**From:** Kodis, Martin
**To:** Niemi, Katie
**Cc:** BalisLarsen, Martha; Phinney, Jonathan T; Pool, Taylor S
**Subject:** Re: CBRA briefing requested by ASFWP hallway
**Date:** Thursday, October 11, 2018 9:11:59 AM
**Importance:** High

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Thanks Katie. FYI, we got a call from Graves' staff asking when they might expect the response letter, so the briefing request is timely. They want the Administration's response in time for potential lame duck session legislative work on this issue (e.g., early Nov. would be good for their purposes).

Marty

On Thu, Oct 11, 2018 at 8:53 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:

> Hi Folks,
> Andrea is requesting a briefing on the Rep. Graves response letter.
>
> Katie
>
> ---------- Forwarded message ---------
> From: **Wellman, Lois** <lois_wellman@fws.gov>
> Date: Thu, Oct 11, 2018 at 6:09 AM
> Subject: Fwd: CBRA briefing requested by ASFWP hallway
> To: Katie Niemi <Katie_Niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>
>
> ---------- Forwarded message ---------
> From: **Sellars, Roslyn** <roslyn_sellars@fws.gov>
> Date: Wed, Oct 10, 2018 at 4:38 PM
> Subject: CBRA briefing requested by ASFWP hallway
> To: Gary D. Frazer <gary_frazer@fws.gov>, Wellman, Lois A <lois_wellman@fws.gov>
> Cc: Ionie Spence <ionie_spence@fws.gov>
>
> Gary
>
> Andrea's Travnicek's office would like to be briefed on the item below. Who would attend the briefing from your office?
>
> CBRA DTS068399
>
> I am waiting for Andrea's office to send me available dates/times.
>
> Roslyn
>
> > ----------
> > On Wed, Oct 10, 2018 at 11:47 AM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:
> >
> > 1) MBTA FR3435: 15 minute briefing on the changes for each species and the reasons for the changes.

Walk through each species.

2) MBTA FR3436: Please provide the difference in the list from previous years and the reasons for the change. Walk through each one.

3) CBRA DTS068399: Need a more in-depth briefing meeting.

4) ROD for NOAA FR3393: Need more in-depth briefing meeting.

5) 50 CFR 80 FR3470: Need more in-depth briefing meeting.

6) # of total acres open for access: briefing paper and how you got to that number (251,000 new + X old = ?? acres)

7) ATV policy: briefing paper

8) List of remote staff

I am holding all the packages. I will add these to the chart but wanted to let you get started.

Thanks.

Maureen


Maureen D. Foster
Chief of Staff
Office of the Assistant Secretary
for Fish and Wildlife and Parks
1849 C Street, NW, Room 3161
Washington, DC 20240

202.208.5970 (desk)
202.208.4416 (main)

Maureen_Foster@ios.doi.gov


--


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

--
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:** Bohn, Cynthia
**To:** Niemi, Katie
**Subject:** Re: CBRA briefing requested by ASFWP hallway
**Date:** Friday, October 12, 2018 11:05:26 AM
**Importance:** High

---

great thanks, 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, Oct 12, 2018 at 10:15 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

> Hi Cindy,
> I'll let you know once we have a date for the briefing. We will share the draft IM with you once it's ready and would appreciate any feedback on that. Thanks!
> Katie
>
> On Fri, Oct 12, 2018 at 9:15 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:
>
> > Thanks, please let me know the date when you get it. Is there anything you all need me to do? 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
> >
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*Information Act (FOIA) and may be disclosed to third parties.*

On Fri, Oct 12, 2018 at 8:47 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

FYI, briefing requested on the CBRA response letter to Rep. Graves on CBRA and sand mining/beach nourishment.

---------- Forwarded message ---------
From: **BalisLarsen, Martha** <martha_balislarsen@fws.gov>
Date: Thu, Oct 11, 2018 at 12:12 PM
Subject: Re: CBRA briefing requested by ASFWP hallway
To: Lois A Wellman <lois_wellman@fws.gov>
Cc: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>, Dr. Jonathan Phinney <jonathan_phinney@fws.gov>

Gina and I talked with Gary after the All Hands. He has asked for an IM and slides. Katie and I discussed.

Lois, we will need SOL to attend this briefing too (Linus and Ben).

Once you get dates, can you let us know? We won't be available Oct 24-26.

Martha

On Thu, Oct 11, 2018 at 10:07 AM Wellman, Lois <lois_wellman@fws.gov> wrote:

He's been too busy this morning with FR packages to give any guidance. I will see what happens this afternoon.

On Thu, Oct 11, 2018 at 8:57 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Hi Lois,
Does Gary want staff support, info memo and/or powerpoint slides for this CBRA briefing?

Thanks!
Katie

On Thu, Oct 11, 2018 at 6:09 AM Wellman, Lois <lois_wellman@fws.gov> wrote:

---------- Forwarded message ---------
From: **Sellars, Roslyn** <roslyn_sellars@fws.gov>
Date: Wed, Oct 10, 2018 at 4:38 PM
Subject: CBRA briefing requested by ASFWP hallway
To: Gary D. Frazer <gary_frazer@fws.gov>, Wellman, Lois A <lois_wellman@fws.gov>
Cc: Ionie Spence <ionie_spence@fws.gov>

Gary

Andrea's Travnicek's office would like to be briefed on the item below. Who would attend the briefing from your office?

CBRA DTS068399

I am waiting for Andrea's office to send me available dates/times.

Roslyn

---

On Wed, Oct 10, 2018 at 11:47 AM Foster, Maureen <maureen_foster@ios.doi.gov> wrote:

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2) MBTA FR3436: Please provide the difference in the list from previous years and the reasons for the change. Walk through each one.

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8) List of remote staff

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Thanks.

Maureen

Maureen D. Foster
Chief of Staff
Office of the Assistant Secretary
for Fish and Wildlife and Parks
1849 C Street, NW, Room 3161
Washington, DC 20240

202.208.5970 (desk)
202.208.4416 (main)

Maureen_Foster@ios.doi.gov

--

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
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MIB 3345
Washington, DC 20240
Lois_Wellman@fws.gov
(202)208-4646 office
(202)208-5618 fax

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | BalisLarsen, Martha |
| **Cc:** | Niemi, Katie; Phinney, Jonathan T |
| **Subject:** | Re: Tomorrow"s CBRA briefing with Margaret |
| **Date:** | Wednesday, April 24, 2019 12:54:11 PM |
| **Attachments:** | Sol Opinion exception 6(a)(6)(G) and USACE letter.pdf<br>068399 Signed.pdf<br>CBRS Map Modernization Info Memo 04222019.docx |
| **Importance:** | High |

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Hi Martha,

Here you go. Also, Gary wanted an Info Memo with general background on comprehensive map modernization, so I prepared and sent that to him on Monday. I have attached that as well. Last I heard he was going to try to get that in her hands before she got on a plane on Monday afternoon.

I've also attached the Graves letter, but am not sure if that's too much.

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, Apr 24, 2019 at 12:43 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> Katie, should I include a copy of the Solicitor opinion on sand mining since that is referenced in the talking points? Margaret may want to read it, since she signed it out early in her return to the Service.
>
> If so, could you send it to me? I am sure that I can find it in my email but that may take time. :)
>
> Martha
>
> On Wed, Apr 24, 2019 at 11:54 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> > Martha,
> > Attached are talking points Dana and I drafted in preparation for tomorrow's briefing for Margaret on the Rep. Van Drew response letter. Also attached is an annotated map of the Herford Inlet area (as it exists today, not proposed changes). The proposed boundary changes to Unit NJ-09 can be viewed

on the CBRS Projects Mapper (click the mapper icon on the right side of the page): https://www.fws.gov/cbra/maps/Mapper.html.

You may want to consider sharing the attached documents with Gary and Wendi before tomorrow's briefing. Dana and I will have our kids here tomorrow so we plan to call in to the briefing at 3:00. We've reserved the Polar Bear room if you're able to join us.

Thanks!

Katie

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 renourishent 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,

/sgn/ 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-PMOSecretary'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\kelseyl\Zirschky.ltr
REVISED:AES:MNash:4/3/95

# 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:

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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:

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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.

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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

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# United States Department of the Interior

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Washington, D.C. 20240

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

DEC 21 2018

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House of Representatives
Washington, D.C. 20515

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# USFWS INFORMATION MEMORANDUM

**DATE:** July 15, 2020

**TO:** Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service Exercising the Authority of the Director of the U.S. Fish and Wildlife Service

**FROM:** Gary Frazer, Assistant Director for Ecological Services, U.S. Fish and Wildlife Service

**SUBJECT:** Background Information on Coastal Barrier Resources System Map Modernization and the Hurricane Sandy Remapping Project

## I. STATEMENT OF ISSUE/KEY FACTS

The Coastal Barrier Resources Act (CBRA) originally established the Coastal Barrier Resources System (CBRS) in 1982. CBRA is a free-market approach to conservation that saves taxpayers money and keeps people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. CBRA prohibits most new federal expenditures and financial assistance within the CBRS, but imposes no restrictions on development conducted with private, state, or local funds. A recent study in the Journal of Coastal Research analyzed the economic benefits from the CBRA. This study found that it reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013, and forecasts that additional savings will range between $11 and $109 billion over the next 50 years.

The CBRS is currently comprised of 870 geographic units totaling 3.5 million acres, located along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS is depicted on a set of maps that is maintained by the U.S. Fish and Wildlife Service (Service). Only Congress has the authority to modify the boundaries of the CBRS by adopting new maps through legislation (there are minor exceptions).

## II. BACKGROUND AND FWS POSITION

The official maps of the CBRS were first created more than 35 years ago, having used what are now outdated base maps and cartographic techniques. Some of the maps contain errors that negatively affect property owners and project proponents. The Service receives numerous requests from property owners and other interested parties who seek to remove land from the CBRS. Over the last two decades, the Service has accrued a backlog of requests from property owners and their members of Congress to review more than 60 units to determine whether a mapping error exists. These technical correction reviews are time and resource intensive. Congress recognized the challenges associated with the outdated maps and, through the 2000 reauthorization of CBRA, directed the Service to conduct a pilot project to remap 50-75 CBRS areas using digital technology. In the 2006 reauthorization of CBRA, Congress directed the Service to prepare digital maps for the remainder of the CBRS and make recommendations for its expansion.

In cases where legitimate mapping errors are found, the Service supports changes to the maps and works with Congress to revise them. The Service uses a "comprehensive map modernization" process to update the maps that requires: (1) research 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 (based on statutory criteria and objective mapping protocols); (3) public review of the draft boundaries; (4) preparation of final recommended maps that takes into consideration information provided during the public comment period; (5) transmittal of final recommended maps to the Congressional committees of jurisdiction and affected members; and (6) Congressional enactment of legislation to make the revised maps effective. This process ensures that newly adopted maps are prepared through a transparent process that clearly identifies the location of the CBRS boundaries and justification for the modifications.

## III. POSITION OF AFFECTED PARTIES/PUBLIC LANDS AFFECTED

**Property Owners**

Some property owners oppose the inclusion of their property within the CBRS (regardless of whether the area was appropriately mapped) because it makes the property ineligible for most new federal subsidies that encourage development, such as federal flood insurance and disaster assistance. Flood insurance on the private market is often significantly more expensive than federal flood insurance.

**States and Local Communities**

States and local communities have varying views on comprehensively revised maps produced by the Service. Some states and communities view the CBRS as a helpful floodplain management tool that discourages property owners from developing in risky areas where it is expensive for the local government to provide infrastructure (such as roads and flood control structures) and hazardous to provide emergency services (such as search and rescue), and are supportive of efforts to modernize the maps and make legitimate technical corrections. However, some communities that have developed despite the CBRA designation oppose modernized maps that do not depict significant removals or the deletion of units, because they seek federal subsidies that encourage development, including funding for beach nourishment and disaster assistance.

**Other Stakeholders**

Taxpayer groups, recreational interest groups, floodplain management groups, and conservation groups generally support comprehensively revised maps produced by the Service and expansion of the CBRS. These groups generally oppose efforts to remove areas from the CBRS unless the Service finds that a technical mapping error exists. Such groups generally support CBRA and do not want to expose the federal taxpayer to expenses incurred through federal flood insurance payouts, beach nourishment, flood control projects, and other expenditures that could encourage further development along the coasts.

## IV. STATUS UPDATE

**Hurricane Sandy Remapping Project**

In 2013, the Department of the Interior funded a project to modernize the maps of the CBRS units in the nine states most affected by Hurricane Sandy. The Service prepared draft revised boundaries and conducted two 120-day public review periods in 2018 and 2019 for the Hurricane Sandy Remapping Project, which was broken into two batches (Batch 1: DE, MA, NH, and NJ, Batch 2: CT, MD, NY [Long Island only], RI and VA). The Hurricane Sandy project addresses approximately 30 percent of the backlog and many other units that have mapping errors.

**Other Technical Corrections**

In 2019, the Service plans to put a *Federal Register* notice into the clearance process to announce a public review period for draft revised boundaries for several units in Florida and South Carolina. These projects would address approximately seven percent of the backlog. The Service continues to receive new inquiries from members of Congress and other interested parties who seek technical corrections to the CBRS maps.

## V. POTENTIAL ISSUES

As the final comment period for the Hurricane Sandy Remapping Project closed on April 17, 2019, the CBRA Program is still in the process of obtaining and reading all of comments submitted through www.regulations.gov. Thus far in our review, the comments received generally align with the "Positions of Affected Parties" listed above. Stone Harbor Point Unit NJ-09, located in Cape May County, New Jersey, has garnered the most attention during the course of the project due to local interests that seek the use of Hereford Inlet as a sand borrow site for a nearby U.S. Army Corps of Engineers beach nourishment project. While the Service has proposed additions to Unit NJ-09, the sand borrow site was first added to the CBRS in the 1990's. Our recent review re-affirmed that the area was appropriately included within the System Unit.

## VI. TIMELINE/NEXT STEPS

Now that the final comment period for the Hurricane Sandy Remapping Project has closed, we will begin preparing a report to Congress on the project (pursuant to Pub. L. 109-226), along with final recommended maps and summaries of and responses to the comments. The revised CBRS boundaries will only become effective once the final recommended maps are adopted into law by Congress. We anticipate that the report to Congress will not be transmitted until 2020.

**Prepared by:** *Dana Wright, Program Specialist, Ecological Services*

☐ **FYI** **or** ☐ **Requested by:** *[name]*

☒ **Prepared for a meeting:** *April 25, 2019, DCN 069830 – CBRS (Response letter to Rep. Van Drew)*

| | |
|---|---|
| **From:** | BalisLarsen, Martha |
| **To:** | Frazer, Gary D |
| **Cc:** | Shultz, Gina; Niemi, Katie; Wright, Dana K; Phinney, Jonathan T |
| **Subject:** | Fwd: Tomorrow"s CBRA briefing with Margaret |
| **Date:** | Wednesday, April 24, 2019 1:03:41 PM |
| **Attachments:** | CBRS Mapper Unit NJ-09.pdf<br>Talking Points on NJ-09.docx<br>CBRS Map Modernization Info Memo 04222019.docx<br>Sol Opinion exception 6(a)(6)(G) and USACE letter.pdf<br>068399 Signed.pdf |
| **Importance:** | High |

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Gary, Attached are talking points that Dana and Katie drafted in preparation for tomorrow's briefing for Margaret on the Rep. Van Drew response letter. Also attached is an annotated map of the Herford Inlet area (as it exists today, not proposed changes). The proposed boundary changes to Unit NJ-09 can be viewed on the CBRS Projects Mapper (click the mapper icon on the right side of the page): https://www.fws.gov/cbra/maps/Mapper.html.

In case it is needed, attached is the response to Representative Graves re: sand mining, the SOL opinion, and the Information Memo with general background on comprehensive map modernization that Dana had provided you on earlier this week.

OK for me to forward this information to Wendi, Deb, and Kyla too?

Martha

| | |
|---|---|
| **From:** | Frazer, Gary D |
| **To:** | BalisLarsen, Martha |
| **Cc:** | Shultz, Gina; Niemi, Katie; Wright, Dana K; Phinney, Jonathan T |
| **Subject:** | Re: Tomorrow"s CBRA briefing with Margaret |
| **Date:** | Wednesday, April 24, 2019 1:19:32 PM |
| **Importance:** | High |

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Fine to send to R5.

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

On Wed, Apr 24, 2019 at 1:03 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

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| | |
|---|---|
| **From:** | BalisLarsen, Martha |
| **To:** | Weber, Wendi; Rocque, Deborah; Hastie, Kyla |
| **Cc:** | Niemi, Katie; Wright, Dana K; Phinney, Jonathan T; Frazer, Gary D; Shultz, Gina |
| **Subject:** | Fwd: Tomorrow"s CBRA briefing with Margaret |
| **Date:** | Wednesday, April 24, 2019 2:46:05 PM |
| **Attachments:** | CBRS Mapper Unit NJ-09.pdf<br>Talking Points on NJ-09.docx<br>CBRS Map Modernization Info Memo 04222019.docx<br>Sol Opinion exception 6(a)(6)(G) and USACE letter.pdf<br>068399 Signed.pdf |
| **Importance:** | High |

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Wendi, Deb, and Kyla, Katie Niemi and Dana Wright developed the attached background materials in preparation for tomorrow's briefing for Margaret on the Rep. Van Drew response letter. The materials include talking points for the meeting from our perspective and an annotated map of the Herford Inlet area (as it exists today, not proposed changes). In case it is needed, also attached are the response to Representative Graves re: sand mining, the SOL opinion, and an information memo with general background on comprehensive map modernization.

Please note, the proposed boundary changes to Unit NJ-09 can be viewed on the CBRS Projects Mapper (click the mapper icon on the right side of the page): https://www.fws.gov/cbra/maps/Mapper.html.

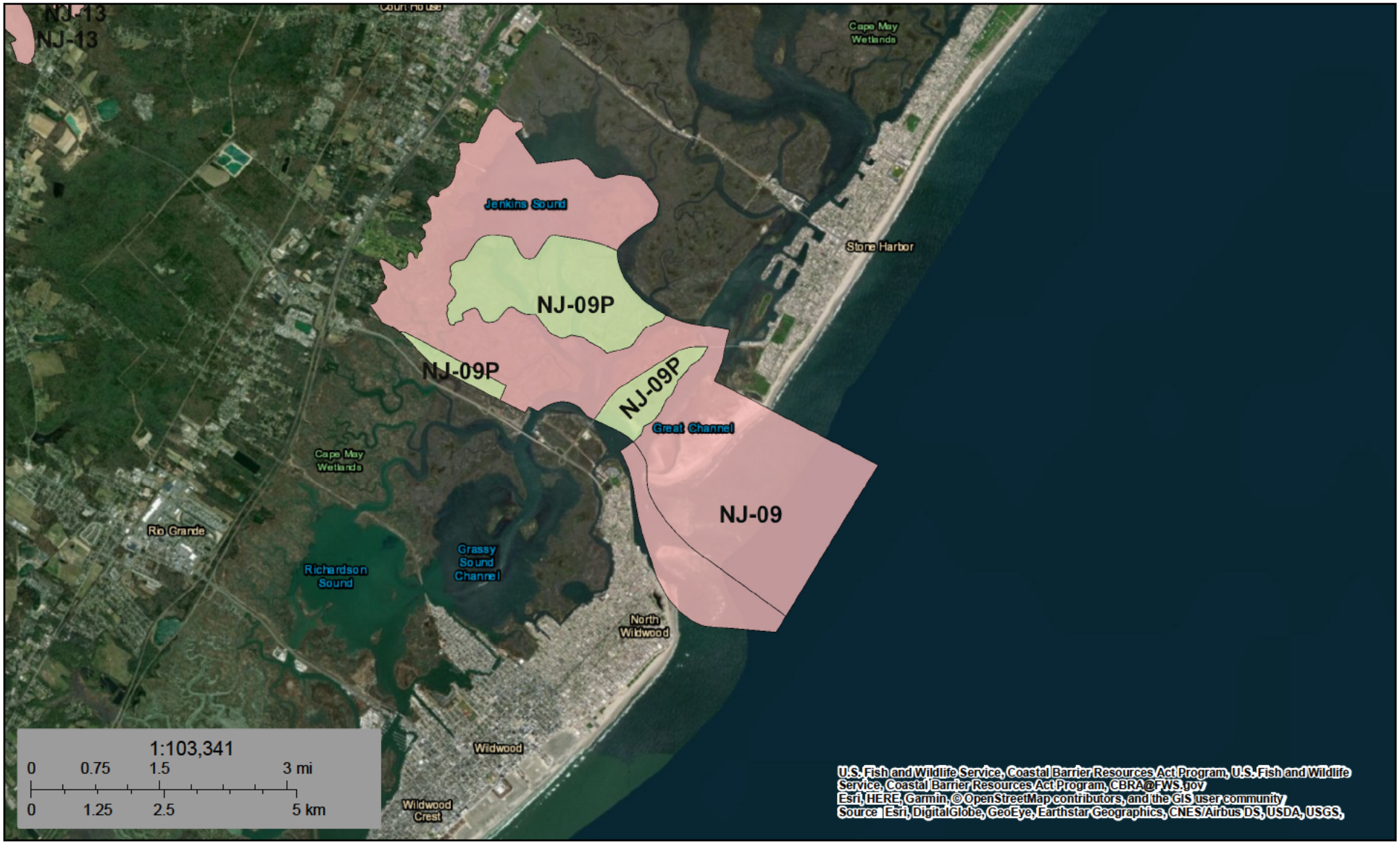
Please feel free to reach out to Katie or Dana if you need additional information or have any questions prior to tomorrow's discussion.

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)

# U.S. Fish and Wildlife Service
## Coastal Barrier Resources System

# Unit NJ-09




April 24, 2019

CBRS Buffer Zone

System Unit

**CBRS Units**

Otherwise Protected Area

This map is for general reference only. The Coastal Barrier Resources System (CBRS) boundaries depicted on this map are representations of the controlling CBRS boundaries, which are shown on the official maps, accessible at https://www.fws.gov/cbra/maps/index.html. All CBRS related data should be used in accordance with the layer metadata found on the CBRS Mapper website.

The CBRS Buffer Zone represents the area immediately adjacent to the CBRS boundary where users are advised to contact he Service for an official determination (http://www.fws.gov/cbra/Determinations.html) as to whether the property or project site is located "in" or "out" of the CBRS.

CBRS Units normally extend seaward out to the 20- or 30-foot bathymetric contour (depending on he location of the unit). The true seaward extent of the units is not shown in the CBRS mapper.

This page was produced by the CBRS Mapper

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# CBRS Stone Harbor Unit NJ-09 (Hereford Inlet) Talking Points

## CBRA Basics:

- CBRA is a map based law comprising 870 units that make up the Coastal Barrier Resources System (CBRS), which contains 3.5 million acres of barriers and associated wetlands along the Atlantic, Gulf of Mexico, and Great Lakes coasts, as well as Puerto Rico and the U.S. Virgin Islands.

- The three purposes of CBRA are to minimize: wasteful federal expenditures, loss of human life, and damage to natural resources. CBRA achieves these goals by restricting federal funding and financial assistance that may encourage development, such as flood insurance, disaster assistance, beach nourishment, and new road construction. CBRA does not restrict the use of private, state, or local funds within the CBRS or limit the issuance of federal permits.

- A recent study in the Journal of Coastal Research estimated CBRA saved the taxpayers $9.5 billion from 1989-2013 (avoided coastal disaster expenditures by FEMA, DOT, EPA, and HUD).

- The Service is responsible for maintaining and updating the CBRS maps. With minor exceptions, only Congress can change the maps of the CBRS to add or remove lands.

- The Service receives numerous requests for changes to the maps from interested parties (generally property owners, local communities, and their members of Congress) that seek federal funding for specific areas. The Service conducts research, applies statutory criteria and objective mapping protocols, and prepares revised maps for Congressional consideration.

- CBRA has about a dozen exceptions, but consultation with the Service is required before a federal agency can obligate funding for an excepted activity. Any response provided by the Service is an opinion only. **The funding agency makes the final decision. The Service has no regulatory authority over CBRA.**

## Hereford Inlet - Sand Mining Issues:

- **Hereford Inlet**, located along the Atlantic coast in Cape May County in southeastern New Jersey, **was first added to Unit NJ-09 of the CBRS in 1990**. The Service is currently remapping this area as part of a large project covering nine states in Region 5 using Hurricane Sandy supplemental funds.

- In 2016, the Corps requested a consultation from the Service's NJ Field Office 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 (Borough of Stone Harbor).

- In 2016, the Service found the project not allowable with federal funds under CBRA. Though CBRA contains an exception for shoreline stabilization to restore natural systems within the CBRS, **a 1994 DOI solicitor's opinion states that this exception does not allow for sand mining <u>within the CBRS</u> for the purposes of nourishing beaches <u>outside of the CBRS</u>.**

- The Corps previously assumed they could use the Hereford Inlet borrow site because they had received concurrence from the NJFO on a previous project within Unit NJ-09 in the late 1990's. However, the previous project was for environmental restoration within Unit NJ-09. The project proposed in 2016 sought to borrow sand from the CBRS for use in nourishing a developed shoreline outside of the CBRS for storm protection. **These projects are different fact patterns and therefore there has been no "reversal" in Service policy (as has been reported in the media).**

- In light of the Service's 2016 non-binding opinion, the Corps decided not to fund the dredging of Hereford Inlet. **The Corps subsequently entered into an MOA with the State of NJ to use state funds for the dredging within the CBRS, and the project was completed. This approach to use non-federal funding for portions of projects within the CBRS has been applied elsewhere and is currently proposed for a large storm damage reduction project in Texas.**

- In 2016, the nearby Borough of Avalon filed suit against the Corps and the Service for violation of the Administrative Procedures Act, alleging an arbitrary and capricious interpretation of CBRA. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing.

- In 2019, the Corps pulled out of a planned renourishment project for the Borough of Stone Harbor due to CBRA. Recent news reports state that without federal funds, the project is too expensive.

- Interested parties now seek to downgrade the unit to an Otherwise Protected Area (OPA). System Units carry CBRA's full suite of restrictions on federal expenditures, while OPAs (generally comprised of park lands at the time of designation) restrict only federal flood insurance. Reclassifying the borrow site to an OPA would allow the use of federal funds for dredging. **The borrow site does not qualify for reclassification to OPA according to the Service's objective mapping protocols and CBRA's statutory definition of "otherwise protected."**

**National Implications:**

- The sand mining issue has come up in two other hot spots along the Atlantic Coast (southeastern NC and Folly Beach, SC), where local communities seek to use inlets within the CBRS as borrow sites for beach nourishment projects outside of the CBRS. The use of nearshore borrow sites is generally preferable to offshore borrow sites due to sand quality and cost.

- **Following recent Congressional inquiries, the Acting AS-FWP was briefed on this matter in November 2018 and declined to re-asses DOI's longstanding interpretation of CBRA**. A letter from the Service's Principal Deputy Director to seven members of Congress conveyed this position in December 2018.

- Numerous groups (e.g., Association of State Floodplain Managers, National Audubon Society, American Littoral Society) have submitted comments to the Service opposing the use of inlets within the CBRS as borrow sites due to impacts on these areas as natural storm buffers and habitat.

Prepared: April 24, 2019

# USFWS INFORMATION MEMORANDUM

**DATE:** July 15, 2020

**TO:** Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service Exercising the Authority of the Director of the U.S. Fish and Wildlife Service

**FROM:** Gary Frazer, Assistant Director for Ecological Services, U.S. Fish and Wildlife Service

**SUBJECT:** Background Information on Coastal Barrier Resources System Map Modernization and the Hurricane Sandy Remapping Project

## I. STATEMENT OF ISSUE/KEY FACTS

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**Property Owners**

Some property owners oppose the inclusion of their property within the CBRS (regardless of whether the area was appropriately mapped) because it makes the property ineligible for most new federal subsidies that encourage development, such as federal flood insurance and disaster assistance. Flood insurance on the private market is often significantly more expensive than federal flood insurance.

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## IV. STATUS UPDATE

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**Other Technical Corrections**

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**Prepared by:** *Dana Wright, Program Specialist, Ecological Services*

☐ **FYI** **or** ☐ **Requested by:** *[name]*

☒ **Prepared for a meeting:** *April 25, 2019, DCN 069830 – CBRS (Response letter to Rep. Van Drew)*

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 renourishent 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,

/sgn/ 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-PMOSecretary'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\kelseyl\Zirschky.ltr
REVISED:AES:MNash:4/3/95

# 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.

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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.

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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.

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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.

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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.

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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.

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Sincerely,

Principal Deputy Director

**From:** Wright, Dana K
**To:** Niemi, Katie
**Subject:** Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
**Date:** Thursday, July 11, 2019 8:20:25 AM
**Importance:** High

---

Katie,

I updated our latest briefing paper with the sand mining issue and study. I also cut some things to shorten it a bit - most of the BPs on google drive are only 1 or 2 pages. Can you please review/accept changes?

\\IFW-HQSKYFS1\Ecological Services Maps\CBRA\Briefing Papers\CBRS Map Modernization Info Memo 07112019.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

On Wed, Jul 10, 2019 at 3:28 PM Martha BalisLarsen <martha_balislarsen@fws.gov> wrote:

> Katie, do we have a general CBRA briefing paper?
>
> Didn't we do one recently for ASFWP?
>
> Martha
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Shultz, Gina" <Gina_Shultz@fws.gov>
> > **Date:** July 10, 2019 at 12:31:44 PM EDT
> > **To:** Martha BalisLarsen <martha_balislarsen@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, Michelle Shaughnessy <michelle_shaughnessy@fws.gov>, Carey Galst <carey_galst@fws.gov>
> > **Subject: Fwd: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book**
> >
> > Martha, Craig and Michelle,

Please update existing IMs (assuming we have) for CBRA, Pesticide Consutlation, and DOI-DOD partnerships. Keep these at a high level and to one page. If possible provide them to Gary tomorrow. Let em know if you need more time.

Cary, copying you as 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: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Wed, Jul 10, 2019 at 10:46 AM
Subject: Fwd: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
To: Gina Shultz <Gina_Shultz@fws.gov>

The items highlighted below warrant inclusion, and I assume we have existing BPs that we could easily update. -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

---------- Forwarded message ---------
From: **Chang, Lena** <lena_chang@fws.gov>
Date: Wed, Jul 10, 2019 at 10:02 AM
Subject: Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
To: FWS Assistant Directors <fws_assistant_directors@fws.gov>, FWS Deputy Assistant Directors <fws_deputy_assistant_directors@fws.gov>

Hi All!

Thank you for your assistance on the briefing papers thus far. We still have needs for these items on this list below - please take a look. If these are briefing book worthy, please email an existing or updated briefing paper to me. Friday will be my last day here, so if you could please send them by 3pm tomorrow (Thursday), that would be great! (The google folder is updated with what we currently have for BPs.)

AFWA

Alaska Issues - Kenai

Alaska Issues - other

Anti-harassment Policy
Budget 2021
California Water Issues
CBRA
DOD-DOI Recovery MOU
Ethics
Fire
Highways
Hunt/Fish Rule
Hunting and Fishing Access (general)
Hurricane Funding (we have blue sheet)
JAO
MBTA Regs (we have M-opinion BP)
Pesticide Consultation
Private Lands Conservation/Partnerships
Recovery Plans
Reorganization - Unified Regions

Thank you!
Lena

On Wed, Jul 3, 2019 at 11:12 AM Chang, Lena <lena_chang@fws.gov> wrote:

Hi All,

We are putting together a briefing book for the incoming Assistant Secretary for Fish and Wildlife and Parks. Additionally, we'll be creating a copy of this book for Bryan Arroyo.

We have started to compile budget briefing papers on a variety of issues, and we need any additional updated BPs that are a priority for the briefing books. On the attached excel spreadsheet, you will see:

**Column A** = A list of budget briefing papers we currently have (some may need to be updated; they are accessible here if you'd like to see them: https://drive.google.com/drive/folders/1NsmXjEew_ttxsS7l9tU-Ju7uWV5Mendk?usp=sharing)

**Column C** = A list of what we know to be hot issues and need briefing papers for (highlighted items are those already listed in column A)

**Request:** Please take a look at what we already have in Column A and what we need in Column C. Please send briefing papers for the issues in column C, and any additional briefing papers/issues that need to be added or updated. You can send these to me via email. I'm attaching an example of one of the budget BPs - it's a simpler template than what we normally use, and it can be used for this book; however, if you already have a recent BP in another format, feel free to send that as-is, with the original date and addressee.

In addition, if there is anything specific or different you'd like to add for Bryan's book, please specify that in your email to me.

Thanks very much! Happy and safe 4th, all!
Lena

--

Lena Chang, Acting Deputy Chief of Staff
Office of the Director, U.S. Fish & Wildlife Service
1849 C Street Washington D.C. 20240 Room 3352
Direct: 202 208 4923 Mobile: 202 794 3822 | lena_chang@fws.gov

--

Lena Chang, Acting Deputy Chief of Staff
Office of the Director, U.S. Fish & Wildlife Service
1849 C Street Washington D.C. 20240 Room 3352
Direct: 202 208 4923 Mobile: 202 794 3822 | lena_chang@fws.gov

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Ren, Chun-Xue |
| **Cc:** | Wright, Dana K; Phinney, Jonathan T; BalisLarsen, Martha |
| **Subject:** | Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book |
| **Date:** | Thursday, July 11, 2019 3:06:21 PM |
| **Attachments:** | CBRA info memo 7.11.19.docx |

---

Hi Chun,
I'm sending the attached CBRA briefing paper to you since you're Acting for Martha. Please let me know if you need anything else related to this request.

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

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> Begin forwarded message:
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> > **From:** "Shultz, Gina" <Gina_Shultz@fws.gov>
> > **Date:** July 10, 2019 at 12:31:44 PM EDT
> > **To:** Martha BalisLarsen <martha_balislarsen@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, Michelle Shaughnessy <michelle_shaughnessy@fws.gov>, Carey Galst <carey_galst@fws.gov>
> > **Subject: Fwd: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book**
> >
> > Martha, Craig and Michelle,
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> > Cary, copying you as 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: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Wed, Jul 10, 2019 at 10:46 AM
Subject: Fwd: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
To: Gina Shultz <Gina_Shultz@fws.gov>

The items highlighted below warrant inclusion, and I assume we have existing BPs that we could easily update. -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

---------- Forwarded message ---------
From: **Chang, Lena** <lena_chang@fws.gov>
Date: Wed, Jul 10, 2019 at 10:02 AM
Subject: Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
To: FWS Assistant Directors <fws_assistant_directors@fws.gov>, FWS Deputy Assistant Directors <fws_deputy_assistant_directors@fws.gov>

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Pesticide Consultation
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Reorganization - Unified Regions

Thank you!
Lena

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Thanks very much! Happy and safe 4th, all!
Lena

--

Lena Chang, Acting Deputy Chief of Staff
Office of the Director, U.S. Fish & Wildlife Service
1849 C Street Washington D.C. 20240 Room 3352

Direct: 202 208 4923 Mobile: 202 794 3822 | lena_chang@fws.gov

--

Lena Chang, Acting Deputy Chief of Staff
Office of the Director, U.S. Fish & Wildlife Service
1849 C Street Washington D.C. 20240 Room 3352
Direct: 202 208 4923 Mobile: 202 794 3822 | lena_chang@fws.gov

**INFORMATION MEMORANDUM**

FROM: U.S. Fish and Wildlife Service (FWS)
SUBJECT: Coastal Barrier Resources System - Mapping Projects and Sand Mining Issues

BACKGROUND

- The Coastal Barrier Resources Act (CBRA) is a free-market approach to conservation that saves taxpayers money and keeps people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. The law prohibits most new federal expenditures (including most dredging and beach nourishment) within the Coastal Barrier Resources System (CBRS) but imposes no restrictions on development conducted with private, state, or local funds.
- A recent study in the *Journal of Coastal Research* estimated that CBRA reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013, and forecasts that additional savings will range between $11 and $108 billion over the next 50 years.
- The CBRS covers 3.5 million acres along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts
- The Service is responsible for maintaining and updating the CBRS maps. With minor exceptions, only Congress can change the maps to add or remove areas.
- The official maps of the CBRS were first created more than 35 years ago, and some of the maps contain errors that negatively affect property owners and project proponents.
- Congress recognized the challenges associated with the outdated maps and directed the Service to prepare digital maps for the entire CBRS and make recommendations for its expansion. The Service has mapping projects underway for over 40 percent of the CBRS units.

CURRENT STATUS

- The Service is preparing a report to Congress on the Hurricane Sandy Remapping Project, along with final recommended maps for about 430 units and summaries of and responses to comments that were received when the proposed boundaries underwent public review in 2018 and 2019. This large-scale project includes revised maps for nine states in the northeast and corrects mapping errors affecting property owners and adds areas eligible for inclusion. The report and final recommended maps are planned for completion in late 2020.
- The Service is also working on revised maps that address technical mapping errors for certain units Florida and South Carolina.
- In recent years, the issue of mining sand from within CBRS has come up in certain areas along the Atlantic Coast (Hereford Inlet, NJ, southeastern NC and Folly Beach, SC), where communities seek to use inlets within the CBRS as borrow sites for federal beach nourishment projects outside of the CBRS. The Service and the Department have received numerous inquiries from members of Congress regarding this issue. Due to the high level of interest, Chairman Grijalva of the House Natural Resources Committee recently requested that USGS, in conjunction with the Service, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS.

TALKING POINTS

- The Service receives numerous requests from property owners and other interested parties who seek to remove land from the CBRS. The Hurricane Sandy Remapping Project (as well as other smaller projects) addresses a significant number of technical mapping errors.
- CBRA does not prohibit private, state, or local funding for projects within the CBRS. State and local funding has been used to cover project costs within the CBRS in Florida and New Jersey and is currently proposed for a storm-damage-reduction project in Texas. 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.

Contact: Gary Frazer (202) 208-4646

**From:** Phinney, Jonathan T
**To:** Aubrey, Craig
**Cc:** Ren, Chun-Xue; Niemi, Katie; Wright, Dana K
**Subject:** Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
**Date:** Thursday, July 11, 2019 4:54:00 PM
**Attachments:** CBRA briefing memo FWP Rob Wallace 7.11.19.docx
**Importance:** High

---

Craig,

As requested, I reformatted the CBRA brief to the new template and to the 1 page minimum.

Let me know if there are any issues and thanks for collating the materials!

Jph

On Thu, Jul 11, 2019 at 3:06 PM Aubrey, Craig <craig_aubrey@fws.gov> wrote:

> Pls use the attached format. thanks,
>
> Craig
>
> On Thu, Jul 11, 2019 at 2:54 PM Shaughnessy, Michelle <michelle_shaughnessy@fws.gov> wrote:
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> > Craig - since you are acting for Gina... Is there a format we are supposed to be using for these? We had to create an IM for the DOD/DOI recovery IM so am not sure what format to put it in. Are you compiling these to send up to Gary?
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> > > MS: ES
> > > 5275 Leesburg Pike
> > > Falls Church, VA 22041-3803
> > > 703-358-1985
> > >
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> > > Date: Wed, Jul 10, 2019 at 10:46 AM
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*U.S. Fish and Wildlife Service*
*(202) 208-4646*

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Date: Wed, Jul 10, 2019 at 10:02 AM
Subject: Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book
To: FWS Assistant Directors <fws_assistant_directors@fws.gov>, FWS Deputy Assistant Directors <fws_deputy_assistant_directors@fws.gov>

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Reorganization - Unified Regions

Thank you!
Lena

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In addition, if there is anything specific or different you'd like to add for Bryan's book, please specify that in your email to me.

Thanks very much! Happy and safe 4th, all!
Lena

--

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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)
Cell - 505-908-1151

--
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

# INFORMATION MEMORANDUM FOR THE PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS EXERCISING THE AUTHORITY OF THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS

**DATE:** **July 11, 2019**
**FROM:** Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service
**SUBJECT:** Coastal Barrier Resources System - Mapping Projects and Sand Mining Issues

## I. STATEMENT OF PURPOSE

To inform the incoming Assistant Secretary.

## II. BACKGROUND

- The Coastal Barrier Resources Act (CBRA) is a free-market approach to land conservation that saves taxpayers money and keeps people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. The law prohibits most new federal expenditures (including most dredging and beach nourishment) within the Coastal Barrier Resources System (CBRS) but imposes no restrictions on development conducted with private, state, or local funds.
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- The official maps of the CBRS were first created more than 35 years ago, and some contain errors that negatively affect property owners and project proponents.
- Congress directed the Service to prepare digital maps for the entire CBRS and make recommendations for its expansion. The Service has mapping projects underway for over 40 percent of the CBRS units.
- A recent study in the *Journal of Coastal Research* estimated that CBRA reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013.

## III. DISCUSSION

- The Service plans to complete a report to Congress in late 2020 with final recommended maps for about 430 units in nine states in the northeast that will correct mapping errors affecting property owners as well as add areas eligible for inclusion.
- The Service is also addressing technical mapping errors for certain units Florida and South Carolina that require Congressional approval to be implemented into CBRS.
- The issue of mining sand inside of CBRS to replenish areas outside is a significant issue for areas along the Atlantic Coast (e.g. Hereford Inlet, NJ, southeastern NC and Folly Beach, SC). The Service and the Department have received numerous inquiries from members of Congress including Chairman Grijalva of the House Natural Resources Committee. The Service along with USGS will evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS.

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Phinney, Jonathan T; Aubrey, Craig; Ren, Chun-Xue |
| **Cc:** | Wright, Dana K; BalisLarsen, Martha |
| **Subject:** | Re: DUE 9am Wednesday, July 10: Briefing Papers for ASFWP Briefing Book |
| **Date:** | Friday, July 12, 2019 9:45:57 AM |
| **Attachments:** | CBRA briefing memo FWP Rob Wallace 7.12.19.docx |

---

Hi Folks,
Attached are my comments/edits to the most recent version of the CBRA BP. I just wanted to double check that we don't need to include a section "IV Next Steps" per the BP template. Also, we may want to soften the language concerning our commitment to the sand mining study requested by Chairman Grijalva. The most recent version of the draft response letter to the Chairman includes this language "Our agencies have initiated an assessment on the feasibility of your request. This includes an examination of information, resource, and funding needs."

Let me know if you have any questions.

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 11, 2019 at 4:54 PM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

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**DATE:** July 11, 2019
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**SUBJECT:** Coastal Barrier Resources System - Mapping Projects and Sand Mining Issues

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- A recent study in the *Journal of Coastal Research* estimated that CBRA reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013.

**Commented [NK1]:** CBRS includes uplands, wetlands, open water

## III. DISCUSSION

- The Service plans to complete a report to Congress in late 2020 with final recommended maps for about 430 units in nine states in the northeast that will correct mapping errors affecting property owners as well as add areas eligible for inclusion within the CBRS.
- The Service is also remapping ~~addressing technical mapping errors for~~ certain units in Florida and South Carolina. ~~that require Congressional approval to be implemented into CBRS.~~
- The issue of mining sand inside of CBRS to replenish areas outside is a significant issue for certain areas along the Atlantic Coast (e.g. Hereford Inlet, NJ, southeastern NC and Folly Beach, SC). The Service and the Department have received numerous inquiries from members of Congress including Chairman Grijalva of the House Natural Resources

**Formatted:** Indent: Left: 0.25 , Hanging: 0.25

**Commented [NK2]:** Alternative language: "The Service is also preparing revised maps for certain units in Florida and South Carolina that will correct mapping errors and add areas eligible for inclusion within the CBRS."

Committee. -The Service along with USGS have been asked to ~~will~~ evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS.

**Commented [NK3]:** Do we need a "IV. Next Steps" section per the BP template?

**From:** Niemi, Katie
**To:** BalisLarsen, Martha
**Subject:** Re: CBRA Briefing for Congressional Committee Staff / SOL and ES Input
**Date:** Tuesday, December 3, 2019 9:23:13 AM

---

Correct, we haven't received responses back from SOL. My understanding is that they have been reviewed through Ben and are with Peg. (b) (6) [redacted] I agree we need feedback from the lawyers but we also need feedback from the regions on how they plan to implement the new policy through the consultation process.

Katie

On Tue, Dec 3, 2019 at 9:12 AM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> Katie, did you get anything from Linus last week in response to your questions on the new SOL guidance? If not, doesn't seem like we are ready to schedule this briefing.
>
> Gary just mentioned on the Chiefs call that (b) (6) [redacted] so she will be out all week.
>
> Martha
>
> On Tue, Dec 3, 2019 at 8:46 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
>> FYI. See below.
>>
>> ---------- Forwarded message ---------
>> From: **Kodis, Martin** <martin_kodis@fws.gov>
>> Date: Tue, Dec 3, 2019 at 8:42 AM
>> Subject: CBRA Briefing for Congressional Committee Staff / SOL and ES Input
>> To: Peg Romanik <peg.romanik@sol.doi.gov>, Gary Frazer <Gary_Frazer@fws.gov>
>> Cc: Linus Y Chen <linus.chen@sol.doi.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Wainman, Barbara <barbara_wainman@fws.gov>, Alyssa Hausman <alyssa_hausman@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
>>
>> Good morning Peg and Gary,
>>
>> I'm following up on the meeting a couple of weeks ago regarding the recent CBRA SOL memo on sand mining. I believe I mentioned at that meeting that we got a request from House Natural Resources Committee majority staff for a briefing on the new approach on sand mining within the CBRS for projects outside the CBRS. Specifically, they are asking how this will work on the ground.
>>
>> When we left the meeting, I understood that SOL was going to work with ES to tackle

some of the questions on the effects of the decision and what kind of guidance might be provided to project proponents and the Service's field offices.

We would like to followup on the outstanding request from the committee staff for a briefing. However, we first want to make sure that we are ready to give such a briefing. Gary would be our principal, with Katie as support, and it would be done over the phone. We anticipate the committee will reach out again soon as it's been a couple of weeks, but we need to have a clearer understanding of this issue prior to scheduling the call.

OCL is aware of the briefing request and told us we should set up a call with the committee staff, but OCL asked that we first provide them with a pre-brief.

Have you been able to work on any sort of guidance for the memo?

Please let me know if and when we can get the ball rolling on a pre-brief for OCL and a telephone briefing for the committee staff.

I'm copying Alyssa here as she'll be covering CBRA while Liz is on travel.

Thank you.

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

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | BalisLarsen, Martha; Wright, Dana K; Shaughnessy, Michelle |
| **Subject:** | Fwd: CBRA Briefing for Congressional Committee Staff / SOL and ES Input |
| **Date:** | Tuesday, December 3, 2019 3:00:29 PM |
| **Attachments:** | Responses to CBRA program questions 112019 v2.docx |

---

FYI

---------- Forwarded message ---------
From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Tue, Dec 3, 2019 at 1:31 PM
Subject: Re: CBRA Briefing for Congressional Committee Staff / SOL and ES Input
To: Frazer, Gary <gary_frazer@fws.gov>
Cc: Kodis, Martin <martin_kodis@fws.gov>, Peg Romanik <peg.romanik@sol.doi.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Wainman, Barbara <barbara_wainman@fws.gov>, Alyssa Hausman <alyssa_hausman@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>, Jesup, Benjamin <benjamin.jesup@sol.doi.gov>, Kristen Floom <kristen.floom@sol.doi.gov>

Hi All,
Attached is DPW's draft response to FWS' questions on the new CBRA memo. Ben gave Kristen Floom and I (who are added to this email) the ok to provide it to you, with the caveat that it is draft.
Linus

On Tue, Dec 3, 2019 at 12:24 PM Frazer, Gary <gary_frazer@fws.gov> wrote:

> SOL/DPW is still working through responses to the questions we posed about application and implications of their memo. Peg is out for the rest of the week, so I do not expect a response before she gets back.
>
> We won't be ready for either of these briefings until we get SOL's advice and have an opportunity to discuss in-house and with SOL. -- GDF
>
> *Gary Frazer*
> *Assistant Director -- Ecological Services*
> *U.S. Fish and Wildlife Service*
> *(202) 208-4646*
>
> On Tue, Dec 3, 2019 at 8:42 AM Kodis, Martin <martin_kodis@fws.gov> wrote:
>
>> Good morning Peg and Gary,
>>
>> I'm following up on the meeting a couple of weeks ago regarding the recent CBRA SOL memo on sand mining. I believe I mentioned at that meeting that we got a request from House Natural Resources Committee majority staff for a briefing on the new approach on sand mining within the CBRS for projects outside the CBRS. Specifically, they are asking how this will work on the ground.

> When we left the meeting, I understood that SOL was going to work with ES to tackle some of the questions on the effects of the decision and what kind of guidance might be provided to project proponents and the Service's field offices.
>
> We would like to followup on the outstanding request from the committee staff for a briefing. However, we first want to make sure that we are ready to give such a briefing. Gary would be our principal, with Katie as support, and it would be done over the phone. We anticipate the committee will reach out again soon as it's been a couple of weeks, but we need to have a clearer understanding of this issue prior to scheduling the call.
>
> OCL is aware of the briefing request and told us we should set up a call with the committee staff, but OCL asked that we first provide them with a pre-brief.
>
> Have you been able to work on any sort of guidance for the memo?
>
> Please let me know if and when we can get the ball rolling on a pre-brief for OCL and a telephone briefing for the committee staff.
>
> I'm copying Alyssa here as she'll be covering CBRA while Liz is on travel.
>
> Thank you.
>
> 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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**DRAFT RESPONSES TO FWS' INITIAL QUESTIONS**
**REGARDING 10/30/19 SOL MEMO**

This memorandum responds to the document titled "Initial Questions from CBRA Program concerning 10/30/19 SOL Memo," provided to us at the November 12, 2019 meeting between FWS and the Solicitor's Office. We are responding only to those items flagged as questions for the Solicitor's Office, thus there are gaps in the numbering below.

(b) (5)

(b) (5)

[redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

DRAFT

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Bohn, Cynthia |
| **Cc:** | Niemi, Katie |
| **Subject:** | Re: Briefing on Wrightville Beach and SOL CBRA opinion |
| **Date:** | Monday, December 9, 2019 11:51:01 AM |
| **Attachments:** | Topsail and CBRA IM - from Raleigh FO.docx<br>20191017 Decision Briefing Doc - CBRA Sand Mining post-final minor edits for future docs.docx<br>FWS HQ Notes - 8 APR 19- Corps-USFWS- Initial meeting.docx |

---

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> 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
>
> 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>
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>

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.*

# Decision Briefing Document for Action by Secretary

## Sand Mining within the Coastal Barrier Resources System

**STATEMENT OF ISSUE:**

The Coastal Barrier Resources Act (CBRA) originally established the Coastal Barrier Resources System (CBRS) in 1982. The purpose of the law is to save taxpayer money and keep people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. CBRA prohibits most new federal expenditures and financial assistance within the CBRS, but does not restrict the use of private, state, or local funds or limit the issuance of federal permits within the CBRS. A recent study in the *Journal of Coastal Research* found that CBRA reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013.

CBRA restricts new federal expenditures within 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 U.S. Fish and Wildlife Service (Service), may make expenditures within the CBRS for activities that meet one of CBRA's exceptions (16 U.S.C. 3505). Since 1994, the Service has adhered to a legal interpretation provided by the Office of the Solicitor and advised federal agencies that most federally-funded sand mining within the CBRS for shoreline-stabilization projects outside of the CBRS is prohibited. This interpretation has affected several U.S. Army Corps of Engineers (Corps) shore-protection projects in 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 benefiting developed areas outside of the CBRS.

Construction agencies and project sponsors often prefer to use nearshore sand borrow sites instead of offshore borrow sites due to sand quality and cost. It is important to note that CBRA does not ban shoreline stabilization or sand-mining activities within CBRS units; they can still occur within the CBRS provided that no federal funds are used and the cost is covered by private, state, or local sources.

The Service's long-standing legal interpretation has become controversial with certain local communities and their members of Congress in recent years due to difficulties in sourcing beach-quality sand while maintaining the positive project cost-benefit ratio necessary for the Corps to complete the project. Members of Congress have recently asked that the Service reconsider this legal interpretation.

**ISSUE BACKGROUND**:

CBRA's legislative history makes it clear that the law 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.*

In 1994, the Assistant Solicitor for 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 attached). In recent years, the Corps has acted in accordance with the Service's interpretation of CBRA and generally avoided utilizing borrow sites within the CBRS (despite its historic usage of some sites).

The Service received a letter in June 2018 from seven members of Congress asserting that the agency has taken an unreasonably narrow interpretation of CBRA's exceptions as they pertain to congressionally authorized shoreline-stabilization projects. The Service's December 2018 response letter (DCN 068399) 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." There are currently no CBRA consultations involving this issue pending with the Service.

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 (in excess of the mandatory 35% non-federal cost share required for most projects) has been used to cover project costs within the CBRS in the past and is currently proposed for a multi-billion dollar storm-damage-reduction project in Texas. Additionally, some beach resort communities use local funds to cover their beach nourishment costs (e.g., Hilton Head, SC and Nags Head, NC). However, given the escalating costs of beach nourishment and increasing exposure to hazards, local communities and others continue to seek a path forward to allow sand mining from within the CBRS using federal funds.

Due to the high level of interest in this matter, Chairman Grijalva of the House Natural Resources Committee recently requested that the U.S. Geological Survey (USGS), in conjunction with the Service, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS. The Service and USGS have initiated an assessment on the feasibility of Chairman Grijalva's request for a study on sand/sediment removal in areas within and adjacent to the CBRS. A response letter to Chairman Grijalva is currently in clearance (DCN 070502).

**CONSTRAINTS ON SECRETARY OR DEPUTY SECRETARY FOR ACTION (include Office of Solicitor input if legal rationale is provided as a limitation on action):** *The information in this section was prepared by the Office of the Solicitor, Division of Parks & Wildlife, Branch of Fish & Wildlife.*

Section 5 of CBRA prohibits most new federal expenditures and financial assistance within the CBRS, while imposing no restrictions on development conducted with private, state, or local funds. 16 U.S.C. § 3504. Section 6 of CBRA sets out exceptions to this general prohibition. The Section 6 exception language states that an agency, "after consultation with the Secretary (of the Interior), may make Federal expenditures and may make financial assistance available *within the System*" for a variety of purposes. *Id.* § 3505(a). [1] Section 6(a)(6) lists seven actions or projects that can be federally funded if 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 coastal barriers. Those actions or projects include:

> (G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system. (16 U.S.C. 3505(a)(6)(G))

---

[1] Section 5 contains an additional exception, not relevant here, which does not require consultation with the Secretary. That exception allows federal expenditures "in cases where an emergency threatens life, land, and property immediately adjacent to the unit." 16 U.S.C. § 3504(a)(3).

In 1994, the Assistant Solicitor for Fish and Wildlife signed a memorandum (the "1994 Opinion"; attached) concluding that a beach-renourishment project could only fall within Section 6(a)(6)(G) if the project renourished a beach within a CBRS unit. Further, the opinion stated that even if the project was intended to renourish a beach within a CBRS unit, the project would still have to be found to be consistent with the purposes of the Act, including minimizing damage to fish, wildlife, and other natural resources. *See* 16 U.S.C. § 3501(b). The 1994 Opinion was cited in a June 12, 1995 letter from the Assistant Secretary for Fish and Wildlife and Parks to the Acting Assistant Secretary of the Army for Civil Works (attached), explaining that Section 6(a)(6)(G) only applies to projects for stabilizing the shoreline within a unit of the CBRS, and since the shoreline being stabilized by the project was outside the CBRS unit, the exception could not apply. This has been the consistent position of the Department of the Interior for the past 24 years.

(b) (5)

[redacted]

[redacted]

[redacted]

In 2016, the Borough of Avalon, NJ filed suit against the Corps and the Service for violation of the Administrative Procedure Act, alleging an arbitrary and capricious interpretation of CBRA (consistent

with the 1994 Opinion) in a project consultation that resulted in federal funds being denied for sand mining within Hereford Inlet, NJ. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing. Media reports indicate that communities in NJ are considering pursuing additional litigation. In July 2019, the Service's New Jersey Ecological Services Field Office received a letter from an attorney for the Boroughs of Avalon and Stone Harbor and the City of North Wildwood, NJ, requesting that the Service reconsider its determination that CBRA prohibits using Hereford Inlet as a borrow area for periodic beach nourishment in each of the respective municipalities. The Service has not responded to this letter and does not have a response in process.

***PLEASE INDICATE IF TIME SENSITIVE:*** This issue is not time sensitive for the Department; however, there is significant congressional interest and the local communities and the Corps view it as an urgent matter as it affects an ongoing Corps project in NJ.

**OPTION 1:** (b) (5)

Views of other DOI Bureaus (if applicable):
There are no other DOI Bureaus involved.

Consistent with relevant EO's or SO's? (specify):
N/A

Secretarial Priorities Advanced by Option:
N/A

Outside Perspectives - Members of Congress?; Federal, State, Tribal, Territorial, and local government?; and Citizen groups?:

Certain affected local communities and the State of New Jersey disagree with the Service's long-standing interpretation of CBRA and seek to invoke an exception or have the CBRS maps changed to allow sand mining for beach-nourishment projects to proceed with federal funds. Communities continue to reach out to their members of Congress regarding this matter, and Representative Van Drew (NJ-2) sent a letter to the Service regarding the Hereford Inlet, NJ borrow site in March 2019 (DCN 069830 – response pending clearance).

Several organizations (e.g., American Littoral Society, Association of State Floodplain Managers, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, and R

[2] E.g., 44 C.F.R. § 206.342 (FEMA regulation noting that "[a]pproval by the Secretary is not required in order that an action be carried out"). The Army Corps of Engineers does not have a comparable regulation.

Street) 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.

The Corps faces challenges in sourcing beach-quality sand for their ongoing projects. The Corps may consider the alternatives listed above or seek other alternatives; the Service does not have veto authority over the funding agency's decisions.

**Approval** -_____

**OPTION 2:** (b) (5) [redacted]

Views of other DOI Bureaus (if applicable):
There are no other DOI Bureaus involved.

Consistent with relevant EO's or SO's? (specify):
N/A

Secretarial Priorities Advanced by Option:
N/A

Outside Perspectives - Members of Congress?; Federal, State, Tribal, Territorial, and local government?; and Citizen groups?:
(b) (5) [redacted]

**Approval** -_____

Attachment

USACE – USFWS – Initial CBRA Coordination Meeting
Carolina Beach and Wrightsville Beach Studies
April 8, 2019
1030-1130AM

Agenda

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5)

(b) (5)

**From:** Niemi, Katie
**To:** Wright, Dana K
**Subject:** Re: L09 Corps call re: Carolina Beach and Wrightsville Beach projects
**Date:** Monday, April 8, 2019 2:10:07 PM

---

Great. Thanks.

On Mon, Apr 8, 2019 at 2:02 PM Wright, Dana <dana_wright@fws.gov> wrote:

> Katie,
>
> Notes on the Corps call are here: K:\CBRA\Consistency Consultations\Actual Consultations\North Carolina\Unit L09 Corps Dredging\L09 Corps Project 2019\FWS HQ Notes - 8 APR 19- Corps-USFWS- Initial meeting.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:** Niemi, Katie
**To:** BalisLarsen, Martha; Phinney, Jonathan T; Pool, Taylor S; Kodis, Martin; Hausman, Alyssa B
**Cc:** Wright, Dana K
**Subject:** NC Corps projects and CBRA
**Date:** Thursday, July 11, 2019 11:35:28 AM

---

Hi Folks,
We had a call this week with folks at Corps HQ to talk about (b) (5) [redacted] We mentioned the call we had in April with the Wilmington District about Carolina Beach and Wrightsville Beach. Below is some info that we got back from the Corps's Office of Chief Counsel:

> "On the call, you mentioned discussions USFWS has had with Corps district staff working on the Carolina Beach and Wrightsville Beach projects. Draft reports for those projects have just recently been released for public review and are available on the Wilmington District's website. Continued use of the existing borrow sources within the CBRS are evaluated in the reports, with the acknowledgement that Congress would have to expressly except or exempt the projects from COBRA in order for those borrow sources to be utilized. It's too early in both the public review and policy review processes to say whether this is the recommendation that will ultimately be adopted for either project."

Last Congress there was legislation in both the House and Senate that would have exempted certain Texas units from CBRA's restrictions on shoreline stabilization (to allow for a specific Corps project), but those bills died in Committee and the Corps ended up working out a deal with the non-federal sponsor to cover the costs inside the CBRS.

Katie

**From:** Chen, Linus
**To:** Wright, Dana K
**Cc:** Niemi, Katie; Tripp, Kimberly J; Floom, Kristen B
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
**Date:** Friday, February 21, 2020 1:49:20 PM

---

My thought with (b) (5) [redacted]

On Fri, Feb 21, 2020 at 1:18 PM Wright, Dana K <dana_wright@fws.gov> wrote:

> Thanks for your quick review and comments. Katie and I will send you a clean copy when we're done with your edits so that you can share with Ben.
>
> How concerned are you about (b) (5) [redacted]
>
> 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:** Chen, Linus <linus.chen@sol.doi.gov>
> **Sent:** Friday, February 21, 2020 12:37 PM
> **To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
> **Cc:** Floom, Kristen B <kristen.floom@sol.doi.gov>
> **Subject:** Fwd: Please surname CBRA letter to Corps on sand mining/beach nourishment
>
> Hi All,
> Kristen and my comments/edits to the draft documents are attached. I think my most substantive comment (b) (5) [redacted] If you can send a revised version, we can send it to Ben to see if any additional surnaming would be needed beyond Kristen and myself. (Also, I'm out Monday, but back in for the rest of the week starting Tuesday.)
> Thanks,
> Linus

---------- Forwarded message ---------
From: **Wright, Dana K** <dana_wright@fws.gov>
Date: Thu, Feb 20, 2020 at 9:21 AM
Subject: Please surname CBRA letter to Corps on sand mining/beach nourishment
To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>

Hi Linus and Kristen,

We have drafted a letter to the Director of Civil Works at the Corps to convey our new position on sand mining/beach nourishment and CBRA. The letter is to be signed by Gary. Can you please review the attached letter and provide us with any edits/comments? Gary has indicated that we need your surname before he will review and surname, and we can do that via email.

