, Z. A. Collier, C. J. Fischenich, J. Z. Gailani, L. D. Leuck, C. D. Piercy, J. D. Rosati, E. J. Russo, D. J. Shafer, B. C. Suedel, E. A. Vuxton, and T. V. Wamsley. 2015. *Use of Natural and Nature-Based Features (NNBF) for Coastal Resilience*. ERDC/EL-SR-15-1. Vicksburg, MS: U.S. Army Engineer Research and Development Center. <https://dost.el.erdcd.dren.mil/elpubs/pdf/sr-15-1.pdf>.
- Burlas, M., G. L. Ray, and D. G. Clarke. 2001. *The New York District's biological monitoring program for the Atlantic coast of New Jersey, Ashbury Park to Manasquan Section beach erosion control project*. Final Report, prepared by U.S. Army Engineer Research and Development Center for U.S. Army Engineer District, New York.
- Collins, J. T., R. Powell, and R. Conant. 1998. *Peterson Field Guide to Reptiles and Amphibians of Eastern and Central North America*. New York, NY: Houghton Mifflin Company.
- Colosio, F., M. Abbiati, and L. Airoidi. 2007. Effects of beach nourishment on sediments and benthic assemblages. *Marine Pollution Bulletin* 54(8):1197–1206. <https://doi.org/10.1016/j.marpolbul.2007.04.007>.
- Dickerson, D. D., J. Smith, M. Wolters, C. Theriot, K. J. Reine, and J. Dolan. 2006. A review of beach nourishment impacts on marine turtles. *Shore and Beach* 75(1):1–8.
- Ens, B. J., and L. G. Underhill. 2014. Synthesis of oystercatcher conservation assessments: General lessons and recommendations. *International Wader Studies* 20:5–22.
- Fischer, R. A., M. P. Guilfoyle, C. A. Lott, and D. N. Pashley. 2004. Application of dredged material disposal for enhancement of bird habitat: Past and current efforts by the U.S. Army Corps of Engineers. Pages 95–103 In C. A. Fleming, ed., 3<sup>rd</sup> Missouri River and North American Piping Plover and Least Tern Symposium, Sioux City: NE.
- Fischer, R. A., M. P. Guilfoyle, C. Lott, and A. Hannes. 2010. Engineering along coastlines and interior rivers – how is the U.S. Army Corps of Engineers integrating bird conservation with dredging/beach nourishment activities in North America? Beijing, China: 19<sup>th</sup> World Dredging Congress. 1122–1135.

- Gibson, D., M. K. Chaplin, K. L. Hunt, M. J. Friedrich, C. E. Weithman, L. M. Addison, V. Cavaliere, S. Coleman, F. J. Cuthbert, J. D. Fraser, W. Golder, D. Hoffman, S. M. Karpanty, A. Van Zoeren, and D. H. Catlin. 2018. Impacts of anthropogenic disturbance on non-breeding body condition, survival, and population growth of a shorebird. *Condor* 120(3):566–580. <https://doi.org/10.1650/CONDOR-17-148.1>.
- Gillespie, C. R., and J. J. Fontaine. 2017. Shorebird stopover habitat decisions in a changing landscape. *Journal of Wildlife Management* 81(6):1051–1062. <https://doi.org/10.1002/jwmg.21271>.
- Golder, W., D. Allen, S. Cameron, and T. Wilder. 2008. *Dredged Material as a Tool for Management of Tern and Skimmer Nesting Habitat*. DOER Technical Notes Collection ERDC TN-DOER-E24. Vicksburg, MS. U.S. Army Engineer Research and Development Center. <https://erdc-library.erdcdren.mil/xmlui/handle/11681/8757>.
- Guilfoyle, M. P., R. A. Fischer, D. N. Pashley, and C. A. Lott. 2006. *Summary of First Regional Workshop on Dredging, Beach Nourishment, and Birds on the South Atlantic Coast*. DOER Technical Report ERDC/EL TR-06-10. Vicksburg, MS. U.S. Army Engineer Research and Development Center. <https://el.erdcdren.mil/elpubs/pdf/trel06-10.pdf>.
- Guilfoyle, M. P., R. A. Fischer, D. N. Pashley, and C. A. Lott. 2007. *Summary of Second Regional Workshop on Dredging, Beach Nourishment, and Birds on the South Atlantic Coast*. DOER Technical Report ERDC/EL TR-07-26. Vicksburg, MS. U.S. Army Engineer Research and Development Center. <https://el.erdcdren.mil/elpubs/pdf/trel07-26.pdf>.
- Harrington, B. R. 2008. *Coastal Inlets as Strategic Habitat for Shorebirds in the Southeastern United States*. DOER Technical Notes Collection ERDC TN-DOER-E25, Vicksburg, MS. U.S. Army Engineer Research and Development Center. <https://erdc-library.erdcdren.mil/xmlui/handle/11681/8756>.
- Hartfield, P., J. G. Brown, and R. A. Fischer. 2017. *The Role of Interagency Cooperation in the Conservation of Threatened and Endangered Species*. DOER technical Notes Collection. ERDC TN-DOER-40. Vicksburg, MS. U.S. Army Engineer Research and Development Center. [https://doer.el.erdcdren.mil/notes\\_reports.html](https://doer.el.erdcdren.mil/notes_reports.html).
- Kirby, J. S., A. J. Statterfield, S. H. M. Butchart, M. I. Evans, R. F. A. Grimmett, V. R. Jones, J. O’Sullivan, G. M. Tucker, and I. Newton. 2008. Key conservation issues for migratory land- and waterbird species on the world’s major flyways. *Bird Conservation International* 18:S49–S73. <https://doi.org/10.1017/S0959270908000439>.
- Li, Y-W. 2017. Invigorating a neglected tool for endangered species recover. American Bar Association: Section of Environment, Energy, and Resources. *American Bar Association Section of Environment, Energy, and Resources: Endangered Species Committee Newsletter* 16(1):6–9.
- Mazaris, A. D., G. Schofield, C. Gkazinou, V. Almpnidou, and G. C. Hays. 2017. Global sea turtle conservation successes. *Science Advances* 3 2017(3):e1600730.
- Merkel and Associates, Inc. 2017. Final Oceanside Harbor (2017) maintenance dredging, San Diego County, CA: Western Snowy Plover monitoring and avoidance plan. Prepared for Manson Construction, Long Beach, CA.
- Newton, I. 2004. Population limitation in migrants. *British Ornithologists’ Union, Ibis* 146:197–226.
- Niles, L. J., J. J. Bart, H. P. Sitters, A. D. Dey, K. E. Clark, P. W. Atkinson, A. J. Baker, K. A. Bennett, K. S. Kalasz, N. A. Clark, J. Clark, S. Gillings, A. S. Gates, P. M. Gonzalez, D. E. Hernandez, C. D. T. Minton, R. L. G. Morrison, R. R. Port, R. K. Ross, and C. R. Veitch. 2009. Effects of horseshoe crab harvest in Delaware Bay on Red Knots: Are harvest restrictions working? *Bioscience* 59(2):153–164. <https://doi.org/10.1525/bio.2009.59.2.8>.
- Peterson, C. H., and M. J. Bishop. 2005. Assessing the environmental impacts of beach nourishment. *Bioscience* 55(10):887–896. [https://doi.org/10.1641/0006-3568\(2005\)055\[0887:ATEIOB\]2.0.CO;2](https://doi.org/10.1641/0006-3568(2005)055[0887:ATEIOB]2.0.CO;2).
- Rakocinski, C., R. Heard, S. LeCroy, J. McLelland, and T. Simmons. 1996. Responses by microbenthic assemblages to extensive beach restoration at Perdido Key, FL, USA. *Journal of Coastal Research* 12(1):326–353. <https://www.jstor.org/stable/4298484>
- Rice, T. M. 2009. Best management practices for shoreline stabilization to avoid and minimize adverse environmental impacts. Prepared for the U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office by Terwilliger Consulting, Inc., Locustville, VA.

- Rosov, B., S. Bush, T. R. Briggs, and N. Elko. 2016. The state of understanding the impacts of beach nourishment activities on infaunal communities. *Shore and Beach* 84(3):51–55.
- Ryan, T., and R. Hamilton. 2009. Surfside beach sand replenishment project Western Snowy Plover Monitoring. Final Report. Prepared for Manson Construction, San Pedro, CA.
- Sibley, D. S. 2016. *The Sibley Field Guide to Birds of Eastern North America: Second Edition*. New York, NY: Alfred A. Knopf, Inc.
- Soots, R. F., Jr., and M. C. Landin. 1978. *Development and Management of Avian Habitat on Dredged Material Islands*. DMRP Technical Report DS-78-18. Vicksburg, MS: U.S. Army Engineer Research and Development Center.
- U.S. Environmental Protection Agency (EPA). 2007. Identifying, planning, and financing beneficial use projects using dredged material: Beneficial use planning manual. Washington, DC: U.S. Environmental Protection Agency. [https://www.epa.gov/sites/production/files/2015-08/documents/identifying\\_planning\\_and\\_financing\\_beneficial\\_use\\_projects.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/identifying_planning_and_financing_beneficial_use_projects.pdf).
- U.S. Fish and Wildlife Service (USFWS). 2014. Conservation Measures to Protect Shorebirds and Piping Plovers on Panama City and Pensacola Beach, FL. Washington, DC: U.S. Fish and Wildlife Service.
- Van Gils, J. A., B. Spaans, A. Dekinga, and T. Piersma. 2006. Foraging in a tidally structured environment by red knots (*Calidris canutus*): ideal but not free. *Ecology* 87:1189–1202. [https://doi.org/10.1890/0012-9658\(2006\)87\[1189:FIATSE\]2.0.CO;2](https://doi.org/10.1890/0012-9658(2006)87[1189:FIATSE]2.0.CO;2).
- Wooldridge, T. H., H. J. Henter, and J. R. Kohn. 2016. Effects of beach replenishment on intertidal invertebrates: a 15-month, eight beach study. *Estuarine Coastal and Shelf Science* 175:24–33. <https://doi.org/10.1016/j.ecss.2016.03.018>.

you to the Chesapeake Bay Field Office to confirm that (Chris Guy from that office is copied). The October 2019 SOL memo affects projects where a sand borrow site is located within a System Unit of the CBRS and the beach renourishment activities occur partially or completely outside of the CBRS. I am not aware of any borrow sites in Delaware that are within a System Unit. Chris, can you please confirm that the Corps has not contacted your office seeking to mine sand from within a System Unit in Delaware?

The Corps and the Service completed a CBRA consultation for a Delaware Bay Coastal Storm Risk Management Project in 2017 (see attached FYI only, not to share). That project was found to be allowable under CBRA's exceptions. My understanding is that in that case, the sand was coming from navigation channel maintenance outside of the CBRS, not from a borrow site in a System Unit.

It may be a good idea to also refer the reporter to the Corps to confirm that they are not seeking to mine sand from within System Units in Delaware. Chris, is there a contact at the Corps' Philadelphia District that could be provided? Is it Barb Conlin?

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 13, 2019 at 10:34 AM BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)> wrote:

Gavin, as discussed, please call Sophie Schmidt, Reporter with Delaware Public Media. Interested in change in federal spending prohibitions under CBRA, re: NY Times article, and impact on beaches, especially those in Delaware. She looked online but could not find any documentation related to the change. 302-690-1616.

Martha

**From:** [Kilheffer, Chellby R](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: [EXTERNAL] Coastal Engineering References  
**Date:** Monday, November 18, 2019 11:05:30 AM

---

Thanks, Katie!

Chellby Kilheffer  
2019 Knauss Fellow, Special Assistant to the Deputy Assistant Director  
U.S. Fish and Wildlife Service, Ecological Services  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
(703) 358-2312 (office)

On Mon, Nov 18, 2019 at 10:51 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:  
FYI

----- Forwarded message -----

**From:** **Wright, Dana** <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Date:** Fri, Nov 15, 2019 at 10:37 AM  
**Subject:** Fwd: [EXTERNAL] Coastal Engineering References  
**To:** Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Katie Niemi <[Katie\\_Niemi@fws.gov](mailto:Katie_Niemi@fws.gov)>

Katie and Cindy,

I had a good chat with Tracy this morning - she pointed me in the direction of the attached technical paper from USACE (Guilfoyle et al), which looks very promising. Please take a look

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

**From:** **Tracy Rice** <[tracymrice@yahoo.com](mailto:tracymrice@yahoo.com)>  
**Date:** Fri, Nov 15, 2019 at 9:59 AM  
**Subject:** [EXTERNAL] Coastal Engineering References

To: Dana Wright <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>

Dana -

Attached is the Technical Note from the Corps regarding coastal engineering BMPs, which you should find useful.

While looking for those old BOEM (MMS) studies, I found in my literature files that the Journal of Coastal Research (JCR) did a special issue back in 2004 on offshore sand mining impacts that I'd forgotten about. I zipped all those papers into a folder for you to give you some of the scientific research regarding borrow areas offshore.

I'll attach the MMS / BOEM studies to a separate email for ease of attachment size limitations.

It was great talking with you this morning, and please don't hesitate to contact me if you have any additional questions in the future -

Tracy

p.s. If you want to look up specific papers referenced in the Corps TN or any of my reports, and can't find them readily, let me know and I'll see if I have electronic copies in my files that I can send to you. I should have digital copies of just about anything I reference in a report. Anne Hecht in the Hadley regional office, and Wendy Walsh in the New Jersey FO, also have significant digital libraries of recent scientific studies related to coastal ecosystems. And Melissa Bimbi in Charleston ES and Kathy Matthews in Raleigh ES should have the latest unpublished monitoring results / studies going on in the Carolinas, where much of the best research is going on nowadays, at least the monitoring not directly tied to listed sea turtles.

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Letter to Corps  
**Date:** Wednesday, November 20, 2019 3:26:18 PM

---

Katie,

The letter to the Corps is ready for you to look at. It's 3.5 pages plus endnotes. It still obviously needs a lot of work and guidance from leadership, but it's a starting point.

K:\CBRA\Consistency Consultations\Beach Nourishment and Dredging\20191030 SOL Memo on Sand Mining\DRAFT letter to USACE Director of Civil Works.docx

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Shaughnessy, Michelle](#)  
**To:** [Wright, Dana K](#); [Niemi, Katie](#); [Bowen, Diane](#); [Comlish, Paul D](#); [Hatch, Kristy B](#); [Zosh, Jennifer M](#); [Phinney, Jonathan T](#); [BalisLarsen, Martha](#)  
**Cc:** [Tripp, Kim](#)  
**Subject:** Branch of Coastal and Marine Resources - new branch chief  
**Date:** Thursday, November 21, 2019 1:57:15 PM

---

Folks - I wanted to give you an update on our efforts to stand up the new branch. As you recall, we were going to move toward our new organization once we found our new branch chief, which we have!! I would like to extend a BIG WELCOME BACK to the FWS to Kim Tripp, who is currently at BLM.

She will be joining us on Jan. 20 in her new role!!

Martha and I have agreed that we should leave the current structure in place until we have Kim on, but I will continue to engage in issues and hopefully be somewhat up to speed when the transition begins. I think given the recent solicitor's opinion in the CBRA program, Kim's expertise will come in handy. Both her work on coastal issues and the TE knowledge she will bring from her current position. So excited to have her join us!

Kim and I discussed her coming into the office to meet the team the week of Dec. 9th.

Thoughts on the best day to meet everyone?

--

Michelle Shaughnessy  
Chief, Division of Restoration and Recovery  
Ecological Services  
US Fish and Wildlife Service Headquarters  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

703-358-2171 (general)  
703-358-2555 (direct)  
703-801-1774 (cell)

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Wrightsville Beach  
**Date:** Thursday, November 21, 2019 2:43:14 PM

---

Katie,

I looked into whether the Wrightsville Beach project is nonstructural. It looks like it consists of just beach fill/dune and berm construction. There is an existing jetty at Masonboro Inlet.

The current authorized project consists of the following: A dune having a crown width of 25 feet at 12.5 feet North American Vertical Datum of 1988 (NAVD88), together with a beach berm, having a crown width of 50 feet at 9.5 feet NAVD88, and a construction berm, having a crown width of 205 feet at 5.0 feet NAVD88. The dune and berms extend north 13,670 feet from the Masonboro Inlet north jetty. In addition to the main fill, the project includes a 2,000-foot-long transition on the north end. The total project length (including transitions) would be 15,650 feet. The periodic renourishment interval for the project remains at four years. Dredged material for the beach fill would be obtained from Masonboro Inlet/Banks Channel as the primary borrow source in combination with an offshore source, to the extent required, through FY 2036. Continued use of the Masonboro Inlet and about half of the Banks Channel borrow source would require an exemption from the provisions of CBRA. Use of an offshore source would not require an exemption from the provisions of CBRA.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Carolina Beach  
**Date:** Thursday, November 21, 2019 2:49:32 PM

---

Carolina Beach also appears to be nonstructural, presuming that they are not doing anything to the existing rock revetment:

### 6.1 Plan Description and Components

The Recommended Plan is alternative #2 – Continuation of Federal Participation for Periodic Renourishments consistent with the currently authorized project using the inlet borrow source, for a 15 year period from 2022 to 2036. This alternative would result in an additional 15 years of Federal participation beginning at initiation of construction of the congressionally authorized renourishment. This alternative includes approximately 14,000 feet of ocean shoreline and fronts the Town of Carolina Beach. The project includes the following: Dune having a crown width of 25 feet at 12.5 feet North American Vertical Datum of 1988 (NAVD88), together with a storm berm, having a crown width of 50 feet at 9.5 feet NAVD88. The dune and berm extend about 14,000 feet along the beachfront from the northern to the southern limits of Carolina Beach. **Included with this project is a 2,050 foot long rock revetment located on the far northeast segment of the project** (from Station 116+00 to 137+.15). Historically the project renourishment extends from Station 0+00 to 120+00 with a 2,000-foot transition to station 140+00. To compensate for higher erosion rates in the northern segment, the construction berm width increases from 40 feet at station 90+00 to 100 feet at station 120+00. Material for the beach fill would be obtained from Carolina Beach Inlet and would require an exemption from CBRA for this project in the final Congressional authorization. Typical project plan views and template profiles are illustrated in Figures 6.1 and 6.2.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Hausman, Alyssa B](#)  
**To:** [Niemi, Katie](#)  
**Cc:** [Kodis, Martin](#); [BalisLarsen, Martha](#); [Wright, Dana K](#)  
**Subject:** Re: Confusion re: CBRA response to Rep. Pallone - 069862  
**Date:** Wednesday, December 4, 2019 2:52:07 PM  
**Importance:** High

---

Hi All,

I spoke with Marty about this issue, and we decided that it is not worth checking Taylor on this one, as the issue is resolved and we have not heard from Pallone's office asking about the status of our response.

Please let me know if you have any questions.

Thanks,  
Alyssa

Alyssa Hausman  
Congressional and Legislative Affairs Specialist  
U.S. Fish and Wildlife Service  
Office: (703) 358-2275  
Mobile: (703) 785-3402  
[alyssa\\_hausman@fws.gov](mailto:alyssa_hausman@fws.gov)

On Tue, Dec 3, 2019 at 10:12 AM Hausman, Alyssa <[alyssa\\_hausman@fws.gov](mailto:alyssa_hausman@fws.gov)> wrote:

Hi Katie,

I can check in with Taylor a little later this morning and see if he will move/reopen this.

Thanks,  
Alyssa

Alyssa Hausman  
Congressional and Legislative Affairs Specialist  
U.S. Fish and Wildlife Service  
Office: (703) 358-2275  
Mobile: (703) 785-3402  
[alyssa\\_hausman@fws.gov](mailto:alyssa_hausman@fws.gov)

On Tue, Dec 3, 2019 at 8:36 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Marty & Martha,

Please see Dana's email below concerning our draft response to a letter from Rep. Pallone which has now been closed out in DTS, though the Service has not responded to Rep. Pallone on the raised in his letter (unrelated to the sand mining issue). Please advise on how you want to handle.

Katie

----- Forwarded message -----

From: **Wright, Dana** <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
Date: Tue, Dec 3, 2019 at 6:57 AM

Subject: Re: Confusion re: CBRA response to Rep. Pallone - 069862  
To: Katie Niemi <[Katie\\_Niemi@fws.gov](mailto:Katie_Niemi@fws.gov)>

Hi Katie,

I just checked the status of our response to Rep. Pallone (069862) and found that Nikki closed it out on 12/2 with no response.

Back in November, OCL had assumed that this letter was related to the sand mining issue and uploaded a note to DTS that said "overcome by events, see Nov. 4 response on the issue." We informed Nikki that this letter was unrelated to sand mining and she routed it back to OCL for username with a note that said "This letter does not fall under the purview of the November 4th letter signed by the Secretary. These are constituent driven letters and therefore a response is required. Please review and surname." The letter then stayed assigned to OCL for several more weeks, and yesterday a note was added to the Synopsis field in DTS that says "PER OCL Playforth OBE", which I assume means "overcome by events."

Should we alert Marty? Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Wed, Nov 6, 2019 at 10:03 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Kaite,

There is a new issue with our response to Rep. Pallone - it looks like the mapping/boundary placement issue in the Sandy project has been confused with the sand mining issue. This letter had been held up for a while, but Gary talked to Margaret about it in October and got it moving through surname again. OCL just reviewed it and Taylor Playforth added a note that says "overcome by events, see Nov 4th response on the issue." The package was sent back to CCU yesterday and the routing is CCU-Hold.

Can we have someone check in with OCL/CCU to explain that this matter is unrelated to the sand mining issue? See attached for the most recent draft dated 5/15/19 and the note from OCL that was uploaded 11/5/19.

Thanks,

Dana Wright  
Program Specialist

Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Hausman, Alyssa B](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Bohn, Cynthia](#); [Niemi, Katie](#); [Peters, Kristen E](#)  
**Subject:** Re: [EXTERNAL] CRO Today  
**Date:** Thursday, December 5, 2019 2:40:13 PM  
**Importance:** High

---

Thanks Cindy and Dana. I actually just spoke with Kristen on this one. Glad we're all on the same page.

Alyssa Hausman  
Congressional and Legislative Affairs Specialist  
U.S. Fish and Wildlife Service  
Office: (703) 358-2275  
Mobile: (703) 785-3402  
[alyssa\\_hausman@fws.gov](mailto:alyssa_hausman@fws.gov)

On Thu, Dec 5, 2019 at 2:29 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Cindy,

Thanks for the update. I checked on Mason Inlet and that's Unit L08, looks like it's different from the Corps' proposed borrow site at Masonboro Inlet (on the other end of Wrightsville Beach). Looks like the contract award is local (and maybe state) funds.

Copying Alyssa in CLA re: Senator Burr as FYI. Alyssa, Region 4 hasn't yet received a CBRA consultation for the dredging/beach nourishment project(s) in question, but anticipates receiving one soon.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Thu, Dec 5, 2019 at 2:12 PM Bohn, Cynthia <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)> wrote:

They already have a contract for dredging the inlet for Wrightsville beach...

