



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Memorandum

To: Principal Deputy Director, U.S. Fish and Wildlife Service

From: Assistant Secretary for Fish and Wildlife and Parks

SHANNON
ESTENOZ

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SHANNON ESTENOZ
Date: 2021.07.14
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Subject: Coastal Barrier Resources Act Section 6(a)(6)(G) Exception

Congress passed the Coastal Barrier Resources Act (CBRA), 16 U.S.C. § 3501 et seq., to restrict federal funds from being used on projects that could result in harmful development of coastal barriers. The CBRA delineated the areas subject to the Act's protections by establishing the John H. Chafee Coastal Barrier Resources System (System). 16 U.S.C. §§ 3502(6) and 3503(a). Within the System, CBRA prohibits Federal financial support for the development of coastal barriers, with limited exceptions defined in Section 6 of the Act, including for "[n]onstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." 16 U.S.C. § 3505(a)(6)(G).

On October 30, 2019, the Associate Solicitor, Division of Parks and Wildlife, issued a memorandum concluding that Section 6(a)(6)(G) of the CBRA, 16 U.S.C. § 3505(a)(6)(G), permits Federal funding for using sand removed from within the System to support shoreline stabilization projects located outside the System. The 2019 memorandum reversed the Department's earlier position, held since 1994, that the exemption allowing Federal funding for shoreline stabilization applies only to projects within the System, and not to projects that rely on resources exported from the System for use outside System boundaries.

The interpretation in the 2019 memorandum was adopted by Secretary Bernhardt as the Department's position¹ and subsequently challenged in *National Audubon Soc'y v. Haaland*, No. 20-5065 (S.D.N.Y.). Pursuant to Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,"² the 2019 memorandum was reviewed by the Department, and it has been rescinded. As explained in the accompanying memorandum from Sarah Krakoff, Deputy Solicitor for Parks and Wildlife, the better interpretation of CBRA's statutory text is that the exemption in Section 6(a)(6)(G) applies only to projects designed to stabilize shorelines located within the System. This interpretation furthers the Act's goals of minimizing wasteful expenditures of Federal funds and damage to fish,

¹ See Memorandum from Secretary Bernhardt to Rob Wallace, Assistant Secretary for Fish and Wildlife and Parks, and Margaret Everson, Principal Deputy Director, U.S. Fish and Wildlife Service, Nov. 4, 2019.

² Section 1 of Executive Order 13990 states that it is national policy "to improve public health and the environment," and directs that agency heads "shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order."

wildlife, and other natural resources, and is supported by the Act's plain language, structure, and legislative history. The Office of the Secretary concurs with the decision to rescind the 2019 memorandum and restore the prior longstanding interpretation.

The CBRA exception that allows Federal funding of nonstructural projects for shoreline stabilization is limited to projects designed to stabilize shorelines within the System. In the context of a beach-renourishment project, sand from a System unit may not be used to renourish a beach located outside of the System, even if the other requirements of Section 6(a)(6)(G) are met. Please notify your staff of this revised interpretation and request that they modify communications to bring them into compliance with the Department's current interpretation.

I concur.

A handwritten signature in blue ink, appearing to read "Rob Harsh".

Secretary of the Interior

JUL 15 2021

Date