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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**From:** Shaughnessy, Michelle
**To:** Wright, Dana K
**Cc:** Niemi, Katie; Tripp, Kimberly J
**Subject:** Re: please review - CBRA Corps letter
**Date:** Monday, February 24, 2020 3:32:38 PM

---

Great - thanks for the update!

Michelle Shaughnessy
Headquarters Ecological Services
Chief, Division of Restoration and Recovery
(Direct) 703-358-2555

On Feb 24, 2020, at 12:37 PM, Wright, Dana K <dana_wright@fws.gov> wrote:

> Hi Michelle,
>
> Yes, we moved it to Gary and he asked that we send it through SOL. We received comments back from SOL on Friday. There are no significant issues, but several minor things that Kim, Katie, and I need to work through. We have a lot of meetings today, but resolving those comments will be a priority for tomorrow. After we resolve comments, we have to send it back to Linus as he needs to show it to Ben Jesup to determine whether it needs any additional SOL surname. Hopefully we'll know more at the end of this 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
>
> ---
>
> **From:** Shaughnessy, Michelle <Michelle_Shaughnessy@fws.gov>
> **Sent:** Monday, February 24, 2020 12:30 PM
> **To:** Niemi, Katie <katie_niemi@fws.gov>
> **Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
> **Subject:** Re: please review - CBRA Corps letter

Hey everyone - going through email and found this. We moved this up to Gary correct? and he has requested solicitor review?

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:** 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:** Chen, Linus
**To:** Wright, Dana K
**Cc:** Niemi, Katie; Tripp, Kimberly J; Floom, Kristen B
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
**Date:** Tuesday, February 25, 2020 11:28:51 AM

---

I think having two endnotes (10 & 11) at the end of a sentence is a little confusing. What about putting the "old" endnote 11 after "shorefront communities," (and renumbering endnotes 10 and 11)?

On Tue, Feb 25, 2020 at 11:12 AM Wright, Dana K <dana_wright@fws.gov> wrote:

> Hi Linus and Kristen,
>
> We have accepted most of your edits and responded to two comments. Also, please note the addition of endnote 11. An updated version of the letter is attached for you to circulate with Ben. Please let us know whether any additional SOL surnames are required.
>
> 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>
> **Sent:** Friday, February 21, 2020 1:18 PM
> **To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
> **Cc:** Floom, Kristen B <kristen.floom@sol.doi.gov>
> **Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
>
> Thanks for your quick review and comments. Katie and I will send you a clean copy when we're done with your edits so that you can share with Ben.
>
> How concerned are you about the term "sand mining"? I think it's an accurate term for the activity -- it's the extraction of a resource of value for another purpose. The term "borrow" indicates that it will be returned, but there is often a net loss of sand from these projects, so that could be misleading. The terms "sand removal" and "dredging," while not inaccurate, don't make it clear what the purpose of the action that we're referring to is - and that's

resource extraction (not just channel maintenance).

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:** Chen, Linus <linus.chen@sol.doi.gov>
**Sent:** Friday, February 21, 2020 12:37 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Subject:** Fwd: Please surname CBRA letter to Corps on sand mining/beach nourishment

Hi All,
Kristen and my comments/edits to the draft documents are attached. I think my most substantive comment is to use alternate wording to the term "sand mining." If you can send a revised version, we can send it to Ben to see if any additional surnaming would be needed beyond Kristen and myself. (Also, I'm out Monday, but back in for the rest of the week starting Tuesday.)
Thanks,
Linus

---------- Forwarded message ---------
From: **Wright, Dana K** <dana_wright@fws.gov>
Date: Thu, Feb 20, 2020 at 9:21 AM
Subject: Please surname CBRA letter to Corps on sand mining/beach nourishment
To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>

Hi Linus and Kristen,

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--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

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Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**From:** Wright, Dana K
**To:** Floom, Kristen B; Chen, Linus Y
**Cc:** Niemi, Katie; Tripp, Kimberly J
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment
**Date:** Wednesday, February 26, 2020 2:29:18 PM

---

Thanks to you both. Ben's edits have been accepted and we've addressed his comment about the effective date as suggested (it now says "The Service began applying this interpretation on November 4, 2019.")

Dana

**From:** Floom, Kristen <kristen.floom@sol.doi.gov>
**Sent:** Wednesday, February 26, 2020 1:40 PM
**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

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> This email is my surname (I'll let Kristen send a separate email for her surname). I'll check with Ben if we can expect additional surnames above Kristen and myself.
> Linus
>
> ---------- Forwarded message ---------
> From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
> Date: Wed, Feb 26, 2020 at 11:44 AM
> Subject: Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
> To: Chen, Linus <linus.chen@sol.doi.gov>
> Cc: Kristen Floom <kristen.floom@sol.doi.gov>
>
> Minor suggestions attached. (Sorry about the hyphen-storm.)
>
> Go ahead and surname.
>
> Ben
>
> On Tue, Feb 25, 2020 at 11:48 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:
>
> > Hi Ben,
> > Attached is a letter to the Corps on CBRA that FWS would like us to surname. FWS has incorporated most of Kristen and my comments. Do you or Peg need to review and surname, or is Kristen and my surname enough?
> > Thanks,

Linus

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To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>

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Thanks,

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Division Parks & Wildlife

(w) 202-208-5036

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Ben Jesup
Assistant Solicitor for Fish and Wildlife
Department of the Interior
202-208-3170

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Division Parks & Wildlife

(w) 202-208-5036

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--
Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Floom, Kristen B |
| **Subject:** | Re: Please surname CBRA letter to Corps on sand mining/beach nourishment |
| **Date:** | Friday, February 28, 2020 1:58:50 PM |

Sounds good. Thanks Kristen!
Katie

---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Friday, February 28, 2020 1:43 PM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Katie:

Thanks for following up about this. Ben and Peg are both out of the office today, but I'll check in with Ben first thing on Monday to see if any higher-level review is required.

Thanks,
Kristen

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 28, 2020 1:40 PM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Kristen and Linus,
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Katie

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**From:** Floom, Kristen <kristen.floom@sol.doi.gov>
**Sent:** Wednesday, February 26, 2020 1:40 PM
**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>

**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
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> From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
> Date: Wed, Feb 26, 2020 at 11:44 AM
> Subject: Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
> To: Chen, Linus <linus.chen@sol.doi.gov>
> Cc: Kristen Floom <kristen.floom@sol.doi.gov>
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> Go ahead and surname.
>
> Ben
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> > Hi Ben,
> > Attached is a letter to the Corps on CBRA that FWS would like us to surname. FWS has incorporated most of Kristen and my comments. Do you or Peg need to review and surname, or is Kristen and my surname enough?
> > Thanks,
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> >
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> > From: **Wright, Dana K** <dana_wright@fws.gov>
> > Date: Thu, Feb 20, 2020 at 9:21 AM
> > Subject: Please surname CBRA letter to Corps on sand mining/beach nourishment
> > To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
> > Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>
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> > Hi Linus and Kristen,

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Thanks,

Dana Wright
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Ecological Services
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5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
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Learn more about the Coastal Barrier Resources Act

--
Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

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Ben Jesup
Assistant Solicitor for Fish and Wildlife
Department of the Interior
202-208-3170

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--

Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

**From:** Wright, Dana K
**To:** Shaughnessy, Michelle
**Cc:** Tripp, Kimberly J; Niemi, Katie
**Subject:** Fw: Please surname CBRA letter to Corps on sand mining/beach nourishment 071591
**Date:** Monday, March 2, 2020 10:49:56 AM

---

Hi Michelle,

Please see below on the status of the CBRA letter to the Corps (DCN 071591). Presumably Karen Budd-Falen will determine what level of SOL surname is required. We currently have surname from staff in SOL-DPW (Kristen Floom and Linus Chen). Ben Jesup also reviewed - he had no substantive edits.

Thanks,

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

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---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Monday, March 2, 2020 10:46 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Katie:

Ben and I just walked the letter down to Karen Budd-Falen, who said she'd look at it today. I'll let you know ASAP if she has any comments.

Regards,
Kristen

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 28, 2020 1:40 PM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

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Katie

---

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**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

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> Hi All,
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> This email is my surname (I'll let Kristen send a separate email for her surname). I'll check with Ben if we can expect additional surnames above Kristen and myself.
> Linus
>
> ---------- Forwarded message ---------
> From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
> Date: Wed, Feb 26, 2020 at 11:44 AM
> Subject: Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
> To: Chen, Linus <linus.chen@sol.doi.gov>
> Cc: Kristen Floom <kristen.floom@sol.doi.gov>
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> Minor suggestions attached. (Sorry about the hyphen-storm.)
>
> Go ahead and surname.
>
> Ben
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Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

**From:** Niemi, Katie
**To:** Floom, Kristen B
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
**Date:** Monday, March 2, 2020 10:49:33 AM

---

Thanks Kristen for the update. Much appreciated.

Katie

---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Monday, March 2, 2020 10:46 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
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1849 C Street, N.W.
Washington, DC 20240
202-208-3795

**From:** Chen, Linus Y
**To:** Wright, Dana K; Floom, Kristen B; Niemi, Katie
**Cc:** Tripp, Kimberly J
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
**Date:** Monday, March 2, 2020 12:23:26 PM
**Attachments:** 20200302 DRAFT CBRA letter to USACE Director of Civil Works 071591.docx

---

Hi All,

We got one comment from our Deputy Solicitor, which I've incorporated and made edits to the attached. (We'll try to check with Ben later today if additional surname is needed).

Linus

Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 2, 2020 10:59 AM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Thanks

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**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Peg is out of the office through Thursday so she hasn't weighed in.

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 2, 2020 10:51 AM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Thanks Kristen, we appreciate you keeping us posted. Did Peg have any thoughts on the 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

---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Monday, March 2, 2020 10:46 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Katie:

Ben and I just walked the letter down to Karen Budd-Falen, who said she'd look at it today. I'll let you know ASAP if she has any comments.

Regards,
Kristen

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 28, 2020 1:40 PM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>

**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Kristen and Linus,
Thank you for your review and surname of the draft Corps letter. We are working with the Corps and NC field office on two consultations that are applying the new interpretation under exception 6(G). The Corps is anxious to finalize the consultations and Senator Burr (NC) is also interested. There are many stakeholders looking to us for guidance on the new interpretation so anything you can do to help move the draft letter through review, we'd much appreciate. Have a good weekend.

Katie

---

**From:** Floom, Kristen <kristen.floom@sol.doi.gov>
**Sent:** Wednesday, February 26, 2020 1:40 PM
**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

This email is my surname.

On Wed, Feb 26, 2020 at 1:19 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

> Hi All,
> Ben had some minor edits in the attached.
> This email is my surname (I'll let Kristen send a separate email for her surname). I'll check with Ben if we can expect additional surnames above Kristen and myself.
> Linus
>
> ---------- Forwarded message ---------
> From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
> Date: Wed, Feb 26, 2020 at 11:44 AM
> Subject: Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
> To: Chen, Linus <linus.chen@sol.doi.gov>
> Cc: Kristen Floom <kristen.floom@sol.doi.gov>
>
> Minor suggestions attached. (Sorry about the hyphen-storm.)
>
> Go ahead and surname.
>
> Ben
>
> On Tue, Feb 25, 2020 at 11:48 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Hi Ben,
Attached is a letter to the Corps on CBRA that FWS would like us to surname. FWS has incorporated most of Kristen and my comments. Do you or Peg need to review and surname, or is Kristen and my surname enough?
Thanks,
Linus

---------- Forwarded message ---------
From: **Wright, Dana K** <dana_wright@fws.gov>
Date: Thu, Feb 20, 2020 at 9:21 AM
Subject: Please surname CBRA letter to Corps on sand mining/beach nourishment
To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>

Hi Linus and Kristen,

We have drafted a letter to the Director of Civil Works at the Corps to convey our new position on sand mining/beach nourishment and CBRA. The letter is to be signed by Gary. Can you please review the attached letter and provide us with any edits/comments? Gary has indicated that we need your surname before he will review and surname, and we can do that via email.

Thanks,

Dana Wright
Program Specialist
Ecological Services
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5275 Leesburg Pike, MS: ES
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Learn more about the Coastal Barrier Resources Act

--
Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

--
Ben Jesup
Assistant Solicitor for Fish and Wildlife
Department of the Interior
202-208-3170

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--
Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

--
Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

In Reply Refer To:
FWS/AES/DBTS/BGMTS/071591

Mr. James C. Dalton
Director of Civil Works
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

Dear Mr. Dalton:

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-renourishment 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"[1] could not (b) (5) [redacted] 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 renourish 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. (b) (5) [redacted] 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.[2] Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA's exceptions.[3] 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.[4] 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 ~~which~~ that may be susceptible to the adverse impacts of dredging and shoreline-stabilization projects. This letter provides information about the consultation process and considerations for developing CBRA-compliant shoreline-stabilization 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[5] be considered under the exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."[6] This exception also requires that the project be consistent with the purposes of CBRA, which are:

**Commented [WDK1]:** (b) (5) [redacted]

**Commented [WDK2]:** Kristen's Floom's comment: (b) (5) [redacted]

Response from CBRA Program: (b) (5) [redacted]

**Commented [SOL-BCJ3R2]:** (b) (5) [redacted]

[redacted]

*…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.*[7]

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. Likewise, our revised interpretation also requires consideration of the impacts of the project both within and outside of the CBRS. The Service recognizes that while dredging and beach-nourishment projects can be detrimental to coastal habitats, it may be possible for such projects to be done in a manner that is consistent with CBRA using reasonable and prudent conservation measures and BMPs that result in positive outcomes for both natural resources and nearby developed shorelines.

*Need for Monitoring and BMPs 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 renourishment is consistent with the purposes of CBRA (see #3 and 4 below). The Corps 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.[8] 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 littoral drift will be impeded by 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?**[9] Many species depend upon the perpetuation of natural dynamic coastal-formation processes. Dredging of inlets for sand can be detrimental, causing 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 frequently leads to more development in greater density within shorefront communities,[10] which are then faced with the need for future replenishment or more drastic stabilization measures.[11] 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; 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?**[12] Shoreline-stabilization activities and residential growth along coastal areas may negatively impact coastal-dependent species, resulting in future listings under the Endangered Species Act, and may even threaten the continued existence of coastal barriers themselves.[13] 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

---

[1] 16 U.S.C. § 3505(a)(6)(G)
[2] *Id.* § 3504(a)(3)
[3] *Id.* § 3505(a)
[4] *Id.* § 3506(b)
[5] 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.
[6] 16 U.S.C. § 3505(a)(6)(G)
[7] *Id.* § 3501(b)
[8] In June 2019, the Corps 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. http://el.erdc.usace.army.mil/emrrp/techran.html
[9] *Ibid.*
[10] "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.
[11] Pilkey, O.H. and K.L. Dixon. 1996. The Corps and the shore. Island Press; Washington, D.C.
[12] 16 U.S.C. § 3501(b)
[13] 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:** | Chen, Linus Y |
| **To:** | Niemi, Katie; Floom, Kristen B |
| **Cc:** | Tripp, Kimberly J; Wright, Dana K |
| **Subject:** | Re: Please surname CBRA letter to Corps on sand mining/beach nourishment |
| **Date:** | Tuesday, March 3, 2020 10:04:07 AM |

---

I don't think we need the Deputy Sol's surname since she did review and comment on the letter.

Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Tuesday, March 3, 2020 9:17 AM
**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>; Floom, Kristen B <kristen.floom@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Great. Thanks Linus and Kristen for moving this forward. Do we need a surname from the Deputy Solicitor?

Katie

---

**From:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Sent:** Monday, March 2, 2020 3:28 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Ok, we're set. I just checked with Ben, and he said since our Deputy Solicitor reviewed, no need for Peg to review the letter.

Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

---

**From:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Sent:** Monday, March 2, 2020 12:23 PM

**To:** Wright, Dana K <dana_wright@fws.gov>; Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Hi All,

We got one comment from our Deputy Solicitor, which I've incorporated and made edits to the attached. (We'll try to check with Ben later today if additional surname is needed).

Linus

Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

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**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 2, 2020 10:59 AM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

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

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**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Monday, March 2, 2020 10:58 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Peg is out of the office through Thursday so she hasn't weighed in.

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 2, 2020 10:51 AM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

Thanks Kristen, we appreciate you keeping us posted. Did Peg have any thoughts on the 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)

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**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: Please surname CBRA letter to Corps on sand mining/beach nourishment

Katie:

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Regards,
Kristen

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**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 28, 2020 1:40 PM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
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Katie

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**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: Please surname CBRA letter to Corps on sand mining/beach nourishment

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> Linus
>
> ---------- Forwarded message ---------
> From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
> Date: Wed, Feb 26, 2020 at 11:44 AM
> Subject: Re: Please surname CBRA letter to Corps on sand mining/beach nourishment
> To: Chen, Linus <linus.chen@sol.doi.gov>
> Cc: Kristen Floom <kristen.floom@sol.doi.gov>
>
>
> Minor suggestions attached. (Sorry about the hyphen-storm.)
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> Ben
>
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>
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Thanks,
Linus

---------- Forwarded message ---------
From: **Wright, Dana K** <dana_wright@fws.gov>
Date: Thu, Feb 20, 2020 at 9:21 AM
Subject: Please surname CBRA letter to Corps on sand mining/beach nourishment
To: Chen, Linus Y <Linus.Chen@sol.doi.gov>, Floom, Kristen B <kristen.floom@sol.doi.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Tripp, Kimberly J <kimberly_tripp@fws.gov>

Hi Linus and Kristen,

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Thanks,

Dana Wright
Program Specialist
Ecological Services
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5275 Leesburg Pike, MS: ES
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Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

--
Ben Jesup
Assistant Solicitor for Fish and Wildlife
Department of the Interior
202-208-3170

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--
Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

--
Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Niemi, Katie; Tripp, Kimberly J |
| **Cc:** | Bohn, Cynthia |
| **Subject:** | Director edits/comments on Corps letter |
| **Date:** | Wednesday, March 25, 2020 7:52:02 AM |
| **Attachments:** | 071591 Corps Letter DIR comments.pdf |

---

Katie and Kim,

Edits from Aurelia were uploaded to DTS this morning. There appear to be some substantive comments. I have not gone through it in detail.

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

AS 3/24/20
with comments

In Reply Refer To:
FWS/AES/DBTS/BGMTS/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"[1] 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.[2] Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA's exceptions.[3] 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.[4] 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 and considerations for developing CBRA-compliant shoreline-stabilization 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[5] be considered under the exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization

system."[6] 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.*[7]

The Service's revised interpretation of the CBRA exception for nonstructural shoreline-stabiliza (b) (5) projects does not alter the federal funding agency's responsibility to consider each project on a c 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 the project design and/or scope is subject to CBRA's consultation requirement. Information abo consultation process is available at: https://www.fws.gov/cbra/consultations.html.

Our revised interpretation of the CBRA exception for nonstructural shoreline-stabilization proje federal agencies more flexibility to undertake projects that will protect coastal resources, even if

(b) (5 (b) (5)

*Need for Monitoring and BMPs 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 Corps has identified the need for BMPs for coastal engineering projects and pre- and pos (b) (5) project monitoring to assess whether the BMPs are benefiting targeted species as designed.[8] The Serv agrees that BMPs and monitoring are necessary to assess whether projects are contributing to the lon 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:

(b) (5)

- 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?**[9] Many species depend upon the perpetuation of natural

(b) (5)

(b) (5)

address through a consultation may include, but are not limited to:

(b) (5)

(b) (5)

- 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; 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?**[12] Shoreline-stabilization activities and

(b) (5)

- 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

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[1] 16 U.S.C. § 3505(a)(6)(G)
[2] *Id.* § 3504(a)(3)
[3] *Id.* § 3505(a)
[4] *Id.* § 3506(b)
[5] 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.
[6] 16 U.S.C. § 3505(a)(6)(G)
[7] *Id.* § 3501(b)
[8] In June 2019, the Corps 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. http://el.erdc.usace.army.mil/emrrp/techran.html
[9] *Ibid.*
[10] "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.
[11] Pilkey, O.H. and K.L. Dixon. 1996. The Corps and the shore. Island Press; Washington, D.C.
[12] 16 U.S.C. § 3501(b)

[13] 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:** | Wright, Dana K |
| **To:** | Niemi, Katie; Tripp, Kimberly J |
| **Cc:** | Bohn, Cynthia |
| **Subject:** | Re: Director edits/comments on Corps letter |
| **Date:** | Wednesday, March 25, 2020 8:27:35 AM |
| **Attachments:** | 20200324 DRAFT CBRA letter to USACE Director of Civil Works 071591 DIR Comments.docx |

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I typed her comments in with track changes in a Word doc (attached). There were a few words that I couldn't read, and I'm unclear on the expected follow up for some of these edits.

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

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**From:** Wright, Dana K
**Sent:** Wednesday, March 25, 2020 7:51 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Director edits/comments on Corps letter

Katie and Kim,

Edits from Aurelia were uploaded to DTS this morning. There appear to be some substantive comments. I have not gone through it in detail.

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:
FWS/AES/DBTS/BGMTS/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"[1] 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.[2] Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures under one of CBRA's exceptions.[3] 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.[4] 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 and considerations for developing CBRA-compliant shoreline-stabilization 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[5] be considered under the exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."[6] 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.*[7]

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. (b) (5) [redacted]

(b) (5) [redacted]

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. Likewise, our revised interpretation also requires consideration of the impacts of the project both within and outside of the CBRS. The Service recognizes that while dredging and beach-nourishment projects can be (b) (5) [redacted] done in a manner that is consistent with CBRA using reasonable and (b) (5) [redacted] result in positive outcomes for both natural resources and nearby developed shorelines.

[redacted]

*Need for Monitoring and BMPs 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). (b) (5) [redacted]

[redacted]

*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)?**

(b) (5) [redacted]

(b) (5) [redacted]

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?**[9] Many species depend upon the perpetuation of natural dynamic coastal-formation processes. (b) (5) [redacted] 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. (b) (5) [redacted] Examples of issues to address through a consultation may include, but are not limited to:

[redacted]

- (b) (5) [redacted]

[redacted]

4) **Will the project contribute to the long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers?**[12] Shoreline-stabilization activities and residential growth along coastal areas may negatively impact coastal-dependent species. (b) (5) [redacted] 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

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[1] 16 U.S.C. § 3505(a)(6)(G)
[2] *Id.* § 3504(a)(3)
[3] *Id.* § 3505(a)
[4] *Id.* § 3506(b)
[5] 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.
[6] 16 U.S.C. § 3505(a)(6)(G)
[7] *Id.* § 3501(b)
[8] In June 2019, the Corps 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. http://el.erdc.usace.army.mil/emrrp/techran.html
[9] *Ibid.*
(b) (5)
[12] 16 U.S.C. § 3501(b)
(b) (5)

(b) (5)

[redacted]

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Niemi, Katie |
| **Cc:** | Phinney, Jonathan T |
| **Subject:** | Draft Decision Briefing Document |
| **Date:** | Wednesday, October 9, 2019 1:48:01 PM |
| **Attachments:** | 4 - Instructions for Memorandum.docx |

---

Katie,

I have prepared a draft decision briefing document requested by Gary using the template that Martha sent. There are a lot of issues, including the unresolved comments between Linus and Katie Mills about the legal issues. I think this document should go back through the Solicitor's office to resolve those issues in the section that they drafted.

I ended up putting "N/A" for how the opportunities align with the Departmental priorities.

K:\CBRA\Briefing Papers\20191009 Decision Briefing Doc - CBRA Sand Mining.docx

I've attached the instructions we're supposed to follow for this type of decision briefing document.

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

# GUIDIANCE ON DECISION BRIEFING DOCUMENTS AND OPTIONS DOCUMENTS FROM THE OFFICE OF THE DEPUTY SECRETARY

Any proposal for action by the Secretary or the Deputy Secretary shall be in the form of an options paper that contains alternative actions from which the Secretary or Deputy Secretary may choose. The Immediate Office of the Secretary anticipates having at least 5 calendar days to review each decision before it is finalized and this timing must be factored into any request for review. If the issue is time sensitive it shall be indicated. Each option shall:

A. Concisely present two or more alternative actions for the Secretary or Deputy Secretary to take;

B. Reflect adequate coordination and consultation with any interested bureau or office, and when appropriate, be accompanied by a separate statement from each bureau or office having a direct responsibility or special expertise concerning the issue;

C. Be provided to the Deputy Secretary for consideration sufficiently in advance of any scheduled meeting with either the Deputy Secretary or the Secretary on the subject matter to permit adequate review of the material;

D. If the proposed action requires the direct action of the Secretary and the Deputy Secretary concurs with the adequacy of the document, it will be provided to the Chief of Staff, through the Deputy Chief of Staff, for the Secretary of the Interior's consideration within 24 hours of receipt, otherwise it will be returned; and

E. Each document shall contain:

(1) A statement of the issue;

(2) A brief background of the matter;

(3) A description of key constraints on the Secretary's ability to act if any;

(4) At least two options from which the Secretary or Deputy Secretary may choose, with approval lines for each. One of the options shall be a "no-action" alternative. If the matter is complex, the paper shall accurately describe the views of each bureau if more than one is anticipated to have an interest in any option;

(5) Each option shall identify how it would be consistent with any relevant Executive Orders and Secretarial Orders, and shall also indicate which of the Secretarial priorities are advanced by the option;

(6) Drafters shall ensure that anticipated or stated views of Members of Congress, Federal, State, Tribal, Territorial and local government officials, and citizen groups are accurately provided; and

(7) Drafters shall ensure that the Office of Solicitor has agreed with the range of legal options, if a legal rationale is provided as a limitation on action.

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | BalisLarsen, Martha |
| **Cc:** | Shaughnessy, Michelle; Wright, Dana K; Phinney, Jonathan T |
| **Subject:** | Re: draft email for FOs on CBRA change |
| **Date:** | Thursday, November 14, 2019 1:11:49 PM |

---

Martha,
How about replacing the 3rd bullet with: "Until we have further guidance from HQ, please do not respond to any CBRA consultations without coordinating with me."

Katie

On Thu, Nov 14, 2019 at 12:45 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> so are you comfortable with the 3rd bullet encouraging the use of the check box? I thought that we are seeking clarification on that. Would it be better not to include the 2nd sentence in that bullet?
>
> Martha

On Thu, Nov 14, 2019 at 12:37 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

> Martha,
> Do you have any changes or concerns with the draft email below that Cindy plans to send to R1 and R2 field office supervisors and CBRA contacts? The only changes I have are to change "SOL opinion" to "SOL memo" and change "The Director has asked that we not release..." to "The SOL has advised that we not release ..." I think it's important that we get something out to the field offices soon.
>
> 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: **Bohn, Cynthia** <cynthia_bohn@fws.gov>
> Date: Thu, Nov 14, 2019 at 12:18 PM
> Subject: Fwd: Scanned CBRA doc2
> To: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

Ladies, I have coordinated with the ARDs and would like to send the following email to the Field Office's. I still need to contact the folks in Texas but they will need a different memo if we do one. Please send to Martha for review as requested. We would like to send to the Field as soon as possible to get input. thanks, c

MEMO to all FO Supervisors and CBRA Staff:

(It you do not work on the Coastal Barrier Resources Act please disregard and excuse this interruption.)

Hello CBRA folks and field supervisors,

Per my discussion with Acting ARD Pam Tochik and Deputy Spencer Simon or Michelle Everson and Deputy Jack Arnold, I wanted to reach out to you to provide an update and ask for your coordination on the Solicitor's opinion on sand mining in a CBRS Unit. (Please see the memo attached and the message from the Director below for background information) The Solicitor's memo reads in its conclusion, "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."

In a nutshell, here are the things you may need to know:

- The HQ staff has been collecting and developing questions for the Solicitors and the Service Leadership to provide us with guidance on how to proceed at the national/regional/field level. The Director has asked for this guidance to ensure our alignment with this position.
- **The Director has asked that we not release the 10/30/2019 Solicitor's memo and keep it "close hold" until further notice.**
- Continue to use the current CBRA Inter Agency Template and process. This includes utilizing the "Due to many competing priorities, the Service is unable to provide an opinion..." check box on all CBRA consultation requests except those involving the use of the Section 6(a)(6)(G) exemption for non-structural shoreline stabilization.
- Please inform me if your field office has any projects ongoing or that may be/have been "reopened for consultation" due to this change of opinion.
- Please contact me with any questions you may have so that they may be included in the ongoing conversations and guidance development. The field level input is important in this discussion.
- The Acting ARD has requested that you refer any press inquiries to the Regional EA staff.

Thank you all for your attention and patience as we work to provide the best possible guidance for furthering the purposes of CBRA 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,". As always, please feel free to contact me at any time.

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

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: **Toschik, Pamela** <pamela_toschik@fws.gov>
Date: Thu, Nov 14, 2019 at 9:46 AM
Subject: Fwd: Scanned CBRA doc2
To: Cynthia Bohn <cynthia_bohn@fws.gov>

Hi Cindy,
Here's what we sent to our FOs.
Best wishes,
Pam

---------- Forwarded message ---------
From: **Toschik, Pamela** <pamela_toschik@fws.gov>
Date: Thu, Nov 7, 2019 at 12:27 PM
Subject: Fwd: Scanned CBRA doc2
To: FW5 ES Field Office Supervisors <fw5_es_field_office_supervisors@fws.gov>
Cc: Spencer Simon <spencer_simon@fws.gov>, Jahn, Kathryn <kathryn_jahn@fws.gov>, Martin Miller <martin_miller@fws.gov>, Diane Lynch <diane_opper@fws.gov>

Hi team,
Please see below and attached, and note we are anticipating additional guidance from HQ. If you have a CBRA action come up before we receive guidance, please coordinate with the RO and HQ.
Best wishes,
Pam

---------- Forwarded message ---------
From: **Wendi Weber** <wendi_weber@fws.gov>
Date: Tue, Nov 5, 2019 at 6:45 PM
Subject: Fwd: Scanned CBRA doc2
To: FW5_Regional_Directorate@fws.gov <FW5_Regional_Directorate@fws.gov>

Please share with your staff as appropriate. Thank you

Sent from my iPhone

Begin forwarded message:

> **From:** "Everson, Margaret" <margaret_e_everson@fws.gov>
> **Date:** November 5, 2019 at 6:42:59 PM EST
> **To:** FWS Directorate & Deputies <fwsdirectanddep@fws.gov>
> **Cc:** Melissa Beaumont <melissa_beaumont@fws.gov>, "Morris, Charisa" <charisa_morris@fws.gov>, "Kodis, Martin" <Martin_Kodis@fws.gov>
> **Subject: Fwd: Scanned CBRA doc2**
>
> > FWS Team.
> Plese 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 occuring 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 guidence that needs to be updated to align with the SOL guidence. 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 gudience 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 recomendations and opinions are consistent with the SOL memo.
>
> Best
> Margaret

--
Pamela Toschik (she, her)
Acting Assistant Regional Director - Ecological Services
North Atlantic-Appalachian Region
Dept of the Interior

U.S. Fish & Wildlife Service
Phone: (413) 253-8610

--
Pamela Toschik (she, her)
Acting Assistant Regional Director - Ecological Services
North Atlantic-Appalachian Region
Dept of the Interior
U.S. Fish & Wildlife Service
Phone: (413) 253-8610

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | kathyrn_matthews; Wells, Emily N |
| **Cc:** | Bohn, Cynthia; Niemi, Katie |
| **Subject:** | Draft CBRA letter to Director of Civil Works |
| **Date:** | Monday, January 13, 2020 11:57:11 AM |
| **Attachments:** | 20191210 DRAFT CBRA letter to USACE Director of Civil Works 071591.docx |
| **Importance:** | High |

---

Kathy and Emily,

Please see attached. This draft is being revised and will not go out as is (we will cut back significantly), but it has a lot of good information and may be helpful to you.

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:
FWS/AES/DBTS/BGMTS/071591

Mr. James C. Dalton
Director of Civil Works
U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

Dear Mr. Dalton:

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 renourishment 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"[1] 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 legal interpretation related to this CBRA exception and, in consultation with the Department's Office of the Solicitor, have determined that sand from *within* the CBRS may be used to renourish 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.

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.[2] Notwithstanding these prohibitions, federal agencies, after consultation with the Service, may make expenditures for activities that meet one of CBRA's exceptions.[3] The Service has an opportunity to provide an opinion on projects through the consultation process, but does not have enforcement authority over CBRA; 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.[4] The law does not restrict the use of private, state, or local funds or limit the issuance of federal permits within the CBRS.

When it enacted CBRA, Congress found that coastal barriers and the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters provide essential habitat for migratory birds, commercially and recreationally important species of finfish and shellfish, and other aquatic organisms such as sea turtles.[5] Congress further found that coastal barriers function as natural storm protective buffers and are generally unsuitable for development.[6] The legislative history identified certain activities that are detrimental to coastal barrier ecosystems, including dredging and flood-control projects:

> *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.*[7]

We are providing information in this letter about the CBRA consultation process, our general understanding of the impacts of such projects on coastal ecosystems, and the CBRA exception for nonstructural shoreline stabilization projects. We hope this information can help inform your dredging and shoreline stabilization projects under CBRA.

*CBRA Consultation Process*

The Corps may submit consultation requests to the Service for projects that seek to mine sand from within the CBRS for shoreline stabilization outside of the CBRS, including nonstructural beach nourishment projects. Such projects would generally[8] be considered under the exception for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system."[9] 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.*[10]

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 CBRA consultation process is available on our website at: https://www fws.gov/cbra/consultations.html.

*Impacts of Dredging and Shoreline Stabilization Projects on Coastal Ecosystems*

The U.S. Atlantic and Gulf of Mexico coasts, including the beaches, inlets, and wetlands within and adjacent to the CBRS, support a diversity of fish and wildlife that are dependent upon coastal environments for their essential behaviors (i.e., breeding, feeding, and sheltering). These areas are part of important flyways and are vital as resting stopovers and foraging areas for migratory birds. The coasts are utilized by several threatened and endangered species, such as the green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), leatherback sea turtle (*Dermochelys coriacea*), Kemp's ridley sea turtle (*Lepidochelys kempii*), piping plover (*Charadrius melodus*), rufa red knot (*Calidris canutus rufa*), roseate tern (*Sterna dougallii dougallii*), and seabeach amaranth (*Amaranthus pumilus*), as well as other trust resources that may be adversely affected by dredging and shoreline stabilization projects. Additionally, these

areas support a myriad of commercially and recreationally important finfish and shellfish species including coastal migratory pelagic species, various reef fish species, shrimp and corals; all of which may be susceptible to the adverse impacts of dredging and shoreline stabilization projects.

Important components of ecologically-sound barrier beach management include perpetuation of natural dynamic coastal formation processes. Today, large-scale coastal development disrupts natural coastal processes and dynamics and results in habitat loss for coastal-dependent species. Development impedes the landward migration of coastal barriers that naturally occurs in response to storm events and sea level rise. Beach nourishment has long been used as the preferred solution to the inherent conflict between dynamic beaches and development. Nonstructural forms of shoreline stabilization (e.g., nourishing beaches, altering natural dunes to be artificially high and/or contiguous, planting dune-stabilizing vegetation, and (b) (5) [redacted] can result in degradation and/or loss of habitat for coastal-dependent species. Many of these projects are implemented to substantially reduce the probability of inlet creation and dune overwash from coastal storms that would otherwise form the sparsely-vegetated, low-lying, early-successional barrier beach habitats important to many species. Dredging of inlets for sand can also be detrimental, causing 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 has resulted in habitat loss and degradation, which may reduce the system's ability to maintain a full suite of inlet habitats as sea level continues to rise at an accelerating rate.

**Commented [1]:** (b) (5) [redacted]

While nourishment technology and environmental safeguards have improved, the negative effects to coastal-dependent species often outweigh the potential benefits to the species. Even under the best circumstances (e.g., when high-quality materials are used, and project design and implementation are ecologically sound) the purpose of beach nourishment is typically for structure protection and not restoration of species habitat. Beach nourishment frequently leads to more development in greater density within shorefront communities, which are then faced with the need for future nourishment replenishment or more drastic stabilization measures.[11] The very existence of a beach nourishment project can encourage more development in coastal areas,[12] especially if federal funds subsidize each future erosion control event. As long as there are immovable structures along the shoreline, species habitat cannot be fully restored. A 2017 USGS study found the following:

> *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.*[13]

*Comments on Developing Projects that are Consistent with CBRA*

The mission of the Service is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. Achieving our conservation goals depends on collaboration with many partners, and could include working with the Corps to create new habitat alternatives, such as engineered habitat. The Service recognizes

that while dredging and beach nourishment projects can be detrimental to coastal habitats, many barrier islands have already been extensively modified and have existing Corps projects that predate CBRA. It may be possible for Corps dredging and beach nourishment projects to be done in a manner that is consistent with CBRA using reasonable and prudent conservation measures and Best Management Practices (BMPs) that result in positive outcomes for both fish and wildlife and nearby developed shorelines.

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, and allows for projects that indirectly benefit coastal barrier resources within the CBRS and (b) (5) [redacted] For example, stabilizing a beach adjacent to the CBRS with sand from a nearby inlet could have positive effects on habitat located within the CBRS, if conducted using appropriate methods to minimize impacts to the coastal system. Sand dredged from an inlet downdrift of a beach in need of nourishment may better match the sediment characteristics and composition than sand dredged from offshore borrow sites. Using sand with similar characteristics for beach nourishment may promote the integrity of restored beaches for nesting seabirds, shorebirds, and sea turtles and promote re-colonization of the area by native benthic organisms.[14] Some of the sand used for nourishment projects will flow back to the borrow site over time through natural littoral drift if not impeded by hard structures such as groins and jetties.

It is important to note that the removal of sand from within the CBRS must be consistent with the purposes of CBRA, including the "long-term conservation of these fish, wildlife, and other natural resources" associated with coastal barriers.[15] The Corps should consider whether the sand can be removed without damage to the natural resources within the CBRS. In other words, care should be taken to ensure that the habitat at the borrow site can withstand the withdrawal of sediment without significant adverse effects; and the impacts of the dredging should be carefully considered through the consultation process. Likewise, the project should not encourage development of coastal barriers. The federal funding agency must also consider whether the proposed project meets the limitations of the exception. That is, the entire project (both inside and outside of the CBRS) must be both "nonstructural" and "designed to mimic, enhance, or restore a natural stabilization system."[16] Projects that contain structural elements (e.g., jetties, groins, seawalls, geotubes, and bulkheads) and/or projects that do not "mimic, enhance, or restore a natural stabilization system" are not allowable under the exception. For example, a project that includes the construction of artificially high, contiguous, densely-vegetated dunes that is designed to prevent natural processes, such as overwash and erosion, may not mimic a natural stabilization system.

**Commented [2]:** (b) (5) [redacted]

In June 2019, the Corps published a technical note entitled "Developing Best Management Practices for Coastal Engineering Projects that Benefit Atlantic Coast Shoreline-dependent Species."[17] This technical note 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. The Service agrees with the need for BMPs and pre- and post-project monitoring, of both the borrow site and nourishment site. Many Corps projects are authorized for long-term periods and include numerous planned dredging and renourishment cycles. Without collecting data on the actual on-the-ground impacts of dredging and beach nourishment for specific projects, including the recovery of the borrow site, it is difficult to assess whether subsequent sand borrowing and/or renourishment is consistent with the purposes of CBRA.

We welcome the opportunity to work with you to implement sand mining and shoreline stabilization activities that are consistent with the requirements of CBRA and result in more sustainable coastal storm damage reduction projects. 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

---

[1] 16 U.S.C. § 3505(a)(6)(G)
[2] *Id.* § 3504(a)(3)
[3] *Id.* § 3505(a)
[4] *Id.* § 3506(b)
[5] *Id.* § 3501(a)
[6] *Id.* § 3501(a)(3)
[7] U.S. House of Representatives. Committee on Merchant Marines and Fisheries. Coastal Barrier Resources Act. (97 H. Rpt. 841 Part 1).
[8] 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 that can be obtained through maintenance dredging alone.
[9] 16 U.S.C. § 3505(a)(6)(G)
[10] *Id.* § 3501(b)
[11] Pilkey, O.H. and K.L. Dixon. 1996. The Corps and the shore. Island Press; Washington, D.C.
[12] Dean C. 1999. Against the tide: the battle for America's beaches. Columbia University Press; New York, NY.

Ruppert, T.K., T. Ankersen, C. Covington, R. Feinberg, Y. Huang, M. McDonnell, and A. Miller. 2008. Eroding long-term prospects for Florida's beaches: Florida's coastal management policy. University of Florida Institute for Food and Agricultural Sciences, report to Sea Turtle Grant Program (Contract #07-019E). 157 pages.
[13] 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
[14] 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.erdc.usace.army.mil/emrrp/techran.html

[15] 16 U.S.C. § 3505(a)(6)

[16] *Id.* § 3505(a)(6)(G)

[17] 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.erdc.usace.army.mil/emrrp/techran.html

**From:** Wright, Dana K
**To:** Niemi, Katie
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs
**Date:** Wednesday, March 4, 2020 2:41:34 PM

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Katie,

Please see my minor edits/comments here:

K:\CBRA\Consistency Consultations\Actual Consultations\North Carolina\Unit L09 Corps Dredging\2020 Consultation\20200304_ltr_FWS_Corps_CBRA_Wrightsville_Carolina_Beaches DRAFT.doc

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

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**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Wednesday, March 4, 2020 10:46 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>; Benjamin, Pete <pete_benjamin@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Kathy, I have reviewed your letter and it is very well done. I don't see a need to add or change anything. The letter clearly lays out the project, the impact of these and other projects to the barrier system in the area over the years, and the impact to species which are interest to the Service and the State. It also clearly outlines the use of the exemption, and identifies the need for more analysis and coordination with other agencies, State, NGOs and the ongoing USGS input that has been requested by Congressman Grijalva, Chair of the House Committee on Natural Resources.

Considering the difficulty of identifying and isolating the impacts of this particular action in an area that has been altered by jetties and used as a sand mine for over 50 years, you have

addressed with the Corps, the needed studies and efforts that would determine how the projects would meet the definitions of the §3505(a)(6)(G) exemption for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Both projects clearly show a deficient in the natural renourishment of the sand in the system. The impacts to the species are documented including listed and at-risk species, including important shorebirds, that may not be considered in a section 7 analysis. I believe this is an important responsibility for CBRA.

Thank you and Pete for your willingness to take on this difficult, time consuming, and precedent setting effort. Your superb coordination and professional relationships with the Corps, other partners, and within your office shows that additional conservation is attainable even on highly political and complicated projects and can achieve the spirit of "conservation without conflict." I also applaud the Corps for their willingness and efforts to go through this process with us and provide meaningful measures to address our concerns.

Due to the interest of the Corps and Congressional members to expedite and move this 15 year extension into the upcoming WRDA bill, I believe that this letter outlines our best current understanding of use of the §3505(a)(6)(G) exemption and the implementation of the November 4, 2019 letter from Secretary Bernhardt and associated Solicitor's memo and input on the use of sand from within the system to nourish beaches outside the system. Therefore, I would agree, at this time, these 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. However, as you stated, the understanding of the project may change in the future, particularly for the expected 50 year re-authorization effort and be subject to additional CBRA consultations and changing interpretations as this issue matures.

Thanks again for all your excellent work on behalf of the CBRA program and NC's barrier resources.

Cindy

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 4, 2020 8:17 AM
**To:** Benjamin, Pete <pete_benjamin@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Hi all,

Please find attached a draft letter for the Corps. I would appreciate any comments you may have. The majority of the legal language is from the Solicitor's memo or the draft letter to the Corps Director for Civil Works, and other CBRA consultations. Please also let me know if the concurrence statement is adequate, or if you think it should be worded differently (last paragraph).

Thanks very much.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

**From:** Niemi, Katie
**To:** Tripp, Kimberly J
**Subject:** Fw: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs
**Date:** Monday, March 9, 2020 3:15:04 PM

---

Kim,
Can you please take a look at draft NC response letter I sent you last week and include any feedback you have. We need to get our comments to NC FO asap.

Thanks!
Katie

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Monday, March 9, 2020 8:49 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Fw: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Hi Katie,

Just wanted to check in and see if you had questions or concerns for me. Eric Gasch (Corps) is starting to call about the letter.

Thanks, and have a good week,

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Wednesday, March 4, 2020 3:56 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>; Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks! I had a few minor things and a comment about maybe introducing the idea that we used to have a different legal interpretation (this would help explain the existence of a "revised interpretation"). I've put in my comments and passed it to Katie and we'll get it back to you soon. I don't anticipate any show stoppers.

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:** Wednesday, March 4, 2020 3:45 PM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

You did a really great job. Dana may be providing you some edits for technical stuff, she has not had a chance to look at it yet. Her edits are very good and specific in nature, mine are usually substance. Before you send it, check with her to see if she has anything to add. Again, thanks for all your help and willingness to do this. c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 4, 2020 3:18 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks!

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

---

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**Sent:** Wednesday, March 4, 2020 10:46 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>; Benjamin, Pete <pete_benjamin@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>

**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Kathy, I have reviewed your letter and it is very well done. I don't see a need to add or change anything. The letter clearly lays out the project, the impact of these and other projects to the barrier system in the area over the years, and the impact to species which are interest to the Service and the State. It also clearly outlines the use of the exemption, and identifies the need for more analysis and coordination with other agencies, State, NGOs and the ongoing USGS input that has been requested by Congressman Grijalva, Chair of the House Committee on Natural Resources.

Considering the difficulty of identifying and isolating the impacts of this particular action in an area that has been altered by jetties and used as a sand mine for over 50 years, you have addressed with the Corps, the needed studies and efforts that would determine how the projects would meet the definitions of the §3505(a)(6)(G) exemption for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Both projects clearly show a deficient in the natural renourishment of the sand in the system. The impacts to the species are documented including listed and at-risk species, including important shorebirds, that may not be considered in a section 7 analysis. I believe this is an important responsibility for CBRA.

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Due to the interest of the Corps and Congressional members to expedite and move this 15 year extension into the upcoming WRDA bill, I believe that this letter outlines our best current understanding of use of the §3505(a)(6)(G) exemption and the implementation of the November 4, 2019 letter from Secretary Bernhardt and associated Solicitor's memo and input on the use of sand from within the system to nourish beaches outside the system. Therefore, I would agree, at this time, these 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. However, as you stated, the understanding of the project may change in the future, particularly for the expected 50 year re-authorization effort and be subject to additional CBRA consultations and changing interpretations as this issue matures.

Thanks again for all your excellent work on behalf of the CBRA program and NC's barrier resources.

Cindy

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 4, 2020 8:17 AM
**To:** Benjamin, Pete <pete_benjamin@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Hi all,

Please find attached a draft letter for the Corps. I would appreciate any comments you may have. The majority of the legal language is from the Solicitor's memo or the draft letter to the Corps Director for Civil Works, and other CBRA consultations. Please also let me know if the concurrence statement is adequate, or if you think it should be worded differently (last paragraph).

Thanks very much.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

**From:** Tripp, Kimberly J
**To:** Niemi, Katie
**Subject:** Re: High Priority - please review DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs
**Date:** Monday, March 9, 2020 5:09:23 PM

---

Hi Katie. Looks like this email was in my draft box.

I did review since then and have no comments

---

Hi Katie,

Thank you for sharing the document. I will read it for my edification, but please don't delay your response.

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:** Thursday, March 5, 2020 10:44 AM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** High Priority - please review DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Kim,
Please see attached draft response the NC field office has prepared to the Corps on the Wrightsville and Carolina Beach projects. Cindy, Dana and I have all reviewed the draft response and I concur that the field office did a great job coordinating this consultation and preparing the response. The attached draft contains a few minor edits from us in HQ. Please review and include any additional comments or edits you have in track changes. We'd like to get our edits back to Kathy by today or tomorrow so her office can finalize the letter and send it off to the Corps. Thanks!

Katie

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>

**Sent:** Wednesday, March 4, 2020 10:46 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>; Benjamin, Pete <pete_benjamin@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Kathy, I have reviewed your letter and it is very well done. I don't see a need to add or change anything. The letter clearly lays out the project, the impact of these and other projects to the barrier system in the area over the years, and the impact to species which are interest to the Service and the State. It also clearly outlines the use of the exemption, and identifies the need for more analysis and coordination with other agencies, State, NGOs and the ongoing USGS input that has been requested by Congressman Grijalva, Chair of the House Committee on Natural Resources.

Considering the difficulty of identifying and isolating the impacts of this particular action in an area that has been altered by jetties and used as a sand mine for over 50 years, you have addressed with the Corps, the needed studies and efforts that would determine how the projects would meet the definitions of the §3505(a)(6)(G) exemption for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Both projects clearly show a deficient in the natural renourishment of the sand in the system. The impacts to the species are documented including listed and at-risk species, including important shorebirds, that may not be considered in a section 7 analysis. I believe this is an important responsibility for CBRA.

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particularly for the expected 50 year re-authorization effort and be subject to additional CBRA consultations and changing interpretations as this issue matures.

Thanks again for all your excellent work on behalf of the CBRA program and NC's barrier resources.

Cindy

---

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**Sent:** Wednesday, March 4, 2020 8:17 AM
**To:** Benjamin, Pete <pete_benjamin@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
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Thanks very much.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

**From:** Niemi, Katie
**To:** Tripp, Kimberly J
**Subject:** Fw: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs
**Date:** Wednesday, March 18, 2020 3:35:37 PM

---

Kim,
Per our discussion, please see Cindy's March 4 email below for a kudos to the Raleigh FO. The key folks who worked on this at the FO include Kathy Matthews, Emily Wells, and Pete Benjamin (Field Supervisor). Folks to copy in the RO include Aaron Valenta (has been serving as CBRA POC since Cindy left), Catherine Philips (ARD), and Patty Kelly (new SE Regional CBRA Coordinator). I think a short email from Michelle, Gina or Gary would be nice to acknowledge the superb work the FO did in coordinating with us in HQ and the Corps on the first two CBRA consultations following the new SOL memo on sand mining.

Thanks!
Katie

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**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks again Kathy for all your efforts on this. c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Tuesday, March 10, 2020 8:57 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks so much. I will make those revisions and route it to Pete for signature.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606

919-856-4520, x. 27

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**Sent:** Tuesday, March 10, 2020 8:37 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

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**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

You did a really great job. Dana may be providing you some edits for technical stuff, she has not had a chance to look at it yet. Her edits are very good and specific in nature, mine are usually substance. Before you send it, check with her to see if she has anything to add. Again, thanks for all your help and willingness to do this. c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 4, 2020 3:18 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks!

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

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**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>; Benjamin, Pete <pete_benjamin@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
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the Corps adopts the measures listed above and in the February 26, 2020 Addendum. However, as you stated, the understanding of the project may change in the future, particularly for the expected 50 year re-authorization effort and be subject to additional CBRA consultations and changing interpretations as this issue matures.

Thanks again for all your excellent work on behalf of the CBRA program and NC's barrier resources.

Cindy

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**Sent:** Wednesday, March 4, 2020 8:17 AM
**To:** Benjamin, Pete <pete_benjamin@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
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Thanks very much.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

**From:** Chen, Linus Y
**To:** Floom, Kristen B; Wright, Dana K; Niemi, Katie
**Cc:** Tripp, Kimberly J
**Subject:** Re: please review - Draft response to CBRA letter from Chairman Huffman
**Date:** Friday, March 20, 2020 8:16:44 AM

---

If we need to surname this in DTS, Ben will surname in DTS also.

I am occasionally teleworking, and will respond when I can (taking care of kids).

Linus Y. Chen, Attorney
Division Parks & Wildlife
(w) 202-208-5036
(f) 202-208-3877

---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Friday, March 20, 2020 8:04 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: please review - Draft response to CBRA letter from Chairman Huffman

Dana:

Yes, I think Ben needs to review it. And I already emailed it to him yesterday evening. My apologies, but I didn't know about the directive from Congressional Affairs. So I guess that means it should be cleared through the Director's Office.

And I guess this also means I have to figure out how to use DTS…

Thanks,
Kristen

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Friday, March 20, 2020 6:52 AM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: please review - Draft response to CBRA letter from Chairman Huffman

Hi Kristen,

Congressional Affairs indicated that if this needs to go beyond you and Linus that we would need to get it cleared through the Director's office first, and then we'll route it to SOL more

formally in DTS. Let us know if that's the case and we'll go ahead and send it through the Director's office.

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:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Thursday, March 19, 2020 5:07 PM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: please review - Draft response to CBRA letter from Chairman Huffman

Thanks Katie. I can access these attachments.

I'll confer with Linus, and I think we need to loop in Ben and perhaps Peg to weigh in on the statement about declining to release the legal interpretation.

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Thursday, March 19, 2020 4:15 PM
**To:** Floom, Kristen B <kristen.floom@sol.doi.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: please review - Draft response to CBRA letter from Chairman Huffman

Sorry, still trying to figure out Teams in order to minimize use of VPN right now.

Katie

---

**From:** Floom, Kristen B <kristen.floom@sol.doi.gov>
**Sent:** Thursday, March 19, 2020 3:50 PM

**To:** Niemi, Katie <katie_niemi@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** RE: please review - Draft response to CBRA letter from Chairman Huffman

Katie:

I'm unable to open either of these attachments. I'm on the VPN, so I don't know what the problem is. Is it possible to attach the files directly in their native format instead of using Sharepoint?

Thanks,
Kristen

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Thursday, March 19, 2020 3:42 PM
**To:** Chen, Linus Y <Linus.Chen@sol.doi.gov>; Floom, Kristen B <kristen.floom@sol.doi.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** please review - Draft response to CBRA letter from Chairman Huffman

Linus and Kristen,
I hope you both are doing okay. Can you please review the attached draft response prepared by CLA in response to an incoming letter from Rep. Huffman (Chair of Subcommittee on Water, Oceans, and Wildlife) concerning the Department's revised interpretation of the CBRA sand mining exception. Dana and I have reviewed and we wanted to get your feedback before it starts moving through surname 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:** Niemi, Katie
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs
**Date:** Tuesday, March 24, 2020 12:02:24 PM

---

Will do

Sent from my iPhone

On Mar 18, 2020, at 3:35 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

Kim,
Per our discussion, please see Cindy's March 4 email below for a kudos to the Raleigh FO. The key folks who worked on this at the FO include Kathy Matthews, Emily Wells, and Pete Benjamin (Field Supervisor). Folks to copy in the RO include Aaron Valenta (has been serving as CBRA POC since Cindy left), Catherine Philips (ARD), and Patty Kelly (new SE Regional CBRA Coordinator). I think a short email from Michelle, Gina or Gary would be nice to acknowledge the superb work the FO did in coordinating with us in HQ and the Corps on the first two CBRA consultations following the new SOL memo on sand mining.

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**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks again Kathy for all your efforts on this. c

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**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks so much. I will make those revisions and route it to Pete for signature.

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**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
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**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>

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Fish and Wildlife Biologist
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919-856-4520, x. 27

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Kelly, Patricia |
| **Cc:** | Wright, Dana K; Niemi, Katie |
| **Subject:** | Fw: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs |
| **Date:** | Tuesday, March 24, 2020 4:05:41 PM |

Patti, see Kathy's letter. Ideally we could just add the information to the CBRA Template. The information needed is in the last part of the letter.

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Wednesday, March 4, 2020 3:56 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>; Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks! I had a few minor things and a comment about maybe introducing the idea that we used to have a different legal interpretation (this would help explain the existence of a "revised interpretation"). I've put in my comments and passed it to Katie and we'll get it back to you soon. I don't anticipate any show stoppers.

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:** Wednesday, March 4, 2020 3:45 PM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

You did a really great job. Dana may be providing you some edits for technical stuff, she has not had a chance to look at it yet. Her edits are very good and specific in nature, mine are usually substance. Before you send it, check with her to see if she has anything to add. Again, thanks for all your help and willingness to do this. c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>

**Sent:** Wednesday, March 4, 2020 3:18 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Thanks!

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC 27606
919-856-4520, x. 27

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Wednesday, March 4, 2020 10:46 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>; Benjamin, Pete <pete_benjamin@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** Re: DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Kathy, I have reviewed your letter and it is very well done. I don't see a need to add or change anything. The letter clearly lays out the project, the impact of these and other projects to the barrier system in the area over the years, and the impact to species which are interest to the Service and the State. It also clearly outlines the use of the exemption, and identifies the need for more analysis and coordination with other agencies, State, NGOs and the ongoing USGS input that has been requested by Congressman Grijalva, Chair of the House Committee on Natural Resources.

Considering the difficulty of identifying and isolating the impacts of this particular action in an area that has been altered by jetties and used as a sand mine for over 50 years, you have addressed with the Corps, the needed studies and efforts that would determine how the projects would meet the definitions of the §3505(a)(6)(G) exemption for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." Both projects clearly show a deficient in the natural renourishment of the sand in the system. The impacts to the species are documented including listed and at-risk species, including important shorebirds, that may not be considered in a section 7 analysis. I believe this is an important responsibility for CBRA.

Thank you and Pete for your willingness to take on this difficult, time consuming, and

precedent setting effort. Your superb coordination and professional relationships with the Corps, other partners, and within your office shows that additional conservation is attainable even on highly political and complicated projects and can achieve the spirit of "conservation without conflict." I also applaud the Corps for their willingness and efforts to go through this process with us and provide meaningful measures to address our concerns.

Due to the interest of the Corps and Congressional members to expedite and move this 15 year extension into the upcoming WRDA bill, I believe that this letter outlines our best current understanding of use of the §3505(a)(6)(G) exemption and the implementation of the November 4, 2019 letter from Secretary Bernhardt and associated Solicitor's memo and input on the use of sand from within the system to nourish beaches outside the system. Therefore, I would agree, at this time, these 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. However, as you stated, the understanding of the project may change in the future, particularly for the expected 50 year re-authorization effort and be subject to additional CBRA consultations and changing interpretations as this issue matures.

Thanks again for all your excellent work on behalf of the CBRA program and NC's barrier resources.

Cindy

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 4, 2020 8:17 AM
**To:** Benjamin, Pete <pete_benjamin@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>; Wells, Emily N <emily_wells@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Wright, Dana K <dana_wright@fws.gov>
**Cc:** Eversen, Michelle <michelle_eversen@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>
**Subject:** DRAFT CBRA consultation letter for Wrightsville and Carolina Beach CSRMs

Hi all,

Please find attached a draft letter for the Corps. I would appreciate any comments you may have. The majority of the legal language is from the Solicitor's memo or the draft letter to the Corps Director for Civil Works, and other CBRA consultations. Please also let me know if the concurrence statement is adequate, or if you think it should be worded differently (last paragraph).

Thanks very much.

Kathy Matthews

Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC  27606
919-856-4520, x. 27

**From:** Wright, Dana K
**To:** Wellman, Lois A
**Subject:** Fw: DTS assignment 072054
**Date:** Wednesday, March 18, 2020 7:03:23 AM

---

FYI re 072054

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)

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---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 12:41 PM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Will do. Thanks for your patience. It may be a little bit before the routing is resolved.

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

---

**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Monday, March 16, 2020 12:37 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

thank you Alyssa.
We'll be curious to track the response that's delivered. Would you please share it with us, once it's completed?
Dana would you please reroute to Alyssa.

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:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 8:14 AM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Kim,

My supervisor was going to check with DOI congressional on Friday, but didn't get the chance and is sending a note about this now. At least within CLA, we don't think that FWS should lead response and are trying to get this assigned to an office within DOI. If we do not get that clearance, then I will draft the response myself. If you all want to close your DTS routing and assign to CLA for appropriate action, that may be best the best step at this point. I will let you know as soon as I have guidance.

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

---

**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Friday, March 13, 2020 5:21 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>

**Subject:** DTS assignment

Hi Alyssa

Has the congressional letter on the solicitor memo been reassigned in DTS to CLA?

Thanks for the update!
Kim

Sent from my iPhone

**From:** Niemi, Katie
**To:** Hausman, Alyssa B
**Cc:** Wright, Dana K; Tripp, Kimberly J
**Subject:** Re: DTS assignment
**Date:** Friday, March 20, 2020 2:50:55 PM
**Attachments:** 072054 Huffman Response - Draft 3.20.20.docx

---

Hi Alyssa,
Thanks for preparing the draft response to Chairman Huffman. Attached is initial feedback from me and Dana. Can you please upload the draft response letter to DTS and include ES, SOL, and the Director's Office in the surname routing. Thanks!

Katie

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Thursday, March 19, 2020 10:55 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Katie and Dana,

Attached is my draft response to Chairman Huffman. I took much of the language from the ACOE letter.