[Mason Inlet Dredging Contract Awarded](#)

PS we got a call from Senator Burr's office to check on the status of our review and to let us know the project needed to be fast tracked. c

Cynthia Bohn

Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

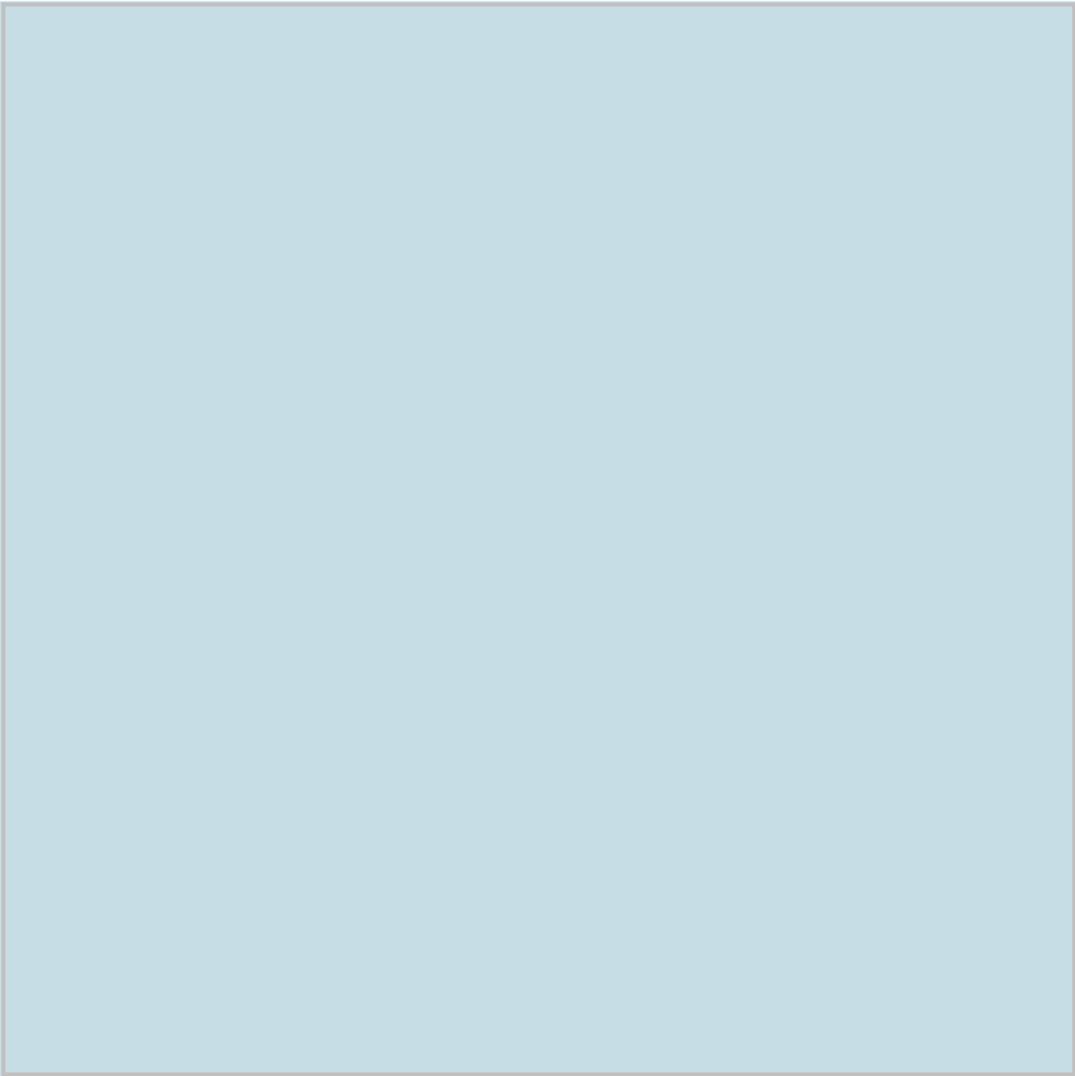
[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

From: **Coastal Review Online** <[info@nccoast.org](mailto:info@nccoast.org)>  
Date: Thu, Dec 5, 2019 at 6:01 AM  
Subject: [EXTERNAL] CRO Today  
To: <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>

[View this email in your browser](#)



Today on CRO

Moms Bring Science to Beaufort Classroom



Mothers of students at a private school in Beaufort are leading a program called Moms Do Science, which is aimed at boosting science literacy and breaking down stereotypes.

[Read in browser »](#)

## More News of the Coast

[NC 12 to Reopen to All Traffic Thursday](#)

[Roanoke Island Aquarium Goes Green](#)

[Mason Inlet Dredging Contract Awarded](#)



*Copyright © 2019 North Carolina Coastal Federation, All rights reserved.*  
You are receiving this email because you opted in via our website.

**Our mailing address is:**  
North Carolina Coastal Federation  
3609 NC 24  
Newport, Nc 28570

[Add us to your address book](#)

Want to change how you receive these emails?  
You can [update your preferences](#) or [unsubscribe from this list](#).



**From:** [Niemi Katie](#)  
**To:** [BalisLarsen Martha](#); [Phinney Jonathan T](#); [Shaughnessy Michelle](#); [Frazer Gary D](#); [Shultz Gina](#); [Wright Dana K](#); [Bohn Cynthia](#); [Schradling Eric](#); [Comlish Paul D](#); [Zosh Jennifer M](#); [Hatch Kristy B](#); [Kodis Martin](#); [Gustavson Angela](#); [Berg Elizabeth A](#); [Hausman Alyssa B](#); [Peters Kristen E](#); [Eustis Christine](#); [Simon Spencer](#); [Hires Brian K](#); [Shire Gavin G](#); [Eisenhauer David](#); [Chen Linus Y](#); [Jesup Benjamin C](#)  
**Subject:** E&E News: Greens blast Bernhardt's sand-mining decision  
**Date:** Friday, December 6, 2019 2:11:23 PM

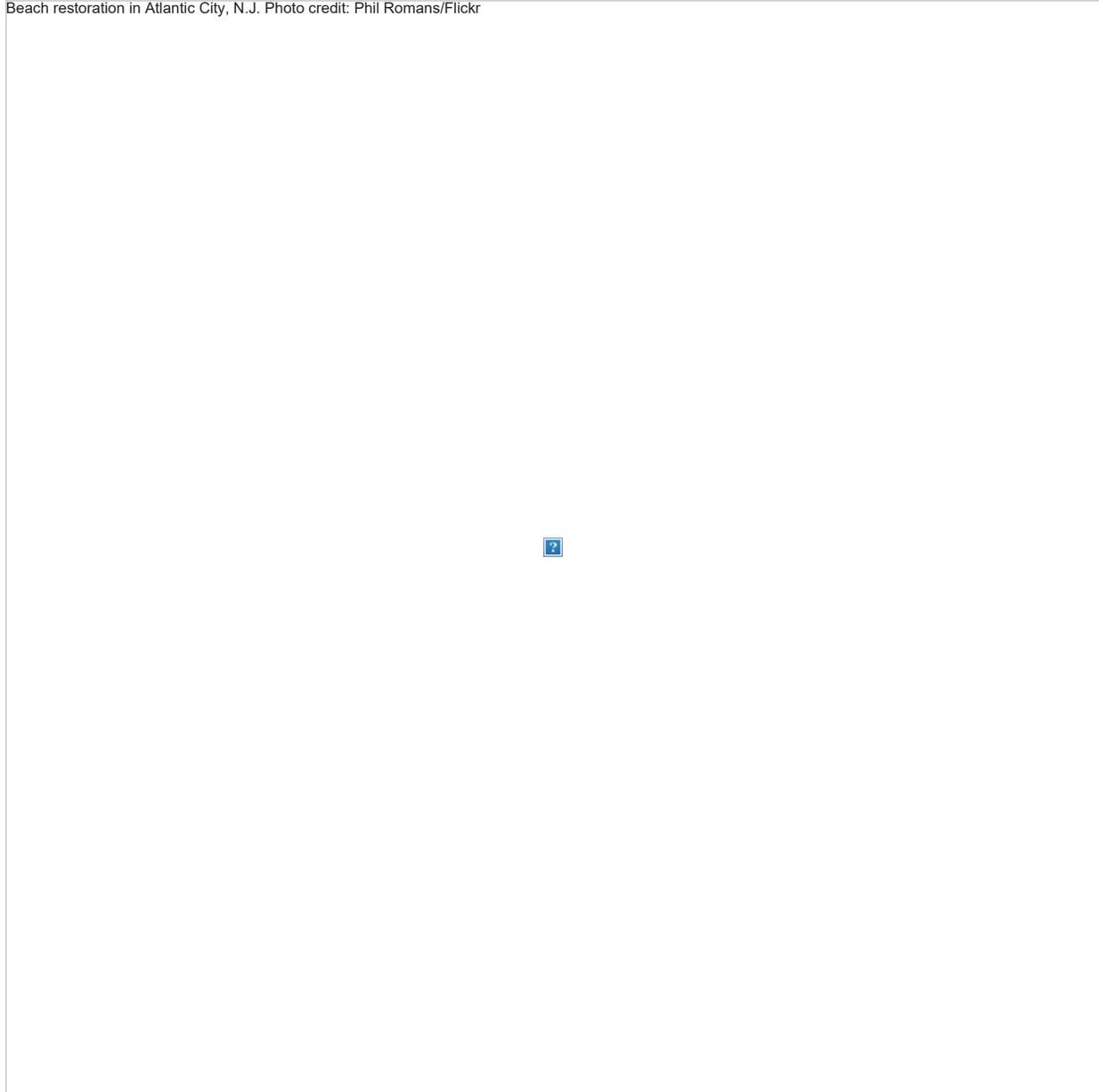
---

FYI

## Greens blast Bernhardt's sand-mining decision

[Ariel Wittenberg](#), E&E News reporter Published: Friday, December 6, 2019

Beach restoration in Atlantic City, N.J. Photo credit: Phil Romans/Flickr



Beach restoration in Atlantic City, N J. Phil Romans/Flickr

More than 30 groups concerned about conservation and coastal resilience are slamming Interior Secretary David Bernhardt's decision last month to allow federally funded sand mining in protected areas.

In letters to Bernhardt, they **wrote** that the decision to open up areas protected by the Coastal Barrier Resources Act "would harm some of the most important remaining habitat on the coasts."

Passed in 1982, CBRA designated 3.5 acres of relatively undeveloped Atlantic and Gulf coastline as protected "units" in which no federal funding or assistance can be used. That includes no federal spending on things like flood insurance, road construction or dredging, though there are no limits on state, local or privately funded activities in those areas.

But Bernhardt last month made an exception allowing federal funding to remove sand from CBRA areas for beach restoration elsewhere, a decision that was prompted by a request from Reps. Jeff Van Drew (D-N.J.), David Rouzer (R-N.C.) and Garret Graves (R-La.) ([Greenwire](#), Nov. 8).

The decision isn't sitting well with conservation groups or those concerned about coastal resilience. They noted in letters to Bernhardt yesterday that CBRA has long been heralded by both political parties as a commonsense way to simultaneously conserve coastal resources and save the federal government money.

"For decades, federal expenditures to mine sand for use outside of the System have been prohibited. This prohibition is consistent with all three purposes of the Coastal Barrier Resources Act (CBRA): to discourage coastal development that places people at risk, prevent federal expenditures that encourage development, and conserve coastal fisheries and wildlife," said one [letter](#) signed by conservation groups including the Theodore Roosevelt Conservation Partnership and Chesapeake Bay Foundation.

"Opening up System areas to federally-funded sand mining would run counter to the Act's purposes," the letter continued. "We ask that you reinstate the long-standing policy to protect the coastal environment from harmful sand mining impacts, while saving federal tax dollars and promoting public safety."

Indeed, a 2007 study found that 97% of CBRA units remained either totally undeveloped or experienced minimal development. In 2002, the Fish and Wildlife Service estimated that the program had saved more than \$1.3 billion.

Groups concerned about coastal resilience noted that local communities, states and private funding can still pay for sand mining in CBRA units.

"Allowing federal tax dollars to be spent to dredge System units to supply beach renourishment operations that themselves consume billions of dollars in no way reduces federal expenditures that support hazard-prone coastal development, which is an explicit goal of the CBRA," the Association of State Floodplain Managers, the R Street Institute and others wrote in their letter.

**From:** [Phinney, Jonathan T](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: E&E News: Greens blast Bernhardt's sand-mining decision  
**Date:** Friday, December 6, 2019 3:19:30 PM  
**Importance:** High

---

Thanks for sending it on.

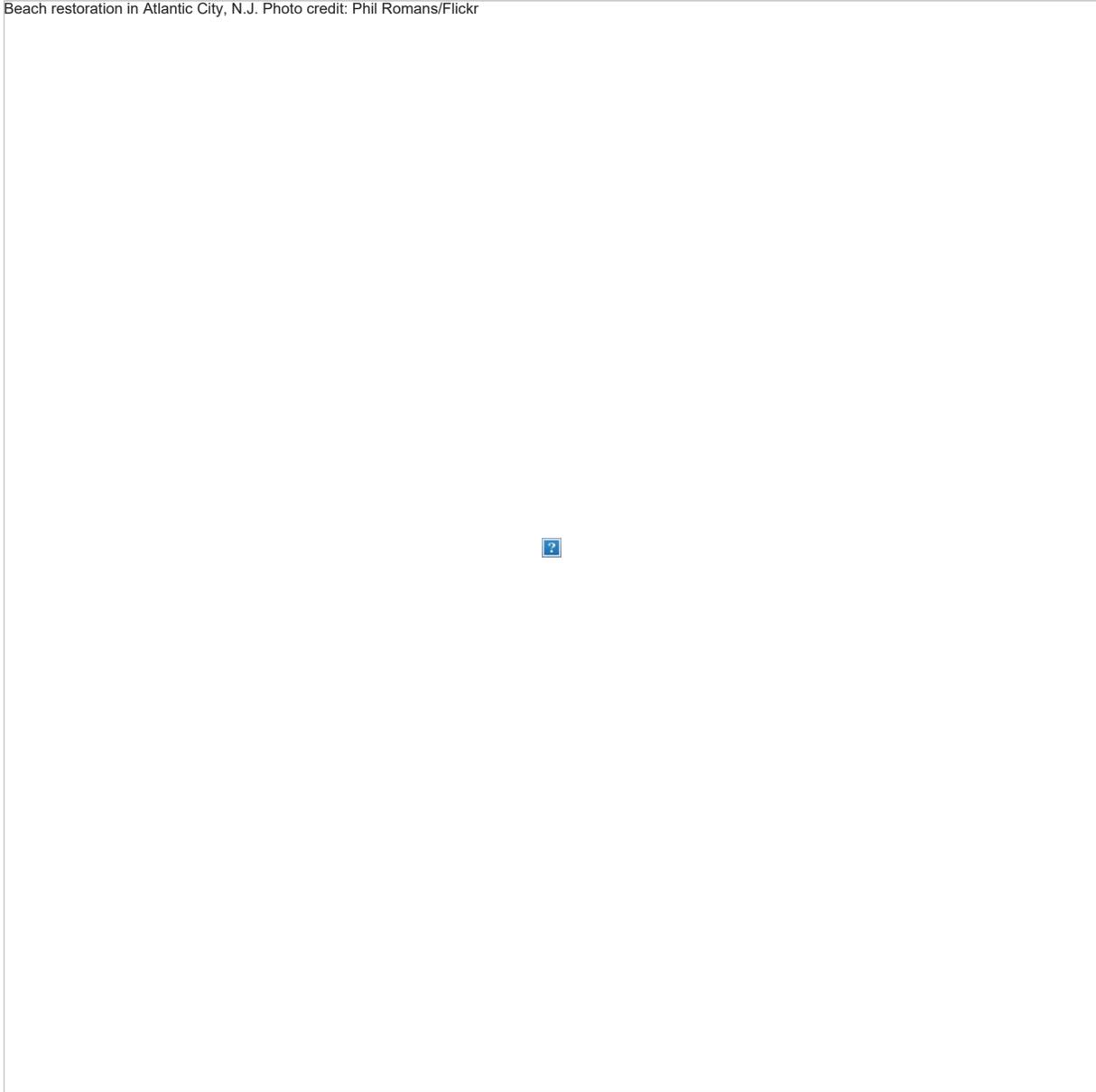
Jph

On Fri, Dec 6, 2019 at 2:11 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

FYI

## Greens blast Bernhardt's sand-mining decision

[Ariel Wittenberg](#), E&E News reporter Published: Friday, December 6, 2019  
Beach restoration in Atlantic City, N.J. Photo credit: Phil Romans/Flickr



Beach restoration in Atlantic City, N J. Phil Romans/Flickr

More than 30 groups concerned about conservation and coastal resilience are slamming Interior Secretary David Bernhardt's decision last month to allow federally funded sand mining in protected areas.

In letters to Bernhardt, they **wrote** that the decision to open up areas protected by the Coastal Barrier Resources Act "would harm some of the most important remaining habitat on the coasts."

Passed in 1982, CBRA designated 3.5 acres of relatively undeveloped Atlantic and Gulf coastline as protected "units" in which no federal funding or assistance can be used. That includes no federal spending on things like flood insurance, road construction or dredging, though there are no limits on state, local or privately funded activities in those areas.

But Bernhardt last month made an exception allowing federal funding to remove sand from CBRA areas for beach restoration elsewhere, a decision that was

prompted by a request from Reps. Jeff Van Drew (D-N.J.), David Rouzer (R-N.C.) and Garret Graves (R-La.) ([Greenwire](#), Nov. 8).

The decision isn't sitting well with conservation groups or those concerned about coastal resilience. They noted in letters to Bernhardt yesterday that CBRA has long been heralded by both political parties as a commonsense way to simultaneously conserve coastal resources and save the federal government money.

"For decades, federal expenditures to mine sand for use outside of the System have been prohibited. This prohibition is consistent with all three purposes of the Coastal Barrier Resources Act (CBRA): to discourage coastal development that places people at risk, prevent federal expenditures that encourage development, and conserve coastal fisheries and wildlife," said one [letter](#) signed by conservation groups including the Theodore Roosevelt Conservation Partnership and Chesapeake Bay Foundation.

"Opening up System areas to federally-funded sand mining would run counter to the Act's purposes," the letter continued. "We ask that you reinstate the long-standing policy to protect the coastal environment from harmful sand mining impacts, while saving federal tax dollars and promoting public safety."

Indeed, a 2007 study found that 97% of CBRA units remained either totally undeveloped or experienced minimal development. In 2002, the Fish and Wildlife Service estimated that the program had saved more than \$1.3 billion.

Groups concerned about coastal resilience noted that local communities, states and private funding can still pay for sand mining in CBRA units.

"Allowing federal tax dollars to be spent to dredge System units to supply beach renourishment operations that themselves consume billions of dollars in no way reduces federal expenditures that support hazard-prone coastal development, which is an explicit goal of the CBRA," the Association of State Floodplain Managers, the R Street Institute and others wrote in their letter.

--

Jonathan T. Phinney PhD  
Chief, Branch of Geospatial Mapping  
and Technical Services (CBRA, NWI)  
USFWS Ecological Services  
5275 Leesburg Pike Suite 2 C007  
Falls Church, VA 22041  
703-358-1832 (office)  
-1800 (fax)  
571-388-7526 (mobile)  
[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)  
<http://www.fws.gov>

**From:** [Kilheffer\\_Chellby R](#)  
**To:** [Niemi\\_Katie](#)  
**Subject:** Re: E&E News: Greens blast Bernhardt's sand-mining decision  
**Date:** Friday, December 6, 2019 5:32:23 PM  
**Importance:** High

---

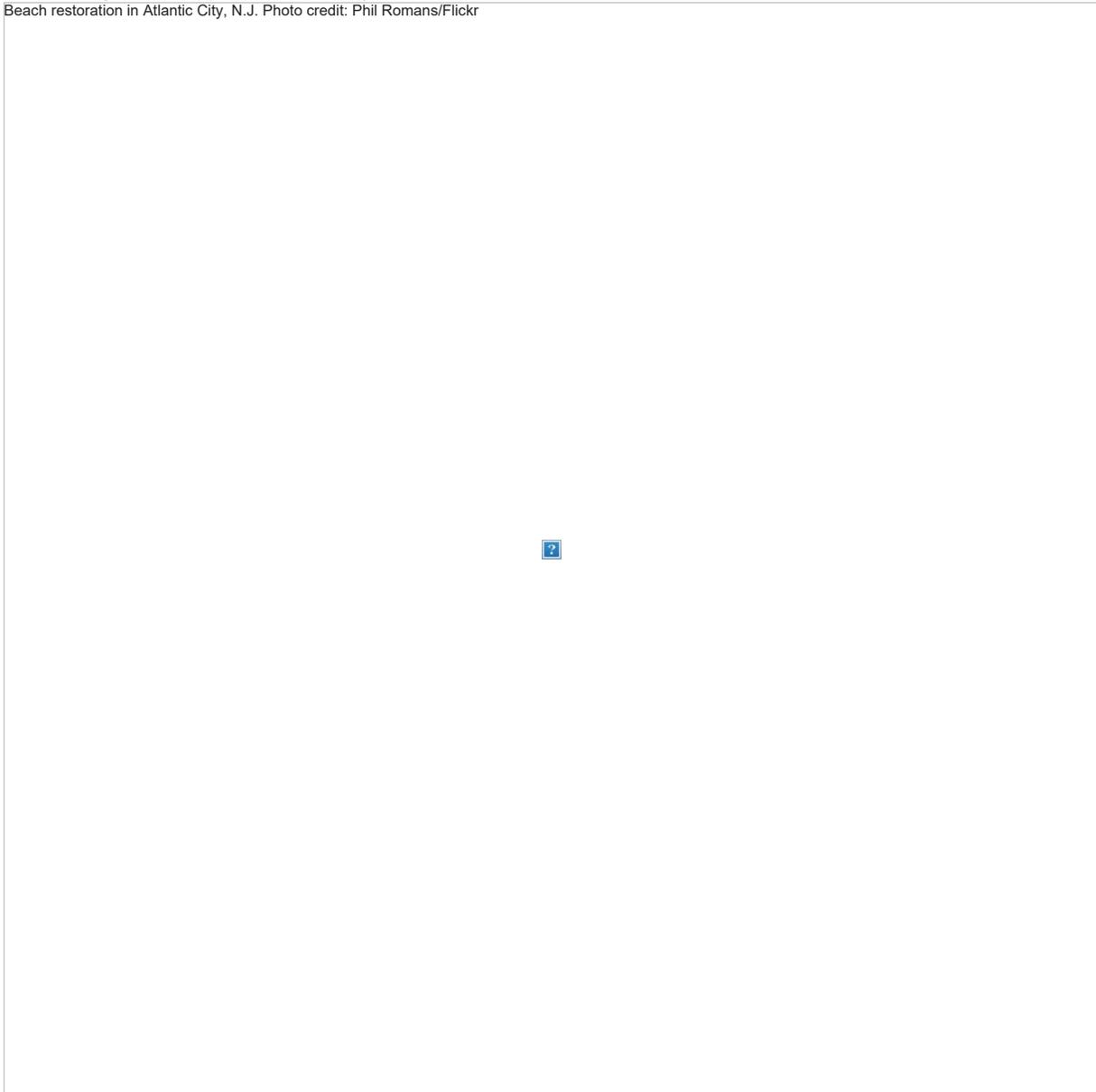
Wow, can't wait to dive in to this a bit more next week. Thank you for sending it along!

Chellby Kilheffer  
2019 Knauss Fellow, Special Assistant to the Deputy Assistant Director  
U.S. Fish and Wildlife Service, Ecological Services  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
(703) 358-2312 (office)

On Fri, Dec 6, 2019 at 3:14 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:  
FYI. Check out the hyperlinked letters as well.

## Greens blast Bernhardt's sand-mining decision

[Ariel Wittenberg](#), E&E News reporter Published: Friday, December 6, 2019  
Beach restoration in Atlantic City, N.J. Photo credit: Phil Romans/Flickr



Beach restoration in Atlantic City, N.J. Phil Romans/Flickr

More than 30 groups concerned about conservation and coastal resilience are slamming Interior Secretary David Bernhardt's decision last month to allow federally funded sand mining in protected areas.

In letters to Bernhardt, they **wrote** that the decision to open up areas protected by the Coastal Barrier Resources Act "would harm some of the most important remaining habitat on the coasts."

Passed in 1982, CBRA designated 3.5 acres of relatively undeveloped Atlantic and Gulf coastline as protected "units" in which no federal funding or assistance can be used. That includes no federal spending on things like flood insurance, road construction or dredging, though there are no limits on state, local or privately funded activities in those areas.

But Bernhardt last month made an exception allowing federal funding to remove sand from CBRA areas for beach restoration elsewhere, a decision that was prompted by a request from Reps. Jeff Van Drew (D-N.J.), David Rouzer (R-N.C.) and Garret Graves (R-La.) ([Greenwire](#), Nov. 8).

The decision isn't sitting well with conservation groups or those concerned about coastal resilience. They noted in letters to Bernhardt yesterday that CBRA has long been heralded by both political parties as a commonsense way to simultaneously conserve coastal resources and save the federal government money.