Please edit as you see fit. I would appreciate it if you could please take a look at the paragraph addressing the political interference claim to ensure you are comfortable with that language. I am open to eliminating that paragraph or providing separately for DOI consideration if you prefer.

Once you (and Linus) have the chance to review, I will go ahead and put into DTS and route to ES. If Linus can't do an informal review or would like to send to additional folks within SOL, I would prefer to hold on that and route to them through DTS following Aurelia's reivew.

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

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Wednesday, March 18, 2020 11:36 AM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Alyssa,
Send me a chat when you're available. I'm pretty open.
Katie

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Wednesday, March 18, 2020 9:50 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DTS assignment

Thanks, Dana.

Katie, please let me know if there are any times that work best for you. I have a couple other calls today, but am relatively flexible.

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

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**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Wednesday, March 18, 2020 9:45 AM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>

**Subject:** Re: DTS assignment

OK, thanks. I recommend that you talk to Katie about that rather than me. Adding her to this email.

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)

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---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Wednesday, March 18, 2020 8:54 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Hi Dana,

I spoke with Marty and he thinks that the letter should come from FWS, not the Department. I will take the lead on drafting this and then will route to you all through DTS for ES surname.

Do you have time today you can chat with me about key messages for the response?

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

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 12:54 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Thanks, Dana and Kim. I'll let you know as soon as I get guidance and will share the final letter

with you all.

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

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 16, 2020 12:52 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

I updated the DTS record and it's open with CLA for appropriate action.

Thanks,

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
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Learn more about the Coastal Barrier Resources Act

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 12:41 PM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

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Alyssa Hausman
Congressional and Legislative Affairs Specialist
U.S. Fish and Wildlife Service
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Mobile: (703) 785-3402
alyssa_hausman@fws.gov

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**Sent:** Monday, March 16, 2020 12:37 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

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We'll be curious to track the response that's delivered. Would you please share it with us, once it's completed?
Dana would you please reroute to Alyssa.

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

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**Sent:** Monday, March 16, 2020 8:14 AM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Kim,

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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

---

**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Friday, March 13, 2020 5:21 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** DTS assignment

Hi Alyssa

Has the congressional letter on the solicitor memo been reassigned in DTS to CLA?

Thanks for the update!
Kim

Sent from my iPhone

The Honorable Jared Huffman
Chairman, Committee on Natural Resources,
Subcommittee on Water, Oceans, and Wildlife
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Huffman:

Thank you for your letter of March 4, 2020, to Secretary of the Interior David Bernhardt regarding the revised legal interpretation of certain exceptions under the Coastal Barrier Resources Act (CBRA; 16 U.S.C § 3501 et seq.). Secretary Bernhardt has asked me to respond on his behalf.

The U.S. Fish and Wildlife Service (Service) is responsible for administering CBRA, which originally established the Coastal Barrier Resources System (CBRS) in 1982. The purpose of the law is to conserve natural resources, save taxpayer money and keep people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. CBRA prohibits most new federal expenditures and financial assistance within the CBRS. The law provides exceptions to the prohibitions and allows for certain federal expenditures following consultation with the Service. Among those exceptions, Section 6(a)(6)(~~g~~G) of CBRA allows for federal expenditures for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore ~~a~~ natural stabilization systems" ~~if it is~~that are also consistent with the purposes of the law.

Last year, the Department of the Interior (Department) and the Service revisited the 1994 legal interpretation for the exception provided under Section 6(a)(6)(~~g~~G). In consultation with the Department's Office of the Solicitor, Division of Parks and Wildlife, we 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.

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 Service's revised interpretation does not alter the federal funding agency's responsibility to consider each project on a case-by-case basis through the consultation process. 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.

As you note in your letter, stakeholders including coastal communities and Members of Congress raised concerns and requested that the Department review the 1994 legal interpretation of the exception provided under Section 6(a)(6)(~~g~~G). While the Secretary requested the review of the 1994 interpretation in response to those concerns, as noted in his November 2019 letter to the requesting Members of Congress, the revised interpretation is based on a legal analysis by the

Office of the Solicitor (b) (5) [redacted]

The requested legal interpretation is an internal document and not subject to distribution, per the guidance of the Department's Office of the Solicitor. In lieu of the requested document, we are enclosing ~~attaching~~ a March X, 2020 letter to the U.S. Army Corps of Engineers regarding the revised legal interpretation~~, which provides information about the CBRA consultation process, our general understanding of the impacts of such projects on coastal ecosystems, and the CBRA exception for nonstructural shoreline stabilization projects.~~ and considerations for developing CBRA-compliant shoreline-stabilization projects under the exception at 16 U.S.C. § 3505(a)(6)(G).

Commented [HAB1]: Letter is in final stages of clearance – DCN 071591

Thank you for your interest in CBRA and its objectives to minimize threats to human life and property, save taxpayer dollars, and conserve coastal barrier habitat. If you have any questions, please contact Gary Frazer, Assistant Director for Ecological Services at 202-208-~~9694~~646.

Sincerely,

Aurelia Skipwith
Director
U.S. Fish and Wildlife Service~~.~~

Enclosure

Commented [NK2]: Enclosure Corps letter once cleared (DCN 071591)

**From:** Hausman, Alyssa B
**To:** Wright, Dana K; Niemi, Katie
**Cc:** Tripp, Kimberly J
**Subject:** Re: DTS assignment
**Date:** Monday, March 23, 2020 7:16:43 AM

---

That's fine. Thanks for the heads up.

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

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 23, 2020 7:10 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>; Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Hi all,

Lois asked me about this today because it was routed to Gary. I updated the routing to insert Kim, Michelle, and Gina before Gary. Let me know if you have any concerns with that.

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)

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---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, March 20, 2020 3:03 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Please have it go through AES-DRR-BCMR so Kim and Michelle can review/surname first. Thanks.

Katie

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Friday, March 20, 2020 3:02 PM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Thanks, Katie. Should I route straight to AES, or would you prefer it go to AES-DRR-BCMR first?

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

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, March 20, 2020 2:50 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

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Katie

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Thursday, March 19, 2020 10:55 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

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Please edit as you see fit. I would appreciate it if you could please take a look at the paragraph addressing the political interference claim to ensure you are comfortable with that language. I am open to eliminating that paragraph or providing separately for DOI consideration if you prefer.

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Let me know if you have any questions.

Thanks,
Alyssa

Alyssa Hausman
Congressional and Legislative Affairs Specialist
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**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Alyssa,
Send me a chat when you're available. I'm pretty open.
Katie

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Wednesday, March 18, 2020 9:50 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>

**Subject:** Re: DTS assignment

Thanks, Dana.

Katie, please let me know if there are any times that work best for you. I have a couple other calls today, but am relatively flexible.

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

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Wednesday, March 18, 2020 9:45 AM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DTS assignment

OK, thanks. I recommend that you talk to Katie about that rather than me. Adding her to this email.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
Falls Church, VA 22041
703-358-2443 (office)
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**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Wednesday, March 18, 2020 8:54 AM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Hi Dana,

I spoke with Marty and he thinks that the letter should come from FWS, not the Department. I will take the lead on drafting this and then will route to you all through DTS for ES surname.

Do you have time today you can chat with me about key messages for the response?

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

---

**From:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 12:54 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

Thanks, Dana and Kim. I'll let you know as soon as I get guidance and will share the final letter with you all.

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

---

**From:** Wright, Dana K <dana_wright@fws.gov>
**Sent:** Monday, March 16, 2020 12:52 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: DTS assignment

I updated the DTS record and it's open with CLA for appropriate action.

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 <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 12:41 PM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Will do. Thanks for your patience. It may be a little bit before the routing is resolved.

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

---

**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Monday, March 16, 2020 12:37 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

thank you Alyssa.
We'll be curious to track the response that's delivered. Would you please share it with us, once it's completed?
Dana would you please reroute to Alyssa.

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:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Sent:** Monday, March 16, 2020 8:14 AM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS assignment

Hi Kim,

My supervisor was going to check with DOI congressional on Friday, but didn't get the chance and is sending a note about this now. At least within CLA, we don't think that FWS should lead response and are trying to get this assigned to an office within DOI. If we do not get that clearance, then I will draft the response myself. If you all want to close your DTS routing and assign to CLA for appropriate action, that may be best the best step at this point. I will let you know as soon as I have guidance.

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

---

**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Friday, March 13, 2020 5:21 PM
**To:** Hausman, Alyssa B <alyssa_hausman@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** DTS assignment

Hi Alyssa

Has the congressional letter on the solicitor memo been reassigned in DTS to CLA?

Thanks for the update!
Kim

Sent from my iPhone

**From:** Wright, Dana K
**To:** Tripp, Kimberly J
**Cc:** Niemi, Katie
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act
**Date:** Tuesday, March 24, 2020 2:37:07 PM

---

Hi Kim,

Katie and I restructured the first paragraph. We moved the sentence about what CBRA prohibits earlier in the paragraph and then added examples that we could refer to as "these federal incentives." Let me know if this misses the mark. I'll upload an updated version to DTS tomorrow.

The U.S. Fish and Wildlife Service (Service) is responsible for administering CBRA, which originally established the Coastal Barrier Resources System (CBRS) in 1982. CBRA prohibits most new federal expenditures and financial assistance affecting the CBRS that may encourage development, such as flood insurance and loans and grants for infrastructure construction. The purpose of the law is to conserve natural resources, save taxpayer money and keep people out of harm's way by removing these federal incentives to develop ecologically sensitive and storm-prone coastal areas. The law provides exceptions to the prohibitions and allows for certain federal expenditures following consultation with the Service. Among those exceptions, Section 6(a)(6)(G) of CBRA allows for federal expenditures for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems" that are also consistent with the purposes of the law.

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:** Tuesday, March 24, 2020 11:22 AM
**To:** Wright, Dana K <dana_wright@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

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> 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>
**Sent:** Monday, March 23, 2020 6:16 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <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:** Wright, Dana K
**To:** Tripp, Kimberly J
**Cc:** Niemi, Katie
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act
**Date:** Wednesday, March 25, 2020 9:39:34 AM

---

Thanks. I uploaded the revised version, entered your surname, and pushed it on to 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:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Wednesday, March 25, 2020 9:28 AM
**To:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

Works. Thanks

Sent from my iPhone

On Mar 24, 2020, at 2:37 PM, Wright, Dana K <dana_wright@fws.gov> wrote:

Hi Kim,

Katie and I restructured the first paragraph. We moved the sentence about what CBRA prohibits earlier in the paragraph and then added examples that we could refer to as "these federal incentives." Let me know if this misses the mark. I'll upload an updated version to DTS tomorrow.

The U.S. Fish and Wildlife Service (Service) is responsible for administering CBRA, which originally established the Coastal Barrier Resources System (CBRS) in 1982. CBRA prohibits most new federal expenditures and financial assistance affecting the CBRS that may encourage development, such as flood insurance and loans and grants for infrastructure construction. The purpose of the law is to conserve natural resources, save taxpayer money and keep people out of harm's way by removing these federal incentives to develop ecologically sensitive

and storm-prone coastal areas. The law provides exceptions to the prohibitions and allows for certain federal expenditures following consultation with the Service. Among those exceptions, Section 6(a)(6)(G) of CBRA allows for federal expenditures for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems" that are also consistent with the purposes of the law.

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:** Tuesday, March 24, 2020 11:22 AM
**To:** Wright, Dana K <dana_wright@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: DTS Assignment--Comments regarding the Coastal Barrier Resources Act

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> 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>
**Sent:** Monday, March 23, 2020 6:16 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <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:** | Wright, Dana K |
| **To:** | Niemi, Katie |
| **Subject:** | Re: Graves letter |
| **Date:** | Thursday, August 30, 2018 8:49:28 AM |
| **Attachments:** | Graves et al 068399 CBRA Response 8.29.18 v3.docx |
| **Importance:** | High |

---

How about this? See attached.

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 30, 2018 at 6:19 AM, Wright, Dana <dana_wright@fws.gov> wrote:

> Katie,
>
> Can we meet to discuss Gary's latest version of the Graves letter? (b) (5) [redacted]
>
> 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:
FWS/AES/DBTS/BGMTS/068399

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) regarding our interpretation of certain provisions of the Coastal Barrier Resources Act (CBRA).[1] The (b) (5) [redacted]

[redacted]

[redacted]

[redacted]

---

[redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

---

[redacted]

health and safety that are also necessary to alleviate an emergency in a Presidentially declared

(b) (5)

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5)

. If you have any additional questions concerning this matter, please contact Mr. Gary Frazer, Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

Deputy Director

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

**From:** Wright, Dana K
**To:** Niemi, Katie
**Subject:** Re: Graves letter
**Date:** Thursday, August 30, 2018 2:29:52 PM
**Importance:** High

---

Done. Version 9 is uploaded.

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 30, 2018 at 2:25 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:

> You can upload it so the letter in DTS at least makes sense. Thanks.
>
> Katie
>
> On Thu, Aug 30, 2018 at 2:23 PM, Wright, Dana <dana_wright@fws.gov> wrote:
>
> > OK - should I upload or wait until you talk to Marty/Martha?
> >
> > 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 30, 2018 at 2:09 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:
> >
> > > Your revised language looks good.
> > >
> > > Katie
> > >
> > > On Thu, Aug 30, 2018 at 8:49 AM, Wright, Dana <dana_wright@fws.gov> wrote:
> > >
> > > > How about this? See attached.
> > > >
> > > > 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 30, 2018 at 6:19 AM, Wright, Dana <dana_wright@fws.gov> wrote:

Katie,

Can we meet to discuss Gary's latest version of the Graves letter? (b) (5) [redacted]

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:** | Wright, Dana K |
| **Subject:** | Graves response |
| **Date:** | Tuesday, October 2, 2018 8:39:02 AM |
| **Attachments:** | Scanned from a Xerox Multifunction Printer.pdf |

---

Gary just stopped by with hard copy of the 1 page response letter to Rep. Graves (see attached scanned version). Please take a look and we can discuss. I just read it and it looks fine to me.

Katie

---------- Forwarded message ---------
From: <KATIE_NIEMI@fws.gov>
Date: Tue, Oct 2, 2018 at 8:37 AM
Subject: Scanned from a Xerox Multifunction Printer
To: KATIE_NIEMI@FWS.GOV <KATIE_NIEMI@fws.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: 2W305
Device Name: ifwhqPr-2W305

For more information on Xerox products and solutions, please visit http://www.xerox.com

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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), also co-signed by several of your colleagues, regarding the Service's interpretation of certain provisions of the Coastal Barrier Resources Act (CBRA).

The U.S. Army Corps of Engineers (Corps) has sought to conduct dredging operations within the Coastal Barrier Resource System (CBRS) to mine sand 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 CBRA 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. Your letter asks whether the 1994 Solicitor's opinion continues to dictate Service policy, whether we consider this opinion to be an appropriate interpretation, and whether we will revisit this interpretation.

This interpretation of the statutory language (b) (5) [redacted] (b) (5) [redacted] (b) (5) [redacted] and 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 reflecting any concern or clarification regarding this interpretation of the law. Accordingly, (b) (5) [redacted] I can advise that we have no intention to revisit this interpretation.

The Service 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. 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,

Deputy Director

| | |
|---|---|
| **From:** | Pool, Taylor S |
| **To:** | Niemi, Katie; Wright, Dana K |
| **Subject:** | Fwd: DCN - 068399: CBRA Graves Response Letter Revision |
| **Date:** | Thursday, November 8, 2018 1:53:38 PM |
| **Attachments:** | 068399 Graves v4.docx |
| **Importance:** | High |

---

Hi CBRA,

Please see the attached revised letter. The revised letter was approved by Gary and sent back to ASFWP.

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

---------- Forwarded message ----------
From: **Pool, Taylor** <taylor_pool@fws.gov>
Date: Thu, Nov 8, 2018 at 1:03 PM
Subject: DCN - 068399: CBRA Graves Response Letter Revision
To: Wendy Fink <wendy_r_fink@ios.doi.gov>
Cc: Marty Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>

Hi Wendy,

As we discussed, please see the attached revised letter for the response to Rep. Graves regarding sandmining within CBRA units. These revisions were suggested after we briefed Andrea. I will upload a copy of this into the DTS record, as well.

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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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. (b) (5) [redacted]

This interpretation of the statutory language (b) (5) [redacted] as 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 reflecting any concern or clarification regarding this interpretation of the law. Accordingly, (b) (5) [redacted] I can advise that we currently have no plan to revisit this interpretation.

The Service 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. 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,

Deputy Director

**From:** Wright, Dana K
**To:** Pool, Taylor S
**Subject:** Re: DCN - 068399: CBRA Graves Response Letter Revision
**Date:** Thursday, November 8, 2018 1:57:54 PM

---

Thanks Taylor.

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, Nov 8, 2018 at 1:54 PM Pool, Taylor <taylor_pool@fws.gov> wrote:

> Hi CBRA,
>
> Please see the attached revised letter. The revised letter was approved by Gary and sent back to ASFWP.
>
> 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
>
> ---------- Forwarded message ----------
> From: **Pool, Taylor** <taylor_pool@fws.gov>
> Date: Thu, Nov 8, 2018 at 1:03 PM
> Subject: DCN - 068399: CBRA Graves Response Letter Revision
> To: Wendy Fink <wendy_r_fink@ios.doi.gov>
> Cc: Marty Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>
>
> Hi Wendy,
>
> As we discussed, please see the attached revised letter for the response to Rep. Graves regarding sandmining within CBRA units. These revisions were suggested after we briefed Andrea. I will upload a copy of this into the DTS record, as well.

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

**From:** Niemi, Katie
**To:** Pool, Taylor S
**Cc:** Wright, Dana K; BalisLarsen, Martha; Phinney, Jonathan T
**Subject:** Re: DCN - 068399: CBRA Graves Response Letter Revision
**Date:** Thursday, November 8, 2018 2:06:01 PM
**Importance:** High

---

Thanks Taylor. The revised letter looks good.

Katie

On Thu, Nov 8, 2018 at 1:54 PM Pool, Taylor <taylor_pool@fws.gov> wrote:

> Hi CBRA,
>
> Please see the attached revised letter. The revised letter was approved by Gary and sent back to ASFWP.
>
> 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
>
> ---------- Forwarded message ----------
> From: **Pool, Taylor** <taylor_pool@fws.gov>
> Date: Thu, Nov 8, 2018 at 1:03 PM
> Subject: DCN - 068399: CBRA Graves Response Letter Revision
> To: Wendy Fink <wendy_r_fink@ios.doi.gov>
> Cc: Marty Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>
>
> Hi Wendy,
>
> As we discussed, please see the attached revised letter for the response to Rep. Graves regarding sandmining within CBRA units. These revisions were suggested after we briefed Andrea. I will upload a copy of this into the DTS record, as well.
>
> 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

**From:** Chen, Linus Y
**To:** Bohn, Cynthia
**Cc:** Niemi, Katie; BalisLarsen, Martha; Phinney, Jonathan T; Pool, Taylor S; Jesup, Benjamin C; Wright, Dana K
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Monday, October 29, 2018 4:09:20 PM
**Attachments:** CBRA Info Memo on Shoreline Stabilization 10.29.18 lyc.docx
**Importance:** High

---

Hi All,

(b) (6) [redacted]

Second, my comments/edits on the Info memo attached.
Third, edits on the powerpoint here:
Slide 2: CRS, Congressional Research Service?
Slide 6: In 1994 the DOI Solicitor's Office [Branch of Fish & Wildlife]...
Thanks,
Linus

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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**Information Memorandum for the Principal Deputy Assistant Secretary - Water and Science Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks**

**Date:** October 29, 2018

**From:** Gary Frazer, Assistant Director for Ecological Services

**Telephone #:** (202) 208-4646

**Subject:** Coastal Barrier Resources Act restrictions and exceptions relating to shoreline stabilization projects

## I. Introduction

The Coastal Barrier Resources System (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. The purposes of the 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 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 (16 U.S.C. 3504). However, federal agencies, after consultation with the U.S. Fish and Wildlife Service (Service), may make expenditures and financial assistance available within the CBRS 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.

From 1994 to the present, the Service has applied a consistent legal interpretation (based on (b) (5) [redacted] that the CBRA prohibits most sand mining within the CBRS for shoreline stabilization projects outside of the CBRS. Since 2017, this policy (as well as shoreline stabilization and beach nourishment in general) has been the subject of inquiries from members of Congress and Congressional committees, who are hearing from local officials regarding this matter. In March and April of 2018 the Service responded to numerous questions from the Congressional Research Service regarding the CBRA, with a focus on consultations, beach nourishment, and dredging.

Commented [CLV1]: (b) (5) [redacted]

The Service received a letter in June 2018 from seven members of Congress which asserts that the agency has taken an unreasonably narrow interpretation of the CBRA's exceptions, specifically as they pertain to congressionally authorized shoreline stabilization and beach

nourishment projects. The letter requested responses to several questions concerning the Service's interpretation of the CBRA and the agency's recommendations regarding legislative and administrative remedies. The incoming letter (DCN #068399), the Service's responses to the questions, and other supporting materials are attached.

## II. Background

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 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.

The CBRA is a free-market approach to conservation. It does not ban shoreline stabilization and sand mining activities; they can still occur within the CBRS provided that the cost is covered by private, state, or local sources rather than the American taxpayer. As stated by President Reagan in his signing statement on the CBRA, "The difficult task of balancing competing uses of resources is best performed by the market, free of Federal subsidies."

There are some exceptions under the CBRA that allow for certain dredging, beach nourishment, and other shoreline stabilization activities within the CBRS. There is an exception that allows dredging of federal navigation channels (including the disposal of dredge materials), however this exception is limited to the dredging necessary for the maintenance of the channel (16 U.S.C. 3505(a)(3)). Beneficial use of dredge spoils from such channel maintenance activities for beach nourishment (both within and outside the CBRS) is possible in certain circumstances, but dredging that exceeds what is necessary for true maintenance of the channels is not permitted with federal funds.

There are also two other exceptions that specifically refer to shoreline stabilization activities, and they both require that the projects also be consistent with the three purposes of the CBRA (the purposes are stated in the Introduction section). These exceptions include 1) "Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects" (16 U.S.C. 3505(a)(6)(A)) and 2) "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system" (16 U.S.C. 3505(a)(6)(G)). There are other limited exceptions under which shoreline stabilization projects may fall (see the attachment for further details).

In 1994, the Department of the Interior's (b) (5) [redacted] xceptions apply only to projects for

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 the CBRA). For example, sand mining within the CBRS generally cannot be done to support a "nonstructural shoreline stabilization" project for a developed area *outside* of the CBRS under the exception at 16 U.S.C. 3505(a)(6)(G)(b) (5) [redacted] The excepted activity itself (e.g., shoreline stabilization) must occur *within* the CBRS to meet the exception. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the CBRA. See the attachments for related correspondence.

Commented [CLY2]: (b) (5) [redacted]

## III. Positions of Interested Parties

**Service Position**

The Service maintains that the CBRA was generally intended to restrict the use of federal funds for erosion control and storm damage reduction projects. The Service also 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. The Service, however, does not have any type of enforcement authority over federal expenditures in the CBRS; each agency affected by the CBRA is independently responsible for complying with the law.

**Local Interests**

Finding and securing an adequate source of high quality sand for beach nourishment projects is becoming an increasing concern for local communities. In some areas, beach quality sands are available within the nearby inlets, tidal creeks, rivers, and the Intracoastal Waterway. However, many of these potential borrow sites are within the CBRS and are subject to CBRA's restrictions. 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.). Local communities have sought to remove areas from the CBRS and/or an exception under CBRA so sand mining and beach nourishment projects can proceed with federal funds.

Commented [CLY3]: Word missing- Invoke? Use?

**Congressional Interest**

Certain members of Congress, as well as the House Natural Resources Committee and the House Transportation and Infrastructure Committee, 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. These concerns have generally come from coastal districts with developed barriers within or adjacent to the CBRS.

Commented [CLY4]: Army Corps of Engineers

Attachments

**From:** Phinney, Jonathan T
**To:** Wright, Dana K; Niemi, Katie
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Tuesday, October 30, 2018 10:35:45 AM
**Importance:** High

---

Thanks.

Jph

On Tue, Oct 30, 2018 at 10:06 AM Wright, Dana <dana_wright@fws.gov> wrote:

> Hi Jonathan,
>
> Thanks for your comments. We're working on incorporating edits now. In this case, we'd prefer to say "allowable under the CBRA" instead of "within the CBRS" because the beneficial use of dredge materials from maintenance of Federal navigation channels can be done both within and outside of the CBRS. Also, "recreation projects" are specifically called out in the exception and in the legislative history as an allowable activity.
>
> 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, Oct 30, 2018 at 10:00 AM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:
>
> > Slide 7 bullet 3 "Certain dredging, beach nourishment and shoreline stabilization activities may be allowable under the CBRA.... (suggest adding "within CBRS" after "activities").
> > Same bullet, I would remove "recreation" and limit the allowable activities to "restoration projects" only unless recreation is in the legislation.
> >
> > On Mon, Oct 29, 2018 at 5:10 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:
> >
> > > Katie, I don't have any additional edits to Linus' for the memo.
> > >
> > > (b) (5) [redacted]

(b) (5)

- 
  - 
  - 
  - 
  - 

Note, throughout the powerpoint, I would add periods for the bullets that are complete sentences. Just a presentation preference.

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 Mon, Oct 29, 2018 at 4:09 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Hi All,

(b) (6)

[redacted]

Second, my comments/edits on the Info memo attached.

Third, edits on the powerpoint here:

Slide 2: CRS, Congressional Research Service?

Slide 6: In 1994 the DOI Solicitor's Office [Branch of Fish & Wildlife]...

Thanks,

Linus

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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--
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

--
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and Technical Services (CBRA, NWI)
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-1800 (fax)
703-819-2570 (mobile)
jonathan_phinney@fws.gov
http://www.fws.gov

**From:** Jesup, Benjamin C
**To:** Niemi, Katie
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Tuesday, October 30, 2018 12:02:21 PM
**Attachments:** CBRA Info Memo on Shoreline Stabilization 10.29.18 lyc bcj.docx
**Importance:** High

---

I just looked at the last draft. Attached are purely non-substantive comments.

Ben

On Tue, Oct 30, 2018 at 11:59 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

> Hi Everybody,
> Thanks for your edits to the info memo and powerpoint slides. We've incorporated most of your edits. We also added a new slide 7 (to include the perspective of the local communities as well as organizations that have expressed concerns over sand mining within the CBRS). Please let me know if you have any additional changes.
>
> Taylor and Ben, I've asked to get you added to the briefing invite but in case you haven't received the calendar invite yet, the briefing will be at 11:00 am on Nov. 1 in the ASFWP conf. room - 3144.
>
> Linus, you have a good excuse to miss the briefing :) All the best.
>
> Katie
>
> On Mon, Oct 29, 2018 at 5:10 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:
>
>> Katie, I don't have any additional edits to Linus' for the memo.
>>
>> (b) (5) [redacted]
>>
>> - [redacted]

(b) (5)

[redacted]

- [redacted]

[redacted]

- [redacted]

[redacted]

- [redacted]

Note, throughout the powerpoint, I would add periods for the bullets that are complete sentences. Just a presentation preference.

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 P ke
Falls Church, VA 22041-3803
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703-358-2314 (direct)

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Thanks,
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Learn more about the Coastal Barrier Resources Act

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--

> > Linus Y. Chen, Attorney
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> Division Parks & Wildlife
>
> (w) 202-208-5036
>
> (f) 202-208-3877

--

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.

**Information Memorandum for the Principal Deputy Assistant Secretary - Water and Science Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks**

**Date:** October 29, 2018

**From:** Gary Frazer, Assistant Director for Ecological Services

**Telephone #:** (202) 208-4646

**Subject:** Coastal Barrier Resources Act restrictions and exceptions relating to shoreline stabilization projects

## I. Introduction

The Coastal Barrier Resources System (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. The purposes of the 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 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.

**Commented [JBC1]:** Be consistent: "CBRA" or "the CBRA." Note that the rule of thumb is that if you sound out the abbreviation, you don t use "the." Examples: "the ESA," "the APA," "NEPA," "CERCLA."

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 (16 U.S.C. 3504). However, federal agencies, after consultation with the U.S. Fish and Wildlife Service (Service), may make expenditures and financial assistance available within the CBRS 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.

From 1994 to the present, the Service has applied a consistent legal interpretation (b) (5) [redacted] that the CBRA prohibits most sand mining within the CBRS for shoreline stabilization projects outside of the CBRS. Since 2017, this policy (as well as shoreline stabilization and beach nourishment in general) has been the subject of inquiries from members of Congress and Congressional committees, who are hearing from local officials regarding this matter. In March and April of 2018 the Service responded to numerous questions from the Congressional Research Service regarding the CBRA, with a focus on consultations, beach nourishment, and dredging.

**Commented [CLY2]:** (b) (5) [redacted]

The Service received a letter in June 2018 from seven members of Congress ~~which~~ that asserts that the agency has taken an unreasonably narrow interpretation of the CBRA's exceptions, specifically as they pertain to congressionally authorized shoreline-~~-~~stabilization and beach-

nourishment projects. The letter requested responses to several questions concerning the Service's interpretation of the CBRA and the agency's recommendations regarding legislative and administrative remedies. The incoming letter (DCN #068399), the Service's responses to the questions, and other supporting materials are attached.

## II. Background

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 and flood control projects. House Report 97-841 Part 1 states:

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There are some exceptions under the CBRA that allow for certain dredging, beach-nourishment, and other shoreline-stabilization activities within the CBRS. There is an exception that allows dredging of federal navigation channels (including the disposal of dredge materials); however this exception is limited to the dredging necessary for the maintenance of the channel (16 U.S.C. 3505(a)(3)). Beneficial use of dredge spoils from such channel-maintenance activities for beach nourishment (both within and outside the CBRS) is possible in certain circumstances, but dredging that exceeds what is necessary for true maintenance of the channels is not permitted with federal funds.

There are also two other exceptions that specifically refer to shoreline-stabilization activities, and they both require that the projects also be consistent with the three purposes of the CBRA (the purposes are stated in the Introduction section). These exceptions include (1) "Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects" (16 U.S.C. 3505(a)(6)(A)) and (2) "Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system" (16 U.S.C. 3505(a)(6)(G)). There are other limited exceptions under which shoreline-stabilization projects may fall (see the attachment for further details).

In 1994, the (b) (5) [redacted] xceptions

apply only to projects for 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 the CBRA). For example, sand mining within the CBRS generally cannot be done to support a "nonstructural shoreline stabilization" project for a developed area *outside* of the CBRS under the exception at 16 U.S.C. 3505(a)(6)(G). (b) (5) [redacted] The excepted activity itself (e.g., shoreline stabilization) must occur *within* the CBRS to meet the exception. A subsequent review of this matter by the Assistant Secretary for Fish and Wildlife and Parks in 1995 reaffirmed this interpretation of the CBRA. See the attachments for related correspondence.

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## III. Positions of Interested Parties

**Service Position**

The Service maintains that the CBRA was generally intended to restrict the use of federal funds for erosion control and storm-damage-reduction projects. The Service also 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. The Service, however, does not have any type of enforcement authority over federal expenditures in the CBRS; each agency affected by the CBRA is independently responsible for complying with the law.

**Local Interests**

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Commented [CLY4]: Word missing- Invoke? Use?

**Congressional Interest**

Certain members of Congress, as well as the House Natural Resources Committee and the House Transportation and Infrastructure Committee, 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. These concerns have generally come from coastal districts with developed barriers within or adjacent to the CBRS.

Commented [CLY5]: Army Corps of Engineers

Attachments

**From:** Niemi, Katie
**To:** Jesup, Benjamin C
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Tuesday, October 30, 2018 1:50:07 PM

---

Ben,
Thanks for the edits. Good to know we can drop "the" before "CBRA" :)

Katie

On Tue, Oct 30, 2018 at 12:02 PM Jesup, Benjamin <benjamin.jesup@sol.doi.gov> wrote:

> I just looked at the last draft. Attached are purely non-substantive comments.
>
> Ben
>
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> > Thanks for your edits to the info memo and powerpoint slides. We've incorporated most of your edits. We also added a new slide 7 (to include the perspective of the local communities as well as organizations that have expressed concerns over sand mining within the CBRS). Please let me know if you have any additional changes.
> >
> > Taylor and Ben, I've asked to get you added to the briefing invite but in case you haven't received the calendar invite yet, the briefing will be at 11:00 am on Nov. 1 in the ASFWP conf. room - 3144.
> >
> > Linus, you have a good excuse to miss the briefing :) All the best.
> >
> > Katie
> >
> > On Mon, Oct 29, 2018 at 5:10 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:
> >
> > > Katie, I don't have any additional edits to Linus' for the memo.
> > >
> > > (b) (5)
> > > [redacted]

(b) (5) [redacted]

[redacted]

- [redacted]
  - [redacted]
    - [redacted]
    - [redacted]
    - [redacted]

Note, throughout the powerpoint, I would add periods for the bullets that are complete sentences. Just a presentation preference.

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 Mon, Oct 29, 2018 at 4:09 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

> Hi All,
>
> (b) (6) [redacted]

(b) (6)

Second, my comments/edits on the Info memo attached.
Third, edits on the powerpoint here:
Slide 2: CRS, Congressional Research Service?
Slide 6: In 1994 the DOI Solicitor's Office [Branch of Fish & Wildlife]...
Thanks,
Linus

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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

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:** | BalisLarsen, Martha |
| **Cc:** | Phinney, Jonathan T |
| **Subject:** | Re: please review-CBRA info memo and slides for AS-FWP briefing |
| **Date:** | Tuesday, October 30, 2018 2:01:01 PM |
| **Attachments:** | CBRA Briefing for DOI-FWP shoreline stabilization 10.29.18.pptx<br>CBRA Info Memo on Shoreline Stabilization 10.30.18.docx<br>Attachment 1- Graves et al 068399 Incoming 6.20.18.PDF<br>Attachment 2 - Responses to Questions.docx<br>Attachment 3 - SOL Opinion exception 6(a)(6)(G) and USACE letter.pdf |

---

Martha,
Ben provided some minor edits which are incorporated into the most recent version of the info memo (attached). Can you please forward the attached files to Gary. Thanks.

Katie

On Tue, Oct 30, 2018 at 12:21 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> Katie, the revised slides look good to me. Did you forward the info memo and slides to Gary already or want me to do so?
>
> Martha
>
> On Tue, Oct 30, 2018 at 11:59 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> > Hi Everybody,
> > Thanks for your edits to the info memo and powerpoint slides. We've incorporated most of your edits. We also added a new slide 7 (to include the perspective of the local communities as well as organizations that have expressed concerns over sand mining within the CBRS). Please let me know if you have any additional changes.
> >
> > Taylor and Ben, I've asked to get you added to the briefing invite but in case you haven't received the calendar invite yet, the briefing will be at 11:00 am on Nov. 1 in the ASFWP conf. room - 3144.
> >
> > Linus, you have a good excuse to miss the briefing :) All the best.
> >
> > Katie
> >
> > On Mon, Oct 29, 2018 at 5:10 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:
> >
> > > Katie, I don't have any additional edits to Linus' for the memo.
> > >
> > > (b) (5) [redacted]

(b) (5)

- 
  - 
  - 
  - 
  - 

Note, throughout the powerpoint, I would add periods for the bullets that are complete sentences. Just a presentation preference.

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 Mon, Oct 29, 2018 at 4:09 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:

Hi All,

(b) (6)

[redacted]

Second, my comments/edits on the Info memo attached.

Third, edits on the powerpoint here:

Slide 2: CRS, Congressional Research Service?

Slide 6: In 1994 the DOI Solicitor's Office [Branch of Fish & Wildlife]...

Thanks,

Linus

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

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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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

| | |
|---|---|
| **From:** | BalisLarsen, Martha |
| **To:** | Frazer, Gary D |
| **Cc:** | Shultz, Gina; Niemi, Katie; Phinney, Jonathan T |
| **Subject:** | Fwd: please review-CBRA info memo and slides for AS-FWP briefing |
| **Date:** | Tuesday, October 30, 2018 2:22:04 PM |
| **Attachments:** | CBRA Briefing for DOI-FWP shoreline stabilization 10.29.18.pptx<br>CBRA Info Memo on Shoreline Stabilization 10.30.18.docx<br>Attachment 1- Graves et al 068399 Incoming 6.20.18.PDF<br>Attachment 2 - Responses to Questions.docx<br>Attachment 3 - SOL Opinion exception 6(a)(6)(G) and USACE letter.pdf |
| **Importance:** | High |

---

Gary, attached are the materials for the briefing with Andrea Travnicek on Thursday re: CBRA and the Graves letter. We are providing in case you want to share with Andrea in advance. The Solicitor's office (Ben and Linus) provided review and comments which have been incorporated. Please let us know if you need anything else.

Martha

---------- Forwarded message ---------
From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Tue, Oct 30, 2018 at 2:01 PM
Subject: Re: please review-CBRA info memo and slides for AS-FWP briefing
To: BalisLarsen, Martha <martha_balislarsen@fws.gov>
Cc: Jonathan Phinney <jonathan_phinney@fws.gov>

Martha,
Ben provided some minor edits which are incorporated into the most recent version of the info memo (attached). Can you please forward the attached files to Gary. Thanks.

Katie

**From:** Pool, Taylor S
**To:** Niemi, Katie
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Tuesday, October 30, 2018 3:36:07 PM
**Importance:** High

---

Just spoke with Dominic, he hasn't received the calendar invite either. He will be out of office, but may send over a surrogate.

I am going to send Dominic and Micah a calendar invite, so they have it on their radar.

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, Oct 30, 2018 at 1:26 PM, Taylor Pool <taylor_pool@fws.gov> wrote:

> I haven't heard from either of them yet. I'm doing a Bat Week booth at MIB, I'll check in with them around 2.
>
> —-
> Taylor Pool
> Congressional/Legislative Affairs Specialist
> USFWS
> taylor_pool@fws.gov
> C: 202-657-2989
> O: 703-358-2128
>
> On Oct 30, 2018, at 1:18 PM, Niemi, Katie <katie_niemi@fws.gov> wrote:
>
>> Thanks. Do you know whether Micah and/or Dominic plan to attend the briefing?
>>
>> Katie
>>
>> On Tue, Oct 30, 2018 at 12:29 PM Taylor Pool <taylor_pool@fws.gov> wrote:
>>> Thanks, Katie!
>>>
>>> And, I reviewed Linus's edits and don't have anything else to add or other suggestions. Looks great and very comprehensive.
>>>
>>> Best,
>>> Taylor

—-
Taylor Pool
Congressional/Legislative Affairs Specialist
USFWS
taylor_pool@fws.gov
C: 202-657-2989
O: 703-358-2128

> On Oct 30, 2018, at 11:58 AM, Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> Hi Everybody,
> Thanks for your edits to the info memo and powerpoint slides. We've
> incorporated most of your edits. We also added a new slide 7 (to include
> the perspective of the local communities as well as organizations that have
> expressed concerns over sand mining within the CBRS). Please let me know if
> you have any additional changes.
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> Taylor and Ben, I've asked to get you added to the briefing invite but in
> case you haven't received the calendar invite yet, the briefing will be at
> 11:00 am on Nov. 1 in the ASFWP conf. room - 3144
> <https://maps.google.com/maps?hl=en&q=ASFWP%20conf.%20room%20-%203144&source=calendar>
> .
>
> Linus, you have a good excuse to miss the briefing :) All the best.
>
> Katie
>
>
>
> On Mon, Oct 29, 2018 at 5:10 PM BalisLarsen, Martha <
> martha_balislarsen@fws.gov> wrote:
>
>> Katie, I don't have any additional edits to Linus' for the memo.
>>
(b) (5)
[redacted]

(b) (5)

>>
>>
>> Note, throughout the powerpoint, I would add periods for the bullets that
>> are complete sentences. Just a presentation preference.
>>
>> 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 Mon, Oct 29, 2018 at 4:09 PM Chen, Linus <linus.chen@sol.doi.gov>
>> wrote:
>>
>>> Hi All,
>>> (b) (6) [redacted]
>>> Second, my comments/edits on the Info memo attached.
>>> Third, edits on the powerpoint here:
>>> Slide 2: CRS, Congressional Research Service?
>>> Slide 6: In 1994 the DOI Solicitor's Office [Branch of Fish & Wildlife]...
>>> Thanks,
>>> Linus
>>>
>>> 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
>>>> <http://www.fws.gov/cbra>
>>>>
>>>>
>>>> *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
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>>>>> 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
>>>>>
>>>>
>>>
>>> --
>>>
>>> Linus Y. Chen, Attorney
>>>
>>> Division Parks & Wildlife
>>>
>>> (w) 202-208-5036
>>>
>>> (f)  202-208-3877
>>>
>>
> <CBRA Briefing for DOI-FWP shoreline stabilization 10.29.18.pptx>

> <CBRA Info Memo on Shoreline Stabilization 10.30.18.docx>

**From:** Niemi, Katie
**To:** Phinney, Jonathan T
**Subject:** Re: please review-CBRA info memo and slides for AS-FWP briefing
**Date:** Wednesday, October 31, 2018 10:48:37 AM

---

Thanks!

On Wed, Oct 31, 2018 at 10:43 AM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

> Gary has no concerns with the ppt for tomorrow. See below.
>
> Jph
>
> ---------- Forwarded message ---------
> From: **Frazer, Gary** <gary_frazer@fws.gov>
> Date: Wed, Oct 31, 2018 at 10:11 AM
> Subject: Re: please review-CBRA info memo and slides for AS-FWP briefing
> To: Jonathan Phinney <jonathan_phinney@fws.gov>
>
> No concerns. Materials are already delivered to FWP. -- GDF
>
> *Gary Frazer*
> *Assistant Director -- Ecological Services*
> *U.S. Fish and Wildlife Service*
> *(202) 208-4646*
>
> On Wed, Oct 31, 2018 at 9:58 AM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:
>
>> Hi Gary,
>>
>> Can you let us know of any concerns with the CBRA Powerpoint today?
>>
>> The CBRA team will be bring hard copies to the 1100 tomorrow.
>>
>> The other background material are pretty standard and thorough.
>>
>> Thanks
>>
>> Jph
>>
>> On Tue, Oct 30, 2018 at 4:28 PM Frazer, Gary <gary_frazer@fws.gov> wrote:
>>
>>> Got it, thanks.
>>>
>>> *Gary Frazer*
>>> *Assistant Director -- Ecological Services*
>>> *U.S. Fish and Wildlife Service*
>>> *(202) 208-4646*

On Tue, Oct 30, 2018 at 2:22 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> Gary, attached are the materials for the briefing with Andrea Travnicek on Thursday re: CBRA and the Graves letter. We are providing in case you want to share with Andrea in advance. The Solicitor's office (Ben and Linus) provided review and comments which have been incorporated. Please let us know if you need anything else.
>
> Martha
>
> ---------- Forwarded message ---------
> From: **Niemi, Katie** <katie_niemi@fws.gov>
> Date: Tue, Oct 30, 2018 at 2:01 PM
> Subject: Re: please review-CBRA info memo and slides for AS-FWP briefing
> To: BalisLarsen, Martha <martha_balislarsen@fws.gov>
> Cc: Jonathan Phinney <jonathan_phinney@fws.gov>
>
> Martha,
> Ben provided some minor edits which are incorporated into the most recent version of the info memo (attached). Can you please forward the attached files to Gary. Thanks.
>
> Katie

--
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

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Wright, Dana K |
| **Subject:** | Fwd: FR Notice FR00003325 |
| **Date:** | Wednesday, August 15, 2018 8:53:46 AM |
| **Attachments:** | Extract 1 - hrg-1980-iia-0001_from_1_to_657 March 1980.pdf<br>Extract 2 - hrg-1980-iia-0001_from_1_to_657 March 1980-2.pdf |
| **Importance:** | High |

---

Dana,
These two excerpts are worth a read if you haven't read them before. Very interesting testimony.

Katie

---------- Forwarded message ----------
From: **Teresa Fish** <teresa_fish@fws.gov>
Date: Tue, Aug 14, 2018 at 11:44 AM
Subject: RE: FR Notice FR00003325
To: Katie Niemi <katie_niemi@fws.gov>

I've extracted the relevant passages that Linus commented on and have attached them.

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Tuesday, August 14, 2018 10:46 AM
**To:** Teresa Fish <teresa_fish@fws.gov>
**Subject:** Fwd: FR Notice FR00003325

Terri,

Can you open the file and find the pages where Linus has commented. I'm not seeing his comments in the attachment. Thanks.

---------- Forwarded message ----------
From: **Wright, Dana** <dana_wright@fws.gov>
Date: Mon, Aug 13, 2018 at 11:06 AM
Subject: Fwd: FR Notice FR00003325
To: Katie Niemi <Katie_Niemi@fws.gov>

I haven't reviewed this yet. Maybe he's on to something?

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: **Linus Chen** <linus.chen@sol.doi.gov>
Date: Mon, Aug 13, 2018 at 11:05 AM
Subject: Re: FR Notice FR00003325
To: "Wright, Dana" <dana_wright@fws.gov>

Ok. I think as I mentioned, our office has not changed our position on those memos related to beach nourishment. Also, in looking at some legislative history (see attached, if it's too large, I can try to just send a couple of the relevant pages; I've commented on the relevant passages), ACOE raised the concern of additional costs of importing sand, but Cong went ahead and kept the restriction. Have we pointed that out in the past?

(feel free to relay my significant life event info to Katie)

hrg-1980-iia-0001_from_1_to_657 March 1980.pdf

On Mon, Aug 13, 2018 at 9:14 AM Wright, Dana <dana_wright@fws.gov> wrote:

> Thanks! Much appreciated. (b) (6) [redacted] The next issue up for CBRA will be a letter that we received from seven members of Congress regarding our interpretation of the CBRA exceptions in relation to sand mining/beach nourishment projects. We'll try to get that to you as soon as possible given your upcoming leave.
>
> 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, Aug 13, 2018 at 9:10 AM, Linus Chen <linus.chen@sol.doi.gov> wrote:

> Peg was on vacation, so that is part of the delay. I will check with her on this when I go to the office tomorrow (teleworking today).
>
> Also, (b) (6) [redacted] What other CBRA related stuff can I expect the next couple of months?
>
> On Mon, Aug 13, 2018 at 6:40 AM Wright, Dana <dana_wright@fws.gov> wrote:
>
>> Hi Linus,
>>
>> I noticed that Peg has had our CBRA FR notice package for two weeks now - do you have any sense for how long it usually takes to get all the way out of your office? We were hoping to have it reviewed by Gary by the end of this week to keep it on track for publication in late September.
>>
>> 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)
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> > > Learn more about the Coastal Barrier Resources Act
>
> --
>
> Linus Y. Chen, Attorney
>
> Division Parks & Wildlife
>
> (w) 202-208-5036
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> (f) 202-208-3877

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

[Prepared statement of Maj. Gen. E. R. Heiberg III may be found in the appendix.]

STATEMENT OF MAJ. GEN. E. R. HEIBERG, III, DIRECTOR OF CIVIL WORKS, OFFICE OF CHIEF OF ENGINEERS, U.S. DEPARTMENT OF THE ARMY, ACCOMPANIED BY RON ALLEN, COUNSEL; CRAIG DeREMER, POLICY; GABE ROZSA, REAL ESTATE; AND RENNIE SHERMAN, PLANNING

General HEIBERG. Thank you, sir.

Mr. BURTON. You have a friend working here on my immediate left.

General HEIBERG. I hope so.

I am Major General Heiberg, Director of Civil Works, the water resources side of the Corps of Engineers. I want to talk about our programs that are related to barrier islands for your consideration on H.R. 5981. Sir, you have asked for a Department of Army accounting of programs and expenditures concerning barrier islands. I will describe these to the best of my knowledge, given the limitations of precise breakouts of budgetary information applying specifically to barrier islands.

I want to express from the outset, however, three areas of concern. First, many of our programs and large amounts of expenditures cannot be easily categorized into those which protect development on barrier islands and those which are for other purposes—for instance, navigation between two of those islands or behind a barrier island.

Second, there are significant definition problems. There is no universally agreed-to determination of what is or what is not a barrier island, what is an undeveloped barrier island, or what may constitute encouraging development.

While efforts have been undertaken within the Department of the Interior to work on these issues, our agency has not been a participant in these studies. However, we are looking at the draft EIS that you noted earlier and will soon have the Army's comments on that. I do know that Interior's draft EIS does not have a definitive set of recommendations, but rather considers a range of options.

Third, the bill itself appears to be a laudable goal protecting the natural values of the barrier islands. However, there are some concerns I have as to the authorities, requirements, and prohibitions of the bill as written upon the missions of our agency.

As I describe our programs and resources expended over the last 5 years, I will relate them to these concerns. I will be describing only the civil works program of the Army. To the best of my knowledge, there are no major Department of the Army military programs or installations on the barrier islands. I cannot speak to other Defense Department programs. I do not include, of course, those related to the space program, Cape Canaveral and any Air Force bases such as Tyndall Air Force Base or various programs related to military training that the Marine Corps or the Navy or the Army exercises might bring to barrier islands.

There are four types of our programs that relate to barrier islands: research, regulatory efforts, authorized projects, and maintenance operations. Ms. Jimenez and Mr. Wilcox addressed some of

these. The first two of these are probably not programs for which you are seeking information, so I will just mention a word. Research that we or others may carry out on or near development islands does not have an impact on use of these islands. Under regulatory authority, we provide permission for structures affecting navigation channels under section 10 of the River and Harbor Act of 1899.

We also provide permits under section 404 of the Clean Water Act. If there is any effect of having to obtain these permits, I would expect it would be to discourage development.

We must examine the public interest as we consider a permit and closely coordinate with Federal agencies in the concerned States. We must consider, of course, environmental effects.

Regarding authorized projects, the Corps of Engineers implements projects as authorized by Congress for a number of purposes, including flood control, navigation, beach erosion, and hurricane protection. In the tables that I have furnished to the committee, I have listed expenditures from fiscal years 1975 through 1969 as well as appropriations for this fiscal year for construction of specifically authorized projects on barrier islands which at least in part were for protection of developed properties on these islands. These projects are justified by their benefits to the national economy exceeding the costs of their construction.

I might note that these construction amounts have varied, but tended to be reduced over the 5-year period that we looked at. The cost of the studies for such projects has been small over the past 5 years, and there is no certainty as to whether protection projects will result from these investigations. Our so-called small projects which are constructed under the continuing authority of section 103 of the 1962 River and Harbor Act provides up to 70 percent Federal funding of beach erosion projects at publicly owned parks.

This program has varied from zero to $2 million per year since 1975, but little of it has ever been spent on barrier islands. In fact, only $125,000 has been expended since fiscal 1975 on section 103 efforts on barrier islands, and this was for studies which have not yet led to recommendations for construction.

I do not have figures for maintenance of projects affecting the barrier islands. However, I do expect these are rather limited. We have significant maintenance costs for navigation projects near barrier islands, but these projects serve mainland coastal ports.

I must point out that some of our projects are multipurpose and it is not always possible to differentiate among expenditures. Also, a project carried out for one purpose may have positive or negative effect on something else. For example, in Florida and elsewhere, dredged material from navigation projects is sometimes deposited on barrier islands as the best alternative for disposal, both economically and ecologically. While this may provide beach nourishment as a bonus, the expenditure of funds was primarily for navigation.

The last area of programs is emergency operations. Emergency work to repair or protect Federal projects is carried out by the Corps of Engineers under its authority which is given by Public Law 84-99. In the last 5 years, about $6.5 million has been spent to protect or restore Federal projects on barrier islands. The following

list of five projects constitute the only work for beach erosion control or hurricane protection carried out on barrier islands since 1974 under this emergency authority. I have a listing of Rockaway Beach, N.Y.; Long Beach Island, N.J.; Rehoboth Beach, Del.; Wrightsville Beach, N.C.; Hunting Island, S.C.

Regarding the Hunting Island Beach, I would like to point out that we expedited replenishment of this beach primarily because of ecological concerns. The existing beach at the Federal project was washed away last fall by a major storm. Sea turtles which come ashore on Hunting Island to lay eggs in the spring would have found unsuitable terrain. Therefore, we wanted to insure that the beach is restored beforehand in order to promote the survival of the turtles.

In conclusion, sir, I want to express again our concern with possible unintended effects of H.R. 5981, if enacted as written. As I mentioned, the Army supports the desirability of preserving the natural values of the undeveloped barrier islands. However the means of protecting these values might have extensive negative impacts, both economic and environmental.

If dredging of inlets or navigation channels behind barrier islands is restricted, trade and recreation could be significantly curtailed. I am thinking specifically of the Gulf and Atlantic Intracoastal Waterways, which carry substantial amounts of commerce along the coasts. Also related to such projects is disposal of dredged material. If this material cannot be placed on barrier islands, the cost of maintaining the project will increase substantially. Also, alternative disposal sites may be less environmentally desirable. Care must also be taken that protection does not preclude scientific or other important programs unrelated to private development on barrier islands.

Last, while the Corps of Engineers has not specifically protected an undeveloped barrier island, there could be instances where that would be desirable, not to encourage development on the barrier island, but to protect other coastal or mainland communities or navigation projects. There have been instances where breached barrier islands have increased storm damage to the shore.

Together with other Federal agencies, the Congress and the States, I intend to insure that the Corps of Engineers will work to find ways to protect the natural values of the undeveloped barrier islands, which recognize the complex interaction of environmental and economic factors along the Atlantic and the gulf coasts. I am certain that together a valuable and workable program can be developed.

Sir, this concludes my statement I welcome your questions.

Mr. BURTON. Congressman Gudger.

Mr. GUDGER. I merely want to state my appreciation for the general's comments. Having served on the Port Authority of the State of North Carolina for some time, I was quite aware of what the Corps of Engineers was doing at Morehead City and at Wilmington to maintain navigational access and to dredge out and keep those waterways open, I certainly am gratified to find at Wrightsville Beach, a place that I have long known and loved.

I would like to say that we are all quite aware of the fact that emergency problems do arise, and we are most gratified that the

Corps of Engineers has always risen to the occasion, done its job, and done an outstanding job in eastern North Carolina.

I yield back the balance of my time, Mr. Chairman.

General HEIBERG. Sir, if I may comment, in western North Carolina I was the guy in charge of replacing several hundred bridges out there in November of 1977. Our charge, as you recall, was to get them back before Christmas.

Mr. GUDGER. Forgive me, General, I do recall the charge and I do recall the dispatch with which that work was done. I commend you. My apologies that I did not recognize you as the general in charge.

General HEIBERG. I quickly say that I did that under FEMA's authority, sir.

Mr. BURTON. Congressman Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman.

Thank you for your excellent statement, General. I have only one question. It relates to the corps' plans for the Oregon Inlet-Cape Hatteras area. I understand that may be somewhat controversial with other Federal agencies. Can you tell me what the plan is about and what your view is on it?

General HEIBERG. I can tell you a little. I have been trying to get down there. I am still new in my job. I haven't been able to yet. I know generally the problem with respect to the concern that the other Federal agencies have. We call this Manteo Bay, or Shallow Bag Bay, in North Carolina. It is the area of the Oregon Inlet, and the concern is over the effects that the proposed jetties will have on the movement of the littoral sand and associated environmental impacts in that area. It is one that we are continuing to work on, and I intend to focus more completely myself personally on the issues that we have with the National Park Service and the Department of the Interior.

Mr. BEREUTER. What is the status of the plan at this point?

General HEIBERG. I know we have funds on it, sir. The allocations we have had through last September, for example, is less than $1 million, in preconstruction work. The money that we have for fiscal 1980 is $2 million to initiate construction Our primary work would begin with a large amount, some $16 million that we have requested in appropriations for fiscal 1981. The total project would cost in the order of $80 million.

Mr. BEREUTER. Thank you.

General, I would say that I look forward to a better relationship than my predecessor had with your predecessor related to the Missouri River. Thank you.

General HEIBERG. I am aware of the problem, sir.

Mr. BURTON. Mr. Crane.

Mr. CRANE. General, in relationship to your concerns with the bill as written; the questions related to unintended effects on navigation. The bill directly relates to a map as drawn rather than to any vague definition of barrier islands. Would your staff be available to assist us in making sure that the barrier islands we intend to acquire is mapped in such ways as to reduce any possible unintended impact on navigation?

General HEIBERG. We certainly would be glad to work with you on that.

Mr. CRANE. Second, in terms of the disposal of dredge material, the corps acquires the sites for the dredge material on intracoastal waterways, is that correct, or is that done by local interests?

General HEIBERG. It is done in a cooperative arrangement. I ask for some help on that, if I can, from my planning folks, either Rennie Sherman or Craig DeRemer help me on that. Craig is from my policy office.

Mr. CRANE. The dredged materials along the intracoastal waterways, are those acquired fully by the Federal Government for disposal or are they local ABC requirements?

Mr. DEREMER. It depends on the date of the project. For new projects it is a total local responsibility to find suitable disposal areas for the material especially in case of its being polluted. It may have to be confined. Under older agreements, that is not necessarily a local obligation, and in some cases is totally Federal. It varies from site to site, depending on that part of the waterway, and when it was authorized and constructed.

Mr. CRANE. Under the act, as we currently have it written, federally owned land, as long as they are used for the current land use as of this date, there is no impact in terms of acquisition. But if there is any attempt to dispose of the land, then it comes under the purview of the Secretary of the Interior to accept the land. Does that cause you any problem?

Mr. BURTON. Apart from a territorial one.

Mr. DEREMER. It would not appear to me to have, but I would want to have counsel look at that in more depth. I would not see that to be a problem, assuming that the reason it is being given up is because it is no longer needed for the function.

Mr. CRANE. I think the statement in terms of your concerns here reflects perhaps a somewhat careless reading of the bill and its intent. We would like very much to work with you to make sure there are not any unintended impairment of the navigation functions.

Mr. BURTON. Thank you very much.

Thank you, General. As I said earlier, you have a friend in the court.

Our distinguished colleague, Congressman Young from Florida. We apologize for requiring you to wait until completion of the previous testimony.

[Prepared statement of Hon. C. W. Bill Young may be found in the appendix.]

## STATEMENT OF HON. C. W. BILL YOUNG, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. YOUNG. Mr. Chairman, that is perfectly all right. I want to thank you for allowing me to be here this morning. I would beg the indulgence of the committee while we set up two easels so I can show you some pictures that I want you to look at this morning.

Mr. BURTON. Let me note that as in most instances when you have legislation introduced, we will stipulate there are a number of factors that were not anticipated, and we are going to have extensive hearings trying to do as best we can to perfect this product. We will listen to your testimony from that orientation.

is the other programs that really pour the big dollars into the development of barrier islands.

Mr. BURTON. The gentleman from Nebraska.

Mr. BEREUTER. May I follow that up? When you're talking about the subsidy, are you talking about the subsidy nationwide, or are you talking about the subsidy in the V zone?

Dr. SHEAFFER. We're talking about a subsidy that is the differential between the premiums that a policyholder pays in the V zone and the A zone, and what the policyholder actually collects as flood insurance payments.

Mr. BEREUTER. So the subsidy in the V zone is not that appreciable factor as compared to the developmental costs.

Dr. SHEAFFER. Right. That is what I am saying.

Mr. BURTON. Well, that is reasonably alarming because the subsidy on the overall income and payout is reaching something on the order of 3 to 1.

Dr. SHEAFFER. Yes. It is 3 to 1. But I'm saying in the total, the flood insurance subsidy makes up very little of that $11 billion figure I mentioned.

Mr. BURTON. Proceed with the slides, and I hope the audience will forgive us because we will have to leave at some point during the course of the presentation here.

[Mr. Miller presented several slides after which there was a brief recess.]

AFTER RECESS

Mr. BURTON. Panel No. 2, Mr. Clark, Mr. Godfrey, Skip Livingston, Eugene Odum, and Dr. Pilkey.

Please proceed.

Mr. CLARK. Mr. Chairman, my name is John Clark. If you have no objection, I will ask the witnesses to appear in a slightly different order in order to make a particular point.

We have with us this morning Dr. Orrin Pilkey, who is a specialist in beachfront geology; Dr. Paul Godfrey, who is a specialist in islands; Dr. Robert Livingston, who is a specialist in coastal ecology; and me, a marine biologist and planner.

Dr. Odum could not be with us this morning, I am sorry to say. Each of us will present a very brief summary, and more lengthy written testimony will be provided to the committee. Each of us will also do our own introduction. Without further delay, I would like to introduce Dr. Orrin Pilkey.

[Prepared statements of Orrin Pilkey, Jr., and Paul J. Godfrey may be found in the appendix.]

**PANEL CONSISTING OF ORRIN PILKEY, JR., PROFESSOR OF GEOLOGY, DUKE UNIVERSITY; PAUL J. GODFREY, ASSOCIATE PROFESSOR, DEPARTMENT OF BOTANY, UNIVERSITY OF MASSACHUSETTS, AMHERST, MASS.; ROBERT LIVINGSTON, ASSOCIATE PROFESSOR, FLORIDA STATE UNIVERSITY; AND JOHN CLARK, COASTAL PLANNER, CONSERVATION FOUNDATION, WASHINGTON, D.C.**

Dr. PILKEY. Mr. Chairman, my name is Orrin Pilkey. I'm a professor of geology at Duke University. I specialize in beaches and on the Continental Shelf, and I am the coauthor of three books on the barrier island.

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I'd like to put the barrier island in a geological context. During the last 10 to 15 years geological research has established beyond a reasonable doubt that barrier islands have migrated in from the edge of the Continental Shelf, during the last 12,000 to 15,000 years. This means, for example, that islands off Georgia have migrated, over 10,000 to 15,000 years a total of 80 miles. They have done this in response to a rising sea level.

A few years ago NOAA scientists discovered that the sea level rise has suddenly accelerated once again. We are now confronted, for the last 30 years, with a sea level rise on the order of 1 foot per century. This is based on tidal gauge data.

Now the important thing about this sea level rise is that a small, incremental sea level rise produces a very large horizontal retreat of the shoreline. For most American barrier islands, the present sea level rise of 1 foot per century means that the barrier islands will move landward a distance from 500 to 1,000 feet during this century. This is not erosion, this is barrier island migration. There's a lot of evidence of this erosion; a neat little piece of evidence recently showed up on the front side of a New Jersey barrier island that was reported in a local newspaper. Some marsh mud showed up on the front side of the island after a storm. In this marsh mud were colonial implements, fragments of pottery and horsepins and cow hooves. All of this was from a colonial garbage dump that was on the back side of the island. In a couple hundred years it had migrated to the front side of the island as the island moved.

Development of barrier islands inevitably leads to demands for stabilization. And, stabilization leads to what we geologists are now referring to as "New Jerseyization." "New Jerseyization" is the end result of decades of intense development. It does not refer to dumps or unattractive constructions, or anything like that. Rather it refers to a situation in which the entire island system had been stabilized for a long period of time in defiance of the island's attempts to migrate as the sea level rises.

In the New Jerseyization situation, as the sea level continues to rise the static shoreline is in increasing disequilibrium because the shoreline should be and wants to be somewhere else. With the increasing disequilibrium of the shoreline, that is, the increasing distance between where the shoreline is and where the shoreline wants to be, the beach becomes steeper, sand supplies are cut off, wave height increases, and maintenance of artificial beaches becomes prohibitively costly.

Putting this in the context of Miami Beach, this $65 million beach that the Corps of Engineers put in, we would expect to——.

Mr. BURTON. Excuse me, I find your testimony very worth while, and therefore, since, we have at least an hour of uninterrupted time, you can slow down the pace.

Dr. PILKEY. All right. I apologize for that.

Mr. BURTON. It is quite all right. I commend you for your thoughtfulness.

Dr. PILKEY. Back to the $65 million beach that the Corps of Engineers has recently put in place in Miami Beach. The New Jerseyization problem will cause this beach to disappear at a much more rapid rate than a natural beach would disappear. And, in

theory, the second replenishment, or the second beach that would be put in by the Corps of Engineers, should disappear more rapidly than the first beach disappeared.

Beaches in North Carolina that have been replenished artificially generally disappear at a rate 10 times that of the natural beach.

Sea Bright, N.J., is a classic example of New Jerseyization, or of the 100- to 150-year result of shoreline stabilization. Sea Bright, N.J., is basically a spit, not an island, fronted by a very tall seawall. The beach now is totally missing, even at low tide, and it has been replaced by a line of rubble from previously destroyed seawalls and groins.

Over the years the entire Continental Shelf has deepened to the point that there is no more possibility of beach replenishment because the sand would disappear very rapidly. The economic possibility of beach replenishment is essentially gone, that option is gone.

The shoreline at Sea Bright is steep enough that sustained 25 knot winds will produce waves that will top the seawall, as I saw last summer.

Sea Bright has reached a point of no return. It is not even possible to remove the seawall and let nature take her course because the natural shoreline or where the beach wants to be, is now hundreds of feet behind where the seawall is. This is the 100- to 150-year picture. It is a very basic, a very, very fundamental problem. Only recently have geologists realized how fundamental the New Jerseyization problem is, or the stabilization problem, is.

Mr. BURTON. How much unity or dispute within this expert community is there on the point that you've just made?

Dr. PILKEY. Regarding equilibrium of the shoreline? I think among shoreline geologists we find a great deal of unanimity on this. This is new information. This is based not only on studies of beaches but it is also based on studies of continental shelves. We're just coming into an understanding of how whole islands migrate in response to a sea level rise.

As the sea level rises, we think it is not just a matter of the beach moving back, but the whole shore-face moves back. This means the whole system, down to a depth of about 10 or 15 meters which means a whole mile, maybe 2 or 3 miles of Continental Shelf, moves as the sea level rises.

This is something, based on material that's come out in the last decade of research. A good part of this is from the work of Don Swift of NOAA. I would like to say that New Jerseyization is not only a New Jersey phenomena: many American beaches are approaching the same stage. To name a few, I can include Rehoboth Beach, Del.; Ocean City, Md., Wrightsville Beach, N.C.; Folly Beach, S.C.; Tybee Island, Ga.; numerous south Florida islands; Grande Isle, La.; and, South Padre Island, Tex.

I strongly feel that we should prohibit additional Federal expenditures on the proposed barrier island units. Especially in light of what now appears to be the really fundamental nature and irreversible nature of the damage that is done by stabilization, stabilization that is an absolute certain result of development.

New Jerseyization is, in the final analysis, a result of Federal action, and it will not appear without Federal support. Thank you.

Mr. BURTON. Is this movement landward?

Dr. PILKEY. Yes, this is movement landward in response to the rising sea level which at this particular point in geologic time is very rapid. At the same time that the islands are moving landward, the mainland is also moving landward. We don't know much about erosion rates on the landward side but in North Carolina's outer banks, for example, the shoreline of Pamlico Sound is eroding more rapidly at this point in time than the islands are moving landward. So in effect, Pamlico Sound is getting larger at this point.

Mr. BURTON. What are the physical factors that produce this?

Dr. PILKEY. Basically, I guess the best way to describe it is to say that the whole shoreface of the barrier islands is in a dynamic state of equilibrium between wave energy, sand supply and shape of the shoreface and the sea level rise. The actual force, or energy, that is pushing the islands forward, or landward, is involved from the waves. Fair-weather waves push sands up, storm waves take sand back, and all these islands are adjusted to a certain regime of storms, to a certain frequency of storms; they're happy under these circumstances. But, again, you must look at this in a geologic context, and not look at it from the standpoint of a shoreline engineer's context of 20 to 30 years. You must look at this from the standpoint of 100 to 1,000 years.

I use the New Jerseyization term to point out that even though we're talking about long periods of time, 100 to 150 years, the 150-year shoreline is already with us. It's in New Jersey, and that's where we're going in other places.

Now, having said all this, if the sea level were to suddenly stop rising, our problems would not be as severe. We don't know why the sea level is rising, for certain. We do not know how long it will continue to rise.

Mr. CLARK. Thank you. Next, Dr. Paul Godfrey.

Dr. GODFREY. Mr. Chairman, my name is Paul Godfrey, and I am an associate professor at the University of Massachusetts. I have been conducting ecological and geological research on barrier islands and beaches for some 12 years, having published one book and numerous papers and reports.

I appreciate the opportunity to comment on the proposed bill from that background. Much of my research has been along the coasts of North Carolina and Massachusetts, but I have experience with the whole coastline from Maine to Texas. The comments I make here are mine alone and do not reflect any official position of the University of Massachusetts, or of the agencies that have funded my research.

Barrier islands are part of an environment in which it is the purest folly for man to try to dominate nature. In the coastal zone, we are up against two forces that are far beyond our control: rising sea level and regular severe storms. The geological evidence is clear that the sea is rising; recent measurements show a range of at least one-half to 1 foot, or more, per century. Severe storms are a major fact of life along the coast; for example, between 1585 and 1966 at least 150 hurricanes have affected North Carolina alone. Some areas are more prone to hurricanes than others. For example, the North Carolina outer banks, the Florida east coast, and the

Texas Gulf Coast, among others, but all portions have experienced some hurricanes. Winter storms, or "northeasters," can have almost as much effect, particularly in the mid-Atlantic and Northeastern States, the great blizzard of 1978 and the Ash Wednesday storm of 1962 are some recent examples.

On an unaltered barrier island, the sea moves sand along the beach all the time, and sometimes washes it clear across the island; inlets open and then close, leaving behind shoals that later become new marshes; and the wind moves sand about constantly, building here and eroding there. Inlets, for example, have been a major feature of barrier islands, like the outer banks, where at least 30 have been known in historic times but only seven are active now. Geological evidence shows that many more old inlet sites exist than are known in the written record.

All these forces combine to continually rearrange the island and to cause it to migrate toward the mainland coast, most of which is itself retreating. Our comparisons of old and modern maps of the outer banks show that over the long term, these islands are retreating at least 150 to 300 feet per century, and upwards of 3,000 feet or more per century in some places like Cape Hatteras, based on map measurements. Direct measurements in the field, and aerial photographic analysis, show rates of 3 to 10 feet per year, depending on storm cycles and other factors. A beach we have been studying since 1972 in Massachusetts has retreated more than 30 feet per year in the past 2 years as a result of severe and frequent northeasters, although 3 feet per year was more typical until recently.

The islands must migrate as sea level rises and storms keep reworking them, or they would drown. But they do change position, and thus survive. I have attached several diagrams showing models of how the islands move, for the committee's consideration and review.

The plants and animals of this environment are adapted to these constant changes, and indeed thrive upon them. A number of seabirds, for example, require expanses of newly deposited sand for nesting. Common beach grasses need blowing sand for good growth, and from it they build the dunes that protect the rest of the island from too-frequent inundation by the sea. Other grasses can survive storm driven overwash, and grow up through the newly deposited sand with renewed vigor. Still another kind of grass can colonize in sand that overwashes all the way into the lagoon behind the island, or in sand left as shoals after the closure of an inlet; this species forms the intertidal salt marshes that contribute so much to the biological productivity of estuaries, and therefore to all the coastal fisheries. Natural barrier islands seem to recover in short order from even the most violent assaults by the sea; the outline of the island will be slightly different, but the natural system is soon restored. Any particular coastal feature is inherently transitory, but the overall barrier island ecosystem can be said to be dynamically stable.

We have also found that barrier islands and beaches differ substantially from each other depending on average sea energy, relative rates of sea level change, storms, wind directions, geological origins, sand supply and so forth. Thus, while some islands are low

and rapidly retreating, and subject to regular flooding, others may have high dunes and substantial uplands, and be less subject to storm damage. However, the majority of islands are subject to some storm related hazard, and most are moving. We have ranked types of islands by their topographic features, and can make some statements about relative stability. For instance, the washover type barrier, which predominates along many sections of the coast, is very hazardous to develop, while the coastal plain remnant type is much less prone to severe flooding. But these more stable islands have great values in terms of wildlife habitat and must be considered in that regard as well. I have attached diagrams showing some of the dominant types of barrier island crosssections.

When we try to develop moving, retreating islands, it inevitably becomes necessary to interfere with the natural system in an attempt to protect our structures. This must ultimately be futile, since in the long run we obviously cannot stop either sea level rise or storms. At best, we can hope for a very expensive short-term holding action. We buy a little time at great cost in energy and resources. In the process we destroy much of the vegetation that had held the natural island together. Sooner or later the sea overwhelms our defenses, but the buildings and parking lots do not regenerate as the grasses would have done.

This waste of money is enough reason to avoid development of barriers, but there is a greater reason: the waste of the natural system itself. The unaltered island serves as a natural buffer against storms, absorbing much of the sea's energy before it reaches the mainland. The marshes and lagoons that the island shelters make coastal fisheries possible. If dunes are leveled, marshes are dredged, and vegetation is destroyed to make way for development. Then the inevitable storm flattens what we have built, and the barrier could be reduced to little more than a sand bar and some rubble. The ecological effects of this could be so far reaching and subtle that it is impossible to calculate this cost in dollars. We might be able, with great effort, to restore some semblance of the natural order, but we would surely wish for the days when we had it free.

Clearly the only rational uses for barrier islands are nondestructive recreation, and enjoyment of the esthetic, education, and scientific benefits that they so abundantly provide. With this in mind, I wish to lend my support to your efforts. Thank you.

I might add I would be glad to provide the committee with photographic documentation of numerous study sites we have along the coast showing changes due to storms and other events, both in the natural barrier islands, and developed islands. These are pictures that we have accumulated since 1938, and some more recent pictures. But I could supply those in black and white.

Mr. BURTON. That would be helpful. How well-defined is the term "washover" type barrier?

Dr. GODFREY. That's fairly well-defined, although sometimes it is called overwash or washover. These are islands that tend to retreat most rapidly when storms sweep over the top. That's a fairly common term.

Mr. BURTON. We've been given a list of barrier islands by the Department of the Interior. Would each of those specific islands lend themselves to the classification you described?

Dr. GODFREY. Yes, they do. We have, in fact, tried to do that for a number of islands. I have been working on that type of approach in classification very recently. And in the review of material that was sent in by many people around the country, we did ask them to try to rate their particular island as to the topographic type and various other characteristics of its flooding. Yes, that can be done.

Mr. BURTON. How many gradations of washover barriers are there? Is it a black or white situation in the sense that it is or is not a washover barrier?

Dr. GODFREY. It depends on how frequently storms go through the dunes. For instance, the outer banks in North Carolina are washed over all the time. They do have lots of dunes, though. And this may become a question that people don't quite understand. A washover barrier can have dunes all over it, but the effect is that when there is a severe storm, with a high storm surge, the water can go right over the island and through all the dune passes. That happens quite regularly. Many islands are of that type. You can go to a type where there are no dunes at all, and that often occurs after a big storm, for instance.

Mr. BURTON. I will ask the staff to give you the list that we have. It would be of interest to us, I think, to have enumerated these washover islands which I gather are islands that there's little or no dispute we should ban development on.

Dr. GODFREY. That's right. There is this gradation between islands that are relatively stable and fairly high down to the very low islands that wash over all the time. But even the more stable ones are experiencing erosion problems in various places as well.

Mr. BURTON. Yes, the gentleman from Nebraska.

Mr. BEREUTER. Thank you, Mr. Chairman. When you look at that list, would you look at whether or not there is a possibility we have what might be called an anchored island, or one which by geological composition or land formation, really doesn't belong in the description of these islands even though, perhaps, we have the sand dune type of development on it? Are there such things, for instance, on the Atlantic and Gulf coasts?

Dr. GODFREY. I'm not aware of anything like that. The definition of the barrier islands sets the first stage.

Mr. BEREUTER. We have not included, as far as you know, any improper islands in this list?

Dr. GODFREY. Not that. The only, there is one——

Mr. BURTON. Wait a minute. I didn't get the nature of the response.

Dr. GODFREY. I think they all apply. There is only one slight misuse of the word which crops up in a number of publications and things, and is rather minor. For instance, people have talked about Cape Cod as being a barrier island. Cape Cod is not a barrier island. Cape Cod has barrier islands and beaches associated with it, and it is part of a much larger system, but that is about the only nitpicking that one could do in this listing.

All the islands that are listed are valid barrier islands or beaches.

Mr. BEREUTER. I recall studying this subject for about a month in a classroom and writing a paper on it in the late 1950's. It seems to me that what you are doing here is extremely valuable, but much of this was known by some of the leading people in the field back then and even prior to that time.

Why is it, in your judgment, that we have done so little to influence Federal action on the basis of this knowledge?

Dr. GODFREY. We have asked that same question among ourselves, I think, very frequently. For many years, I am afraid, scientists did not look at the overall problems involved in Government actions on things like this. Scientific knowledge was around, but we have learned a great deal more in the last 10 years about how barrier islands move around. That was very important work to do. But even in those early days people were not there beating the drum and saying we have to do this. Scientists were tending to stay in their universities. And, it was only when Government, the National Park Service, for instance, and other agencies, became concerned with such things that scientists began coming out and answering their questions and providing work for them.

Mr. BEREUTER. Do you have a working relationship with scientists who might be employed as employees or consultants of the Corps of Engineers, the agency that has been responsible for much of the protective work which really is not sufficient to protect the shoreline in the long run.

Dr. GODFREY. I am sorry, I do not quite follow you.

Mr. BEREUTER. I am wondering what kind of relationship you have and what kind of response to scientific data that you received from people who were employed as consultants or employees of the Corps of Engineers.

Dr. GODFREY. I would say it is getting better. It is pretty good now. The Corps of Engineers, for example, called together not long ago, a whole group of coastal scientists. Dr. Pilkey was there and myself and others. The corps asked us what we knew about barrier islands. They've gone out to seek scientific advice, and I think it's an improving situation.

Dr. LIVINGSTON. I do not agree with that, but I would like to address that when I testify.

Mr. CLARK. I do have a comment on how we got ourselves into this dilemma, in response to your question. We are a Nation of risk-takers, and we were in a gigantic building boom along the coast in the prosperous period following World War II. This initiated a great boom in choice places where people wanted to live close to the sea. The boom was moving, people were taking their own risks, and sometime in the 1960's we caught up with the problem that they now had endangered houses and endangered properties and there were terrible problems occurring. We then decided to jump in with Federal money and begin to bail these people out.

That is when the inequity struck and it took a while for it to take hold. And many people say, that is not fair. If these people want to take the risk, OK. But now they are asking for Federal subsidies for all kinds of disaster insurance, for building the roads and things they needed. That is what has caught up with us. It does not seem equitable to be spending an extraordinary amount of

Federal money to support these people living out on these thin, movable islands.

The next witness is Dr. Robert Livingston.

Dr. LIVINGSTON. My name is Robert Livingston. I am an associate professor at Florida State University in north Florida.

For the past 17 years I have been a research scientist in aquatic systems along the eastern coast and the Gulf of Mexico. I am a research scientist. I do systems ecology work. I look at the systems as a whole and how all the pieces fit together. And I must also add that I also do another thing which I am going to add to this testimony which I think may be a more important part. I am an adviser, and have been for the past 10 years, to a group of counties along the northeast Gulf of Mexico. You have probably never heard of the area, it is the Apalachicola Bay system. It is presently the largest estuarine sanctuary in the country, however. We just, in September, got that designation and I serve on the committee that runs the estuarine sanctuary.

Let us get back to these people. This is a little area that you probably haven't had much experience with, but in a way that has been a blessing because the Federal Government and all its great agencies have not discovered this area until very recently. The public works projects which have gone on around the country have somehow eluded this area. Now we are starting to get our share, and we have had some problems with it.

My studies show that the barrier islands systems should be looked at as part of overall drainage systems. This area, the Apalachicola Bay system provides 90 percent of Florida's oysters, 10 percent of the Nation's oysters. It is part of one of the last great river systems left undammed, undyked, unditched, and largely unpolluted. Very few people live there, very little industry, very little agriculture, there are not too many people there, but the people who are there live off the land. They are beekeepers, they are commercial fishermen. Our major shrimp crops in the whole Big Bend area of Florida are nurserying in the Apalachicola drainage. We found that there are three major aspects to that productivity. It is incredible. It is unpolluted, relatively so, although we are having problems now, but it has been up to this point relatively unpolluted with the usual kind of pollutants you would get in commercial, industrial, and agricultural areas.

We find that the river is very important. And, of course, this is important for nourishing the islands, and so on. We find that the swamps and marshes that line the river and the basins are important and we find that the barrier islands are very important. The barrier islands ring the system; without the barrier islands there would not be this incredible oyster, shrimp, crab, and fish productivity.

What the islands do essentially is they hold in the freshwater runoff, the nutrients, various goods that move into the system. It leaks out in various areas, but by and large it is sort of like a huge test tube type thing where the whole current structure is slowed up and we have incredible productivity.

If you were to wipe out the barrier islands, and we have done this with actual natural experiments, or unnatural; one of the public works projects that has gotten in is our Bob Sykes cut. Bob

Sykes, as you know, is a Congressman. This cut was named after him. And the cut was put into the island. We figured it reduced the productivity of the bay by about one-twelfth to one-sixteenth. Every time you cut a hole in this you are leaking out some of these goods and the system becomes that much less productive. I have got this written in papers, I can supply them if you are interested.

Then a bridge was built in the late 1960's. Again, another public works project funded by the Federal Government, largely. The problem with that was that immediately the island became, the big island, St. George Island, which is probably the biggest of the series of islands that ring this area, this island then became very hot property. And we have had problems with it ever since. Trying to protect this very delicate oyster industry, which is a delicate industry, indeed, from going down the tubes due to coliform bacteria infections coming from septic tanks, runoff from all the structures, including the bridge itself and all of the associated structures of houses and everything else, it eventually accumulates on the island.

What Dr. Godfrey has said is quite true, the islands themselves are delicate, very distinct ecosystems in their own right. They are not part of the mainland, in that sense, they are very different types of ecosystems. But on the other hand, they are a part of the larger ecosystem which is very important to the natural productivity of many of these areas. I know what I am talking about because I lived in New Jersey when I grew up, and I was on Long Beach Island and used to walk along those islands and take out crabs and all sorts of seafood that just are not there anymore today—are all the reasons that we are fighting down in Apalachicola now.

Just a week ago the entire bay was closed due to coliform bacteria, and there are a lot of people now who are out of jobs down there, people along with their ancestors, who have been working these bays for the past 200 years; now the realization that we are coming to down there is this whole way of life has been threatened. And what we are finding is that most of our problems are coming right out of the Federal Government. All of the major problems that we are having are due to these great public works projects. For instance, we have been fighting the corps for years. They want to build a series of dams along the river so that they can industrialize the river. They want to make this river the ruler of the South. All federally funded. The bridges and all of the other types of activities that have been funded through these types of projects actually benefit very few people. A few real estate developers are going to get very rich. You can have a few rich people out there in nice air-conditioned conditions on the island but these fishermen, these people who have lived along this bay all their lives, are right now out of business because of the problems that they are having with this kind of development that these types of projects bring.

I am not too happy. In fact, I am very unhappy with the entire situation because what it boils down to is very simple. We all pay taxes, so do these people who live along the coast. These taxes then come back to us in these public works projects which benefit a very narrow proportion of our population. What they do, just by their own nature, is simply go away. You do not hear anymore about them, another industry is finished. I am familiar with this because

I lived along these coasts all my life and I know what happens to fishermen and people who live off the land once this kind of development gets involved.

To be more precise, what we are doing is we are substituting naturally subsidized systems. Systems that work perfectly alright by themselves if we leave them alone, which people can make a living off of and which take very little energy to run with subsidized systems that have to be maintained by a tremendous amount of energy. We are, in reality, reducing our productivity, we are destroying the intrinsic worth of areas that we can never create again, and that will be gone once they are gone, they are gone forever.

I have seen this happen all through Florida, all through New Jersey, I am now involved in a very unpleasant situation in the largest estuarine sanctuary in the country. This situation is not over as far as we are concerned. I think I can speak for the people down there right now, and I will tell you right now that as long as I am around and as long as they are around, somebody is going to hear about this and we want action, but the right kind of action. And we are tired of Federal subsidies of the types of projects that put these people out of business.

I can give you all the good scientific reasons why these islands are important to protect. We have got them documented, I have a series of publications that nobody reads. But I can tell you, quite frankly, as a person, as a scientist who has worked with these people, that something has to be done, it has to come from the Congress of the United States because this is where all these great projects are coming from. Somebody has to listen and find out what is going on today in this country. It is not right, I do not like it, we do not like it down there, for what it is worth, and that is what I have to tell you.

Mr. CLARK. Any questions?

Mr. BURTON. Congressman Bereuter.

Mr. BEREUTER. No questions.

Mr. BURTON. Staff.

Mr. CRANE. Just one question, you talked about the losses in seafood, I assume fisheries as well as shellfish, related to developments on barrier island. Have any efforts been made or any work been done to quantify those losses, either in economic terms or in poundage, in any of the barrier island groups.

Dr. LIVINGSTON. In ours, yes. Apalachicola has been fairly well documented economically. This is the entire economic base for a whole region, and part of the country. When this hit, three counties had to get Federal help, you know, subsidies, for disaster areas, so economically these people depend solely on this system for their livelihoods. And, I would say, fully 70 percent of the jobs in Franklin County, Florida, are dependent on the oyster industry and related seafood industry. When that goes, these people have no recourse. There are no other jobs. They have to leave the area.

Mr. CRANE. Can you quantify that? Can you put dollars or jobs on it and submit it for the record?

Dr. LIVINGSTON. Yes, that has been done and there are a series of papers on this, the economics of that industry and how the multiplier effects and so on. The industry, itself, is worth, just extrinsi-

cally, I think between $5 and $10 million, but when you pump it up with all the multipliers and stuff like that it goes up to $50, $60, $70 million for the entire industry.

Mr. CRANE. Can you submit for the record the historic data?

Dr. LIVINGSTON. I can.

Mr. CRANE. Thank you very much.

[EDITOR'S NOTE.—The information requested had not been submitted at time of printing; and will be placed in the committee files when received.]

Mr. CLARK. Shall I proceed?

Mr. BURTON. Please.

Mr. CLARK. My name is John Clark. I'm with the Conservation Foundation in Washington, D.C. This is a private policy and resource analysis group. We have worked at the Conservation Foundation in coastal matters for over 25 years. I have personally worked for the Conservation Foundation for the last 8 years on coastal matters. I started out as a commercial fishermen, became a fish biologist, then an estuarine ecologist, and finally a coastal planner. I've written a few books and a number of papers, and I have continued over the last 8 years to work in planning operations from the community level on trying to solve coastal development problems.

Although I have seen, inspected and worked with barrier islands in most the coastal States, my experience is deepest in Florida, and to a lesser extent, in South Carolina.

What I find in planning work is that all of what my colleagues have said, the warnings that they give, the conditions that they have explained, make it extremely difficult for local governments to provide for the health, safety, and welfare of citizens living on the barrier islands, and for the protection of coastal resources, and environments of the estuaries as well.

I would like to point out to you that behind every barrier island is an estuary, the type of productive system that my colleague Dr. Livingston mentioned. For instance for New Jersey, if you look at the map you will see a thin edge of barrier islands extending along the outer coast. In behind those islands lie the bays, the sloughs, the lagoons, the sounds and the other elements that make up the Nation's extremely rich and productive estuarine system.

The local governments cannot properly protect people against property damage and threat to life from hurricanes without exercising very strong controls over how people use the land, where they build, how they build, and how many houses and how many people will be allowed on each island. And yet it has been extremely difficult, politically, to pass the ordinances needed and to defend these in court because they involve that basic element of our society, personal property rights. The local governments cannot provide the basic services that are needed for development of islands without heavy public subsidies for bridges, roads, water, sewage, beach fortifications, and so forth.

The Federal Government provides this subsidy, but the Federal Government does little, if anything, to help local government plan for the consequences of these actions. We've been called in just recently, down to Franklin County, in this Apalachicola area that Dr. Livingston described, to try to help those people resolve the

problems that are going on since that bridge was built out to St. George's Island and since St. George's Island approached the runaway situation

The result of all of this is a paradox. The services provided at great public expense, cause runaway growth that local governments cannot control. The effects are extraordinary risk to life and property and great damage to the coastal environment and its resources such as oysters, fish, crabs and waterfowl. All are declining rapidly because their habitats are being destroyed by development, and the waters they live in are being degraded by pollution from land development.

When disaster strikes, either a hurricane wipe-out or resource collapse, the Federal Government must come in and rescue the situation at great expense to the taxpayers. Apalachicola Bay has become polluted, the Government has declared it a disaster area, people that want to work can't work; the Feds come in with the money, then the whole thing gets tipped upside down. A problem that could have been remedied in the first place, if the development had not been allowed to proceed in that unwise fashion. Once these islands are developed with Government support, they remain as a continuing liability forever.

The solution is to stop this cycle by cutting off Federal subsidy for all islands and by purchasing some selected ones and adding them to the Park Service. This would help many local governments.

My experience with island planning confirms this fact. Demand for the infrastructure, bridges, sewers, and so forth, comes from speculators, not from the residents.

In fact, in many cases the residents fight against bridges that open the islands to runaway growth. Let me tell you about Sanibel, you'll be hearing more about it. But in the late 1950's a proposal came up to provide a bridge from the mainland to Sanibel Island. The people that lived out there, the residents, did everything in their power to fight against it to convince Lee County not to let that happen. The bridge, nevertheless, was built. The people began to come to the island, developers began to develop at an outrageous rate; it finally took the city to get together, Sanibel, to get together and incorporate as a city to get the land-use controls in their own hands, before they could stop it.

There exists today a tremendous risk imposed by that development. All because of the lust for money by speculators that caused them to get that bridge built out to that island and the insensitivity of the Lee County Commissioners who let it all go ahead when the residents of that island did everything they could within their power to fight against it.

I'd like to mention a couple of other islands. Gasparilla Island on the southwest coast of Florida, where I tried to help them plan, has lost 700 feet. Now that's five lots deep in only 30 years by erosion caused partly by careless action of the Corps of Engineers in an inlet project, and partly by the rise of sea level that we heard about earlier.

Folly Beach, S.C.; 40 percent of the houses on Folly Beach Island will be in the sea, according to predictions by the Corps of Engineers, in the next 50 years. Those are the problems that we have,

and that is the dilemma of planning. Local governments are not able to cope with the effects of these heavy Government subsidies that get the development on these islands started, and in a runaway situation. Thank you.

Mr. BURTON. Thank you very much. Congressman Bereuter

Mr. BEREUTER. Mr. Clark, were you involved in the planning of Sanibel Island?

Mr. CLARK. Yes, sir.

Mr. BEREUTER. I'd like to personally give you my congratulations on your work; it's noted as an outstanding example in the urban planning profession. I'm pleased to have your testimony here today.

Mr. CLARK. Thank you. I'd like to say that the Conservation Foundation, with the help of 15 technical folks, put together the environmental part of that.

The planning work was done by Wallace, McHarg, Roberts & Todd, from Philadelphia, and the ordinances and the legal part was done by Ross Hardees and so forth from Chicago with Fred Bosselman.

We only did the environmental part. I'm proud to accept your compliments, and I will extend it to my colleagues in those other two firms, thank you.

Mr. BURTON. It would be helpful to have you spell out the names of those firms that you mentioned and give them to the reporter.

Mr. CLARK. I shall write them down and do so.

Mr. BURTON. Well, your testimony is sobering and impressive. Thank you all, very much.

Panel No. 3. Dery Bennett, Porter Goss, Wallace Kaufman, Della McCaughan, Hans Neuhauser, and Dinesh Sharma.

[Prepared statements of Dery Bennett, Wallace Kaufman, Della M. McCaughan, Andrew A. Balius, Hans Neuhauser, Porter J. Goss, and Dinesh C. Sharma may be found in the appendix.]

**PANEL CONSISTING OF: DERY BENNETT, EXECUTIVE DIRECTOR, AMERICAN LITTORAL SOCIETY, SANDY HOOK, N.J.; WALLACE KAUFMAN, PRESIDENT, HEARTWOOD, REALTY, INC., AND PRESIDENT, CONSERVATION FOUNDATION CARRBORO, N.C.; DELLA M. McCAUGHAN, BARRIER ISLAND COALITION, BILOXI, MISS.; ANDREW A. BALIUS, GULF COAST FISHERMAN, BILOXI, MISS.; HANS NEUHAUSER, GEORGIA, CONSERVANCY, SAVANNAH, GA.; PORTER GOSS, COUNCILMAN, SANIBEL, FLA.; AND DINESH C. SHARMA, ENVIRONMENTAL RESOURCES CONSULTANT, FORT MYERS, FLA.**

Mr. BENNETT. Mr. Chairman, my name is Dery Bennett. I'm executive director of the American Littoral Society. This is a regional panel. We have six people here to go into detail on specific cases that they know of up and down the coast. I've asked them to be brief and summarize their statements. We have changed the order slightly so that Porter Goss who was second will go fifth, otherwise we'll follow the order and I'll ask each one of them to introduce themselves as they come up on the agenda.

I speak on behalf of the American Littoral Society, which is a public interest group, located just north of Orrin Pilkey's favorite

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Wright, Dana K |
| **Cc:** | Niemi, Katie |
| **Subject:** | Re: [EXTERNAL] New Hanover County, NC |
| **Date:** | Wednesday, August 22, 2018 9:35:16 AM |
| **Importance:** | High |

---

Thanks Dana, I think a call to discuss may be helpful. As I said, the Corps has not contacted me for technical assistance, but in talking to Mr Layton, they have had discussions with the Corps on the CBRA requirements. So, no one is waiting on me for an answer but would like to hear your thoughts. Please set it up at your convenience. 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

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On Wed, Aug 22, 2018 at 8:49 AM, Wright, Dana <dana_wright@fws.gov> wrote:

> Hi Cindy,
>
> Thanks for getting back to him. I think we may have talked with the Wilmington office briefly about this concept, but I'm sure that nothing was ever resolved. The law says that federal financial assistance is affected by CBRA because it is "new" in the following circumstances (16 USC 3504(b)):
>
> > (1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date on which the relevant System unit or portion of the System unit was included within the System (in most cases this was either 1982 or 1990) or;
> > (2) no legally binding commitment for the expenditure or financial assistance was made before such date. (16 U.S.C. 3504(b))
>
> **I would say that the authorization date for the project has no effect on whether the project needs to comply with the CBRA, and that it's solely the date of the appropriation. So for example, if a project in the CBRS was authorized in 1980 but not funded until 2012, that project would need to comply with CBRA even though it was authorized before the CBRA was enacted. Should we set a call with you and me and Katie to discuss?**

(b) (5)

[redacted]

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 3:05 PM, Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

> Hi Dana, it was about a consistency project.
>
> The Storm Reduction projects that the Corps authorized for Wrightsville and Carolina Beach have expired either due to time limit or the use of all the funding. The Corps is saying that if they reauthorize these projects they may be subject to CBRA since it is new money.
>
> This is the first time I have run across "existing projects" now expiring and something that has been done for 50 or so years is now needing to be "reauthorized", so I don't think we have precedent. Mr Bedsole mentioned that they were the first beaches to be authorized in

the 60s. I told him it was basically the Corps' call and I have not been contacted by the Corps (it was their Washington counsel)to discuss the project. Have you had any contact with them or request for discussion or interpretation? This is something we will need to put on our "to discuss" agenda with our Solicitor's perhaps.

(b) (6) [redacted] Take care, and don't worry about replying to this immediately.

cb

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, Aug 21, 2018 at 1:50 PM, Wright, Dana <dana_wright@fws.gov> wrote:

Hi Cindy,

Could you please call Mr. Bedsole for me? My assumption is that it's about a consultation issue rather than a mapping issue.

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: **Bedsole, Layton** <lbedsole@nhcgov.com>
Date: Tue, Aug 21, 2018 at 1:36 PM
Subject: [EXTERNAL] New Hanover County, NC

To: "Dana Wright (dana_wright@fws.gov)" <dana_wright@fws.gov>

Good Afternoon,

May I have a few minutes of your day to discuss Masonboro Inlet and Carolina Beach Inlet, both located in New Hanover County, NC.

Thanks!

L.

**Layton Bedsole | Shore Protection Coordinator**
Engineering
New Hanover County
230 Government Center Drive, Suite 160
Wilmington, NC 28403
(910) 798-7104 p | (910) 798-7051 f
www.nhcgov.com

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Chen, Linus Y |
| **Cc:** | Niemi, Katie |
| **Subject:** | Re: Please review CBRA letter DCN 068399 |
| **Date:** | Tuesday, August 28, 2018 3:21:58 PM |
| **Attachments:** | Graves et al 068399 CBRA Response 8.23.18 SOL lyc DKW response.docx<br>Graves et al 068399 CBRA Response 8.28.18.docx |
| **Importance:** | High |

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Thanks for your edits Linus. Katie and I discussed today and we made most of your changes. (b) (5) [redacted] I have attached your edited version with my responses to your comments and also the most recent clean version of the letter. It's currently open in DTS with Gina and Gary. Please let me know if you have any further changes. If not, I'll go ahead and upload to DTS.

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 24, 2018 at 1:21 PM, Linus Chen <linus.chen@sol.doi.gov> wrote:

> Looks good. Comments/edits attached. (b) (5) [redacted]
>
> I want to take another look at the 1994 SOL opinion, but I'm guessing I won't have any additional comments after looking at the SOL opinion.
>
> On Thu, Aug 23, 2018 at 1:30 PM Wright, Dana <dana_wright@fws.gov> wrote:
>
> > Hi Linus,
> >
> > Can you please review the attached draft letter to seven members of Congress regarding CBRA and dredging/beach nourishment projects? Please let me know if you have any questions. This letter has not been assigned to SOL in DTS yet, that will happen after Gary and others have reviewed on our end.
> >
> > The DCN is 068399.
> >
> > 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

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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) regarding our interpretation of certain provisions of the Coastal Barrier Resources Act (CBRA).[1]

(b) (5)

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(b) (5)

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[redacted]

[redacted]

[redacted]

(b) (5)

We hope this information is helpful. If you have any additional questions concerning this matter, please contact Mr. Gary Frazer, Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

Deputy Director

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.

---

(b) (5)

Representative David Rouzer
Representative Randy K. Weber

Enclosures

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FWS/AES/DBTS/BGMTS/068399

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(b) (5)

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(b) (5) [redacted]

[redacted]

[redacted] We hope this information is helpful. If you have any additional questions concerning this matter, please contact Mr. Gary Frazer, Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

Deputy Director

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

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(b) (5) [redacted]

| | |
|---|---|
| **From:** | Frazer, Gary D |
| **To:** | Wright, Dana K |
| **Cc:** | Niemi, Katie; Phinney, Jonathan T; BalisLarsen, Martha |
| **Subject:** | Edits to DCN 68399 |
| **Date:** | Wednesday, August 29, 2018 12:55:11 PM |
| **Attachments:** | Graves et al 068399 CBRA Response 8.28.18 AES edits.docx |
| **Importance:** | High |

---

Dana -- Excellent letter. Thank you.

Would you confirm that I haven't mischaracterized anything or otherwise gone astray in the attached edits?

(b) (5) [redacted] -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

The Honorable Garret Graves
House of Representatives
Washington, D.C. 20515

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(b) (5)

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(b) (5)

We hope this information is helpful. If you have any additional questions concerning this matter, please contact Mr. Gary Frazer, Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

Deputy Director

b5-DPP

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Frazer, Gary D |
| **Cc:** | Niemi, Katie; Phinney, Jonathan T; BalisLarsen, Martha; Wellman, Lois A |
| **Subject:** | Re: Edits to DCN 68399 |
| **Date:** | Wednesday, August 29, 2018 1:51:25 PM |
| **Attachments:** | Graves et al 068399 CBRA Response 8.29.18.docx |
| **Importance:** | High |

---

Gary,

Thank you for your edits. Katie and I just reviewed we accepted all of them. Attached is a clean version of the letter.

(b) (5) [redacted].

Thanks again,

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 12:55 PM, Frazer, Gary <gary_frazer@fws.gov> wrote:

> Dana -- Excellent letter. Thank you.
>
> Would you confirm that I haven't mischaracterized anything or otherwise gone astray in the attached edits?
>
> (b) (5) [redacted] -- GDF
>
> *Gary Frazer*
> *Assistant Director -- Ecological Services*
> *U.S. Fish and Wildlife Service*
> *(202) 208-4646*

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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) regarding our interpretation of certain provisions of the Coastal Barrier Resources Act (CBRA).[1]

(b) (5)

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(b) (5)

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Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

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**To:** Wright, Dana K
**Cc:** Niemi, Katie; Phinney, Jonathan T; BalisLarsen, Martha; Wellman, Lois A
**Subject:** Re: Edits to DCN 68399
**Date:** Wednesday, August 29, 2018 2:07:54 PM
**Importance:** High

---

(b) (5) [redacted]

I'll have to discuss with the Director's office how much Departmental review is desired here. The Department assigned it to FWS for response. -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

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>
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(b) (5)

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Niemi, Katie; Phinney, Jonathan T |
| **Subject:** | Fwd: Question about SOL surname on 068399 |
| **Date:** | Wednesday, September 5, 2018 3:25:19 PM |
| **Attachments:** | Graves et al 068399 CBRA Response 8.23.18 SOL lyc DKW response compare bcj (1).docx<br>Graves et al 068399 CBRA Response 9.4.18 bcj.docx |
| **Importance:** | High |

---

FYI. I haven't reviewed the edits yet.

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)

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---------- Forwarded message ----------
From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Wed, Sep 5, 2018 at 3:02 PM
Subject: Re: Question about SOL surname on 068399
To: "Wright, Dana" <dana_wright@fws.gov>

Hi Dana,
I had Ben look over the letter, and he had some edits (nothing big). Attached is a version that compares an earlier one that I commented with the version from yesterday which Ben commented on. For your convenience, I transferred his comments/edits to a "cleaner" version. If you accept all of them, I'll let him know; I'm not sure if he needs to surname the letter, however we do want to let Peg Romanik, our Associate Solicitor, know about the letter because of the 1994 DPW solicitor's opinion. I think my surname (or mine and Ben) is enough, but we'll know once I pass a revised letter (and the 1994 opinion) to Peg.
Linus

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> Hi Linus,
>
> This package is now open with you in DTS. (b) (5) [redacted]
>
> Thanks,
>
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> Program Specialist
> Ecological Services
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Learn more about the Coastal Barrier Resources Act

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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.

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

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Program Specialist
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Learn more about the Coastal Barrier Resources Act

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Linus Y. Chen, Attorney

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(f) 202-208-3877

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

The Honorable Garret Graves
House of Representatives
Washington, D.C. 20515

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(b) (5)

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(b) (5)



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Sincerely,

Deputy Director

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures



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Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

**From:** Niemi, Katie
**To:** Wright, Dana K
**Subject:** Re: Question about SOL surname on 068399
**Date:** Thursday, September 6, 2018 11:19:33 AM
**Importance:** High

---

I just reviewed and accepted all Ben's edits. Thanks.

Katie

On Wed, Sep 5, 2018 at 3:55 PM, Wright, Dana <dana_wright@fws.gov> wrote:

> I'm good with Ben's edits. He made a couple good points and had some minor editorial things. Katie, can we discuss tomorrow after the FEMA call?
>
> Dana Wright
> Program Specialist
> Ecological Services
> U.S. Fish & Wildlife Service
> 5275 Leesburg Pike, MS: ES
> Falls Church, VA 22041
> 703-358-2443 (office)
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Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
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Learn more about the Coastal Barrier Resources Act

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U.S. Fish & Wildlife Service
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703-358-2443 (office)
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Learn more about the Coastal Barrier Resources Act

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>
> --
>
> Linus Y. Chen, Attorney
>
> Division Parks & Wildlife
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> (w) 202-208-5036
>
> (f) 202-208-3877

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

**From:** Wright, Dana K
**To:** Chen, Linus Y
**Cc:** Niemi, Katie
**Subject:** Re: Question about SOL surname on 068399
**Date:** Thursday, September 6, 2018 11:23:28 AM
**Attachments:** Graves et al 068399 CBRA Response 9.6.18.docx
**Importance:** High

---

Thanks Linus! We've accepted all of Ben's edits. I went ahead and attached a clean copy in case you want to update DTS for any further review in your office. The DTS routing is still open with SOL-DPW.

Dana Wright
Program Specialist
Ecological Services
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: ES
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Learn more about the Coastal Barrier Resources Act

--

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Division Parks & Wildlife

(w) 202-208-5036

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In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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We hope this information is helpful. If you have any additional questions concerning this matter, please contact Mr. Gary Frazer, Assistant Director for Ecological Services, at (202) 208-4646.

Sincerely,

Deputy Director

cc: Representative Doug Lamborn
Representative Walter B. Jones
Representative Frank A. LoBiondo
Representative Neal P. Dunn, M.D.
Representative David Rouzer
Representative Randy K. Weber

Enclosures

**From:** Niemi, Katie
**To:** BalisLarsen, Martha
**Subject:** Re: [EXTERNAL] Meeting on CBRA and Beaches
**Date:** Monday, October 15, 2018 10:07:33 AM

---

Martha,
Thanks for calling Derek. Does he want to talk about our CBRA sand mining policy or more broadly about CBRA and beach nourishment? Does he want to talk about individual areas/projects? Depending on the nature of what he wants to talk about, we may need to loop in Cindy and perhaps it should be a call instead of in person meeting. If the focus is on CBRA and the sand mining policy, we could send him the Solicitor's memo and describe our policy which is currently in effect.

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 Fri, Oct 12, 2018 at 1:43 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

> I talked with Derek and agreed to a meeting in November. I explained that you have been doing your best to set up this meeting but we have hesitant given the internal review ongoing. He explained that they would like to meet to hear our position because they have heard from some members but as an organization, they do not have a position on CBRA and sand mining. Since he has a board meeting October 29 - Nov 6, I set up meeting for November 7 at 2 pm here. I explained that we might not have anything new to add and he assured me that he just wants to discuss our current position.
>
> Hopefully this date/time works for either you or Dana to join me.
>
> Martha
>
> On Fri, Oct 12, 2018 at 11:10 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> > Martha,
> > Can you please call Derek. Tel. below. Thanks.
> >
> > 202-827-4246 (office)
> >
> > 917-536-6878 (cell)

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)*

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917-536-6878 (cell)

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www.twitter.com/asbpa

**From:** Niemi, Katie
**To:** Wright, Dana K
**Subject:** Re: [EXTERNAL] Follow up on CBRA
**Date:** Friday, November 16, 2018 12:20:52 PM
**Importance:** High

---

Dana,
Thanks for drafting. (b) (5) [redacted]

[redacted]

Katie
On Fri, Nov 16, 2018 at 10:20 AM Wright, Dana <dana_wright@fws.gov> wrote:

> Hi Katie,
>
> Does Derek still need a response?
>
> 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 Fri, Nov 9, 2018 at 1:33 PM Wright, Dana <dana_wright@fws.gov> wrote:
>
>> Here is a draft response to the highlighted question in his email below. Not sure if the formatting of the excerpt will get messed up in translation from one email system to another...we could also take a screenshot and insert it as an image if that is a concern.
>>
>> Dana
>>
>> ~~~~~~~~~~~~~~~
>>
>> (b) (5) [redacted]

(b) (5) [redacted]

On Fri, Nov 9, 2018 at 8:34 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Dana,
Can you draft a response to Derek's questions on the 6(a)(6) exceptions? Thanks.

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)*

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www.twitter.com/asbpa

**From:** Niemi, Katie
**To:** Wright, Dana K
**Subject:** Re: [EXTERNAL] Follow up on CBRA
**Date:** Thursday, November 29, 2018 12:29:50 PM
**Importance:** High

---

Dana,
Please see revised email response language below. (b) (5) [redacted]
Thanks.
Katie

DRAFT EMAIL:

(b) (5) [redacted]

[redacted]

[redacted]

(b) (5)

Katie

On Fri, Nov 9, 2018 at 1:34 PM Wright, Dana <dana_wright@fws.gov> wrote:

> Here is a draft response to the highlighted question in his email below. Not sure if the formatting of the excerpt will get messed up in translation from one email system to another...we could also take a screenshot and insert it as an image if that is a concern.
>
> Dana
>
> ~~~~~~~~~~~~~~
>
> (b) (5)

(b) (5)

[redacted]

On Fri, Nov 9, 2018 at 8:34 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

Dana,
Can you draft a response to Derek's questions on the 6(a)(6) exceptions? Thanks.

Katie

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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 –

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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).

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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?

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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)*

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Derek.Brockbank@asbpa.org

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www.twitter.com/asbpa

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Niemi, Katie |
| **Subject:** | Fwd: CBRA Reclassification Coordination |
| **Date:** | Wednesday, February 13, 2019 1:26:49 PM |
| **Attachments:** | 068399 Signed.pdf<br>Sol Opinion exception 6(a)(6)(G) and USACE letter.pdf |
| **Importance:** | High |

---

Just FYI - I chatted with Martha about whether to send the Graves letter to Wendi along with the SOL opinion before I sent it. She agreed that we could do that to show that this Administration has recently reviewed this issue and declined to reconsider 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

---------- Forwarded message ---------
From: **Wright, Dana** <dana_wright@fws.gov>
Date: Wed, Feb 13, 2019 at 1:10 PM
Subject: Re: CBRA Reclassification Coordination
To: Weber, Wendi <wendi_weber@fws.gov>
Cc: Niemi, Katie <katie_niemi@fws.gov>, Eric Schrading <eric_schrading@fws.gov>, Hastie, Kyla <kyla_hastie@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>, Frazer, Gary <gary_frazer@fws.gov>, Jennifer Zosh <jennifer_zosh@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Deborah Rocque <Deborah_Rocque@fws.gov>, Spencer Simon <spencer_simon@fws.gov>, Jonathan Phinney <jonathan_phinney@fws.gov>

Hi Wendi,

The SOL opinion and related a letter from AS-FWP to the Corps are attached - you can share those with the DEP.

For your awareness, seven members of Congress raised this issue with us in a letter we received in June. As described in the attached response letter dated December 21, 2018, the Administration has considered this matter and declined to review it any further.

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, Feb 13, 2019 at 12:56 PM Weber, Wendi <wendi_weber@fws.gov> wrote:

> Thank you Dana, this is helpful. I spoke with Catherine McCabe and told her where we are in the process. I told her that once we internally had a chance to talk in detail about the state comments and better understand how we will be responding that I would set up another call to discuss where we may have differences and why. She did ask if we could provide the SOL opinion on Hereford Inlet, do you have that for me to share? She was appreciative of this suggested approach and will be waiting for me to follow up with her. I appreciate everyone's time this morning. It was informative and helpful. Looking forward to continuing our discussion.
>
> Thanks again,
> Wendi
>
> On Wed, Feb 13, 2019 at 11:03 AM Wright, Dana <dana_wright@fws.gov> wrote:
>
>> Hi Wendi,
>>
>> You requested copies of our records of initial coordination with the NJ DEP. We received this same request from the NJ Coastal Zone Manger (Kim Springer) during the comment period. The summary of our coordination efforts that we provided is below and records of communication are attached. Our communications were with the Division of Fish and Wildlife and the Division of Parks and Forestry, which are both under the Assistant Commissioner for Natural and Historical Resources. I do not know whether these Divisions brought their Assistant Commissioner into that decision making process.
>>
>> I found one email in particular in our records that I thought might be helpful to you, which I have attached separately (see the file dated 6.8.16). I connected with the Chief of Staff to the DEP Commissioner (Magdalena Padilla) back in 2016 and worked with her to set up a meeting with DEP folks to discuss the project. I wanted to ensure that our project had broad visibility within DEP leadership. Information about that meeting is included in the email.
>>
>> I am happy to provide any further information as necessary. Thanks for your time 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

---------- Forwarded message ---------
From: **Wright, Dana** <dana_wright@fws.gov>
Date: Thu, May 17, 2018 at 11:28 AM
Subject: CBRA Reclassification Coordination
To: Springer, Kim <Kim.Springer@dep.nj.gov>
Cc: Katie Niemi <Katie_Niemi@fws.gov>

Hi Kim,

As we discussed earlier this week, I'd like to follow up with you regarding the proposed reclassification of a number of DEP owned areas from OPA to System Unit. We reached out to folks in both the Division of Fish and Wildlife and the Division of Parks and Forestry in 2016 to discuss the mapping of DEP owned lands. I've attached a file containing relevant emails and the meeting invites that I found on my calendar.

Please see our Federal Register notice for information on how we conducted our initial outreach: https://www.federalregister.gov/d/2018-04889/p-28. Information regarding how we deal with the unit type classification for areas that were conserved prior to CBRA designation is here in the notice: https://www.federalregister.gov/d/2018-04889/p-61.

The following DEP owned areas intersect with proposed System Unit areas (described in the highlighted portions of attached unit summaries):

- Navesink River WMA (very minor area) - Unit NJ-04A
- Swan Point State Natural Area - Unit NJ-04B
- Cape May Wetlands WMA - Unit NJ-08 and NJ-09
- Dennis Creek WMA - Unit NJ-12 and NJ-14
- Heislerville WMA - Unit NJ-14

Most of these DEP owned areas proposed for reclassification to System Unit can be changed back to OPA if that is what you ask for in your comments. The mapping in some of these areas would be complicated (mostly NJ-14) because of the patchwork of conserved lands mixed in with private lands. Please note that areas **currently** within System Units that were acquired by the DEP for conservation purposes **after** the initial CBRS designation in 1990 would not likely be reclassified to OPA.

Also, I think it might be helpful for you to have the New Jersey volume of our 1988 Report to Congress on the CBRS, which has the draft maps that we presented to Congress for New Jersey. This report contains some good information about the factors that were considered at the time. Comment letters from the Governor and others are also included in this document: https://www.fws.gov/cbra/documents/1988-Report-to-Congress/1988_Report_Vol_07_NJ.pdf.

Please give me a call if you'd like to discuss.

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

--

Wendi Weber
Regional Director
Department of the Interior
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589
413/253-8300
413/253-8308fax
413/531-5163cell
wendi_weber@fws.gov

# 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.

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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.

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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.

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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

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 renourishent 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,

/sgn/ 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-PMOSecretary'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\kelseyl\Zirschky.ltr
REVISED:AES:MNash:4/3/95

| | |
|---|---|
| **From:** | Lawrence Malizzi |
| **To:** | Derek Brockbank; Niemi, Katie |
| **Cc:** | "Spencer Wetmore" |
| **Subject:** | RE: [EXTERNAL] RE: USFWS Visit During the ASBPA Coastal Summit on March 13th |
| **Date:** | Wednesday, March 6, 2019 8:50:18 PM |
| **Attachments:** | image001.png<br>image002.png<br>image003.png<br>image004.png<br>image005.png |
| **Importance:** | High |

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Thanks Derek!


**Lawrence D. Malizzi**
Senior Manager
302-598-7553
Lawrence.Malizzi@obg.com| **www.obg.com**


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---

**From:** Derek Brockbank [mailto:derek.brockbank@asbpa.org]
**Sent:** Wednesday, March 6, 2019 10:55 AM
**To:** 'Niemi, Katie' <katie_niemi@fws.gov>; Lawrence Malizzi <Lawrence.Malizzi@obg.com>
**Cc:** 'Spencer Wetmore' <swetmore@cityoffollybeach.com>
**Subject:** RE: [EXTERNAL] RE: USFWS Visit During the ASBPA Coastal Summit on March 13th

Apologies for me jumping in since I will also not be able to attend (unfortunately this is simultaneous to our US Army Corps meeting!)

I think our CBRA issues will be similar to our last discussion. We continue to hear federal coastal projects are being delayed and made more expensive due to restrictions in using sand from shoals and inlets in CBRA zone. We are also hearing that Rep. Graves is interested in drafting some leg language that would address these issue, so we'd love to hear how you think this could be addressed while maintaining the goals and purpose of CBRA? Basically what modifications or parameters would you recommend to ensure restoration projects have wildlife benefits in order to gain access CBRA-

area sand?

Again, my apologies for not being able to attend this meeting. I hope we can follow up (in person or by phone) after the meeting. I'm also not sure if the attendees of the meeting will have detailed understanding of CBRA. I'll be briefing them, and I know Steve Shuttleworth has a basic knowledge of some of the CBRA concerns in NC (Wrightsville beach), but I don't the depth of his knowledge.

Thanks again for meeting!
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, March 6, 2019 8:25 AM
**To:** Lawrence Malizzi <Lawrence.Malizzi@obg.com>
**Cc:** Derek Brockbank <derek.brockbank@asbpa.org>; Spencer Wetmore <swetmore@cityoffollybeach.com>
**Subject:** Re: [EXTERNAL] RE: USFWS Visit During the ASBPA Coastal Summit on March 13th

Lawrence,
Are there any CBRA specific issues you'd like to discuss?

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 Tue, Mar 5, 2019 at 10:36 PM Lawrence Malizzi <Lawrence.Malizzi@obg.com> wrote:

> Katie,

Our attendees have not changed. They would like to discuss a permitting process similar to the nationwide permit for environmental projects that includes all agencies from the beginning and better prioritizes and expedites the long-term environmental benefits that come with these projects. In particular, they would like to discuss ways to improve the approval processes on coastal resilience projects that provide environmental benefits with only minimal impacts. thx

**Lawrence D. Malizzi**
Senior Manager
302-598-7553
Lawrence.Malizzi@obg.com| **www.obg.com**

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**From:** Niemi, Katie [mailto:katie_niemi@fws.gov]
**Sent:** Tuesday, February 26, 2019 10:28 AM
**To:** Lawrence Malizzi <Lawrence.Malizzi@obg.com>
**Subject:** Re: [EXTERNAL] RE: USFWS Visit During the ASBPA Coastal Summit on March 13th

Sounds 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

On Mon, Feb 25, 2019 at 3:25 PM Lawrence Malizzi <Lawrence.Malizzi@obg.com> wrote:

> Katie,
>
> Thanks for the response. Steve Shuttleworth, Town of Carolina Beach,

steve.shuttleworth@carolinabeach.org, Bryan Chadwick, Town of Topsail Beach, townmanager@ntbnc.org, and Doug Gibson, San Eligo Lagoon Conservancy, doug@saneligo.org will be in attendance, at this point. We will get back to you with some suggested agenda items next week. thx

**Lawrence D. Malizzi**
Senior Manager
302-598-7553
Lawrence.Malizzi@obg.com| **www.obg.com**

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**From:** Niemi, Katie [mailto:katie_niemi@fws.gov]
**Sent:** Wednesday, February 20, 2019 9:41 AM
**To:** Lawrence Malizzi <Lawrence.Malizzi@obg.com>
**Cc:** BalisLarsen, Martha <martha_balislarsen@fws.gov>; Derek Brockbank <derek.brockbank@asbpa.org>; Spencer Wetmore <swetmore@cityoffollybeach.com>; Ben Thatcher <ben_thatcher@fws.gov>; Keith Paul <keith_paul@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: [EXTERNAL] RE: USFWS Visit During the ASBPA Coastal Summit on March 13th

Hi Lawrence,
We have folks available on March 13 from 1:00-2:00 to meet with you concerning CBRA as well as Section 7 consultations. Are there specific CBRA issues or areas that you'd like to discuss? Please let me know how many folks plan to attend and their names/email addresses.

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, Feb 18, 2019 at 8:22 AM Lawrence Malizzi <Lawrence.Malizzi@obg.com> wrote:

Katie & Martha,

Any thoughts as to the feasibility of the request below? We look forward to hearing from you. thx

**Lawrence D. Malizzi**
Senior Manager
302-598-7553
Lawrence.Malizzi@obg.com| **www.obg.com**

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**From:** Lawrence Malizzi
**Sent:** Friday, February 1, 2019 12:40 PM
**To:** 'Katie Niemi' <katie_niemi@fws.gov>; 'BalisLarsen, Martha' <martha_balislarsen@fws.gov>
**Cc:** Derek Brockbank <derek.brockbank@asbpa.org>; Lawrence Malizzi <Lawrence.Malizzi@obg.com>; Spencer Wetmore <swetmore@cityoffollybeach.com>
**Subject:** USFWS Visit During the ASBPA Coastal Summit on March 13th

Katie & Martha,

Hope all is well. ASBPA is having our annual Coastal Summit in March. We would like to come visit you again, and other appropriate colleagues, sometime on the afternoon of March 13th between 1:00 - 4:00 pm. Our folks will accommodate whatever works best for you all. We'd like to follow up on our fall meeting and we'll be having additional folks join, so we'll probably need to quickly cover some of the same ground we did in the fall to make sure everyone is up to speed. Also, we would like to discuss how to expedite Section 7 Consultations and how local beach communities can help support the USFWS working to come to determination quicker.

Please let me know your thoughts on this request and if there are others I need to reach out to in order to set up a meeting. Thank you for your consideration in this matter.

**Lawrence D. Malizzi**
Senior Manager
302-598-7553
Lawrence.Malizzi@obg.com| **www.obg.com**

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**From:** Derek Brockbank [mailto:derek.brockbank@asbpa.org]
**Sent:** Thursday, November 8, 2018 4:06 PM
**To:** 'Katie Niemi' <katie_niemi@fws.gov>; 'BalisLarsen, Martha' <martha_balislarsen@fws.gov>
**Cc:** Lawrence Malizzi <Lawrence.Malizzi@obg.com>
**Subject:** Follow up on CBRA

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

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www.twitter.com/asbpa

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**From:** Wright_Dana K
**To:** Chen_Linus Y
**Cc:** Niemi_Katie
**Subject:** Re: CBRS/CBRA in eenews (Avalon)
**Date:** Monday, March 25, 2019 1:29:33 PM
**Importance:** High

---

Hi Linus,

We did receive a letter from Congressman Van Drew last week. We have a response working its way through surname, but we don't think we need a legal review on it. Basically Rep. Van Drew asked us to reclassify the sand borrow site to an OPA (without legal or legislative action). We answered that we cannot make that change administratively, and that such a reclassification would need to be made through legislation. We explained why we didn't propose that the area be reclassified to OPA through the Sandy project, and noted that we are still in the middle of the remapping project and will respond to the comments we received. We also put in a few sentences to clarify the project consultation issue; he had characterized our 2016 consultation letter as a "reversal", but really it was a totally different project. The original project was an environmental restoration within the unit, whereas the 2016 project was for sand mining.

We'll send you a copy of the signed response once it is complete.

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, Mar 25, 2019 at 9:52 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:

> I guess I'll be seeing a response letter to Rep Jeff Van Drew soon?  How much pressure is FWS getting from Van Drew?
> And if Avalon sues again, Martha Ansty will handle the litigation?  If so, maybe she should also review the response letter to Van Drew?
> Linus
>
> https://www.eenews.net/climatewire/2019/03/25/stories/1060128119
>
> **ADAPTATION**
>
> # 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.