"For decades, federal expenditures to mine sand for use outside of the System have been prohibited. This prohibition is consistent with all three purposes of the Coastal Barrier Resources Act (CBRA): to discourage coastal development that places people at risk, prevent federal expenditures that encourage development, and conserve coastal fisheries and wildlife," said one **letter** signed by conservation groups including the Theodore Roosevelt Conservation Partnership and Chesapeake Bay Foundation.

"Opening up System areas to federally-funded sand mining would run counter to the Act's purposes," the letter continued. "We ask that you reinstate the long-standing policy to protect the coastal environment from harmful sand mining impacts, while saving federal tax dollars and promoting public safety."

Indeed, a 2007 study found that 97% of CBRA units remained either totally undeveloped or experienced minimal development. In 2002, the Fish and Wildlife Service estimated that the program had saved more than \$1.3 billion.

Groups concerned about coastal resilience noted that local communities, states and private funding can still pay for sand mining in CBRA units.

"Allowing federal tax dollars to be spent to dredge System units to supply beach renourishment operations that themselves consume billions of dollars in no way reduces federal expenditures that support hazard-prone coastal development, which is an explicit goal of the CBRA," the Association of State Floodplain Managers, the R Street Institute and others wrote in their letter.

**From:** [Niemi, Katie](#)  
**To:** [Wright, Dana K](#)  
**Subject:** Fwd: Briefing on Wrightville Beach and SOL CBRA opinion  
**Date:** Monday, December 9, 2019 11:49:11 AM  
**Attachments:** [RD Briefing Meeting Request Form.docx](#)

---

Meant to copy you.

----- Forwarded message -----

**From:** **Niemi, Katie** <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Date:** Mon, Dec 9, 2019 at 11:48 AM  
**Subject:** Fwd: Briefing on Wrightville Beach and SOL CBRA opinion  
**To:** Michelle Shaughnessy <[michelle\\_shaughnessy@fws.gov](mailto:michelle_shaughnessy@fws.gov)>, BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)>

Martha & Michelle,

Cindy is briefing Leo next week on the CBRA sand mining issue. Any chance we could your feedback on the draft Corps letter soon as we're anxious to get that draft to Gary and then out to the Regions/FOs for review. Interested parties (including the Corps and the Hill) are asking what our plan is to provide guidance on the new SOL memo and work with the Corps on the affected projects. Thanks!

Katie

----- Forwarded message -----

**From:** **Bohn, Cynthia** <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>  
**Date:** Mon, Dec 9, 2019 at 11:36 AM  
**Subject:** Fwd: Briefing on Wrightville Beach and SOL CBRA opinion  
**To:** Katie Niemi <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>, Dana Wright <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>

Hi ladies, I'm giving Leo a briefing next week and wondered if you all had any briefing statements or language already written for this. If so, I'd love to use it so we're all using the same message. thanks, cindy

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

From: **Valenta, Aaron** <[aaron\\_valenta@fws.gov](mailto:aaron_valenta@fws.gov)>

Date: Mon, Dec 9, 2019 at 10:45 AM

Subject: Briefing on Wrightville Beach and SOL CBRA opinion

To: Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>

Hey,

Here's the briefing request form. Please fill it out and send it back to me wehn you can.

**Thanks,**

**Aaron Valenta**

Chief, Division of Restoration and Recovery

U.S. Fish and Wildlife Service

1875 Century Boulevard

Atlanta, Georgia 30345

404/679-4144

*This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act and may be disclosed to third parties.*

## MEETING REQUEST FORM for Internal and External Meetings

*Has ARD or Acting been notified of and approved request? (All briefing/meeting requests must be approved by ARD or Acting in order to be scheduled)*

**REQUEST APPROVED BY ARD or ACTING?** *(List name of person who approved)*

**FROM:**

**Internal or External (Circle one)**

*Your name*

*Your phone number: (office, cell, and home)*

*Your email*

*Your Program/Agency/Region/Organization*

**REQUEST:**

*Name of Meeting/Call*

**PURPOSE:** *What is the purpose of this meeting? (e.g., general briefing/update, or decision needed)? Provide brief description of topic and why briefing is needed.*

**PROPOSED DATE:**

*Month, Day, Year*

**PROPOSED TIME:**

*Start Time - End Time*

**LOCATION:**

*Building Name, Address, Room Number, City, State*

**LIST OF PARTICIPANTS:** *List the names of people participating either in person or by phone.*

**POINT OF CONTACT:**

*Person who can answer questions regarding the meeting/call.*

**PRE-BRIEF NEEDED?:** *Schedule pre-brief at least 4-5 days before external meeting/call (when briefing DOI, Director, or external partners), if possible.*

**DOES RD/DRD NEED TO MAKE DECISION?** *If yes, please provide recommendations/options with pros and cons for each*

**READ-AHEAD MATERIAL NEEDED?:** *Necessary if meeting/call requires a decision. Scheduled due date is at least 3 days before meeting/call.*

**From:** [Bohn, Cynthia](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Niemi, Katie](#)  
**Subject:** Re: Briefing on Wrightville Beach and SOL CBRA opinion  
**Date:** Monday, December 9, 2019 1:15:09 PM

---

Thanks, I appreciate it. c

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

On Mon, Dec 9, 2019 at 11:51 AM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Cindy,

The decision memo we recently wrote for the Secretary is attached, not sure if any of the background will be helpful. I also attached an IM the Raleigh office prepared back in 2017 (not sure if it has any useful info on the Wrightsville Beach project) and my meeting notes from our April 2019 call with the Wilmington District. Katie is checking with our bosses about the status of the draft Corps letter (they are still reviewing).

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Mon, Dec 9, 2019 at 11:36 AM Bohn, Cynthia <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)> wrote:

Hi ladies, I'm giving Leo a briefing next week and wondered if you all had any briefing statements or language already written for this. If so, I'd love to use it so we're all using the same message. thanks, cindy

Cynthia Bohn  
Regional Coastal Program Coordinator  
Coastal Barrier Resources Act Regional Coordinator  
USFWS  
1875 Century Blvd, Room 200  
Atlanta, GA 30345  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

----- Forwarded message -----

From: **Valenta, Aaron** <[aaron\\_valenta@fws.gov](mailto:aaron_valenta@fws.gov)>  
Date: Mon, Dec 9, 2019 at 10:45 AM  
Subject: Briefing on Wrightville Beach and SOL CBRA opinion  
To: Cynthia Bohn <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>

Hey,

Here's the briefing request form. Please fill it out and send it back to me wehn you can.

**Thanks,**

**Aaron Valenta**  
Chief, Division of Restoration and Recovery  
U.S. Fish and Wildlife Service  
1875 Century Boulevard  
Atlanta, Georgia 30345  
404/679-4144

*This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act and may be disclosed to third parties.*

**From:** [Parker, Alison L](#)  
**To:** [Wellman, Lois A](#)  
**Cc:** [Niemi, Katie](#); [Wright, Dana K](#)  
**Subject:** Re: Hard copy package for DCN 071591  
**Date:** Tuesday, December 10, 2019 2:41:21 PM  
**Importance:** High

---

Hi Lois,

I'll take care of it.

Thanks,  
Alison

On Tue, Dec 10, 2019 at 2:35 PM Wellman, Lois <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)> wrote:

Alison,

If you have time today, would you put this pkg together. If not, Rob can do it tomorrow when he returns. Just let me know.

Thanks,

Lois

----- Forwarded message -----

**From:** **Wright, Dana** <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Date:** Tue, Dec 10, 2019 at 2:11 PM  
**Subject:** Hard copy package for DCN 071591  
**To:** Wellman, Lois <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Katie Niemi <[Katie\\_Niemi@fws.gov](mailto:Katie_Niemi@fws.gov)>

Hi Lois,

Can you please have someone make a hard copy package for DCN 071591? Files are attached. The hard copy needs to go to Michelle Shaughnessey for surname.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

--

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

**From:** [Niemi, Katie](#)  
**To:** [Wright, Dana K](#)  
**Subject:** Re: DTS Assignment--CBRA and Corps Sanding Mining/Shoreline Stabilization Projects  
**Date:** Tuesday, December 10, 2019 3:03:32 PM

---

Dana,  
I surnamed in DTS. Can you check in with Alison tomorrow and see if she can get Michelle the hard copy package. Thanks.

Katie

On Tue, Dec 10, 2019 at 2:12 PM Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:  
The letter is ready for surname.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

----- Forwarded message -----

From: <[DTS@fws.gov](mailto:DTS@fws.gov)>  
Date: Tue, Dec 10, 2019 at 2:04 PM  
Subject: DTS Assignment--CBRA and Corps Sanding Mining/Shoreline Stabilization Projects  
To: <[chellby\\_kilheffer@fws.gov](mailto:chellby_kilheffer@fws.gov)>, <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>, <[jennifer\\_zosh@fws.gov](mailto:jennifer_zosh@fws.gov)>, <[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)>, <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>, <[Martha\\_BalisLarsen@fws.gov](mailto:Martha_BalisLarsen@fws.gov)>, <[megan\\_lang@fws.gov](mailto:megan_lang@fws.gov)>, <[teresa\\_fish@fws.gov](mailto:teresa_fish@fws.gov)>

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:  
<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)\*\* 071591.

To move the document to the next office in the routing process, enter your surname information for your office's task and save the record.

Document Subject: CBRA and Corps Sanding Mining/Shoreline Stabilization Projects  
Synopsis: This letter provides a revised legal interpretation of the Coastal Barrier Resources

Act (CBRA) exception for ?nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system? that are also consistent with the purposes of CBRA.

Action Required: 16-Surname through DTS

Assigned By Office: AES-DBTS-BGMTS User: Dana Wright

**\*\*Thank you\*\*.**

**From:** [Parker, Alison L](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: Hard copy package for DCN 071591  
**Date:** Tuesday, December 10, 2019 3:31:42 PM

---

Great, thanks! I see you surnamed before I sent my email. I think I just needed to refresh DTS.

Thanks again!  
Alison

On Tue, Dec 10, 2019 at 3:28 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Thanks Alison. I surnamed for BGMETS. It's now open with DAES. Thanks.

Katie

On Tue, Dec 10, 2019 at 3:16 PM Parker, Alison <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)> wrote:

Hi Dana and Katie,

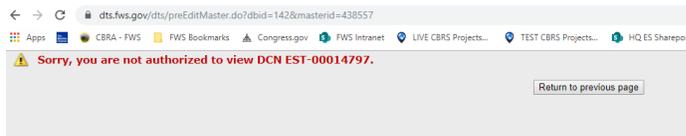
Michelle has surnamed this package and has asked me to pass along to Gina and Gary. There is routing opened to BGMETS for someone to surname in DTS. Just thought I would let you know so you can close out that routing when you get a chance.

Thanks!  
Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

**From:** [Wright, Dana K](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: E&E News: Greens blast Bernhardt's sand-mining decision  
**Date:** Thursday, December 12, 2019 8:02:47 AM  
**Attachments:** [image.png](#)  
**Importance:** High



Dana Wright  
Program Specialist  
Ecological Services  
U S Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

On Tue, Dec 10, 2019 at 9:00 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:  
I still can't find it in DTS

----- Forwarded message -----

From: **Chen, Linus** <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)>  
Date: Tue, Dec 10, 2019 at 8:55 AM  
Subject: Re: E&E News: Greens blast Bernhardt's sand-mining decision  
To: Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>

this was just sent as an FYI from DTS (full message below)

Has FWS thought about doing a response?

\*\*\*

Hello and welcome to the DTS automated email alert!

Your office (DPW Support Staff) has a task assigned.

Please log in to the Data Tracking System at the following URL  
Address: <https://dts.fws.gov/dts/preLogin.do?officeId=5538> and review Document Control Number (DCN)\*\* EST-00014797.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Concerns Regarding the Coastal Barrier Resources Act  
Action Required: 15-For Your Information  
Assigned By Office: DAD User: Jatori Harley

\*\*Thank you\*\*.

On Tue, Dec 10, 2019 at 8:53 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

I'm not finding that DCN What DTS database is it in? Maybe one I don't have access to What office is tasked in the routing to prepare the draft response?  
Thanks.  
Katie

On Tue, Dec 10, 2019 at 8:44 AM Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)> wrote:  
Document Control Number (DCN)\*\* EST-00014797

On Tue, Dec 10, 2019 at 8:18 AM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:  
Hi Linus,  
I haven't seen those letters in DTS Do you have the DCN #s?

Thanks  
Katie

On Mon, Dec 9, 2019 at 4:01 PM Chen, Linus <[linus.chen@sol.doi.gov](mailto:linus.chen@sol.doi.gov)> wrote:

Hi Katie,  
Is FWS planning on a possible response to the letters mentioned in the E&E story? We got copies of the letters through DTS  
Linus

On Fri, Dec 6, 2019 at 2:11 PM Niemi, Katie <katie\_niemi@fws.gov> wrote:

FYI

## Greens blast Bernhardt's sand-mining decision

[Ariel Wittenberg](#), E&E News reporter Published: Friday, December 6, 2019

Beach restoration in Atlantic City, N.J. Photo credit: Phil Romans/Flickr



Beach restoration in Atlantic City, N.J. Phil Romans/Flickr

More than 30 groups concerned about conservation and coastal resilience are slamming Interior Secretary David Bernhardt's decision last month to allow federally funded sand mining in protected areas.

In letters to Bernhardt, they **wrote** that the decision to open up areas protected by the Coastal Barrier Resources Act "would harm some of the most important remaining habitat on the coasts."

Passed in 1982, CBRA designated 3.5 acres of relatively undeveloped Atlantic and Gulf coastline as protected "units" in which no federal funding or assistance can be used. That includes no federal spending on things like flood insurance, road construction or dredging, though there are no limits on state, local or privately funded activities in those areas.

But Bernhardt last month made an exception allowing federal funding to remove sand from CBRA areas for beach restoration elsewhere, a decision that was prompted by a request from Reps. Jeff Van Drew (D-N.J.), David Rouzer (R-N.C.) and Garret Graves (R-La.) ([Greenwire](#), Nov. 8).

The decision isn't sitting well with conservation groups or those concerned about coastal resilience. They noted in letters to Bernhardt yesterday that CBRA has long been heralded by both political parties as a commonsense way to simultaneously conserve coastal resources and save the federal government money.

"For decades, federal expenditures to mine sand for use outside of the System have been prohibited. This prohibition is consistent with all three purposes of the Coastal Barrier Resources Act (CBRA): to discourage coastal development that places people at risk, prevent federal expenditures that encourage development, and conserve coastal fisheries and wildlife," said one [letter](#) signed by conservation groups including the Theodore Roosevelt Conservation Partnership and Chesapeake Bay Foundation.

"Opening up System areas to federally-funded sand mining would run counter to the Act's purposes," the letter continued. "We ask that you reinstate the long-standing policy to protect the coastal environment from harmful sand mining impacts, while saving federal tax dollars and promoting public safety."

Indeed, a 2007 study found that 97% of CBRA units remained either totally undeveloped or experienced minimal development. In 2002, the Fish and Wildlife Service estimated that the program had saved more than \$1.3 billion.

Groups concerned about coastal resilience noted that local communities, states and private funding can still pay for sand mining in CBRA units.

"Allowing federal tax dollars to be spent to dredge System units to supply beach renourishment operations that themselves consume billions of dollars in no way reduces federal expenditures that support hazard-prone coastal development, which is an explicit goal of the CBRA," the Association of State Floodplain Managers, the R Street Institute and others wrote in their letter.

--

Linus Y Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Linus Y Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Linus Y Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

 **Sorry, you are not authorized to view DCN EST-00014797.**

[Return to previous page](#)

**From:** [BalisLarsen, Martha](#)  
**To:** [Niemi, Katie](#)  
**Cc:** [Shaughnessy, Michelle](#); [Phinney, Jonathan T](#); [Wright, Dana K](#)  
**Subject:** Re: CBRA issues for Chiefs meeting tomorrow  
**Date:** Monday, January 6, 2020 3:37:06 PM

---

Katie, either Michelle or I will bring these items up. Thanks for raising them to our attention.

Martha

On Mon, Jan 6, 2020 at 3:08 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Michelle & Martha,

Can you please raise the following two issues with Gary at the Chiefs meeting tomorrow:

- 1) Has he had a chance to review the draft letter to the Corps on the new sand mining/beach nourishment interpretation? Following his surname, can we route the package to the regions in DTS? We'd like to share the draft with some field office folks to get their feedback. The Hill is asking for a briefing on our new interpretation.
- 2) Can we set up a call with him and Catherine Phillips this week to discuss how the Service will respond to the two new consultations from the Corps on NC storm damage reduction projects? The Corps requested a response by the end of the month.

Thanks.

Katie

----- Forwarded message -----

**From:** **Wellman, Lois** <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>

**Date:** Mon, Jan 6, 2020 at 10:50 AM

**Subject:** Re: Status of CBRA letter to the Corps (071591)

**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>

**Cc:** BalisLarsen, Martha <[martha\\_balislarsen@fws.gov](mailto:martha_balislarsen@fws.gov)>, Michelle Shaughnessy <[michelle\\_shaughnessy@fws.gov](mailto:michelle_shaughnessy@fws.gov)>, Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>

Katie,

I asked Gary about this letter, he said he would talk to SOL tomorrow - he hadn't seen any comments from them on this.

Lois

On Fri, Jan 3, 2020 at 3:13 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Hi Lois,

Can you please check with Gary on status of our draft letter to the Corps (DCN 071591). Your note in DTS says it's been in Gary's inbox since Dec. 13. The Hill is asking for a briefing with us on the CBRA sand mining/beach nourishment issue so we're anxious to get this letter reviewed/cleared.

Thanks and happy new year!

Katie

----- Forwarded message -----

From: <[DTS@fws.gov](mailto:DTS@fws.gov)>

Date: Tue, Dec 10, 2019 at 2:04 PM

Subject: DTS Assignment--CBRA and Corps Sanding Mining/Shoreline Stabilization Projects

To: <[chellby\\_kilheffer@fws.gov](mailto:chellby_kilheffer@fws.gov)>, <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>, <[jennifer\\_zosh@fws.gov](mailto:jennifer_zosh@fws.gov)>, <[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)>, <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>, <[Martha\\_BalisLarsen@fws.gov](mailto:Martha_BalisLarsen@fws.gov)>, <[megan\\_lang@fws.gov](mailto:megan_lang@fws.gov)>, <[teresa\\_fish@fws.gov](mailto:teresa_fish@fws.gov)>

Hello and welcome to the DTS automated email alert!

Your office (AES-DBTS-BGMTS) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:

<https://dts.fws.gov/dts/preLogin.do?officeId=4641> and review Document Control Number (DCN)\*\* 071591.

To move the document to the next office in the routing process, enter your surname information for your office's task and save the record.

Document Subject: CBRA and Corps Sanding Mining/Shoreline Stabilization Projects  
Synopsis: This letter provides a revised legal interpretation of the Coastal Barrier Resources Act (CBRA) exception for ?nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system? that are also consistent with the purposes of CBRA.

Action Required: 16-Surname through DTS

Assigned By Office: AES-DBTS-BGMTS User: Dana Wright

\*\*Thank you\*\*.

--

Lois Wellman

AES Special Assistant

Office of the Assistant Director for Ecological Services

U.S. Fish & Wildlife Service

1849 C St. NW

MIB 3345

Washington, DC 20240

[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)

(202)208-4646 office

(202)208-5618 fax

**From:** [Phinney, Jonathan T](#)  
**To:** [Niemi, Katie](#); [Wright, Dana K](#)  
**Subject:** CBRA highlights for Program briefing for Aurelia- needed COB (sorry)  
**Date:** Tuesday, January 7, 2020 12:49:09 PM  
**Importance:** High

---

These are bullets for a slide for the ES Briefing for Aurelia this week.

Katie and I came up with the following (in my order of importance).

OK?

### Coastal Barrier Resources System (CBRA)

- 1 Federal Register package in Director's office to update the CBRA maps in SC and FL affecting financial decisions on private property.
2. FY20 Q1 change in a solicitor's opinion to allow removal of sand from a CBRA unit and to place it on beaches outside of the system. Guidance is needed for the Army Corp and coastal towns on how to implement the revised opinion and maintain the integrity of the act..
3. Hurricane Sandy remapping project will be put into surname in FY20 that updated 42% of the CBRA units (16% of the total acreage) in affected areas from VA to NH.

--

Jonathan T. Phinney PhD  
Chief, Branch of Geospatial Mapping  
and Technical Services (CBRA, NWI)  
USFWS Ecological Services  
5275 Leesburg Pike Suite 2 C007  
Falls Church, VA 22041  
703-358-1832 (office)  
-1800 (fax)  
571-388-7526 (mobile)  
[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)  
<http://www.fws.gov>



**From:** [Tawes, Robert](#)  
**To:** [Niemi, Katie](#)  
**Subject:** Re: Press Inquiry — DOI's reversal of FWS interpretation of sand within CBRS  
**Date:** Friday, January 10, 2020 7:31:13 AM  
**Importance:** High

---

Thanks Katie - will do!

On Thu, Jan 9, 2020 at 4:51 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Hi Rob,

I got out of office response from Aaron so sharing this to make sure you're office is aware that Aurelia is doing this interview tomorrow. You may want to share with Catherine. Thanks!

Katie

----- Forwarded message -----

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>

**Date:** Thu, Jan 9, 2020 at 4:40 PM

**Subject:** Press Inquiry — DOI's reversal of FWS interpretation of sand within CBRS

**To:** Bohn, Cynthia <[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)>, Pete Benjamin <[pete\\_benjamin@fws.gov](mailto:pete_benjamin@fws.gov)>, Kathryn Matthews <[kathryn\\_matthews@fws.gov](mailto:kathryn_matthews@fws.gov)>, Aaron Valenta <[aaron\\_valenta@fws.gov](mailto:aaron_valenta@fws.gov)>

**Cc:** Brian Hires <[brian\\_hires@fws.gov](mailto:brian_hires@fws.gov)>, Wright, Dana <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>, Jonathan Phinney <[jonathan\\_phinney@fws.gov](mailto:jonathan_phinney@fws.gov)>, Michelle Shaughnessy <[michelle\\_shaughnessy@fws.gov](mailto:michelle_shaughnessy@fws.gov)>

Hi Folks,

Just wanted to make sure you're aware that Aurelia is doing an interview tomorrow with a reporter from Coastal Review Online (North Carolina-based publication) on the new interpretation of the CBRA exception for sand mining/beach nourishment. Attached are the talking points we developed with External Affairs. Please let me know if you have any questions or concerns.

Katie

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

--

Rob W. Tawes  
Chief, Division of Environmental Review  
U.S. Fish and Wildlife Service  
South Atlantic, Gulf & Mississippi Basin Regions  
1875 Century Boulevard  
Atlanta, GA 30345

(w) 404/679-7142

(f) 404/679-7081

<http://www.fws.gov/southeast/>  
[www.fws.gov](http://www.fws.gov)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

**From:** [Bohn, Cynthia](#)  
**To:** [Niemi, Katie](#)  
**Cc:** [Wright, Dana K](#)  
**Subject:** Re: Corps letter  
**Date:** Wednesday, January 22, 2020 1:50:10 PM  
**Importance:** High

---

Thanks, I'll take a look. I can get into your K drive

Cynthia Bohn  
Coastal Barrier Resources Act Specialist  
Phone: 404-679-7122  
Fax: 404-679-7081  
[cynthia\\_bohn@fws.gov](mailto:cynthia_bohn@fws.gov)

[Learn more about the Coastal Barrier Resources Act](#)

*NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.*

On Wed, Jan 22, 2020 at 1:38 PM Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)> wrote:

Hi Cindy,

Are you now able to access files on our shared CBRA server? Here's the filepath for the revised Corps letter in case you want to read through it before our 2:00 call.