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Arnold, Jack |
| **Cc:** | Valenta, Aaron; Peters, Kristen E; Niemi, Katie |
| **Subject:** | Re: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD |
| **Date:** | Tuesday, March 26, 2019 2:46:01 PM |
| **Attachments:** | 20190319 SEN Burr and Tillis Carolina Wrightsville Beach Borrow Sites-In....pdf |
| **Importance:** | High |

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Thanks Jack.

Thanks for the info. This is the only example of this in the country that I know of. The Service did not determine the project was compliant in 1998, the Wilmington Corps determined they were compliant over our objection, and never consulted again to my knowledge. As you know, it is up to the funding agency to make a determination; we do not have "veto authority", nor do we have the ability to support a "perpetual CBRA exemption." Please let me know if you have any questions or need further staff input. Thanks, Cindy

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

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On Tue, Mar 26, 2019 at 12:56 PM Arnold, Jack <jack_arnold@fws.gov> wrote:

> Just FYI - relative to the call Mike and I had yesterday with COE-SAD
>
> Jack Arnold
> Acting Assistant Regional Director - Ecological Services
> U.S. Fish and Wildlife Service
> 1875 Century Blvd.
> Atlanta, GA 30345
> 404-679-7311 office
> 404-679-7081 fax
> 703-789-5620 cell
>
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---------- Forwarded message ---------
From: **Reese, Acquanetta** <acquanetta_reese@fws.gov>
Date: Mon, Mar 25, 2019 at 12:16 PM
Subject: Fwd: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD
To: Leopoldo Miranda <Leopoldo_Miranda@fws.gov>
Cc: Arnold, Jack <Jack_Arnold@fws.gov>

info for this afternoon's call

---------- Forwarded message ---------
From: **Duncan, Ruth L (Cindy) SAD** <Ruth.L.Duncan@usace.army.mil>
Date: Mon, Mar 25, 2019 at 11:05 AM
Subject: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD
To: acquanetta_reese@fws.gov <acquanetta_reese@fws.gov>

Acquanetta, attached is the memo I referenced last week that BG Holland received as copy furnished.

Also wanted to confirm you have the call in information for the 1530 this afternoon. You should have received the calendar invite from LT Gonzalez with the following dial in information.

Toll Free: 877-336-1280
Access Code: 7958088
Security Code:1234

Thank you,
Vr,
Cindy R.L. Duncan
Executive Officer to the Commanding General
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street SW
Atlanta, GA 30303-8801
ruth.l.duncan@usace.army.mil
404-562-5005 (Ofc)

--
***Acquanetta Reese*** ¦Executive Assistant to the Regional Director

**U.S. Fish and Wildlife Service ¦ Southeast Region**

1875 Century Blvd; Suite 400 ¦ Atlanta, Georgia 30345

**Phone:** 404-679-4000 ¦ **Fax:** 404-679-4006 ¦ **Email:** acquanetta_reese@fws.gov

> *"We all Die!! The goal isn't to live forever, it is to "create" something that will!"  Chuck Palahniuk*

United States Senate
WASHINGTON, DC 20510

March 18, 2019

The Honorable R.D. James
Assistant Secretary of the Army for Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Dear Mr. James:

We write to respectfully urge that you allow Carolina Beach and Wrightsville Beach to continue to borrow sand from Coastal Barrier Resource Zones to carry out their Coastal Storm Damage Reduction projects. The U.S. Fish and Wildlife Service (FWS) has urged the Corps of Engineers to use different borrow sites to, in their view, come into compliance with the Coastal Barrier Resources Act (CBRA), which was enacted decades after these projects began construction. When FWS initially voiced their concerns in 1998, the Wilmington District determined they were compliant with CBRA exceptions under 16 U.S.C. Section 3505(a)(2) and 16 U.S.C. Section 3505(a)(6)(G), and has upheld this determination ever since.

The towns have been utilizing sand from these areas for decades, and the alternative would be to use offshore borrow sites. A deviation from the original sand sources would increase costs for these communities and diminish the benefit-cost ratio significantly. We urge you to support the use of the traditional inlet borrow sites and advance the Wilmington District's environmental and economic justifications supporting perpetual CBRA exemptions for Masonboro Inlet and Carolina Beach Inlet.

Thank you for your consideration.

Sincerely,

Richard Burr
United States Senator

Thom Tillis
United States Senator

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Arnold, Jack; Benjamin, Pete |
| **Cc:** | Wells, Emily N; Augspurger, Tom; Matthews, Kathryn H; Ellis, John; Fish, Teresa L; Niemi, Katie; Wright, Dana K; Valenta, Aaron |
| **Subject:** | Re: [EXTERNAL] Meeting Request - CBRA Coordination, Carolina Beach & Wrightsville Beach -April 8th or 11th |
| **Date:** | Tuesday, April 2, 2019 9:25:46 AM |
| **Importance:** | High |

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Jack and Pete, I am assuming this is the meeting that was discussed after Jack and Mike had the call with SAD. How would you all like to proceed? I can go to Raleigh, preferably on the 11th. Cindy

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

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On Tue, Apr 2, 2019 at 8:28 AM Wright, Dana <dana_wright@fws.gov> wrote:

> Hi all,
>
> Katie and I are both available either day. We'd like to also have a pre-call with just FWS folks before the meeting.
>
> 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, Apr 1, 2019 at 3:06 PM Wells, Emily <emily_wells@fws.gov> wrote:

I am available on April 8th but not the 11th.

~Emily

---------- Forwarded message ---------
From: **Owens, Jennifer L CIV USARMY CESAW (US)**
<Jennifer.L.Owens@usace.army.mil>
Date: Mon, Apr 1, 2019 at 2:41 PM
Subject: [EXTERNAL] Meeting Request - CBRA Coordination, Carolina Beach & Wrightsville Beach -April 8th or 11th
To: Cynthia_Bohn@fws.gov <Cynthia_Bohn@fws.gov>, Katie_Niemi@fws.gov <Katie_Niemi@fws.gov>, Dana_Wright@fws.gov <Dana_Wright@fws.gov>, Teresa_Fish@fws.gov <Teresa_Fish@fws.gov>, Pete_Benjamin@fws.gov <Pete_Benjamin@fws.gov>, Tom_Augspurger@fws.gov <Tom_Augspurger@fws.gov>, Emily_Wells@fws.gov <Emily_Wells@fws.gov>, kathryn_matthews@fws.gov <kathryn_matthews@fws.gov>
Cc: McCorcle, Justin P CIV USARMY CESAW (US) <Justin.P.Mccorcle@usace.army.mil>, Gasch, Eric K CIV USARMY CESAW (US) <Eric.K.Gasch@usace.army.mil>, Glazener, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, Gatwood, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Keistler, Robert W CIV CESAW CESAD (US) <Robert.W.Keistler@usace.army.mil>, MEDLOCK, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>

Good afternoon,

The Wilmington District U. S. Army Corps of Engineers (Corps) is working on coastal storm risk management studies for Carolina Beach and Wrightsville Beach, examining alternatives to extend Federal participation in periodic nourishments for both projects. The projects were initially constructed in 1965 using Carolina Beach Inlet and Masonboro Inlet, respectively, as borrow sources and the projects have been periodically nourished for the past 50+ years using these inlet borrow sources. Both historic borrow areas are located in the Coastal Barrier Resources Act (CBRA) zone L09 and the placement areas are located outside this CBRA zone.

On behalf of the Corps' team working on these two studies, I'd like to request a face-to-face meeting with USFWS to discuss the CBRA implications for both studies. If at all possible, we'd like to meet in Raleigh on either April 8th or April 11th at 1030 am. If those options are not acceptable then please let me know and we'll work to find a mutually acceptable time.

Prior to the meeting, the Corps will provide read-ahead information that will include project details, as well as documents related to our past CBRA coordination with USFWS. We can also setup a teleconference line if needed. For now, please let me know of your availability to meet at 1030 am on April 8th or April 11th.

Please call me if you have any questions.

Thanks-
Jenny

Jenny Owens
Chief, Environmental Resources Section
Wilmington District, U.S. Army Corps of Engineers
69 Darlington Ave.
Wilmington, NC 28402
910-251-4757

--

Emily Wells
USFWS Fish and Wildlife Biologist
Raleigh Ecological Services Field Office
551-F Pylon Drive
Raleigh, North Carolina 27606
Office # 919-856-4520 x25
Fax # 919-856-4556

Mailing Address:
P.O. Box 33726
Raleigh, North Carolina 27636-3726

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**From:** Niemi, Katie
**To:** BalisLarsen, Martha
**Cc:** Wright, Dana K
**Subject:** Fwd: [EXTERNAL] Meeting Request - CBRA Coordination, Carolina Beach & Wrightsville Beach -April 8th or 11th
**Date:** Wednesday, April 3, 2019 12:35:00 PM

---

Martha,
Please see below. There is a meeting/call scheduled with the Raleigh FO (Cindy, Dana and I will call in) and the Corps on April 8 to discuss how CBRA applies to the Carolina Beach and Wrightsville Beach projects. Have you had a chance to check in with Mike or Jack to get any feedback on the meeting they recently had with the Corps concerning this issue? It would be helpful for us to know what was discussed/decided at that meeting before we have this meeting/call with the Corps on Monday. Also, do you have any concerns with us sharing the letter Margaret signed on the sand mining issue with the Corps?
Thanks.
Katie

---------- Forwarded message ---------
From: **Ellis, John** <john_ellis@fws.gov>
Date: Wed, Apr 3, 2019 at 10:52 AM
Subject: Re: [EXTERNAL] Meeting Request - CBRA Coordination, Carolina Beach & Wrightsville Beach -April 8th or 11th
To: Owens, Jennifer L SAW <Jennifer.L.Owens@usace.army.mil>, Cynthia Bohn <cynthia_bohn@fws.gov>, Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>, Pete Benjamin <pete_benjamin@fws.gov>, Tom Augspurger <tom_augspurger@fws.gov>, Emily Jernigan <emily_wells@fws.gov>, Kathryn Matthews <kathryn_matthews@fws.gov>, Teresa Fish <teresa_fish@fws.gov>, Gasch, Eric K SAW <Eric.K.Gasch@usace.army.mil>, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Robert W CIV CESAW CESAD (US) <Robert.W.Keistler@usace.army.mil>, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>

Jenny,

It looks like April 8, 2019, would be the best date for the meeting. Recognizing that how CoBRA applies to COE dredging projects is being discussed at higher levels, I'm not sure if much will be decided at the SAW and FWS Raleigh levels. For this reason, I would think the key items to talk about are what is being proposed for the future and how it may differ from the past projects. From that we can assess if there is a change in how CoBRA applies to them as well as if we have other resource concerns that are different from those being addressed by the current projects. If the COE isn't making big changes to these projects a conf call or webinar may be as effective and be a cost savings in comparison to traveling to Raleigh but that is up to you all.

Thanks,

John

On Wed, Apr 3, 2019 at 10:31 AM Wells, Emily <emily_wells@fws.gov> wrote:

---------- Forwarded message ---------
From: **Owens, Jennifer L CIV USARMY CESAW (US)**
<Jennifer.L.Owens@usace.army.mil>
Date: Mon, Apr 1, 2019 at 2:41 PM
Subject: [EXTERNAL] Meeting Request - CBRA Coordination, Carolina Beach & Wrightsville Beach -April 8th or 11th
To: Cynthia_Bohn@fws.gov <Cynthia_Bohn@fws.gov>, Katie_Niemi@fws.gov <Katie_Niemi@fws.gov>, Dana_Wright@fws.gov <Dana_Wright@fws.gov>, Teresa_Fish@fws.gov <Teresa_Fish@fws.gov>, Pete_Benjamin@fws.gov <Pete_Benjamin@fws.gov>, Tom_Augspurger@fws.gov <Tom_Augspurger@fws.gov>, Emily_Wells@fws.gov <Emily_Wells@fws.gov>, kathryn_matthews@fws.gov <kathryn_matthews@fws.gov>
Cc: McCorcle, Justin P CIV USARMY CESAW (US) <Justin.P.Mccorcle@usace.army.mil>, Gasch, Eric K CIV USARMY CESAW (US) <Eric.K.Gasch@usace.army.mil>, Glazener, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, Gatwood, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Keistler, Robert W CIV CESAW CESAD (US) <Robert.W.Keistler@usace.army.mil>, MEDLOCK, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>

Good afternoon,

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Prior to the meeting, the Corps will provide read-ahead information that will include project details, as well as documents related to our past CBRA coordination with USFWS. We can also setup a teleconference line if needed. For now, please let me know of your availability to meet at 1030 am on April 8th or April 11th.

Please call me if you have any questions.

Thanks-
Jenny

Jenny Owens
Chief, Environmental Resources Section
Wilmington District, U.S. Army Corps of Engineers
69 Darlington Ave.
Wilmington, NC 28402
910-251-4757

--

Emily Wells
USFWS Fish and Wildlife Biologist
Raleigh Ecological Services Field Office
551-F Pylon Drive
Raleigh, North Carolina 27606
Office # 919-856-4520 x25
Fax # 919-856-4556

Mailing Address:
P.O. Box 33726
Raleigh, North Carolina 27636-3726

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**From:** Phinney, Jonathan T
**To:** Niemi, Katie; Wright, Dana K
**Subject:** Fwd: FYI for Thursday CBRA meeting with Margaret and Wendi
**Date:** Tuesday, April 23, 2019 11:23:30 AM
**Importance:** High

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Email trail with Gary

---------- Forwarded message ---------
From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Tue, Apr 23, 2019 at 10:58 AM
Subject: Re: FYI for Thursday CBRA meeting with Margaret and Wendi
To: Phinney, Jonathan <jonathan_phinney@fws.gov>
Cc: Gina Shultz <Gina_Shultz@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>

I just included Liz Berg on the invite. Wendi or Deb should decide whether to bring in Eric. -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

On Tue, Apr 23, 2019 at 10:47 AM Phinney, Jonathan <jonathan_phinney@fws.gov> wrote:

> Gary,
>
> Yes, CLA is engaged on the April 29th meeting with the Rep Van Drew's Chief of Staff.
>
> However, they were recently informed about the Thursday meeting.
>
> OK to invite Liz Berg from CLA and Eric Schrading (NJ FO) to the Thursday meeting? (If so, I can ask Lois to invite them).
>
> JPh
>
> On Tue, Apr 23, 2019 at 10:28 AM Frazer, Gary <gary_frazer@fws.gov> wrote:
>
>> I'll kick off the Thurs briefing for Margaret, but then hand the ball to Katie and Dana.
>>
>> Can I assume that CLA is fully engaged in the meeting with Cong Van Drew's office? -- GDF
>>
>> *Gary Frazer*
>> *Assistant Director -- Ecological Services*
>> *U.S. Fish and Wildlife Service*
>> *(202) 208-4646*
>>
>> On Tue, Apr 23, 2019 at 10:17 AM Phinney, Jonathan <jonathan_phinney@fws.gov>

wrote:

Gary,

I forgot to mention at the staff meeting this morning that Katie and Dana are meeting with the Chief of Staff for Rep Van Drew (D-NJ) on sand mining on April 29th (Tuesday) which is the topic for the Thursday CBRA meeting with Margaret and Wendi.

We assume that you will lead the Thursday discussion from MIB. Please let me know otherwise.

Jph

--
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

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and Technical Services (CBRA, NWI)
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-1800 (fax)

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jonathan_phinney@fws.gov
http://www.fws.gov

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|---|---|
| **From:** | Wright, Dana K |
| **To:** | Schrading, Eric; Bohn, Cynthia; Popolizio, Carlo |
| **Cc:** | Niemi, Katie |
| **Subject:** | Background Paper on Unit NJ-09 |
| **Date:** | Wednesday, April 24, 2019 11:26:25 AM |
| **Attachments:** | CBRS Mapper Unit NJ-09.pdf<br>Talking Points on NJ-09.docx |

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Hi Carlo, Eric and Cindy,

We are participating in a briefing this Thursday afternoon for Margaret Eversen (with Wendi and Gary among others). We have prepared the attached document for our own use during that briefing, and thought you might also like a copy. Also attached is an annotated map of the area (as it exists today, not proposed changes).

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:** | Kodis, Martin; Berg, Elizabeth A |
| **Subject:** | CBRA and Hereford Inlet (Unit NJ-09) |
| **Date:** | Wednesday, April 24, 2019 11:40:05 AM |
| **Attachments:** | CBRS Mapper Unit NJ-09.pdf<br>Talking Points on NJ-09.docx |

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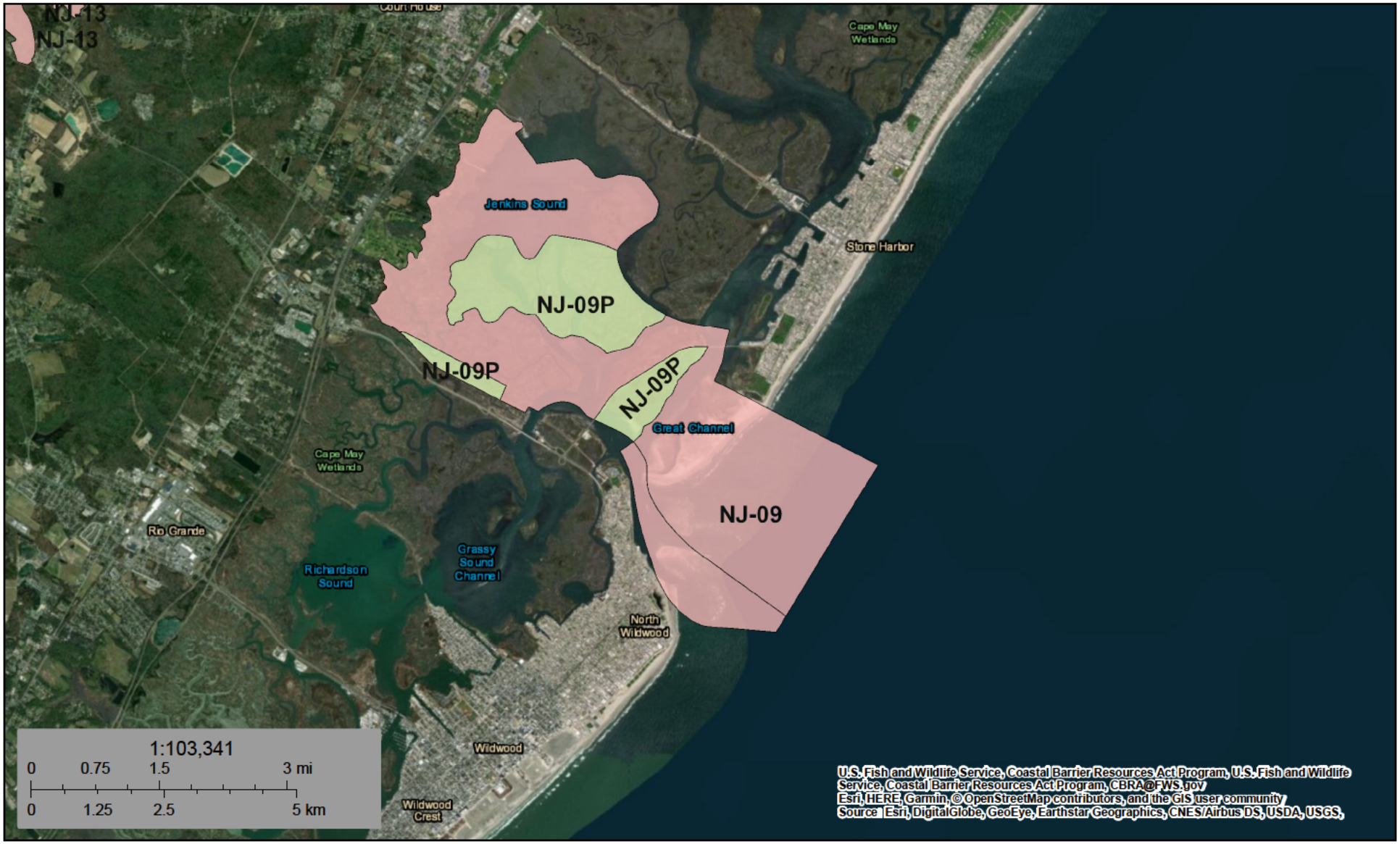
Hi Marty and Liz,

Dana and I drafted the attached talking points in preparation for tomorrow's briefing on the Rep. Van Drew response letter. Also attached is an annotated map of the Herford Inlet area (as it exists today, not proposed changes). The proposed boundary changes to Unit NJ-09 can be viewed on the CBRS Projects Mapper (click the mapper icon on the right side of the page): https://www.fws.gov/cbra/maps/Mapper.html.

Katie

# U.S. Fish and Wildlife Service
## Coastal Barrier Resources System

# Unit NJ-09




April 24, 2019

CBRS Buffer Zone

System Unit

**CBRS Units**

Otherwise Protected Area

This map is for general reference only. The Coastal Barrier Resources System (CBRS) boundaries depicted on this map are representations of the controlling CBRS boundaries, which are shown on the official maps, accessible at https://www.fws.gov/cbra/maps/index.html. All CBRS related data should be used in accordance with the layer metadata found on the CBRS Mapper website.

The CBRS Buffer Zone represents the area immediately adjacent to the CBRS boundary where users are advised to contact he Service for an official determination (http://www.fws.gov/cbra/Determinations.html) as to whether the property or project site is located "in" or "out" of the CBRS.

CBRS Units normally extend seaward out to the 20- or 30-foot bathymetric contour (depending on he location of the unit). The true seaward extent of the units is not shown in the CBRS mapper.

This page was produced by the CBRS Mapper

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# CBRS Stone Harbor Unit NJ-09 (Hereford Inlet) Talking Points

## CBRA Basics:

- CBRA is a map based law comprising 870 units that make up the Coastal Barrier Resources System (CBRS), which contains 3.5 million acres of barriers and associated wetlands along the Atlantic, Gulf of Mexico, and Great Lakes coasts, as well as Puerto Rico and the U.S. Virgin Islands.

- The three purposes of CBRA are to minimize: wasteful federal expenditures, loss of human life, and damage to natural resources. CBRA achieves these goals by restricting federal funding and financial assistance that may encourage development, such as flood insurance, disaster assistance, beach nourishment, and new road construction. CBRA does not restrict the use of private, state, or local funds within the CBRS or limit the issuance of federal permits.

- A recent study in the Journal of Coastal Research estimated CBRA saved the taxpayers $9.5 billion from 1989-2013 (avoided coastal disaster expenditures by FEMA, DOT, EPA, and HUD).

- The Service is responsible for maintaining and updating the CBRS maps. With minor exceptions, only Congress can change the maps of the CBRS to add or remove lands.

- The Service receives numerous requests for changes to the maps from interested parties (generally property owners, local communities, and their members of Congress) that seek federal funding for specific areas. The Service conducts research, applies statutory criteria and objective mapping protocols, and prepares revised maps for Congressional consideration.

- CBRA has about a dozen exceptions, but consultation with the Service is required before a federal agency can obligate funding for an excepted activity. Any response provided by the Service is an opinion only. **The funding agency makes the final decision. The Service has no regulatory authority over CBRA.**

## Hereford Inlet - Sand Mining Issues:

- **Hereford Inlet**, located along the Atlantic coast in Cape May County in southeastern New Jersey, **was first added to Unit NJ-09 of the CBRS in 1990**. The Service is currently remapping this area as part of a large project covering nine states in Region 5 using Hurricane Sandy supplemental funds.

- In 2016, the Corps requested a consultation from the Service's NJ Field Office 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 (Borough of Stone Harbor).

- In 2016, the Service found the project not allowable with federal funds under CBRA. Though CBRA contains an exception for shoreline stabilization to restore natural systems within the CBRS, **a 1994 DOI solicitor's opinion states that this exception does not allow for sand mining <u>within the CBRS</u> for the purposes of nourishing beaches <u>outside of the CBRS</u>.**

- The Corps previously assumed they could use the Hereford Inlet borrow site because they had received concurrence from the NJFO on a previous project within Unit NJ-09 in the late 1990's. However, the previous project was for environmental restoration within Unit NJ-09. The project proposed in 2016 sought to borrow sand from the CBRS for use in nourishing a developed shoreline outside of the CBRS for storm protection. **These projects are different fact patterns and therefore there has been no "reversal" in Service policy (as has been reported in the media).**

- In light of the Service's 2016 non-binding opinion, the Corps decided not to fund the dredging of Hereford Inlet. **The Corps subsequently entered into an MOA with the State of NJ to use state funds for the dredging within the CBRS, and the project was completed. This approach to use non-federal funding for portions of projects within the CBRS has been applied elsewhere and is currently proposed for a large storm damage reduction project in Texas.**

- In 2016, the nearby Borough of Avalon filed suit against the Corps and the Service for violation of the Administrative Procedures Act, alleging an arbitrary and capricious interpretation of CBRA. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing.

- In 2019, the Corps pulled out of a planned renourishment project for the Borough of Stone Harbor due to CBRA. Recent news reports state that without federal funds, the project is too expensive.

- Interested parties now seek to downgrade the unit to an Otherwise Protected Area (OPA). System Units carry CBRA's full suite of restrictions on federal expenditures, while OPAs (generally comprised of park lands at the time of designation) restrict only federal flood insurance. Reclassifying the borrow site to an OPA would allow the use of federal funds for dredging. **The borrow site does not qualify for reclassification to OPA according to the Service's objective mapping protocols and CBRA's statutory definition of "otherwise protected."**

**National Implications:**

- The sand mining issue has come up in two other hot spots along the Atlantic Coast (southeastern NC and Folly Beach, SC), where local communities seek to use inlets within the CBRS as borrow sites for beach nourishment projects outside of the CBRS. The use of nearshore borrow sites is generally preferable to offshore borrow sites due to sand quality and cost.

- **Following recent Congressional inquiries, the Acting AS-FWP was briefed on this matter in November 2018 and declined to re-asses DOI's longstanding interpretation of CBRA**. A letter from the Service's Principal Deputy Director to seven members of Congress conveyed this position in December 2018.

- Numerous groups (e.g., Association of State Floodplain Managers, National Audubon Society, American Littoral Society) have submitted comments to the Service opposing the use of inlets within the CBRS as borrow sites due to impacts on these areas as natural storm buffers and habitat.

Prepared: April 24, 2019

**From:** Niemi, Katie
**To:** Chen, Linus Y; Jesup, Benjamin C
**Subject:** Re: CBRA IM for Secretary"s meeting with Rep. Rouzer (edits needed by 11:30 today)
**Date:** Tuesday, May 14, 2019 10:59:33 AM

---

Got it. Thanks for the quick review. Much appreciated.

Katie

On Tue, May 14, 2019 at 10:47 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:

> Ben and my comments. Ben had minor edits (primarily hyphens). I thought the in last paragraph, it might help clarify CBRA amendments (last amended in 1990) vs reauthorization (twice since 1994).
>
> 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

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Kodis, Martin |
| **Cc:** | Niemi, Katie; Berg, Elizabeth A; Gustavson, Angela; Schrading, Eric; Popolizio, Carlo |
| **Subject:** | Re: Stone Harbor correspondence |
| **Date:** | Wednesday, May 15, 2019 3:57:03 PM |
| **Attachments:** | 12.24.1996 Region 5 CBRA Letter - Stone Harbor.pdf<br>11.7.1996 USACE CBRA Consultation Request.pdf<br>5.15.1997 USACE Stone Harbor.pdf<br>3.4.1997 DOI Environmental Review - Stone Harbor.pdf<br>9.12.1997 DOI Environmental Review - Stone Harbor.pdf<br>12.6.1996 Public Notice.pdf<br>Key Letter Excerpts.docx<br>2017-CPA-0042.PDF<br>Corps_Incoming_7.28.16.pdf<br>16-CPA-0223 USACE Formal CBRA.PDF<br>Talking Points on Hereford Inlet NJ-09 4.24.19.docx<br>CBRS Mapper Unit NJ-09.pdf<br>068399 Signed with Enclosures - Rep LoBiondo.pdf |
| **Importance:** | High |

---

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

# United States Department of the Interior

FISH AND WILDLIFE SERVICE
300 Westgate Center Drive
Hadley, Massachusetts 01035-9589


In Reply Refer To:
FWS/Region 5/ES

DEC 24 1996

Lieutenant Colonel Robert B. Keyser
District Engineer, Philadelphia District
U.S. Army Corps of Engineers
Wanamaker Building, 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Dear Lieutenant Colonel Keyser:

This letter is in response to a request made on November 7, 1996, by the U.S. Army Corps of Engineers, Philadelphia District, for consultation under the Coastal Barrier Resources Act (104 Stat. 2931; 16 U.S.C. 3501 *et seq.*), regarding a proposed action that would affect the Stone Harbor (NJ-09) Unit of the Coastal Barrier Resources System.

The CBRA prohibits all federal expenditures on units of the Coastal Barrier Resources System, except for a few clearly defined exceptions. These exceptions are found at Section 6 of the CBRA, and the following comments are provided pursuant to this section. The Corps' request for consultation concerns the Stone Harbor portion of the Corps' Brigantine Inlet to Great Egg Harbor Inlet and Townsends Inlet to Cape May Inlet Feasibility Studies (Stone Harbor Project).

The Stone Harbor Project is within the NJ-09 Unit of the System and is located in Cape May County, New Jersey. Site inspections of the NJ-09 Unit were made by U.S. Fish and Wildlife Service biologists on April 25, July 21, and August 15, 1995. This portion of the barrier island provides habitat for a variety of migratory birds including colonial nesting waterbirds. The wetlands and shallow open waters in the vicinity of Stone Harbor also support important shellfish and finfish resources. Severe erosion and habitat loss has occurred in the Stone Harbor Unit partially as a result of sand capture by a groin structure, which has prevented replenishment via natural littoral drift. The proposed action within the Stone Harbor Unit is designed to replace approximately 157.7 acres of upland (dominated by bayberry [*Myrica pensylvanica*]), sand dune, and beach, which have been lost by erosion and not replaced by littoral drift.

Section 6(a)(6)(A) of the CBRA provides an exception to Section 5, "Limitations on federal expenditures affecting the System," if the expenditure is for the study, management, protection, and enhancement of fish and wildlife resources and habitats." Further, under this section, the expenditure must also be consistent with the three purposes of the Act, which are to minimize: loss of human life, unnecessary expenditures of federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the System.

The proposed Stone Harbor Project is intended to create and enhance fish and wildlife habitat while also minimizing the loss of human life and property by providing a stabilized shoreline adjacent to residential areas. The proposed project would use federal revenues to enhance fish and wildlife habitat, provided that sand is permitted to bypass existing groins that have caused sand starvation of the Stone Harbor Unit. Therefore, the Service recommends that the proposed project incorporates an appropriate sand by-pass system in order to ensure that littoral drift continues to renourish the Stone Harbor Unit in perpetuity. One potential sand by-pass alternative would involve notching the terminal groins to permit sand to drift toward the Stone Harbor Unit.

Long-term protection of the Stone Harbor Unit as a natural, undeveloped area would also be required to ensure that the project would meet the letter and spirit of the CBRA. Therefore, the Service recommends that the Corps secure a deed restriction or place the proposed project area under a conservation easement in order to prevent development within the project area and preserve the proposed fish and wildlife habitat.

It is the Service's conclusion that this proposed action constitutes an exception under Section 6(a)(6)(A) of the CBRA, provided that the following conditions are incorporated into the project design:

1. Construction of an appropriate sand by-pass system (such as modifying or notching the terminal groins) to ensure that littoral drift renourishes the Stone Harbor Unit in perpetuity, thereby eliminating sand starvation. A sand by-pass system would constitute a one-time investment of federal monies sufficient to renourish the Stone Harbor Unit. Some funds may be also necessary to provide for routine maintenance of such a system; however, it is likely that this maintenance activity would be less costly than the alternative, a process necessitating yearly replenishment of sand.

2. Protection of the proposed project area from development via deed restriction, placement under a conservation easement, or other protection by the State of New Jersey in perpetuity.

Given that the above conditions are incorporated into the project design, the Service has determined that the proposed Stone Harbor Project is consistent with the purposes of the CBRA. The above views constitute the Service's consultation regarding the CBRA.

If you have any questions regarding these comments or require further assistance on issues regarding fish and wildlife resources in New Jersey, please contact Mr. Clifford G. Day, Supervisor, New Jersey Field Office, at (609) 646-9310.

Sincerely,

Cathy Short ACTING

Ronald E. Lambertson
Regional Director

**DEPARTMENT OF THE ARMY**
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

REPLY TO
ATTENTION OF

NOV 07 1996

Environmental Resources Branch

Mr. Clifford G. Day, Supervisor
U.S. Fish and Wildlife Service
927 North Main Street
Building D-1
Pleasantville, New Jersey 08232

Dear Mr. Day:

This letter serves to request the initiation of formal consultation under the Coastal Barrier Resources Act for the proposed Army Corps of Engineers project which extends from Townsends Inlet to Cape May Inlet, New Jersey. The proposed plan for the above project consists of a beachfill and environmental restoration at Stone Harbor Point.

Preliminary coordination regarding this project has been conducted with Eric Schrading of your staff and a copy of the Townsends Inlet to Cape May Inlet Draft Feasibility Report and EIS was forwarded to Mr. Schrading several weeks ago.

At this time, we would like to request a written statement from your office regarding the status of our compliance with the Coastal Barrier Resources Act, as it applies to the Townsends Inlet project.

Any questions regarding this issue can be directed to Beth Brandreth at 215-656-6558. Thank you in advance for your attention to this matter.

Sincerely,

for John A Burns
Robert L. Callegari
Chief, Planning Division

Proposed Report*
DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-AR (10-1-7a)

15 MAY 1997

SUBJECT: New Jersey Shore Protection, Townsends Inlet to Cape May Inlet Interim

THE SECRETARY OF THE ARMY

1. I submit for transmission to Congress my report on the study of hurricane and storm damage reduction for Townsends Inlet to Cape May Inlet, on the Atlantic coast of New Jersey, located in Cape May County. It is accompanied by the report of the district and division engineers. These reports are in partial response to resolutions adopted by the Committee on Environment and Public Works of the United States Senate dated 17 December 1987 and the Committee on Public Works and Transportation of the United States House of Representatives dated 10 December 1987. These resolutions requested review of existing reports of the Chief of Engineers for the entire coast of New Jersey with a view to study, in cooperation with the State of New Jersey, its political subdivisions and agencies and instruments thereof, the changing coastal processes along the coast of New Jersey. Preconstruction engineering and design activities for Townsends Inlet to Cape May Inlet, New Jersey, if funded, would be continued under the study authorities cited above.

2. As reported by the district engineer, the preferred plan consists of five separable construction elements comprised of two seawall projects, two beach nourishment projects, and an ecosystem restoration project. For the inlet frontages of Avalon and North Wildwood, the plan proposes the construction of stone seawall sections with top elevations of +14 feet National Geodetic Vertical Datum (NGVD) and +13 feet NGVD and toe protection to -3 feet NGVD and -6 feet NGVD, respectively. The seawalls would extend for approximately 2,970 linear feet in Avalon and 8,660 linear feet in North Wildwood and would encompass the existing bulkheads, rock revetments, and seawalls. The plan also includes two beachfill sections for the oceanfronts of Avalon and Stone Harbor (Seven Mile Island). The beach nourishment plan is designed with a berm width of 150 feet at elevation +8.5 feet NGVD and a dune 7.5 feet above grade at elevation +16 feet NGVD. The dune plans call for a crest width of 25 feet including dune grass and dune fencing. Suitable advance beachfill and periodic nourishment of 746,000 cubic yards every 3 years for 50 years is included in the oceanfront plan. The plan requires a total initial fill of approximately 3,111,000 cubic yards. The seawall and beachfill features would be for the purpose of hurricane and storm damage reduction.

*This report contains the proposed recommendation of the Chief of Engineers. The recommendation is subject to change to reflect Washington level review and comments from Federal and State agencies.

CECW-AR
SUBJECT: New Jersey Shore Protection, Townsends Inlet to Cape May Inlet Interim

3. The fifth separable feature of the plan is for ecosystem restoration of the area at the southern end of Stone Harbor, also called Stone Harbor Point. The plan includes the restoration and protection of 116 acres of coastal barrier habitat including wetland, beach, dune, and bayberry (tertiary dune) habitats. The plan includes the planting of approximately 3 acres of dune grass and 64 acres of bayberry and eastern red cedar. The restoration requires an estimated 1,366,000 cubic yards of fill to be placed from designated offshore borrow sites. On the oceanfront of the restoration site, a 150-foot-wide berm at elevation +8.5 feet NGVD with a dune at elevation +12 feet NGVD and crest width of 25 feet would extend 1000 linear feet southwest of the terminal groin in Stone Harbor. Along the inlet frontage, the beach would transition to the west 350 linear feet with a berm width of 275 feet at elevation +6 feet NGVD and with a dune at elevation +10 feet NGVD and crest width of 20 feet. The dune would continue to the northwest, along the inlet, for an additional 250 linear feet. The dune includes a sand fence and has a sand-filled, geotextile core extending 1,350 feet with scour protection. The restoration site would be left in a natural state and would not include periodic nourishment.

4. As reported by the district engineer, based on October 1996 price levels, the total first cost of the plan is estimated at $53,700,000. Under cost sharing specified by the Water Resources Development Act of 1986, $34,905,000 of the total first cost of the plan would be Federal and $18,795,000 would be non-Federal. Of the non-Federal share, the total cash contribution required would be $18,349,750. The balance of the non-Federal share would consist of $445,250 for the estimated creditable cost for lands, easements, rights-of-way, relocations, storm drain outfall extensions, and suitable borrow material areas. The proposed plan calls for renourishment of the oceanfront beachfill every 3 years or 16 times during the 50-year period following the initial construction. At October 1996 prices, periodic renourishment costs are estimated at $6,146,400, on average, about every 3 years. The cumulative costs over 50 years for periodic renourishment would be $112,959,750. Total periodic renourishment costs are stated in terms of October 1996 prices and include beachfill performance monitoring and major rehabilitation costs.

5. Based on a discount rate of 7.375 percent and a 50-year period of economic analysis, average annual national economic development (NED) benefits accruing to the shore protection project are estimated at $10,694,000, and average annual costs are estimated at $5,958,000. Equivalent annual net benefits are estimated at $4,736,000. The resulting ratio of benefits-to-costs is 1.8. Based on information available at this time, the shore protection plan developed by the district engineer is the NED plan.

6. Based on a discount rate of 7.375 percent and a 50-year period of economic analysis, average annual costs of the ecosystem restoration are estimated to be $741,000. Benefits are based on the habitat evaluation procedure which provides environmental quality benefits in terms of habitat units. Replacement and protection of approximately 116 acres of wildlife habitat would achieve 194 habitat units in the first year, and average 79 acres annually over the life of the project. Based

CECW-AR
SUBJECT: New Jersey Shore Protection, Townsends Inlet to Cape May Inlet Interim

on current Army policy and guidance available at this time, the ecosystem restoration plan developed by the district engineer is the plan which is the most cost effective and least cost plan to obtain the highest value habitat units.

7. I generally concur in the findings, conclusions, and recommendation of the reporting officers.

8. The Administration has determined that hurricane and storm damage reduction projects, such as the seawalls and beach nourishment elements of this project, should be considered for implementation by the State and non-Federal interests that benefit from them. The division engineer recognized this current budgetary policy in his report. The ecosystem restoration feature of the project involves the restoration of an environmentally sensitive area. This separable feature will be considered for further Federal participation if found technically sound, economically cost effective, and environmentally and socially acceptable during Washington level review.

9. Should the project be authorized for construction and construction funds appropriated, Federal implementation would be subject to cost sharing, financing, and other applicable requirements for hurricane and storm damage reduction projects established by the Water Resources Development Act of 1986, as amended, unless authorized otherwise, and would be implemented with such modifications as the Chief of Engineers deems advisable within his discretionary authority.

JOE N. BALLARD
Lieutenant General, USA
Chief of Engineers

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# United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
408 Atlantic Avenue - Room 142
Boston, Massachusetts 02210-3334


ER 96/0781

March 4, 1997

Lt. Colonel Robert B. Keyser
District Engineer, Philadelphia District
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Dear Lt. Colonel Keyser:

The Department of the Interior (Department) has reviewed the Townsends Inlet to Cape May Inlet Draft Feasibility Study and Draft Environmental Impact Statement (DEIS). The subject DEIS addresses shoreline protection and ecosystem restoration within the 15-mile-long project area, which incorporates two barrier islands (i.e., Seven Mile Island and Five Mile Beach) and two coastal inlets in Cape May County, New Jersey. The project involves 4.3 miles (77.5 acres) of beach nourishment along the ocean front of Avalon and Stone Harbor, and the construction of two seawalls on the southern shores of Townsends Inlet and Hereford Inlet that would be placed on existing bulkheads. The project also involves the restoration of 107 acres of natural, undeveloped barrier island at Stone Harbor Point in order to restore and enhance valuable wildlife habitat.

## FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES

The Corps states in the DEIS that no known nesting sites for the federally listed (threatened) piping plover (*Charadrius melodus*) occur within the proposed project area. However, a review of U.S. Fish and Wildlife Service (Service) records indicates that piping plovers nest within the proposed project area. Specifically, piping plovers have recently nested along Townsends Inlet, the ocean front of Avalon and Stone Harbor, and on beaches of the northeast corner of North Wildwood.

Project-related activities such as beach nourishment and seawall construction could adversely affect the piping plover. In addition, dredged spoil deposition has the potential to create additional suitable nesting habitat for piping plovers and other beach nesting birds such as black skimmers (*Rynchops niger*), least terns (*Sterna antillarum*), and common terns (*Sterna hirundo*), provided the material is deposited prior to nesting (U.S. Fish and Wildlife Service, 1988). As a result, piping plovers could nest in areas other than those currently identified within the project area, after nourishment is completed. Unfortunately, high levels of human activity on nourished beaches often eliminates nesting success (U.S. Fish and Wildlife

Service, 1988). Therefore, occurrence and nesting of federally listed threatened or endangered shorebirds may require restrictions on some recreational and beach management activities (e.g., beach raking) to protect these species from adverse impacts.

The lead federal agency for a project has the responsibility under Section 7(c) of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to prepare a Biological Assessment if the project is a construction project that requires an Environmental Impact Statement and the project may affect listed species. Therefore, the Corps must prepare a Biological Assessment to address potential project-related adverse impacts to the piping plover.

The Biological Assessment should contain information concerning listed or proposed species, which may be present in the action area, and an analysis of any potential effects of the proposed action on such species. The following may be considered for inclusion in a Biological Assessment of the proposed project, although actual contents are at the discretion of the federal authorizing agency:

(1) results of field surveys to determine if listed species are present or occur seasonally;

(2) views of recognized experts on the species;

(3) literature review;

(4) analysis of direct, indirect, and cumulative effects of the action on the species; and,

(5) analysis of alternative actions.

Specifically, the Biological Assessment should include potential adverse impacts on piping plovers associated with proposed beach nourishment and renourishment activities for the project life (i.e., 50 years). Additionally, the Biological Assessment should address long-term direct and indirect adverse impacts from proposed seawalls on beaches used by piping plovers (e.g., beach areas located on Townsends Inlet between the Townsends Inlet bridge and the 8th Street groin).

Biological Assessments may be consolidated with procedures for interagency cooperation required by other statutes such as the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) or the National Environmental Policy Act (NEPA) of 1969, as amended (83 Stat. 852; 42 U.S.C. 4321 *et seq.*). However, the satisfaction of the requirements of the above statutes does not in itself relieve a federal agency of its obligation to comply with the Biological Assessment procedures of the Endangered Species Act. If the Biological Assessment indicates that no listed or proposed species are present or will be affected, and the Service <u>concurs</u> in writing with the assessment, then no formal consultation pursuant to Section 7 will be required.

The Department recommends that the Corps consult with the Service to identify measures that would avoid or minimize adverse impacts on piping plovers. In addition the Department recommends that the Corps include a discussion in subsequent NEPA documents on potential project-related impacts on piping plovers and mitigative measures to avoid adverse impacts.

## EXTRACTION FROM BORROW AREAS

The Corps proposes to use only two borrow areas for initial construction, Borrow Area E (Townsends Inlet) for the beachfill on Seven Mile Island and Borrow Area G (Hereford Inlet) for ecosystem restoration on Stone Harbor Point. The Department concurs with the Corps proposal to initially use borrow areas E and G due to a lower diversity and abundance of benthic invertebrates compared with Borrow Area F. The Department recommends that borrow areas E and G be used exclusively, unless these sites are not sufficient for the quantities of sand required. Additionally, the Department recommends that the Corps consult with the New Jersey Bureau of Shellfisheries to ensure that adverse impacts on shellfish within borrow areas are minimized.

## BEACH NOURISHMENT

Beach nourishment and subsequent renourishment would create approximately 77.5 acres of new beach area along the ocean front of Avalon and Stone Harbor. Much of the area created and the existing beach area would be considered upland. It is assumed that the Corps would obtain an easement for the project area for the project life (e.g., 50 years) in order to complete renourishment activities. However, it is unclear what type of easement would exist after the project is completed. In order to prevent residential or commercial development within the project area or adjacent beach area; the Department recommends that the Corps obtain a perpetual deed restriction or conservation easement for the newly created beach and adjacent beach areas.

## SEAWALLS

The proposed seawalls at Townsends Inlet and Hereford Inlet would eliminate shallow water habitat and intertidal habitat. The proposed seawalls are substantially larger (e.g., approximately 35 feet wider) than the existing bulkhead footprints on which the seawalls are proposed to be located. The seawalls at Townsends Inlet and Hereford Inlet would eliminate 2.4 acres and 7.2 acres, respectively, of beach, intertidal habitat, or sand-bottom, shallow-water habitat. In addition, seawalls typically promote erosion of the foreshore by increasing wave energy due to waves reflecting off the face of the structure (Clark, 1977). Over time, the proposed seawalls may create deep water zones in front of the seawalls, which typically have lower concentrations of detritus, lower phytoplankton production, and fewer benthic organisms than adjacent natural beach areas (Mulvihill *et al.*, 1980).

Seawalls also restrict movement of sand to and from beach and dune areas, which in concert with the reflection of wave energy from the seawall face, inhibit the recovery of sediments to storm-eroded beaches (Mulvihill *et al.*, 1980). In general, channels tend to migrate within rough historic boundaries; therefore, while beaches along Townsends and Hereford Inlets may be eroded in some years, in other years the beaches may have significant accretion (U.S. Army Corps of Engineers, 1996). Placement of seawalls may prevent future beach accretion as a result of altered inlet hydraulics.

Seawalls promote erosion of adjacent beaches as a result of the alteration of the geohydraulic equilibrium (Mulvihill *et al.*, 1980). Alteration in water circulation patterns from the proposed seawalls encroaching into the littoral zone and obstructing littoral drift may result in erosion of adjacent beaches (Mulvihill *et al.*, 1980). The Department is particularly concerned about potential impacts on adjacent beaches, because the beach immediately west of the proposed Townsends Inlet seawall is currently a productive nesting area for the federally listed (threatened) piping plover and the State-listed (endangered) least tern.

The proposed seawall at Hereford Inlet may further isolate transitional areas (undeveloped areas landward of the mean high water line) from existing intertidal habitat, which may provide habitat for fish and wildlife resources that depend on foraging in the intertidal area. Additionally, as discussed above, reflection of wave energy from the seawall face and alteration of the geohydraulic equilibrium in Hereford Inlet could result in increased erosion of Champagne Island, which provides unique and valuable habitat for nesting common terns, and State-listed least terns and black skimmers.

Construction of the proposed seawall may encourage development landward of the seawall in currently undeveloped lots due to improved flood protection. Improved flood protection may have an effect on local flood insurance allowing development in areas where development was previously restricted.

The Department has significant concerns regarding the Corps proposal to construct seawalls at Townsends and Hereford inlets. Based on the information provided in the DEIS, the Department recommends that the proposed seawalls at Townsends and Hereford inlets not be constructed and that the Corps reconsider alternatives that do not rely on the construction of hard structures. In particular, the Department recommends examination of a combination of alternatives (which were not considered in the DEIS) such as beach nourishment and notching the 8th Street jetty at Townsends Inlet or minor channel realignment, extension of groins, and beach nourishment at Hereford Inlet.

## ECOSYSTEM RESTORATION

The Department strongly supports the Corps proposal regarding ecosystem restoration at Stone Harbor Point. The proposed restoration would restore rare, unique, and valuable habitat for a variety of fish and wildlife resources including federally and State-listed species.

In order to limit human disturbance of fish and wildlife potentially using the proposed Stone Harbor Point, the Department recommends that vehicular access to the subject area be prohibited, and pedestrian travel within and adjacent to existing and proposed bayberry stands be restricted via fencing and signs.

The Stone Harbor Point is designated as a unit (NJ-09) pursuant to the Coastal Barrier Resources Act (CBRA) (104 Stat. 2931; 16 U.S.C. 3501 *et seq.*). The purposes of the CBRA are to minimize the loss of human life and to prevent unnecessary expenditures of federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the System. The proposed Stone Harbor Project is intended to minimize the loss of human life and effectively use federal revenues to enhance fish and wildlife habitat.

Long-term protection of Stone Harbor Point as a natural, undeveloped area would be required in order to be consistent with CBRA. Consultation among the Service and the Corps pursuant to CBRA was completed on December 24, 1996. The Service consultation was contingent upon the following two conditions in order to prevent development within the project area and preserve the proposed fish and wildlife habitat:

1. construction of an appropriate sand by-pass system (such as modifying or notching the terminal groins) to ensure that littoral drift renourishes the Stone Harbor Unit in perpetuity, thereby eliminating sand starvation. A sand by-pass system would constitute a one-time investment of federal funds, which would be less costly than yearly replenishment of sand.

2. protection of the proposed project area from development via deed restriction, placement under a conservation easement, or other protection by the State of New Jersey in perpetuity.

## DEPARTMENT POSITION

The Department has several significant outstanding concerns regarding potential adverse impacts on fish and wildlife resources. In order to minimize adverse impacts to fish and wildlife, the Department recommends the following measures.

1. Prepare a Biological Assessment to address potential project-related adverse impacts to the piping plover.

2. Consult with the Service to identify measures that would avoid or minimize adverse impacts on piping plovers.

3. Include a discussion in subsequent NEPA documents on potential project-related impacts on piping plovers and mitigative measures to avoid adverse impacts.

4. Use borrow areas E and G exclusively, unless these sites are not sufficient for the quantities of sand required.

5. Consult with the New Jersey Bureau of Shellfisheries to ensure that adverse impacts on shellfish within borrow areas are minimized.

6. Obtain a perpetual deed restriction or conservation easement for the newly created beach and adjacent beach areas along Seven Mile Island.

7. Reconsider alternatives to the proposed seawalls, which do not rely on the construction of hard structures.

8. Prohibit vehicular access to the subject area and restrict pedestrian travel within and adjacent to existing and proposed bayberry stands via fencing and signs.

9. Construct an appropriate sand by-pass system (such as modifying or notching the terminal groins) to ensure that littoral drift renourishes Stone Harbor Point.

10. Protect the proposed Stone Harbor Point ecosystem restoration area from development via deed restriction, placement under a conservation easement, or other protection by the State of New Jersey in perpetuity.

The Department encourages the Corps to resolve the above-mentioned concerns and incorporate Departmental recommendations in the final project design and the Final Environmental Impact Statement. The Department and the Service will continue to cooperate fully to resolve these aforementioned concerns.

If you have any questions regarding these comments or require further assistance on issues regarding fish and wildlife resources related to the subject project, including federally listed threatened or endangered species, please contact the Service at the following address:

Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
Ecological Services
927 N. Main Street, Building D-1
Pleasantville, New Jersey 08232
(609) 646-9310

Thank you for the opportunity to provide these comments.

Sincerely,

Andrew Raddant
Regional Environmental Officer

**LITERATURE CITED**


Clark, J.R. 1977. Coastal ecosystem management: A technical manual for the conservation of coastal zone resources. John Wiley and Sons. New York, New York. 928 pp.

Mulvihill, E.L., C.A. Francisco, J.B. Glad, K.B. Kaster, and R.E. Wilson. 1980. Biological impacts of minor shoreline structures on the coastal environment: state of the art review. U.S. Department of the Interior, Fish and Wildlife Service, Biological Services Program. FWS/OBS-77/51. 2 volumes.

U.S. Army Corps of Engineers. 1996. Townsends Inlet to Cape May Inlet Draft Feasibility Report and Draft Environmental Impact Statement. U.S. Department of the Army, Corps of Engineers, Philadelphia District, Philadelphia, Pennsylvania.

U.S. Fish and Wildlife Service. 1988. Atlantic Coast piping plover recovery plan. U.S. Department of the Interior, Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts. 77 pp.

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# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ER 97/306

SEP 12 1997

Mr. David B. Sanford, Jr.
Chief, Policy Division
Policy Review Branch
ATTN: CECW-AR (IP)
U.S. Army Corps of Engineers
7701 Telegraph Road
Alexandria, VA 22315-3861

Dear Mr. Sanford:

In our June 13, 1997, letter commenting on the proposed Chief of Engineers report and final environmental statement for the **Townsends Inlet to Cape May Inlet** project located in Cape May County, New Jersey, we indicated that the proposed Chief's report was incomplete pending the incorporation of the final Fish and Wildlife Coordination Act (FWCA) report. Since then we have received the District Engineer's July 31, 1997, circulation of the final FWCA report stating that it replaces the draft report contained in the project documents. While we have no overall objection to the project contained in the Chiefs proposed report, we do have areas of concern outlined in this letter which, we believe, merit continued coordination and cooperation between the District and our Fish and Wildlife Service (FWS).

The project as discussed in the final environmental statement addresses shoreline protection and ecosystem restoration within the 15 mile project area, which incorporates two barrier islands (i.e., Seven Mile Island and Five Mile Beach) and two coastal inlets in Cape May County, New Jersey. The project involves 4.3 miles (77.5 acres) of beach nourishment along the ocean front of Avalon and Stone Harbor, and the construction of two seawalls on the southern shores of Townsends Inlet and Hereford Inlet that would be placed on existing bulkheads. The project also involves the restoration of 107 acres of natural, undeveloped barrier island at Stone Harbor Point in order to restore and enhance valuable wildlife habitat.

## FEDERALLY LISTED THREATENED AND ENDANGERED SPECIES

The federally listed (threatened) piping plover (*Charadrius melodus*) nests within the proposed project area. Specifically, piping plovers have recently nested along Townsends Inlet, the ocean front of Avalon and Stone Harbor, and on beaches of the northeast corner of North Wildwood.

Project-related activities such as beach nourishment and seawall construction could adversely affect the piping plover. In addition, dredged spoil deposition has the potential to create additional suitable nesting habitat for piping plovers and other beach nesting birds such as black skimmers (*Rynchops niger*), least terns (*Sterna antillarum*), and common terns (*Sterna hirundo*), provided the material is deposited prior to nesting (U.S. Fish and Wildlife Service, 1988). As a result, piping plovers could nest in areas other than those currently identified within the project area, after nourishment is completed. Unfortunately, high levels of human activity on nourished beaches often eliminates nesting success (U.S. Fish and Wildlife Service, 1988). Therefore, occurrence and nesting of federally listed threatened or endangered shorebirds may require restrictions on some recreational and beach management activities (e.g., beach raking) to protect these species from adverse impacts.

The lead federal agency for a project has the responsibility under Section 7(c) of the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to prepare a Biological Assessment if the project is a construction project that requires an Environmental Impact Statement and the project may affect listed species. Therefore, the Corps must prepare a Biological Assessment to address potential project-related adverse impacts to the piping plover.

The Biological Assessment should contain information concerning listed or proposed species, which may be present in the action area, and an analysis of any potential effects of the proposed action on such species. The following may be considered for inclusion in a Biological Assessment of the proposed project, although actual contents are at the discretion of the federal authorizing agency:

(1) results of field surveys to determine if listed species are present or occur seasonally;

(2) views of recognized experts on the species;

(3) literature review;

(4) analysis of direct, indirect, and cumulative effects of the action on the species; and,

(5) analysis of alternative actions.

Specifically, the Biological Assessment should include potential adverse impacts on piping plovers associated with proposed beach nourishment and renourishment activities for the project life (i.e., 50 years). Additionally, the Biological Assessment should address long-term direct and indirect adverse impacts from proposed seawalls on beaches used by piping plovers (e.g., beach areas located on Townsends Inlet between the Townsends Inlet bridge and the 8th Street groin).

Biological Assessments may be consolidated with procedures for interagency cooperation required by other statutes such as the FWCA (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) or the National Environmental Policy Act (NEPA) of 1969, as amended (83 Stat. 852; 42 U.S.C. 4321 *et seq.*). However, satisfying the requirements of the above statutes does not in itself relieve a federal agency of its obligation to comply with the Biological Assessment procedures of the ESA. If the Biological Assessment indicates that no listed or proposed species are present or will be affected, and the FWS concurs in writing with the assessment, then no formal consultation pursuant to Section 7 will be required.

The Department recommends that the Corps consult with the FWS to identify measures that would avoid or minimize adverse impacts on piping plovers. In addition, the Department recommends that the Corps initiate consultation with the FWS early to avoid delays in the proposed construction schedule.

## EXTRACTION FROM BORROW AREAS

The Corps proposes to use only two borrow areas for initial construction--Borrow Area E (Townsends Inlet) for the beachfill on Seven Mile Island and Borrow Area G (Hereford Inlet) for ecosystem restoration on Stone Harbor Point. The Department concurs with the Corps proposal to initially use borrow areas E and G, due to a lower diversity and abundance of benthic invertebrates compared with Borrow Area F. The Department recommends that borrow areas E and G be used exclusively, unless these sites are not sufficient for the quantities of sand required. Additionally, the Department recommends that the Corps consult with the New Jersey Bureau of Shellfisheries to ensure that adverse impacts on shellfish within borrow areas are minimized.

## BEACH NOURISHMENT

Beach nourishment and subsequent renourishment would create approximately 77.5 acres of new beach area along the ocean front of Avalon and Stone Harbor. Much of the area created and the existing beach area would be considered upland. It is assumed that the Corps would obtain an easement for the project area for the life of the project (e.g., 50 years) in order to complete renourishment activities. However, it is unclear what type of easement would exist after the project is completed. In order to prevent residential or commercial development within the project area or adjacent beach area, the Department recommends that the Corps obtain a perpetual deed restriction or conservation easement for the newly created beach and adjacent beach areas.

## SEAWALLS

The proposed seawalls at Townsends Inlet and Hereford Inlet would eliminate shallow water and intertidal habitats. The proposed seawalls are substantially larger (e.g., approximately 35 feet wider) than the existing bulkhead footprints where the seawalls are proposed. The proposed seawalls at Townsends Inlet and Hereford Inlet would eliminate 2.4 acres and 7.2

acres of intertidal and subtidal habitat, respectively. In addition, seawalls typically promote erosion of the foreshore due to waves reflecting off the face of the structure (Clark, 1977). The proposed seawalls may over time create a deep-water zone in front of the seawall, which typically has lower concentration of detritus, lower phytoplankton production, and fewer benthic organisms than adjacent natural beach areas (Mulvihill *et al.*, 1980).

Seawalls restrict movement of sand to and from beach and dune areas which, in concert with the reflection of wave energy from the seawall face, inhibit the recovery of sediments to storm eroded beaches (Mulvihill *et al.*, 1980). In general, channels tend to migrate within rough historic boundaries; therefore, while beaches along Townsends and Hereford Inlets may be eroded in some years, in other years the beaches may have significant accretion (U.S. Army Corps of Engineers, 1996). Placement of seawalls may reduce future beach accretion as a result of altered inlet hydraulics.

Seawalls may promote erosion of adjacent beaches as a result of the alteration of the geohydraulic equilibrium (Mulvihill *et al.*, 1980). Alteration in water circulation patterns may result in erosion of adjacent beaches due to proposed seawalls encroaching into the littoral zone and obstructing littoral drift (Mulvihill *et al.*, 1980). The Department is particularly concerned about potential impacts on adjacent beaches, because the beach immediately west of the proposed Townsends Inlet seawall is currently a productive nesting area for the federally listed (threatened) piping plover and the State-listed (endangered) least tern.

Based on the information provided in the final statement, the Department recommends that the Corps not construct the seawalls at Townsends Inlet and Hereford Inlet as proposed. The Department typically recommends nonstructural alternatives to shoreline protection; however, the Corps has determined that nonstructural alternatives are not feasible at Townsends Inlet and Hereford Inlet. Consequently, in order to minimize adverse impacts on beach, intertidal, and sand-bottom, shallow-water habitats, the Department recommends that, if seawalls are constructed at Townsends Inlet and Hereford Inlet, all construction must occur landward of the existing bulkheads. If avoidance of adverse impacts on shallow open water habitat is not feasible, the Department recommends that the Corps minimize work waterward of the existing bulkheads to the maximum extent practicable. If the Corps proceeds with the proposed seawalls, we recommend that the Corps provide compensation for all adverse impacts on open water at a 2:1 mitigation ratio (e.g., 2 acres of required mitigation for every 1 acre of impacted habitat).