CBRA\Consistency Consultations\Beach Nourishment and Dredging\20191030 SOL Memo on Sand Mining\20200117 DRAFT CBRA letter to USACE Director of Civil Works 071591.docx

Katie

**From:** [DTS@fws.gov](mailto:DTS@fws.gov)  
**To:** [Wright, Dana K](#); [Bowen, Diane](#); [Zosh, Jennifer M](#); [Niemi, Katie](#); [Tripp, Kimberly J](#)  
**Subject:** DTS Assignment--CBRA and Corps Sand Mining/Shoreline Stabilization Projects  
**Date:** Monday, January 27, 2020 3:03:19 PM

---

Hello and welcome to the DTS automated email alert!

Your office (AES-DRR-BCMR) has a task assigned.

Please log in to the Data Tracking System at the following URL Address: <https://dts.fws.gov/dts/preLogin.do?officeId=7740> and review Document Control Number (DCN)\*\* 071591.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: CBRA and Corps Sand Mining/Shoreline Stabilization Projects

Synopsis: This letter provides a revised legal interpretation of the Coastal Barrier Resources Act (CBRA) exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system" that are also consistent with the purposes of CBRA.

Action Required: 6-Revise

Assigned By Office: CCU User: Lois Wellman

\*\*Thank you\*\*.

**From:** [Wright, Dana K](#)  
**To:** [Tripp, Kimberly J](#); [Niemi, Katie](#)  
**Subject:** Re: Corps letter  
**Date:** Wednesday, February 12, 2020 9:32:15 AM

---

Thanks Kim. I've uploaded the new version to DTS. Katie will check in with you this morning about next steps for routing.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Sent:** Tuesday, February 11, 2020 4:14 PM  
**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Subject:** Re: Corps letter

Looks good. Please prepare for Michelle's surnaming.

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, February 11, 2020 3:01 PM  
**To:** Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Subject:** Re: Corps letter

Kim,

Dana and I reviewed your edits and accepted most of them. Please see 2 comments and track

changes text in the attached version. Thanks!

Katie

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, February 10, 2020 5:00 PM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: Corps letter

Hi Dana and Katie,

I reviewed the latest draft. Since Katie conveyed the interest in retaining the level of detail in this letter, I support the content. I made a few word smithing edits for your consideration. Please finalize a clean copy and send directly to Michele with a cc to me Tuesday. I'd like to tell Gary that the response is in circulation for his signature.

Thanks,  
Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Monday, February 10, 2020 1:26 PM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: Corps letter

This time with the attachment.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041

703-358-2443 (office)

703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wright, Dana K

**Sent:** Monday, February 10, 2020 1:25 PM

**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>

**Cc:** Niemi, Katie <katie\_niemi@fws.gov>

**Subject:** Corps letter

Hi Kim,

Per your request, the latest version of the Corps letter is attached. We have it saved on the network here:

K:\CBRA\Consistency Consultations\Beach Nourishment and Dredging\20191030 SOL Memo on Sand Mining

Thanks,

Dana Wright

Program Specialist

Ecological Services

U.S. Fish & Wildlife Service

5275 Leesburg Pike, MS: ES

Falls Church, VA 22041

703-358-2443 (office)

703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Niemi, Katie](#)  
**To:** [Ellis, Lisa A](#)  
**Subject:** Re: please review - CBRA Corps letter  
**Date:** Thursday, February 13, 2020 12:30:22 PM

---

Thanks Lisa!

Katie

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 12:28 PM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Surnamed!

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:51 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Hi Lisa,

Thanks for your review. If it's no concern to anyone, we'd like to leave the comment in for when it gets circulated to the regions/field, which I believe will be after Gary's review but before his signature.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service

5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:42 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Thanks - it looks good, I learned a lot!

There's still a comment in it - I assume that should that be removed before going to Gary for signature? Let me know - then I can surname.

Thanks,  
Lisa

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Thursday, February 13, 2020 9:43 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Fw: please review - CBRA Corps letter

Hi Lisa,

Would you serve as reviewer since Michelle is out till Wednesday? She has surnamed

previously. We've made minor adjustments and would like to get it back in the queue for Gary's signature.

Thanks

Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Wednesday, February 12, 2020 2:03 PM  
**To:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>  
**Cc:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** please review - CBRA Corps letter

Michelle,

Attached is the revised/shortened version of letter to the Corps concerning the updated SOL memo. Kim has reviewed and we have incorporated her changes. Can you please take a look and let me know if you have any concerns or changes. The package is currently open with Gary in DTS (DCN 071591). Following Gary's review, it will be assigned to the regions in DTS.

Thanks!

Katie

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

**From:** [Wright, Dana K](#)  
**To:** [Ellis, Lisa A](#)  
**Subject:** Re: please review - CBRA Corps letter  
**Date:** Thursday, February 13, 2020 1:24:26 PM

---

Thanks!

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 12:28 PM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Surnamed!

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:51 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Hi Lisa,

Thanks for your review. If it's no concern to anyone, we'd like to leave the comment in for when it gets circulated to the regions/field, which I believe will be after Gary's review but before his signature.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:42 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Thanks - it looks good, I learned a lot!

There's still a comment in it - I assume that should that be removed before going to Gary for signature? Let me know - then I can surname.

Thanks,  
Lisa

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Thursday, February 13, 2020 9:43 AM

**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Fw: please review - CBRA Corps letter

Hi Lisa,

Would you serve as reviewer since Michelle is out till Wednesday? She has surnamed previously. We've made minor adjustments and would like to get it back in the queue for Gary's signature.

Thanks  
Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Wednesday, February 12, 2020 2:03 PM  
**To:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>  
**Cc:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** please review - CBRA Corps letter

Michelle,  
Attached is the revised/shortened version of letter to the Corps concerning the updated SOL memo. Kim has reviewed and we have incorporated her changes. Can you please take a look and let me know if you have any concerns or changes. The package is currently open with Gary in DTS (DCN 071591). Following Gary's review, it will be assigned to the regions in DTS.

Thanks!  
Katie

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES

5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

**From:** [Tripp, Kimberly J](#)  
**To:** [Wright, Dana K](#); [Ellis, Lisa A](#)  
**Cc:** [Niemi, Katie](#)  
**Subject:** Re: please review - CBRA Corps letter  
**Date:** Friday, February 14, 2020 12:01:18 PM

---

Always a step ahead! Thank you

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Friday, February 14, 2020 10:29 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Kim,

We already have a paper copy - we have it to Rob yesterday to send over to MIB for Gary.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Friday, February 14, 2020 10:11 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>

**Subject:** Re: please review - CBRA Corps letter

thanks Lisa.

Michelle has mentioned that Gary's a bit old school and would like a paper copy circulated to him in a folder format. Is that correct? Should Katie/Dana work with Allison to prepare for Gary's review in addition to DTS?

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 12:28 PM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Surnamed!

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:51 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Hi Lisa,

Thanks for your review. If it's no concern to anyone, we'd like to leave the comment in for when it gets circulated to the regions/field, which I believe will be after Gary's review but before his signature.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Sent:** Thursday, February 13, 2020 11:42 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Re: please review - CBRA Corps letter

Thanks - it looks good, I learned a lot!

There's still a comment in it - I assume that should that be removed before going to Gary for signature? Let me know - then I can surname.

Thanks,  
Lisa

Lisa A. Ellis  
Chief, Branch of Recovery and Conservation Planning  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2307

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Thursday, February 13, 2020 9:43 AM  
**To:** Ellis, Lisa A <Lisa\_Ellis@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** Fw: please review - CBRA Corps letter

Hi Lisa,

Would you serve as reviewer since Michelle is out till Wednesday? She has surnamed previously. We've made minor adjustments and would like to get it back in the queue for Gary's signature.

Thanks  
Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
703-358-2151

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Wednesday, February 12, 2020 2:03 PM  
**To:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>  
**Cc:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>  
**Subject:** please review - CBRA Corps letter

Michelle,  
Attached is the revised/shortened version of letter to the Corps concerning the updated SOL memo. Kim has reviewed and we have incorporated her changes. Can you please take a look and let me know if you have any concerns or changes. The package is currently open with Gary in DTS (DCN 071591). Following Gary's review, it will be assigned to the regions in DTS.

Thanks!  
Katie

Katie Niemi  
Coastal Barriers Coordinator

U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

**From:** [DTS@fws.gov](mailto:DTS@fws.gov)  
**To:** [Wright, Dana K](#); [Bowen, Diane](#); [Zosh, Jennifer M](#); [Niemi, Katie](#); [Tripp, Kimberly J](#); [Hatch, Kristy B](#); [Comlish, Paul D](#)  
**Subject:** DTS Assignment--CBRA and Corps Sand Mining/Shoreline Stabilization Projects  
**Date:** Thursday, February 20, 2020 9:16:50 AM

---

Hello and welcome to the DTS automated email alert!

Your office (AES-DRR-BCMR) has a task assigned.

Please log in to the Data Tracking System at the following URL Address: <https://dts.fws.gov/dts/preLogin.do?officeId=7740> and review Document Control Number (DCN)\*\* 071591.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: CBRA and Corps Sand Mining/Shoreline Stabilization Projects

Synopsis: This letter provides a revised legal interpretation of the Coastal Barrier Resources Act (CBRA) exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system" that are also consistent with the purposes of CBRA.

Action Required: 2-Appropriate Action

Assigned By Office: AES User: Lois Wellman

\*\*Thank you\*\*.

**From:** [Wright, Dana K](#)  
**To:** [Wellman, Lois A](#)  
**Subject:** Re: Checking on status of 071591  
**Date:** Wednesday, March 4, 2020 10:16:50 AM

---

Thanks Lois!

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Wednesday, March 4, 2020 10:14 AM  
**To:** Wright, Dana K <dana\_wright@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** RE: Checking on status of 071591

I will take care of printing all the new materials and place the package in Gary's inbox.

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Wednesday, March 4, 2020 10:11 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Cc:** Niemi, Katie <katie\_niemi@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: Checking on status of 071591

Hi Lois,

We have completed SOL review/surname of the CBRA letter to the Corps (071591) and uploaded the latest version plus related emails. I routed it back to Gary for surname. Do you have the hard copy? I'm teleworking today so I'm not sure if it's on my desk. If you don't have it then please let Katie know, she's in the office today and can look for it.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service

5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Sent:** Wednesday, February 19, 2020 8:48 AM  
**To:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Subject:** Re: Checking on status of 071591

Ok, thanks.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Sent:** Wednesday, February 19, 2020 7:59 AM  
**To:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Cc:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Subject:** Re: Checking on status of 071591

I have it. I'm asking him about the solicitor's surnaming before he surnames it.

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>  
**Sent:** Wednesday, February 19, 2020 7:46 AM  
**To:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Subject:** Checking on status of 071591

Hi Lois,

I'm checking in to make sure that the hard copy of 071591 (CBRA letter to Corps Civil Works) made it to Gary's inbox. I didn't see the usual note in DTS. We had it sent over to MIB last Thursday I believe.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [Wright, Dana K](#)  
**To:** [Bohn, Cynthia](#)  
**Subject:** Fw: DTS Assignment--Comments regarding the Coastal Barrier Resources Act  
**Date:** Monday, March 9, 2020 12:45:17 PM  
**Attachments:** [Huffman Incoming 3.4.20.pdf](#)

---

FYI

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Monday, March 9, 2020 12:44 PM  
**To:** Niemi, Katie <katie\_niemi@fws.gov>; Hausman, Alyssa B <alyssa\_hausman@fws.gov>  
**Subject:** Fw: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

See attached. Katie, can you seek guidance on a response from Kim/Michelle?

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** DTS@fws.gov <DTS@fws.gov>  
**Sent:** Monday, March 9, 2020 10:02 AM  
**To:** Parker, Alison L; Wright, Dana K; Bowen, Diane; Zosh, Jennifer M; Niemi, Katie; Tripp, Kimberly J; Hatch, Kristy B; Comlish, Paul D; Barba, Robert  
**Subject:** DTS Assignment--Comments regarding the Coastal Barrier Resources Act

Hello and welcome to the DTS automated email alert!

Your office (AES-DRR-BCMR) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:

<https://dts.fws.gov/dts/preLogin.do?officeId=7740> and review Document Control Number (DCN)\*\*  
072054.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: Comments regarding the Coastal Barrier Resources Act

Synopsis: Must have Dept Clearance before signing

Action Required: 0-Prepare Draft Response

Assigned By Office: AES User: Lois Wellman

\*\*Thank you\*\*.

JARED HUFFMAN  
2ND DISTRICT, CALIFORNIA

WASHINGTON OFFICE  
1527 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
PHONE: (202) 225-5161  
FAX: (202) 225-5163  
WEBSITE: huffman.house.gov

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0502

COMMITTEE ON  
NATURAL RESOURCES  
WATER, OCEANS, AND WILDLIFE – CHAIR  
NATIONAL PARKS, FORESTS, AND PUBLIC LANDS  
ENERGY AND MINERAL RESOURCES  
COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE  
HIGHWAYS AND TRANSIT  
WATER RESOURCES AND ENVIRONMENT  
SELECT COMMITTEE ON THE  
CLIMATE CRISIS

March 4, 2020

The Honorable David Bernhardt  
Secretary  
U.S. Department of the Interior  
1849 C St. NW  
Washington, DC 20240

Dear Secretary Bernhardt,

I am writing to express my serious concern regarding your decision to overturn a long-standing interpretation of the Coastal Barrier Resources Act (CBRA)<sup>i</sup>, which will result in federal funds being used to mine sand from Coastal Barrier Resources System (System) units for use outside the System.

The decision to remove the prohibition on the use of federal funds to mine sand from System units was announced only six working days after receiving a letter<sup>ii</sup> requesting that the long-standing policy be overturned, only two weeks after meeting with stakeholders in New Jersey who were requesting the change<sup>iii</sup>, and during a time when the Administration was aggressively lobbying a certain New Jersey Congressman to oppose impeachment. The Department's hasty decision to overturn a policy that has long had bipartisan support, protected taxpayers, and preserved coastal environments indicates, at best, a lack of thorough assessment of the possible impacts and appears politically driven. It is also troubling that a Solicitor's memorandum on the decision has yet to be released.

The CBRA was specifically created to prevent the wasteful expenditure of federal taxpayer dollars in areas that are highly vulnerable to hurricanes, storms and other hazards, and to date it has been highly successful.<sup>iv</sup> The 3.5 million acres protected in the System include islands, beaches, wetlands, and estuarine areas that buffer storm and erosion impacts, but sand mining reduces this resilience and resulting benefits. The U.S. Fish and Wildlife Service, Army Corps of Engineers, NOAA, and various scientists have also identified significant negative impacts of sand mining on threatened species, such as piping plovers and red knots, and on fisheries, important shorebird and wildlife habitat, and coastal erosion.<sup>v-x</sup>

Beach renourishment projects can also encourage development in hazard-prone areas, increasing risk and potential for damage in highly vulnerable coastal zones.<sup>xi</sup> Allowing the use of federal funds for sand mining in vulnerable System units directly contravenes the intent of the CBRA to discourage development that places lives at risk. Further, requiring the federal taxpayer to pay

SAN RAFAEL  
999 FIFTH AVENUE, SUITE 290  
SAN RAFAEL, CA 94901  
PHONE: (415) 258-9657  
FAX: (415) 258-9913

PETALUMA  
206 G STREET, #3  
PETALUMA, CA 94952  
PHONE: (707) 981-8967  
FAX: (415) 258-9913

UKIAH  
200 S. SCHOOL ST., SUITE 1  
UKIAH, CA 95482  
PHONE: (707) 671-7449  
FAX: (707) 962-0905

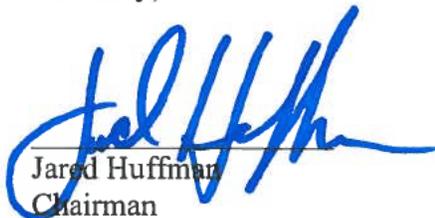
FORT BRAGG  
430 NORTH FRANKLIN STREET  
P.O. Box 2208  
FORT BRAGG, CA 95437  
PHONE: (707) 962-0933  
FAX: (707) 962-0905

EUREKA  
317 THIRD STREET, SUITE 1  
EUREKA, CA 95501  
PHONE: (707) 407-3585  
FAX: (707) 407-3559

for sand mining operations in System units runs directly counter to the goal of saving tax dollars by preventing federal expenditures within the System. Sand mining in System units can take place if state, local or private entities pay their own way, but the Department's decision contradicts the clear intent of the CBRA and instead puts it on taxpayers across the country to subsidize those projects.

The CBRA has a long track record of saving taxpayer dollars and protecting coastal areas by prohibiting federal development subsidies on undeveloped barrier islands. Given the potential for significant harm to sensitive coastal areas and public safety by opening up System units to federally funded sand mining, I urge you to withdraw the new interpretation and reinstate the policy that has been in effect for the past 25 years, and I request the Solicitor's memorandum outlining the rationale for the decision. CBRA should continue to provide the protections to the federal taxpayer and coastal environment and communities that it has long afforded.

Sincerely,



Jared Huffman  
Chairman

Subcommittee on Water, Oceans, and Wildlife

<sup>i</sup> Secretary Bernhardt, response letter to Rep. Van Drew, Rep. Rouzer, Rep. Graves, November 4, 2019.

<sup>ii</sup> Rep. Van Drew, Rep. Rouzer, Rep. Graves, Letter to Interior Secretary Bernhardt. October 25, 2019.

<sup>iii</sup> <https://stoneharbornj.org/department-of-interior-secretary-approves-avalon-stone-harbor-north-wildwood-position-on-hereford-inlet/>; [https://www.capemaycountyherald.com/news/environment/article\\_47836054-ff59-11e9-ad45-c31717434b2f.html](https://www.capemaycountyherald.com/news/environment/article_47836054-ff59-11e9-ad45-c31717434b2f.html)

<sup>iv</sup> Nearly \$10 billion in avoided federal expenditures since 1982; Coburn, Andrew S., and Whitehead, John C. "An Analysis of Federal Expenditures Related to the Coastal Barrier Resources Act of 1982," in *Journal of Coastal Research*. March 15, 2019. <https://www.jcronline.org/doi/abs/10.2112/JCOASTRES-D-18-00114.1>

<sup>v</sup> U.S. Fish and Wildlife Service, New Jersey Field Office, "Rufa Red Knot (*Calidris canutus rufa*) [threatened]." May 11, 2016. <https://www.fws.gov/northeast/njfieldoffice/endangered/redknot.html>

<sup>vi</sup> U.S. Fish and Wildlife Service. Status of the Species – piping plover. January 2017. [https://www.fws.gov/verobeach/StatusoftheSpecies/20170112\\_SOS\\_PipingPlover.pdf](https://www.fws.gov/verobeach/StatusoftheSpecies/20170112_SOS_PipingPlover.pdf)

<sup>vii</sup> Dabees, Mohamed A. and Kraus, Nicholas C. on contract with the U.S. Army Corps of Engineers' Vicksburg, MS Lab. "Evaluation of Ebb-Tidal Shoals as a Sand Source for Beach Renourishment: General Methodology with Reservoir Model Analysis." 2004. <https://cirp.usace.army.mil/Downloads/PDF/dabees-kraus-FSBPA04.pdf>

<sup>viii</sup> Crowe, Stacie E., et al. "Physical and Biological Alterations Following Dredging in Two Beach Nourishment Borrow Areas in South Carolina's Coastal Zone." *Journal of Coastal Research*. July 2016; National Oceanic and Atmospheric Administration, NOAA Fisheries, "Habitat Areas of Particular concern within Essential Fish Habitat." July 26, 2018. [www.fisheries.noaa.gov](http://www.fisheries.noaa.gov).

<sup>ix</sup> NOAA Fisheries, Greater Atlantic Region. "Protecting Offshore Habitats While Rebuilding New Jersey Beaches." 2014. <https://www.greateratlantic.fisheries.noaa.gov/stories/2014/protectingoffshorehabitats.html>

<sup>x</sup> Hobbs, C.H. "An Investigation of Potential Consequences of Marine Mining in Shallow Water: An Example from the Mid-Atlantic Coast of the United States." *Journal of Coastal Research*. Winter 2002. <http://journals.fcla.edu/jcr/article/viewFile/81252/78392>

<sup>xi</sup> Armstrong, Scott B., et al. "Indications of a positive feedback between coastal development and beach nourishment," in *Earth's Future*, a publication of the American Geophysical Union. November 10, 2016. <https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2016EF000425>



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Raleigh ES Field Office

Post Office Box 33726

Raleigh, North Carolina 27636-3726

March 10, 2020

Ms. Christine M. Brayman  
Deputy District Engineer for Programs and  
Project Management  
U. S. Army Corps of Engineers  
69 Darlington Avenue  
Wilmington, North Carolina 28403-1343

Subject: Wrightsville Beach and Carolina Beach – Interagency CBRA Consultations  
New Hanover County, NC

Dear Ms. Brayman:

This is in response to the email from the U.S. Army Corps of Engineers (Corps), dated December 20, 2019, requesting consultation under the Coastal Barrier Resource Act (CBRA) for the Corps' Wrightsville Beach and Carolina Beach Coastal Storm Risk Management Projects (CSRMs), New Hanover County, NC. The Corps indicated in the Template for Interagency CBRA Consultations that the projects meet the exception at 16 U.S.C. §3505(a)(6)(G), for nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system. The Corps further stated in the template that the use of the inlets in the Coastal Barrier Resources System (System) as the primary borrow sources is consistent with the three purposes of the CBRA. The Corps submitted two Addenda to the consultation request by email on February 18, 2020 and February 26, 2020, respectively, to provide additional support for its consistency determination.

These projects are authorized in the Water Resources Development Act (WRDA) of 1986. The Corps is currently seeking authorization in the 2020 WRDA for a 15-year extension through fiscal year 2036. The U.S. Fish and Wildlife Service (Service) previously reviewed the Draft Integrated Validation Study Reports (Draft Report) and Environmental Assessments (EA) for each of these 15-year extensions and provided comments in letters dated July 16, 2019. In letters dated April 6, 2018, and April 16, 2019, the Service concurred with the Corps' determination that the requirements of Section 7(a)(2) of the Endangered Species Act (ESA) have been met for the projects, respectively. The Service also agreed that a Coordination Act Report under the Fish and Wildlife Coordination Act (FWCA) was not required for continuation of the two CSRMs projects.

## Purposes of CBRA and the Consultation Process

Since 1994, the Service has advised the Corps that the CBRA exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system”<sup>iii</sup> could not be applied to sand mining *within* the System for beach nourishment projects that occur *outside* of the System. We have revisited our legal interpretation related to this CBRA exception and, in consultation with the Department of the Interior’s Office of the Solicitor, have determined that sand from *within* the System may be used to renourish beaches *outside* of the System, provided that the federal funding agency consults with the Service and the project meets the requirements of the exception and is consistent with the purposes of CBRA. This new interpretation was made effective on November 4, 2019.

On November 4, 2019, David Bernhardt, Secretary of the Interior, conveyed letters to the Hon. Jeff Van Drew, the Hon. David Rouzer, and the Hon. Garret Graves. The letters state that the Department’s Office of the Solicitor determined that the exemption in section 6 of CBRA for nonstructural shoreline stabilization projects (16 U.S.C. 3505(a)(6)(G)) is not limited to projects occurring within the system. The letters conclude that sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the CBRA, which are:

*...to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers...by restricting future federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers...and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.*

While the revised legal interpretation does not *guarantee* that sand within the System may be used for beach replenishment outside the System, it does make such projects eligible for consideration by federal agencies through the CBRA consultation process. The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the System for nonstructural shoreline stabilization outside of the System. Such projects would generally be considered under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” This exception also requires that the project be consistent with the purposes of CBRA.

The Service’s revised interpretation of the CBRA exception for nonstructural shoreline stabilization projects does not alter the federal funding agency’s responsibility to consider each project on a case-by-case basis through the consultation process. Additionally, any new commitment of federal funds associated with a project following the initial consultation (e.g.,

future beach renourishment) or change in the project design and/or scope is subject to CBRA's consultation requirement. Information about the consultation process is available at: <https://www.fws.gov/cbra/consultations.html>.