## ECOSYSTEM RESTORATION

The Department strongly supports the Corps proposal regarding ecosystem restoration at Stone Harbor Point. The proposed restoration would restore rare, unique, and valuable habitat for a variety of fish and wildlife resources including federally and State-listed species. In order to limit human disturbance of fish and wildlife potentially using the proposed Stone Harbor

Point, the Department recommends that vehicular access to the subject area be prohibited, and pedestrian travel within and adjacent to existing and proposed bayberry stands be restricted via fencing and signs.

The Stone Harbor Point is designated as a unit (NJ-09) pursuant to the Coastal Barrier Resources Act (CBRA) (104 Stat. 2931; 16 U.S.C. 3501 *et seq.*). The purposes of the CBRA are to minimize the loss of human life and to prevent unnecessary expenditures of federal revenues, and damage to fish, wildlife, and other natural resources associated with units of the ecosystem. The proposed Stone Harbor Project is intended to minimize the loss of human life and effectively use federal revenues to enhance fish and wildlife habitat.

To be consistent with provisions of the CBRA, long-term protection of Stone Harbor Point as a natural, undeveloped area would be required. Consultation among the FWS and the Corps pursuant to CBRA was completed on December 24, 1996. The FWS consultation was contingent upon the following two conditions in order to prevent development within the project area and preserve the proposed fish and wildlife habitat:

1. Construction of an appropriate sand by-pass system (such as modifying or notching the terminal groins) to ensure that littoral drift renourishes the Stone Harbor Unit in perpetuity, thereby eliminating sand starvation. A sand by-pass system would constitute a one-time investment of federal funds, which would be less costly than yearly replenishment of sand.

2. Protection of the proposed project area from development via deed restriction, placement under a conservation easement, or other protection by the State of New Jersey in perpetuity.

## SUMMARY AND RECOMMENDATIONS

The Department has several outstanding concerns regarding potential adverse impacts on fish and wildlife resources. In order to minimize adverse impacts to fish and wildlife, the Department recommends the following measures.

1. Prepare a Biological Assessment to address potential project-related adverse impacts to the piping plover.

2. Consult with the FWS to identify measures that would avoid or minimize adverse impacts on piping plovers.

3. Include a discussion in any subsequent project documents on potential project-related impacts on piping plovers and mitigative measures to avoid adverse impacts.

4. Use borrow areas E and G exclusively, unless these sites are not sufficient for the quantities of sand required.

5. Consult with the New Jersey Bureau of Shellfisheries to ensure that adverse impacts on shellfish within borrow areas are minimized.

6. Obtain a perpetual deed restriction or conservation easement for the newly created beach and adjacent beach areas along Seven Mile Island.

7. Avoid adverse impacts on shallow open water habitat by constructing seawalls landward of the existing bulkheads. If avoidance is not feasible, minimize impacts by: (1) reducing the area of impact waterward of the existing bulkhead to the maximum extent practicable; and, (2) providing compensation for all adverse impacts on open water at a 2:1 mitigation ratio (e.g., 2 acres of required mitigation for every 1 acre of impacted habitat).

8. Prohibit vehicular access to the subject area and restrict pedestrian travel within and adjacent to existing and proposed bayberry stands via fencing and signs.

9. Construct an appropriate sand by-pass system (such as modifying or notching the terminal groins) to ensure that littoral drift renourishes Stone Harbor Point.

10. Protect the proposed Stone Harbor Point ecosystem restoration area from development via deed restriction, placement under a conservation easement, or other protection by the State of New Jersey in perpetuity.

The Department encourages the Corps to resolve the above-mentioned concerns and incorporate Departmental recommendations in the final project design. We will continue to cooperate fully to resolve these aforementioned concerns.

If you have any questions regarding these comments or require further assistance on issues regarding fish and wildlife resources related to the proposed project, including federally listed threatened or endangered species, please contact the FWS at the following address:

Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
Ecological Services
927 N. Main Street, Building D-1
Pleasantville, New Jersey 08232
(609) 646-9310

Thank you for the opportunity to provide these comments.

Sincerely,

Willie R. Taylor
Director, Office of Environmental
Policy and Compliance

Attachment: Literature Cited

## LITERATURE CITED

Clark, J.R. 1977. Coastal ecosystem management: A technical manual for the conservation of coastal zone resources. John Wiley and Sons. New York, New York. 928 pp.

Mulvihill, E.L., C.A. Francisco, J.B. Glad, K.B. Kaster, and R.E. Wilson. 1980. Biological impacts of minor shoreline structures on the coastal environment: state of the art review. U.S. Department of the Interior, Fish and Wildlife Service, Biological Services Program. FWS/OBS-77/51. 2 volumes.

U.S. Army Corps of Engineers. 1996. Townsends Inlet to Cape May Inlet Final Feasibility Report and Final Environmental Impact Statement. U.S. Department of the Army, Corps of Engineers, Philadelphia District, Philadelphia, Pennsylvania.

U.S. Fish and Wildlife Service. 1988. Atlantic Coast piping plover recovery plan. U.S. Department of the Interior, Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts. 77 pp.

THIS IS NOT A PAID ADVERTISEMENT

US Army Corps of Engineers
Philadelphia District

# Public Notice

Public Notice No. CENAP-PL-E-96-33
Date 06 DECEMBER 1996
Application No.
File No.

In Reply Refer to:
ENVIRONMENTAL RESOURCES BRANCH

**TOWNSENDS INLET TO CAPE MAY INLET**
**FEASIBILITY STUDY**

Pursuant to Section 102 of the National Environmental Policy Act, Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, NOTICE IS HEREBY GIVEN THAT the Philadelphia District of the U.S. Army Corps of Engineers has completed a draft feasibility report, which addresses shore protection and storm damage reduction alternatives for the communities of Avalon, Stone Harbor and North Wildwood, Cape May County, New Jersey and an ecosystem restoration project for Stone Harbor Point (Figure 1). The draft feasibility report titled: Townsends Inlet to Cape May Inlet Feasibility Study - Draft Feasibility Report and Draft Environmental Impact Statement is available for public review and comment. The feasibility study is being cost-shared equally by the Federal government and the New Jersey Department of Environmental Protection (NJDEP), the non-Federal project sponsor.

Avalon, Stone Harbor and North Wildwood are extensively developed shore communities in New Jersey, which play a principal role in the well being of New Jersey's economy. Significant beach and dune erosion has left these communities vulnerable to storm damages, and with reduced recreational opportunities. Severe storms in recent years have caused a reduction in the overall beach height and width along the study area, which, along with the absence of suitable dunes, exposes the communities of Seven Mile Island to catastrophic damage from ocean flooding and wave attack.

After evaluating several structural and non-structural storm damage reduction alternatives during the feasibility study, the recommended plan was determined to include beach nourishment utilizing sand obtained from three proposed borrow areas. The three sites are Townsends Inlet, Hereford Inlet, and an area offshore of Seven Mile Island (Figure 2). Beach nourishment will consist of berm and dune restoration along the ocean frontage of Avalon and Stone Harbor. This plan would require placement of approximately 3,110,500 cubic yards of sand for initial construction, with 745,800 cubic yards anticipated for periodic renourishments every 3 years over the 50 year project life. The proposed beach nourishment plan (Figure 3) will result in a 150

foot wide berm with a top elevation of +8.5 feet NGVD, and a dune elevation of +16 feet NGVD with a crest width of 25 feet and 1V on 5H side slopes for the oceanfront of Avalon and Stone Harbor. The proposed dunes will be planted with approximately 50 acres of dune grass, and would also contain 42,500 linear feet of sand fence.

The proposed inlet plans consist of the construction of a stone seawall which will extend from near the western end of Inlet Drive to the 8th Street groin along Townsends Inlet, and from the western end of the existing bulkhead in Anglesea to JFK Boulevard along Hereford Inlet. These seawalls will be constructed to top elevations of +14 feet NGVD and +13 feet NGVD, respectively, with a 12 foot top width and a seaward slope of 1 on 2 (Figure 4). In Avalon, the toe elevation is -3 feet NGVD, while in Wildwood, the toe elevation is -6 feet NGVD.

This study also evaluated restoration options for the wildlife habitat being lost at Stone Harbor Point. This evaluation, which was completed through the use of a Habitat Evaluation Procedure (HEP) and an incremental cost analysis, identified an ecosystem restoration plan consisting of the replacement and protection of approximately 116 acres of wildlife habitat (Figure 5). This protection and replacement will be accomplished through beachfill, dune creation, and the planting of 64 acres of bayberry and eastern red cedar. This plan will require the placement of 1,336,225 cubic yards of sand for initial beachfill placement with 240,000 cubic yards for periodic nourishment every three years over the 50 year project life. The proposed beach nourishment will result in a 150 foot wide berm at an elevation of +8.5 feet NGVD, with a dune elevation of +12 feet NGVD. Approximately 1000 feet south of the terminal groin the project will transition west, into the inlet, for 350 feet, with the berm widening to 275 feet at an elevation of +6 feet NGVD with a dune elevation of +10 feet NGVD. The dune will have a 1350 foot sand-filled, geotextile core with scour protection.

In accordance with the National Environmental Policy Act of 1969, a draft Environmental Impact Statement (DEIS) has been developed for this project and is being circulated to the appropriate State and Federal agencies; local, State, and Federal officials; and private organizations.

Impacts to Water Quality have been evaluated in accordance with the Section 404(b)(1) guidelines of the Clean Water Act, and are not adverse. In accordance with Section 401 of the Clean Water Act, Water Quality Certification is being requested from the New Jersey Department of Environmental Protection.

In accordance with Section 307 (c) of the Coastal Zone Management Act of 1972, an activity affecting land or water uses

in a State's coastal zone must comply with the State's Coastal Zone Management Program. A certification of compliance is being requested from the New Jersey Department of Environmental Protection.

It has been determined that the proposed work would not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. Updated consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service would occur prior to project implementation to insure compliance with Section 7 of the Endangered Species Act.

Review of the National Register of Historic Places indicates that no registered properties, or properties listed as eligible for inclusion, would be impacted.

All practicable means to avoid or minimize adverse environmental effects have been incorporated into the recommended plan.

The public and all agencies are invited to comment on this proposal. Copies of the Draft Feasibility Report and Draft Environmental Impact Statement are available upon request by calling (215) 656-6555. More detailed information on this work is also available for public review at the Philadelphia District Office.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice (December 6, 1996 to January 22, 1997), that a public hearing be held to consider this proposal. Requests for a public hearing shall state, in detail, the reasons for holding a public hearing.

All comments on the work described in this public notice and/or in the report titled: Townsends Inlet to Cape May Inlet Feasibility Study - Draft Feasibility Report and Draft Environmental Impact Statement should be directed to Mr. Robert L. Callegari, ATTN: Environmental Resources Branch, U.S. Army Corps of Engineers, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390 by January 22, 1997.

FOR THE COMMANDER:

for John A. Burke

Robert L. Callegari
Chief, Planning Division

Enclosures

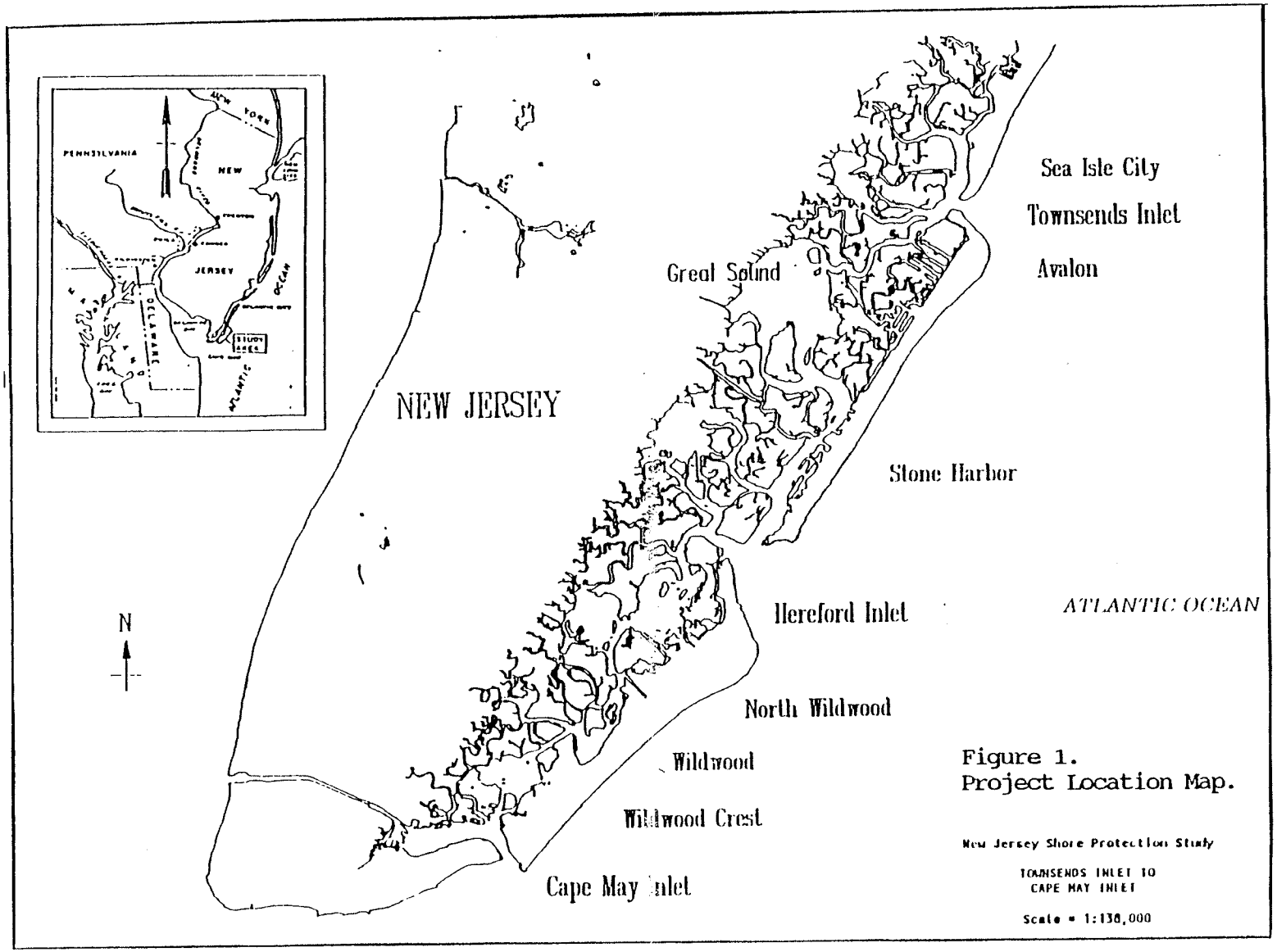
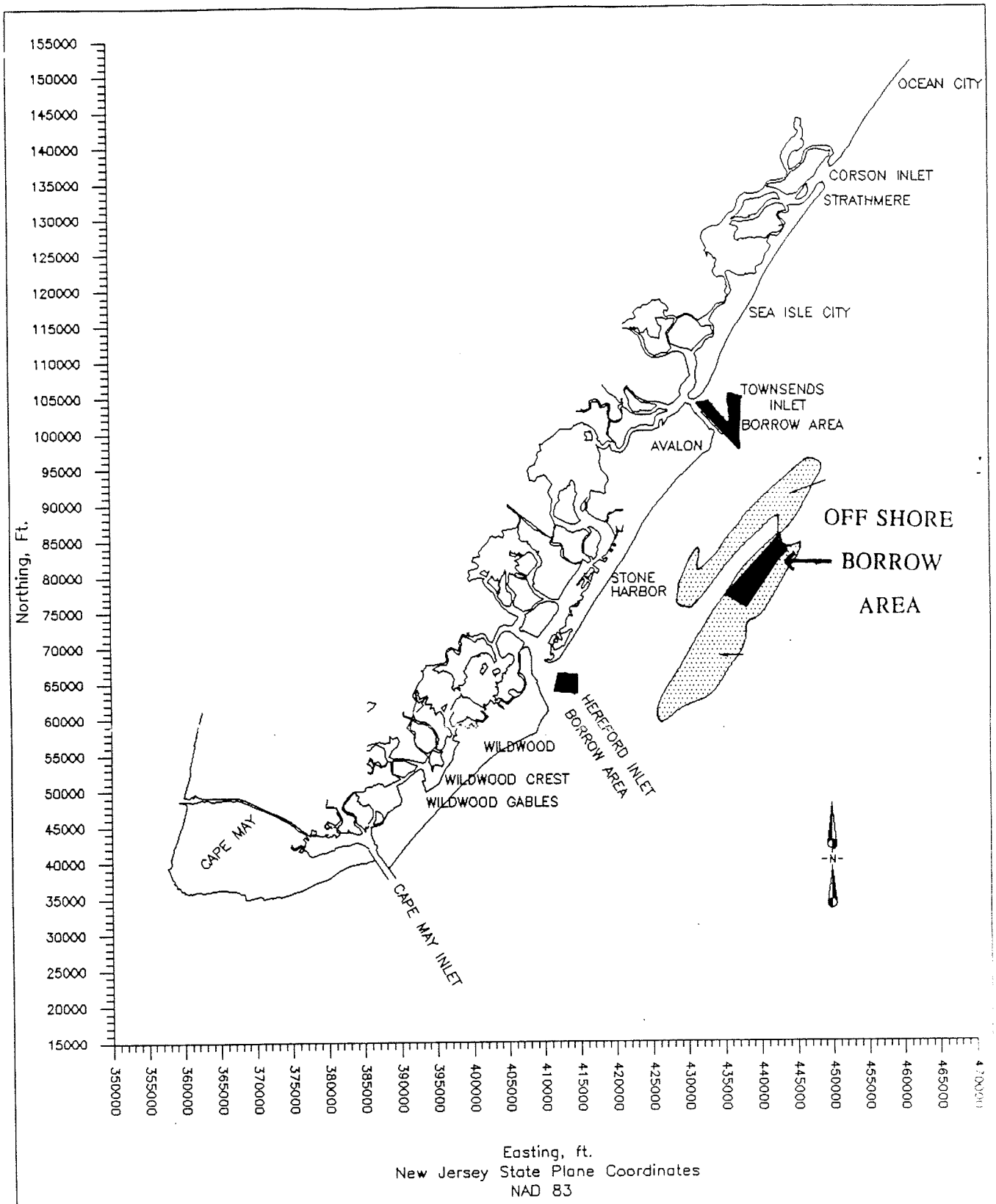



Figure 1.
Project Location Map.



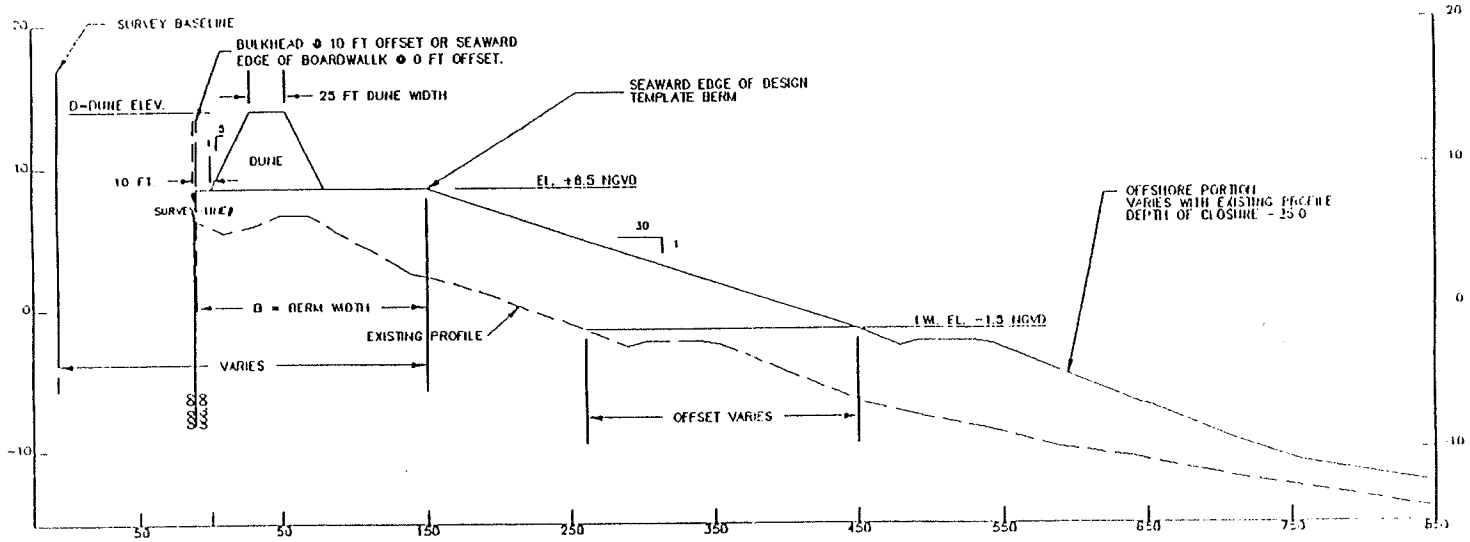

U.S. Army Corps of Engineers
Philadelphia District

**FIGURE 2**

POTENTIAL SAND SOURCES

FILE NAME: JERSEY.DWG

SCALE: NTS | DATE: JUNE 6 1996 | SHEET




| CYCLE 3 ALTER. | BERM WIDTH B FT. | DUNE EL. + FT. NGVD |
|---|---|---|
| BO | 100 | – |
| BX | 100 | 14 |
| CO | 150 | -- |
| CX | 150 | 14 |
| CY | 150 | 16 |
| DO | 200 | – |
| DX | 200 | 14 |
| DY | 200 | 16 |

SELECTED PLAN

**FIGURE 3** Selected Oceanfront Plan.

DEPARTMENT OF THE ARMY
Philadelphia District, Corps of Engineers
Philadelphia, Pennsylvania
NEW JERSEY SHORE PROTECTION STUDY
TOWNSENDS INLET TO CAPE MAY INLET
FEASIBILITY STUDY
AVALON & STONE HARBOR
SELECTED PLAN
DESIGN TEMPLATE
N.T.S.

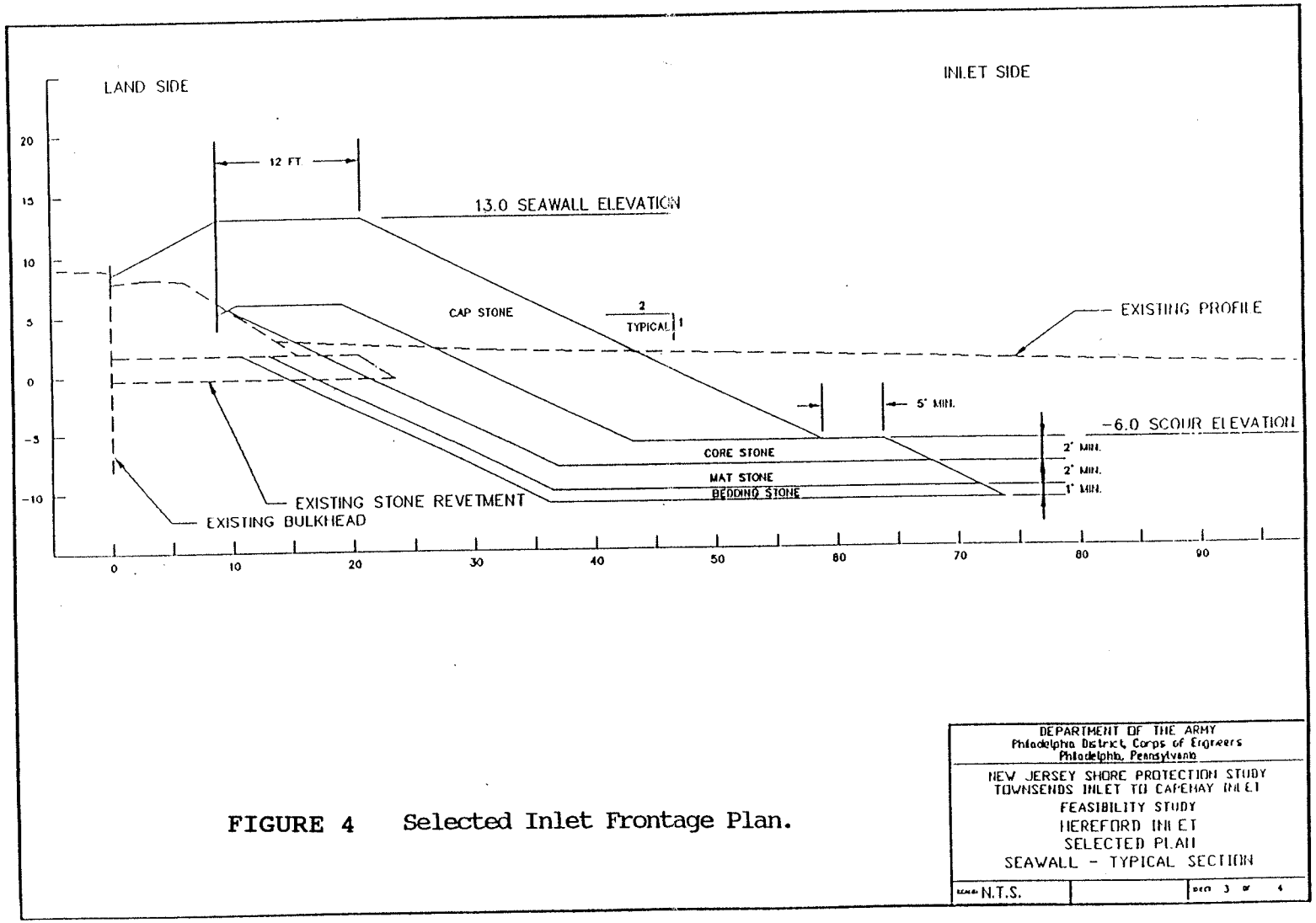
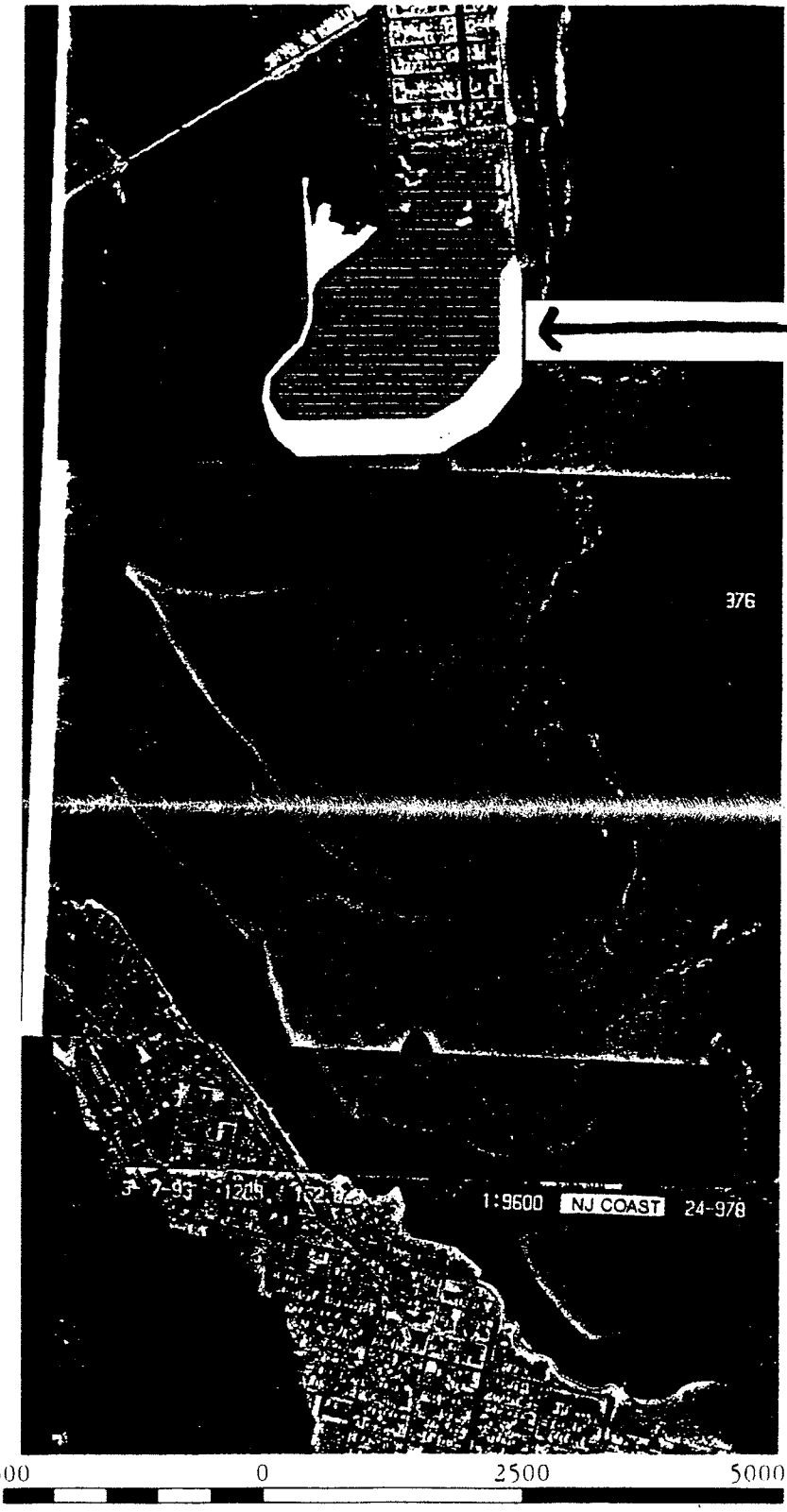



**FIGURE 4** Selected Inlet Frontage Plan.

FIGURE 5

# Stone Harbor Medium Configuration with Created Habitat



**12.24.1996 letter from Regional Director Ronald Lambertson to Lieutenant Colonel Keyser at USACE Philadelphia**

The Stone Harbor Project is within the NJ-09 Unit of the System and is located in Cape May County, New Jersey. Site inspections of the NJ-09 Unit were made by U.S. Fish and Wildlife Service biologists on April 25, July 21, and August 15, 1995. This portion of the barrier island provides habitat for a variety of migratory birds including colonial nesting waterbirds. The wetlands and shallow open waters in the vicinity of Stone Harbor also support important shellfish and finfish resources. Severe erosion and habitat loss has occurred in the Stone Harbor Unit partially as a result of sand capture by a groin structure, which has prevented replenishment via natural littoral drift. The proposed action within the Stone Harbor Unit is designed to replace approximately 157.7 acres of upland (dominated by bayberry [*Myrica pensylvanica*]), sand dune, and beach, which have been lost by erosion and not replaced by littoral drift.

**5.15.1997 Proposed Report to Congress from the Secretary of the Army "New Jersey Shore Protection, Townsends Inlet to Cape May Inlet Interim**

3. The fifth separable feature of the plan is for ecosystem restoration of the area at the southern end of Stone Harbor, also called Stone Harbor Point. The plan includes the restoration and protection of 116 acres of coastal barrier habitat including wetland, beach, dune, and bayberry (tertiary dune) habitats. The plan includes the planting of approximately 3 acres of dune grass and 64 acres of bayberry and eastern red cedar. The restoration requires an estimated 1,366,000 cubic yards of fill to be placed from designated offshore borrow sites. On the oceanfront of the restoration site, a 150-foot-wide berm at elevation +8.5 feet NGVD with a dune at elevation +12 feet NGVD and crest width of 25 feet would extend 1000 linear feet southwest of the terminal groin in Stone Harbor. Along the inlet frontage, the beach would transition to the west 350 linear feet with a berm width of 275 feet at elevation +6 feet NGVD and with a dune at elevation +10 feet NGVD and crest width of 20 feet. The dune would continue to the northwest, along the inlet, for an additional 250 linear feet. The dune includes a sand fence and has a sand-filled, geotextile core extending 1,350 feet with scour protection. The restoration site would be left in a natural state and would not include periodic nourishment.

**9.12.1997 letter from Willie Taylor, Director, Office of Environmental Policy and Compliance, DOI to David Sanford, Jr., Policy Review Branch, USACE**

This letter comments on the proposed Chief of Engineers report and final environmental statement for the Townsends Inlet to Cape May Inlet project.

EXTRACTION FROM BORROW AREAS

The Corps proposes to use only two borrow areas for initial construction--Borrow Area E (Townsends Inlet) for the beachfill on Seven Mile Island and Borrow Area G (Hereford Inlet) for ecosystem restoration on Stone Harbor Point. The Department concurs with the Corps proposal to initially use borrow areas E and G, due to a lower diversity and abundance of benthic invertebrates compared with Borrow Area F. The Department recommends that borrow areas E and G be used exclusively, unless these sites are not sufficient for the quantities of sand required. Additionally, the Department recommends that the Corps consult with the New Jersey Bureau of Shellfisheries to ensure that adverse impacts on shellfish within borrow areas are minimized.

**8.9.2016 letter from Eric Schrading, Field Supervisor, NJ ESFO, USFWS to Peter Blum, Chief, Planning Division, USACE Philadelphia District**

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.

# 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


In Reply Refer To:
17-CPA-0042

NOV 28 2016

Peter Blum, Chief
Planning Division
Philadelphia District
U.S. Army Corps of Engineers
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Beth Brandreth

Dear Mr. Blum:

The U.S. Fish and Wildlife Service (Service) received your November 17, 2016 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). 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 December 2016 to an unspecified 2017 completion date for the Avalon/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).

## CONSULTATION HISTORY

A chronology of key correspondences and communications between the Service and the Corps, regarding the subject re-nourishment event. A chronology of key correspondences is provided below.

| | |
|---|---|
| July 28, 2016 | The Corps consulted with the Service on the proposed use of the Hereford Inlet Borrow Area, which is within the CBRS Unit NJ-09 of the CBRA, requesting 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). |
| August 9, 2016 | The Service carefully reviewed the Corps request and identified 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. 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 were found not to be consistent with the provisions of the CBRA. |
| August 16, 2016 | The Corps requested re-initiation of streamlined (Tier 2) formal consultation under Section 7 of the ESA with regard to the Federal beach nourishment activities in Avalon and Stone Harbor, New Jersey (Townsends Inlet to Hereford Inlet). |
| August 17, 2016 | Via e-mail, the Service advised the Corps the August 16, 2016 letter did not reflect the formal consultation between the Corps and the Service on the use of Hereford Inlet as a borrow area pursuant to the CBRA. The Service requested that the August 16, 2016 be updated accordingly. |
| August 17, 2016 | Via e-mail, the Corps requested to hold off on the Tier 2 consultation request while the Corps' attorneys looked into the CBRA issue. |
| September 7, 2016 | The Corps and the Service discussed issues related to the CBRA by conference call. |

| | |
|---|---|
| September 8, 2016 | Via e-mail, the Corps provided additional information, including previous coordination letters specific to CBRA, aerial images displaying the borrow location and shoreline changes over time, and the current plans/drawings for the project. |
| September 12, 2016 | The Corps and the Service further discussed issues related to the CBRA by conference call. |
| September 15, 2016 | The Corps, in an attached document to an e-mail, provided additional information, reiterating that the project qualified for an exemption under Section 6(a)(6)(G) of the CBRA and requested a meeting/teleconference between the respective counsels. |
| September 27, 2016 | In consultation with the Service's Headquarters, the Service's Regional Office determined that there was not a need for additional solicitor review on the CBRA consultation provided by the New Jersey Field Office to the Corps on August 9, 2016. The previous solicitor opinions from the Service's Headquarters and the Department of the Interior were founds to provide sufficient information from which the Service's position was derived. The Service recommended that the Corps consider including alternative dredging sources (*e.g.*, OS-1 off N. Wildwood) and investigating non-federal funding (*e.g.*, State of New Jersey) for removal of sand from the CBRS unit. |
| November 16, 2016 | By phone call, the Corps Planning Division informed the Service that the Corps' Regulatory Branch determined that New Jersey Department of Environmental Protection (NJDEP) does not require a Corps permit for the use of non-Federal funds to dredge Hereford Inlet because the action is contained entirely within the footprint and environmental coordination of the overall Federal project. |
| November 17, 2016 | The Corps provided a revised letter requesting Tier 2 formal consultation for the Townsends Inlet to Hereford Inlet beach nourishment project, confirming that no Federal funds or assistance will be provided for costs associated with removal of sand material from the Hereford inlet Borrow Area which falls within CBRS Unit NJ-09 of the CBRA. |

**PROJECT DESCRIPTION**

The Corps proposes to re-nourish the Borough of Avalon beach between 8th and 28th Streets; and the Borough of Stone Harbor between 92nd and 114th Streets, and from 121st Street to the terminal groin. Between 355,000 and 1,375,000 yards of sand is proposed to be placed on the beaches from borrow areas within Townsends and Hereford inlets. Dredging sand from Hereford Inlet will be accomplished with non-Federal funds

(NJDEP). Berm profiles will be returned to the +7.25 NAVD design criteria. The Corps proposes to award the contract in December 2016. The duration of the project is projected to be 90 days.

## 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 2016-17 re-nourishment of Stone Harbor:

- The beach nourishments may be conducted during the beginning of the piping plover nesting season. Although nesting was not documented within the fill area in Stone Harbor, which is also outside the designated species protection areas in the Borough's Beach Management Plan, the southern extent of the beach nourishment in Stone Harbor and the dredge in Hereford Inlet is close enough to the designated/recent nesting area (Stone Harbor Point) to raise concerns about disturbance to piping plovers. The Service recommends that dredging and beach re-nourishment activities begin in Stone Harbor and move northward to the Borough of Avalon as time progresses to avoid adverse effects to piping plovers.

There have been no known occurrences of seabeach amaranth in the proposed areas to be re-nourished. Beach re-nourishment activities are proposed to occur outside of the migration period of the federally listed (threatened) red knot (*Calidris canutus rufa*). Therefore, the Service concurs that project activities are not likely to adversely affect the red knot.

## 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 Avalon-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 Avalon-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. However, the southern extent of the beach nourishment in Stone Harbor and the dredge in Hereford Inlet is close enough to the designated/recent nesting area (Stone Harbor Point) to raise concerns about disturbance to piping plovers. Therefore, the Service recommends that dredging and beach re-nourishment activities begin in Stone Harbor and move northward to the Borough of Avalon as time progresses to avoid adverse effects to piping plovers.

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 project 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 2016-17 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-Stone Harbor re-nourishment project:

- Begin dredging at Hereford Inlet and re-nourish Stone Harbor beaches first and move northward to Townsends Inlet and Avalon as time progresses to avoid adverse effects to piping plovers.

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 Section7(o)(2) of the ESA may lapse.

**REINITIATION - CLOSING STATEMENT**

This concludes Tier 2 formal consultation on the effects of the Corps' proposed 2016-17 beach re-nourishment of the Boroughs of Avalon and Stone Harbor, Cape May County, New Jersey. As provided in 50 CFR Section 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.

The Corps has confirmed that no Federal funds will be provided for costs associated with removal of sand material from the Hereford inlet Borrow Area, which is included in CBRS Unit NJ-09 of the CBRA. As a reminder, this Tier 2 consultation covers only the 2016-17 Avalon-Stone Harbor re-nourishment event, 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.

Please contact Carlo Popolizio at (609) 382-5271 if you have any questions or require further assistance.

Sincerely,

Eric Schrading
Field Supervisor

**DEPARTMENT OF THE ARMY**
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3391

NOV 17 2016

Environmental Resources Branch

Mr. Eric Schrading, Supervisor
U.S. Fish and Wildlife Service
Atlantic Professional Park
4 E. Jimmie Leeds Road
Galloway, New Jersey 08205

Dear Mr. Schrading:

In accordance with procedures outlined in the "Biological Opinion on the Effects of Federal Beach Nourishment Activities Along the Atlantic Coast of New Jersey Within the U.S. Army Corps of Engineers, Philadelphia District on the Piping Plover and Seabeach Amaranth", prepared by your office in December 2005, the Philadelphia District is writing to request reinitiation of streamlined (Tier 2) formal consultation under Section 7 of the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*), with regard to the Federal beach nourishment activities in Avalon and Stone Harbor, New Jersey (Townsends Inlet to Hereford Inlet project) and the concerns over potential direct, indirect and cumulative impacts to the federally threatened piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*). We are also requesting informal consultation related to potential impacts to the rufa red knot (*Calidris canutus rufa*). This letter serves to update the project information and schedule discussed in our August 16, 2016 Tier 2 letter on this project. It is currently anticipated that the construction contract for this project will be awarded in December 2016.

The quantity of material to be placed in Avalon and Stone Harbor for this nourishment cycle will be between 355,000 and 1,375,000 cy, depending upon available funding. The fill in Avalon will be placed from the 8th Street jetty to 28th street, while the fill in Stone Harbor will be between 92nd Street and 114th Street and 121st Street and the terminal groin. The nourishment activities will replace the sand that has been lost in order to return the berm profile to the +7.25 feet NAVD design criteria. Construction is anticipated to last approximately 90 days. Sand will be obtained from the previously utilized offshore borrow areas in Townsends and Hereford Inlets.

Piping plovers have regularly nested within the project area, and protective nesting areas lie adjacent to the areas currently proposed for fill. During the 2016 nesting season, plovers were present in Avalon between 40th and 58th Streets and at Stone Harbor Point. Both of these areas fall outside of the fill area for this nourishment cycle. It is anticipated that nesting pairs will return to the project area during the 2017 nesting season. For this reason, a piping plover construction monitor will be present in the event that construction is not completed before March 15.

Seabeach amaranth is a small beach dwelling plant generally found on the fore dunes and seaward edges of beaches above the high tide line. Information provided by your office indicated that no seabeach amaranth plants have recently been found at the site.

On September 27, 2013, the United States Fish and Wildlife Service (USFWS) released a proposal to list the *rufa* subspecies of red knot (*Calidris canutus rufa*), as threatened under the ESA. The final rule under the ESA was published December 11, 2014, and became effective January 12, 2015. Red knots also are federally protected under the Migratory Bird Treaty Act and are listed as endangered by the State of New Jersey. Threats to the red knot include sea level rise; coastal development; shoreline stabilization; dredging; reduced food availability at stopover areas; disturbance by vehicles, people, dogs, aircraft, and boats; and climate change. Red knots typically occur in New Jersey during their annual spring and fall migration. Small numbers of red knots may occur year-round in New Jersey, whereas large numbers rely on New Jersey's coastal stopover habitats during the spring (mid-May through early June) and fall (late-July through November) migration periods (USFWS 2015).

Portions of the project area serve as fall migratory stopover habitat for the red knot. During the fall migration, the red knot typically spends time foraging and resting within and above the intertidal zone. In 2014 the US Army Corps of Engineers (Corps) contracted a red knot survey along the coast of New Jersey to aid in identifying areas frequented by red knots during the fall migration. A total of 31 one-mile transects were surveyed over 7 survey events from September to November of 2014. Only 20 red knots were observed during the surveys and those birds were only found in 3 of the transects. The survey report concluded that, overall, the results of the 2014 surveys indicated a low usage of the Corps Philadelphia beach nourishment Project Areas by red knots during the survey period (late September to late November). None of the transect surveys identified high concentrations of red knots using any part of the Project Areas as a focal point for foraging, roosting, or migration during the survey period. However, since these surveys only captured one fall migration season, the Corps is currently conducting another red knot survey which began in August 2016. This current survey will include undisturbed reference areas as well as the Avalon and Stone Harbor project area, which was not included in the previous sampling effort. Red knots are

known to frequent the beach between 20th and 80th Streets in Avalon and Stone Harbor Point.

To insure that the upcoming construction activities are "not likely to adversely affect" listed species, the Corps has taken several preliminary steps to avoid directly impacting the piping plover, seabeach amaranth and red knot. No construction activities will take place within active plover nesting zones. It is anticipated that most of the construction activities will take place outside of the piping plover nesting season (March 15- August 15) to minimize potential impacts to plovers, as well as their eggs, nests, and chicks. In addition, all efforts will be made to prioritize placement activities adjacent to known nesting areas to avoid potential conflicts during the nesting season. With regard to red knots, the project fill area does overlap areas where red knots may be found from 20th – 28th Streets. This represents a small portion of the overall area (between 20th and 80th Streets) where red knots may be frequenting. In addition, the since the fall migration typically ends in November, all sand placement activities will occur outside of the migration period.

Based on the above information, and the fact that the Corps will follow the reasonable and prudent measures and terms and conditions outlined in the Biological Opinion to protect the species in question, it is concluded that the current plan to place between 355,000 and 1,375,000 cubic yards of sand on the beaches of Avalon and Stone Harbor is not likely to directly impact the piping plover, red knot or seabeach amaranth through burial or habitat alteration. The potential indirect, secondary, and cumulative impacts to plovers, have been fully covered in the Biological Opinion and are “not likely to adversely affect” either species. Therefore we believe that the consultation for this nourishment cycle can be concluded through informal consultation.

With respect to your finding that our use of the Hereford Inlet Borrow Area was no longer consistent with the Coastal Barrier Resources Act of 1982 (CBRA), no federal funds or assistance will be provided for costs associated with removal of material from the Hereford Inlet Borrow Area, which falls within System Unit NJ-09 of the CBRA System.

At this time, we are requesting a written response indicating your concurrence with our proposed course of action with regard to direct and indirect impacts to these threatened species and the proposed Corps construction activities. This response will serve to conclude the Section 7 Consultation Process for this phase of the Townsends Inlet to Hereford Inlet Project. We appreciate your attention to this matter. If you have any questions or require additional information, please contact Ms. Beth Brandreth of the Environmental Resources Branch at (215) 656-6558.

Sincerely,

Peter R. Blum, P.E.
Chief, Planning Division

Cc: Christine Davis, NJDEP

**DEPARTMENT OF THE ARMY**
PHILADELPHIA DISTRICT, CORPS OF ENGINEERS
100 EAST PENN SQUARE, FLOOR 7
PHILADELPHIA, PENNSYLVANIA 19107-3390

Environmental Resources Branch

JUL 28 2016

Mr. Eric Schrading, Supervisor
U.S. Fish and Wildlife Service
Atlantic Professional Park
4 E. Jimmie Leeds Road
Galloway, New Jersey 08205

Dear Mr. Schrading:

The purpose of this letter is to conduct further coordination with the U.S. Fish and Wildlife Service (Service) under the Coastal Barrier Resources Act of 1982 (CBRA) for the ongoing Townsends Inlet to Cape May Inlet beach restoration project being conducted by the Philadelphia District of the U.S. Army Corps of Engineers (Corps).

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. 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). Section 6 of the CBRA (16 U.S.C. 3505) however provides exceptions to the general prohibitions in Section 5 of the CBRA (16 U.S.C. 3504) for Federal expenditures within or affecting the Coastal Barrier Resources System (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 loss of human life, wasteful Federal expenditures, and damage to natural resources). Based on information received from your office, however, apparently this exception only applies to shoreline stabilization projects within the CBRS.

One of the borrow areas (Hereford Inlet) for the above referenced Townsends Inlet to Cape May Inlet project falls within System Unit NJ-09 of the CBRS. During the initial planning and NEPA compliance for this project, coordination was conducted with the Service with respect to CBRA. In a letter dated December 24, 1996, the Service's Region 5 Headquarters approved the use of the Hereford Inlet borrow area for the project which included beach restoration and periodic nourishment over the 50 year project life. The project was successfully constructed in 2003 using sand obtained from both Townsends Inlet and Hereford Inlet borrow areas. The Townsends Inlet borrow area is used as a sand source for the northern end of the project and the Hereford Inlet borrow area is used as a sand source for the southern end of the project to accommodate the pumping distance between the two ends of the project (approximately

7 miles). Since the initial construction, the Hereford Inlet borrow area was used by the Corps for nourishment cycles in Stone Harbor in 2011 and 2013. The initial construction, as well as all subsequent nourishment has been coordinated with the USFWS prior to construction activities and has been found to be in compliance with all applicable Service regulations.

During the last nourishment cycle in 2013, the Service informed the Corps that additional coordination under CBRA was now required to insure compliance under the Act due to concerns regarding the removal of sand from a CBRA unit. The Corps currently plans to use the Hereford Inlet Borrow Area for nourishment activities in the Fall of 2016.

According to a report entitled: ***Shoreline Changes Along Hereford Inlet Since 1998 Potential Related to Sand Removal for Beach Nourishment***, by Dr. Stewart Farrell, Director of the Coastal Research Center at The Richard Stockton College of New Jersey, approximately 6 million cubic yards of sand was removed from Hereford Inlet between 1998 and 2011 for Federal, state and local beach nourishment projects. (This report was previously provided to your office.) Of this quantity, more than 4 million cubic yards was placed along the beaches of Stone Harbor. In 2013, the borrow area was used again by the Corps to place sand on the Stone Harbor beaches. The borrow area was also used by the City of Wildwood to place sand in North Wildwood in 2013 using FEMA funding.

Within the project area, the predominate longshore transport is to the south. This means that the beachfill material which is placed along the shoreline of Stone Harbor migrates south due to dispersion and the net longshore current direction. As a result, a significant portion of the sand that is placed along the Stone Harbor oceanfront ends up back in Hereford Inlet and on Stone Harbor Point. One of the reasons that inlet borrow areas are so important to ongoing coastal projects along the coast of New Jersey is because they represent a renewable source of beach quality sand. The results of project monitoring and surveys within the borrow area support this statement and provide a clear picture of the borrow area's rapid infilling rate. Three recent examples of Hereford Inlet's rapid borrow area infilling include surveys from October 2010, December 2012 and August 2014 where 101%, 107% and 105% of the material removed from the site was replaced within 18-24 months.

As mentioned above, the longshore transport also moves sand from the placement area onto Stone Harbor Point. As you are aware, Stone Harbor Point is located immediately south of and adjacent to the Stone Harbor portion of the project area. The Point is a protected natural area that provides important beach nesting bird habitat for a variety of shorebirds, including piping plovers, and also falls within System Unit NJ-09 of the CBRS. The Point has been subject to extreme erosion and shoreline change for many years. According to Dr. Farrell, in 1986, the Point extended 1 mile south of Stone Harbor with a mature dune system and associated vegetation. Coastal erosion and the lack of sand movement within the system led to the loss of all of the upland and exposed beach habitat after 1988. These conditions persisted through 1998 with sand slowly accumulating south of the terminal groin in Stone Harbor. Following the beachfill activities in 1998 and 2003, the Point began to grow steadily as sand was

added back into the longshore transport system (see enclosed photos). The sand dredged from the Hereford Inlet borrow area is essentially backpassed (i.e., returned) to an updrift location, allowing sediment to both maintain and increase habitat at Stone Harbor Point while returning additional sand back into the Inlet. With the continued placement of sand on the Stone Harbor beaches, the Point has again stabilized and formed a variety of important natural coastal habitats.

Based on the above information, the Corps feels that the use of sand from the previously approved Hereford Inlet borrow area meets 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 CBRA (*i.e.* to minimize loss of human life, wasteful Federal expenditures, and damage to natural resources). The Corps feels this exception is applicable because no sand is being directly placed within the CBRS unit. The placement of sand outside of the unit is serving to add sand back into the longshore transport system and allow it to naturally accumulate on Stone Harbor Point which is in fact protecting the valuable natural resources in that area from further excessive erosion and damages. In addition, the placement of sand along the beaches of Stone Harbor protects that community from property damage and the potential loss of human life during severe storm events that are common along the coast of New Jersey. If there is concern over the removal of sand from the CBRS unit, this letter previously discussed the fact that sand removed from the borrow area is quickly returned to the unit both within the borrow area and along Stone Harbor Point. In addition, based on surveys conducted following Hurricane Sandy, the amount of sand in the borrow area accounts for only 2% of the Hereford Inlet sub-tidal areas between the outer limits of the ebb-tidal delta, the two barrier islands and the salt marsh to the west.

At this time we are requesting your concurrence that the continued use of the Hereford Inlet borrow area for the Townsends Inlet to Cape May Inlet project is in compliance with CBRA regulations. Should you need further information or if you have any questions regarding this letter, please contact Ms. Beth Brandreth of the Environmental Resources Branch at 215-656-6558.

Sincerely,

for Peter R. Blum, P.E.
Chief, Planning Division

Enclosures

3/1991
1991
Image NASA
Image U.S. Geological Survey
Google earth
Tour Guide
Imagery Date: 3/10/1991 39°01'16.45" N 74°46'59.23" W elev 3 ft eye alt 21543 ft

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2002
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Imagery Date: 7/15/2006 39°01'16.45" N 74°46'59.23" W elev 3 ft eye alt 21543 ft

5/2015
Google earth
Tour Guide
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Imagery Date: 5/25/2015 39°01'16.45" N 74°46'59.23" W elev 3 ft eye alt 21543 ft

# 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


In Reply Refer To:
16-CPA-0223

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 0 9 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 Schrading
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 0 2 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 NO1, Little Tybee Island, of the Coastal Barrier Resources System for a beach nourishment project outside of Unit NO1. 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 NO1, 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,

Richard N. Smith

Deputy DIRECTOR

IDENTICAL LETTER SENT TO:
Colonel Wayne W. Boy, Savannah District

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# CBRS Stone Harbor Unit NJ-09 (Hereford Inlet) Talking Points

## CBRA Basics:

- CBRA is a map based law comprising 870 units that make up the Coastal Barrier Resources System (CBRS), which contains 3.5 million acres of barriers and associated wetlands along the Atlantic, Gulf of Mexico, and Great Lakes coasts, as well as Puerto Rico and the U.S. Virgin Islands.

- The three purposes of CBRA are to minimize: wasteful federal expenditures, loss of human life, and damage to natural resources. CBRA achieves these goals by restricting federal funding and financial assistance that may encourage development, such as flood insurance, disaster assistance, beach nourishment, and new road construction. CBRA does not restrict the use of private, state, or local funds within the CBRS or limit the issuance of federal permits.

- A recent study in the Journal of Coastal Research estimated CBRA saved the taxpayers $9.5 billion from 1989-2013 (avoided coastal disaster expenditures by FEMA, DOT, EPA, and HUD).

- The Service is responsible for maintaining and updating the CBRS maps. With minor exceptions, only Congress can change the maps of the CBRS to add or remove lands.

- The Service receives numerous requests for changes to the maps from interested parties (generally property owners, local communities, and their members of Congress) that seek federal funding for specific areas. The Service conducts research, applies statutory criteria and objective mapping protocols, and prepares revised maps for Congressional consideration.

- CBRA has about a dozen exceptions, but consultation with the Service is required before a federal agency can obligate funding for an excepted activity. Any response provided by the Service is an opinion only. **The funding agency makes the final decision. The Service has no regulatory authority over CBRA.**

## Hereford Inlet - Sand Mining Issues:

- **Hereford Inlet**, located along the Atlantic coast in Cape May County in southeastern New Jersey, **was first added to Unit NJ-09 of the CBRS in 1990**. The Service is currently remapping this area as part of a large project covering nine states in Region 5 using Hurricane Sandy supplemental funds.

- In 2016, the Corps requested a consultation from the Service's NJ Field Office 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 (Borough of Stone Harbor).

- In 2016, the Service found the project not allowable with federal funds under CBRA. Though CBRA contains an exception for shoreline stabilization to restore natural systems within the CBRS, **a 1994 DOI solicitor's opinion states that this exception does not allow for sand mining <u>within the CBRS</u> for the purposes of nourishing beaches <u>outside of the CBRS</u>.**

- The Corps previously assumed they could use the Hereford Inlet borrow site because they had received concurrence from the NJFO on a previous project within Unit NJ-09 in the late 1990's. However, the previous project was for environmental restoration within Unit NJ-09. The project proposed in 2016 sought to borrow sand from the CBRS for use in nourishing a developed shoreline outside of the CBRS for storm protection. **These projects are different fact patterns and therefore there has been no "reversal" in Service policy (as has been reported in the media).**

- In light of the Service's 2016 non-binding opinion, the Corps decided not to fund the dredging of Hereford Inlet. **The Corps subsequently entered into an MOA with the State of NJ to use state funds for the dredging within the CBRS, and the project was completed. This approach to use non-federal funding for portions of projects within the CBRS has been applied elsewhere and is currently proposed for a large storm damage reduction project in Texas.**

- In 2016, the nearby Borough of Avalon filed suit against the Corps and the Service for violation of the Administrative Procedures Act, alleging an arbitrary and capricious interpretation of CBRA. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing.

- In 2019, the Corps pulled out of a planned renourishment project for the Borough of Stone Harbor due to CBRA. Recent news reports state that without federal funds, the project is too expensive.

- Interested parties now seek to downgrade the unit to an Otherwise Protected Area (OPA). System Units carry CBRA's full suite of restrictions on federal expenditures, while OPAs (generally comprised of park lands at the time of designation) restrict only federal flood insurance. Reclassifying the borrow site to an OPA would allow the use of federal funds for dredging. **The borrow site does not qualify for reclassification to OPA according to the Service's objective mapping protocols and CBRA's statutory definition of "otherwise protected."**

**National Implications:**

- The sand mining issue has come up in two other hot spots along the Atlantic Coast (southeastern NC and Folly Beach, SC), where local communities seek to use inlets within the CBRS as borrow sites for beach nourishment projects outside of the CBRS. The use of nearshore borrow sites is generally preferable to offshore borrow sites due to sand quality and cost.

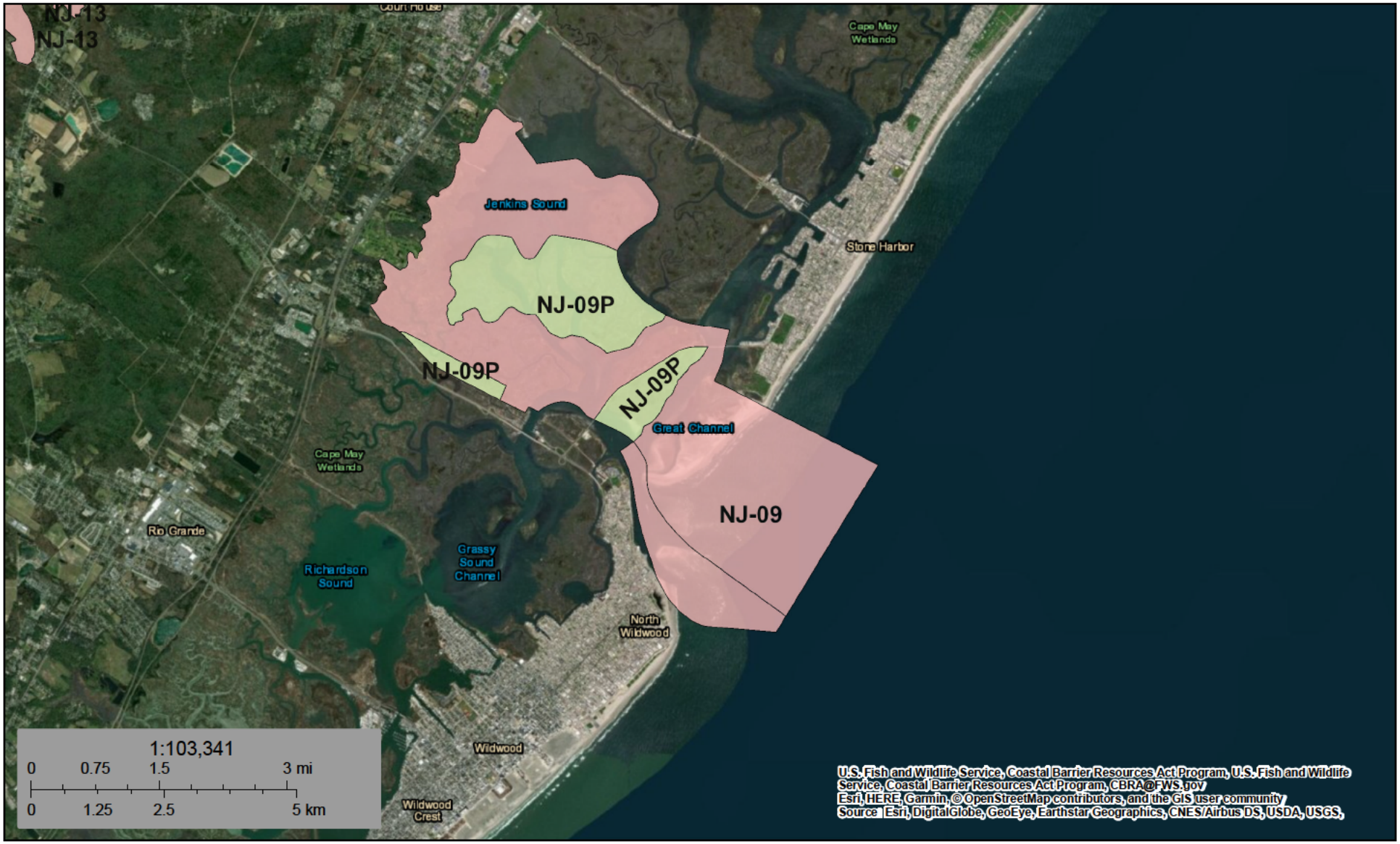
- **Following recent Congressional inquiries, the Acting AS-FWP was briefed on this matter in November 2018 and declined to re-asses DOI's longstanding interpretation of CBRA**. A letter from the Service's Principal Deputy Director to seven members of Congress conveyed this position in December 2018.

- Numerous groups (e.g., Association of State Floodplain Managers, National Audubon Society, American Littoral Society) have submitted comments to the Service opposing the use of inlets within the CBRS as borrow sites due to impacts on these areas as natural storm buffers and habitat.