These comments are provided as technical assistance only; individual Federal agencies have the responsibility to independently ensure compliance with CBRA. Additionally, these comments do not constitute consultation for any project pursuant to Section 7 of the ESA or comments afforded by the FWCA; nor do they preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

### **Project Description**

The borrow areas for the Wrightsville Beach and Carolina Beach CSRMs are both located in Coastal Barrier Resource System (System) Unit L09. Sand is regularly dredged and removed from inlets on the north end and south end of the unit, and placed outside of the unit on Wrightsville Beach or Carolina Beach, respectively.

Masonboro Island, bounded on the north by Masonboro Inlet, and on the south by Carolina Beach Inlet, encompasses most of System Unit L09. Masonboro Island also encompasses all of piping plover critical habitat unit NC-13 and a large portion of piping plover critical habitat unit NC-14.

#### *Wrightsville Beach CSR*

The inlet borrow area (Masonboro Inlet) is within System Unit L09. According to the Draft Report/EA for this project, current engineering analysis of this borrow source indicates that there may not be a sufficient quantity of sand to provide borrow material for four additional planned renourishments through 2036. The Corps indicated that, due to the identified risk of the System Unit, and the forecasted sand deficiency, it has identified a new potential offshore borrow area located outside of a System. Additional investigations and technical analyses will be required to determine the quality and quantity of a potential offshore borrow source. The Service appreciates the Corps efforts to identify and develop an offshore borrow source for this project.

The construction of jetties at Masonboro Inlet, the creation of Carolina Beach Inlet, and local navigation improvements have impacted sediment transport and hydrology of the area around the island (Fear 2008, pp. 90-100). Those impacts are related to, but not the focus of this consultation. The Corps' reports state that presence of the northern Masonboro jetty has interrupted the natural littoral transport of sediments (Wrightsville Beach Draft Report, p. 60). Page 62 of the Wrightsville Beach Draft Report indicates that removing sand from the System

Unit, currently every four years, would temporarily reduce approximately 780,000 cubic yards (cy) of sand in the inlet that could potentially move downdrift to Masonboro Island. On a yearly basis, that amounts to an average of 195,000 cy of sand removed from the System Unit L-09 due to the Wrightsville Beach CSR project. Approximately 145,000 cy returns to the unit each year, resulting in a net loss of sediment from the unit of approximately 50,000 cy per year.

As you know, the Corps and Service have worked together over the past few years to address concerns for impacts to breeding and migratory shorebirds in the System Unit. In particular, the south end of Wrightsville Beach is an important nesting area for American oystercatcher (*Haematopus palliatus*), willet (*Tringa semipalmata*), common tern (*Sterna hirundo*), least tern (*Sternula antillarum*), and black skimmer (*Rynchops niger*) (Addison and McIvor 2014, p. 8). The conservation needs of birds in North Carolina center mainly on habitat management, restoration, and protection, especially for habitats including coastal beach and estuarine habitats (NC Wildlife Action Plan 2015 p. 52). The state of North Carolina has identified several bird Species of Greatest Conservation Need (SGCN) in coastal beach and estuarine habitats, including piping plover, red knot, Wilson's plover, American oystercatcher, black skimmer, and least tern (NC Wildlife Action Plan 2015, pp. 53-56). In addition, all five species of sea turtles are listed as Reptile SGCN in coastal beach and estuarine habitats. Each of these shorebird and sea turtle species have been further identified by the state as a SGCN Conservation Priority and a Management Concern or Management Need (NC Wildlife Action Plan 2015, Appendix G).

Addison and McIvor (2014) observed 84 species of birds at Masonboro Inlet during 2010- 2014. Twenty-three of those species are of conservation concern (p. 9). In the southeastern U.S., the occurrence and numbers of shorebirds that use coastal habitats tends to be greater at inlet habitats than at other habitat types, including piping plovers and red knots. Piping plover and red knot (both listed as threatened under the ESA) have been observed within the System Unit in relatively small numbers (Addison and McIvor 2014, p. 9-19). Most piping plover observations in Masonboro Inlet were on the south end of Wrightsville Beach. Piping plover observations within the System Unit included three (3) banded individuals from the endangered Great Lakes population.

#### *Carolina Beach CSR*

The inlet borrow area (Carolina Beach Inlet) is at the southern end of System Unit L09. The Corps' Draft Report (p. 60) indicates that continued removal of sand from the System Unit would cause continued erosion on south end of Masonboro Island, due to a lack of an inlet management plan that includes sand bypassing.

Carolina Beach Inlet is also located within piping plover critical habitat unit NC-14. In general, the dredging and mining of sediment from inlet complexes threatens the piping plover on its

wintering grounds through habitat loss and degradation. Dredging can significantly alter the natural coastal processes on inlet shorelines of nearby barrier islands (Otvos 2006, entire; Otvos and Carter 2008, p. 477; USACE 1984, p. 117). Sand removal or sediment starvation of shoals, sandbars, and adjacent shoreline habitat upsets the natural equilibrium and may reduce the system's ability to maintain a full suite of inlet habitats as sea level rise continues to accelerate.

Carolina Beach is also within designated terrestrial critical habitat for the Northern Recovery Unit of the Northwest Atlantic Ocean Loggerhead Turtle Distinct Population Segment (DPS) (critical habitat unit LOGG-T-NC-05).

The Corps' February 26, 2020 addendum states that approximately 270,000 cy of sediment per year is removed from the System Unit and placed on Carolina Beach. Approximately 65,000 cy of that material returns to the inlet, resulting in a net sediment loss of approximately 205,000 cy per year.

#### *Proposed Impact Minimization Measures*

The Corps has proposed several measures in the February 26, 2020 Addendum to the CBRA consultation template document. These measures are the same for the two projects:

1. The Corps commits to model and/or monitor inlet and shoreline responses within System Unit L-09, subject to project reauthorization.
2. The Masonboro Inlet sediment budget analysis of 2014 will be provided to the Service. The 2017 draft sediment budget analysis in the vicinity of Carolina Beach Inlet and adjacent beaches to the south will be finalized and provided to the Service.
3. The USACE, as a part of the upcoming (2020) Wrightsville Beach and Carolina Beach feasibility studies to extend Federal participation of periodic nourishment for a full 50 years, will investigate longer term sea level rise rates and climate change.
4. Monitoring of seabeach amaranth will continue when sand is placed on Masonboro Island, such as the planned 2020 placement on the southern part of this island.
5. The USACE will continue to actively investigate potential future opportunities to place sand onto Masonboro Island. Currently being evaluated are options to place sand on the northern portion of Masonboro Island by removing sand from Disposal Area 251, located at the intersection of the Atlantic Intracoastal Waterway and Shinn Creek/Masonboro inlet.
6. All obligations requiring expenditure of funds are subject to appropriation of funding to complete these activities.

In addition, for the Wrightsville Beach CSRМ project, the Corps has proposed the following additional measures:

1. The Town of Wrightsville Beach recently informed the Corps that their primary emergency access route through the central part of the spit has been modified to follow a more direct route to the western side of the spit, thereby minimizing disturbance to more central bird nesting areas.
2. Bypassing sand to Masonboro Island as a result of the impacts due to the construction of the Masonboro Inlet jetties began in 1986. The USACE vigorously pursues Operations and Maintenance funding to mechanically bypass sand from Masonboro Inlet to Masonboro Island in the same fiscal years that periodic nourishment of Wrightsville Beach is scheduled. The Corps commits to continue seeking funding for this activity through the Federal budgeting and appropriation process.

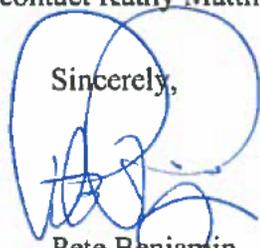
### **Service Determination**

The Service has significant concerns regarding the long-term loss of 255,000 cy per year of sediment from the System Unit, although without more data, it is difficult to discern the specific loss caused or contributed by the two CSRMs projects. The Service believes that it will be important to investigate the various causes of sand loss as well as potential actions to restore sand to the System Unit.

The Service concurs that the projects meet the exception at 16 U.S.C. §3505(a)(6)(G), if the Corps adopts the measures listed above and in the February 26, 2020 Addendum. The Service also recommends that the Corps utilize the information from the modeling, monitoring, and sand budget investigations to explore a more holistic management of sand and resources in the coastal barrier system. For example, the work may inform efforts related to the South Atlantic Coastal Study (SACS) and others. The Corps' proposed measures may also assist the Service and U.S. Geological Survey (USGS) in completing an evaluation of the short-and long-term impacts of sand removal on areas in and adjacent to the System, as requested in a June 24, 2019 letter to the agencies from the Hon. Raul M. Grijalva, Chair of the House Committee on Natural Resources.

The Service also recommends continued coordination with the local sponsors and North Carolina National Estuarine Research Reserve to determine other potential actions considered beneficial to the coastal barrier system.

The Service looks forward to continued coordination with the Corps on this project. For questions or further coordination, please contact Kathy Matthews at (919) 856-4520, ext. 27.

Sincerely,  
  
 Pete Benjamin  
 Field Supervisor

#### References:

- Addison, L., and T. McIvor. 2014. Masonboro Inlet Bird Surveys, 2009-2014: Preliminary Summary of Results. Unpublished report from Audubon North Carolina, Wilmington, NC. 24 pp.
- Fear, J. 2008. A Comprehensive Site Profile for the North Carolina National Estuarine Research Reserve. August 2008. 167 pp.
- Grijalva, R.M. 2019. Letter from the Hon. Raul M. Grijalva to Margaret Everson and Jim Reilly, concerning the Coastal Barrier Resources Act. June 24, 2019. 2 pp.
- North Carolina Wildlife Resources Commission. 2015. 2015 Wildlife Action Plan. 1328 pp. Available online at: <https://www.ncwildlife.org/plan#6718619-2015-wildlife-action-plan-document-downloads>.
- Otvos, E. G. 2006. Discussion of Froede, C.R., Jr., 2006. The impact that Hurricane Ivan (September 16, 2004) made across Dauphin Island, Alabama. *Journal of Coastal Research*, 22(2), 562-573. *Journal of Coastal Research* 22(6):1585-1588.
- Otvos, E. G. and G. A. Carter. 2008. Hurricane degradation – barrier development cycles, northeastern Gulf of Mexico: Landform evolution and island chain history. *Journal of Coastal Research* 24(2):463-478.
- U.S. Army Corps of Engineers. 1984. Shore Protection Manual. Volume 1. Coastal Engineering Research Center, Waterways Experiment Station. 452 pp.

---

<sup>1</sup> 16 U.S.C. § 3505(a)(6)(G)

**From:** [Tripp, Kimberly J](#)  
**To:** [Wright, Dana K](#)  
**Cc:** [Niemi, Katie](#)  
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act  
**Date:** Tuesday, March 24, 2020 11:22:36 AM

---

Hmm

I just added a comment. The term federal incentive is used without context. I think it should be defined in its first usage. It's not critical to change if you can't restructure a few sentences.

Sent from my iPhone

On Mar 24, 2020, at 6:54 AM, Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)> wrote:

Hi Kim,

I used the "compare" tool in Word to compare the version of the letter you uploaded with the previous version and it found no differences. Maybe you uploaded the wrong version? Do you still have the version you revised? If you email it to me I can upload.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Sent:** Monday, March 23, 2020 6:16 PM  
**To:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Subject:** Fw: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

Hi

I reviewed the document. I thought it was well done. I had one edit on clarifying what "federal incentive" means. Once addressed please forward to Michelle. You don't need to send to me again. I'm emailing you both because I'm not confident I did all correctly in DTS.

thanks

Kim

Kim Tripp

Chief, Branch of Coastal and Marine Resources

Fish and Wildlife Service

Ecological Services, MS: ES

5275 Leesburg Pike

Falls Church, VA 22041-3803

Office- 703-358-2151

Cell- 571-389-2658

---

From: DTS@fws.gov <DTS@fws.gov>

Sent: Monday, March 23, 2020 7:06 AM

To: Parker, Alison L; Wright, Dana K; Bowen, Diane; Zosh, Jennifer M; Niemi, Katie; Tripp, Kimberly J; Hatch, Kristy B; Comlish, Paul D; Barba, Robert

Subject: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

Hello and welcome to the DTS automated email alert!

Your office (AES-DRR-BCMR) has a task assigned.

Please log in to the Data Tracking System at the following URL Address:

<https://dts.fws.gov/dts/preLogin.do?officeId=7740> and review Document Control Number (DCN)\*\* 072054.

To move the document to the next office in the routing process, enter your surname information for your office's task and save the record.

Document Subject: Comments regarding the Coastal Barrier Resources Act

Synopsis: Must have Dept Clearance before signing

Action Required: 16-Surname through DTS

Assigned By Office: AES-DRR-BCMR User: Dana Wright

\*\*Thank you\*\*.

**From:** [Niemi, Katie](#)  
**To:** [Tripp, Kimberly J](#)  
**Subject:** Fw: CBRA consistency determination for Wrightsville Beach and Carolina Beach CSRM Projects  
**Date:** Friday, March 27, 2020 4:02:42 PM  
**Attachments:** [20200310\\_ltr\\_FWS\\_Corps\\_CBRA\\_WB\\_CB.pdf](#)

---

Kim,  
Here's the Raleigh field office response letter.

Katie

---

**From:** Matthews, Kathryn H <kathryn\_matthews@fws.gov>  
**Sent:** Wednesday, March 11, 2020 8:02 AM  
**To:** Owens, Jennifer L CIV USARMY CESAW (USA) <Jennifer.L.Owens@usace.army.mil>; Gasch, Eric K CIV USARMY CESAW (US) <Eric.K.Gasch@usace.army.mil>  
**Cc:** Benjamin, Pete <pete\_benjamin@fws.gov>; Bohn, Cynthia <cynthia\_bohn@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Wells, Emily N <emily\_wells@fws.gov>  
**Subject:** CBRA consistency determination for Wrightsville Beach and Carolina Beach CSRM Projects

Dear Jenny,

Please find attached our letter concerning these two projects. A hard copy will follow in the mail. Thanks to you and your staff, especially Eric, for the close coordination.

Please contact me or Pete if you have any questions.

Kathy Matthews  
Fish and Wildlife Biologist  
U.S. Fish and Wildlife Service  
551-F Pylon Drive  
Raleigh, NC 27606  
919-856-4520, x. 27



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Raleigh ES Field Office

Post Office Box 33726

Raleigh, North Carolina 27636-3726

March 10, 2020

Ms. Christine M. Brayman  
Deputy District Engineer for Programs and  
Project Management  
U. S. Army Corps of Engineers  
69 Darlington Avenue  
Wilmington, North Carolina 28403-1343

Subject: Wrightsville Beach and Carolina Beach – Interagency CBRA Consultations  
New Hanover County, NC

Dear Ms. Brayman:

This is in response to the email from the U.S. Army Corps of Engineers (Corps), dated December 20, 2019, requesting consultation under the Coastal Barrier Resource Act (CBRA) for the Corps' Wrightsville Beach and Carolina Beach Coastal Storm Risk Management Projects (CSRMs), New Hanover County, NC. The Corps indicated in the Template for Interagency CBRA Consultations that the projects meet the exception at 16 U.S.C. §3505(a)(6)(G), for nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system. The Corps further stated in the template that the use of the inlets in the Coastal Barrier Resources System (System) as the primary borrow sources is consistent with the three purposes of the CBRA. The Corps submitted two Addenda to the consultation request by email on February 18, 2020 and February 26, 2020, respectively, to provide additional support for its consistency determination.

These projects are authorized in the Water Resources Development Act (WRDA) of 1986. The Corps is currently seeking authorization in the 2020 WRDA for a 15-year extension through fiscal year 2036. The U.S. Fish and Wildlife Service (Service) previously reviewed the Draft Integrated Validation Study Reports (Draft Report) and Environmental Assessments (EA) for each of these 15-year extensions and provided comments in letters dated July 16, 2019. In letters dated April 6, 2018, and April 16, 2019, the Service concurred with the Corps' determination that the requirements of Section 7(a)(2) of the Endangered Species Act (ESA) have been met for the projects, respectively. The Service also agreed that a Coordination Act Report under the Fish and Wildlife Coordination Act (FWCA) was not required for continuation of the two CSRMs projects.

## Purposes of CBRA and the Consultation Process

Since 1994, the Service has advised the Corps that the CBRA exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system”<sup>iii</sup> could not be applied to sand mining *within* the System for beach nourishment projects that occur *outside* of the System. We have revisited our legal interpretation related to this CBRA exception and, in consultation with the Department of the Interior’s Office of the Solicitor, have determined that sand from *within* the System may be used to renourish beaches *outside* of the System, provided that the federal funding agency consults with the Service and the project meets the requirements of the exception and is consistent with the purposes of CBRA. This new interpretation was made effective on November 4, 2019.

On November 4, 2019, David Bernhardt, Secretary of the Interior, conveyed letters to the Hon. Jeff Van Drew, the Hon. David Rouzer, and the Hon. Garret Graves. The letters state that the Department’s Office of the Solicitor determined that the exemption in section 6 of CBRA for nonstructural shoreline stabilization projects (16 U.S.C. 3505(a)(6)(G)) is not limited to projects occurring within the system. The letters conclude that sand from units within the System may be used to renourish beaches located outside of the System, provided the project is consistent with the purposes of the CBRA, which are:

*...to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers...by restricting future federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers...and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.*

While the revised legal interpretation does not *guarantee* that sand within the System may be used for beach replenishment outside the System, it does make such projects eligible for consideration by federal agencies through the CBRA consultation process. The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the System for nonstructural shoreline stabilization outside of the System. Such projects would generally be considered under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.” This exception also requires that the project be consistent with the purposes of CBRA.

The Service’s revised interpretation of the CBRA exception for nonstructural shoreline stabilization projects does not alter the federal funding agency’s responsibility to consider each project on a case-by-case basis through the consultation process. Additionally, any new commitment of federal funds associated with a project following the initial consultation (e.g.,

future beach renourishment) or change in the project design and/or scope is subject to CBRA's consultation requirement. Information about the consultation process is available at: <https://www.fws.gov/cbra/consultations.html>.

These comments are provided as technical assistance only; individual Federal agencies have the responsibility to independently ensure compliance with CBRA. Additionally, these comments do not constitute consultation for any project pursuant to Section 7 of the ESA or comments afforded by the FWCA; nor do they preclude comment on any forthcoming environmental documents pursuant to the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321 *et seq.*).

### **Project Description**

The borrow areas for the Wrightsville Beach and Carolina Beach CSRMs are both located in Coastal Barrier Resource System (System) Unit L09. Sand is regularly dredged and removed from inlets on the north end and south end of the unit, and placed outside of the unit on Wrightsville Beach or Carolina Beach, respectively.

Masonboro Island, bounded on the north by Masonboro Inlet, and on the south by Carolina Beach Inlet, encompasses most of System Unit L09. Masonboro Island also encompasses all of piping plover critical habitat unit NC-13 and a large portion of piping plover critical habitat unit NC-14.

#### *Wrightsville Beach CSR*

The inlet borrow area (Masonboro Inlet) is within System Unit L09. According to the Draft Report/EA for this project, current engineering analysis of this borrow source indicates that there may not be a sufficient quantity of sand to provide borrow material for four additional planned renourishments through 2036. The Corps indicated that, due to the identified risk of the System Unit, and the forecasted sand deficiency, it has identified a new potential offshore borrow area located outside of a System. Additional investigations and technical analyses will be required to determine the quality and quantity of a potential offshore borrow source. The Service appreciates the Corps efforts to identify and develop an offshore borrow source for this project.

The construction of jetties at Masonboro Inlet, the creation of Carolina Beach Inlet, and local navigation improvements have impacted sediment transport and hydrology of the area around the island (Fear 2008, pp. 90-100). Those impacts are related to, but not the focus of this consultation. The Corps' reports state that presence of the northern Masonboro jetty has interrupted the natural littoral transport of sediments (Wrightsville Beach Draft Report, p. 60). Page 62 of the Wrightsville Beach Draft Report indicates that removing sand from the System

Unit, currently every four years, would temporarily reduce approximately 780,000 cubic yards (cy) of sand in the inlet that could potentially move downdrift to Masonboro Island. On a yearly basis, that amounts to an average of 195,000 cy of sand removed from the System Unit L-09 due to the Wrightsville Beach CSR project. Approximately 145,000 cy returns to the unit each year, resulting in a net loss of sediment from the unit of approximately 50,000 cy per year.

As you know, the Corps and Service have worked together over the past few years to address concerns for impacts to breeding and migratory shorebirds in the System Unit. In particular, the south end of Wrightsville Beach is an important nesting area for American oystercatcher (*Haematopus palliatus*), willet (*Tringa semipalmata*), common tern (*Sterna hirundo*), least tern (*Sternula antillarum*), and black skimmer (*Rynchops niger*) (Addison and McIvor 2014, p. 8). The conservation needs of birds in North Carolina center mainly on habitat management, restoration, and protection, especially for habitats including coastal beach and estuarine habitats (NC Wildlife Action Plan 2015 p. 52). The state of North Carolina has identified several bird Species of Greatest Conservation Need (SGCN) in coastal beach and estuarine habitats, including piping plover, red knot, Wilson's plover, American oystercatcher, black skimmer, and least tern (NC Wildlife Action Plan 2015, pp. 53-56). In addition, all five species of sea turtles are listed as Reptile SGCN in coastal beach and estuarine habitats. Each of these shorebird and sea turtle species have been further identified by the state as a SGCN Conservation Priority and a Management Concern or Management Need (NC Wildlife Action Plan 2015, Appendix G).

Addison and McIvor (2014) observed 84 species of birds at Masonboro Inlet during 2010- 2014. Twenty-three of those species are of conservation concern (p. 9). In the southeastern U.S., the occurrence and numbers of shorebirds that use coastal habitats tends to be greater at inlet habitats than at other habitat types, including piping plovers and red knots. Piping plover and red knot (both listed as threatened under the ESA) have been observed within the System Unit in relatively small numbers (Addison and McIvor 2014, p. 9-19). Most piping plover observations in Masonboro Inlet were on the south end of Wrightsville Beach. Piping plover observations within the System Unit included three (3) banded individuals from the endangered Great Lakes population.

#### *Carolina Beach CSR*

The inlet borrow area (Carolina Beach Inlet) is at the southern end of System Unit L09. The Corps' Draft Report (p. 60) indicates that continued removal of sand from the System Unit would cause continued erosion on south end of Masonboro Island, due to a lack of an inlet management plan that includes sand bypassing.

Carolina Beach Inlet is also located within piping plover critical habitat unit NC-14. In general, the dredging and mining of sediment from inlet complexes threatens the piping plover on its

wintering grounds through habitat loss and degradation. Dredging can significantly alter the natural coastal processes on inlet shorelines of nearby barrier islands (Otvos 2006, entire; Otvos and Carter 2008, p. 477; USACE 1984, p. 117). Sand removal or sediment starvation of shoals, sandbars, and adjacent shoreline habitat upsets the natural equilibrium and may reduce the system's ability to maintain a full suite of inlet habitats as sea level rise continues to accelerate.

Carolina Beach is also within designated terrestrial critical habitat for the Northern Recovery Unit of the Northwest Atlantic Ocean Loggerhead Turtle Distinct Population Segment (DPS) (critical habitat unit LOGG-T-NC-05).

The Corps' February 26, 2020 addendum states that approximately 270,000 cy of sediment per year is removed from the System Unit and placed on Carolina Beach. Approximately 65,000 cy of that material returns to the inlet, resulting in a net sediment loss of approximately 205,000 cy per year.

#### *Proposed Impact Minimization Measures*

The Corps has proposed several measures in the February 26, 2020 Addendum to the CBRA consultation template document. These measures are the same for the two projects:

1. The Corps commits to model and/or monitor inlet and shoreline responses within System Unit L-09, subject to project reauthorization.
2. The Masonboro Inlet sediment budget analysis of 2014 will be provided to the Service. The 2017 draft sediment budget analysis in the vicinity of Carolina Beach Inlet and adjacent beaches to the south will be finalized and provided to the Service.
3. The USACE, as a part of the upcoming (2020) Wrightsville Beach and Carolina Beach feasibility studies to extend Federal participation of periodic nourishment for a full 50 years, will investigate longer term sea level rise rates and climate change.
4. Monitoring of seabeach amaranth will continue when sand is placed on Masonboro Island, such as the planned 2020 placement on the southern part of this island.
5. The USACE will continue to actively investigate potential future opportunities to place sand onto Masonboro Island. Currently being evaluated are options to place sand on the northern portion of Masonboro Island by removing sand from Disposal Area 251, located at the intersection of the Atlantic Intracoastal Waterway and Shinn Creek/Masonboro inlet.
6. All obligations requiring expenditure of funds are subject to appropriation of funding to complete these activities.

In addition, for the Wrightsville Beach CSRSM project, the Corps has proposed the following additional measures:

1. The Town of Wrightsville Beach recently informed the Corps that their primary emergency access route through the central part of the spit has been modified to follow a more direct route to the western side of the spit, thereby minimizing disturbance to more central bird nesting areas.
2. Bypassing sand to Masonboro Island as a result of the impacts due to the construction of the Masonboro Inlet jetties began in 1986. The USACE vigorously pursues Operations and Maintenance funding to mechanically bypass sand from Masonboro Inlet to Masonboro Island in the same fiscal years that periodic nourishment of Wrightsville Beach is scheduled. The Corps commits to continue seeking funding for this activity through the Federal budgeting and appropriation process.

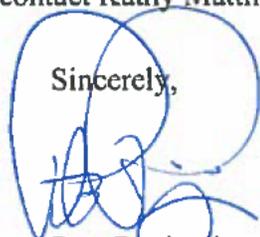
### **Service Determination**

The Service has significant concerns regarding the long-term loss of 255,000 cy per year of sediment from the System Unit, although without more data, it is difficult to discern the specific loss caused or contributed by the two CSRMs projects. The Service believes that it will be important to investigate the various causes of sand loss as well as potential actions to restore sand to the System Unit.

The Service concurs that the projects meet the exception at 16 U.S.C. §3505(a)(6)(G), if the Corps adopts the measures listed above and in the February 26, 2020 Addendum. The Service also recommends that the Corps utilize the information from the modeling, monitoring, and sand budget investigations to explore a more holistic management of sand and resources in the coastal barrier system. For example, the work may inform efforts related to the South Atlantic Coastal Study (SACS) and others. The Corps' proposed measures may also assist the Service and U.S. Geological Survey (USGS) in completing an evaluation of the short-and long-term impacts of sand removal on areas in and adjacent to the System, as requested in a June 24, 2019 letter to the agencies from the Hon. Raul M. Grijalva, Chair of the House Committee on Natural Resources.

The Service also recommends continued coordination with the local sponsors and North Carolina National Estuarine Research Reserve to determine other potential actions considered beneficial to the coastal barrier system.

The Service looks forward to continued coordination with the Corps on this project. For questions or further coordination, please contact Kathy Matthews at (919) 856-4520, ext. 27.

Sincerely,  
  
 Pete Benjamin  
 Field Supervisor

#### References:

- Addison, L., and T. McIvor. 2014. Masonboro Inlet Bird Surveys, 2009-2014: Preliminary Summary of Results. Unpublished report from Audubon North Carolina, Wilmington, NC. 24 pp.
- Fear, J. 2008. A Comprehensive Site Profile for the North Carolina National Estuarine Research Reserve. August 2008. 167 pp.
- Grijalva, R.M. 2019. Letter from the Hon. Raul M. Grijalva to Margaret Everson and Jim Reilly, concerning the Coastal Barrier Resources Act. June 24, 2019. 2 pp.
- North Carolina Wildlife Resources Commission. 2015. 2015 Wildlife Action Plan. 1328 pp. Available online at: <https://www.ncwildlife.org/plan#6718619-2015-wildlife-action-plan-document-downloads>.
- Otvos, E. G. 2006. Discussion of Froede, C.R., Jr., 2006. The impact that Hurricane Ivan (September 16, 2004) made across Dauphin Island, Alabama. *Journal of Coastal Research*, 22(2), 562-573. *Journal of Coastal Research* 22(6):1585-1588.
- Otvos, E. G. and G. A. Carter. 2008. Hurricane degradation – barrier development cycles, northeastern Gulf of Mexico: Landform evolution and island chain history. *Journal of Coastal Research* 24(2):463-478.
- U.S. Army Corps of Engineers. 1984. Shore Protection Manual. Volume 1. Coastal Engineering Research Center, Waterways Experiment Station. 452 pp.

---

<sup>1</sup> 16 U.S.C. § 3505(a)(6)(G)

**From:** [Tripp, Kimberly J](#)  
**To:** [Niemi, Katie](#); [Wright, Dana K](#)  
**Subject:** Fwd: I recieved the following message FROM EXSEC  
**Date:** Friday, April 10, 2020 10:02:33 AM

---

Hopefully some movement.  
Sent from my iPhone

Begin forwarded message:

**From:** "Randolph, Nikki" <[nikki\\_randolph@fws.gov](mailto:nikki_randolph@fws.gov)>  
**Date:** April 10, 2020 at 9:26:34 AM EDT  
**To:** "Frazer, Gary D" <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)>, "Shultz, Gina" <[Gina\\_Shultz@fws.gov](mailto:Gina_Shultz@fws.gov)>  
**Cc:** "Shaughnessy, Michelle" <[Michelle\\_Shaughnessy@fws.gov](mailto:Michelle_Shaughnessy@fws.gov)>, "Tripp, Kimberly J" <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>, "Niemi, Katie" <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>, "Wright, Dana K" <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>, "Wellman, Lois A" <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Subject: Re: I recieved the following message FROM EXSEC**

Thank you

Nikki S. Randolph  
Chief, CCU  
U.S. Fish and Wildlife Service  
202-208-7535

---

**From:** Frazer, Gary D <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)>  
**Sent:** Friday, April 10, 2020 9:22 AM  
**To:** Randolph, Nikki <[nikki\\_randolph@fws.gov](mailto:nikki_randolph@fws.gov)>; Shultz, Gina <[Gina\\_Shultz@fws.gov](mailto:Gina_Shultz@fws.gov)>  
**Cc:** Shaughnessy, Michelle <[Michelle\\_Shaughnessy@fws.gov](mailto:Michelle_Shaughnessy@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>; Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>; Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Subject:** Re: I recieved the following message FROM EXSEC

My bad. In was in my inbox. I just cleared it.

Gina, this response to Cong Huffman is set up to include as an attachment the letter to the Corps interpreting the revised SOL memo. Aurelia sent that response back with comments, and it looks like you have our response in your inbox. We should get both cleared and moving on parallel tracks. Our response to Aurelia's

comments looked good to me. -- GDF

*Gary Frazer*

*Assistant Director - Ecological Services*

*gary\_frazer@fws.gov*

*Ph. (202) 208-4646*

*Cell (202) 253-4578*

---

**From:** Randolph, Nikki <nikki\_randolph@fws.gov>

**Sent:** Friday, April 10, 2020 6:47 AM

**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Frazer, Gary D <gary\_frazer@fws.gov>

**Subject:** I recieved the following message FROM EXSEC

- EST-00015554/FWS 072054 Response to Rep. Jared Huffman Re the Coastal Barrier Resources Act - Per the FWS record, the response in the record was assigned to the Asst. Dir.-Ecological Services, for surname, on March 27, 2020. Could the response be surnamed, or could a reason be provided for the delay?

Nikki S. Randolph

Chief, CCU

U.S. Fish and Wildlife Service

202-208-7535

**From:** [Shultz, Gina](#)  
**To:** [Frazer, Gary D](#); [Randolph, Nikki](#)  
**Cc:** [Shaughnessy, Michelle](#); [Tripp, Kimberly J](#); [Niemi, Katie](#); [Wright, Dana K](#); [Wellman, Lois A](#)  
**Subject:** Re: I recieved the following message FROM EXSEC  
**Date:** Friday, April 10, 2020 4:06:13 PM

---

I surnamed the letter to the Corps on sandmining in DTS and moved it to you.

---

**From:** Frazer, Gary D <gary\_frazer@fws.gov>  
**Sent:** Friday, April 10, 2020 9:22 AM  
**To:** Randolph, Nikki <nikki\_randolph@fws.gov>; Shultz, Gina <Gina\_Shultz@fws.gov>  
**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** Re: I recieved the following message FROM EXSEC

My bad. In was in my inbox. I just cleared it.

Gina, this response to Cong Huffman is set up to include as an attachment the letter to the Corps interpreting the revised SOL memo. Aurelia sent that response back with comments, and it looks like you have our response in your inbox. We should get both cleared and moving on parallel tracks. Our response to Aurelia's comments looked good to me. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*gary\_frazer@fws.gov*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*

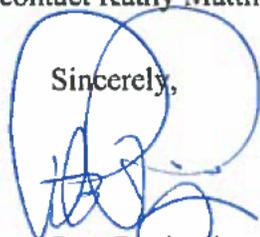
---

**From:** Randolph, Nikki <nikki\_randolph@fws.gov>  
**Sent:** Friday, April 10, 2020 6:47 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Frazer, Gary D <gary\_frazer@fws.gov>  
**Subject:** I recieved the following message FROM EXSEC

- EST-00015554/FWS 072054 Response to Rep. Jared Huffman Re the Coastal Barrier Resources Act - Per the FWS record, the response in the record was assigned to the Asst. Dir.- Ecological Services, for surname, on March 27, 2020. Could the response be surnamed, or could a reason be provided for the delay?

Nikki S. Randolph  
Chief, CCU  
U.S. Fish and Wildlife Service  
202-208-7535

The Service looks forward to continued coordination with the Corps on this project. For questions or further coordination, please contact Kathy Matthews at (919) 856-4520, ext. 27.

Sincerely,  
  
 Pete Benjamin  
 Field Supervisor

#### References:

- Addison, L., and T. McIvor. 2014. Masonboro Inlet Bird Surveys, 2009-2014: Preliminary Summary of Results. Unpublished report from Audubon North Carolina, Wilmington, NC. 24 pp.
- Fear, J. 2008. A Comprehensive Site Profile for the North Carolina National Estuarine Research Reserve. August 2008. 167 pp.
- Grijalva, R.M. 2019. Letter from the Hon. Raul M. Grijalva to Margaret Everson and Jim Reilly, concerning the Coastal Barrier Resources Act. June 24, 2019. 2 pp.
- North Carolina Wildlife Resources Commission. 2015. 2015 Wildlife Action Plan. 1328 pp. Available online at: <https://www.ncwildlife.org/plan#6718619-2015-wildlife-action-plan-document-downloads>.
- Otvos, E. G. 2006. Discussion of Froede, C.R., Jr., 2006. The impact that Hurricane Ivan (September 16, 2004) made across Dauphin Island, Alabama. *Journal of Coastal Research*, 22(2), 562-573. *Journal of Coastal Research* 22(6):1585-1588.
- Otvos, E. G. and G. A. Carter. 2008. Hurricane degradation – barrier development cycles, northeastern Gulf of Mexico: Landform evolution and island chain history. *Journal of Coastal Research* 24(2):463-478.
- U.S. Army Corps of Engineers. 1984. Shore Protection Manual. Volume 1. Coastal Engineering Research Center, Waterways Experiment Station. 452 pp.

---

<sup>1</sup> 16 U.S.C. § 3505(a)(6)(G)

**From:** [bamcoast@earthlink.net](mailto:bamcoast@earthlink.net)  
**To:** [Niemi, Katie](#)  
**Subject:** [EXTERNAL] Re: CBRA consistency determination for Wrightsville Beach and Carolina Beach CSRM Projects  
**Date:** Friday, April 17, 2020 5:50:25 PM

---

Thanks very much, Katie!

Stay safe!

-----Original Message-----

From: "Niemi, Katie"  
Sent: Apr 17, 2020 3:26 PM  
To: Beth Millemann  
Subject: CBRA consistency determination for Wrightsville Beach and Carolina Beach CSRM Projects

Hi Beth,

Per your request, attached is the Service's response to the Corps on the Wrightsville Beach and Carolina Beach projects.

Take care!

Katie

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

**From:** [Tripp, Kimberly J](#)  
**To:** [Wright, Dana K](#); [Niemi, Katie](#)  
**Subject:** Fw: I recieved the following message FROM EXSEC  
**Date:** Monday, April 20, 2020 10:19:10 AM

---

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151  
Cell- 571-389-2658

---

**From:** Randolph, Nikki <[nikki\\_randolph@fws.gov](mailto:nikki_randolph@fws.gov)>  
**Sent:** Monday, April 20, 2020 7:04 AM  
**To:** Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: I recieved the following message FROM EXSEC

### With Aurelia for Surname

Nikki S. Randolph  
Chief, CCU  
U.S. Fish and Wildlife Service  
202-208-7535

---

**From:** Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Sent:** Friday, April 17, 2020 1:14 PM  
**To:** Randolph, Nikki <[nikki\\_randolph@fws.gov](mailto:nikki_randolph@fws.gov)>  
**Subject:** Re: I recieved the following message FROM EXSEC

Hi Nikki,

My staff are keeping track of this Huffman letter and noted multiple copies within the DTS system. Would you please let us know the status of the document.

Here is the DCN for the Huffman letter: 072054

Thank you,  
Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151  
Cell- 571-389-2658

---

**From:** Randolph, Nikki <nikki\_randolph@fws.gov>  
**Sent:** Friday, April 10, 2020 9:26 AM  
**To:** Frazer, Gary D <gary\_frazer@fws.gov>; Shultz, Gina <Gina\_Shultz@fws.gov>  
**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** Re: I recieved the following message FROM EXSEC

**Thank you**

Nikki S. Randolph  
Chief, CCU  
U.S. Fish and Wildlife Service  
202-208-7535

---

**From:** Frazer, Gary D <gary\_frazer@fws.gov>  
**Sent:** Friday, April 10, 2020 9:22 AM  
**To:** Randolph, Nikki <nikki\_randolph@fws.gov>; Shultz, Gina <Gina\_Shultz@fws.gov>  
**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** Re: I recieved the following message FROM EXSEC

My bad. In was in my inbox. I just cleared it.

Gina, this response to Cong Huffman is set up to include as an attachment the letter to the Corps interpreting the revised SOL memo. Aurelia sent that response back with comments, and it looks like you have our response in your inbox. We should get both cleared and moving

on parallel tracks. Our response to Aurelia's comments looked good to me. -- GDF

*Gary Frazer*

*Assistant Director - Ecological Services*

*gary\_frazer@fws.gov*

*Ph. (202) 208-4646*

*Cell (202) 253-4578*

---

**From:** Randolph, Nikki <nikki\_randolph@fws.gov>

**Sent:** Friday, April 10, 2020 6:47 AM

**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Frazer, Gary D <gary\_frazer@fws.gov>

**Subject:** I recieved the following message FROM EXSEC

- EST-00015554/FWS 072054 Response to Rep. Jared Huffman Re the Coastal Barrier Resources Act - Per the FWS record, the response in the record was assigned to the Asst. Dir.- Ecological Services, for surname, on March 27, 2020. Could the response be surnamed, or could a reason be provided for the delay?

Nikki S. Randolph

Chief, CCU

U.S. Fish and Wildlife Service

202-208-7535

**From:** [Wright, Dana K](#)  
**To:** [Bohn, Cynthia](#); [Niemi, Katie](#)  
**Cc:** [Tripp, Kimberly J](#)  
**Subject:** Re: Corps letter 071591 for Gary's signature  
**Date:** Tuesday, April 21, 2020 12:58:46 PM

---

Yes, we'll put it on Teams once it is signed.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Sent:** Tuesday, April 21, 2020 11:00 AM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Cc:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: Corps letter 071591 for Gary's signature

Hi ladies, will you put a copy of this in our Teams documents when it is signed? I don't think I have access to DTS, at least I never have. I will send to the ROs as soon as it is available.

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 20, 2020 11:46 AM  
**To:** Barba, Robert <robert\_barba@fws.gov>; Wright, Dana K <dana\_wright@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Cc:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Subject:** Re: Corps letter 071591 for Gary's signature

Thank you Rob!

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151

Cell- 571-389-2658

---

**From:** Barba, Robert <robert\_barba@fws.gov>  
**Sent:** Monday, April 20, 2020 10:16 AM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Cc:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Subject:** Re: Corps letter 071591 for Gary's signature

All,  
Final copy has been uploaded to DTS awaiting signature.

Thanks for your time,  
-Rob  
Robert R. Barba  
AES-BASS  
Ecological Services Program  
U.S. Fish & Wildlife Service  
MS-ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
(703) 358-2171  
(703) 358 2689 direct  
(703) 358-1800 fax  
[Robert\\_Barba@fws.gov](mailto:Robert_Barba@fws.gov)

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Monday, April 20, 2020 7:42 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Barba, Robert <robert\_barba@fws.gov>  
**Cc:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Subject:** Re: Corps letter 071591 for Gary's signature

Great, thank you.

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES  
Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 20, 2020 7:41 AM  
**To:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Barba, Robert <robert\_barba@fws.gov>  
**Cc:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Subject:** Re: Corps letter 071591 for Gary's signature

Rob,

Please put this letter on electronic letterhead so that Gary can electronically sign it. Gary is also working from home now so everything will be done electronically.

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Wright, Dana K <dana\_wright@fws.gov>  
**Sent:** Monday, April 20, 2020 7:31 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Cc:** Bohn, Cynthia <cynthia\_bohn@fws.gov>  
**Subject:** Corps letter 071591 for Gary's signature

Hi folks,

Good news - the Director's office has cleared the Corps letter (071591) for signature. CCU routed it back to Gary on Friday and no further edits were uploaded. Lois, is Gary able to sign and scan letters? We've been waiting on this letter to be finished up so that we can attach it to a Congressional letter that we have pending.

Thanks,

Dana Wright  
Program Specialist  
Ecological Services  
U.S. Fish & Wildlife Service  
5275 Leesburg Pike, MS: ES

Falls Church, VA 22041  
703-358-2443 (office)  
703-358-1800 (fax)

[Learn more about the Coastal Barrier Resources Act](#)

**From:** [DTS@fws.gov](mailto:DTS@fws.gov)  
**To:** [Parker, Alison L](#); [Wright, Dana K](#); [Bowen, Diane](#); [Zosh, Jennifer M](#); [Niemi, Katie](#); [Tripp, Kimberly J](#); [Hatch, Kristy B](#); [Comlish, Paul D](#); [Barba, Robert](#)  
**Subject:** DTS Assignment--CBRA and Corps Sand Mining/Shoreline Stabilization Projects  
**Date:** Sunday, April 26, 2020 1:50:44 PM

---

Hello and welcome to the DTS automated email alert!

Your office (AES-DRR-BCMR) has a task assigned.

Please log in to the Data Tracking System at the following URL Address: <https://dts.fws.gov/dts/preLogin.do?officeId=7740> and review Document Control Number (DCN)\*\* 071591.

To move the document to the next office in the routing process, enter the task completed date for your office's routing in the routing screen and save the record.

Document Subject: CBRA and Corps Sand Mining/Shoreline Stabilization Projects

Synopsis: This letter provides a revised legal interpretation of the Coastal Barrier Resources Act (CBRA) exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system" that are also consistent with the purposes of CBRA.

Action Required: 2-Appropriate Action

Assigned By Office: AES User: Gary Frazer

\*\*Thank you\*\*.

**From:** [Frazer, Gary D](#)  
**To:** [Niemi, Katie](#)  
**Cc:** [Mills, Katie E](#)  
**Subject:** Fw: DCN 71591 Sand mining letter to Corps  
**Date:** Monday, April 27, 2020 9:04:36 AM  
**Attachments:** [071591 - for signature.pdf](#)

---

Katie Niemi -- Intended to copy you.

Katie Mills -- Sorry; copied the wrong Katie. And congrats on your new position!

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*gary\_frazer@fws.gov*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*

---

**From:** Frazer, Gary D  
**Sent:** Sunday, April 26, 2020 1:54 PM  
**To:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Mills, Katie E <katie\_mills@ios.doi.gov>  
**Cc:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** DCN 71591 Sand mining letter to Corps

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*gary\_frazer@fws.gov*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

5275 Leesburg Pike  
MS-ES  
Falls Church, Virginia 22041

April 20, 2020

In Reply Refer To:  
FWS/AES/DRR/BCMR/071591

Mr. Alvin Lee  
Director of Civil Works  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, D.C. 20314-1000

Dear Mr. Lee:

The Department of the Interior (Department) and the U.S. Fish and Wildlife Service (Service) have revisited an issue related to the interpretation of the Coastal Barrier Resources Act (CBRA) (16 U.S.C § 3501 et seq.) that impacts U.S. Army Corps of Engineers (Corps) dredging and beach-nourishment projects. Since 1994, the Department and the Service have advised the Corps that the CBRA exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system”<sup>i</sup> could not be applied to sand mining *within* the John H. Chafee Coastal Barrier Resources System (CBRS) for beach-nourishment projects that occur *outside* of the CBRS. We have revisited our interpretation of this CBRA exception and, in consultation with the Department’s Office of the Solicitor, Division of Parks and Wildlife, have determined that sand from *within* the CBRS may be used to nourish beaches *outside* of the CBRS, provided that the federal funding agency consults with the Service and the project meets the requirements of the exception and is consistent with the purposes of CBRA. The Service began applying this interpretation on November 4, 2019.

CBRA prohibits most new federal expenditures and financial assistance within the CBRS, including projects to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area.<sup>ii</sup> Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA’s exceptions.<sup>iii</sup> Each affected agency is independently responsible for complying with the law and certifying annually to the Secretary of the Interior that they are in compliance with CBRA.<sup>iv</sup> The law does not restrict the use of private, state, or local funds or limit the issuance of federal permits within the CBRS.

The beaches, inlets, and wetlands within and adjacent to the CBRS support a diversity of fish and wildlife that may be susceptible to the adverse impacts of dredging and shoreline-stabilization projects. This letter provides information about the consultation process, the need for monitoring

and Best Management Practices (BMPs) for shoreline-stabilization projects, and considerations for developing CBRA-compliant projects under the exception at 16 U.S.C. § 3505(a)(6)(G).

### *CBRA Consultation Process for Nonstructural Shoreline-Stabilization Projects*

While the revised legal interpretation does not *guarantee* that sand within the CBRS may be used for beach replenishment outside the CBRS, it does make such projects eligible for consideration by federal agencies through the CBRA consultation process. The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the CBRS for nonstructural shoreline stabilization outside of the CBRS. Such projects would generally<sup>v</sup> be considered under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.”<sup>vi</sup> This exception also requires that the project be consistent with the purposes of CBRA, which are:

*to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers ... by restricting future federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers... and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.*<sup>vii</sup>

The Service’s revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects does not alter the federal funding agency’s responsibility to consider each project on a case-by-case basis through the consultation process. Additionally, any new commitment of federal funds associated with a project following the initial consultation (e.g., future beach renourishment) or change in the project design and/or scope is subject to CBRA’s consultation requirement. Information about the consultation process is available at: <https://www.fws.gov/cbra/consultations.html>.

Our revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects gives federal agencies more flexibility to undertake projects that will protect coastal resources, even if those resources are located outside of the CBRS. Accordingly, our revised interpretation also requires consideration of the impacts of the project both within and outside of the CBRS. It is incumbent upon the funding agency to demonstrate that the project will minimize damage to fish, wildlife, and other natural resources and contribute to the long-term conservation of the coastal barrier resources.

### *Need for Monitoring and Best Management Practices for Nonstructural Shoreline-Stabilization Projects*

Many Corps projects are authorized for long-term periods (e.g., more than 20 years) and include numerous planned dredging and renourishment cycles. There is minimal data capturing the long-term effects of such protracted operations. In such situations, conducting pre-and post-project data collection and monitoring throughout the duration of the project is essential to determine effects on the natural resources and the coastal barrier system (including physical, geologic, and biological parameters). By collecting data on the actual on-the-ground impacts of dredging and beach nourishment for specific projects, including the recovery of the borrow site, our agencies will be better suited to assess whether subsequent sand borrowing and/or nourishment is

consistent with the purposes of CBRA (see #3 and 4 below). The U.S. Army Engineer Research and Development Center Environmental Laboratory has identified the need for BMPs for coastal engineering projects and pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed.<sup>viii</sup> The Service agrees that BMPs and monitoring are necessary to assess whether projects are contributing to the long-term conservation of natural resources, as forecasted.