Prepared: April 24, 2019

# U.S. Fish and Wildlife Service
## Coastal Barrier Resources System

# Unit NJ-09




April 24, 2019

CBRS Buffer Zone

System Unit

**CBRS Units**

Otherwise Protected Area

This map is for general reference only. The Coastal Barrier Resources System (CBRS) boundaries depicted on this map are representations of the controlling CBRS boundaries, which are shown on the official maps, accessible at https://www.fws.gov/cbra/maps/index.html. All CBRS related data should be used in accordance with the layer metadata found on the CBRS Mapper website.

The CBRS Buffer Zone represents the area immediately adjacent to the CBRS boundary where users are advised to contact he Service for an official determination (http://www.fws.gov/cbra/Determinations.html) as to whether the property or project site is located "in" or "out" of the CBRS.

CBRS Units normally extend seaward out to the 20- or 30-foot bathymetric contour (depending on he location of the unit). The true seaward extent of the units is not shown in the CBRS mapper.

This page was produced by the CBRS Mapper

# 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

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 renourishent 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,

/sgn/ 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-PMOSecretary'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\kelseyl\Zirschky.ltr
REVISED:AES:MNash:4/3/95

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Gustavson, Angela |
| **Subject:** | Fwd: URGENT: Questions about amendments: due COB today |
| **Date:** | Wednesday, June 19, 2019 11:27:42 AM |
| **Attachments:** | Info Memo for Secretary - Rep Rouzer CBRA 05142019.docx |

---

FYI

---------- Forwarded message ---------
From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Mon, Jun 17, 2019 at 1:34 PM
Subject: Fwd: URGENT: Questions about amendments: due COB today
To: Elizabeth Berg <elizabeth_berg@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>
Cc: Wright, Dana <dana_wright@fws.gov>

FYI, assuming you are in the loop on this but this is what Martha sent forward on the earlier proposed CBRA sand mining rider (which has changed).

Katie

---------- Forwarded message ---------
From: **BalisLarsen, Martha** <martha_balislarsen@fws.gov>
Date: Mon, Jun 17, 2019 at 12:06 PM
Subject: Fwd: URGENT: Questions about amendments: due COB today
To: Katie Niemi <katie_niemi@fws.gov>, Dana Wright <dana_wright@fws.gov>

FYI ... this was the earlier version of the rider language that we had an hour at the end of the day last week to respond to. As you can see, I borrow language from the bp to respond. Interesting to see what the proposed rider language is now.

Martha

---------- Forwarded message ---------
From: **BalisLarsen, Martha** <martha_balislarsen@fws.gov>
Date: Thu, Jun 13, 2019 at 5:53 PM
Subject: Re: URGENT: Questions about amendments: due COB today
To: Bivens, Dana <dana_bivens@fws.gov>, Nolin, Chris <chris_nolin@fws.gov>
Cc: Chun-Xue Ren <chun-xue_ren@fws.gov>, Rachel Merkel <rachel_merkel@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Gary D Frazer <Gary_Frazer@fws.gov>

Dana and Chris, response to the second batch. Gary, please weigh in if you get a chance.

Attached is briefing paper that we did in response to a request in June 2018 from seven members of Congress regarding the Service's interpretation of CBRA's exceptions, specifically as they pertain to congressionally-authorized shoreline-

stabilization projects.

The proposed amendment is unclear to me. Agencies are required to consult with the Service under CBRA but 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).

There has been a lot of questions raised regarding our CBRA consultations that require sand mining. 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. Per the request of Representative Van Drew to Secretary Bernhardt during the FY20 Budget hearing, the 1994 Solicitor's opinion is under review.

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.

Let me know if you need additional information.

Martha

On Thu, Jun 13, 2019 at 5:01 PM Bivens, Dana <dana_bivens@fws.gov> wrote:

> Hi Martha,
>
> We received another draft amendment and the committee would like the Program's feedback. The draft amendment states:
>
> None of the funds made available by this act may be used to implement the Department of Interior Solicitor's opinion (FWS.CW.0380) issued in 1994, to advance life-saving coastal storm reduction and community resiliency projects at less cost to local and state taxpayers while also improving ecological productivity.
>
> The referenced solicitor's opinion is referenced below. I heard that may be a briefing paper on this? If you can share that would be great!
>
> Thanks in advance for your quick turn around on these requests.
>
> -Dana

On Thu, Jun 13, 2019 at 3:41 PM Bivens, Dana <dana_bivens@fws.gov> wrote:

Thanks Martha!

On Thu, Jun 13, 2019 at 3:27 PM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:

Let me go find Gary or Gina for responses and I will get back to you ASAP.

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, Jun 13, 2019 at 3:25 PM Bivens, Dana <dana_bivens@fws.gov> wrote:

Good afternoon Martha,

Jocelyn asked for some background information a few amendments. Amendments are due to the House Rules committee by COB today so they need to hear back from us ASAP. Can you please provide your feedback on the following amendments:

-Prevents funds from being used to treat the Mexican wolf as an endangered or threatened species. (Lesko, AZ) Need status of MX wolf - regulatory status plus population status.

-Prohibits funds from this Act to be used to list the grizzly bear in the Greater Yellowstone Ecosystem Area under the Endangered Species Act. Cheney (WY), Gianforte (MT) Need status of griz - regulatory plus population.

-Prohibits funds from being used to enforce the listing of the Panama City Crayfish under the Endangered Species Act. Dunn (FL). What is the concern? Regulatory status?

Thanks so much!

-Dana

--
Dana Bivens

Program Analyst
U.S. Fish and Wildlife Service
Division of Budget
Office: (703) 358-2419
dana_bivens@fws.gov

--
Dana Bivens
Program Analyst
U.S. Fish and Wildlife Service
Division of Budget
Office: (703) 358-2419
dana_bivens@fws.gov

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Dana Bivens
Program Analyst
U.S. Fish and Wildlife Service
Division of Budget
Office: (703) 358-2419
dana_bivens@fws.gov

**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

| | |
|---|---|
| **From:** | Frazer, Gary D |
| **To:** | Shultz, Gina; BalisLarsen, Martha; Phinney, Jonathan T; Niemi, Katie; Wright, Dana K |
| **Subject:** | Fwd: CBRA memo comments and questions |
| **Date:** | Tuesday, June 25, 2019 2:00:02 PM |
| **Attachments:** | Attachment 2 - Responses to Questions.docx<br>CBRA Options Paper for the Secretary 6.6.19kem lyc.docx |

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FYI

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

---------- Forwarded message ---------
From: **Jesup, Benjamin** <benjamin.jesup@sol.doi.gov>
Date: Tue, Jun 25, 2019 at 1:47 PM
Subject: Fwd: CBRA memo comments and questions
To: Gary D Frazer <Gary_Frazer@fws.gov>

FYI. We've heard nothing since on this issue.

Ben

---------- Forwarded message ---------
From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Thu, Jun 6, 2019 at 4:28 PM
Subject: Re: CBRA memo comments and questions
To: Mills, Katie <katie_mills@ios.doi.gov>
Cc: Benjamin Jesup <benjamin.jesup@sol.doi.gov>, Peg Romanik <peg.romanik@sol.doi.gov>, Karen Budd-Falen <karen.budd-falen@sol.doi.gov>

Katie,
Attached is our response to your comments.
Also attached is FWS' response to Congressman Grave's June 20, 2018 letter (previously sent to Andrea T); I've highlighted on page 3 some helpful language related to your navigation dredging question (excerpted in our response to your comments).
Feel free to contact me if you have questions,
Linus

On Thu, Jun 6, 2019 at 12:56 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:
> We will try to get something to you by COB today.
>
> On Thu, Jun 6, 2019 at 11:05 AM Mills, Katie <katie_mills@ios.doi.gov> wrote:
> > Linus, thanks for the memo. I have attached some comments and questions. Once you have a chance to review, when do you think you can get this back me? Thanks!
> >
> > --

*Katie E. Mills*
*Counselor to the Assistant Secretary for Fish and Wildlife and Parks*
*U.S. Department of the Interior*
*Katie_Mills@ios.doi.gov*
*202-208-4591-Office*
*202-802-2114-Cell*

--

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

--

Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
Department of the Interior
202-208-3170

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CBRA Options Paper for the Secretary

From: SOL-DPW

**Issue:**

The Coastal Barrier Resources Act (CBRA) prohibits most federal expenditures within units of the Coastal Barrier Resources System (CBRS or System), subject to certain exceptions. One of those exceptions is for expenditures within the System for nonstructural projects for shoreline stabilization.

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(b) (5)

[redacted]

DRAFT

**From:** BalisLarsen, Martha
**To:** Niemi, Katie; Phinney, Jonathan T
**Subject:** Fwd: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
**Date:** Wednesday, June 26, 2019 11:22:42 AM
**Importance:** High

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just FYI

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)

---------- Forwarded message ---------
From: **Gary Frazer** <gary_frazer@fws.gov>
Date: Wed, Jun 26, 2019 at 11:19 AM
Subject: Re: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
To: Wainman, Barbara <barbara_wainman@fws.gov>
Cc: Margaret Everson <margaret_e_everson@fws.gov>, Steve Guertin <stephen_guertin@fws.gov>, Gina Shultz <Gina_Shultz@fws.gov>, Martha Balis Larsen <Martha_BalisLarsen@fws.gov>

At Monday's FWP check-in, I understood Taylor to say that David had handed this matter, and the associated Congressional correspondence, to FWP to handle.

With regard to this incoming from Chairman Grijalva, my folks are reaching out to USGS to begin discussions on what such a study might entail, how much it would cost, how long it would take, etc. — GDF

Sent from my iPhone

On Jun 26, 2019, at 9:08 AM, Wainman, Barbara <barbara_wainman@fws.gov> wrote:

> I know there have been discussions about briefing the Secretary on the changes to CBRA that a few members have been advocating for (Van Drew, Tillis, Rouzer). In light of that wanted you to be aware of the Grijalva letter that came to USGS and FWS.

Barbara W. Wainman

Assistant Director, External Affairs
US Fish and Wildlife Service
(202) 208-5256 (office)
(571) 471-4159 (cell)

---------- Forwarded message ---------
From: **Kodis, Martin** <martin_kodis@fws.gov>
Date: Wed, Jun 26, 2019 at 10:54 AM
Subject: Letter to FWS and USGS from Chairman Grijalva / CBRA sand mining study
To: Cole Rojewski <cole_rojewski@ios.doi.gov>, Playforth, Taylor <taylor_playforth@ios.doi.gov>
Cc: Wainman, Barbara <barbara_wainman@fws.gov>, Melissa Beaumont <melissa_beaumont@fws.gov>, Elizabeth Berg <elizabeth_berg@fws.gov>, Jester, Julia <jjester@usgs.gov>

Hi Cole and Taylor,

The attached letter was sent to FWS and USGS. It requests that USGS in conjunction with FWS conduct a study on the effects of taking sand from a CBRA unit for use in beach nourishment outside the unit.

Julia and I talked about this yesterday. There are a few issues to consider as we draft a response.

- How much would such a study cost, and if we were to conduct it, where would the funds come from?

- What will be the decision process on whether and how we conduct this study?

- How should we respond to the incoming letter? I recommend sending an interim response soon acknowledging receipt of the letter, and that we're looking into the possibilities of conducting the requested study, including cost and availability of funds, and will get back to the chairman after we've done that scoping. I guess that letter would be signed by FWS and USGS.

Please let me know if you have any thoughts on this. We could wait till Friday's meeting to discuss this when we're all together.

Thank you,

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

<2019-06-24 RG to FWS and USGS on CBRA study.pdf>

| | |
|---|---|
| **From:** | Wright, Dana K |
| **To:** | Niemi, Katie; Phinney, Jonathan T |
| **Subject:** | Re: CBRA Memo |
| **Date:** | Thursday, July 25, 2019 10:45:20 AM |
| **Attachments:** | USFWS Information Memo 4.2019.docx |

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Katie,

Gary just called me about this. Apparently Margaret will be engaging with Karen Budd-Falen (Acting AS-FWP and also Deputy SOL for Parks and Wildlife) on this. He asked that we be sure to mention that this issue was reviewed and certified by the Assistant Secretary in the past and that Congress has twice reauthorized CBRA without regard to this issue. I asked whether we should keep it to two pages and he said not to worry about a page limit.

**Jonathan**, can you please seek clarification regarding which template to use? My understanding is that we are to use the one with the logos on it (attached), and this is also the version currently available on the ES Magnet site: https://sites.google.com/a/fws.gov/hqesops/bptemplate. I am going to prepare this as an IM to Margaret from Gary (not from Margaret to Karen Budd-Falen). Please let me know if you think otherwise.

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, 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

# USFWS INFORMATION MEMORANDUM

**DATE:** July 15, 2020

**TO:** Andrea Travnicek, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks *or* Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service Exercising the Authority of the Director of the U.S. Fish and Wildlife Service

**FROM:** Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service Exercising the Authority of the Director of the U.S. Fish and Wildlife Service *or* [*RD/AD name and jurisdiction/unified region]*

**SUBJECT:** *[enter subject]*

## I. STATEMENT OF ISSUE/KEY FACTS

## II. BACKGROUND AND FWS POSITION

## III. POSITION OF AFFECTED PARTIES/PUBLIC LANDS AFFECTED

## IV. STATUS UPDATE

## V. POTENTIAL ISSUES

## VI. TIMELINE/NEXT STEPS

**Prepared by:** *[RD/AD name and jurisdiction/unified region] or [SME]*

☐ **FYI** **or** ☐ **Requested by:** *[name]*

☐ **Prepared for a meeting:** *[meeting date] [meeting invite title]*

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | BalisLarsen, Martha |
| **Cc:** | Wright, Dana K; Bohn, Cynthia; Simon, Spencer; Schrading, Eric; Phinney, Jonathan T |
| **Subject:** | Re: Yoskin Letter |
| **Date:** | Friday, July 26, 2019 2:23:58 PM |
| **Attachments:** | 068399 Signed - Rep LoBiondo.pdf<br>CBRA Info Memo on Sand Mining 07262019.docx<br>Yoskin Letter.pdf |

---

Martha,
Please see the attached letter from an attorney representing the NJ municipalites affected by the Hereford Inlet sand mining issue. Given the request yesterday that we prepare an info memo on sand mining for Margaret (and that she still needs to chat with SOL for legal direction), please advise how the Service should proceed with responding to the attached letter. One option may be for the NJ FO to send a short response letter to the attorney that summarizes the attached December 2018 response to Rep. LoBiondo and other Congressional members on this matter.

Eric, Spencer, and Cindy, please see the attached draft info memo for Margaret and let me and Dana know if you have any changes or concerns.

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 Fri, Jul 26, 2019 at 10:05 AM Schrading, Eric <eric_schrading@fws.gov> wrote:

> Katie, Dana, Cynthia,
>
> We received this letter from an attorney for the towns of Avalon, Stone Harbor, and N. Wildwood asking us to reconsider our position on CBRA consistency associated with using Hereford Inlet as a borrow area. (b) (5) [redacted]
>
> [redacted]
>
> [redacted]
>
> Can we set up a call to discuss response options? Maybe Wed. July 31?
>
> --
> 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

# 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

# USFWS INFORMATION MEMORANDUM

**DATE:** July 26, 2019

**TO:** Margaret Everson, Principal Deputy Director, U. S. Fish and Wildlife Service Exercising the Authority of the Director of the U.S. Fish and Wildlife Service

**FROM:** Gary Frazer, Assistant Director for Ecological Services, U.S. Fish and Wildlife Service

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

## I. STATEMENT OF ISSUE/KEY FACTS

The Coastal Barrier Resources Act (CBRA) originally established the Coastal Barrier Resources System (CBRS) in 1982. CBRA is a free-market approach to conservation that saves taxpayers money and keeps people out of harm's way by removing the federal incentive to develop ecologically sensitive and storm-prone coastal areas. CBRA prohibits most new federal expenditures and financial assistance within the CBRS. A recent study in the *Journal of Coastal Research* found that CBRA reduced federal coastal disaster expenditures by $9.5 billion between 1989 and 2013.

The CBRS is currently comprised of 870 geographic units totaling 3.5 million acres, located along the Atlantic, Gulf of Mexico, Great Lakes, U.S. Virgin Islands, and Puerto Rico coasts. The CBRS is depicted on a set of maps that is maintained by the U.S. Fish and Wildlife Service (Service). Only Congress has the authority to modify the boundaries of the CBRS by adopting new maps through legislation (there are minor exceptions).

CBRA restricts new federal expenditures within 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 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 a limited number of U.S. Army Corps of Engineers (Corps) shore-protection projects in 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 benefiting 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. The Service's long-standing policy has become controversial with local communities and their members of Congress in recent years due to difficulties in sourcing beach-quality sand while maintaining the positive project cost-benefit ratio necessary for the Corps to complete the project.

## II. BACKGROUND AND FWS POSITION

CBRA's legislative history makes it clear that the law 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 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. In recent years, the Corps has acted in accordance with the Service's interpretation of CBRA and ceased utilizing borrow sites within the CBRS (despite its historic usage of some sites).

The Service received a letter in June 2018 from seven members of Congress asserting that the agency has taken an unreasonably narrow interpretation of CBRA's exceptions 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.

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 (in excess of the mandatory 35% non-federal cost share required for most projects) has been used to cover costs within the CBRS in FL and NJ and is currently proposed for a multi-billion dollar storm-damage-reduction project in TX. The Service is supportive of this approach. However, given the escalating costs of beach nourishment and increasing exposure to hazards, local communities and others continue to seek a path forward to allow sand mining within the CBRS using federal funds.

## III. POSITION OF AFFECTED PARTIES/PUBLIC LANDS AFFECTED

Certain affected local communities and the State of New Jersey disagree with the Service's interpretation of CBRA and seek to invoke an exception or have the CBRS maps changed to allow sand mining for beach-nourishment projects to proceed with federal funds. Communities continue to reach out to their members of Congress regarding this matter.

The Corps' Wilmington, NC District office recently released for public review two draft Evaluation Reports for projects with borrow sites in the CBRS. These projects are nearing the end of their congressional authorization and/or their spending caps. The draft reports note that continued use of the CBRS borrow sites would require a legislative exemption from CBRA in the projects' final congressional authorizations.

Several organizations (e.g., American Littoral Society, Association of State Floodplain Managers, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, and R Street) 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.

## IV. STATUS UPDATE

An amendment offered by Representatives Van Drew (NJ-2), Graves (LA-6), and Rouzer (NC-7) on a DOI appropriations bill in June 2019 sought to restrict the use of funds "to implement the Department of the Interior Solicitor's opinion (FWS.CW.0380) issued in 1994 interpreting the applicability of Section 6(a)(6)(G) of [CBRA]." This amendment was withdrawn, however there is still significant congressional interest. Due to the high level of interest in this matter, Chairman Grijalva of the House Natural Resources Committee recently requested that the U.S. Geological Survey (USGS), in conjunction with the Service, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS.

In July 2019, the Service's New Jersey Ecological Services Field Office received a letter from an attorney for the Boroughs of Avalon and Stone Harbor and the City of North Wildwood, NJ, requesting that the Service reconsider its determination that CBRA prohibits using Hereford Inlet as a borrow area for periodic beach nourishment in each of the respective municipalities (see Attachment 3).

## V. POTENTIAL ISSUES

In 2016, the Borough of Avalon, 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, NJ. The NJ District Court dismissed the suit in 2017 due to mootness and lack of standing. Media reports indicate that communities in NJ are considering pursuing additional litigation.

## VI. TIMELINE/NEXT STEPS

There are currently no CBRA consultations involving this issue pending with the Service. The Service and USGS have initiated an assessment on the feasibility of Chairman Grijalva's request for a study on sand/sediment removal in areas within and adjacent to the CBRS. A response letter is currently in clearance (DCN 070502). Additionally, the Service is preparing a response to the request from the NJ municipalities' attorney concerning the CBRA issue affecting Hereford Inlet, NJ.

**Prepared by:** *Dana Wright, Program Specialist, Ecological Services*

☐ **FYI** **or** ☒ **Requested by:** *Melissa Beaumont, Advisor, Office of the Director*

☐ **Prepared for a meeting:**

Attachments

CULLENandDYKMANLLP

229 Nassau Street
Princeton, New Jersey 08542
Telephone (609) 279-0900 • Facsimile (609) 497-2377

NEIL YOSKIN
PARTNER
NYoskin@cullenanddykman.com

July 12, 2019
*Via Overnight Delivery*

Eric Schrading, Supervisor
U.S. Fish & Wildlife Service
New Jersey Field Office
Atlantic Professional Park
Four East Jimmie Leeds Road; Ste.4
Galloway, NJ 08205

RE: Applicability of Coastal Barrier Resources Act to Unit NJ-09 /
Hereford Inlet Borrow Area
Cape May County, New Jersey

Dear Mr. Schrading:

This Firm represents the Boroughs of Avalon and Stone Harbor, and the City of North Wildwood, New Jersey (hereinafter collectively the "Municipalities"). The purpose of this letter is to ask that the U.S. Fish & Wildlife Service ("Service") reconsider its August 9, 2016 Determination that the Coastal Barrier Resources Act prohibits the use of the Hereford Inlet Borrow Area as part of the Federal Government's obligation to conduct periodic beach nourishment in each of the respective municipalities. If this determination stands, it will result in significant financial hardship to the municipalities, and may well jeopardize public safety by limiting their ability to maintain storm-resistant beaches.

For the reasons stated below, we believe that the use of the Hereford Inlet Borrow Area is entirely consistent with the legislative intent of the Coastal Barrier Resources Act (CBRA) and falls within the exception in Section 6(a)(6)(G) of the Act for non-structural shoreline stabilization projects that are designed to mimic, enhance or restore a natural stabilization system.

## Background

It is our understanding that on or about July 26, 2019, the US Army Corps of Engineers (USACE) plans to solicit bids for the next phase of the periodic beach renourishment in Stone Harbor and Avalon, as authorized by Congress as part of the Townsends Inlet to Cape May Inlet, New Jersey Shore Protection Project.[1] We are advised that the Corps is proceeding with the understanding that the findings made in your August 9, 2016 letter are still in place. That letter determined that the proposed use of the Hereford Inlet Borrow Area does not fall within the exception under section 6(a)(6)(G) of the CBRA. As a consequence, the Corps' bid specifications are limited to the use of sand from the Townsends Inlet borrow area at the North end of Seven Mile Island.

We are further advised that the limited availability of sand from the Townsends Inlet Borrow Area, together with the distance from that borrow area to Stone Harbor, is such that the nourishment of Stone Harbor's beaches will not be included within the bid specifications. As a result, the inability to use the Hereford Inlet Borrow Area will raise the overall cost of the project, as sand must now be pumped from a more remote location. (The total cost of the most recent 2016 beach nourishment was increased by $6 million as a result of the Service's determination that the CBRA precludes use of the Borrow Area.)

## DISCUSSION

### CBRA Applicability

As a preliminary matter, the municipalities fully support the legislative goals of the CBRA and recognize the importance of preserving Unit NJ-09 (Hereford Inlet) from development. Almost the entirety of New Jersey's 127 mile ocean shoreline is developed to some extent, and special attention must therefore be given to the areas at the extreme ends of barrier islands such as Hereford Inlet, as they are the most subject to erosion, migration and change. This is why, for example, the State of New Jersey and the Borough of Stone Harbor long ago determined that Stone Harbor Point should be preserved in its undeveloped state.

---

[1] North Wildwood's Beaches are not part of the Townsends Inlet to Cape May Inlet Project. Beach nourishment in North Wildwood is authorized under a different project that has not yet begun construction. However, the CBRA prohibition on the use of the Hereford Inlet Borrow Area will adversely affect that project.

The littoral transport patterns in and around Hereford Inlet that result in the beneficial impacts on Stone Harbor are best illustrated in the attached aerial photograph ("Hereford Inlet Sediment Distribution", October 2017). The beneficial impacts themselves are documented in the attached report prepared by the Richard Stockton College of New Jersey entitled *"Changes Observed and Mapped in Hereford Inlet, Cape May County, NJ between March 1979 and April 2019"*. That Report documents the fact that these beach restoration activities have contributed enormously to the habitat values and functions of Stone Harbor Point. The Stockton Report also documents the fact that the Borrow Area, which is located well offshore, does not contribute to the habitat values and functions of Unit NJ-09, meaning that its continued use is fully consistent with the CBRA's legislative purposes.

The following language from a September 15, 2016 e-mail from Erik Rourke of the USACE to Eric Schrading at the Service takes note of these site-specific conditions: "This situation [i.e. use of the Hereford Inlet Borrow Area] is uniquely different from past reviews by the USFWS in that the sand borrowed from the authorized borrow area within System Unit NJ-09 **is placed within the littoral system of the barrier inlet and will remain within the sediment budget of Unit NJ-09,** therefore nourishing and stabilizing the shoreline of Stone Harbor Point and recharging the borrow area" (emphasis added). We wish that the Service would give more weight to this observation.

**CZMA Applicability**

The CBRA is not the only statute that is relevant to the Service's decision making. The Federal Coastal Zone Management Act (CZMA, 16 USC 1451 et seq.) states that the protection of the Nation's coastal zones natural resources is of national importance. The Act recognizes the need to create a system of reconciling the competing interests in the preservation, protection and utilization of coastal resources. It is for that reason that Section 307 of the CZMA requires that Federal actions affecting the coastal environment be consistent to the maximum extent practicable with approved state coastal management programs.

New Jersey's CZM program was one of the first such programs in the Country, having been approved by the Department of Commerce in 1978. New Jersey DEP has issued favorable federal consistency determinations each and every time that the USACE has engaged in periodic nourishment of Avalon and Stone Harbor's beaches. It has done so in large part because of the positive impacts on the resource values and functions of Stone Harbor Point. We would hope that the Service recognizes the significance of these decisions and will act accordingly and consistent with the goals and purposes of the CZMA.

**Other Programmatic Considerations**

Shore protection projects are unique in that they involve continuing construction throughout the 50-year period for which they are authorized. When the Service approved the use of the Hereford Inlet Borrow Area in 1996, the letter of approval contained no limitation that would indicate that the approval was only for the project's initial construction phase. Moreover, shore protection projects are *construction* projects, not maintenance projects. Maintenance of a navigation channel for example, is paid out of the Corps' operation and maintenance account. However, periodic beach renourishment is paid for out of the Corps' construction account.

Had the Service said no to the Avalon/Stone Harbor component of the Townsends Inlet to Cape May Project in 1996, it might never have been built.[2] Having now been constructed, it should continue as authorized. Congress authorized the Project with the understanding that the Hereford Inlet Borrow Area was to be used for the periodic nourishment of nearby beaches, and in doing so relied upon the Service's determination that this was the case. That being the case, we believe that congressional authorization cannot be modified by an administrative action of the Service.

**CONCLUSION**

The actions of the Service in approving the 1996 beach restoration as habitat enhancement, while later prohibiting periodic nourishment once Stone Harbor Point was re-established, is unreasonable. Nothing has changed in the interim except that the areal extent of Stone Harbor Point has grown and its habitat values have been enhanced, due in large part to the nourishment of the beaches in Avalon and Stone Harbor. If the Service's more recent decision stands as is, then the continued viability of this area will be jeopardized.

The Municipalities are acutely aware of the fact that this has been a highly contested issue over the past several years, and that the Service may be concerned that allowing the use of the Hereford Inlet Borrow Area will serve to weaken the CBRA's protections. They do not share that concern. It is clear based on the factors outlined in this letter that the granting of an exception in this case furthers the policy goals of the CBRA and the CZMA, and represents a wise use of the region's and the nation's coastal resources. The sand that is removed from the

---

[2] The original project specifications for use of the Hereford Inlet Borrow Area w343 limited to the construction of Stone Harbor Point. Townsends Inlet was to be used for periodic nourishment. We are advised by the USACE that it was during the design phase of the initial construction that the use of the Borrow Area was expanded to include beach nourishment in Avalon and Stone Harbor. That action was taken with the understanding that the FWS had issued the 1996 CBRA exception allowing its use.

Unit returns to the Unit, and does so within a short period of time. And while that sand may protect existing homes and infrastructure for a short period of time, it does nothing to facilitate or encourage new development. It is for all of these reasons that we urge you to reconsider your decision.

Sincerely,
CULLEN AND DYKMAN LLP

Neil Yoskin

NY/cl
Enclosures
cc:
Mayor and Council, Borough of Avalon (*via e-mail and overnight w/enclosures*)
Mayor and Council, City of North Wildwood (*via overnight w/enclosures*)
Mayor and Council, Borough of Stone Harbor (*via overnight w/enclosures*)
Eric J. Rourke, USACE, Philadelphia District (*via overnight w/enclosures*)
William Dixon, NJDEP (*via overnight w/enclosures*)
Christopher Constantino, NJDEP (*via overnight w/enclosures*)
Ginger Kopkash, NJDEP (*via overnight w/enclosures*)
Diane Dow, NJDEP (*via overnight w/enclosures*)

**From:** Wright, Dana K
**To:** Schrading, Eric
**Cc:** Niemi, Katie; BalisLarsen, Martha; Bohn, Cynthia; Simon, Spencer; Phinney, Jonathan T
**Subject:** Re: Yoskin Letter
**Date:** Monday, July 29, 2019 7:30:32 AM

---

Good point, thanks Eric. The Van Drew letter is pending clearance and has been with the Department since early May. I have added note about that to the IM and will send you an updated version once it is finalized.

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, Jul 26, 2019 at 4:02 PM Schrading, Eric <eric_schrading@fws.gov> wrote:

> Katie,
>
> Info memo looks good to me. I'm not sure if you also want to mention the letter from Van Drew to the Acting Director on March 14, 2019 regarding Hereford Inlet. I have not seen a response to that letter and it may still be pending.
>
> Thanks for sharing.
>
> On Fri, Jul 26, 2019 at 2:24 PM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> > Martha,
> > Please see the attached letter from an attorney representing the NJ municipalites affected by the Hereford Inlet sand mining issue. Given the request yesterday that we prepare an info memo on sand mining for Margaret (and that she still needs to chat with SOL for legal direction), please advise how the Service should proceed with responding to the attached letter. One option may be for the NJ FO to send a short response letter to the attorney that summarizes the attached December 2018 response to Rep. LoBiondo and other Congressional members on this matter.
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> > Eric, Spencer, and Cindy, please see the attached draft info memo for Margaret and let me and Dana know if you have any changes or concerns.
> >
> > 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 Fri, Jul 26, 2019 at 10:05 AM Schrading, Eric <eric_schrading@fws.gov> wrote:

Katie, Dana, Cynthia,

We received this letter from an attorney for the towns of Avalon, Stone Harbor, and N. Wildwood asking us to reconsider our position on CBRA consistency associated with using Hereford Inlet as a borrow area. (b) (5) [redacted]

Can we set up a call to discuss response options? Maybe Wed. July 31?

--
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

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New Jersey Field Office
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**From:** Schrading, Eric
**To:** Simon, Spencer
**Cc:** Bohn, Cynthia; Wright, Dana K; Niemi, Katie
**Subject:** Re: Yoskin Letter
**Date:** Wednesday, July 31, 2019 10:43:07 AM
**Importance:** High

---

Spencer,

Since its up to R5 on whether to respond I think we have two options.

1. Respond with a 1-2 page letter summarizing - thank you for the request; our position on compliance with CBRA remains unchanged; we are willing to work with the muniicipalities, State of NJ, and Corps for find solutions that meet the needs of the community while ensuring CBRA compliance.
2. No response.

I think I would rather be responsive (option 1) than not, but if you and/or Wendi have concerns about a response, I can live with option 2.

On Wed, Jul 31, 2019 at 10:35 AM Wright, Dana <dana_wright@fws.gov> wrote:

> Hi Eric,
>
> Martha didn't have any specific guidance; she was OK with your approach and said it's up to the Region to determine how to respond. Just know that this matter is again under review in the Director's Office and we don't know what will come of that. Katie and Cindy are out this week, but give me a call if you want to discuss.
>
> 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)
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Thanks!
Katie

Katie Niemi
Coastal Barriers Coordinator
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[redacted]

[redacted]

Can we set up a call to discuss response options? Maybe Wed. July 31?

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Eric Schrading, CWB
Field Supervisor
U.S. Fish and Wildlife Service
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Follow us on Facebook: https://www facebook.com/USFWSNewJerseyFieldOffice

| | |
|---|---|
| **From:** | Frazer, Gary D |
| **To:** | BalisLarsen, Martha; Niemi, Katie; Wright, Dana K |
| **Subject:** | Fwd: CBRA |
| **Date:** | Wednesday, September 18, 2019 11:13:02 AM |
| **Attachments:** | CBRA Options Paper for the Secretary 6.6.19kem lyc.docx |
| **Importance:** | High |

---

Here's the last version of the options paper that SOL/DPW was asked to prepare on the sand mining issue. No one knows who has the ball on reviewing this issue at the policy level or whether it is still on anyone's radar, and I do not see any reason for us to push it. If we are sued by those NJ townships, that will probably force the question.

OCL is not clearing any Congressional responses on CBRA until this issue is resolved, so that may also be an action-forcing mechanism at some point.

But for now, I think we should just sit tight. If any of you think differently, let me know. -- GDF

*Gary Frazer*
*Assistant Director -- Ecological Services*
*U.S. Fish and Wildlife Service*
*(202) 208-4646*

---------- Forwarded message ---------
From: **Romanik, Peg** <peg.romanik@sol.doi.gov>
Date: Wed, Sep 18, 2019 at 10:37 AM
Subject: Fwd: CBRA
To: Frazer, Gary <gary_frazer@fws.gov>

Hi Gary, I think this is the last thing produced from DPW. It is still a draft as neither Karen nor I reviewed it. 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**

---------- Forwarded message ---------
From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Tue, Sep 17, 2019 at 11:08 AM
Subject: Fwd: CBRA
To: Peg Romanik <peg.romanik@sol.doi.gov>

Options paper for CBRA, attached.

---------- Forwarded message ---------
From: **Chen, Linus** <linus.chen@sol.doi.gov>
Date: Fri, Jul 19, 2019 at 3:38 PM
Subject: Re: CBRA
To: Peg Romanik <peg.romanik@sol.doi.gov>
Cc: Jesup, Benjamin <benjamin.jesup@sol.doi.gov>

Peg,
Attached is the latest CBRA Options Paper for the Secretary document that I have; this was sent to Katie back in early June where I responded to her comments.
Linus

On Fri, Jul 19, 2019 at 3:32 PM Jesup, Benjamin <benjamin.jesup@sol.doi.gov> wrote:
> Linus, please send Peg the output of our last discussions on this (with Katie?). That may help to provide context.
>
> Ben
>
> On Fri, Jul 19, 2019 at 11:18 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:
> > It sounds like I will be reviewing the briefing paper, and possible providing a legal review of it. Do you know when we can be expecting the briefing/decision paper?
> >
> > On Fri, Jul 19, 2019 at 10:37 AM Romanik, Peg <peg.romanik@sol.doi.gov> wrote:
> > > I am confused by this email string. Do we have to do something more? 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**
> > >
> > > ---------- Forwarded message ---------
> > > From: **Budd-Falen, Karen** <karen.budd-falen@sol.doi.gov>
> > > Date: Thu, Jul 18, 2019 at 12:56 PM
> > > Subject: Fwd: CBRA
> > > To: Peg Romanik <PEG.ROMANIK@sol.doi.gov>
> > >
> > > I am not sure who in your shop worked on this before, but I just wanted to let them know this is coming back (again). I said we needed to include the legal review with the decision paper just to get everything done so I can quit hearing about this.
> > >
> > > ---------- Forwarded message ---------
> > > From: **Margaret Everson** <margaret_e_everson@fws.gov>

Date: Thu, Jul 18, 2019 at 12:50 PM
Subject: Re: CBRA
To: Budd-Falen, Karen <karen.budd-falen@sol.doi.gov>
Cc: Melissa Beaumont <melissa_beaumont@fws.gov>, Taylor Playforth <taylor_playforth@ios.doi.gov>, Katie Mills <katie_mills@ios.doi.gov>

Yes. We will be happy to draft.
Also do you want to discuss the SOL portion in the same paper or separately?
Thank you
Margaret

Sent from my iPhone

On Jul 18, 2019, at 12:46 PM, Budd-Falen, Karen <karen.budd-falen@sol.doi.gov> wrote:

> I understand that there are still questions and issues with regard to CBRA and its implementation and that there are some in the Congressional delegation who want us to look at this question.
>
> I have read letter and other information but to get a decision and put this issue to bed, can FWS put together a briefing paper (including Taylor's and Katie's input) that we can sent to the end of the 6th floor and get some direction on what to do with this issue. That decision memo should give the option of (b) (5) [redacted] If you could provide some facts about how many of these FWS does and how many would be a problem, it would be good.
>
> I do not think we need a detailed analysis, but to stop the circling and circling, we need to get together a decision paper and get a decision.
>
> Thanks
>
> --
> Karen Budd-Falen
> Deputy Solicitor for Parks and Wildlife
> Department of the Interior
> Main Interior Building, Suite 6348
> 1849 C Streets NW
> Washington D.C. 20240
> 202-208-4507 (Voice)
> 202-365-5854 (Cell)
> karen.budd-falen@sol.doi.gov

--

Karen Budd-Falen
Deputy Solicitor for Parks and Wildlife
Department of the Interior
Main Interior Building, Suite 6348
1849 C Streets NW
Washington D.C. 20240
202-208-4507 (Voice)
202-365-5854 (Cell)
karen.budd-falen@sol.doi.gov

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Ben Jesup
Assistant Solicitor for Fish and Wildlife
Solicitor's Office
Department of the Interior
202-208-3170

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--

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:** CBRA options paper
**Date:** Friday, September 20, 2019 2:41:45 PM
**Attachments:** CBRA Options Paper for the Secretary 6.6.19kem lyc.docx

---

See attached

CBRA Options Paper for the Secretary

From: SOL-DPW

**Issue:**

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

(b) (5)

[redacted]

DRAFT

**From:** Niemi, Katie
**To:** Frazer, Gary D
**Cc:** BalisLarsen, Martha; Shultz, Gina; Wellman, Lois A
**Subject:** Re: CBRA packages
**Date:** Tuesday, October 15, 2019 11:00:10 AM

---

That is great news. Thanks Gary for your help in moving the CBRA packages.

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 Fri, Oct 11, 2019 at 11:57 AM Frazer, Gary <gary_frazer@fws.gov> wrote:

> Barbara tells me that she spoke with Margaret this morning, and she's going to move all but the Grijalva and Van Drew responses. (Helps to have the S. 47 driver and also an upcoming confirmation hearing from Kate MacGregor, for which they're trying to clear all pending Congressional correspondence.) -- GDF
>
> *Gary Frazer*
> *Assistant Director -- Ecological Services*
> *U.S. Fish and Wildlife Service*
> *(202) 208-4646*
>
> On Wed, Oct 9, 2019 at 11:17 AM Frazer, Gary <gary_frazer@fws.gov> wrote:
>
> > Based on my last discussion with Margaret on this "hold", I'm going to continue to push her to release the stakeholder letters and NOA of the draft maps, highlighted below. Let's see if that works before we switch horses. -- GDF
> >
> > *Gary Frazer*
> > *Assistant Director -- Ecological Services*
> > *U.S. Fish and Wildlife Service*
> > *(202) 208-4646*
> >
> > On Wed, Oct 9, 2019 at 10:47 AM BalisLarsen, Martha <martha_balislarsen@fws.gov> wrote:
> >
> > > Gary, I understand that you and Katie discussed this list earlier this morning. Forwarding this list of packages for your info.
> > >
> > > For the Stakeholder outreach letters related to the Dingell Act, what do you think about pulling them back and just informing Congress by email that the letters were sent? There isn't any action expected by Congress so we don't need to

send them letters. The letters, as drafted, including Congresional members as a cc since we were informing their constituents about Congress' engagement of changes to their CBRS units. Let us know if we should revise the distribution and outreach plan accordingly.

Martha
---

From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Tue, Oct 8, 2019 at 10:20 AM
Subject: CBRA packages
To: BalisLarsen, Martha <martha_balislarsen@fws.gov>
Cc: Wright, Dana <dana_wright@fws.gov>

Martha,
Below are the CBRA packages that are either pending in the Director's office or have a "CCU-HOLD" in DTS.

069934 Rep. Hoyer (mapping related request - Unit MD-51) - CCU HOLD
069862 Rep. Pallone (mapping related request - Unit NJ-18) - CCU HOLD
070502 Chairman Grijalva (sand mining study) - open with D
070534 Stakeholder outreach letter (to notify stakeholders of the comment period for the FL/SC maps when FR NOA publishes) - open with D
070322 Stakeholder outreach letter (implementation of PL 116-9) - open with D
069830 Rep. Van Drew (sand mining and mapping related request - Unit NJ-09) - CCU HOLD

Also wanted to note that the following FR package for the FL and SC maps is open with Gary for signature and then will go to D and FWP for surname.
FR00003680 FR NOA (FL and SC maps for public review) - open with AES

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:** | Schrading, Eric; Niemi, Katie |
| **Cc:** | BalisLarsen, Martha; Phinney, Jonathan T; Shaughnessy, Michelle; Eustis, Christine; Simon, Spencer; Wright, Dana K; Chen, Linus Y; Jesup, Benjamin C; Kodis, Martin; Berg, Elizabeth A |
| **Subject:** | Re: high priority - please review CBRA options paper |
| **Date:** | Thursday, October 17, 2019 11:34:17 AM |
| **Attachments:** | USACE Position Paper 1999.pdf |
| **Importance:** | High |

---

Hi Katie, I agree this looks great.

As another point: On option one, the discussion of the Corps other choices, one could always mention that the Wilmington Corps decided in 1999 that they disagreed with our legal interpretation and decided to continue the NC projects that we had determined were inconsistent with CBRA (one of these being the Carolina Beach Project which now needs to be reauthorized.) This may be too much information for this memo, but I believe it is something that is important to the conversation, the Corps has a precedent of "overriding" the Service's CBRA consultation recommendation and has continued to implement projects for the last 20 years. I've attached the Corps 1999 Position Paper.

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

Learn more about the Coastal Barrier Resources Act

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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

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United States Senate
WASHINGTON, DC 20510

March 18, 2019

The Honorable R.D. James
Assistant Secretary of the Army for Civil Works
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Dear Mr. James:

We write to respectfully urge that you allow Carolina Beach and Wrightsville Beach to continue to borrow sand from Coastal Barrier Resource Zones to carry out their Coastal Storm Damage Reduction projects. The U.S. Fish and Wildlife Service (FWS) has urged the Corps of Engineers to use different borrow sites to, in their view, come into compliance with the Coastal Barrier Resources Act (CBRA), which was enacted decades after these projects began construction. When FWS initially voiced their concerns in 1998, the Wilmington District determined they were compliant with CBRA exceptions under 16 U.S.C. Section 3505(a)(2) and 16 U.S.C. Section 3505(a)(6)(G), and has upheld this determination ever since.

The towns have been utilizing sand from these areas for decades, and the alternative would be to use offshore borrow sites. A deviation from the original sand sources would increase costs for these communities and diminish the benefit-cost ratio significantly. We urge you to support the use of the traditional inlet borrow sites and advance the Wilmington District's environmental and economic justifications supporting perpetual CBRA exemptions for Masonboro Inlet and Carolina Beach Inlet.

Thank you for your consideration.

Sincerely,

Richard Burr
United States Senator

Thom Tillis
United States Senator

| | |
|---|---|
| **From:** | Arnold, Jack |
| **To:** | Valenta, Aaron; Bohn, Cynthia |
| **Subject:** | Fwd: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD |
| **Date:** | Tuesday, March 26, 2019 12:56:11 PM |
| **Attachments:** | 20190319 SEN Burr and Tillis Carolina Wrightsville Beach Borrow Sites-In....pdf |
| **Importance:** | High |

---

Just FYI - relative to the call Mike and I had yesterday with COE-SAD

Jack Arnold
Acting Assistant Regional Director - Ecological Services
U.S. Fish and Wildlife Service
1875 Century Blvd.
Atlanta, GA 30345
404-679-7311 office
404-679-7081 fax
703-789-5620 cell

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---------- Forwarded message ---------
From: **Reese, Acquanetta** <acquanetta_reese@fws.gov>
Date: Mon, Mar 25, 2019 at 12:16 PM
Subject: Fwd: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD
To: Leopoldo Miranda <Leopoldo_Miranda@fws.gov>
Cc: Arnold, Jack <Jack_Arnold@fws.gov>

info for this afternoon's call

---------- Forwarded message ---------
From: **Duncan, Ruth L (Cindy) SAD** <Ruth.L.Duncan@usace.army.mil>
Date: Mon, Mar 25, 2019 at 11:05 AM
Subject: [EXTERNAL] 1530-1600 Call with BG Holland and Mr. Al Lee, COE SAD
To: acquanetta_reese@fws.gov <acquanetta_reese@fws.gov>

Acquanetta, attached is the memo I referenced last week that BG Holland received as copy furnished.

Also wanted to confirm you have the call in information for the 1530 this afternoon. You should have received the calendar invite from LT Gonzalez with the following dial in information.

Toll Free: (b) (5)
Access Code: (b) (5)

Security Code: (b) (5)

Thank you,
Vr,
Cindy R.L. Duncan
Executive Officer to the Commanding General
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street SW
Atlanta, GA 30303-8801
ruth.l.duncan@usace.army.mil
404-562-5005 (Ofc)

--
***Acquanetta Reese*** ¦Executive Assistant to the Regional Director

**U.S. Fish and Wildlife Service ¦ Southeast Region**

1875 Century Blvd; Suite 400 ¦ Atlanta, Georgia 30345

**Phone:** 404-679-4000 ¦ **Fax:** 404-679-4006 ¦ **Email:** acquanetta_reese@fws.gov

*"We all Die!! The goal isn't to live forever, it is to "create" something that will!" Chuck Palahniuk*

**From:** Bohn, Cynthia
**To:** Simon, Spencer; Valenta, Aaron; Eversen, Michelle
**Subject:** Fwd: CBRA Compliance, Beach nourishment
**Date:** Friday, November 8, 2019 11:52:52 AM

---

Hi all:

I'm catching up to speed with all of the CBRA events that have taken place while I was out taking in the glory of the California coast. I **had a long conversation with the HQ folks today to get up to speed relative to the Secretary's new memo and the Solicitor's change in the opinion on sand mining in CBRA.** I'm not sure if you all have had time to look at this or any of the other CBRA emails. The rubber will meet the road within the Regions on how this is interpreted and (b) (5) [redacted] Anyway, this will obviously take some time to settle down but we have the opportunity to send questions to the SOL and FWS leadership to interpret what this means for application at the FO and RO level, and the Service's overall approach. **A communications document has been requested by HQ EA and a quick roll out request to other Federal agencies is expected from the Director.**

**I'd like to talk to all of you in person/phone if you have a moment to discuss.**The Corps has stated (third hand) that they plan to reopen some projects within our regions. Please give me a call or let me know how to make an appointment with you. I advise to scan over Katie's questions to the Solicitor if you have time.

**Also, I would like to discuss this to a few key field folks in our Regions** to make sure that we are capturing issues or important opportunities for our resources that this may now offer us. Do I have your approval to engage 2 or 3 key field folks from each Region to get their input, with their PL approval, of course?

**Aaron: What about Tuesday, Nov 12 at 9:30 or 10; before or after our DRR Staff mtg to talk to you and/or Michelle E?**

**Spencer: Please share with your ARD if you think appropriate; let me know when a good time is to call you or call me anytime.**

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

Learn more about the Coastal Barrier Resources Act

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---------- Forwarded message ---------
From: **Niemi, Katie** <katie_niemi@fws.gov>
Date: Wed, Nov 6, 2019 at 2:30 PM
Subject: CBRA Compliance, Beach nourishment
To: Aaron Valenta <aaron_valenta@fws.gov>, Spencer Simon <spencer_simon@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>
Cc: Wright, Dana <dana_wright@fws.gov>, BalisLarsen, Martha <martha_balislarsen@fws.gov>

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/1MhUPlHBDj1_YBf9Q-sXrexoZq7wny8fRGXJlCgfteNw/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>
**Date:** November 5, 2019 at 6:42:59 PM EST
**To:** "FWS Directorate & Deputies" <fwsdirectanddep@fws.gov>
**Cc:** Melissa Beaumont <melissa_beaumont@fws.gov>, "Morris, Charisa" <charisa_morris@fws.gov>, "Kodis, Martin" <martin_kodis@fws.gov>
**Subject: Fwd: Scanned CBRA doc2**
FWS Team.

Plese 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 occuring 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 guidence that needs to be updated to align with the SOL guidence. 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 gudience 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 recomendations and opinions are consistent with the SOL memo.

Best
Margaret

Have SOL Surname

out ES

(b) (6)

In Reply Refer To:
FWS/DHC/BCWR

Memorandum

To: Regional Director, Regions 2, 3, 4, and 5 and 1, 7.

From: ~~Deputy~~ Director

Subject: Interpretation of Section 6 of the Coastal Barrier Improvement Act of 1990

A recent consultation submitted to the Service from the U.S. Army Corps of Engineers pursuant to Section 6 of the Coastal Barrier Resources Act (Act) has required clarification from the Department of the Interior's Office of the Solicitor regarding Federally funded beach nourishment activities (Attachment). 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'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 proposed Federal 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.

If you have any questions regarding this matter please contact Linda Kelsey of my staff at (703) 358-2201.

RICHARD N. SMITH

Attachment
cc: 3012-MIB-FWS/Directorate Reading File
3012-MIB-FWS/CCU
3012-MIB-FWS/AEA Files
3024-MIB-FWS/AES Files
400-ARLSQ-FWS/DHC Files
412-ARLSQ-FWS/DHC/BCWR Files
FWS/DHC/BCWR/LKelsey:bg:06/20/94:(703)358-2201
Q:\DHC\KELSEY\SECT6.MEM

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

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 NO1, Little Tybee Island, of the Coastal Barrier Resources System for a beach nourishment project outside of Unit NO1. 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 NO1, 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,

Richard N. Smith

Deputy DIRECTOR

IDENTICAL LETTER SENT TO:
Colonel Wayne W. Boy, Savannah District

**Ecological Services**
**Division of Budget and Technical Support**

## NOTE TO REVIEWERS

- Attached, for the Acting Director's signature, is the U.S. Fish and Wildlife Service's (Service's) response to a letter from Representatives Neal Dunn (FL-2), Garret Graves (LA-6), Walter Jones (NC-3), Doug Lamborn (CO-5), Frank LoBiondo (NJ-2), David Rouzer (NC-7), and Randy Weber (TX-14) concerning the Coastal Barrier Resources Act (CBRA).

- Section 5 of the CBRA prohibits most new federal expenditures and financial assistance for any purpose within the John H. Chafee Coastal Barrier Resource System (CBRS), including "the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area."

- Section 6 of the CBRA provides exceptions to the section 5 prohibitions and requires other federal agencies to consult with the Service prior to making expenditures or providing financial assistance affecting the CBRS.

- The incoming letter states that the Service has taken an unreasonably narrow interpretation of the exceptions, specifically as they pertain to Congressionally authorized shoreline stabilization and beach renourishment projects. The letter includes a list of seven questions which seek to clarify the Service's interpretation of the CBRA and seek the Service's opinion regarding potential legislative and administrative remedies.

- As requested by DOI-OCL, the response letter is written in narrative format rather than Q&A. (b) (5) [redacted]

**Program Contact:** Gary Frazer
**Telephone:** 202-208-4646
**Date:** August 17, 2018

In Reply Refer To:
FWS/AES/DBTS/BGMTS/068399

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), also co-signed by several of your colleagues, regarding the Service's interpretation of certain provisions of the Coastal Barrier Resources Act (CBRA).[1] (b) (5) [redacted]

[redacted]

[redacted]

[redacted]

---

[redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

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(b) (5) [redacted]

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[redacted]

[redacted]

[redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted] 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,

Deputy Director

Enclosures

**Ecological Services**
**Division of Budget and Technical Support**

**NOTE TO REVIEWERS**

- Attached, for the Acting Director's signature, is the U.S. Fish and Wildlife Service's (Service's) response to a letter from Representatives Neal Dunn (FL-2), Garret Graves (LA-6), Walter Jones (NC-3), Doug Lamborn (CO-5), Frank LoBiondo (NJ-2), David Rouzer (NC-7), and Randy Weber (TX-14) concerning the Coastal Barrier Resources Act (CBRA).

- Section 5 of the CBRA prohibits most new federal expenditures and financial assistance for any purpose within the John H. Chafee Coastal Barrier Resource System (CBRS), including "the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area."

- Section 6 of the CBRA provides exceptions to the section 5 prohibitions and requires other federal agencies to consult with the Service prior to making expenditures or providing financial assistance affecting the CBRS.

- The incoming letter states that the Service has taken an unreasonably narrow interpretation of the exceptions, specifically as they pertain to Congressionally authorized shoreline stabilization and beach renourishment projects. The letter includes a list of seven questions which seek to clarify the Service's interpretation of the CBRA and seek the Service's opinion regarding potential legislative and administrative remedies.

- As requested by DOI-OCL, the response letter is written in narrative format rather than Q&A. (b) (5) [redacted]

- (b) (5) [redacted]

**Commented [NK1]:** Address this before letter goes into DTS

**Program Contact:** Katie Niemi
**Telephone:** 703-358-2071
**Date:** August XX, 2018

**Commented [NK2]:** Change to Gary?

**From:** Bohn, Cynthia
**To:** Eversen, Michelle
**Subject:** Re: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports
**Date:** Wednesday, January 8, 2020 10:13:20 AM

---

Sorry, it was quickly arranged for this morning, I'm glad I got in and turned on my email before 9 or I would have missed it also! Basically, the takeaway is that Catherine has agreed to let me and HQ work with the FO to develop some "value added" requests for minimizing the impacts of the two NC beach nourishment projects on coastal barrier fish and wildlife. This will primarily be requests for shorebird nesting habitat and Pirping plover CH issues with recreation and other uses. Pete was on the call as was Kathyrn Matthews so I think we are good to go from the FO perspective and working with the Wilmington Corps district. The response will come from the FO, Pete has agreed and Catherine requested that it come from the FO. Do you want me to include you in any further communications?

Cynthia Bohn
Coastal Barrier Resources Act Specialist
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

Learn more about the Coastal Barrier Resources Act

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On Wed, Jan 8, 2020 at 9:56 AM Eversen, Michelle <michelle_eversen@fws.gov> wrote:

> I didn't see this invite until just now so it is a little late for me.
>
> On Wed, Jan 8, 2020 at 8:53 AM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:
>
> > do you want to join us, you may have the most background in the situation. c
> >
> > Cynthia Bohn
> > Coastal Barrier Resources Act Specialist
> > 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, Jan 7, 2020 at 7:32 PM Tawes, Robert <robert_tawes@fws.gov> wrote:

I will be teleworking tomorrow morning but can call in at 9:00. Sounds like Kathryn will be calling in as well. We can use my conference line (b) (5) [redacted] .

On Tue, Jan 7, 2020 at 5:25 PM Catherine Phillips <catherine_phillips@fws.gov> wrote:

9am, all?

Sent from my iPhone

On Jan 7, 2020, at 5:04 PM, Pete Benjamin <pete_benjamin@fws.gov> wrote:

I'm going to be on the road and in a meeting most of tomorrow. If you want you can call me on my cell (below) between about 9 and noon, when I'll be driving. Also, I'm including Kathy of my staff here for here awareness. Please include her in the discussion (she's the one that actually knows things).

Pete Benjamin

Field Supervisor

U.S. Fish and Wildlife Service

Raleigh ES Field Office

O: 919-856-4520 x 11

M: 919-816-6408

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, January 7, 2020 4:25 PM
**To:** Catherine Phillips <catherine_phillips@fws.gov>
**Cc:** aaron valenta <Aaron_Valenta@fws.gov>; Matthew Dekar <matthew_dekar@fws.gov>; Michelle Eversen <michelle_eversen@fws.gov>; Pete Benjamin <pete_benjamin@fws.gov>; Robert Tawes <robert_tawes@fws.gov>
**Subject:** Re: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports

Thanks Catherine, I am not sure how to do that. I'm in all day tomorrow. Is someone doing your scheduling or do you want to give me a time? I'll be available all day. cb

Cynthia Bohn

Coastal Barrier Resources Act Specialist

Phone: 404-679-7122

Fax: 404-679-7081

cynthia_bohn@fws.gov

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On Tue, Jan 7, 2020 at 4:20 PM Catherine Phillips <catherine_phillips@fws.gov> wrote:

> Cindy,
>
> Let's set up a time to talk so I can make sure i fully understand.
>
> C
>
> Sent from my iPhone
>
> On Jan 7, 2020, at 1:16 PM, Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

**ACTION REQUESTED: I am requesting a meeting and a decision on how to proceed from Region2/4, and to make sure Catherine is briefed before a call from Michelle Shaughnessy later this week.**

Catherine, Aaron, Matt, and all:

**Please see below the formal request from the Wilmington Corps District for CBRA determinations for two Corps projects involving the removal of sand from within a CBRS unit for use outside a CBRS unit.** The Corps has asked that we respond by Jan 31. We had requested that all projects involving sand mining be forwarded from the field to the RO due to the new Solicitor's memo overturning a 30 year old policy and pending guidance being developed at HQ. I worked on this as your Regional CBRA Coordinator with input from Kathyrn Matthews in the RANC FO. As my final duty, I provided Leo and Mike a briefing on 12/20; which I have sent you information on in a separate email. This email is to formally pass this request on to Aaron or whomever may be taking my old position, and to offer our assistance from HQ to you all if you would like. This will be a precedent setting CBRA response and is highly visible at the congressional, secretarial, and NGO level.

**Issues:**

The Corps has requested a 1/31/20 response but that is not mandatory. However, we have had Congressional inquiries as the RO and HQ to "request" that we give this immediate attention.

Leo has directed that the response be Catherine's decision and that his ARD policy of "check the "Due to many competing priorities..." box on the CBRA consultation template does not necessarily have to be used. HQ strongly suggests that we do provide some type of written response and not use that box as this may have precedent setting consequences and the issue will come up again after the projects are authorized. I recommend that HQ work with the FO and RO to develop a response.

HQ and USGS are working together to provide scientific underpinnings for the impacts of sand mining in inlets. The request and effort is currently ongoing in USGS. This was requested by Rep Raúl Grijalva, Arizona, Chair of the House Natural Resources Committee.

The new Solicitor's memo provides some uncertainty on how to apply CBRA for these projects. The standard is that the projects be non-structural, and consistent with the three purposes of CBRA. Although this is not new, the application of the standard may have changed and allows for some type of opportunity related to minimizing impacts to the barrier island and fish and wildlife resources that were not used in the past, if the FO agrees. Internal guidance is not yet developed, we have suggested working with the Corps to develop BMPs or monitoring of biological and geological resources. (I have attached the Solicitory's Memo which we have been asked not to share outside the agency.)

As I said before, this is highly visible by both the Administration, Congress, and NGO's that are watching to see how this plays out as there are numerous Corps beach nourishment and sand mining projects that will be coming in the future. There is also strong support for maintaining a restriction on sand mining in CBRS units, a letter was sent to the Secretary and signed by 30 NGOs including Audubon, R Street Institute, and

Southern Environmental Law Center. **letter**
https://www.rstreet.org/2019/12/05/letter-to-secretary-bernhardt-on-coastal-barrier-resources-act/

There is a current GAO audit that was ordered last month to examine Federal Agency's compliance with CBRA.

Thanks so much, I will be looking forward to hearing from you.

Cynthia Bohn

National Coastal Barrier Resources Act Specialist

Phone: 404-679-7122

Fax: 404-679-7081

cynthia_bohn@fws.gov

Learn more about the Coastal Barrier Resources Act

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---------- Forwarded message ---------
From: **Gasch, Eric K CIV USARMY CESAW (US)** <Eric.K.Gasch@usace.army.mil>
Date: Fri, Dec 20, 2019 at 10:00 AM
Subject: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports
To: cynthia_bohn@fws.gov <cynthia_bohn@fws.gov>, Kathy Matthews (kathryn_matthews@fws.gov) <kathryn_matthews@fws.gov>
Cc: Owens, Jennifer L CIV USARMY CESAW (USA) <Jennifer.L.Owens@usace.army.mil>, Gatwood, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Medlock, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>, Glazener, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, McCorcle, Justin P CIV USARMY CESAW (US) <Justin.P.Mccorcle@usace.army.mil>, Pruitt, Carl E Jr CIV USARMY CESAW (USA) <Carl.E.Pruitt@usace.army.mil>

Ladies,

Attached are the interagency CBRA consultations for the Wrightsville Beach, NC, Coastal Storm Risk Management Validation Report and the Carolina Beach, NC, Beach Renourishment Evaluation Report.

If you have any comments or questions, please call, (910)251-4553 or email, eric.k.gasch@usace.army.mil at your earliest convenience.

After your review, I would be very interested in hearing when you thought CBRA consultation would be completed.

Thank you very much,

Eric Gasch
USACE Biologist
69 Darlington Ave
Wilmington, NC 28403
910-251-4553
Eric.K.Gasch@usace.army.mil

<Wrightsville Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf>

<Carolina Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf>

<20191030 Solicitor's Memo on sand mining.pdf>

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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

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--

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*

**From:** Valenta, Aaron
**To:** Bohn, Cynthia
**Subject:** Re: Burr and Tillis Letter- Sand Mining
**Date:** Friday, March 22, 2019 6:53:12 AM
**Importance:** High

---

Thanks Cindy. This provides great context.