### *Considerations for Developing CBRA-Compliant Shoreline-Stabilization Projects*

When assessing whether a particular project meets an exception under 16 U.S.C. § 3505(a)(6)(G), the following factors should be considered:

- 1) **Do the sand mining and beach nourishment (both inside and outside of the CBRS) constitute “nonstructural” shoreline-stabilization activities as required by the exception?**  
Disqualifying factors would be the construction, maintenance, or expansion of structural elements in the project (e.g., jetties, groins, seawalls, geotubes, and bulkheads) either inside or outside of the CBRS. However, the mere presence of pre-existing structures on the ground in a project area that are not being constructed, maintained, or expanded as part of the project at hand *does not* disqualify a project from being considered “nonstructural.”
- 2) **Can the sand mining and the beach nourishment be considered to “mimic, enhance, or restore a natural stabilization system” (both inside and outside of the CBRS)?**  
Examples of issues to address through a consultation may include, but are not limited to:
  - whether the sand will flow back to the borrow site over time through natural littoral drift, and if so, how long it is expected to take;
  - whether dredging sand from an inlet or nearshore area will affect the shoreline laterally up and down the coast from the project, and to what extent;
  - whether littoral drift will be impeded by existing hard structures such as groins and jetties;
  - whether the project includes the removal of an extraordinary volume of sand from an inlet or nearshore area that may interfere with the natural function of the coastal barrier system;
  - whether the project includes the construction of artificial dunes designed to prevent natural processes, such as overwash and erosion; and
  - whether the sediment to be used in beach nourishment exhibits the appropriate characteristics (e.g., color and grain size) present in the natural stabilization system, thereby promoting the integrity of restored beaches for seabirds, shorebirds, sea turtles, and other flora and fauna.
- 3) **Is the project consistent with the purposes of CBRA, including: minimizing the loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources by restricting federal expenditures and financial assistance that have the effect of encouraging development of coastal barriers?<sup>ix</sup>** Many species depend upon the perpetuation of natural dynamic coastal-formation processes. Dredging of inlets for sand may cause changes in the benthic community and seafloor geomorphology. Sand removal or sediment starvation of shoals, sandbars, and adjacent shoreline habitat upsets the natural equilibrium and may reduce the system’s ability to maintain a full suite of inlet habitats as sea level continues to rise at an accelerating rate. Additionally, beach nourishment used to protect existing structures and communities may attract further development in vulnerable areas, thus requiring greater need for

future sand replenishment,<sup>x</sup> or more drastic stabilization measures.<sup>xi</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether the dredging will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the shoreline stabilization will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the project may encourage development on coastal barriers, thus resulting in higher populations in hazard-prone areas; and
- whether the project is designed to protect structures that were constructed within the CBRS after designation.

**4) Will the project contribute to the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers?**<sup>xii</sup> Shoreline-stabilization activities and residential growth along coastal areas may negatively impact coastal-dependent species, many of which are at-risk or federally protected, further exacerbating their vulnerability and endangerment. Furthermore, shoreline alteration may result in desired short-term stability, however, the long-term resiliency of the barrier system may be compromised.<sup>xiii</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether appropriate pre- and post-project monitoring is in place to ensure that the project does not threaten the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers; and
- whether the project incorporates reasonable and prudent conservation measures and BMPs to ensure the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers.

We hope this information is helpful in your efforts to develop shoreline-stabilization projects that are compliant with CBRA. If you have any questions or concerns, please contact me at (202) 208-4646 or Ms. Michelle Shaughnessy, Chief, Division of Restoration and Recovery, at (703) 358-2171.

Sincerely,

Gary Frazer  
Assistant Director for  
Ecological Services

---

<sup>i</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>ii</sup> *Id.* § 3504(a)(3)

<sup>iii</sup> *Id.* § 3505(a)

<sup>iv</sup> *Id.* § 3506(b)

---

<sup>v</sup> CBRA's exception for the maintenance of pre-existing federal navigation channels (16 U.S.C. § 3505(a)(2)) also allows for the removal of sand from the CBRS. However, many coastal storm-damage-reduction projects require a greater volume of sand than can be obtained through maintenance dredging alone.

<sup>vi</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>vii</sup> *Id.* § 3501(b)

<sup>viii</sup> In June 2019, the U.S. Army Engineer Research and Development Center Environmental Laboratory published a technical note that highlights some of the habitat degradation associated with shoreline-stabilization and sand-mining activities, and identifies the need for "improved approaches to offset these negative impacts that will create better conditions for shoreline-dependent birds, sea turtles, and other sensitive or rare flora and fauna." The note states that BMPs need to be developed, tested, and verified locally, and then implemented widely. The note also states the need for pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed. Guilfoyle, M. P., J. F. Jung, R. A. Fischer, and D. D. Dickerson. 2019. Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species. EMRRP Technical Notes Collection. ERDC/TN EMRRP-SI-38. Vicksburg, MS: U.S. Army Engineer Research and Development Center. <https://hdl.handle.net/11681/33203>.

<sup>ix</sup> 16 U.S.C. § 3501(b)

<sup>x</sup> "In a comprehensive, parcel-scale analysis of all shorefront single-family homes in the state of Florida, we find that houses in nourishing zones are significantly larger and more numerous than in non-nourishing zones. The predominance of larger homes in nourishing zones suggests a positive feedback between nourishment and development that is compounding coastal risk in zones already characterized by high vulnerability." Armstrong, S. B., E. D. Lazarus, P. W. Limber, E. B. Goldstein, C. Thorpe, and R. C. Ballinger. 2016. Indications of a positive feedback between coastal development and beach nourishment, *Earth's Future*, 4, 626–635. <https://doi.org/10.1002/2016EF000425>.

<sup>xi</sup> Pilkey, O.H. and K.L. Dixon. 1996. *The Corps and the shore*. Island Press; Washington, D.C.

<sup>xii</sup> 16 U.S.C. § 3501(b)

<sup>xiii</sup> A 2017 U.S. Geological Survey study found that: "The longer humans intervene in the coastal system by fixing the barrier in place laterally and vertically, the faster drowning occurs, even if natural barrier island morphodynamics are restored after human intervention. This suggests that coastal management techniques that seek to maintain barrier positions and redistribute overwash deposits may result in more resilient coastlines initially but that increased vulnerability resulting from human alterations may not be reversible over longer time scales." Miselis, J. L., & Lorenzo-Trueba, J. 2017. Natural and human-induced variability in barrier-island response to sea level rise. *Geophysical Research Letters*, 44, 11, 922–11, 931. <https://doi.org/10.1002/2017GL074811>.

**From:** [Tripp, Kimberly J](#)  
**To:** [Wright, Dana K](#); [Niemi, Katie](#)  
**Subject:** Fwd: DCN 71591 Sand mining letter to Corps  
**Date:** Monday, April 27, 2020 9:04:18 AM

---

I assume email the contact that charissa provided and Lois can do it on behalf of Gary? Do you have the email address?

Sent from my iPhone

Begin forwarded message:

**From:** "Frazer, Gary D" <gary\_frazer@fws.gov>  
**Date:** April 26, 2020 at 1:54:57 PM EDT  
**To:** "Shaughnessy, Michelle" <Michelle\_Shaughnessy@fws.gov>, "Tripp, Kimberly J" <kimberly\_tripp@fws.gov>, "Mills, Katie E" <katie\_mills@ios.doi.gov>  
**Cc:** "Wellman, Lois A" <lois\_wellman@fws.gov>  
**Subject:** DCN 71591 Sand mining letter to Corps

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*gary\_frazer@fws.gov*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*  
*<071591 - for signature.pdf>*

**From:** [Wellman, Lois A](#)  
**To:** [Tripp, Kimberly J](#); [Niemi, Katie](#); [Wright, Dana K](#)  
**Cc:** [Parker, Alison L](#)  
**Subject:** Fw: DCN 71591 Sand mining letter to Corps  
**Date:** Monday, April 27, 2020 10:22:10 AM  
**Attachments:** [071591 - for signature.pdf](#)

---

Do you have an email address to send this letter? If you need assistance in obtaining an email address, please let Alison know.

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Frazer, Gary D <[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)>  
**Sent:** Sunday, April 26, 2020 1:54 PM  
**To:** Shaughnessy, Michelle <[Michelle\\_Shaughnessy@fws.gov](mailto:Michelle_Shaughnessy@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>; Mills, Katie E <[katie\\_mills@ios.doi.gov](mailto:katie_mills@ios.doi.gov)>  
**Cc:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Subject:** DCN 71591 Sand mining letter to Corps

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*[gary\\_frazer@fws.gov](mailto:gary_frazer@fws.gov)*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

5275 Leesburg Pike  
MS-ES  
Falls Church, Virginia 22041

April 20, 2020

In Reply Refer To:  
FWS/AES/DRR/BCMR/071591

Mr. Alvin Lee  
Director of Civil Works  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, D.C. 20314-1000

Dear Mr. Lee:

The Department of the Interior (Department) and the U.S. Fish and Wildlife Service (Service) have revisited an issue related to the interpretation of the Coastal Barrier Resources Act (CBRA) (16 U.S.C § 3501 et seq.) that impacts U.S. Army Corps of Engineers (Corps) dredging and beach-nourishment projects. Since 1994, the Department and the Service have advised the Corps that the CBRA exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system”<sup>i</sup> could not be applied to sand mining *within* the John H. Chafee Coastal Barrier Resources System (CBRS) for beach-nourishment projects that occur *outside* of the CBRS. We have revisited our interpretation of this CBRA exception and, in consultation with the Department’s Office of the Solicitor, Division of Parks and Wildlife, have determined that sand from *within* the CBRS may be used to nourish beaches *outside* of the CBRS, provided that the federal funding agency consults with the Service and the project meets the requirements of the exception and is consistent with the purposes of CBRA. The Service began applying this interpretation on November 4, 2019.

CBRA prohibits most new federal expenditures and financial assistance within the CBRS, including projects to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area.<sup>ii</sup> Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA’s exceptions.<sup>iii</sup> Each affected agency is independently responsible for complying with the law and certifying annually to the Secretary of the Interior that they are in compliance with CBRA.<sup>iv</sup> The law does not restrict the use of private, state, or local funds or limit the issuance of federal permits within the CBRS.

The beaches, inlets, and wetlands within and adjacent to the CBRS support a diversity of fish and wildlife that may be susceptible to the adverse impacts of dredging and shoreline-stabilization projects. This letter provides information about the consultation process, the need for monitoring

and Best Management Practices (BMPs) for shoreline-stabilization projects, and considerations for developing CBRA-compliant projects under the exception at 16 U.S.C. § 3505(a)(6)(G).

### *CBRA Consultation Process for Nonstructural Shoreline-Stabilization Projects*

While the revised legal interpretation does not *guarantee* that sand within the CBRS may be used for beach replenishment outside the CBRS, it does make such projects eligible for consideration by federal agencies through the CBRA consultation process. The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the CBRS for nonstructural shoreline stabilization outside of the CBRS. Such projects would generally<sup>v</sup> be considered under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.”<sup>vi</sup> This exception also requires that the project be consistent with the purposes of CBRA, which are:

*to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers ... by restricting future federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers... and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.*<sup>vii</sup>

The Service’s revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects does not alter the federal funding agency’s responsibility to consider each project on a case-by-case basis through the consultation process. Additionally, any new commitment of federal funds associated with a project following the initial consultation (e.g., future beach renourishment) or change in the project design and/or scope is subject to CBRA’s consultation requirement. Information about the consultation process is available at: <https://www.fws.gov/cbra/consultations.html>.

Our revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects gives federal agencies more flexibility to undertake projects that will protect coastal resources, even if those resources are located outside of the CBRS. Accordingly, our revised interpretation also requires consideration of the impacts of the project both within and outside of the CBRS. It is incumbent upon the funding agency to demonstrate that the project will minimize damage to fish, wildlife, and other natural resources and contribute to the long-term conservation of the coastal barrier resources.

### *Need for Monitoring and Best Management Practices for Nonstructural Shoreline-Stabilization Projects*

Many Corps projects are authorized for long-term periods (e.g., more than 20 years) and include numerous planned dredging and renourishment cycles. There is minimal data capturing the long-term effects of such protracted operations. In such situations, conducting pre-and post-project data collection and monitoring throughout the duration of the project is essential to determine effects on the natural resources and the coastal barrier system (including physical, geologic, and biological parameters). By collecting data on the actual on-the-ground impacts of dredging and beach nourishment for specific projects, including the recovery of the borrow site, our agencies will be better suited to assess whether subsequent sand borrowing and/or nourishment is

consistent with the purposes of CBRA (see #3 and 4 below). The U.S. Army Engineer Research and Development Center Environmental Laboratory has identified the need for BMPs for coastal engineering projects and pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed.<sup>viii</sup> The Service agrees that BMPs and monitoring are necessary to assess whether projects are contributing to the long-term conservation of natural resources, as forecasted.

### *Considerations for Developing CBRA-Compliant Shoreline-Stabilization Projects*

When assessing whether a particular project meets an exception under 16 U.S.C. § 3505(a)(6)(G), the following factors should be considered:

- 1) **Do the sand mining and beach nourishment (both inside and outside of the CBRS) constitute “nonstructural” shoreline-stabilization activities as required by the exception?**  
Disqualifying factors would be the construction, maintenance, or expansion of structural elements in the project (e.g., jetties, groins, seawalls, geotubes, and bulkheads) either inside or outside of the CBRS. However, the mere presence of pre-existing structures on the ground in a project area that are not being constructed, maintained, or expanded as part of the project at hand *does not* disqualify a project from being considered “nonstructural.”
- 2) **Can the sand mining and the beach nourishment be considered to “mimic, enhance, or restore a natural stabilization system” (both inside and outside of the CBRS)?**  
Examples of issues to address through a consultation may include, but are not limited to:
  - whether the sand will flow back to the borrow site over time through natural littoral drift, and if so, how long it is expected to take;
  - whether dredging sand from an inlet or nearshore area will affect the shoreline laterally up and down the coast from the project, and to what extent;
  - whether littoral drift will be impeded by existing hard structures such as groins and jetties;
  - whether the project includes the removal of an extraordinary volume of sand from an inlet or nearshore area that may interfere with the natural function of the coastal barrier system;
  - whether the project includes the construction of artificial dunes designed to prevent natural processes, such as overwash and erosion; and
  - whether the sediment to be used in beach nourishment exhibits the appropriate characteristics (e.g., color and grain size) present in the natural stabilization system, thereby promoting the integrity of restored beaches for seabirds, shorebirds, sea turtles, and other flora and fauna.
- 3) **Is the project consistent with the purposes of CBRA, including: minimizing the loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources by restricting federal expenditures and financial assistance that have the effect of encouraging development of coastal barriers?<sup>ix</sup>** Many species depend upon the perpetuation of natural dynamic coastal-formation processes. Dredging of inlets for sand may cause changes in the benthic community and seafloor geomorphology. Sand removal or sediment starvation of shoals, sandbars, and adjacent shoreline habitat upsets the natural equilibrium and may reduce the system’s ability to maintain a full suite of inlet habitats as sea level continues to rise at an accelerating rate. Additionally, beach nourishment used to protect existing structures and communities may attract further development in vulnerable areas, thus requiring greater need for

future sand replenishment,<sup>x</sup> or more drastic stabilization measures.<sup>xi</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether the dredging will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the shoreline stabilization will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the project may encourage development on coastal barriers, thus resulting in higher populations in hazard-prone areas; and
- whether the project is designed to protect structures that were constructed within the CBRS after designation.

**4) Will the project contribute to the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers?**<sup>xii</sup> Shoreline-stabilization activities and residential growth along coastal areas may negatively impact coastal-dependent species, many of which are at-risk or federally protected, further exacerbating their vulnerability and endangerment. Furthermore, shoreline alteration may result in desired short-term stability, however, the long-term resiliency of the barrier system may be compromised.<sup>xiii</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether appropriate pre- and post-project monitoring is in place to ensure that the project does not threaten the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers; and
- whether the project incorporates reasonable and prudent conservation measures and BMPs to ensure the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers.

We hope this information is helpful in your efforts to develop shoreline-stabilization projects that are compliant with CBRA. If you have any questions or concerns, please contact me at (202) 208-4646 or Ms. Michelle Shaughnessy, Chief, Division of Restoration and Recovery, at (703) 358-2171.

Sincerely,

Gary Frazer  
Assistant Director for  
Ecological Services

---

<sup>i</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>ii</sup> *Id.* § 3504(a)(3)

<sup>iii</sup> *Id.* § 3505(a)

<sup>iv</sup> *Id.* § 3506(b)

---

<sup>v</sup> CBRA's exception for the maintenance of pre-existing federal navigation channels (16 U.S.C. § 3505(a)(2)) also allows for the removal of sand from the CBRS. However, many coastal storm-damage-reduction projects require a greater volume of sand than can be obtained through maintenance dredging alone.

<sup>vi</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>vii</sup> *Id.* § 3501(b)

<sup>viii</sup> In June 2019, the U.S. Army Engineer Research and Development Center Environmental Laboratory published a technical note that highlights some of the habitat degradation associated with shoreline-stabilization and sand-mining activities, and identifies the need for "improved approaches to offset these negative impacts that will create better conditions for shoreline-dependent birds, sea turtles, and other sensitive or rare flora and fauna." The note states that BMPs need to be developed, tested, and verified locally, and then implemented widely. The note also states the need for pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed. Guilfoyle, M. P., J. F. Jung, R. A. Fischer, and D. D. Dickerson. 2019. Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species. EMRRP Technical Notes Collection. ERDC/TN EMRRP-SI-38. Vicksburg, MS: U.S. Army Engineer Research and Development Center. <https://hdl.handle.net/11681/33203>.

<sup>ix</sup> 16 U.S.C. § 3501(b)

<sup>x</sup> "In a comprehensive, parcel-scale analysis of all shorefront single-family homes in the state of Florida, we find that houses in nourishing zones are significantly larger and more numerous than in non-nourishing zones. The predominance of larger homes in nourishing zones suggests a positive feedback between nourishment and development that is compounding coastal risk in zones already characterized by high vulnerability." Armstrong, S. B., E. D. Lazarus, P. W. Limber, E. B. Goldstein, C. Thorpe, and R. C. Ballinger. 2016. Indications of a positive feedback between coastal development and beach nourishment, *Earth's Future*, 4, 626–635. <https://doi.org/10.1002/2016EF000425>.

<sup>xi</sup> Pilkey, O.H. and K.L. Dixon. 1996. *The Corps and the shore*. Island Press; Washington, D.C.

<sup>xii</sup> 16 U.S.C. § 3501(b)

<sup>xiii</sup> A 2017 U.S. Geological Survey study found that: "The longer humans intervene in the coastal system by fixing the barrier in place laterally and vertically, the faster drowning occurs, even if natural barrier island morphodynamics are restored after human intervention. This suggests that coastal management techniques that seek to maintain barrier positions and redistribute overwash deposits may result in more resilient coastlines initially but that increased vulnerability resulting from human alterations may not be reversible over longer time scales." Miselis, J. L., & Lorenzo-Trueba, J. 2017. Natural and human-induced variability in barrier-island response to sea level rise. *Geophysical Research Letters*, 44, 11, 922–11, 931. <https://doi.org/10.1002/2017GL074811>.

**From:** [Niemi, Katie](#)  
**To:** [Parker, Alison L](#); [Wellman, Lois A](#)  
**Cc:** [Wright, Dana K](#); [Tripp, Kimberly J](#)  
**Subject:** Re: DCN 71591 Sand mining letter to Corps  
**Date:** Tuesday, April 28, 2020 2:35:58 PM

---

Great. Thanks Alison.

Lois, can you transmit the pdf of the letter via email to Mr. Lee and Col Gibbs on behalf of Gary? If you want to include a short explanation in your email, you could include something like this:

Mr. Lee,

Please find attached a letter addressed to you from Mr. Gary Frazer, Assistant Director for Ecological Services at the U.S. Fish and Wildlife Service. This letter pertains to a revised interpretation of the Coastal Barrier Resources Act that affects U.S. Army Corps of Engineers dredging and beach nourishment projects. We are transmitting this letter electronically due to COVID-19 related disruptions to our regular mail operations. Thank you.

Please copy me and Kim (or forward us a copy of what you send) so we have a record for our files. Thanks!

Katie

---

**From:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 2:05 PM  
**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie,

I was able to retrieve email addresses for the two individuals requested. They are:

Mr. Alvin Lee: [Alvin.B.Lee@usace.army.mil](mailto:Alvin.B.Lee@usace.army.mil)

Col. Kirk E.Gibbs: [Kirk.E.Gibbs@usace.army.mil](mailto:Kirk.E.Gibbs@usace.army.mil)

Thanks,  
Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:31 AM  
**To:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Sounds good. Thanks Alison.

Katie

---

**From:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:20 AM  
**To:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>; Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie.

I have called the number Jen provided and left several messages on different extensions. If I don't hear anything by the end of the day, I will call back to see if I can reach someone. I will also send an email to the address provided.

Thanks,  
Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355

E-mail: alison\_parker@fws.gov

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 27, 2020 12:15 PM  
**To:** Niemi, Katie <katie\_niemi@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Alison,

Please call and see if we can get an email address.

Katie,

Since we are not clear on when we are going back, I would just close and notate. If later they say we need to send one, we can always do that.

And I'm fine with either - since Gary already signed it, if you want to that's fine. Or I can do it - just let me know which you prefer.

Thanks,

Lois  
Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Monday, April 27, 2020 12:13 PM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Lois,

Jen tried to find email addresses online for Mr. Alvin Lee, Corps Director of Civil Works as well as Chief of Staff, Col. Kirk E. Gibbs. She couldn't find emails for the two individuals but did find the following main tel. number for Corps HQ Public Affairs 202-761-0011 and email hq-publicaffairs@usace.army.mil.

Can Alison please call that number to get the two email addresses (explaining that we are transmitting this official correspondence via email at this time). Do we plan to mail a hard copy once back in the office or will we just close out in DTS with a note that indicates it was transmitted electronically to the two individuals? Also, once we have the email addresses will you transmit the signed letter via email on behalf of Gary or do you want us to do that?

Thanks!  
Katie

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 27, 2020 10:57 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

We can try. Alison, please work to see if we can find an email address.

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 27, 2020 10:49 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Fw: DCN 71591 Sand mining letter to Corps

Hi Lois,

I've tried to track down Kirk's email via this web link, but have been unsuccessful. Would Alison be able to find his contact info?

thank you.

Kim

Kim Tripp

Chief, Branch of Coastal and Marine Resources

Fish and Wildlife Service

Ecological Services, MS: ES

5275 Leesburg Pike

Falls Church, VA 22041-3803

Office- 703-358-2151

Cell- 571-389-2658

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>

**Sent:** Monday, April 27, 2020 10:24 AM

**To:** Frazer, Gary D <gary\_frazer@fws.gov>

**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>

**Subject:** Re: DCN 71591 Sand mining letter to Corps

Thank you Gary.

I reached out to Charissa and found her counterpart at USACOE. I suggest sending as email attachment to:

## Kirk E. Gibbs

Col. Kirk E. Gibbs is currently the Chief of Staff, Headquarters, U.S. Army Corps of Engineers

<https://www.usace.army.mil/About/Leadership/Bio-Article-View/Article/1634632/colonel-kirk-e-gibbs/>

Should Lois send on your behalf?

Kim

Sent from my iPhone

On Apr 26, 2020, at 1:54 PM, Frazer, Gary D <gary\_frazer@fws.gov> wrote:

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*

*Assistant Director - Ecological Services*

*gary\_frazer@fws.gov*

*Ph. (202) 208-4646*

*Cell (202) 253-4578*

*<071591 - for signature.pdf>*

**From:** [Tripp, Kimberly J](#)  
**To:** [Wellman, Lois A](#); [Niemi, Katie](#); [Parker, Alison L](#)  
**Cc:** [Wright, Dana K](#)  
**Subject:** Re: DCN 71591 Sand mining letter to Corps  
**Date:** Tuesday, April 28, 2020 3:09:10 PM

---

thank you!

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151  
Cell- 571-389-2658

---

**From:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 3:07 PM  
**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>; Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Letter sent - you are copied. In addition, I added Gary as a blind copy.

Thanks,

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 2:35 PM  
**To:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>

**Subject:** Re: DCN 71591 Sand mining letter to Corps

Great. Thanks Alison.

Lois, can you transmit the pdf of the letter via email to Mr. Lee and Col Gibbs on behalf of Gary? If you want to include a short explanation in your email, you could include something like this:

Mr. Lee,

Please find attached a letter addressed to you from Mr. Gary Frazer, Assistant Director for Ecological Services at the U.S. Fish and Wildlife Service. This letter pertains to a revised interpretation of the Coastal Barrier Resources Act that affects U.S. Army Corps of Engineers dredging and beach nourishment projects. We are transmitting this letter electronically due to COVID-19 related disruptions to our regular mail operations. Thank you.

Please copy me and Kim (or forward us a copy of what you send) so we have a record for our files. Thanks!

Katie

---

**From:** Parker, Alison L <alison\_parker@fws.gov>

**Sent:** Tuesday, April 28, 2020 2:05 PM

**To:** Niemi, Katie <katie\_niemi@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>

**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>

**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie,

I was able to retrieve email addresses for the two individuals requested. They are:

Mr. Alvin Lee: Alvin.B.Lee@usace.army.mil

Col. Kirk E.Gibbs: Kirk.E.Gibbs@usace.army.mil

Thanks,

Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:31 AM  
**To:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Sounds good. Thanks Alison.

Katie

---

**From:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:20 AM  
**To:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>; Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie.

I have called the number Jen provided and left several messages on different extensions. If I don't hear anything by the end of the day, I will call back to see if I can reach someone. I will also send an email to the address provided.

Thanks,  
Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 27, 2020 12:15 PM  
**To:** Niemi, Katie <katie\_niemi@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Alison,

Please call and see if we can get an email address.

Katie,

Since we are not clear on when we are going back, I would just close and notate. If later they say we need to send one, we can always do that.

And I'm fine with either - since Gary already signed it, if you want to that's fine. Or I can do it - just let me know which you prefer.

Thanks,

Lois  
Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Monday, April 27, 2020 12:13 PM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Lois,

Jen tried to find email addresses online for Mr. Alvin Lee, Corps Director of Civil Works as well as Chief of Staff, Col. Kirk E. Gibbs. She couldn't find emails for the two individuals but did find the following main tel. number for Corps HQ Public Affairs 202-761-0011 and email hq-publicaffairs@usace.army.mil.

Can Alison please call that number to get the two email addresses (explaining that we are

transmitting this official correspondence via email at this time). Do we plan to mail a hard copy once back in the office or will we just close out in DTS with a note that indicates it was transmitted electronically to the two individuals? Also, once we have the email addresses will you transmit the signed letter via email on behalf of Gary or do you want us to do that?

Thanks!  
Katie

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 27, 2020 10:57 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

We can try. Alison, please work to see if we can find an email address.

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 27, 2020 10:49 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Fw: DCN 71591 Sand mining letter to Corps

Hi Lois,

I've tried to track down Kirk's email via this web link, but have been unsuccessful. Would Alison be able to find his contact info?

thank you.  
Kim

Kim Tripp  
Chief, Branch of Coastal and Marine Resources  
Fish and Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151  
Cell- 571-389-2658

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 27, 2020 10:24 AM  
**To:** Frazer, Gary D <gary\_frazer@fws.gov>  
**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Thank you Gary.

I reached out to Charissa and found her counterpart at USACOE. I suggest sending as email attachment to:

## Kirk E. Gibbs

Col. Kirk E. Gibbs is currently the Chief of Staff, Headquarters, U.S. Army Corps of Engineers

<https://www.usace.army.mil/About/Leadership/Bio-Article-View/Article/1634632/colonel-kirk-e-gibbs/>

Should Lois send on your behalf?

Kim

Sent from my iPhone

On Apr 26, 2020, at 1:54 PM, Frazer, Gary D <gary\_frazer@fws.gov> wrote:

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*

*gary\_frazer@fws.gov*

*Ph. (202) 208-4646*

*Cell (202) 253-4578*

*<071591 - for signature.pdf>*

**From:** [Niemi, Katie](#)  
**To:** [Wellman, Lois A](#)  
**Subject:** Re: DCN 71591 Sand mining letter to Corps  
**Date:** Tuesday, April 28, 2020 3:13:50 PM

---

Thanks Lois. Much appreciated!

Katie Niemi  
Coastal Barriers Coordinator  
U.S. Fish & Wildlife Service  
Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Tel (703) 358-2071

---

**From:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 3:07 PM  
**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>; Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Letter sent - you are copied. In addition, I added Gary as a blind copy.

Thanks,

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 2:35 PM  
**To:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Great. Thanks Alison.

Lois, can you transmit the pdf of the letter via email to Mr. Lee and Col Gibbs on behalf of Gary? If you want to include a short explanation in your email, you could include something like this:

Mr. Lee,

Please find attached a letter addressed to you from Mr. Gary Frazer, Assistant Director for Ecological Services at the U.S. Fish and Wildlife Service. This letter pertains to a revised interpretation of the Coastal Barrier Resources Act that affects U.S. Army Corps of Engineers dredging and beach nourishment projects. We are transmitting this letter electronically due to COVID-19 related disruptions to our regular mail operations. Thank you.

Please copy me and Kim (or forward us a copy of what you send) so we have a record for our files. Thanks!

Katie

---

**From:** Parker, Alison L <alison\_parker@fws.gov>

**Sent:** Tuesday, April 28, 2020 2:05 PM

**To:** Niemi, Katie <katie\_niemi@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>

**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>

**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie,

I was able to retrieve email addresses for the two individuals requested. They are:

Mr. Alvin Lee: Alvin.B.Lee@usace.army.mil

Col. Kirk E.Gibbs: Kirk.E.Gibbs@usace.army.mil

Thanks,

Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters

[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

---

**From:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:31 AM  
**To:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>; Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Sounds good. Thanks Alison.

Katie

---

**From:** Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 10:20 AM  
**To:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>; Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>  
**Cc:** Wright, Dana K <[dana\\_wright@fws.gov](mailto:dana_wright@fws.gov)>; Tripp, Kimberly J <[kimberly\\_tripp@fws.gov](mailto:kimberly_tripp@fws.gov)>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Katie.

I have called the number Jen provided and left several messages on different extensions. If I don't hear anything by the end of the day, I will call back to see if I can reach someone. I will also send an email to the address provided.

Thanks,  
Alison

--

Alison Parker  
Ecological Services Program  
U.S. Fish and Wildlife Service Headquarters  
[5275 Leesburg Pike](#) MS:ES  
Falls Church, VA 22041-3803  
Telephone: 703-358-2355  
E-mail: [alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)

---

**From:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Sent:** Monday, April 27, 2020 12:15 PM  
**To:** Niemi, Katie <[katie\\_niemi@fws.gov](mailto:katie_niemi@fws.gov)>; Parker, Alison L <[alison\\_parker@fws.gov](mailto:alison_parker@fws.gov)>

**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Alison,

Please call and see if we can get an email address.

Katie,

Since we are not clear on when we are going back, I would just close and notate. If later they say we need to send one, we can always do that.

And I'm fine with either - since Gary already signed it, if you want to that's fine. Or I can do it - just let me know which you prefer.

Thanks,

Lois  
Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Niemi, Katie <katie\_niemi@fws.gov>  
**Sent:** Monday, April 27, 2020 12:13 PM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Hi Lois,

Jen tried to find email addresses online for Mr. Alvin Lee, Corps Director of Civil Works as well as Chief of Staff, Col. Kirk E. Gibbs. She couldn't find emails for the two individuals but did find the following main tel. number for Corps HQ Public Affairs 202-761-0011 and email hq-publicaffairs@usace.army.mil.

Can Alison please call that number to get the two email addresses (explaining that we are transmitting this official correspondence via email at this time). Do we plan to mail a hard copy once back in the office or will we just close out in DTS with a note that indicates it was transmitted electronically to the two individuals? Also, once we have the email addresses will

you transmit the signed letter via email on behalf of Gary or do you want us to do that?

Thanks!

Katie

---

**From:** Wellman, Lois A <lois\_wellman@fws.gov>  
**Sent:** Monday, April 27, 2020 10:57 AM  
**To:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

We can try. Alison, please work to see if we can find an email address.

Lois

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 27, 2020 10:49 AM  
**To:** Wellman, Lois A <lois\_wellman@fws.gov>; Parker, Alison L <alison\_parker@fws.gov>  
**Cc:** Wright, Dana K <dana\_wright@fws.gov>; Niemi, Katie <katie\_niemi@fws.gov>  
**Subject:** Fw: DCN 71591 Sand mining letter to Corps

Hi Lois,

I've tried to track down Kirk's email via this web link, but have been unsuccessful. Would Alison be able to find his contact info?

thank you.

Kim

Kim Tripp

Chief, Branch of Coastal and Marine Resources

Fish and Wildlife Service

Ecological Services, MS: ES  
5275 Leesburg Pike  
Falls Church, VA 22041-3803  
Office- 703-358-2151  
Cell- 571-389-2658

---

**From:** Tripp, Kimberly J <kimberly\_tripp@fws.gov>  
**Sent:** Monday, April 27, 2020 10:24 AM  
**To:** Frazer, Gary D <gary\_frazer@fws.gov>  
**Cc:** Shaughnessy, Michelle <Michelle\_Shaughnessy@fws.gov>; Wellman, Lois A <lois\_wellman@fws.gov>  
**Subject:** Re: DCN 71591 Sand mining letter to Corps

Thank you Gary.

I reached out to Charissa and found her counterpart at USACOE. I suggest sending as email attachment to:

## Kirk E. Gibbs

Col. Kirk E. Gibbs is currently the Chief of Staff, Headquarters, U.S. Army Corps of Engineers

<https://www.usace.army.mil/About/Leadership/Bio-Article-View/Article/1634632/colonel-kirk-e-gibbs/>

Should Lois send on your behalf?

Kim

Sent from my iPhone

On Apr 26, 2020, at 1:54 PM, Frazer, Gary D <gary\_frazer@fws.gov> wrote:

Signed and uploaded to DTS. Who will transmit to the Corps, and how will that happen? We should probably not just rely on hard copy transmittal in this teleworking environment. -- GDF

*Gary Frazer*  
*Assistant Director - Ecological Services*  
*gary\_frazer@fws.gov*  
*Ph. (202) 208-4646*  
*Cell (202) 253-4578*

<071591 - for signature.pdf>

**From:** [Niemi, Katie](#)  
**To:** [Wright, Dana K](#); [Bohn, Cynthia](#)  
**Subject:** Fw: Letter Re: Corps Sand Mining/Shoreline Stabilization Projects  
**Date:** Tuesday, April 28, 2020 3:25:11 PM  
**Attachments:** [071591 - for signature.pdf](#)

---

FYI

---

**From:** Wellman, Lois A <[lois\\_wellman@fws.gov](mailto:lois_wellman@fws.gov)>  
**Sent:** Tuesday, April 28, 2020 3:06 PM  
**To:** [Alvin.B.Lee@usace.army.mil](mailto:Alvin.B.Lee@usace.army.mil) <[Alvin.B.Lee@usace.army.mil](mailto:Alvin.B.Lee@usace.army.mil)>; [Kirk.E.Gibbs@usace.army.mil](mailto:Kirk.E.Gibbs@usace.army.mil) <[Kirk.E.Gibbs@usace.army.mil](mailto:Kirk.E.Gibbs@usace.army.mil)>  
**Cc:** [Tripp, Kimberly J <kimberly\\_tripp@fws.gov>](mailto:Tripp, Kimberly J <kimberly_tripp@fws.gov>); [Niemi, Katie <katie\\_niemi@fws.gov>](mailto:Niemi, Katie <katie_niemi@fws.gov>)  
**Subject:** Letter Re: Corps Sand Mining/Shoreline Stabilization Projects

Mr. Lee,

Please find attached a letter addressed to you from Mr. Gary Frazer, Assistant Director for Ecological Services at the U.S. Fish and Wildlife Service. This letter pertains to a revised interpretation of the Coastal Barrier Resources Act that affects U.S. Army Corps of Engineers dredging and beach nourishment projects. We are transmitting this letter electronically due to COVID-19 related disruptions to our regular mail operations. Thank you.

Lois Wellman  
AES Special Assistant  
Office of the Assistant Director for Ecological Services  
U.S. Fish & Wildlife Service  
1849 C St. NW  
MIB 3345  
Washington, DC 20240  
[Lois\\_Wellman@fws.gov](mailto:Lois_Wellman@fws.gov)  
(202)208-4646 office  
(202)208-5618 fax



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

5275 Leesburg Pike  
MS-ES  
Falls Church, Virginia 22041

April 20, 2020

In Reply Refer To:  
FWS/AES/DRR/BCMR/071591

Mr. Alvin Lee  
Director of Civil Works  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, D.C. 20314-1000

Dear Mr. Lee:

The Department of the Interior (Department) and the U.S. Fish and Wildlife Service (Service) have revisited an issue related to the interpretation of the Coastal Barrier Resources Act (CBRA) (16 U.S.C § 3501 et seq.) that impacts U.S. Army Corps of Engineers (Corps) dredging and beach-nourishment projects. Since 1994, the Department and the Service have advised the Corps that the CBRA exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system”<sup>i</sup> could not be applied to sand mining *within* the John H. Chafee Coastal Barrier Resources System (CBRS) for beach-nourishment projects that occur *outside* of the CBRS. We have revisited our interpretation of this CBRA exception and, in consultation with the Department’s Office of the Solicitor, Division of Parks and Wildlife, have determined that sand from *within* the CBRS may be used to nourish beaches *outside* of the CBRS, provided that the federal funding agency consults with the Service and the project meets the requirements of the exception and is consistent with the purposes of CBRA. The Service began applying this interpretation on November 4, 2019.

CBRA prohibits most new federal expenditures and financial assistance within the CBRS, including projects to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area.<sup>ii</sup> Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA’s exceptions.<sup>iii</sup> Each affected agency is independently responsible for complying with the law and certifying annually to the Secretary of the Interior that they are in compliance with CBRA.<sup>iv</sup> The law does not restrict the use of private, state, or local funds or limit the issuance of federal permits within the CBRS.

The beaches, inlets, and wetlands within and adjacent to the CBRS support a diversity of fish and wildlife that may be susceptible to the adverse impacts of dredging and shoreline-stabilization projects. This letter provides information about the consultation process, the need for monitoring

and Best Management Practices (BMPs) for shoreline-stabilization projects, and considerations for developing CBRA-compliant projects under the exception at 16 U.S.C. § 3505(a)(6)(G).

### *CBRA Consultation Process for Nonstructural Shoreline-Stabilization Projects*

While the revised legal interpretation does not *guarantee* that sand within the CBRS may be used for beach replenishment outside the CBRS, it does make such projects eligible for consideration by federal agencies through the CBRA consultation process. The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the CBRS for nonstructural shoreline stabilization outside of the CBRS. Such projects would generally<sup>v</sup> be considered under the exception for “nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.”<sup>vi</sup> This exception also requires that the project be consistent with the purposes of CBRA, which are:

*to minimize the loss of human life, wasteful expenditure of federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers ... by restricting future federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers... and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.*<sup>vii</sup>

The Service’s revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects does not alter the federal funding agency’s responsibility to consider each project on a case-by-case basis through the consultation process. Additionally, any new commitment of federal funds associated with a project following the initial consultation (e.g., future beach renourishment) or change in the project design and/or scope is subject to CBRA’s consultation requirement. Information about the consultation process is available at: <https://www.fws.gov/cbra/consultations.html>.

Our revised interpretation of the CBRA exception for nonstructural shoreline-stabilization projects gives federal agencies more flexibility to undertake projects that will protect coastal resources, even if those resources are located outside of the CBRS. Accordingly, our revised interpretation also requires consideration of the impacts of the project both within and outside of the CBRS. It is incumbent upon the funding agency to demonstrate that the project will minimize damage to fish, wildlife, and other natural resources and contribute to the long-term conservation of the coastal barrier resources.

### *Need for Monitoring and Best Management Practices for Nonstructural Shoreline-Stabilization Projects*

Many Corps projects are authorized for long-term periods (e.g., more than 20 years) and include numerous planned dredging and renourishment cycles. There is minimal data capturing the long-term effects of such protracted operations. In such situations, conducting pre-and post-project data collection and monitoring throughout the duration of the project is essential to determine effects on the natural resources and the coastal barrier system (including physical, geologic, and biological parameters). By collecting data on the actual on-the-ground impacts of dredging and beach nourishment for specific projects, including the recovery of the borrow site, our agencies will be better suited to assess whether subsequent sand borrowing and/or nourishment is

consistent with the purposes of CBRA (see #3 and 4 below). The U.S. Army Engineer Research and Development Center Environmental Laboratory has identified the need for BMPs for coastal engineering projects and pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed.<sup>viii</sup> The Service agrees that BMPs and monitoring are necessary to assess whether projects are contributing to the long-term conservation of natural resources, as forecasted.

### *Considerations for Developing CBRA-Compliant Shoreline-Stabilization Projects*

When assessing whether a particular project meets an exception under 16 U.S.C. § 3505(a)(6)(G), the following factors should be considered:

- 1) **Do the sand mining and beach nourishment (both inside and outside of the CBRS) constitute “nonstructural” shoreline-stabilization activities as required by the exception?**  
Disqualifying factors would be the construction, maintenance, or expansion of structural elements in the project (e.g., jetties, groins, seawalls, geotubes, and bulkheads) either inside or outside of the CBRS. However, the mere presence of pre-existing structures on the ground in a project area that are not being constructed, maintained, or expanded as part of the project at hand *does not* disqualify a project from being considered “nonstructural.”
- 2) **Can the sand mining and the beach nourishment be considered to “mimic, enhance, or restore a natural stabilization system” (both inside and outside of the CBRS)?**  
Examples of issues to address through a consultation may include, but are not limited to:
  - whether the sand will flow back to the borrow site over time through natural littoral drift, and if so, how long it is expected to take;
  - whether dredging sand from an inlet or nearshore area will affect the shoreline laterally up and down the coast from the project, and to what extent;
  - whether littoral drift will be impeded by existing hard structures such as groins and jetties;
  - whether the project includes the removal of an extraordinary volume of sand from an inlet or nearshore area that may interfere with the natural function of the coastal barrier system;
  - whether the project includes the construction of artificial dunes designed to prevent natural processes, such as overwash and erosion; and
  - whether the sediment to be used in beach nourishment exhibits the appropriate characteristics (e.g., color and grain size) present in the natural stabilization system, thereby promoting the integrity of restored beaches for seabirds, shorebirds, sea turtles, and other flora and fauna.
- 3) **Is the project consistent with the purposes of CBRA, including: minimizing the loss of human life, wasteful federal expenditures, and damage to fish and wildlife resources by restricting federal expenditures and financial assistance that have the effect of encouraging development of coastal barriers?**<sup>ix</sup> Many species depend upon the perpetuation of natural dynamic coastal-formation processes. Dredging of inlets for sand may cause changes in the benthic community and seafloor geomorphology. Sand removal or sediment starvation of shoals, sandbars, and adjacent shoreline habitat upsets the natural equilibrium and may reduce the system’s ability to maintain a full suite of inlet habitats as sea level continues to rise at an accelerating rate. Additionally, beach nourishment used to protect existing structures and communities may attract further development in vulnerable areas, thus requiring greater need for

future sand replenishment,<sup>x</sup> or more drastic stabilization measures.<sup>xi</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether the dredging will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the shoreline stabilization will result in the degradation or loss of coastal-dependent species and/or their habitat;
- whether the project may encourage development on coastal barriers, thus resulting in higher populations in hazard-prone areas; and
- whether the project is designed to protect structures that were constructed within the CBRS after designation.

**4) Will the project contribute to the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers?**<sup>xii</sup> Shoreline-stabilization activities and residential growth along coastal areas may negatively impact coastal-dependent species, many of which are at-risk or federally protected, further exacerbating their vulnerability and endangerment. Furthermore, shoreline alteration may result in desired short-term stability, however, the long-term resiliency of the barrier system may be compromised.<sup>xiii</sup> Examples of issues to address through a consultation may include, but are not limited to:

- whether appropriate pre- and post-project monitoring is in place to ensure that the project does not threaten the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers; and
- whether the project incorporates reasonable and prudent conservation measures and BMPs to ensure the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers.

We hope this information is helpful in your efforts to develop shoreline-stabilization projects that are compliant with CBRA. If you have any questions or concerns, please contact me at (202) 208-4646 or Ms. Michelle Shaughnessy, Chief, Division of Restoration and Recovery, at (703) 358-2171.

Sincerely,

Gary Frazer  
Assistant Director for  
Ecological Services

---

<sup>i</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>ii</sup> *Id.* § 3504(a)(3)

<sup>iii</sup> *Id.* § 3505(a)

<sup>iv</sup> *Id.* § 3506(b)

---

<sup>v</sup> CBRA's exception for the maintenance of pre-existing federal navigation channels (16 U.S.C. § 3505(a)(2)) also allows for the removal of sand from the CBRS. However, many coastal storm-damage-reduction projects require a greater volume of sand than can be obtained through maintenance dredging alone.

<sup>vi</sup> 16 U.S.C. § 3505(a)(6)(G)

<sup>vii</sup> *Id.* § 3501(b)

<sup>viii</sup> In June 2019, the U.S. Army Engineer Research and Development Center Environmental Laboratory published a technical note that highlights some of the habitat degradation associated with shoreline-stabilization and sand-mining activities, and identifies the need for "improved approaches to offset these negative impacts that will create better conditions for shoreline-dependent birds, sea turtles, and other sensitive or rare flora and fauna." The note states that BMPs need to be developed, tested, and verified locally, and then implemented widely. The note also states the need for pre- and post-project monitoring to assess whether the BMPs are benefiting targeted species as designed. Guilfoyle, M. P., J. F. Jung, R. A. Fischer, and D. D. Dickerson. 2019. Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species. EMRRP Technical Notes Collection. ERDC/TN EMRRP-SI-38. Vicksburg, MS: U.S. Army Engineer Research and Development Center. <https://hdl.handle.net/11681/33203>.

<sup>ix</sup> 16 U.S.C. § 3501(b)

<sup>x</sup> "In a comprehensive, parcel-scale analysis of all shorefront single-family homes in the state of Florida, we find that houses in nourishing zones are significantly larger and more numerous than in non-nourishing zones. The predominance of larger homes in nourishing zones suggests a positive feedback between nourishment and development that is compounding coastal risk in zones already characterized by high vulnerability." Armstrong, S. B., E. D. Lazarus, P. W. Limber, E. B. Goldstein, C. Thorpe, and R. C. Ballinger. 2016. Indications of a positive feedback between coastal development and beach nourishment, *Earth's Future*, 4, 626–635. <https://doi.org/10.1002/2016EF000425>.

<sup>xi</sup> Pilkey, O.H. and K.L. Dixon. 1996. *The Corps and the shore*. Island Press; Washington, D.C.

<sup>xii</sup> 16 U.S.C. § 3501(b)

<sup>xiii</sup> A 2017 U.S. Geological Survey study found that: "The longer humans intervene in the coastal system by fixing the barrier in place laterally and vertically, the faster drowning occurs, even if natural barrier island morphodynamics are restored after human intervention. This suggests that coastal management techniques that seek to maintain barrier positions and redistribute overwash deposits may result in more resilient coastlines initially but that increased vulnerability resulting from human alterations may not be reversible over longer time scales." Miselis, J. L., & Lorenzo-Trueba, J. 2017. Natural and human-induced variability in barrier-island response to sea level rise. *Geophysical Research Letters*, 44, 11, 922–11, 931. <https://doi.org/10.1002/2017GL074811>.