**Thanks,**

**Aaron Valenta**
Chief, Division of Restoration and Recovery
U.S. Fish and Wildlife Service
1875 Century Boulevard
Atlanta, Georgia 30345
404/679-4144

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On Thu, Mar 21, 2019 at 5:05 PM Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:

> Gentlemen:
>
> I reached out to the FO and HQ to see what they might know, I did not hear back from the FO, but I am including information and letters below that HQ sent.
>
> This is the best synopsis of the issue as we know it:
>
> I received a call from one of the town officials from Carolina Beach last August, and we discussed the fact that the Corps' Carolina Beach Renourishment project that had been authorized 50 years ago had now expired and that they were going to need to reauthorize it. The sand source for the project was in a CBRS unit and they had been using it to nourish the beach outside the unit for 50 years. They were concerned that now that the project needed to be reauthorized, they would have CBRA issues. (b) (5) [redacted] (See email attached) I don't believe that they did, but the RANC FO would need to weigh in on that.
>
> Nationally, the Corps, in general, is searching for sand and the CBRS units are the "most practicable alternative" and cheaper that going off shore. The Wilmington District has long disagreed with us on our opinion on using sand from within a CBRS unit to nourish a beach outside of the CBRS.
>
> HQ ES briefed the issues related to sand mining, shoreline stabilization, and CBRA up through the Director's office in November of 2017 and the Assistant Secretary's office in November 2018. I also attached an incoming letter and response letters (approved by the Department and signed by Margaret Everson) to/from Reps. Rouzer and Jones from 2018.
>
> According to an article in Coastal Review, https://www.coastalreview.org/2019/02/push-on-

to-change-sand-rule-interpretation/, Senators Tillis and (Richard) Burr (R-N.C.) will continue to work on possible legislative fixes.

I will be in the office on Monday and can provide additional staff assistance as you need. Thanks, Cindy

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

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On Thu, Mar 21, 2019 at 8:58 AM Valenta, Aaron <aaron_valenta@fws.gov> wrote:

> Hey,
>
> RD's office is setting up a meeting with COE to discuss, " Senators Burr and Tillis about the sand borrowing sites at Carolina and Wrightsville beach." Is this the CBRA issue we were dealing with last year?
>
> **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:** | Bohn, Cynthia |
| **To:** | Wells, Emily N |
| **Subject:** | Re: CBRA Consistency determination for two NC Civil Works Projects |
| **Date:** | Tuesday, March 17, 2020 2:03:05 PM |

---

OK, I'm teleworking also, co call me on my cell at 404-405-1696. thx

---

**From:** Wells, Emily N <emily_wells@fws.gov>
**Sent:** Tuesday, March 17, 2020 12:55 PM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: CBRA Consistency determination for two NC Civil Works Projects

I am teleworking today, so I can give you a call. Just let me know what the best number to reach you is and I will call at 3.

Thanks,
Emily

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, March 17, 2020 12:51 PM
**To:** Wells, Emily N <emily_wells@fws.gov>
**Subject:** Re: CBRA Consistency determination for two NC Civil Works Projects

sounds good, should I call your office number?

---

**From:** Wells, Emily N <emily_wells@fws.gov>
**Sent:** Tuesday, March 17, 2020 11:45 AM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: CBRA Consistency determination for two NC Civil Works Projects

Hi Cindy,

I will be available today from 3-330 to chat if that would work for you. I am TW today.

Thanks,
Emily

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, March 17, 2020 11:04 AM
**To:** Wells, Emily N <emily_wells@fws.gov>
**Subject:** Fw: CBRA Consistency determination for two NC Civil Works Projects

Hi Emily:  I spoke to Kathy, but I'd like to follow up with you also to get your input on how you think this process went and touch base.  Are you available anytime this afternoon or tomorrow morning?  c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Tuesday, March 17, 2020 10:42 AM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: CBRA Consistency determination for two NC Civil Works Projects

Hi Cindy,

I am in the office all day today (until 4), and teleworking tomorrow.

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC  27606
919-856-4520, x. 27

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, March 17, 2020 10:31 AM
**To:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Subject:** Re: CBRA Consistency determination for two NC Civil Works Projects

Hi Kathy, letter looks great.  I'd like to have a followup chat about this effort to see what your final thoughts were about it.  Will you be around this afternoon or tomorrow morning?  c

---

**From:** Matthews, Kathryn H <kathryn_matthews@fws.gov>
**Sent:** Wednesday, March 11, 2020 8:12 AM
**To:** Imm, Donald <donald_imm@fws.gov>; Schrading, Eric <eric_schrading@fws.gov>; McCoy, Thomas <thomas_mccoy@fws.gov>; Kelly, Patricia <patricia_kelly@fws.gov>
**Cc:** Benjamin, Pete <pete_benjamin@fws.gov>; Valenta, Aaron <aaron_valenta@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** CBRA Consistency determination for two NC Civil Works Projects

Hi all,

Please find attached a final letter to the USACE Wilmington District, concerning CBRA consistency for the Wrightsville Beach and Carolina Beach CSRM Projects.  This consistency review was closely coordinated with HQ and SOL.  Please contact me or Pete if you have any

questions.

Have a good week,

Kathy Matthews
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
551-F Pylon Drive
Raleigh, NC  27606
919-856-4520, x. 27

**Responses to Comments from Director Skipwith on Draft Letter to the U.S. Army Corps of Engineers Director of Civil Works – DCN 071591**

1. Page 2 - "*When did this process begin?*"

   **Response:** Since the enactment of the Coastal Barrier Resources Act (CBRA) in 1982, the law has required consultation with the U.S. Fish and Wildlife Service (Service) prior to any new commitment of federal funds for a project affecting the Coastal Barrier Resources System (CBRS). There is no change to this requirement resulting from the revised interpretation of nonstructural shoreline-stabilization projects.

2. Page 2 – (b) (5) [redacted]

3. Page 2 – *"Are there measures provided? If so provide link"*

   **Response:** No, there are currently no nationwide measures/BMPs. The Service may recommend specific measures for projects on a case-by-case basis depending upon the species present and the local function and features of the coastal barrier. The U.S. Army Engineer Research and Development Center Environmental Laboratory recognizes the lack of current BMPs and has identified the need to formulate BMPs informed by further data collection for coastal engineering projects.

4. Page 2 – "*Please provide Corps document on needed BMPs*"

**Response:** The Corps Technical Note is available here: https://erdc-library.erdc.dren.mil/jspui/bitstream/11681/33203/1/ERDC-TN%20EMRRP-SI-38.pdf.

5. Page 3 – *"Clarify it here (or which ones) are examples to mimic and therefore qualify with new interpretation"*

   **Response:** The Solicitor's opinion allows for the expansion of parameters for project consideration. This broadening of project consideration, however, does not imply a set criteria of design features that guarantee consistency with CBRA and therefore, approval. Projects must still meet the complex threshold to "mimic, enhance, or restore a natural stabilization system." One example identified in CBRA's legislative history is the planting of dune grass. The Service's letter provides points of consideration to aid the Corps in determining whether a project meets the exception. These sideboards aid in the consultation process while allowing flexibility for the Corps and Service to consider projects based on their individual features and environmental context.

.

6. Page 3 – (b) (5) [redacted]

   **Response:** (b) (5) [redacted]

   [redacted]

7. Page 3 – (b) (5) [redacted]

   [redacted]

(b) (5) [redacted]

[redacted]

8. Page 3 – (b) (5) [redacted]

9. Page 3 – (b) (5) [redacted] Please note that shoreline-stabilization activities have been documented to have long-term negative effects on both coastal-dependent species and the vulnerability of barrier islands themselves. As noted in the endnote, 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." The aforementioned Technical Note states that "beach nourishment and residential growth along coastal areas continue to negatively impact nesting sea turtles" and "some Atlantic Coast shorebird populations have declined by 70% or more." The Technical Note indicates that "further declines in other sensitive shorebird and seabird populations could result in the future listing of" several species, and that the listing of these species could compromise ongoing efforts by the Corps to meet their mission objectives. These issues are central to the consideration of whether projects contribute to the "long-term conservation of the fish, wildlife, and other natural resources associated with coastal barriers" as required by the law.

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Wright, Dana K; Niemi, Katie |
| **Cc:** | Bohn, Cynthia |
| **Subject:** | Fwd: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports |
| **Date:** | Tuesday, January 7, 2020 1:43:37 PM |
| **Attachments:** | Wrightsville Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf<br>Carolina Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf<br>20191030 Solicitor"s Memo on sand mining.pdf |
| **Importance:** | High |

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Sorry, I meant to include you on the cc list...

Cynthia Bohn
Coastal Barrier Resources Act Specialist
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

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---------- Forwarded message ---------
From: **Bohn, Cynthia** <cynthia_bohn@fws.gov>
Date: Tue, Jan 7, 2020 at 1:16 PM
Subject: Fwd: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports
To: Catherine Phillips <catherine_phillips@fws.gov>, aaron valenta <Aaron_Valenta@fws.gov>, Matthew Dekar <matthew_dekar@fws.gov>
Cc: Michelle Eversen <michelle_eversen@fws.gov>, Pete Benjamin <pete_benjamin@fws.gov>, Robert Tawes <robert_tawes@fws.gov>

**ACTION REQUESTED: I am requesting a meeting and a decision on how to proceed from Region2/4, and to make sure Catherine is briefed before a call from Michelle Shaughnessy later this week.**

Catherine, Aaron, Matt, and all:

**Please see below the formal request from the Wilmington Corps District for CBRA determinations for two Corps projects involving the removal of sand from within a CBRS unit for use outside a CBRS unit.** The Corps has asked that we respond by Jan 31. We had requested that all projects involving sand mining be forwarded from the field to the RO due to the new Solicitor's memo overturning a 30 year old policy and pending guidance being developed at HQ. I worked on this as your Regional CBRA Coordinator with input from Kathyrn Matthews in the RANC FO. As my final duty, I provided Leo and Mike a

briefing on 12/20; which I have sent you information on in a separate email. This email is to formally pass this request on to Aaron or whomever may be taking my old position, and to offer our assistance from HQ to you all if you would like. This will be a precedent setting CBRA response and is highly visible at the congressional, secretarial, and NGO level.

**Issues:**
The Corps has requested a 1/31/20 response but that is not mandatory. However, we have had Congressional inquiries as the RO and HQ to "request" that we give this immediate attention.

Leo has directed that the response be Catherine's decision and that his ARD policy of "check the "Due to many competing priorities..." box on the CBRA consultation template does not necessarily have to be used. HQ strongly suggests that we do provide some type of written response and not use that box as this may have precedent setting consequences and the issue will come up again after the projects are authorized. I recommend that HQ work with the FO and RO to develop a response.

HQ and USGS are working together to provide scientific underpinnings for the impacts of sand mining in inlets. The request and effort is currently ongoing in USGS. This was requested by Rep Raúl Grijalva, Arizona, Chair of the House Natural Resources Committee.

The new Solicitor's memo provides some uncertainty on how to apply CBRA for these projects. The standard is that the projects be non-structural, and consistent with the three purposes of CBRA. Although this is not new, the application of the standard may have changed and allows for some type of opportunity related to minimizing impacts to the barrier island and fish and wildlife resources that were not used in the past, if the FO agrees. Internal guidance is not yet developed, we have suggested working with the Corps to develop BMPs or monitoring of biological and geological resources. (I have attached the Solicitory's Memo which we have been asked not to share outside the agency.)

As I said before, this is highly visible by both the Administration, Congress, and NGO's that are watching to see how this plays out as there are numerous Corps beach nourishment and sand mining projects that will be coming in the future. There is also strong support for maintaining a restriction on sand mining in CBRS units, a letter was sent to the Secretary and signed by 30 NGOs including Audubon, R Street Institute, and
Southern Environmental Law Center. **letter** https://www.rstreet.org/2019/12/05/letter-to-secretary-bernhardt-on-coastal-barrier-resources-act/

There is a current GAO audit that was ordered last month to examine Federal Agency's compliance with CBRA.

Thanks so much, I will be looking forward to hearing from you.

Cynthia Bohn
National Coastal Barrier Resources Act Specialist
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.***

---------- Forwarded message ---------
From: **Gasch, Eric K CIV USARMY CESAW (US)** <Eric.K.Gasch@usace.army.mil>
Date: Fri, Dec 20, 2019 at 10:00 AM
Subject: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports
To: cynthia_bohn@fws.gov <cynthia_bohn@fws.gov>, Kathy Matthews (kathryn_matthews@fws.gov) <kathryn_matthews@fws.gov>
Cc: Owens, Jennifer L CIV USARMY CESAW (USA) <Jennifer.L.Owens@usace.army.mil>, Gatwood, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Medlock, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>, Glazener, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, McCorcle, Justin P CIV USARMY CESAW (US) <Justin.P.Mccorcle@usace.army.mil>, Pruitt, Carl E Jr CIV USARMY CESAW (USA) <Carl.E.Pruitt@usace.army.mil>

Ladies,

Attached are the interagency CBRA consultations for the Wrightsville Beach, NC, Coastal Storm Risk Management Validation Report and the Carolina Beach, NC, Beach Renourishment Evaluation Report.

If you have any comments or questions, please call, (910)251-4553 or email, eric.k.gasch@usace.army.mil at your earliest convenience.

After your review, I would be very interested in hearing when you thought CBRA consultation would be completed.

Thank you very much,

Eric Gasch
USACE Biologist
69 Darlington Ave
Wilmington, NC 28403
910-251-4553
Eric.K.Gasch@usace.army.mil

| | |
|---|---|
| **From:** | Bohn, Cynthia |
| **To:** | Wright, Dana K; Niemi, Katie |
| **Subject:** | Fwd: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports |
| **Date:** | Wednesday, January 8, 2020 8:47:53 AM |
| **Importance:** | High |

do you all want to join us. this is last minute but looks like I have everyone together.

Cynthia Bohn
Coastal Barrier Resources Act Specialist
Phone: 404-679-7122
Fax: 404-679-7081
cynthia_bohn@fws.gov

Learn more about the Coastal Barrier Resources Act

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---------- Forwarded message ---------
From: **Tawes, Robert** <robert_tawes@fws.gov>
Date: Tue, Jan 7, 2020 at 7:32 PM
Subject: Re: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports
To: Catherine Phillips <catherine_phillips@fws.gov>
Cc: Pete Benjamin <pete_benjamin@fws.gov>, Bohn, Cynthia <cynthia_bohn@fws.gov>, Aaron Valenta <aaron_valenta@fws.gov>, Matthew Dekar <matthew_dekar@fws.gov>, Michelle Eversen <michelle_eversen@fws.gov>, Kathryn Matthews <kathryn_Matthews@fws.gov>

I will be teleworking tomorrow morning but can call in at 9:00. Sounds like Kathryn will be calling in as well. We can use my conference line (b) (5) [redacted] .
On Tue, Jan 7, 2020 at 5:25 PM Catherine Phillips <catherine_phillips@fws.gov> wrote:

> 9am, all?
>
> Sent from my iPhone
>
> On Jan 7, 2020, at 5:04 PM, Pete Benjamin <pete_benjamin@fws.gov> wrote:
>
>> I'm going to be on the road and in a meeting most of tomorrow. If you want you can call me on my cell (below) between about 9 and noon, when I'll be driving. Also, I'm including Kathy of my staff here for here awareness. Please include her in the discussion (she's the one that actually knows things).

Pete Benjamin

Field Supervisor

U.S. Fish and Wildlife Service

Raleigh ES Field Office

O: 919-856-4520 x 11

M: 919-816-6408

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, January 7, 2020 4:25 PM
**To:** Catherine Phillips <catherine_phillips@fws.gov>
**Cc:** aaron valenta <Aaron_Valenta@fws.gov>; Matthew Dekar <matthew_dekar@fws.gov>; Michelle Eversen <michelle_eversen@fws.gov>; Pete Benjamin <pete_benjamin@fws.gov>; Robert Tawes <robert_tawes@fws.gov>
**Subject:** Re: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports

Thanks Catherine, I am not sure how to do that. I'm in all day tomorrow. Is someone doing your scheduling or do you want to give me a time? I'll be available all day. cb

Cynthia Bohn

Coastal Barrier Resources Act Specialist

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, Jan 7, 2020 at 4:20 PM Catherine Phillips <catherine_phillips@fws.gov> wrote:

> Cindy,
>
> Let's set up a time to talk so I can make sure i fully understand.
>
> C
>
> Sent from my iPhone
>
> On Jan 7, 2020, at 1:16 PM, Bohn, Cynthia <cynthia_bohn@fws.gov> wrote:
>
>> **ACTION REQUESTED: I am requesting a meeting and a decision on how to proceed from Region2/4, and to make sure Catherine is briefed before a call from Michelle Shaughnessy later this week.**
>>
>> Catherine, Aaron, Matt, and all:
>>
>> **Please see below the formal request from the Wilmington Corps District for CBRA determinations for two Corps projects involving the removal of sand from within a CBRS unit for use outside a CBRS unit.** The Corps has asked that we respond by Jan 31. We had requested that all projects involving sand mining be forwarded from the field to the RO due to the new Solicitor's memo overturning a 30 year old policy and pending guidance being developed at HQ. I worked on this as your Regional CBRA Coordinator with input from Kathyrn Matthews in the RANC FO. As my final duty, I provided Leo and Mike a briefing on 12/20; which I have sent you information on in a separate email. This email is to formally pass this request on to Aaron or whomever may be taking my old

position, and to offer our assistance from HQ to you all if you would like. This will be a precedent setting CBRA response and is highly visible at the congressional, secretarial, and NGO level.

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as there are numerous Corps beach nourishment and sand mining projects that will be coming in the future. There is also strong support for maintaining a restriction on sand mining in CBRS units, a letter was sent to the Secretary and signed by 30 NGOs including Audubon, R Street Institute, and

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There is a current GAO audit that was ordered last month to examine Federal Agency's compliance with CBRA.

Thanks so much, I will be looking forward to hearing from you.

Cynthia Bohn

National Coastal Barrier Resources Act Specialist

Phone: 404-679-7122

Fax: 404-679-7081

cynthia_bohn@fws.gov

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---------- Forwarded message ---------
From: **Gasch, Eric K CIV USARMY CESAW (US)** <Eric.K.Gasch@usace.army.mil>
Date: Fri, Dec 20, 2019 at 10:00 AM
Subject: [EXTERNAL] Interagency CBRA Consultations for the Wrightsville Beach, NC, and the Carolina Beach, NC, Reports

To: cynthia_bohn@fws.gov <cynthia_bohn@fws.gov>, Kathy Matthews (kathryn_matthews@fws.gov) <kathryn_matthews@fws.gov>
Cc: Owens, Jennifer L CIV USARMY CESAW (USA) <Jennifer.L.Owens@usace.army.mil>, Gatwood, Elden J CIV CESAW CESAD (US) <Elden.J.Gatwood@usace.army.mil>, Medlock, James M (Jim) CIV USARMY CESAW (USA) <James.M.Medlock@usace.army.mil>, Glazener, Jason S CIV USARMY CESAW (USA) <Jason.S.Glazener@usace.army.mil>, McCorcle, Justin P CIV USARMY CESAW (US) <Justin.P.Mccorcle@usace.army.mil>, Pruitt, Carl E Jr CIV USARMY CESAW (USA) <Carl.E.Pruitt@usace.army.mil>

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After your review, I would be very interested in hearing when you thought CBRA consultation would be completed.

Thank you very much,

Eric Gasch
USACE Biologist
69 Darlington Ave
Wilmington, NC 28403
910-251-4553
Eric.K.Gasch@usace.army.mil

<Wrightsville Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf>

<Carolina Beach CBRA Inter-Agency Consultation Form - 19-Dec-2019.pdf>

<20191030 Solicitor's Memo on sand mining.pdf>

--

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

*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.*

**F om** [redacted]
**To** [redacted]
**Cc** [redacted]
**Subje t** Re: CBRA hot op c fo me t ng with Di e to
**Date** W dnesday, ana y 8, 2020 12:23:52 M
**Att achments** CBRA hot op c fo Di ecto %201.docx

---

Martha
Sorry I'm sti l rying to f gure out the Teams site. The hot top cs document is a tached.

Ka ie

On Wed Jan 8 2020 at 12:15 PM BalisLarsen Martha <martha_balislarsen@fws.gov> w ote:

Kat e, I need access to the fi e.

t s just a bu let so I was going to use your list o verbally expand on the bu let.

Thanks!

Martha

Ma tha Ba Lar sen
Ch ef, Di v sion of Budget & Tech ca upp t
U S Fish and Wi dl fe Se v ce Headq ua rs
Eco sy cal Se vic s, MS ES
5 PX Jam s q. St
Ar ng ton, VA 22203 3803
703-3 8-21 7 (pho e o )
703-3 8-21 4 (f ax )

On Wed Jan 8 2020 at 9:10 AM Niemi Kat e <[redacted]> wrote:

Miche le and Martha
Here are the CBRA hot topics for your briefing wi h Aurel a. Is here a powerpoint we should add the key po n s to? Thanks.

Kat e

https://teams.microsoft.com/l/file/518373ED-5D3A-66A-B9DC-FC5C0AA 631?ouin Id=0693b5ba-b18- d7b-93 1-
D2f 00a5 9 &file Type=docx&objectUrl=h tps%3A%2F%2Fdoimspp.sharepoint.com%2Fsites%2FGeneralCBRA%2FShared%20Documen s%2FGeneral%2FCBRA%20hot%20top cs%20for%20D rector%201.7.20docx.docx&baseUrl=https%3A%2F%2Fdoimspp.sharepo nt.com%2Fsites%2FGeneralCBRA&ver c=2&msc=teams&th ead Id=19 560d5fd5 6fd a 88c81d675155695a1@thread.skype&groupId=12a39673-
fcdc- fe0-883fc-e6c77fbcd f8e

Katie Niemi
Coastal Ba ie s Coo dinato
U S ish & W ld li e Se v ce
Eco og cal Se vices MS ES
5275 ensbu g ha
at s Chu ch VA 2204 -3803
el (703) 358 207

**Updated Interpretation of CBRA Exception for Beach Nourishment Projects**
On November 4, 2019, Secretary Bernhardt issued letters to certain members of Congress to advise them that the Department had revisited its legal interpretation of a Coastal Barrier Resources Act (CBRA) exception related to beach nourishment. Since 1994, the Department and FWS 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" could not be applied to sand mining *within* the Coastal Barrier Resources System (CBRS) for beach nourishment projects that occur *outside* of the CBRS. The Department's Office of the Solicitor revisited this interpretation and issued a memo to FWS on October 30, 2019, which stated that sand from *within* the CBRS may be used to renourish beaches *outside* of the CBRS, provided that the federal funding agency consults with FWS and the project meets the requirements of the exception and is consistent with the purposes of CBRA.

FWS has received inquiries from Congress, NGOs, and other stakeholder groups seeking clarification on how the new interpretation will affect coastal storm damage reduction projects and the timeframe for FWS guidance on this matter. On December 20, 2019, FWS received consultation requests from the Corps Wilmington District for projects in Carolina Beach and Wrightsville Beach, NC; the Corps has requested a response to these two consultations requests by January 31, 2020. ES HQ is working with Region 2 on the responses to these two consultation requests.

ES HQ has also prepared a draft letter to the Corps Director of Civil Works to explain the Department's revised legal interpretation affecting coastal storm damage reduction projects.

**USGS/FWS Study on Impacts of Sand Mining within and adjacent to the CBRS**
The Chairman of the Committee on Natural Resources sent a June 24, 2019, letter to the Director of USGS and the Principal Deputy Director of FWS requesting that USGS, in conjunction with FWS, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS. FWS is working with USGS to define the scope of the study. A draft response letter to the Chairman is on hold in DTS.

**Remapping of Certain CBRS Units in Florida and South Carolina**
FWS plans to submit to the *Federal Register* an announcement of the availability of comprehensively revised boundaries for CBRS units in Okaloosa and Walton counties, Florida, and Beaufort and Charleston counties, South Carolina. The notice will announce a 60-day public comment period. Outreach will include a news bulletin; letters to Congress, federal, state, and local officials, and NGOs; and a stakeholder outreach toolkit available to local officials. The FR package is open with FWP and will be sent to the FR once cleared. ES staff had a conference call/webex with Katie Mills on December 10 to answer her questions related to this package. Senator Scott (SC) has inquired several times regarding the status of this remapping effort, and has been told that the public comment period was anticipated to begin in late 2019.

**GAO Review of CBRA**
81.5(c) & 81.6(j) [redacted]

81.5(c) & 81.6(j)

**Hurricane Sandy CBRS Remapping Project**
In 2014, FWS initiated it's largest map modernization project to update the maps of approximately 370 CBRS units in the nine states along the North Atlantic coast most affected by Hurricane Sandy: Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York (Long Island), Rhode Island, and Virginia (comprising 16% of the total acreage within the CBRS). This project makes significant progress towards fulfilling the statutory requirement to modernize the entire set of CBRS maps. The modernization effort corrects mapping errors affecting property owners; adds new qualifying areas to the CBRS; and provides more accurate and accessible CBRS data for planning coastal infrastructure projects, habitat conservation efforts, and flood risk mitigation measures.

The public review for this project was conducted in two separate batches in 2018 and 2019. FWS is making appropriate adjustments to the boundaries based on public comments, CBRA criteria, and objective mapping protocols. FWS is also preparing summaries of and responses to the comments received along with final recommended maps that will be included in a report to Congress (anticipate report and related materials will go into surname in 2020). The revised CBRS maps (including proposed removals and proposed additions) will only become effective once the revised maps are adopted into law by Congress.

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# Talking Points on Coastal Barrier Resources Act Consultations

**Background:**

- Since 1994, DOI and FWS 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" could not be applied to sand mining within the CBRS for beach nourishment projects that occur outside of the CBRS.

- This interpretation affected several Corps shore-protection projects in areas along the Atlantic Coast (Stone Harbor, NJ; Topsail Beach, NC; Wrightsville Beach, NC; Carolina Beach, NC; and Folly Beach, SC), where communities and the Corps seek to use areas within the CBRS as borrow sites for beach-nourishment projects benefiting developed areas outside of the CBRS.

- SOL revisited this interpretation (upon request from the Secretary) and issued a memo to FWS on October 30, 2019, stating that sand from within the CBRS may be used to renourish beaches outside of the CBRS, provided that the federal funding agency consults with FWS and the project meets the requirements of the exception and is consistent with the purposes of CBRA.

- On November 4, 2019, the Secretary issued letters to certain members of Congress to advise that DOI revisited its legal interpretation of a CBRA exception related to beach nourishment. This issue has been publicized in local media, E & E, and the New York Times. FWS has received inquiries from Congress (including the HNR Committee), NGOs, and other stakeholder groups seeking clarification on how the new interpretation will affect projects and the timeframe for FWS guidance on this matter.

- There is strong support among NGOs for maintaining a restriction on sand mining in CBRS units (see letters as sent to the Secretary signed by 30 NGOs including Audubon, R Street, NRDC, NWF, and the Southern Environmental Law Center: first letter, second letter). 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. Conversely, there is strong support from communities, certain members of Congress, and the American Shore and Beach Preservation Association for mining sand from within the CBRS.

- Due to the high level of interest in this matter, Chairman Grijalva requested that USGS, in conjunction with the Service, evaluate the short- and long-term impacts of sand/sediment removal on areas in and adjacent to the CBRS. HQ ES is currently coordinating the scope of the study with USGS. However, the Service has not yet responded to the Chairman's incoming letter (DCN 070502).

- Chairman Grijalva also requested that GAO review CBRA. The entrance conference is anticipated to occur in late January. Among other things, GAO will examine the extent to which selected federal agencies have made expenditures in the CBRS and the extent to which those agencies have policies in place to ensure CBRA compliance.

**Issue at hand:**

- The new SOL memo creates uncertainty on how to apply CBRA to sand mining/beach nourishment projects and requires several policy decisions to be made. The standard is that the projects be "non-structural", that they "mimic, enhance, or restore natural stabilization systems", and that they also be consistent with the purposes of CBRA. SOL has stated that these requirements apply to the entire project, both inside and outside of the CBRS (this is a significant change from how projects have been evaluated in the past).

- FWS has been advised that we cannot share the new SOL memo outside of the agency. No external or internal guidance has been developed on this issue. HQ ES has drafted a letter to the Corps (set up for Gary's signature) that would set the tone for future consultations. This letter is currently in surname (DCN 071591). The CBRA website has also been updated to indicate that "FWS will assist federal agencies in evaluating such projects through the interagency consultation process."

- On December 20, 2019, Region 2 received consultation requests from the Corps Wilmington District for projects in Carolina Beach and Wrightsville Beach, NC; the Corps requested a response by January 31, 2020 (though there is no statutory or regulatory time limit). North Carolina Congressional offices have requested that we give this issue immediate attention.

- b5-DPP [redacted]

**Questions:**

- What is the Region's plan for responding to these two consultation requests (and future consultation requests in general).
  - ES HQ CBRA team willing and able to help with response letters, but will require field support regarding the effects of the sand mining on fish and wildlife

- What is the timeframe for establishing the 1-2 CBRA regional coordinators?

- b5-DPP [redacted]

Prepared: January 8, 2020

**From:** Wright, Dana K
**To:** Owen, Gib A CIV USARMY HQDA ASA CW (USA)
**Cc:** Niemi, Katie
**Subject:** Re: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
**Date:** Wednesday, January 22, 2020 3:11:40 PM
**Importance:** High

---

Hello Gib,

Thank you for your message. We have received your request and will share it with our leadership and get back to you 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 Wed, Jan 22, 2020 at 2:31 PM Owen, Gib A CIV USARMY HQDA ASA CW (USA) <gib.a.owen.civ@mail.mil> wrote:

> Dana and Katie,
> 81.5(c) & 81.6(j) [redacted]
>
> Gib
>
> Gib Owen
> Water Resources Policy & Legislation
> Office of the Assistant Secretary of the Army for Civil Works
> Pentagon, Washington DC
> gib.a.owen.civ@mail.mil
> 703 695 4641 - Office
> 571 274 1929 - Cell
> ><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Chen, Linus Y |
| **Cc:** | Shaughnessy, Michelle; Wright, Dana K |
| **Subject:** | Fwd: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988 |
| **Date:** | Wednesday, January 22, 2020 3:19:46 PM |
| **Attachments:** | 11.04.19 Bernhardt CBRA Response.pdf |
| **Importance:** | High |

---

Linus,
Please see request below from the Office of the Assistant Secretary of the Army for Civil Works. Are we able to share the new CBRA SOL memo with the Corps and GAO? On a separate note, we had a call with the Corp South Atlantic Division and Wilmington District folks yesterday concerning two specific NC projects and they are also interested in a copy of the SOL memo as they are working on CBRA consultation requests related to sand mining/beach nourishment. Thanks.

Katie

---------- Forwarded message ---------
From: **Owen, Gib A CIV USARMY HQDA ASA CW (USA)** <gib.a.owen.civ@mail.mil>
Date: Wed, Jan 22, 2020 at 2:31 PM
Subject: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
To: dana_wright@fws.gov <dana_wright@fws.gov>, katie_niemi@fws.gov <katie_niemi@fws.gov>

Dana and Katie,
81.5(c) & 81.6(j) [redacted]

Gib

Gib Owen
Water Resources Policy & Legislation
Office of the Assistant Secretary of the Army for Civil Works
Pentagon, Washington DC
gib.a.owen.civ@mail.mil
703 695 4641 - Office
571 274 1929 - Cell
><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>

**From:** Wright, Dana K
**To:** Niemi, Katie
**Subject:** Re: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
**Date:** Thursday, January 23, 2020 8:38:15 AM
**Attachments:** 1994 SOL Opinion exception 6(a)(6)(G) and 1995 USACE letter.pdf
**Importance:** High

---

Attached is a PDF that you can share with the 94 opinion and 95 letter. It's saved here:

K:\CBRA\GAO\2020 CBRA GAO Audit\Materials to provide GAO

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, Jan 23, 2020 at 8:12 AM Niemi, Katie <katie_niemi@fws.gov> wrote:

> Thanks Kristen and Linus for the confirmation. Can I give the Corps a contact in your office that they can share with GAO? 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, Jan 22, 2020 at 4:03 PM Floom, Kristen <kristen.floom@sol.doi.gov> wrote:
>
> > No, I have not heard that anything has changed -- as far as I know we still are not sharing the 2019 memo.
> >
> > On Wed, Jan 22, 2020 at 3:26 PM Chen, Linus <linus.chen@sol.doi.gov> wrote:
> >
> > > Hi Katie,
> > > (Adding Kristen Floom)
> > > I believe we were asked about sharing the new SOL memo a couple months ago, and at that time we said it could not be shared. I know nothing that has changed. I'm guessing Kristen hasn't heard anything to suggest that the new SOL memo can be shared either.
> > > Thanks,
> > > Linus

On Wed, Jan 22, 2020 at 3:19 PM Niemi, Katie <katie_niemi@fws.gov> wrote:

Linus,
Please see request below from the Office of the Assistant Secretary of the Army for Civil Works. Are we able to share the new CBRA SOL memo with the Corps and GAO? On a separate note, we had a call with the Corp South Atlantic Division and Wilmington District folks yesterday concerning two specific NC projects and they are also interested in a copy of the SOL memo as they are working on CBRA consultation requests related to sand mining/beach nourishment. Thanks.

Katie

---------- Forwarded message ---------
From: **Owen, Gib A CIV USARMY HQDA ASA CW (USA)** <gib.a.owen.civ@mail.mil>
Date: Wed, Jan 22, 2020 at 2:31 PM
Subject: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
To: dana_wright@fws.gov <dana_wright@fws.gov>, katie_niemi@fws.gov <katie_niemi@fws.gov>

Dana and Katie,
81.5(c) & 81.6(j) [redacted]

Gib

Gib Owen
Water Resources Policy & Legislation
Office of the Assistant Secretary of the Army for Civil Works
Pentagon, Washington DC
gib.a.owen.civ@mail.mil
703 695 4641 - Office
571 274 1929 - Cell
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--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--

Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC  20240
202-208-3795

**From:** Floom, Kristen B
**To:** Chen, Linus Y
**Cc:** Niemi, Katie; Wright, Dana K
**Subject:** Re: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
**Date:** Thursday, January 23, 2020 11:36:26 AM
**Importance:** High

---

I can be a contact as well. If you provide info for both of us we can coordinate with each other and our supervisors.

On Thu, Jan 23, 2020 at 10:17 AM Chen, Linus <linus.chen@sol.doi.gov> wrote:

> (Deleting Michelle)
> I can be a contact. (I'll let Kristen volunteer herself if she wants.)
>
> On Thu, Jan 23, 2020 at 8:12 AM Niemi, Katie <katie_niemi@fws.gov> wrote:
>
> > Thanks Kristen and Linus for the confirmation. Can I give the Corps a contact in your office that they can share with GAO? Thanks!
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Subject: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
To: dana_wright@fws.gov <dana_wright@fws.gov>, katie_niemi@fws.gov <katie_niemi@fws.gov>

Dana and Katie,

81.5(c) & 81.6(j) [redacted]

Gib

Gib Owen
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Office of the Assistant Secretary of the Army for Civil Works
Pentagon, Washington DC
gib.a.owen.civ@mail.mil
703 695 4641 - Office
571 274 1929 - Cell
><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>

--

Linus Y. Chen, Attorney

Division Parks & Wildlife

(w) 202-208-5036

(f) 202-208-3877

--
Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240

> > 202-208-3795
>
> --
>
> Linus Y. Chen, Attorney
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> Division Parks & Wildlife
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> (w) 202-208-5036
>
> (f) 202-208-3877

--
Kristen Floom
U.S. Dept. of the Interior, Office of the Solicitor
Division of Parks & Wildlife
1849 C Street, N.W.
Washington, DC 20240
202-208-3795

| | |
|---|---|
| **From:** | Niemi, Katie |
| **To:** | Owen, Gib A CIV USARMY HQDA ASA CW (USA) |
| **Cc:** | Wright, Dana K; Chen, Linus Y; Floom, Kristen B; Shaughnessy, Michelle |
| **Subject:** | Re: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988 |
| **Date:** | Thursday, January 23, 2020 12:58:18 PM |
| **Attachments:** | 1994 SOL Opinion exception 6(a)(6)(G) and 1995 USACE letter.pdf |

Hello Gib,
Attached is the 1994 DOI Solicitor's Memo on the interpretation of CBRA Section 6(a)(6)(G). Also attached is a 1995 letter from the Assistant Secretary for Fish and Wildlife and Parks to the Acting Assistant Secretary for Civil Works regarding DOI's interpretation of Section 6(a)(6)(G). We have been advised by our Office of the Solicitor that we are unable to share the 2019 Solicitor's Memo related to the interpretation of CBRA Section 6(a)(6)(G) outside of DOI. Please contact Linus Chen (copied on this email and tel. 202-208-5036) or Kristen Floom (copied on this email and tel 202-208-3795) of our Solicitor's Office if you (or GAO) have further questions concerning the 2019 memo.
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, Jan 22, 2020 at 2:31 PM Owen, Gib A CIV USARMY HQDA ASA CW (USA) <gib.a.owen.civ@mail.mil> wrote:

> Dana and Katie,
> 81.5(c) & 81.6(j) [redacted]
>
> Gib
>
> Gib Owen
> Water Resources Policy & Legislation
> Office of the Assistant Secretary of the Army for Civil Works
> Pentagon, Washington DC
> gib.a.owen.civ@mail.mil
> 703 695 4641 - Office
> 571 274 1929 - Cell
> ><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>

**From:** Niemi, Katie
**To:** Garrity, Katherine
**Cc:** Wright, Dana K; Tripp, Kimberly J
**Subject:** Fw: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988
**Date:** Thursday, January 30, 2020 12:45:56 PM
**Attachments:** 1994 SOL Opinion exception 6(a)(6)(G) and 1995 USACE letter.pdf

---

Hi Kathy,
Thanks for coordinating the GAO entrance conference yesterday. Below (and attached) is what we shared with the Corps last week (to pass along to GAO). Here is the contact information for the lawyers in our Solicitor's Office who can speak with GAO about the October 2019 SOL memo they requested.

Linus Chen tel. 202-208-5036; email Linus.Chen@sol.doi.gov
Kristen Floom tel 202-208-3795; email kristen.floom@sol.doi.gov

Thanks!
Katie

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Thursday, January 23, 2020 12:58 PM
**To:** Owen, Gib A CIV USARMY HQDA ASA CW (USA) <gib.a.owen.civ@mail.mil>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Chen, Linus Y <Linus.Chen@sol.doi.gov>; Floom, Kristen B <kristen.floom@sol.doi.gov>; Shaughnessy, Michelle <Michelle_Shaughnessy@fws.gov>
**Subject:** Re: [EXTERNAL] Coastal Barriers Resources Act - GAO audit 103988

Hello Gib,
Attached is the 1994 DOI Solicitor's Memo on the interpretation of CBRA Section 6(a)(6)(G). Also attached is a 1995 letter from the Assistant Secretary for Fish and Wildlife and Parks to the Acting Assistant Secretary for Civil Works regarding DOI's interpretation of Section 6(a)(6)(G). We have been advised by our Office of the Solicitor that we are unable to share the 2019 Solicitor's Memo related to the interpretation of CBRA Section 6(a)(6)(G) outside of DOI. Please contact Linus Chen (copied on this email and tel. 202-208-5036) or Kristen Floom (copied on this email and tel 202-208-3795) of our Solicitor's Office if you (or GAO) have further questions concerning the 2019 memo.
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

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> Dana and Katie,
> 81.5(c) & 81.6(j) [redacted]

81.5(c) & 81.6(j) [redacted]

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571 274 1929 - Cell
><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>`·.¸¸.·´¯`·.¸¸.><((((º>

**From:** Willey, Seth
**To:** Ardizzone, Chuck CA; Bohn, Cynthia; Hoth, David; Gardiner, Dawn; Stanley, Susan C; Fasbender, Peter
**Cc:** Niemi, Katie; Tripp, Kimberly J; Forbus, Beth
**Subject:** Re: GAO follow-up from entrance conference on CBRA
**Date:** Monday, February 10, 2020 11:02:03 AM

---

Adding Beth as I think it is her division. Any thoughts Beth?

**********
Seth L. Willey
Deputy ARD, Ecological Services
Southwest Region, USFWS
Seth_Willey@fws.gov
Work: 505-248-6492
Cell: 505-697-7600
**********

---

**From:** Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>
**Sent:** Monday, February 10, 2020 7:45 AM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>; Hoth, David <david_hoth@fws.gov>; Gardiner, Dawn <dawn_gardiner@fws.gov>; Stanley, Susan C <susan_stanley@fws.gov>; Fasbender, Peter <peter_fasbender@fws.gov>; Willey, Seth <seth_willey@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Cindy,

(b) (6) [redacted]. I added Seth Willey, our DARD to this string as well, hopefully Pete and he can determine who will be the Lead in the Regional Office.

**Chuck Ardizzone**
Project Leader
Texas Coastal Ecological Services
U.S. Fish & Wildlife Service
17629 El Camino Real, Ste 211
Houston, TX 77058
W: (281) 286-8282 Ext 26506
C: (713) 882-1912
F: (281) 488-5882

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Monday, February 10, 2020 08:36
**To:** Hoth, David <david_hoth@fws.gov>; Gardiner, Dawn <dawn_gardiner@fws.gov>; Stanley, Susan C <susan_stanley@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Fasbender, Peter

<peter_fasbender@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Hi folks, I have been late in letting you all know that (b) (6) [redacted]. Pete, welcome to the world of CBRA please let me know if you would like to have an overview of the program to get you started.

Please let me know who the new contact is for CBRA within your Region as there are so I may reach out to them and make sure they have the latest guidance. As you know, we recently received a new Solicitor's memo on sand mining and we are currently working with the Southeast and Northeast coast on two projects that are directly involved. This will hopefully provide us with a way forward for addressing this issue. In addition, GAO is performing a government-wide audit of all agencies on how they are implementing and complying with CBRA.

Thanks so much and I look forward to hearing from you. Cindy Bohn

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 7, 2020 10:53 AM
**To:** Hoth, David <david_hoth@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>
**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Hi Folks,
(b) (6) [redacted]

Katie

---

**From:** Hoth, David <david_hoth@fws.gov>
**Sent:** Friday, February 7, 2020 10:42 AM
**To:** Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Good Morning,

If I am not mistaken, I thought Cindy Bohn was the Regional contact regarding CBRA issues. However, I would be happy to assist however I can.

Thank you,

***David Hoth***
*Assistant Field Supervisor*
*U.S Fish and Wildlife Service*
*Texas Coastal Ecological Services Field Office*
*17629 El Camino Real, Suite 211*
*Houston, Texas 77058*
O: (281) 212-1504
M: (281) 705-7436

---

**From:** Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>
**Sent:** Friday, February 7, 2020 9:12 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Hoth, David <david_hoth@fws.gov>; Willey, Seth <seth_willey@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Katie,

in my office David Hoth would be the best POC for questions on CBRA issues. I do not know who would be the POC at our regional office. That would be a question best answered by my DARD Seth Willey, I have cced him on this response.

**Chuck Ardizzone**
Project Leader
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17629 El Camino Real, Ste 211
Houston, TX 77058
W: (281) 286-8282 Ext 26506
C: (713) 882-1912
F: (281) 488-5882

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 7, 2020 09:07
**To:** Valenta, Aaron <aaron_valenta@fws.gov>; Simon, Spencer <spencer_simon@fws.gov>; Krska, Robert <robert_krska@fws.gov>; Deloria, Christie <christie_deloria@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Ricks, Stephen <stephen_ricks@fws.gov>; Trahan, Amy <amy_trahan@fws.gov>

**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
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Thanks!
Katie

Katie Niemi
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5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel (703) 358-2071

---

b1.5(c) & b1.6(

[redacted]

81.5(c) & 81.6(j)

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[redacted]

**From:** Bohn, Cynthia
**To:** Niemi, Katie
**Subject:** Re: GAO follow-up from entrance conference on CBRA
**Date:** Monday, February 10, 2020 11:19:52 AM

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I sent everyone an email in December, I think. I was hoping to have a new POC for folks to replace me with; all the folks in the old R4 and 5 know. I was just waiting on R2 since they had a change in the ARD slot.

I will be happy to do it, but I don't want to "volunteer" to help and give folks the idea that I have been approved by their ARD to assist. I want it to be on a case by case basis. Don't you think? c

---

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Monday, February 10, 2020 11:14 AM
**To:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Good email, thanks for sending Cindy. Do you want to share with all your FO contacts as well? Or send your FO POCs a similar email to let them know your new status? Thanks.

Katie

---

**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Monday, February 10, 2020 9:36 AM
**To:** Hoth, David <david_hoth@fws.gov>; Gardiner, Dawn <dawn_gardiner@fws.gov>; Stanley, Susan C <susan_stanley@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Fasbender, Peter <peter_fasbender@fws.gov>
**Cc:** Niemi, Katie <katie_niemi@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>
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**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Hi Folks,

(b) (6) [redacted]

Katie

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**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
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**Sent:** Friday, February 7, 2020 09:07
**To:** Valenta, Aaron <aaron_valenta@fws.gov>; Simon, Spencer <spencer_simon@fws.gov>; Krska, Robert <robert_krska@fws.gov>; Deloria, Christie <christie_deloria@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Ricks, Stephen <stephen_ricks@fws.gov>; Trahan, Amy <amy_trahan@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** GAO follow-up from entrance conference on CBRA

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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

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[redacted]

[redacted]

[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

**From:** Shaughnessy, Michelle
**To:** Niemi, Katie; Tripp, Kimberly J
**Cc:** Wright, Dana K; Bohn, Cynthia
**Subject:** Re: Communication with the regions on CBRA
**Date:** Tuesday, February 11, 2020 11:54:59 AM

---

How about if we get this on the ARD call agenda for next week? I'll need a little paragraph, or talking points of what you want me to relay.

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:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 7, 2020 11:21 AM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>; Shaughnessy, Michelle <Michelle_Shaughnessy@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Communication with the regions on CBRA

Michelle and Kim,
Please see the message below from David Hoth. I think we need to communicate Cindy's new role to the regions as they may not be aware that she is no longer serving as the CBRA Regional Coordinator for Regions 2, 4, and 5 (yes, Cindy was actually supporting most of the regions and FOs with CBRA on consultation matters). I think we also need to nudge each region towards identifying a new CBRA Coordinator (I think it's fine if it's a FO person who also has the role of regional CBRA Coordinator as one of their responsibilities). How about an email from Michelle to the ARDs to let them know of our re-org and new Branch and Division Chiefs, Cindy's new role, and ask them to identify a new CBRA Coordinator for their region? It could also be an opportunity to give them a heads up that GAO has an audit underway on CBRA and may be reaching out to them about consultations; that we are looking to work with them to develop internal guidance related to sand mining/beach nourishment projects; and that we're looking to work with them on the new CBRA consultations module in ECOS.

Katie

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**From:** Niemi, Katie <katie_niemi@fws.gov>

**Sent:** Friday, February 7, 2020 10:53 AM
**To:** Hoth, David <david_hoth@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>
**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Hi Folks,

(b) (6) [redacted]

Katie

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**From:** Hoth, David <david_hoth@fws.gov>
**Sent:** Friday, February 7, 2020 10:42 AM
**To:** Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Willey, Seth <seth_willey@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Good Morning,

If I am not mistaken, I thought Cindy Bohn was the Regional contact regarding CBRA issues. However, I would be happy to assist however I can.

Thank you,

***David Hoth***
*Assistant Field Supervisor*
*U.S Fish and Wildlife Service*
*Texas Coastal Ecological Services Field Office*
*17629 El Camino Real, Suite 211*
*Houston, Texas 77058*
O: (281) 212-1504
M: (281) 705-7436

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**From:** Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>
**Sent:** Friday, February 7, 2020 9:12 AM
**To:** Niemi, Katie <katie_niemi@fws.gov>
**Cc:** Hoth, David <david_hoth@fws.gov>; Willey, Seth <seth_willey@fws.gov>
**Subject:** Re: GAO follow-up from entrance conference on CBRA

Katie,

in my office David Hoth would be the best POC for questions on CBRA issues. I do not know who would be the POC at our regional office. That would be a question best answered by my DARD Seth Willey, I have cced him on this response.

**Chuck Ardizzone**
Project Leader
Texas Coastal Ecological Services
U.S. Fish & Wildlife Service
17629 El Camino Real, Ste 211
Houston, TX 77058
W: (281) 286-8282 Ext 26506
C: (713) 882-1912
F: (281) 488-5882

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**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 7, 2020 09:07
**To:** Valenta, Aaron <aaron_valenta@fws.gov>; Simon, Spencer <spencer_simon@fws.gov>; Krska, Robert <robert_krska@fws.gov>; Deloria, Christie <christie_deloria@fws.gov>; Ardizzone, Chuck CA <chuck_ardizzone@fws.gov>; Ricks, Stephen <stephen_ricks@fws.gov>; Trahan, Amy <amy_trahan@fws.gov>
**Cc:** Wright, Dana K <dana_wright@fws.gov>; Tripp, Kimberly J <kimberly_tripp@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** GAO follow-up from entrance conference on CBRA

Hi Folks,
Below are some questions from GAO following the entrance conference they had with us on CBRA last week. Please see Question 3 below and let me know who we should identify as the POC for your region to answer questions related to CBRA consultations.

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

81.5(c) & 81.6(

[redacted]

[redacted]

[redacted]

[redacted]
[redacted]
[redacted]

**From:** Niemi, Katie <katie_niemi@fws.gov>
**Sent:** Friday, February 14, 2020 10:58 AM
**To:** Wright, Dana K <dana_wright@fws.gov>
**Subject:** PLEASE REVIEW: CBRA talking points for ARD call next week

Dana,
Can you please take a look at talking points below. I don't want to include too much detail, probably not much time for CBRA so I'd like to just focus on the big needs from the ROs for Michelle to highlight. Take a look especially at highlighted stuff and let me know your thoughts. Thanks.

Kim,
Below are CBRA talking points for Michelle's ARD call next week. Can you make sure CBRA is on the agenda for that call and let me know if Michelle needs any additional information. We may want to talk about the funding issue in advance. Thanks!

Katie

**CBRA Staffing Updates**

- The Ecological Services HQ CBRA Program is now within the Division of Restoration and Recovery (Michelle Shaughnessey Chief) and Branch of Coastal and Marine Resources (Kim Tripp Chief). That re-org was made effective in January 2020.
- (b) (6) [redacted]
- (b) (6) [redacted] Katie Niemi continues to serve as the National CBRA Coordinator. Our CBRA team in HQ is tasked with the mapping efforts, but is also here to help support the regions and field on CBRA policy and consistency issues so please feel free to reach out to Kim or Katie on any CBRA matters.

**CBRA Hot Topics**

- Congress continues to be very interested in CBRA. The Service and USGS received a request from Chairman Grijalva to evaluate the short- and long-term impacts of sand mining and beach nourishment within and adjacent to the CBRS. We are working with USGS to develop an IAA to conduct this assessment.
- GAO has recently initiated an audit of the CBRA Program. They have reached out to us as well as other federal agencies and are asking about our mapping efforts and CBRA consultations. They have requested points of contact from ES at the regional level who can answer questions about CBRA consultations.

The Secretary recently asked the SOL to revisit a long-standing interpretation of a CBRA exception for nonstructural shoreline stabilization projects. SOL issued a new memo in October 2019, stating that sand from within the CBRS may now be used to renourish beaches outside of the CBRS, provided that the federal funding agency consults with FWS and the project meets the requirements of the exception and is consistent with the purposes of CBRA.

- SOL has advised that we cannot share the new SOL memo outside of the agency. We have drafted a letter to the Corps Director of Civil Works to advise the Corps of this new interpretation and provide guidelines to help them develop sand mining/shoreline stabilization projects that are compliant with CBRA. The draft letter will be circulated to the regions for review in DTS.
- While we do not currently have internal or external guidance related to the new SOL interpretation, we are currently working with the NC field office and the Corps on two high profile projects (Carolina Beach and Wrightsville Beach) where the exception is being used. b5-DPP [redacted]
- Our CBRA HQ team (along representatives from the NJ, NC and SC field offices) are working to develop a new CBRA workflow for ECOSphere (TAILS replacement). This will be good opportunity to help streamline the CBRA consultations process and ensure we are capturing all of the CBRA consultations in a central system.

**CBRA Regional Coordinators**

- With all of the interest in CBRA and Cindy Bohn no longer serving as the Regional CBRA Coordinator, it's important that we are in coordination with the regions, especially on the CBRA consulations side of the house.
- **Can you please identify/confirm the CBRA Coordinator(s) for your respective region.** SHOULD WE ASK THEM TO IDENTIFY BY A CERTAIN DATE, END OF THE FEBRUARY?
- The role of the regional coordinators includes: providing support the field offices in responding to requests for CBRA consulation from other federal agencies; answering questions from a variety of stakeholders concerning whether certain types of projects and activities are consistent with CBRA; and coordinating with HQ and the field offices on mapping issues, policy issues, guidance, and other issues related to CBRA.
- If asked about funding for CBRA consultations, you can mention that in recent years we've transferred some funds to Region 4 to cover consultations work Cindy did behalf of the regions. b5-DPP [redacted]

**From:** Niemi, Katie
**To:** Tripp, Kimberly J
**Cc:** Wright, Dana K; Bohn, Cynthia
**Subject:** High Priority-talking points for ARD call next week
**Date:** Friday, February 14, 2020 12:07:58 PM

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Kim,
Below are CBRA talking points for Michelle's ARD call next week. Can you make sure CBRA is on the agenda for that call and let me know if Michelle needs any additional information. The bold items are the issues we are seeking ARD action on. We may want to talk with Michelle and Martha about the funding issue before the call (see highlighted text below). Thanks!

Katie

**CBRA Staffing Updates**

- The Ecological Services HQ CBRA Program is now within the Division of Restoration and Recovery (Michelle Shaughnessy Chief) and Branch of Coastal and Marine Resources (Kim Tripp Chief). That re-org within ES HQ was made effective in January 2020.
- (b) (6) [redacted]
- [redacted] Katie Niemi continues to serve as the National CBRA Coordinator.
- Our CBRA team in HQ is tasked with the mapping efforts, but is also here to help support the regions and field on CBRA policy and consistency issues so please feel free to reach out to Kim or Katie on any CBRA matters.

**CBRA Hot Topics**

- Congress continues to be very interested in CBRA. The Service and USGS received a request from Chairman Grijalva to evaluate the short- and long-term impacts of sand mining and beach nourishment within and adjacent to the CBRS. We are working with USGS to develop an IAA to conduct this assessment.
- GAO has recently initiated an audit of the CBRA Program. They have reached out to us as well as other federal agencies and are asking about our mapping efforts and CBRA consultations. They have requested points of contact from ES at the regional level who can answer questions about CBRA consultations.
- The Secretary recently asked the SOL to revisit a long-standing interpretation of a CBRA exception for nonstructural shoreline stabilization projects. SOL issued a new memo in October 2019, stating that sand from <u>within</u> the CBRS may now be used to renourish beaches <u>outside</u> 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.

- SOL has advised that we cannot share the new SOL memo outside of the agency. We have drafted a letter to the Corps Director of Civil Works to advise the Corps of this new interpretation and provide guidelines to help them develop sand mining/shoreline stabilization projects that are compliant with CBRA. The draft letter will be circulated to the regions for review in DTS.
- While we do not currently have internal or external guidance related to the new SOL interpretation, we are currently working with the NC field office and the Corps on two high profile projects (Carolina Beach and Wrightsville Beach) where that exception is being used. b5-DPP [redacted]
- Our CBRA HQ team (along representatives from the NJ, NC and SC field offices) are working to develop a new CBRA workflow for ECOSphere (TAILS replacement). This will be good opportunity to help streamline the CBRA consultations process and ensure we are capturing all of the CBRA consultations in a centralized system.

**CBRA Regional Coordinators**

- With all of the interest in CBRA and Cindy Bohn no longer serving as the Regional CBRA Coordinator, it's important that we are in coordination with the regions, especially on the CBRA consulations side of the house.
- **Can you please identify/confirm the CBRA Coordinator(s) for your respective region by the end of February.** This request is only for those regions with CBRA units (legacy Regions 2, 3, 4, and 5).
- The role of the regional coordinators includes: providing support the field offices in responding to requests for CBRA consulation from other federal agencies; answering questions from a variety of stakeholders concerning whether certain types of projects and activities are consistent with CBRA; and coordinating with HQ and the field offices on mapping projects, policy issues, guidance, tracking systems (e.g,. ECOSphere, TAILS, IPAC), and other issues related to CBRA.
- If asked about funding for CBRA consultations, you can mention that in recent years we've transferred some CBRA funds to Region 4 to cover the consultation coordination work Cindy did behalf of the regions. I (Katie) think we should b5-DPP [redacted]

**From:** Tripp, Kimberly J
**To:** Bohn, Cynthia; Wright, Dana K; Niemi, Katie
**Subject:** Re: Outline of Introductory Email to Regions
**Date:** Tuesday, March 31, 2020 1:01:45 PM

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we're rescheduling till tomorrow for Katie

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

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**From:** Bohn, Cynthia <cynthia_bohn@fws.gov>
**Sent:** Tuesday, March 31, 2020 12:57 PM
**To:** Tripp, Kimberly J <kimberly_tripp@fws.gov>; Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>
**Subject:** Re: Outline of Introductory Email to Regions

Thanks, am I to assume the call is still on?

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**From:** Tripp, Kimberly J <kimberly_tripp@fws.gov>
**Sent:** Tuesday, March 31, 2020 12:26 PM
**To:** Wright, Dana K <dana_wright@fws.gov>; Niemi, Katie <katie_niemi@fws.gov>; Bohn, Cynthia <cynthia_bohn@fws.gov>
**Subject:** Outline of Introductory Email to Regions

A newly formed Branch of Coastal and Marine Resources

Building capacity at the Headquarters level, allowing for opportunities to develop guidance and tools and more routine and consistent communication to establish a Community of Practice across relevant Regions.

As there are staff changes at Headquarters, I understand there are also several personnel changes at the Region and field level. It seems to be an opportune time to review and refresh the CBRA roles and responsibilities across the Service, and what we foresee as anticipated workloads in light of the new solicitor's interpretation of sand mining in CBRA zones.

Established Roles and Responsibilities
xxxx

Added complexity with the new Solicitor's memo.
xxxx

Value of CBRA
How CBRA provides complementary conservation value at a landscape scale that bolsters the measures applied to species specific management actions.

Based on what typically is fielded by ES offices and Regions, we foresee the roles of coordinators to be:
x,y,z

Please consider whether you are the appropriate contact for this role, or whether someone else would be more appropriate.

I'd like to convene a call in April to debrief on the GAO communications and what we foresee happening in the coming months. I'd also like input on the types of support, tools, training that would be most advantageous to your personnel to be informed and equipped in managing the CBRA program.

GAO contacts,

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

**CBRA Program Priorities (April-September 2020)**

**Hurricane Sandy Remapping Project -** The CBRA Program plans to prepare final recommended maps and unit summaries for all CBRS units included in the Hurricane Sandy Project (~430 units in nine states along the North Atlantic coast). The program will also work on summarizing ~200 public comments received and drafting responses to those comments; developing technical correction assessments for ~27 units within the project area; and preparing a report to Congress to accompany the revised maps and address statutory reporting requirements. This activity is a priority because one of the HQ CBRA Program's primary responsibilities is to maintain and update the maps and the Service received $5 million of Hurricane Sandy Supplemental funding specifically for updating the maps in the northeast. The CBRA Program has communicated to Congress and other interested stakeholders that we anticipate the draft maps and related documents would be completed in 2021 (not including time required for Administration review and clearance of surname package).

81.5(c) & 81.6(j) [redacted]

**Letter to Corps and Public Fact Sheet for Shoreline Stabilization Projects** - Numerous stakeholders (including the Corps, American Shore and Beach Preservation Association, the House Natural Resources Committee, and NGOs) have contacted the Service for information on how the Department's October 2019 revised legal interpretation on CBRA's exception for non-structural shoreline stabilization (16 U.S.C. § 3505(a)(6)(G)) will affect projects on the ground. The CBRA Program has prepared a draft letter to the Corps Director of Civil Works regarding the revised legal interpretation and considerations for developing CBRA-compliant projects. The CBRA Program has responded to questions from the Director on the draft letter. Once the letter is signed, the CBRA Program plans to prepare a public-facing fact sheet that is consistent with the information contained in the letter to the Corps. This activity is a priority because federal agencies and Service field offices are conducting CBRA consultations for non-structural shoreline stabilization projects and are in need of guidelines to help ensure projects are reviewed consistently under the Department's new legal interpretation.

**USGS Sand Mining Study -** The CBRA Program is working with USGS to prepare an Interagency Agreement to fulfill a June 2019 request from House Natural Resources Committee Chairman Grijalva that the two agencies evaluate the short- and long-term impacts of sand/sediment removal and nourishment on areas in and adjacent to the CBRS. Once the Interagency Agreement is signed, USGS will prepare a draft report with support from the CBRA Program. This activity is a priority because the study was requested by the Committee Chairman and it will also help support ongoing consultations that have the potential to be controversial and generate interest from Congress.